

Overall Score:

81 - Strong

Legal Framework Score:

81 - Strong

Actual Implementation Score:

77 - Moderate

Category I. Civil Society, Public Information and Media

I-1. ⁹⁰Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

67

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES | NO

Comments:

The Constitution ensures the general rights for citizens to assemble and to form associations for ends which are not forbidden to individuals by criminal law. Secret associations and those which pursue, even indirectly, political ends by means of organizations of a military character, are forbidden. In particular, good governance and anti-corruption are not forbidden ends. Registration is necessary only to get legal personality.

References:

Art. 17 (Right to Assemble) and art. 18 (Right of Association) of the Constitution(Costituzione)

Art. 17: Citizens have the right to assemble peacefully and unarmed. No previous notice is required for meetings, even in places open to the public. For meetings in public places previous notice must be given to the authorities, who may forbid them only for proven motives of security and public safety.

Art. 18: Citizens have the right to form associations freely, without authorization, for ends which are not forbidden to individuals by criminal law. Secret associations and those which pursue, even indirectly, political ends by means of organizations of a military character, are forbidden.

Source: <http://www.quirinale.it/costituzione/costituzione.htm>

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

Comments:

Private organizations can receive funding from any legal source.

There is a general responsibility under criminal law, if the funding has a criminal purpose (e.g. for corruption or money laundering), but there is no law that limits the capacity for associations – and CSOs in particular – to accept funding.

References:

Art. 41 (Freedom of Economic activity) of the Constitution

Art. 41: Private economic initiative is free. It cannot be conducted in conflict with public will or in such a manner that could damage safety, liberty, and human dignity. The law determines appropriate planning and controls that public and private economic activity are directed and co-ordinated towards social objectives.

<http://www.quirinale.it/costituzione/costituzione.htm>

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

Comments:

There is no legal provision that requires CSOs to disclose their sources of funding. This is true both for anti-corruption NGOs and for any other types of CSOs.

Law 398/91 requires that sport associations use bank transfer to keep track of the payers, since such associations are not required to keep balances and financial documents. Since in Italy there is no law on associations, law 398/91 is applied to other types of associations. Such law doesn't require the disclosure of the source of funding but should allow, in any moment, to see payments in and out (and those who have made the payments.)

References:

There is no specific law.

YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

83

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

100 | 75 | 50 | 25 | 0

Comments:

The creation of such CSOs is not a problem in Italy. There are three main associations working on corruption and good governance in Italy: Transparency, Libera (against organized crime and its impact on society and governance) and Avviso Pubblico, a network of local authorities for good governance.

References:

www.libera.it
www.transparency.it
www.avvisopubblico.it

100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

Comments:

Law 109/96 deals with confiscation and seizure of goods of mafiosi¹⁷, members of criminal organizations. Although it deals with corruption only indirectly, it is a good example of positive influence of NGOs on the political process.

References:

<http://www.libera.it/index.asp?idmenuliv2=12>

A petition that association Libera presented to the public in 1995 to ask a new law on confiscation and seizure of goods of criminals.

The petition became law 109/96.

100: Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | NO

Comments:

No CSOs have been shut down.

References:

www.transparency.it
www.libera.it
www.anticorruzione.it
www.avvisopubblico.it

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

100

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

Comments:

According to the press, in the past years there were no notices of civil society activists working on corruption issues who have been imprisoned.

References:

www.adnkronos.it

www.ansa.it

YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | NO

Comments:

According to the press, in the past years there were no notices of civil society activists working on corruption issues who have been physically harmed.

References:

www.adnkronos.it

www.libera.it

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

Comments:

According to the press, in the past years there were no notices of civil society activists working on corruption issues who have been killed.

References:

www.ansa.it

www.adnkronos.it

YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

100

4a. In law, citizens have a right to organize into trade unions.

YES | NO

Comments:

Trade unions are free. In Italy there are three main trade unions, CGIL, CISL and UIL and many minor trade unions. Despite the fact that first provision of the article (the freedom of organizing trade unions) is fully respected, the remaining part of the article has yet to be implemented. The effect of collective labor agreements has been ensured with a specific law, while a number of proposals have been presented to the Parliament for the enforcement of the article (the last proposal has been presented on the May 31, 2007).

References:

Art. 39 of the Constitution.

Art. 39: Trade union organization is free.

No obligations can be imposed on trade unions other than registration at local or central offices, according to the provisions of the law.

Trade unions are only registered on condition that their by-laws lead to internal organization of democratic character.

Registered trade unions are legal persons. Being represented in proportion to their registered members, they may jointly enter into collective labor contracts which are mandatory for all who belong to the respective industry of these contracts.

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

See the website for a list of the many Italian trade unions.

References:

http://it.wikipedia.org/wiki/Sindacato#I_sindacati_italiani

100: Trade unions are common and are an important part to the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

I-2. Media

5. Are media and free speech protected?

100

5a. In law, freedom of the media is guaranteed.

YES | NO

Comments:

The major debate in Italy is about the freedom of the media with respect to the owners. There are restrictions regarding privacy, but in general this does not affect the freedom of the press.

References:

Art. 21 of the Constitution

Art. 21: (1) Everyone has the right to freely express thoughts in speech, writing, and by other communication. (2) The press may not be controlled by authorization or submitted to censorship. (3) Seizure is permitted only by judicial order stating the reason and only for offenses expressly determined by the press law or for violation of the obligation to identify the persons responsible for such offences. (4) In cases of absolute urgency where immediate judicial intervention is impossible, periodicals may be seized by the judicial police, who must immediately and in no case later than 24 hours report the matter to the judiciary. If the measure is not validated by the judiciary within another 24 hours, it is considered revoked and has no effect. (5) The law may, by general provision, order the disclosure of financial sources of periodical publications. (6) Publications, performances, and other exhibits offensive to public morality are prohibited. Measures of prevention and repression against violations are provided by law.

YES: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | NO

References:

Art. 21 of the Constitution.

Art. 21: (1) Everyone has the right to freely express thoughts in speech, writing, and by other communication. (2) The press may not be controlled by authorization or submitted to censorship. (3) Seizure is permitted only by judicial order stating the reason and only for offenses expressly determined by the press law or for violation of the obligation to identify the persons responsible for such offences. (4) In cases of absolute urgency where immediate judicial intervention is impossible, periodicals may be seized by the judicial police, who must immediately and in no case later than 24 hours report the matter to the judiciary. If the measure is not validated by the judiciary within another 24 hours, it is considered revoked and has no effect. (5) The law may, by general provision, order the disclosure of financial sources of periodical publications. (6) Publications, performances, and other exhibits offensive to public morality are prohibited. Measures of prevention and repression against violations are provided by law.

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

100

6a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

Comments:

The financial investment required to form a print media entity limits the creation of nation-wide print media entities.

In Italy, ownership of the media is closely concentrated among non-publishing companies. Two of the three largest-selling daily newspapers (Corriere della Sera, which reports general news, and Gazzetta dello Sport, which reports sports news) belong to the same group: the RCS MediaGroup owned by the Agnelli group, which has interests in the automobile sector (Fiat), finance, insurance and tourism, and also publishes one of the widest-circulating free newspapers in the country (City). The other main national daily newspaper, la Repubblica, is owned by the Gruppo Editoriale l'Espresso, which is part of the De Benedetti group, which also operates in telecommunications, information systems and finance and owns 15 local newspapers and a number of periodicals.

Competition in the newspaper market is characterized by the presence of six main groups (RCS, l'Espresso, Il Sole 24 Ore, Monrif, Caltagirone, Fiat), which account for around 70 percent of the market. As regards periodicals, the Gruppo Mondadori is the largest Italian publisher, with a 42 percent market share and 50 titles.

References:

AGCOM, annual report http://www.agcom.it/rel_06/index.htm

EIRO, <http://www.eurofound.europa.eu/eiro/2007/country/italy.html>

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

Comments:

No print license is necessary in Italy, so there is no possibility to deny it (except for the cases of publications with content against the law). Yet, to start the activities of printing it is necessary to be registered in a Registry of Communication Operators (Registro degli operatori di comunicazione) held by the Communications Regulatory Authority (Agcom), an independent authority, established by Law n. 249 of July 31, 1997.

The purpose of this registration is to control ownerships, concentration, and the limits of participation of foreign societies in Italian media.

References:

Art. 21 the Constitution
Communications Regulatory Authority (AGCOM)
www.agcom.it

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

NO: A NO score is earned if there is no appeal process for print media licenses.

6c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Licenses are not required.

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Licenses are not required.

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

31

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:

The score of 25 comes from the fact that there are complaints related to TV media companies. The market is owned basically by the public company RAI and Berlusconi's company MEDIASET. The actual law on communication, adopted during the time Berlusconi was prime minister, is accused to close the market of satellite communications only to these two subjects.

References:

News posted on the website of the Ministry of Communication on May 22, 2007

<http://www.comunicazioni.it/news/pagina242.html>

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

Comments:

There are different types of broadcasting licenses: one for network operators” (operatore di rete) – those who hold the infrastructures for broadcasting; one for “service providers” (fornitori di servizi) – those who sell media services (decoder, pay-tv, and in general any pay-per-view broadcast); one for “content provider” (fornitore di contenuti) – i.e. the editor, responsible for the programs.

The Ministry of Communications releases these licenses within 60 days from the request.

There is no specific appeals mechanism apart from the general appeals mechanism for administrative acts.

References:

Law by decree no. 177/2005, Consolidated Act on Broadcast (Decreto Legislativo 177/2005, Testo Unico della radiotelevisione), deliberation of the Communications Regulatory Authority (Agcom):

http://www.agcom.it/L_naz/dl177_05.htm#17

Regulation no. 435/01/CONS, Regulation on Digital Broadcasting (Approvazione del regolamento relativo alla radiodiffusione terrestre in tecnica digitale):

http://www.agcom.it/provv/d_435_01_CONS.htm

Artt. 24 and 125 of Constitution

Art. 24: (1) Everyone may bring cases before a court of law in order to protect their rights under civil and administrative law. (2) Defense is an inviolable right at every stage and instance of legal proceedings. (3) The poor are entitled by law to proper means for action or defense in all courts. (4) The law defines the conditions and forms for reparation in the case of judicial errors.

Art. 125: Administrative tribunals of the first instance shall be established in the region, in accordance with the rules established by the law of the republic. Sections may be established in places other than the regional capital.

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

NO: A NO score is earned if there is no appeal process for broadcast media licenses.

