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Open Data Italy

Definition

Article 1 of the Digital Administration Code (Legislative Decree 7 March 2005, no. 82) defines "open type data" as data having the following features:

- 1) **available** under the terms of a licence or a regulatory provision that allows their use by anyone, even for commercial purposes, in disaggregated format;
- 2) **accessible** through information and communication technologies, including public and private data networks, in open forms, suitable for automatic use by computer programmes and provided with the relevant metadata;
- 3) made available **free of charge** through information and communication technologies, including public and private telematic networks, or made available with marginal costs incurred for their reproduction and dissemination.

Regulatory sources and aims pursued

Open data policies fall within the scope of transparency, which is a central value in the fight against corruption and a widespread instrument of control over the appropriate actions of public administrations and the use of public resources.

Article 1, paragraph 15 of **Anti-Corruption Law no. 190/2012** states that administrative activity is made transparent through the publication, on institutional public administration websites, of information on administrative proceedings, budgets and final accounts as well as on the unitary costs of carrying out of public works and producing services distributed to citizens, in accordance with criteria of easy accessibility, thoroughness and simplicity of consultation, in compliance with the provisions on state secrecy, professional secrecy and personal data protection.

Paragraph 16 establishes that administrations ensure these essential levels of transparency with particular reference, amongst other things, to authorisation or concession procedures and to the choice of contractors for the assignment of works, supplies and services, also with reference to the selection procedure chosen in accordance with the Code of Public Contracts relating to works, services and supplies.

Legislative Decree no. 33/2013, amended by Legislative Decree no. 97/2016, defines transparency as full accessibility to data and documents held by the administrations¹, for the purpose of protecting the fundamental rights of citizens, promoting the participation of any interested party in the

¹ Legislative Decree 33/2013 identifies "public administrations" as all administrations referred to in Article 1, paragraph 2 of Legislative Decree no. 165/2001 as amended, including port authorities, as well as independent administrative authorities having protection, supervisory and regulatory powers. The Legislative Decree extends the same regulation also, insofar as it is compatible, to public economic bodies and professional associations; to public-controlled bodies, excluding listed companies, as well as to investee companies, except where the latter are not held through listed companies, subsidiaries or investee companies of public administrations; to private associations, foundations and bodies, however known, including those without legal personality, having a budget exceeding 500,000 Euro, whose activity has mostly been financed, for at least two consecutive fiscal years in the last three-year period, by public administrations and in which public administrations appoint all members/participants of their management or direction bodies.

The same legislation governing public administrations shall apply, only for data and documents concerning activity of public interest regulated by domestic law or European law, to semi-public companies, as defined by the Legislative Decree issued to implement Article 18 of Law no. 124 dated 7 August 2015, and associations, foundations and private bodies, including those without legal personality, having a budget exceeding 5,000 Euro and performing administrative functions, activities of production of goods and services in favour of public administrations or management of public services.



administrative activities, and fostering widespread forms of control on the pursuit of institutional functions and the use of public funds. Full data accessibility is guaranteed through publication obligations and through public access, which not only allows anyone to request information subject to mandatory publication in the event that its publication has been omitted, but also allows additional data and documents to be obtained. This is the generalised public access introduced by Legislative Decree no. 97/2016 (FOIA legislation, *Freedom of Information Act*), extended to all data and documents held by public administrations, even those that are not subject to mandatory publication, on the sole condition that the public and private interests expressly indicated by the Law are protected.

According to Article 7, documents, information and data subject to mandatory publication are published in an open format, that is to say, pursuant to Legislative Decree 7 March 2005 no. 82, a data format made public, exhaustively documented and neutral in terms of the technological tools required to use the data itself. They are also reusable according to Legislative Decree 24 January 2006 no. 36; Legislative Decree 7 March 2005 no. 82; Legislative Decree 30 June 2003 no. 196, without other restrictions aside from the obligation to cite the source and to respect its integrity.

The **Digital Administration Code** (Legislative Decree 7 March 2005 no. 82), brings together and organises the rules concerning the computerisation of the Public Administration in relationships with citizens and businesses. It was amended and supplemented by Legislative Decree 22 August 2016 no. 179, and subsequently by Legislative Decree 13 December 2017 no. 217, to promote and implement digital citizenship rights.

Legislative Decree 24 January 2006 no. 36 (Implementation of Directive 2003/98/EC on the re-use of Public Sector Information) as amended by Legislative Decree 18 May 2015 no. 102 (implementation of Directive 2013/37/EU amending Directive 2003/98/EC on the re-use of Public Sector Information) regulates the methods for re-using documents containing public data in the availability of public administrations and bodies governed by public law.