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The problems come from the TV media license. Actually there are by law 11 available licenses for analogic TV broadcasting at national level. Only seven of them have been assigned: three to RAI, the public media company, three to Mediaset, Berlusconi's

media company, and one to TI Media (Telecom Italia Media), controlled by Telecom Italia, recently sold by Marco Tronchetti Provera to the new Telecom owners (a group made by Generali, Mediobanca, Intesa Sanpaolo, Benetton and Telefónica). The three big owners are now getting the same space on digital TV broadcasting, thus controlling the access to the system. An independent media entrepreneur, Mr. Francesco Di Stefano, has been waiting since 1999 to obtain the license he won regularly for his tv channel Europa 7, but he is being stopped because the frequencies are those used by Rete4, one of the three channels (analogical) of Berlusconi. Rete4, since 1999, should transmit only through digital channel, but it is still transmitting in analogic. Three different governments (D'alema, left wing, Berlusconi, right wing, and Prodi, left wing) did not solve the problem. De facto, any other access to national broadcast is forbidden. On July 18, 2007, Italy was placed under warning procedure for violation of EU laws on telecommunications.

References:

http://it.wikipedia.org/wiki/Europa_7
<http://www.europa7.it/> – for the story and the judicial records.

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

In 1999, the public procedure for assigning the TV frequencies required the amount of 12 billion liras (US\$8.8 million) to participate at the tender.

Mr. Francesco di Stefano had that amount and required two frequencies. In order to block him and to respect an agreement between Berlusconi and the left-wing parties ruling at that moment, the (public) commission interpreted the law by saying that that amount was necessary for any frequency required, thus reducing the chances of Mr. Di Stefano. The system is so closed that, to date, four of 11 national frequencies are still vacant, because no one could afford the costs.

References:

http://it.wikipedia.org/wiki/Europa_7

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

8a. In practice, the government does not prevent citizens from accessing content published online.

100 | 75 | 50 | 25 | 0

Comments:

Internet is free to use, except for illegal content.

There is a debate about the power of the Amministrazione Autonoma Monopoli di Stato" to block the access to sites for online gambling not previously authorised: it is seen as a preventive action or as censorship. In both cases, the reason is strictly economic.

References:

<http://punto-informatico.it/p.aspx?i=1420871>

<http://www.aams.it/site.php?page=20060213093339750&op=download>

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content online.

100 | 75 | 50 | 25 | 0

References:

OECD Communications Outlook 2007

http://www.oecd.org/document/17/0,3343,en_2649_201185_38876369_1_1_1_1,00.html

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons

posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

100

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

Comments:

In law, the right to information is guaranteed. The Ethic Code of Journalists requires that they tell the truth and repair damages in case of false information, and there is no preventive censorship on media.

In law there are also criminal sanctions for libel and insult (arts. 594-599 of criminal codes) and the more general right to protect individual rights.

References:

Art. 21 of the Constitution

Art. 21: (1) Everyone has the right to freely express thoughts in speech, writing, and by other communication. (2) The press may not be controlled by authorization or submitted to censorship. (3) Seizure is permitted only by judicial order stating the reason and only for offenses expressly determined by the press law or for violation of the obligation to identify the persons responsible for such offenses. (4) In cases of absolute urgency where immediate judicial intervention is impossible, periodicals may be seized by the judicial police, who must immediately and in no case later than 24 hours report the matter to the judiciary. If the measure is not validated by the judiciary within another 24 hours, it is considered revoked and has no effect. (5) The law may, by general provision, order the disclosure of financial sources of periodical publications. (6) Publications, performances, and other exhibits offensive to public morality are prohibited. Measures of prevention and repression against violations are provided by law

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

References:

Il Sole 24 ore (but it could be any other journal)

Dates published: see for example articles on corruption on dates Sept. 24, 2006, Jan. 24, 2007, April 22, 2007, April 27, 2007, May 17, 2007, May 18, 2007, June 8, 2007

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

References:

Il Sole 24 ore (but it could be any other journal)

Dates published: see for example articles on corruption on dates Sept. 24, 2006, Jan. 24, 2007, April 22, 2007, April 27, 2007, May 17, 2007, May 18, 2007, June 8, 2007

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

90

10a. In law, print media companies are required to disclose their ownership.

YES | NO

Comments:

The Communications Regulatory Authority (Agcom) manages the ROC (Registro degli Operatori di Comunicazione), a public registry that reports ownerships, name and number of the media companies controlled, and the management structures.

References:

Law 249, Art. 1, a), 5 and 6, of July 31, 1997

YES: A YES score is earned if print media companies are required by law to disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being disclosed.

10b. In law, broadcast (radio and TV) media companies are required to disclose their ownership.

YES | NO

Comments:

The Communications Regulatory Authority (Agcom) manages the ROC (Registro degli Operatori di Comunicazione), a public registry that reports ownerships, the name and number of media companies controlled, and the management structures.

References:

Law 249, Art. 1, a), 5 and 6, of July 31, 1997

YES: A YES score is earned if broadcast media companies are required by law to disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain type of entities or agents from being disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | 25 | 0

Comments:

Some journalists and editors are politically engaged, thus influencing the type and content of information, though this is commonly known. Most importantly, the coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration is an insignificant phenomenon.

There is a set of very independent sources of information, on paper, radio or internet.

According to the Press freedom index 2006 (Reporters sans frontieres), the end of the Berlusconi era saw a slight improvement in Italys position (to 40th), mainly due to repeated criticism of the then prime ministers abuse of broadcasting time during the April 2006 parliamentary election campaign.

References:

Federazione Nazionale Stampa Italiana (Press National Trade Union)

http://www.fnsi.it/Contenuto/Documentazione/CarteDeontologiche/Carte_deontologiche.htm

Documents: carta di treviso”, “carta dei doveri del giornalista” and “codice deontologico”

http://www.rsf.org/rubrique.php3?id_rubrique=639

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to sell” favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | 25 | 0

Comments:

The Communications Regulatory Authority (Agcom) is an independent authority, established by Law n. 249 of July 31, 1997. Among its duties, the Authority monitors the media coverage during elections (par condicio), and publishes the results in its reports. The authority has monitoring and sanctioning powers, e.g. TG4 received a 250.000 euro fine (US\$355.350) for unfair media coverage).

Despite this, there have been frequent claims during the past electoral campaigns, because of the media influence of Silvio Berlusconi. In particular one of his channels, Rete4, has a news program (TG4, anchored by Emilio Fede), which is clearly unfair, not only as regards the time dedicated to different parties (the criteria to measure par condicio, see the above mentioned fine), but as regards the way in which information is given, the picture or the part of the speeches chosen (e.g. Berlusconi has always wonderful pictures, his opponents seem always sick).

This apart, in general broadcast companies respect the par condicio” (fair conditions) between candidates, and the authority does a good job in measuring and sanctioning the excesses.

References:

http://www.agcom.it/rel_07/07_Relaz_part02.pdf

<http://www.centrodiascolto.it/view.php?id=32029>

<http://www.centrodiascolto.it/view.php?id=32029>

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting

political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | 25 | 0

Comments:

The equitable access does not imply per se that media are credible sources of information (see the title of the question). According to Reporters sans frontières' Press freedom index 2006, the end of the Berlusconi era saw a slight improvement in Italy's position (to 40th), mainly due to repeated criticism of the then prime minister's abuse of broadcasting time during the April 2006 parliamentary election campaign.

References:

www.primaonline.it/allegati/file10183629876135.doc
http://www.agcom.it/par_condicio/index.htm

http://www.rsf.org/rubrique.php3?id_rubrique=639

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

100

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | NO

References:

www.adnkronos.it
www.ansa.it

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | NO

Comments:

There are no cases of journalists harmed, killed or threatened by the state or the police. Anyhow, I report here the case of Mr. Lirio Abbate, a journalist investigating the mafia organization in southern Italy. Although not physically harmed, he has been threatened by criminal organizations. Some of his investigations are related to corruption of public officials by mafia criminals.

References:

www.adnkronos.it
www.ansa.it
<http://www.articolo21.info/notizia.php?id=5360>

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

References:

www.adnkronos.it
www.ansa.it

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

89
I-3. Public Access to Information

12. Do citizens have a legal right of access to information?

100

12a. In law, citizens have a right of access to government information and basic government records.

YES | NO

References:

Law 241/1990, arts 22-28.

Art. 22: In order to ensure the transparency of administrative activity and to foster the fair activity, the access to administrative documents is guaranteed to anyone who has legitimate interest to protect his right.

Art. 2 of the Decreto del Presidente della Repubblica n. 184/2006 Regulation on Access to Administrative Documents”

YES: A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

NO: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | NO

Comments:

This is the general right to act against breaches of individual rights.

References:

Art 24 of the Constitution

Art. 24: Everyone can take judicial action to protect individual rights and legitimate interests.

Decreto del Presidente della Repubblica n. 184/2006 Regulation on Access to Administrative Documents”

YES: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

NO: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | NO

References:

Art.s 5-7 of the Decreto del Presidente della Repubblica n. 184/2006 Regulation on access to administrative documents”

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right of access to information effective?

85

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There are no studies at national level about the time period to get answers.

Law 241/90 sets the normal time limit for the public administration at 30 days, plus other 30 in case of requests of clarifications. In general, though, there is a set of information that is immediately and freely available, also through websites. Other information, sometimes more complex or that requires the use of discretionary powers of public administration, may require more time (e.g. a building license).

Also the staff of public offices can affect the time period: in general, some public administration offices are quite efficient, while others are much slower in reacting to citizens' requests.

References:

<http://www.palazzochigi.it/Presidenza/ACCESSO/direttive.html#1>

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Copies are available for the cost of photocopying.

References:

<http://www.palazzochigi.it/Presidenza/ACCESSO/direttive.html#1>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

13c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

For 2006, appeals took from 12 days to one year (one case).

References:

http://www.palazzochigi.it/Presidenza/ACCESSO/volumi_accesso.html

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13d. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The appeals to the Commission to obtain administrative documents is free.

References:

<http://www.palazzochigi.it/Presidenza/ACCESSO/index.html>

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13e. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

Comments:

The reports of the Commission for the access of administrative documents (Commissione per l'accesso agli atti amministrativi) contain the proceedings of the Commission on the requests (both from public administration or citizens) of access to public documents, usually against the denial of access.

References:

<http://www.palazzochigi.it/Presidenza/ACCESSO/index.html>

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

II-1. Voting & Citizen Participation

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | NO

Comments:

Universal and equal adult suffrage is a reality in Italy.

References:

Arts. 1 and 48 of the Constitution

Art. 1: Italy is a democratic republic, founded on work. Sovereignty belongs to the people, which exercises it in the forms and within the limits of the Constitution.

Art. 48: All citizens, male and female, who have become of age, are electors.

The vote is personal and equal, free and secret. The exercise thereof is a civic duty.

An Act of Parliament shall establish the conditions and the procedures under which Italian nationals residents abroad may exercise their right to vote in Italian elections, and shall guarantee its effectiveness. For this purpose a 'Foreign Constituency' shall be created to which members to both houses of Parliament shall be elected. The number of seats shall be established by a constitutional law and comply with the criteria enacted by the Act of Parliament.