Almost all **Regions and Autonomous Provinces** have adopted regulatory measures and guidelines to enhance the wealth of public information: a summary table is provided below.

Public Administration	Catalogue	Regulations	Guidelines
Valle d'Aosta	regione.vda.it/statistica/Opendata	Regione Valle d'Aosta DGR 899 del 2014	Linee guida per gli Open Data presso la Regione Autonoma Valle d'Aosta
Piemonte	dati.piemonte.it	D.G.R n. 18-5072	Linee guida per l'ecosistema digitale regionale dei dati aperti
Liguria	regione.liguria.it//opendata.html		
Lombardia	dati.lombardia.it	DGR 2904/2012 - Criteri Open Data	Linee Guida Open Data di Regione Lombardia
Bolzano	dati.retcevica.bz.it		
Trentino	dati.trentino.it	Delibera n° 2449 del 30/12/2015	Linee guida provinciali per la valorizzazione del patrimonio informativo pubblico
Veneto	dati.veneto.it	DGR n. 2301 del 29-12-2011	
Friuli-Venezia Giulia	dati.friuliveneziagiulia.it	L.R. 7/2014, Disposizioni in materia di dati aperti e loro riutilizzo e relative Regole attuative	



Emilia-Romagna	dati.emilia-romagna.it		Linee guida relative al riutilizzo e messa a disposizione in open data dei dati pubblici dell'Amministrazione regionale
Toscana	dati.toscana.it	Delibera della Giunta regionale n. 23/2013	Le strategie in materia di open data di Regione Toscana: norme e atti di riferimento
Marche	www.regione.marche.it/Open-data		
Umbria	dati.umbria.it	DGR n. 371 del 27/3/2015	Linee guida per la pubblicazione di Open Data
Lazio	dati.lazio.it	Legge Regionale del Lazio 18 giugno 2012, n.7	
Abruzzo	opendata.regione.abruzzo.it		
Molise			
Campania	iteropendata.regione.campania.it	Legge Regionale N. 14/2013	Disciplinare sugli open data in Regione Campania
Basilicata	dati.regione.basilicata.it		Linee Guida sugli Open Data della Regione Basilicata
Puglia	dati.puglia.it		Linee Guida per la pubblicazione degli Open Data della Regione Puglia
Calabria			
Sicilia	dati.regione.sicilia.it		
Sardegna	opendata.regione.sardegna.it		Linee guida sull'Open Data per la Regione Sardegna

The **Digital Agency for Italy (AgID)**, established with Legislative Decree 22 June 2012 no. 83, is the national competence centre for open data, within the framework of the regulatory provisions contained in the Digital Administration Code and the regulations implementing the PSI (Public Sector Information) Directive, in line with Open Government policies. It promotes the enhancement of public information within a programming and controlling cycle articulated around three documents: the **National Agenda**, which identifies the objectives and implementation plan for the opening of the databases, based on the goals set by the European Digital Agenda for the development of the economy and digital culture in Europe; the **Guidelines**, which define the operational models and the technical aspects for implementing the regulatory provisions as well as the National Agenda in a homogeneous manner on a national scale; the **Annual Monitoring Report** on the stage of progress of the opening of public databases. It coordinates the activities of the administrations for the use of information and communication technologies, through the drafting and control of the implementation of the **Three-Year Plan for IT in the Public Administration**, which contains the objectives and the primary interventions for developing and managing the information systems of public administrations. AgID has also managed, since 2015, the national catalogue of open data made available by the administrations, *dati.gov.it*, which contributes to feeding the European Data Portal (*europaanddataportal.eu*).

The **Three-Year Plan for IT in the Public Administration 2019-2021** is the strategic and economic policy document which defines the reference model for the development of Italian public information technology and the operational strategy for the country's digital transformation.

The Plan identifies the following medium-term strategic objectives regarding open data:

- to promote and intercept the request for data re-use, particularly on the territory, by sectors of interest, with the involvement of the local government, activating a dialogue with companies and civil society, to better understand how to stimulate the meeting between data demand and supply; to link this objective with the actions envisaged in the context of the [Open Government Partnership \(OGP\)](#);



- to spread the culture of open data in administrations and companies, based on inclusive actions aimed at fostering an understanding of the potential of data re-use, while avoiding new or higher burdens for administrations;
- to put in place efforts coordinated between central, regional and local administrations, for particular domains or ecosystems, aimed at opening data with the same subject but containing different information that complements each other;
- to promote planned actions to make some regional datasets available in all regions, to guarantee coverage throughout the country.