The right to vote cannot be restricted, except for civil incapacity or as a consequence of an irrevocable penal sentence or in cases of moral unworthiness as laid down by law.

YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

Comments:

Elections have been always held within the terms set in article 61.

The natural duration of five years has been reached only one time (legislature), all other times the houses have been dissolved before the five years, as decided by the president of the republic after the government had faced a no-confidence vote by the Parliament. This is a procedure set by the Constitution and has always been a democratic process.

References:

Arts. 60 and 61 of the Constitution

Art 60: The Chamber of Deputies and the Senate of the republic are elected for five years. The term for each house cannot be extended except by law and only in cases of war.

Art. 61: Elections for the new houses will take place within 70 days of the end of the term of the previous houses. The first meeting will take place no later than 20 days after the elections. The previous chambers retain their powers until the new chambers meet.

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

NO: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

100

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

Comments:

In the past political elections (April 2006), about 84 percent of citizens voted (47.160.264 voters from 56.995.744 citizens).

References:

http://www.repubblica.it/speciale/2006/elezioni/camera/riepilogo_nazionale.html

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

Comments:

Silvio Berlusconi and his party, Forza Italia, claimed for gerrymandering in past political elections (April 2006), but the inspections carried out after his complaints have shown minimal mistakes, without changing the final result. Some problems came from

Italians (living and) voting abroad, an opportunity asked from a right-wing party, Alleanza Nazionale, because of its appeal abroad. This system has caused some further claims (still to be verified), but in general the secrecy of ballots is ensured.

References:

<http://www.ilgiornale.it/a.pic1?ID=192050>

<http://www.repubblica.it/2007/07/sezioni/politica/voto-estero-video/voto-estero-video/voto-estero-video.html>

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

Comments:

The websites report the dates of legislatures and details on elections.

References:

<http://politiche.interno.it/> (dates of elections)

<http://www.governo.it/Governo/Governi/governi.html>

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

90

16a. In law, all citizens have a right to form political parties.

YES | NO

Comments:

Art. 98 of the Constitution sets a specific limitation of political activity for certain public officers.

Art. 98: [...] The law can set limitations to the right to become members of political parties in the case of magistrates, career military in active service, functionaries and agents of the police, diplomatic and consular representatives abroad.

References:

Art. 49 of the Constitution

Art. 49: All citizens have the right to freely associate in parties to contribute through democratic processes to determining national policies.

YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

YES | NO

Comments:

Art. 98 of the Constitution sets a specific limitation of political activity for certain public officers.

Art. 98: [...] The law can set limitations to the right to become members of political parties in the case of magistrates, career military in active service, functionaries and agents of the police, diplomatic and consular representatives abroad.

References:

Art. 51 of the Constitution

Art. 51: All citizens of either sex are eligible for public office and for elected positions on equal terms, according to the conditions established by law. The law may grant Italians who are not resident in the republic the same rights as citizens for the purposes of access to public offices and elected positions. Whoever is called to perform an elected public office has the right to have the needful time to carry out that function and to conserve his place of work

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if Individuals with a history of violence, terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

References:

http://it.wikipedia.org/wiki/Partiti_politici_italiani

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

Comments:

The last reform of the electoral system has canceled the possibility for the voter to select the candidate, leaving the possibility to give the vote only to the list or political party.

The lists of candidates have been decided by the parties' political leaders, thus ensuring the candidates about the certainty of being elected or not (i.e. the first names of the lists were sure to be elected, the last names were sure to not be elected).

This system, chosen by Silvio Berlusconi and his coalition to increase the control on the members of the Parliament, has reduced significantly and concretely the possibility for citizens to run for political offices. Moreover, according to a World Bank study, this system is a crime-facilitator for corruption.

References:

A Fabio Carducci article published on April 15, 2007: "Più corruzione con la lista bloccata"

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

Comments:

The opposition party has 348 seats from 630 in the Chamber of Deputies (Camera dei Deputati) and 158 seats from 320 in the Senate (Senato).

References:

http://www.repubblica.it/speciale/2006/elezioni/camera/riepilogo_nazionale.html

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

II-2. Election Integrity

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

100

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

Comments:

The elections are monitored by the Office of the Ministry of Interior. The D.P.R. of March 30, 1957, n° 361, with amendments, is the law (testo Unico) on elections. It includes several criminal offenses (including giving/promising money or other goods) during elections.

References:

Central Direction on Electoral Services, Department of Internal Affairs of the Ministry of Interior (Direzione Centrale per i servizi elettorali, Dipartimento per gli affari interni e territoriali, Ministero dell'Interno)

<http://elezioni.interno.it>

During elections, a special agency is set up. A central office is set up in the Corte di Cassazione: National Central Election Office (Ufficio elettorale centrale nazionale), local offices are set up in appeal courts (corti d'appello) or tribunals (arts. 12 and 13 of D.P.R. March 30, 1957, n° 361). In general, Criminal Courts can act for criminal behaviours (including corruption), under the consolidated Act on Elections (arts. 94-114 of D.P.R. March 30, 1957, n° 361). http://www.camera.it/cost_reg_funz/667/668/728/listaArticoli.asp

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

NO: A NO score is earned if no domestic agency or set of domestic agencies/entities that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

18. Is the election monitoring agency effective?

80

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES | **NO**

Comments:

There is no law that formally protects the Central Agency (Direzione Centrale). Substantially, though, the agency was never involved in complaints or actions against its work, so the impression is that there is no political interference in the agency. Members of the National Electoral Board (Ufficio elettorale centrale nazionale) are judges whose independence is guaranteed by law.

References:

The agency belongs to the Ministry of Interior.

The judges are instead protected from political interference by the Constitution (art. 101).

Art. 101: Justice is administered in the name of the people. Judges are subject only to the law.

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

The independence of magistrates of the Corte di Cassazione is widely recognized.

References:

http://www.osce.org/documents/html/pdf/html/19409_en.pdf.html

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

http://it.wikipedia.org/wiki/Corte_di_Cassazione

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

References:

http://www.cortedicassazione.it/Documenti/comunicato_stampa.pdf

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Last elections went regularly, despite Silvio Berlusconi's claims of gerrymandering. There are some investigation by the Public Prosecutor Offices on possible electoral frauds, reported also in a book and a movie and by many newspapers. To date, though, there is no evidence of offense, so no sanctions have been imposed by the courts.

References:

A movie by Enrico Deaglio, Beppe Cremonesi released in November 2006:
Kill the Democracy! (Uccidete la democrazia)

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

100

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

References:

http://www.osce.org/documents/html/pdf/html/19409_en.pdf.html

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost" voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

YES | NO

Comments:

The right to appeal is a general right of any citizen.

For the elections, there is also a procedure for candidates and citizens to denounce electoral frauds to the local electoral services (set up during the elections in any Municipality) or to the central electoral services. Finally, the Parliament houses have the final right to validate the election of their own members (art. 87 of D.P.R. of March 30, 1957, n° 361).

References:

Art. 24 of the Constitution sets the general right to appeal.

Art 24: Everyone can take judicial action to protect individual rights and legitimate interests.

The right to defense is inviolable at every stage and moment of the proceedings.

The poor are assured, through appropriate institutions, the means for action and defence before all levels of jurisdiction.

The law determines the conditions and the means for the reparation for judicial errors.

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

Mr. Berlusconi has tried in any way to delay the announcement of the victory of the left-wing coalition, but in few days his complaints of gerrymandering were verified by the State Account Court (Corte dei Conti) and Giunta per le Elezioni of the Chamber of Deputies.

References:

Newspaper article: The last temptation of Berlusconi (L'ultima tentazione del Cavaliere)

<http://www.repubblica.it/2006/04/sezioni/politica/elezioni-2006-9/tentazione-cavaliere/tentazione-cavaliere.html>

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

References:

http://www.osce.org/documents/html/pdftohtml/19409_en.pdf.html

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

References:

Art. 5 of Law 22 of January 27, 2006, (admittance of OCSE observers to polling stations):

On the occasion of 2006 elections, in compliance with international commitments undertaken by Italy within OCSE, international observers are admitted to the local polling stations. [...]"

YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

References:

http://www.osce.org/documents/html/pdftohtml/19409_en.pdf.html

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

93
II-3. Political Financing

20. Are there regulations governing political financing?

57

20a. In law, there are regulations governing private contributions to political parties.

YES | NO

Comments:

Since 1974 (law 195/74) there was a system of public/private financing of political parties. In April 1993, part of this law (the part related to State financing) was abrogated with public referendum (in Italy referendum, i.e. public consultations with legislative power, are only abrogative), while the part related to private contribution is still in force.

In May 1996 and in July 1996 two laws set a system of reimbursement of electoral costs to the parties, thus creating a

surreptitious system of public financing. In fact, the reimbursement is a forfait for single voter, regardless the effective expenditures for the elections. A law of 1997 set up a new system of voluntary contribution (4×1,000 of own taxes devoted to political parties, as the 5×1,000 for religious churches and (now) 7×1,000 to NGOs), but it was a complete failure. New laws in 1999 and 2002 modified such system by canceling the voluntary contribution of 4×1,000 but increasing enormously the reimbursement costs. In particular with the reform of 2002, when Berlusconi was prime minister, the reimbursement became annual, whether there are elections or not. For example, according to the results of the 2006 elections, the political parties and coalitions will get 100 million euros (US\$143 million) per year from 2006 to 2010. At present, names of the private people contributing more than 20.000 euros (US\$28,603) must be made public, together with the amounts contributed.

References:

Laws regulating political financing:

Law 195 of May 2, 1974

Law 659 of November 18, 1981

Law 369 of July 8, 1996

Law 515 of December 10, 1993 *this is relevant for private contributions (art. 7.5)

Law 2 of January 2, 1997

Law 157 of June 3, 1999

Ministerial Decree (D.M.-Decreto Ministeriale) of February 23, 2001

Law 156 of July 26, 2002

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to political parties.

NO: A NO score is earned if there is no regulation of private contributions to political parties.

20b. In law, there are limits on individual donations to candidates and political parties.

YES | **NO**

References:

Law 195/1974

Law 515/1993

YES: A YES score is earned if there are any limits, regardless of size, on individual contributions to political candidates and political parties. A YES score is earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

20c. In law, there are limits on corporate donations to candidates and political parties.

YES | **NO**

Comments:

Legal persons (of any kind) are forbidden to make donations to political parties, joint political or administrative structures, parliamentary groups if:

- they have public holding above 20 percent;
- they are controlled by a legal person that has public holding above 20 percent;
- the decision is not taken by the legal entity's competent bodies

– donations are not declared in the balance.
This apart, there is no limit on corporate donations.