As part of its participation in the *Open Government Partnership*, Italy has started drafting the **Fourth National Action Plan for the 2019-2021 Open Government**, which represents an overall strategy for achieving significant results in terms of transparency, civic participation, fight against corruption, simplification and innovation of the Public Administration. The first action is dedicated to the topic of open data and focuses, in particular, on the need to continue to promote a culture of enhancing the value of public information assets aimed at data re-use. One of the objectives of the Plan is to define at national level measures that can lead to the adoption of a national licence or, where useful and applicable, diversified licences capable of stimulating the correct and effective re-use of data; to define common standards of data published by type, also using work already started in this context and defining quality indicators for Open Data; to develop, at regional level, joint initiatives on open data to increase transparency and accountability and to encourage data re-use.

Areas of disclosure of public data

The amendment of Article 52 of the Digital Administration Code introduced the obligation to publish open data, known as "open data by default principle", whereby data and documents that administrations post without the express adoption of a licence refer to data released as open type.

Articles 3 and 7 of Legislative Decree no. 33/2013 provide that all documents, information and data subject to mandatory publication are published in an open type format, and anyone has the right to know them, to use them for free, and to reuse them without further restrictions other than the obligation to cite the source and respect its integrity.

Publication requirements and data standardisation. Personal data protection

Documents, information and data subject to mandatory publication are published on the institutional websites of administrations in a special section called "Transparent Administration", organised into first and second level subsections, according to the scheme set out in Annex A) of Legislative Decree no. 33/2013.

In this section, administrations must also publish **data on their payments** to facilitate consultation on the type of expenditure incurred, the timeframe of reference and the beneficiaries (Article 4bis of Legislative Decree no. 33/2013). The website "Soldi Pubblici" allows access to data of incoming funds and payments of public administrations and enables their consultation by type of expenditure incurred and the administrations that incurred it, as well as the timeframe of reference.

The National Anti-Corruption Authority, in the National Anti-Corruption Plan, can modulate the publication obligations and the related implementation methods, with regard to the nature of the subjects, their organisational dimension and the activities carried out, providing simplified



procedures for Municipalities having fewer than 15,000 inhabitants, and for professional orders and colleges.

Data, information and documents subject to mandatory publication are published for 5 years starting from 1 January of the year after that in which the publication obligation begins, and in any case for as long as the published documents produce their effects, without prejudice to the different terms envisaged by the legislation on personal data processing. After these deadlines, data can be accessed through public access (Article 8). In some cases, identified by ANAC at the proposal of the Personal Data Protection Authority on the basis of an assessment of the corruption risk, as well as of the simplification requirements and of the access requests presented, data and documents may be published for less than 5 years.

The National Anti-Corruption Authority, having consulted the Personal Data Protection Authority, the Unified Conference, the Digital Italy Agency and ISTAT, defines the criteria, models and standard schemes for the organisation, codification and representation of documents, information and data subject to mandatory publication, and provides guidance on the organisation of the "Transparent Administration" section, as stated in Article 48 of Legislative Decree no. 33/2013.

In anticipation of the definition of publication standards on the different types of obligations to be implemented, ANAC Resolution no. 1310 of 28 December 2016, at point 3, provides some operational indications for increasing the quality and simplicity of consultation of data, documents and information published in the "Transparent Administration" section. In particular, it suggests presenting the published data in tables so as to increase the level of comprehensibility and the simplicity of data consultation.

With particular reference to the publication obligations according to Article 1, paragraph 32 of Law no. 190/2012 (on the procedures for choosing contractors for the assignment of works, supplies and services), Article 6 of ANAC Resolution no. 39/2016 states that such data "must be published in an open standard digital format that allows for its analysis and revision". For this purpose, the Administrations and Authorities "must use the XML format according to the XSD schemes defined in the 'technical specifications' document available on the Authority's website".

There is **no general obligation to publish** all data and documents held by public administrations, but Legislative Decree no. 33/2013 lists the cases in which this duty exists. Chapter II (Articles 13-28) identifies the publication obligations concerning the organisation and activity of the public administrations; Chapter III (Articles 29-31) those on the use of public resources; Chapter IV (Articles 32-36) those relating to the performance offered and the services provided and Chapter V (Articles 37-42) those relating to particular sectors.