References:
Law 195/1974

YES: A YES score is earned if there are any limits, regardless of size, on corporate contributions to political candidates and political parties. A YES score is earned if contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to candidates or political parties. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

20d. In law, there are limits on total political party expenditures.

YES | NO

Comments:

There are limitations on expenditures for elections, but not general limitations. In fact, most of the parties have serious deficit (the two major parties have hundreds of millions of euros of debit).

For electoral expenditures, the limit for each candidate is 52.000 euros (US\$74,367) plus Euros 0,01 x citizen with the right to vote in the constituency (circoscrizione elettorale). In addition, each political party can spend euro 1,00 x citizen with the right to vote in the constituencys (circoscrizione elettorale) where the party concurs.

References:

Law 515/1993 (as amended by law 22 of January 27, 2006), art. 7

YES: A YES score is earned if there are any limits, regardless of size, on political party expenditures. A YES score is earned if all party expenditures are prohibited.

NO: A NO score is earned if there are no limits on political party expenditures. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20e. In law, there are requirements for disclosure of donations to political candidates and parties.

YES | NO

Comments:

Law 659/1981, art. 4: Both the donor and the beneficiary have the duty to send a joint declaration to the President of the Deputy Chamber (Camera dei Deputati) when the donation is over 50.000 euros (US\$71,507).

Law 515/1993: Anyone who runs in the elections has the duty to report to the presidents of the two chambers all the donations received for the elections and the source of financing. The sums to be reported are over 20.000 euros (US\$28,603) for private persons donations, any any sum for legal persons donations. The Court of Accounts (Corte dei Conti), the highest court for public issues has the duty to verify such reports.

Furthermore, representatives or treasuries of political parties must send every year to the president of the Deputy Chamber the general financial report of the party, which is controled by an audit committee, and is published in the Official Gazzette of the State.

The article sets the rule of sound financial management. Moreover, the financial report has to be published in two newspapers, one of which with national circulation.

References:

Law 515/1993 (as amended by Law 2 of January 2, 1997, art. 8)

Law 659/1981, art. 4

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties or candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties or candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

20f. In law, there are requirements for the independent auditing of the finances of political parties and candidates.

YES | NO

Comments:

The presidents of the two chambers set up the board of auditors, made by five independent experts selected between the professional auditors (revisori ufficiali dei conti). The board has the task to verify the compliance of the annual financial report of political parties.

References:

Law 2/1997, art. 8 and Annexes A and B

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of candidate and party finances. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties and candidates or if such requirements exist but allow for candidates or parties to self-audit.

20g. In law, there is an agency or entity that monitors the political financing process.

YES | NO

Comments:

There is a quite good monitoring system for electoral expenditures: controls are made by presidents of the chambers, by the Collegio regionale di garanzia elettorale, an ad hoc board set up in any region, the Court of Accounts, and the Board of Auditors. Political expenditures are, however, much less under control. The presidents of the chambers and the Court of Accounts analyse the political economy through the annual reports provided by parties, which includes the sources of financing. This system of audit (including the activity of the Court of Accounts) for a political party is limited to a control upon the formal compliance of reports with the law requirements (controllo di legittimità) and not upon the merit (controllo di merito). Quite often, judges investigating in criminal systems of financial crimes discover links with political parties, financed sometimes legally (through donations), sometimes illegally. In this case, the judges can investigate the illegal political financing, but there is no specific agency or entity that monitors the political financing process.

References:

Law 515/1993

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around political financing. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

21. Are the regulations governing political financing effective?

58

21a. In practice, the limits on individual donations to candidates and political parties are effective in regulating an individual's ability to financially support a candidate or political party.

100 | 75 | 50 | **25** | 0

Comments:

There are no limits to donations, and this poses a threat because rich actors can finance and influence political parties. For example, the second party in Italy (Forza Italia) is owned and maintained (with a personal guarantee, fidejussion) by Silvio Berlusconi, the richest man of Italy. Another example is the Federfarma, the federation of Pharmaceutical companies, which for the last elections "donated" more than 250.000 euros (US\$357,537), shared between single parliamentarians.

With regards to public financing of parties, for 2006 political parties had "reimbursements" of 50 million euros (US\$71.5 million) for the Deputy Chamber (Camera dei Deputati), 50 million euros for the Senate (Senato), 50 million euros for the regional elections and 50 million euros for the European Parliament elections, for a total of some 200 million euros (US\$286 million).

References:

http://www.report.rai.it/R2_popup_articolofqglia/0,7246,243%25E1068528,00.html

Article by Andrea Marini
Partiti, l'Ulivo riscopre il 4 per mille
August 21, 2007;

<http://banchedati.camera.it/dossier/GetHtml.asp?Item=6&parole=si&Legislatura=15&Cont=0&url=http://www.camera.it/banchedatikm/Documenti/leg15/dossier/testi/AC0139.htm# Toc150>

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which individuals can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

21b. In practice, the limits on corporate donations to candidates and political parties are effective in regulating a company's ability to financially support a candidate or political party.

100 | 75 | 50 | 25 | 0

Comments:

There are no limits to donations, and this poses a threat because rich actors can finance and influence political parties. For example, the second party in Italy (Forza Italia) is owned and maintained (with a personal guarantee, fidejussion) by Silvio Berlusconi, the richest man of Italy. Another example is that of Federfarma, the federation of Pharmaceutical companies, which for the last elections “donated” more than 250.000 euros (US\$357,537), shared between single parliamentarians.

References:

http://www.report.rai.it/R2_popup_articolofoglia/0,7246,243%255E1068528,00.html
http://banchedati.camera.it/dossier/GetHtml.asp?item=6&parole=si&Legislatura=15&Cont=0&url=http://www.camera.it/banchedatikm/Documenti/leg15/dossier/testi/AC0139.htm#_Toc150

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which companies can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making to donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

21c. In practice, the limits on total party expenditures are effective in regulating a political party’s ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

Comments:

In 2006, left-wing parties had 190 million euros (US\$ 271.7 million) in debts and right-wing parties 175 million euros (US\$ 250.2 million) in debts.

References:

Article by Massimo Mucchetti, “Trasparenza e bilanci. Quando il partito è cliente della banca”
Corriere della sera, July 8, 2007

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

21d. In practice, when necessary, an agency or entity monitoring political financing independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

These press articles describe the most recent investigation (in progress) of the Public Prosecution Office (Procuratura) of Catanzaro upon a criminal scheme involving about 25 persons with key roles in the Calabria Region. The charges are fraud against the State, fraud against the European Union, money laundering, criminal association, corruption of public officials, illicit financing to political parties.

References:

<http://www.repubblica.it/2007/06/sezioni/cronaca/inchiesta-catanzaro/inchiesta-catanzaro/inchiesta-catanzaro.html>
<http://europanotizie.ilsole24ore.com/EuropaNotizie/Finanziamenti/20070624/SS20070624010AAA.jsp>

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to political financing. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

21e. In practice, when necessary, an agency or entity monitoring political financing imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

There are penal and administrative sanctions for violation of laws on financing of political parties.

References:

http://banchedati.camera.it/dossier/GetHtml.asp?Item=6&parole=si&Legislatura=15&Cont=0&url=http://www.camera.it/banchedatikm/Documenti/leg15/dossier/testi/AC0139.htm#_Toc150

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

21f. In practice, contributions to political parties and candidates are audited.

100 | 75 | 50 | 25 | 0

Comments:

There is annual audit on parties balances. Some political parties publish them online.

References:

http://www.dsonline.it/aree/tesoreria/documenti/dettaglio.asp?id_doc=42143

100: Political party and candidate finances are regularly audited using generally accepted auditing practices. This includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party and candidate finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party or candidate may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party and candidate finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

22. Can citizens access records related to political financing?

83

22a. In practice, political parties and candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Financial records of political parties are published in the Official Gazette every year.

http://www.dsonline.it/aree/tesoreria/documenti/dettaglio.asp?id_doc=42143

100: Political parties and candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties and candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties and candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

22b. In practice, citizens can access the financial records of political parties and candidates within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Financial records of political parties are published in the Official Gazette every year.

http://www.dsonline.it/aree/tesoreria/documenti/dettaglio.asp?id_doc=42143

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

22c. In practice, citizens can access the financial records of political parties and candidates at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Financial records of political parties are published in the Official Gazette, free of charge.

http://www.dsonline.it/aree/tesoreria/documenti/dettaglio.asp?id_doc=42143

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category III. Government Accountability

III-1. ⁷⁵Executive Accountability

23. In law, can citizens sue the government for infringement of their civil rights?

100

23. In law, can citizens sue the government for infringement of their civil rights?

YES | NO

References:

Arts. 24, 96, and 113 of the Constitution.

Art. 24: Everyone can take judicial action to protect individual rights and legitimate interests.

The right to defence is inviolable at every stage and moment of the proceedings.

The poor are assured, through appropriate institutions, the means for action and defence before all levels of jurisdiction.

The law determines the conditions and the means for the reparation for judicial errors

Art. 96: The President of the Council of Ministers and the Ministers, even if they resign from office, are subject, for crimes committed in the exercise of their duties, to normal justice, provided authorization is given by the Senate of the Republic or the Chamber of Deputies, in accordance with the norms established by Constitutional Law.

Art. 113: Against acts of the public administration the judicial safeguarding of rights and legitimate interests before the organs of ordinary or administrative justice is always permitted.

Such judicial protection may not be excluded or limited in particular kinds of appeal or for particular categories of acts.

The law determines which judicial bodies are empowered to annul acts of public administration in the cases and with the consequences provided for in the law itself.

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

24. Can the chief executive be held accountable for his/her actions?

100

24a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

Comments:

The prime minister usually replies to MPs' questions during the question time", and contents are available online (see for example the link above).

Information is available on the government website, and journalists have easy access to the executive for questions.

References:

<http://www.governo.it/Presidente/AudioVisivi/dettaglio.asp?d=35147>

<http://www.governo.it/GovernoInforma/Comunicati/index.asp>

<http://www.ilsole24ore.com/art/SoleOnLine4/Norme%20e%20Tributi/2007/06/risposte-prodi.shtml?uuid=fba2228e-1f31-11dc-a602-00000e251029&DocRulesView=Libero>

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

24b. In law, the judiciary can review the actions of the executive.

YES | NO

References:

Arts 103, art 113, art. 134 of the Constitution

Art. 103: The Council of State and the other organs of judicial administration have jurisdiction for safeguarding before the public administration legitimate rights and, in particular matters laid out by law, also subjective rights.

The Court of Accounts has jurisdiction in matters of public accounts and in other matters laid out by law.

Military tribunals in time of war have the jurisdiction established by law. In time of peace they have jurisdiction only for military crimes committed by members of the armed forces.

Art. 113: Against acts of the public administration the judicial safeguarding of rights and legitimate interests before the organs of ordinary or administrative justice is always permitted.
Such judicial protection may not be excluded or limited in particular kinds of appeal or for particular categories of acts.
The law determines which judicial bodies are empowered to annul acts of public administration in the cases and with the consequences provided for in the law itself.

Art. 134: The Constitutional Court shall pass judgment on:
Controversies on the constitutional legitimacy of laws and enactments having the force of law issued by the State and the regions;
Conflicts arising from allocation of powers of the State and those allocated to State and regions, and between regions;
Accusations made against the President of the Republic, according to the provisions of the Constitution.

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

24c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

Comments:

There have been 16,805 pronunciations of the Constitutional Courts since 1956.
Apart from the activity of the highest court, when necessary the judiciary reviews the actions of the executive when this constitutes breach of law and not exercise of political power. See for example the case (July 2007) of Judge Forleo, who has sent to the chambers the authorisation of using phone tapping for criminalizing some members of the executive (and of the Parliament) for participation in criminal acts.
Nevertheless, in order to avoid a political use of justice, members of Parliament have the immunity foreseen in art. 68 of the Constitution, as amended in 2003 to avoid that Silvio Berlusconi be indicted for the SME scandal.

References:

<http://www.cortecostituzionale.it/ita/attivita/corte/pronunce/emassime/pronunce/filtro.asp>
http://www.corriere.it/Primo_Piano/Politica/2007/07_Luglio/25/intercettazioni_inviato_Parlamento.shtml

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to rely upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

24d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

Comments:

In the past months (see the website), the prime minister has taken few orders (Decreto del Presidente del Consiglio) regarding small and temporary events, with minor impact on the state.

References:

<http://www.governo.it/Governo/Provvedimenti/index.asp>

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

25. Is the executive leadership subject to criminal proceedings?

50

25a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | **NO**

Comments:

Even the head of the state (president) can be prosecuted for some (few) crimes.

References:

Arts. 68 and 90 of the Constitution.

Art. 68: Members of Parliament may not be required to give account of any opinions expressed or votes cast in the exercise of their functions.

Without authorization from the house to which they belong, no member of Parliament may be subjected to a personal search or have their domicile searched, neither may they be arrested or otherwise deprived of personal freedom, or kept in detention, except to enforce a final conviction, or if caught in the act of committing a crime for which arrest is mandatory.

Similar authorization is also required before members of Parliament may have their conversations or communications intercepted, or their mail impounded.

Art. 90: The president of the republic is not responsible for the acts performed in the exercise of his duties, except for high treason or plots against the Constitution.

In such cases he is impeached by Parliament in joint session, with an absolute majority of its members.

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

25b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

Comments:

After 1993 (Mani Pulite scandal), the parliamentary immunity was revoked in order to let magistrates to clean up the corruptive system pervading Italian politics.

In 2003, a new law increased protection for the five highest offices of the state against investigation and prosecution, but in practice it saved Prime Minister Berlusconi from being brought before a court for a big corruption Scandal, known as "SME".

References:

Art. 68 of the Constitution

Art. 68: Members of Parliament may not be required to give account of any opinions expressed or votes cast in the exercise of their functions. Without authorization from the House to which they belong, no member of Parliament may be subjected to a personal search or have their domicile searched, neither may they be arrested or otherwise deprived of personal freedom, or kept in detention, except to enforce a final conviction, or if caught in the act of committing a crime for which arrest is mandatory. Similar authorization is also required before members of Parliament may have their conversations or communications intercepted, or their mail impounded. (as amended with law 140 of June 20, 2003, the so-called "Lodo Schifani")

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

26. Are there regulations governing conflicts of interest by the executive branch?

53

26a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

Comments:

Law 441/82 applies to:

- members of the Parliament (Senato della Repubblica e della Camera dei deputati);
- President of the Council of Ministers, ministries and state undersecretaries;
- regional councillors
- provincial councillors
- town councillors (only for chief towns (capoluogo di provincia) or towns with more than 50,000 inhabitants).

Head of the state is not required to disclose assets.

References:

Law 441 of July 5, 1982

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

26b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

Comments:

Law 441/82 applies to:

- members of the Parliament (Senato della Repubblica e della Camera dei deputati);
- President of the Council of Ministers, ministries and state undersecretaries;
- regional councillors
- provincial councillors
- town councillors (only for chief towns (capoluogo di provincia) or towns with more than 50,000 inhabitants).

The head of the state is not required to disclose assets.

References:

Law 441/82

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

26c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

References:

<http://www.guidasicilia.it/ita/main/rubriche/index.jsp?IDRubricaClass=12>

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

26d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | NO

References:

There is no such law.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

26e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | NO

Comments:

Members of the executive (prime minister, ministers, vice-ministers, state undersecretaries, Extraordinary Governmental Commissioner (Commissari straordinari di governo)) are not allowed, for 12 months after leaving the government, to:

- work for public bodies
- work for private sector
- do professional job in fields related with their role in the government.

This rule doesn't apply to members of Parliament.

References:

Law 215 of July 20, 2004, art. 2.4

<http://www.parlamento.it/leggi/042151.htm>

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if no such restrictions exist.

26f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

Comments:

In practice regulations can be quite easily bypassed, and no serious sanctions can be enforced. What requires attention is that the actual Government doesn't seem to have political will to tackle conflict of interests seriously. This (but these are only rumors) would be part of a secret agreement with Berlusconi. As these are only rumors, there is no possibility to demonstrate this and the notice should be taken with extreme caution.

References:

Article by the Authority for Competition and Market (Autorità Garante della Concorrenza e del Mercato)
website: www.acgm.it

<http://www.verdi.it/document/lunardi/2.htm>

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

26g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

Comments:

There is no regulation about gifts and hospitality. Media report several cases of gifts, especially because those gifts were presented during judicial investigation on corruption cases.

References:

http://www.regione.calabria.it/?module=rassegna&action=view_articolo&id=125248

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

26h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | **50** | 25 | 0

Comments:

The answer is not simple: executive branch assets disclosures are audited by the Court of Accounts, during the analysis of the state balance. Such audit is only on conformity with the law (controllo di legittimità) and not on merit of expenditures. The 5th Commissions of the two chambers of the Parliament do a political review of expenditures, which perhaps cannot be defined as audit.

References:

Article from the Chamber of Deputies:

<http://legxiv.camera.it/amministrazione/315/6165/copertina.asp>

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

27. Can citizens access the asset disclosure records of the heads of state and government?

100

27a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | NO

Comments:

Law 441/82 requires the disclosure of assets and, in art.s 8 and 9, rules the right to access: the subjects allowed to have access to such records (art. 8), and the ways of publication (art. 9). Records are published in a specific bulletin

References:

Law 441/82, art.s 8 and 9

Art. 8 sets the right to access to asset records for all citizens registered in electoral rolls.

Art 9 sets the rules of publication, in a bulletin

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

27b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The Offices of Presidency of the two Chambers prepares annually a bulletin including all the information required by law 441/82. When the bulletin is ready, it can be accessed at the offices of the Parliament for free by citizens registered in electoral rolls. Consultation is immediate.

References:

Email contact with Mr. Lino Duilio secretariat (President of the V Permanent Commission of the Chamber of Deputies)

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

27c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Access is free.

References:

Email contact with Mr. Lino Duilio secretariat (President of the V Permanent Commission of the Chamber of Deputies)

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

28. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100

28. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

Comments:

Current prime minister, Romano Prodi, is not leading a political party. Some of the ministers are leader of political parties: the minister of Culture (Margherita), the minister of Justice (UDEUR), the minister of Foreign Affairs (DS), the minister of Environment (Verdi).

References:

Global integrity report 2004, question 26, Country Report Italy;
www.governo.it

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

III-2. Legislative Accountability

29. Can members of the legislature be held accountable for their actions?

67

29a. In law, the judiciary can review laws passed by the legislature.

YES | NO

References:

Art. 134 of Constitution

Art. 134: The Constitutional Court shall pass judgment on:

Controversies on the constitutional legitimacy of laws and enactments having the force of law issued by the state and the regions;

Conflicts arising from allocation of powers of the state and those allocated to state and regions, and between regions;

Accusations made against the president of the republic, according to the provisions of the Constitution.

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

29b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

References:

There have been 14,940 decisions of the Constitutional Court on legitimacy since 1956.

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

29c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

Comments:

Yes, although there is a form of immunity.

References:

Art. 68 of the Constitution

Art. 68: Members of Parliament may not be required to give account of any opinions expressed or votes cast in the exercise of their functions.

Without authorization from the House to which they belong, no member of Parliament may be subjected to a personal search or have their domicile searched, neither may they be arrested or otherwise deprived of personal freedom, or kept in detention, except to enforce a final conviction, or if caught in the act of committing a crime for which arrest is mandatory.

Similar authorization is also required before members of Parliament may have their conversations or communications intercepted, or their mail impounded.

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings.

30. Are there regulations governing conflicts of interest by members of the national legislature?

14

30a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

Comments:

Law 441/82 applies to:

- members of the Parliament (Senato della Repubblica e della Camera dei deputati);
- President of the Council of Ministers, ministries and state undersecretaries;
- regional councillors
- provincial councillors
- town councillors (only for chief towns (capoluogo di provincia) or towns with more than 50,000 inhabitants).

The head of the state is not required to disclose assets.

References:

Law 441 of July 5, 1982

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

30b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | NO

Comments:

Members of the executive (prime minister, ministers, vice-ministers, states undersecretaries, extraordinary governmental commissioner (Commissari straordinari di governo) are not allowed, for 12 months after leaving the government, to:

- work for public bodies
- work for private sector
- do professional job in fields related with their role in the government.

This rule doesn't work for members of the Parliament.

References:

Law 215 of July 20, 2004, art. 2.4

<http://www.parlamento.it/leggi/042151.htm>

YES: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

30c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

References:

There is no such law.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

30d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | NO

Comments:

Law 441/82 applies to:

- members of the Parliament (Senato della Repubblica e della Camera dei deputati);
 - President of the Council of Ministers, ministries and state undersecretaries;
 - regional councillors
 - provincial councillors
 - Town councillors (only for chief towns (capoluogo di provincia) or towns with more than 50,000 inhabitants).
- (The head of the state is not required to disclose assets)

The law requires the disclosure of assets but not the independent auditing, so the answer must be NO.

References:

Law 441 of July 5, 1982

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

30e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

References:

Article by Andrea Marini:

Un reticolo di incarichi vietati” agli onorevoli

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

30f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

1

The former Prime Minister Silvio Berlusconi sent to his deputies many gifts like tapis roulants, watches, necklaces...