Article 37, amended by Legislative Decree 25 May 2016, no. 97, regulates the publication obligations concerning public procurements, providing that public administrations and the contracting authorities must publish on their institutional websites, in the "Transparent Administration" section, "Call for Tenders and Contracts" sub-section, the information envisaged by Article 1, paragraph 32 of Law no. 190/2012, on the procedures for selecting contractors for the assignment of works, supplies and services according to paragraph 16, letter b) of that Article:

- contracting authority;
 - subject of the invitation to tender;
 - list of operators invited to submit tenders;
 - contractor;
-



- amount of the award;
- time needed to complete the work, service or supply;
- amount of sums paid;

and acts and information subject to publication according to Legislative Decree 18 April 2016 no. 50², with an indication of the publication date:

- all deeds of the contracting authorities/entities, if not considered significant or secret, concerning
 - o planning of works, services and supplies;
 - o procedures for granting public contracts of services, supplies and works, public design tenders, competitions for ideas and concessions, including those between entities in the context of the public sector as referred in Article 5;
 - o composition of the selection committee and curricula of its members.
- transcripts of the financial management of the contracts, once the execution has ended.

Paragraph 32 of Article 1 of Law no. 190/2012 states that by 31 January of each year, the information referring to the award procedures launched during the previous year must be published in summary tables which can be freely downloaded in an open standard digital format, allowing the computer data to be analysed and reworked, also for statistical purposes. The administrations must send this information in digital format to the Public Works, Services and Supplies Supervision Authority, which publishes it on its website in a section freely accessible to all citizens, catalogued by type of contracting authorities and by region, and sends to the Court of Auditors the list of administrations that have failed to communicate and publish this information in open standard digital format.

ANAC Resolution no. 39/2016 specifies the information to be published by the administrations, briefly describing the list identified by Article 1, paragraph 32 of Law no. 190/2012. It provides that such information is also published pending the award (without prejudice to the principle of secrecy of the offers) and that information is also released regarding the procedures whose contracts of assignment are being carried out in that period or whose data have been modified or updated. It also specifies that the publication obligations concern all contractor selection procedures, regardless of the acquisition of the CIG (tender identification code) or the SmartCIG (CIG in simplified mode used for micro-contracts and contracts excluded in whole or in part from the application of the Code) and regardless of whether or not the choice of contractor took place following a competitive comparison or by direct assignments and regardless of the prior publication of a call for tenders or a letter of invitation. According to Article 1, paragraph 26 of Law no. 190/2012, these publication obligations also apply to procedures implemented as an exception to ordinary procedures.

Annex 1 of **ANAC Resolution no. 1310** summarises the acts that the public administrations are required to publish in the "Transparent Administration" section, "Call for Tenders and Contracts" sub-section, stating that the lists of minutes of the tender committees must also be published.

² According to Article 29 of Legislative Decree 18 April 2016 no. 50, these data shall also be published on the website of the Ministry of Infrastructures and Transport and the digital platform established by the National Anti-Corruption Authority, even using regional digital systems and local e-procurement platforms interconnected through applicative cooperation. Legislative Decree 18 April 2019 no. 32, converted into Law 14 June 2019 no. 55, repealed the obligation to publish the provision determining exclusions from the award procedure and the admissions to the result of the verification of the documentation certifying the absence of the reasons of exclusion set out in Article 80, as well as the continuing existence of the economic and financial requirements and of the technical and professional requirements, within two days from the date of adopting the relevant acts.



In order to remedy, partially, the fragmentation of data on the websites of various bodies, Legislative Decree no. 33/2013, amended by Legislative Decree no. 97/2016, regulates the publication of **national databases** (Article 9 bis; Annex B), providing that the publication obligations can be fulfilled by communicating data, information or documents to the administrative owner of the database and publishing the link to the database on the institutional website.

If data, documents and information subject to mandatory publication include **personal data**, the National Anti-Corruption Authority, after consulting the Personal Data Protection Authority, identifies those data and ensures that only summary information, processed by aggregation, is published.

Article 7 bis, paragraph 4 of **Legislative Decree no. 33/2013** also states that "where the law or regulations require the publication of deeds or documents, the public administrations shall make, with respect to the specific transparency purposes of the publication, unintelligible any personal data that are not relevant or, in the case of sensitive or judicial data, not essential".

The **2018 National Anti-Corruption Plan** clarifies some questions formulated to the National Anti-Corruption Authority on the compatibility of the publication obligations provided by Legislative Decree no. 33/2013 with the new regulation of Legislative Decree 10 August 2018 no 101 which adapts the Data Protection Law, Legislative Decree 30 June 2003 no. 196, to the provisions of EU Regulation 2016/679 (GDPR). The regulatory regime for personal data processing by public entities is substantially unchanged, in line with the principle that it is only permitted if admitted by law or by regulation.