2

Quite often, during investigations on economic crimes, magistrates discover gifts of any size to politicians

References:

1

<http://www.repubblica.it/2005/d/sezioni/politica/nuovogoverno1/carica99/carica99.html>

2

http://www.regione.calabria.it/?module=rassegna&action=view_articolo&id=125248

100: The regulations governing gifts and hospitality to national legislators are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to legislators. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to national legislators are routinely ignored and unenforced. Legislators routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

30g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

Corte dei conti

<http://www.corteconti.it/Ultimi-doc/Attivit-22/index.asp>

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Legislative branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

31. Can citizens access the asset disclosure records of members of the national legislature?

100

31a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | NO

References:

Law 441/82, arts. 8 and 9

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

31b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Asset disclosure records are available for consultation at the Office for Anagrafe Patrimoniale of the Senatoe from Monday to Friday, 9:30 AM to 7:00 PM.

References:

www.corriere.it/Primo_Piano/Politica/2005/04_Aprile/12/scheda.shtml;

Interview by email with Mrs. Maria Claudia Spellucci, Senato della Repubblica, on July 31,2007

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

31c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Consultation of asset disclosure records is free.

References:

Interview by email with Mrs. Maria Claudia Spellucci, Senato della Repubblica, 31/07/2007.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

32. Can citizens access legislative processes and documents?

100

32a. In law, citizens can access records of legislative processes and documents.

YES | NO

References:

Law 07/08/1991 no. 241, as amended by:

D.lgs 03/02/1993 no. 29

Law 07/05/2000 no. 150

Law 11/02/2005 no.15

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there exemptions to the general right that are not clearly defined by formal rules.

32b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

All records are available online on the websites of the two chambers of the Parliament.

References:

<http://www.senato.it/leggiedocumenti/index.htm>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

32c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Access is free.

References:

<http://www.senato.it/leggi/documenti/index.htm>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

70
III-3. Judicial Accountability

33. Are judges appointed fairly?

100

33a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

References:

R.D (Royal Decree) of January 30, 1941, n. 12, arts. 121 to 130

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

33b. In practice, there are certain professional criteria required for the selection of national-level judges.

100 | 75 | 50 | 25 | 0

Comments:

Professional requirements are: a degree in law, a qualification diploma for legal professions.

The selection is a public competition with:

- a pre-selection exam
- a written exam on civil, administrative, and penal law
- an oral exam on civil law, roman law, civil and criminal procedures, criminal law, fiscal law, administrative law, constitutional law, EU law, international law, labor law, a foreign language

References:

Ministry of Justice:

<http://www.giustizia.it/concorsi/comediv.htm>

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

33c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

References:

Art. 105 of the Constitution

Art. 105: The High Council of the judiciary, in accordance with the regulations of the judiciary, has jurisdiction for employment, assignments and transfers, promotions and disciplinary measures of judges.

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by a body directed by the body appointing the judges (such as review by the head of police if judges are appointed by the executive).

34. Can members of the judiciary be held accountable for their actions?

100

34a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

References:

Art. 111 of the Constitution

Art 111: [...] All judicial decisions must be motivated. [...]

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

34b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

References:

see for example the sentences of the Corte di Cassazione, available on line:

<http://www.cortedicassazione.it/Notizie/GiurisprudenzaCivile/SezioniUnite/SezioniUnite.asp#>

see also disciplinary decisions of the Consiglio superiore della Magistratura for judges who delayed the deposit of the motivations of their decisions: http://www.csm.it/quaderni/quad_149/quad_149_19.pdf

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

34c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

References:

Art. 105 of the Constitution

Art. 105: The High Council of the judiciary, in accordance with the regulations of the judiciary, has jurisdiction for employment, assignments and transfers, promotions and disciplinary measures of judges.

YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

34d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | NO

References:

Art. 105 of the Constitution

Art. 105: The High Council of the judiciary, in accordance with the regulations of the judiciary, has jurisdiction for employment, assignments and transfers, promotions and disciplinary measures of judges.

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is operationally independent from political interference by the executive, legislative and judicial branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an inherently subordinate organization, such as an executive ministry, legislative committee, or by an internal judiciary committee or council that can only act with the approval of judges themselves.

34e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

References:

Report from the Consiglio superiore della Magistratura
http://www.csm.it/quaderni/quad_149/149.pdf

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

34f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

Report from the Consiglio superiore della Magistratura
web: http://www.csm.it/quaderni/quad_149/149.pdf

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

35. Are there regulations governing conflicts of interest for the national-level judiciary?

35a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | NO

References:

There is no such law.

YES: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

35b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | NO

Comments:

Magistrates can be subject to disciplinary sanctions if they behave so as to damage the reputation or trust, personal or of the judiciary.

This general law includes also gifts and hospitality, but there is no specific regulation on that.

References:

Royal Decree of May 31, 1946, no. 511, art. 18

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

35c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | NO

References:

There is no such law because there is no asset disclosure duty for members of the judiciary.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

35d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | **NO**

References:

There is no such law.

Interview with Ms. Silvia Varotto, judge, Tribunale di Crema, 02/09/2007

YES: A YES score is earned if there are regulations restricting national-level judges ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

35e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | **0**

References:

Interview with Ms. Silvia Varotto, Judge, Tribunale di Crema, 02/09/2007

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

35f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

References:

interview with Ms. Silvia Varotto, judge, Tribunale di Crema, 02/09/2007

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to judges. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the national-level judiciary are routinely ignored and unenforced. Judges routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

35g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

Ms. Silvia Varorro, judge, Tribunale di Crema, 09/2007

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: National-level judiciary asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

36. Can citizens access the asset disclosure records of members of the national-level judiciary?

0

36a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | **NO**

References:

There is no such law.

YES: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

36b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

There are no such records.

References:

Interview with Ms. Silvia Varotto, judge, Tribunale di Crema, 02/09/2007

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

36c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | **0**

Comments:

There are no such records.

References:

Interview with Ms. Silvia Varotto, judge, Tribunale di Crema, 02/09/2007

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

III-4. Budget Processes

37. Can the legislature provide input to the national budget?

100

37a. In law, the legislature can amend the budget.

YES

NO

Comments:

The annual budget of the state is a law, i.e. must be passed by the Parliament to entry into force, so there is a full control on state budget by the legislature.

In sum, national budget is based on three main laws and one political document.

LAWS: the balance for the next year (Bilancio di previsione), the closed budget for the past year (Rendiconto generale dello Stato), and the financial law (Legge Finanziaria), the law that introduces amendments with an impact on national budget.

DOCUMENT: Economic-financial planning (Documento di programmazione economico finanziaria), a document that contains the economic perspectives of the nation, the priority of the executive and the means to achieve the results.

In particular with the financial law the two houses have the power to introduce or modify items in the national budget.

References:

Art. 81 of the Constitution

Art 81: The houses approve every year the budgets and expenditure accounts submitted by the government.

Provisional use of the budget cannot be conceded unless by law and for periods not exceeding a total four months.

With the law approving the budget it is not possible to introduce new taxes and new expenditures.

Any other law involving new or increased expenditures must specify the means for meeting them.

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

37b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

References:

Any expenditure made by the government is legitimated by the annual balance law as approved by the Parliament. See in details the balance laws and related discussion in <http://www.parlamento.it/parlam/leggi/eletip.htm>

See a description of the main budget documents and related discussions in <http://www.rgs.mef.gov.it/ENGLISH-VE/Public-Fin1/General-re/index.asp>

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

37c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

Comments:

The Chamber of Deputies (Camera dei deputati) has a permanent commission of 47 parliamentaries: The Senate (Senato) has a permanent commission of 25 members.

References:

<http://www.camera.it/organiparlamentarism/10085/242/4411/4515/commissionepermanentexml.asp>
<http://www.senato.it/leg/15/BGT/Schede/Commissioni/0-00005.htm>

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

38. Can citizens access the national budgetary process?

83

38a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

References:

All the documents related to budgetary process are available on the websites of the two houses.

Further documents are available also in other websites of state authorities: see for

example http://www.cnel.it/archivio/bilancio_stato/index.asp or <http://www.dt.tesoro.it/ENGLISH-VE/HomePage/index.htm>

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

38b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can follow the debates on the budget in its drafting stage from the media or directly from the sources of information of the Parliament. In some cases citizens have publicly expressed their agreement or disagreement on some crucial points, though the impact of such inputs is limited.

References:

publication: press

author: various

date: nn/aa

title: various

websites: see for example www.ilsole24ore.com, www.corriere.it, www.repubblica.it

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

38c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

References:

Bilancio di previsione 2005

http://www.cnel.it/archivio/bilancio_stato/index.asp#

100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

39. In law, is there a separate legislative committee which provides oversight of public funds?

100

39. In law, is there a separate legislative committee which provides oversight of public funds?

YES | NO

Comments:

Both houses of the Parliament have a permanent commission on public expenditures. Budget expenditures are controlled also by the judiciary (the Court of Accounts).

References:

Camera dei Deputati, V Commissione Permanente
Senato della Repubblica, V Commissione

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

40. Is the legislative committee overseeing the expenditure of public funds effective?

75

40a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

The Commissions receive reports every three months and have the powers to start ad hoc investigations on specific aspects of expenditures.

Recently, the Ministry of Economics has re-classified the public balances items, now listed by programs and missions, in order to increase transparency and monitoring of expenditures.

References:

Interview with Mrs. Germana di Falco, secretary of the president of the 5th Commission of the Chamber of Deputies, September 24, 2007.

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

40b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

Comments:

Members of the commissions are chosen with respect to the composition of the chamber. In the current legislature, 23 of the 47 members of the 5th Commission of the chamber belong to the ruling party, 21 to the opposition and one is in the independent group (Gruppo misto).

References:

<http://legxv.camera.it/organiparlamentarism/10085/242/4411/4515/commissionepermanentexml.asp>
<http://www.senato.it/leg/14/BGT/Schede/Commissioni/0-00005.htm>

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

40c. In practice, this committee is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The commissions are made by members of the two chambers with respect to the political balances of the two Chambers. This means a substantial parity between the two coalitions' delegates in the Commissions, which doesn't ensure the independence from politics, but a balance between different political visions.

References:

<http://legxv.camera.it/organiparlamentarism/10085/242/4411/4515/commissionepermanentexml.asp>
<http://www.senato.it/leg/14/BGT/Schede/Commissioni/0-00005.htm>

100: This committee operates independently of the political process, without incentive or pressure to render favorable judgments on politically sensitive issues. Investigations are rarely praised or criticized by political figures.

75:

50: This committee is usually independent but is sometimes influenced by negative or positive political incentives. This may include public praise or criticism by the government.

25:

0: This committee is commonly influenced by personal or political forces or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties that ultimately influence the committee's behavior and decision-making. Negative incentives may include threats, harassment or other abuses of power by the government.

40d. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

Comments:

The commission has powers to request information, but the investigation on violations of financial statements is conducted by the Court of Accounts.

References:

<http://legxv.camera.it/organiparlamentarism/10085/242/4411/4515/commissionepermanentexml.asp>
<http://www.senato.it/leg/14/BGT/Schede/Commissioni/0-00005.htm>

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

Category IV. Administration and Civil Service

IV-1. ⁵⁴ Civil Service Regulations

41. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

100

41a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

References:

Art.s 97 and 98 of the Constitution

Art. 97: Public offices are organized according to the provisions of law, so as to ensure efficiency and the impartiality of administration.

The regulations of the offices lay down the areas of competence, duties and responsibilities of their functionaries.

Employment in public administrations is through competitive examinations, except in those cases established by law.

Art. 98: Civil servants are exclusively at the service of the Nation.

If they are members of Parliament they may not be promoted except through seniority.

The law can set limitations to the right to become members of political parties in the case of magistrates, career military in active service, functionaries and agents of the police, diplomatic and consular representatives abroad.

Art. 13 of the Statute of Civil Servants (D. lgs January 10, 1957, no. 3)

YES: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

NO: A NO score is earned if there are no formal rules establishing an independent civil service.

41b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

Comments:

In law, there is a general provision in the constitution setting the criteria for the public administration and the employment system. Art. 97 of the constitution can provide the legal framework for nepotism, cronyism and patronage being illegal.

This apart, there is no express law regulating nepotism, cronyism, and patronage.

References:

Art. 97 of the Constitution

Art. 97: Public offices are organized according to the provisions of law, so as to ensure efficiency and the impartiality of administration.

Employment in public administrations is through competitive examinations, except in those cases established by law.

YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

41c. In law, there is an independent redress mechanism for the civil service.

YES | NO

Comments:

There is no ad hoc redress system. Civil servants can appeal to the judiciary, which is commonly considered independent from politics.

References:

Arts 24, 103 and 113 of the Constitution

Art 24: Everyone can take judicial action to protect individual rights and legitimate interests.
The right to defence is inviolable at every stage and moment of the proceedings.
The indigent are assured, through appropriate institutions, the means for action and defence before all levels of jurisdiction.
The law determines the conditions and the means for the reparation for judicial errors.

Art. 103: The Council of state and the other organs of judicial administration have jurisdiction for safeguarding before the public administration legitimate rights and, in particular matters laid out by law, also subjective rights.

Art. 113: Against acts of the public administration the judicial safeguarding of rights and legitimate interests before the organs of ordinary or administrative justice is always permitted.
Such judicial protection may not be excluded or limited in particular kinds of appeal or for particular categories of acts.
The law determines which judicial bodies are empowered to annul acts of public administration in the cases and with the consequences provided for in the law itself.

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. Civil servants are able to appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists.

41d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

Comments:

Disqualification can be temporary or perpetual.

References:

Arts. 28, 29 and of Criminal Code (general rules for disqualification from holding public offices).
Specific penal norms set disqualification as additional sanction (e.g. art. 383 of Criminal Code)

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist.

42. Is the law governing the administration and civil service effective?

56

42a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

In general, civil servants are protected from political interferences.

References:

Book by Gian Antonio Rizzo and Sergio Stella, May 2007:
La Casta

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

42b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

There are no official figures on violation in appointment procedures. Nevertheless, investigation both from the magistrature and the High Commissioner for Fighting Corruption depicts a scenario where examinations are often rigged, less or more seriously. One of the hot spots” is the system of employment for academics.

References:

Report by Alto Commissariato per la lotta alla corruzione
<http://www.anticorruzione.it/Portals/altocommissario/Documents/relazione%20I%20semestre%202006.pdf>

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

42c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

Comments:

Nepotism, cronyism and patronage are more present in specific sectors, for example the central public administration offices and in the universities.

Public competitive examinations seem to be quite often rigged in order to favor specific candidates.

References:

Book by Gian Antonio Rizzo and Sergio Stella, May 2007

La Casta

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

42d. In practice, civil servants have clear job descriptions.

Comments:

Quite often there are offices in the public administrations whose functions are unknown.

References:

Book by Rizzo, Gian Antonio and Stella, Sergio, May 2007

La Casta

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable means to map positions to both human capital requirements (including the position's authority and responsibilities) and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

42e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

Comments:

Except for politicians, whose salaries and bonuses are very high, the salary for civil servants is fixed with national laws and collective contracts.

There is a discussion to reform the public sector by introducing evaluation systems and bonuses to civil servants related to the results.

References:

Book by Rizzo, Gian Antonio and Stella, Sergio, May 2007
La Casta

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

42f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

Comments:

By reading the reports of single public bodies it is possible sometimes to find information about the number of employees set by law and the number of the staff. In general this happens with special authorities, more recent and ruled by more transparent principles, or with police forces: for example, the tax police (Gurdia di Finanza) the Authority for the fight against corruption. Such lists are never published by the government.

References:

Book by Rizzo, Gian Antonio and Stella, Sergio, May 2007
La Casta

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

42g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | **0**

References:

There is no specific redress system.

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

42h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

Comments:

Salaries are paid on time. In 2007, contracts for civil servants have been renewed to increase salaries.

References:

<http://www.cisl.it/SitoCisl-Pubblico.nsf/Documenti/PUBBLICO%5ENews2?OpenDocument>

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

42i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

Comments:

Cesare Previti's story is an emblematic example of the inefficacy of the prohibition. Previti was sentenced for corruption and banned from public services in 2003. He has been minister of Defence during Berlusconi's government and member of the Parliament since July 31, 2007.

References:

http://it.wikipedia.org/wiki/Cesare_Previti

<http://www.repubblica.it/2007/07/sezioni/politica/previti-giunta/previti-dimissioni/previti-dimissioni.html>

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

43. Are there regulations addressing conflicts of interest for civil servants?

33

43a. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

Comments:

Such law applies only to the prime minister, ministers and vice-ministers, state undersecretary and extraordinary commissioners (Commissari straordinari dello Stato).

References:

Law 20/04/2004 no. 215.

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

43b. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | NO

Comments:

Such law applies only to the prime minister, ministers and vice-ministers, state undersecretary and extraordinary commissioners (Commissari straordinari dello Stato).

The restriction is limited to specific cases and lasts for 12 months after the resignation.

References:

Law 215 of January 20, 2004

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

43c. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

References:

There is no such law.

YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

43d. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

References:

Articles by Marini, Andrea (1) and Dragoni, Gianni (2):
Un reticolo di incarichi vietati" agli onorevoli;
Nomine, la carica di ex deputati e uomini Iri"

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

43e. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

References:

There is no information on this issue. The perception is that there is still little control on this, and in many offices the codes of ethics are not applied.

As a consequence, there is the possibility that the regulations governing gifts and hospitality to civil servants are generally applied, though exceptions exist.

100: The regulations governing gifts and hospitality to civil servants are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to civil servants. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

43f. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

Comments:

Although there are no precise figures on this issue, in particular with regards to local administrations, the perception is that such ethic rule is not enforced, but is left to personal discretion.

The existence of personal discretion doesn't mean per se that Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected" (score 0).

References:

Book by Stella, Gian Antonio and Rizzo, Sergio, May 2007
La Casta

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

44. Can citizens access the asset disclosure records of senior civil servants?

100

44a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | NO

Comments:

The duty to disclose assets is limited to top managers of public bodies or of private bodies where the state holds a participation.

References:

Law 441/82, art. 12

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

44b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The article reports data of 2006.

References:

Article by Andrea Marini and Giovanni Parente:
Nella Classifica dei redditi, il primo è Cardia

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

44c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Information is free of charge.

References:

Article by Andrea Marini and Giovanni Parente:
Nella Classifica dei redditi, il primo è Cardia

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

IV-2. Whistle-blowing Measures

45. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

45a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

Comments:

OECD recommended to adopt specific legislation. Italy indicated that The Italian law (Law no. 45/2001) already provides for the possibility of applying special measures to witnesses who are in serious and present danger as a consequence of their statements. These measures are applicable to both witnesses and members of their family and may, inter alia, include measures to: ensure a person's safety y seep htjob, transfer them to protected locations, give them social and financial support and change their ID details.

These measures are explicitly applicable to domestic and international bribery offences".

The OECD is right: Art. 25 of law 45/2001 says that the rules on whistleblowers protection applies to a certain group of crimes (set in art. 380 of Code of Criminal Procedures) for which the police is obliged to arrest the author in the act of the crime.

The protection system for whistleblowers require that:

- ordinary protection measures that can be put in place by law enforcement agencies are inadequate or the person is already in prison, and
- the witness (or the family) is under serious and actual danger (of life).

References:

There is no such law.

Report by OECD – working group on bribery, March 23, 2007

FOLLOW – UP REPORT ON THE IMPLEMENTATION OF THE PHASE 2 RECOMMENDATIONS

<http://www.oecd.org/dataoecd/30/36/38313133.pdf>

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

45b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

There is no culture of whistleblowing in public sectors.

Media reports on corruption cases always almost refer to criminal investigations rather than to whistleblowing activity.

References:

www.adnkonos.it

www.ansa.it

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

45c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

References:

There is no such law.

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

45d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

The webpages report two stories of persons fired because – this is their version – they discovered corruption schemes.

References:

<http://www.frillieditori.com/books/receprimariadelinquere.htm>

http://offertelavoro.blog.kataweb.it/grandi_ladroni/2007/05/10/storia-di-ordinaria-corruzione/

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

46. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

0

46. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES | **NO**

Comments:

The government set up in 2004 the High Commissioner for the fight and prevention of corruption and other crimes within public administration service. Such authority has the power to initiate investigations directly or indirectly, and to report notices of crimes to the judiciary, but there is no internal system, for civil servants, to report corruption cases to the commissioner.

References:

There is no such law.

Law 3 of January 16, 2003, set up the High Commissioner for the fight and prevention of corruption and other crimes within public administration service. This is a body belonging to the government with powers to investigate on corruption in the public administration and report the cases to the judiciary. This authority has no whistleblowing or internal mechanism to report corruption cases.

YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

47. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

0

47a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | **0**

Comments:

In Dec. 2006, the commissioner had 51 full-time staff from 70 places available, thus reporting insufficient human resources. However, as noted in indicator 46, it does not serve an explicit role as an internal reporting mechanism.

References:

Report by Alto Commissario per la lotta alla corruzione
Relazione sull'attività svolta

<http://www.anticorruzione.it/Portals/altocommissario/Documents/relazione%20I%20semestre%202006.pdf>

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

47b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The amount of funding for the commissioner is set up year by year within the overall balance of the state and it is subject to increases or reductions. However, as noted in indicator 46, it does not serve an explicit role as an internal reporting mechanism.