Therefore, public administrations, before making data and documents including personal data available on their institutional websites, must verify that the transparency regulations of Legislative Decree no. 33/2013 or those included in other provisions, including sector-based rules, include the publication obligation.

In any case, the publication of data on websites for transparency purposes, even if carried out in the presence of a suitable regulatory assumption, must take place in compliance with all principles applicable to personal data processing contained in Article 5 of Regulation (EU) 2016/679, such as fairness, lawfulness and transparency; data minimisation (restriction to what is necessary with respect to the purposes for which personal data are processed); accuracy and updating of data; restriction of storage; integrity and confidentiality, also taking account of the principle of "responsibility" of the data controller.

The 2014 "**Guidelines on Personal Data Processing**" of the Personal Data Protection Authority define a framework of measures aimed at identifying appropriate precautions which must be applied by those subject to the publication obligations in order to prevent the fulfilment of those transparency obligations violating rights protected by the Privacy Code and guaranteed by the Constitution.

Data accessibility

Data accessibility has been established since the Anti-Corruption Law and is further strengthened by Legislative Decree no. 33/2013, as well as by the Digital Administration Code.



Article 1, paragraph 15 of **Law no. 190/2012** states that transparency of administrative activity is provided through the publication, on institutional public administration websites, of information relating to administrative proceedings, following the criteria of easy accessibility, thoroughness and simplicity of consultation, in compliance with provisions on state secrecy, professional secrecy and personal data protection.

Legislative Decree no. 33/2013 defines transparency as "total accessibility" of data and documents held by public administrations. This principle is split into the obligation to publish data ("proactive transparency") and public access ("reactive transparency"), which is obtained in response to requests for knowledge.

The Legislative Decree specifies that all documents, information and data subject to mandatory publication are public, freely available in an open format, and anyone has the right to know, use and re-use them, with no restrictions other than the obligation to cite the source and to respect its integrity (Articles 3 and 7). The publication is made on the institutional websites of the administrations in a special section called "Transparent Administration", directly and immediately accessible by anyone, without authentication and identification. Administrations may not use filters or other technical solutions to prevent web search engines from indexing and searching within the "Transparent Administration" section.

The publication may be replaced by a hypertext link to the section of the website where the data, information or documents are present.

Availability, accessibility and free access are fundamental elements that the **Digital Administration Code** identifies in Article 1 to define open data. Article 50 states that data of public administrations are formed, collected, stored, made available and accessible through the use of information and communication technologies that allow for their use and reuse, under the conditions established by regulations, by other public administrations and persons, subject to the limits on the knowledge of data required by laws and regulations, the rules on personal data protection and EU legislation on the re-use of public sector information.

The importance of accessibility is further underlined in Article 53, which requires that the institutional websites of public administrations are implemented on telematic networks that respect principles of accessibility, as well as high usability and availability, also by disabled people, completeness of information, clarity of language, reliability, simplicity of consultation, quality, homogeneity and interoperability.

The obligation to publish documents, information or data, envisaged for public administrations by the legislation currently in force, entails the right of anyone to request the publication of any document, information or datum whose publication has been omitted, with no limitation regarding the subjective legitimacy of the applicant and no need for reasons (so-called "**simple public access**", Article 5 of Legislative Decree no. 33/2013).

Furthermore, Legislative Decree no. 97/2016 introduced **generalised public access**, which guarantees anyone the right to access data and documents other than those subject to mandatory publication,



subject to restrictions imposed due to the need to protect legally relevant interests as provided by Article 5-bis³.

In this case, if the administration identifies parties that may oppose the publication, it shall notify any such party of the same. The latter, within ten days from receiving that notice, may submit a reasoned statement of opposition to the access application and may then submit a request for review or appeal to the Ombudsman in the event that the access request is accepted.

Alternatively, the application may be presented to the office holding the data, information or documents; to the public relations office; to any other office indicated by the administration in the "Transparent Administration" section of its institutional website; to the person in charge of preventing corruption and guaranteeing transparency if the application concerns data, information or documents whose publication is mandatory. No costs shall be applied to data or documents released in electronic format or hard copy except for the cost actually incurred and duly documented by the administration for reproducing such data and documents on physical devices.

The public access procedure must be completed with the issuance, within thirty days from the date of submitting the relevant application, of an express and motivated order to be sent to the applicant and the opposing parties, if any.

If the application is accepted, the administration shall promptly provide the applicant with the requested data or documents, or, if the application concerns data whose publication is mandatory pursuant to the order, it shall publish the required data, information or documents on the website and shall notify the applicant thereof, also providing the relevant hyperlink.

In the event of a total or partial rejection of access, motivated with reference to the cases and limits established by Article 5 bis, or failure to reply within 30 days, the applicant may submit the request for review to the Head of Prevention of Corruption and of Transparency, who will make the decision, issuing a reasoned measure, within 20 days, having heard the opinion of the Personal Data Protection Authority if there is concrete prejudice in terms of personal data protection.

The applicant may appeal against the decision of the competent administration or, in case of a request for review, against the decision of the Head of Prevention of Corruption and of Transparency, to the Regional Administrative Court in accordance with Article 116 of the Administrative Procedure Code.

If the subject of the application is an act of regional administrations or local entities, the applicant may also appeal to the Ombudsman having territorial jurisdiction, if appointed; otherwise, the applicant may appeal to the Ombudsman competent for the immediately higher territorial scope⁴.

³ Access is excluded to protect the following interests: public security and public order; national security; defence and military matters; international relations; political and financial stability of the state; criminal investigations; regular performance of inspection activities. It is also excluded to avoid prejudicing personal data protection based on specific regulations; freedom and secrecy of correspondence; economic and commercial interests of a natural or legal person, including intellectual property, copyright, and trade secrets. With Resolution no. 1309 of 2016, the National Anti-Corruption Authority adopted, in agreement with the Data Protection Authority, the Guidelines providing operational indications for defining the exclusions and limits according to Article 5-bis, paragraph 6).

⁴ The appeal shall also be notified to the interested administration. The Ombudsman shall make his decision within thirty days from the date on which the appeal is lodged. If the Ombudsman deems the rejection or postponement unlawful, he shall inform the applicant and the competent authority. If the latter confirms the denial or delay within thirty days from the date of receipt of the Ombudsman's notice, access will be permitted. If access is denied or postponed to protect personal data, the Ombudsman shall make his decision, having heard the opinion of the Data Protection Authority, who shall decide within ten days from the request. From the date of sending the notice to the Data Protection Authority, the term by which the Ombudsman may make his decision shall be suspended to the day on which the opinion of the Data Protection Authority is received and in any case for a period not exceeding the ten days described above.



Drafting techniques

To avoid the risk of "opacity due to confusion", particular attention is paid to the quality of data published by public administrations. Article 6 of Legislative Decree no. 33/2013 requires public administrations to guarantee the quality of the information posted on their institutional websites, ensuring its integrity, constant update, completeness, timeliness, ease of consultation, comprehensibility, homogeneity and easy accessibility, as well as compliance with the original documents which contain an indication of its origin and of how it can be reused.

The **Ministry of Public Administration Directive on the simplification of the language of Public Administrations**⁵ indicates some rules to simplify the reading and understanding of administrative deeds and documents, also with regard to the drafting of institutional web pages.

Benchmarking

As examined in the previous paragraphs, Legislative Decree no. 33/2013 requires public administrations to publish on their institutional websites documents, information and data concerning the organisation and activity of public administrations; the use of public resources; the performance offered and the services provided. Certain publication obligations in specific sectors are then regulated.

To support interoperability, comparability and effective re-use, as also highlighted in the *Open Data Charter*, data should be published in structured and standardised formats.

Article 48 of Legislative Decree no. 33/2013 establishes that the National Anti-Corruption Authority, having consulted the Personal Data Protection Authority, the Unified Conference, the Digital Italy Agency and ISTAT, defines the criteria, models and standard schemes for the organisation, codification and representation of documents, information and data subject to mandatory publication, as well as in relation to the organisation of the "Transparent Administration" section.

The standards, models and schemes contain requirements aimed at guaranteeing informative coordination of data, to satisfy the requirements of uniformity of the methods of codifying and representing public information and data, for their comparison and reprocessing. They are also aimed at defining, for specific sectors and types of data, the quality requirements of the information, identifying, in particular, the necessary adjustments by single administrations with their own regulation, the validation procedures, controls and substitutive controls, professional competencies required for managing information disclosed through institutional websites, as well as guarantees and corrections that can be activated by anyone who has an interest.

In anticipation of the definition of publication standards on different types of obligations being implemented, **ANAC Resolution no. 1310 of 28 December 2016**, at point 3, provides some operational indications to increase the quality and consultation simplicity the data, documents and information published in the "Transparent Administration" section. In particular, it suggests presenting the published data in tables in order to increase the level of comprehensibility and simplicity of data consultation.

⁵ <http://www.funzionepubblica.gov.it/sites/funzionepubblica.gov.it/files/16769.pdf>



With particular reference to the publication obligations according to Article 1, paragraph 32 of Law no. 190/2012 (on the procedures for choosing contractors for the assignment of works, supplies and services), Article 6 of **ANAC Resolution no. 39/2016** states that such data "must be published in an open standard digital format that allows for its analysis and revision". For this purpose, the Administrations and Authorities "must use the XML format according to the XSD schemes defined in the 'Technical Specifications' document available on the Authority's website".

Annex A) of Legislative Decree no. 33/2013 indicates the correct structure of each "Transparent Administration" section in order to make the publication on each institutional website homogeneous and thus facilitate the comparability of open data between public administrations. That organisational structure involves first and second level subsections, indicating the minimum contents that must be present in each paragraph according to Legislative Decree no. 33/2013.

The comparability of data between institutions is, therefore, on one hand, made possible by the adoption of a homogeneous structure of institutional sites that allows for the rapid identification of the data of interest; on the other hand, it is hampered by the absence of a definition of publication standards on the different types of obligations.

As highlighted in the Fourth National Action Plan for the Open Government (2019-2021), one of the difficulties that hinders the possibilities of re-use of public information is the fragmented conformity - mainly for non-geographic data - with European metadata standards, as well as the lack of conformity to standard data representation models which make data effectively integrated and comparable. One of the objectives of the Action Plan in order to overcome these limits is the definition of measures that can lead to the adoption of a standard licence or, where useful and applicable, diversified licences for homogeneous categories of data capable of stimulating correct and effective data re-use, overcoming the current incompatibility problems deriving from the use of different types of licences; the definition of the common standards of data published by type, also making use of works already started in this context and the definition of quality indicators for open data, referring, in particular, to the existing ISO standards.

The comparability of open data is facilitated by the *dati.gov.it* portal, the national catalogue of metadata for data released in open format by Italian public administrations, which, as outlined in Article 9 of Legislative Decree no. 36/2006, represents the research tool and the access point to data in open format, as published and updated by the respective administrations. By accessing the portal, searches can be carried out for data by theme or organisation.

The catalogue, which currently contains 26,783 datasets, is inputted with the contribution of all Italian public bodies that disclose open data; to update the information continuously, the harvesting function has been implemented, which can automatically import the metadata of the datasets displayed by the individual administrations into their catalogue.

In particular, control over public expenditure can be applied by analysing the specific sub-section of the "Transparent Administration" section of each administration's website; here, it is possible to observe the data on payments in relation to the type of expenditure incurred, the timeframe of reference and the beneficiaries, or through the website "Soldi Pubblici", which allows access to the data of public administrations' payments and facilitates their consultation in relation to the same



criteria: the type of expenditure incurred and the administrations that carried it out, as well as the timeframe of reference.

According to *Open Data Maturity in Europe 2018*, an action launched by the European Commission to identify the maturity of open data and the implementation of the Public Sector Information (PSI) Directive in the Member States, Italy ranks 4th out of 32 monitored countries.

The *Investigation on the maturity of the open data and on the implementation of the PSI Directive - 2018*⁶ report illustrates the data collected by the survey conducted by the Digital Agency for Italy, which involved 33 administrations. It analyses the policies implemented by public administrations on open data; the impact of open data for administrations, citizens and businesses and the obstacles to further implementation of open data.

Control authorities

The rules concerning supervision on the execution of data publication are contained in Chapter VI of Legislative Decree no. 33/2013. Three bodies have this function: the Head of Prevention of Corruption and of Transparency, the Independent Evaluation Body and the National Anti-Corruption Authority (ANAC).

According to Article 43, within all the administrations the **Head of Prevention of Corruption and of Transparency** supervises the fulfilment by the administration of the publication obligations envisaged by the legislation in force, guaranteeing completeness, clarity, and updating of the published information, reporting on cases of non-fulfilment or delayed fulfilment of the publication obligations to the Independent Evaluation Body, ANAC and, in serious cases, the disciplinary office.

Article 44 states that the **Independent Evaluation Body** verifies the coherence of the objectives envisaged by the Three-Year Plan for the Prevention of Corruption and the Performance Plan, evaluating the adequacy of the related indicators. The bodies in charge of evaluating the performance, and the Independent Evaluation Body, use the information and data on the implementation of the transparency obligation to measure and evaluate both the organisational and individual performance of the manager and the person responsible for data transmission.

An important role is granted to the **National Anti-Corruption Authority**, which, to carry out the supervision and control of the actual application and efficiency of the transparency measures adopted by the public administrations on transparency, may order the adoption of acts or measures required by the rules on the transparency of administrative activity, pursuant to Article 1, paragraph 3 of Law no. 190/2012.

Article 45, paragraph 1 of Legislative Decree no. 33/2013 assigns to the National Anti-Corruption Authority the power to control "the correct compliance with the publication obligation provided by the legislation in force, exercising its inspection powers by requesting information, deeds and documentation from the public administrations and ordering them to publish, within 30 days, data, documentation, and information in line with the provisions of this Decree, to adopt the acts or measures required by the legislation in force or to remove acts in contrast with the plans and rules on transparency".

⁶ https://www.dati.gov.it/sites/default/files/Indagine_grado_maturita_opendata%20_PSI_2018.pdf



ANAC verifies the activity of the Head of Transparency from whom it may request the summary results of the controls performed within the administrations. It can also request from the OIV further information on monitoring of the correct compliance with the transparency obligation envisaged by the legislation in force. Furthermore, it can use the databases of the Presidency of the Council of Ministers - Department of the Public Function to monitor fulfilments of the publication obligations laid down by the legislation in force.

In line with their severity, ANAC reports the offence to the disciplinary office of the administration involved, to the senior management of the administration, to the OIV and, if necessary, to the Court of Auditors, to activate any form of responsibility. The National Anti-Corruption Authority publishes the related decisions.

ANAC Regulation of 29 March 2017 governs the Authority's proceedings concerning the exercise of supervisory powers over the exact fulfilment of the publication obligations envisaged by current legislation, according to Article 45 of Legislative Decree 14 March 2013 no. 33.

Sanctions

Sanctions of different nature have been envisaged.

According to Article 46, non-compliance with the publication obligation envisaged by Legislative Decree no. 33/2013 constitutes an **element of evaluation for managerial responsibility** and a possible cause of liability for damaging the reputation of the administration. It may also be included in the assessment for the purposes of paying performance bonuses and accessory remuneration related to the individual performance of the persons involved, unless the manager proves that the non-compliance was caused by events not attributable to him/her.

According to Article 45 of Legislative Decree no. 33/2013, non-compliance with the publication obligation by the person responsible for publication or the manager responsible for disclosing the information constitutes a **disciplinary offence**.

Furthermore, **administrative pecuniary sanctions** are envisaged in some instances, governed by Article 47 of Legislative Decree no. 33/2013, for those required to communicate specific data or to publish them. In particular:

- an administrative sanction ranging from €500 to €10,000, together with the publication of the related decision on the website of the administration or body involved for:
 - o the person responsible for lack of or incomplete communication of the information and data of the holders of political, administrative, management, government and managerial positions relating to the financial situation of the holder of the duty at the time of appointment, the stock held in companies, the shareholdings and those of the spouse and relatives up to the second degree as well as all remuneration related to the appointment;
 - o the manager who fails to make the communication, according to Article 14, paragraph 1-ter, relating to the total remuneration received from public finance, as well as for the person responsible for the non-publication of the information referred to in the same article;
 - o the person responsible for not publishing the data referred to in Article 4-bis, paragraph 2.
- A pecuniary administrative sanction ranging from €500 to €10,000 for:



- the person responsible for violating the publication obligation envisaged by Article 22 paragraph 2, which requires supervised public bodies, private law bodies in public control and investee companies to publish and update annually the data related to their name, the size of the participation, if any, held by the administration, the duration of the commitment, aggregate charges to be entered, for any reason, in the balance sheet of the administration for the relevant year, number of representatives of the administration in the government bodies, total remuneration to be paid to each of them, results of the financial statements of the latest three fiscal years.
- managers who do not communicate to public shareholders their appointment and the related remuneration within 30 days from the selection, or within 30 days from receiving the result-based remuneration.

ANAC imposes pecuniary sanctions according to the procedure governed by its "*Regulation on the exercise of sanctioning power pursuant to Article 47 of Legislative Decree 14 March 2013, no. 33, as amended by Legislative Decree 25 May 2016 no. 97*".

In addition to these sanctions, there are the following measures:

- with reference to the violation of the obligations pursuant to Article 14, the publication, by ANAC, of the interested parties for whom the data envisaged by the same article have not been published and, by the administration or the organisation concerned, of the sanctioned provision imposed on the person responsible for not communicating the data pursuant to Article 14;
- for the failure or incomplete publication of the obligations provided by Article 22, paragraph 2, the prohibition to provide money for any reason in favour of supervised public bodies, private law bodies in public control, investee companies.

The National Anti-Corruption Authority specified the sanctioning regime for the violation of specific transparency obligations in its **Resolution no. 66/2013**.

Most recent references:

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