References:

Report by Alto Commissario per la lotta alla corruzione:

Relazione sull'attività svolta

<http://www.anticorruzione.it/Portals/altocommissario/Documents/relazione%20I%20semestre%202006.pdf>

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

47c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Investigation of the high commissioner usually takes some months because they involve more serious cases. Nevertheless, the time period between the claim or the information and the evaluation of the commissioner, which has the duty to give notice to the judiciary in case of crimes, is reasonable. However, as noted in indicator 46, it does not serve an explicit role as an internal reporting mechanism.

References:

Report by Alto Commissario per la lotta alla corruzione:

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

47d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

As noted in indicator 46, it does not serve an explicit role as an internal reporting mechanism.

References:

Report by Alto Commissario per la lotta alla corruzione

<http://www.anticorruzione.it/Portals/altocommissario/Documents/relazione%20I%20semestre%202006.pdf>

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

4
IV-3. Procurement

48. Is the public procurement process effective?

48a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | **NO**

References:

There is no such law.

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

NO: A NO score is earned if no such rules exist.

48b. In law, there is mandatory professional training for public procurement officials.

YES | **NO**

References:

There is no such law.

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

48c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | **0**

References:

There is no regulation on conflict of interests.

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

48d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | **NO**

References:

There is no such law.

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

48e. In law, major procurements require competitive bidding.

YES | NO

Comments:

Since April 2006, a new law on public procurements is in force. This law updated and rationalised the previous norms (sometimes quite old), by taking into consideration European laws on public procurement. Its practical effectiveness and the possible problems will take some time to display. The evaluation on the impact of this law is still ongoing.

References:

Decree (Decreto legislativo) 163 of April 12, 2006: Code for Public Procurements

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

48f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

Comments:

The Code sets the rules for public procurements, including sole sourcing.

References:

Decree 163 of April 12, 2006: Code on Public Procurement

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

48g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | **NO**

Comments:

Unsuccessful bidders have the possibility to appeal before a court.

References:

There is no such law.

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

48h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

Comments:

The possibility to appeal falls within the general right to appeal against acts of the public administration.

References:

Art. 113 of the Constitution

Art. 113: Against acts of the public administration the judicial safeguarding of rights and legitimate interests before the organs of ordinary or administrative justice is always permitted.

Such judicial protection may not be excluded or limited in particular kinds of appeal or for particular categories of acts.

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

48i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

References:

Decree (Decreto legislativo) 163 of April 12, 2006: Code for Public Procurements, art. 38, lett. c)

YES: A YES score is earned if there are formal procurement blacklists, preventing convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

48j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

According to the report, in 2006 1,261 guilty firms have been excluded by public procurements. A whitelist is available via web in the "Casellario delle imprese", a list of firms that have been authorised to contract with public administration. Many "tricks" exist to overcome the prohibition, such as secret agreements with other companies, change of administrators or creation of new companies, but both the authority for monitoring public procurements and the judiciary are quite active in investigating to discover such cases.

References:

Report by Autorità per la vigilanza sui Contratti pubblici
Rapporto 2006

<http://www.autoritalavoripubblici.it/pubblicazioni/Relazione2006.pdf>

see also website: <http://casellario.avlp.it/>

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

49. Can citizens access the public procurement process?

49a. In law, citizens can access public procurement regulations.

YES | NO

Comments:

All regulations are available to the public, also on line.

References:

Decree (Decreto legislativo) 163 of April 12, 2006: Code for Public Procurements

YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

49b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

References:

Decree (Decreto legislativo) 163 of April 12, 2006: Code for Public Procurements

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

49c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Report by Autorità per la vigilanza sui Contratti pubblici:
Rapporto 2006

<http://www.autoritalavoripubblici.it/pubblicazioni/Relazione2006.pdf>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

49d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Information is free.

References:

Report by Autorità per la vigilanza sui Contratti pubblici:

Rapporto 2006

<http://www.autoritalavoripubblici.it/pubblicazioni/Relazione2006.pdf>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

49e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

References:

<http://www.autoritalavoripubblici.it/indicatori2006/indicatori.html>

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

49f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

Public contracts over a certain size are published in national journals.

References:

Report by Autorità per la vigilanza sui Contratti pubblici:

Rapporto 2006

<http://www.autoritalavoripubblici.it/pubblicazioni/Relazione2006.pdf>

see also newspapers. for example :Il sole 24 re (paper version), Corriere della sera (paper version)

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

IV-4. Privatization

50. Is the privatization process effective?

33

50a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

Comments:

There is no limitation on eligibility for privatization of state assets.

References:

Law 410 of November, 23, 2001, Art. 4

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

50b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

Comments:

There is a general provision for insider trading, which includes any subject that exploits information intended for his/her office for personal gain in acquiring or selling goods. Controls are made by Consob (www.consob.it). I put NO" because there are no specific formal regulations.

References:

There is no such law.

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

NO: A NO score is earned if there are no such formal regulations.

50c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

References:

There is no such regulation.

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

51. Can citizens access the terms and conditions of privatization bids?

100

51a. In law, citizens can access privatization regulations.

YES | NO

References:

Law 410 of November, 23, 2001

YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

NO: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

51b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

References:

<http://www.dt.tesoro.it/Aree-Docum/Partecipaz/>

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

51c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

References:

<http://www.dt.tesoro.it/Aree-Docum/Partecipaz/Relazione-/Relazione-giugno-2006.pdf>

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

51d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

<http://www.dt.tesoro.it/Aree-Docum/Partecipaz/>

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

51e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

<http://www.dt.tesoro.it/Aree-Docum/Partecipaz/>

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category V. Oversight and Regulation

V-1. ⁹²National Ombudsman

52. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

52. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES

NO

Comments:

Italy does not yet have a national ombudsman or a national committee on petitions. However, it does have a network of regional ombudsmen.

References:

Law 267, August 18, 2000, art. 11

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

53. Is the national ombudsman effective?

86

53a. In law, the ombudsman is protected from political interference.

YES | NO

Comments:

Regional statutes discipline the independence of regional ombudsmen.

References:

Regional laws setting up ombudsmen:
see texts at <http://www.raftware.it/o/index.php?hp=24>

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

53b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

References:

Reports
Relazioni
<http://www.raftware.it/o/index.php?hp=23>

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

53c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

References:

Reports:

Relazioni

<http://www.raftware.it/o/index.php?hp=23>

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

53d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Reports

Relazioni

<http://www.raftware.it/o/index.php?hp=23>

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

53e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

References:

Reports:

Relazioni

<http://www.raftware.it/o/index.php?hp=23>

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

53f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Reports:

Relazioni

<http://www.raftware.it/o/index.php?hp=23>

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

53g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

References:

Reports:

Relazioni

<http://www.raftware.it/o/index.php?hp=23>

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

53h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

References:

Reports:

Relazioni

<http://www.raftware.it/o/index.php?hp=23>

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

53i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The ombudsman has no sanctioning powers but cooperates well with those bodies that do.

References:

<http://www.consiglio.marche.it/difensorecivico/funandcom.php>

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

53j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

References:

Reports:

Relazioni

<http://www.raftware.it/o/index.php?hp=23>

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politicallally sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman reports are often ignored, or given superficial attention. Ombudsman reports do not lead to policy changes.

53k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Reports:

Relazioni

<http://www.raftware.it/o/index.php?hp=23>

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

54. Can citizens access the reports of the ombudsman?

100

54a. In law, citizens can access reports of the ombudsman(s).

YES | NO

References:

Reports:

Relazioni

<http://www.raftware.it/o/index.php?hp=23>

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

54b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Reports:

Relazioni

<http://www.raftware.it/o/index.php?hp=23>

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Reports:

Relazioni

<http://www.raftware.it/o/index.php?hp=23>

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

V-2. Supreme Audit Institution

55. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

55. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

References:

Artss 100 and 103 of the Constitution

Art. 100: [...] The Court of Accounts exercises preventative control on the legitimacy of government measures, and also subsequent control on the management of the state budget. It participates, in those cases and in ways established by law, in control of the financial management of those bodies to which the state contributes in the ordinary way. It reports directly to the houses on the results of audits performed.

The law ensures the independence from the government of the body and of its members.

Art. 103 : [...] The Court of Accounts has jurisdiction in matters of public accounts and in other matters laid out by law.

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

56. Is the supreme audit institution effective?

94

56a. In law, the supreme audit institution is protected from political interference.

YES | NO

References:

Art. 100 of the Constitution

Art. 100: The law ensures the independence from the government of the two bodies and of their members.

Law 202 of July 21, 2000

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

References:

http://www.corteconti.it/Cittadini-/La-Corte-i/natstafunz.doc_cvt.htm

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

56c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

At the present time, the staff of the court is composed of 496 effective units, of which:

1 president

1 general prosecutor

75 presidents of chambers

311 counselors, 55 first referendaries and 53 referendaries

The administrative staff is composed of 2,872 effective units. At the top of the administration of the court there is the general secretary.

References:

http://www.corteconti.it/English-co/Story-org/index.asp#_ftnref2

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

At the present time, the staff of the court is composed of 496 effective units, of which:

1 president

1 general prosecutor

75 presidents of chambers

311 counselors, 55 first referendaries and 53 referendaries

The administrative staff is composed of 2,872 effective units. At the top of the administration of the court there is the general secretary.

References:

http://www.corteconti.it/English-co/Story-org/index.asp#_ftnref2

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

The budget of the Court of Accounts is part of the state budget: see the reports of the Court on State budget

<http://www.corteconti.it/Relazioni-Osservator/Leggi/Bilancio-d/index.asp>

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

56f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

References:

www.corteconti.it

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

Comments:

The Court of Accounts makes a serious and critical analysis of the state budget every year (audit function), though its conclusions are not promptly taken into account, because political interests are more influent. The court's decisions are taken seriously and they are promptly implemented when the court acts in its jurisdictional functions.

References:

Report of the Court of Accounts:
Relazione sul rendiconto generale dello Stato per l'esercizio finanziario 2006
<http://www.corteconti.it/wfprog/GetURL.exe?ID=49906&type=1>

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

56h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

References:

http://www.corteconti.it/English-co/The-italia/The-Italian-Corte-dei-conti1.doc_cvt.htm
see the list of investigations for 2007 in <http://www.corteconti.it/Ultimi-doc/Attivit-22/index.asp>

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

57. Can citizens access reports of the supreme audit institution?

100

57a. In law, citizens can access reports of the audit agency.

YES | NO

References:

www.corteconti.it

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

57b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

www.corteconti.it

<http://www.corteconti.it/Ricerca-e-1/Gli-Atti-d/index.asp>

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Reports are free.

References:

<http://www.corteconti.it/Ricerca-e-1/Gli-Atti-d/index.asp>

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

98
V-3. Taxes and Customs

58. In law, is there a national tax collection agency?

100

58. In law, is there a national tax collection agency?

YES | NO

References:

Decree 300 of July 30, 1999, art. 57;

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

59. Is the tax collection agency effective?

100

59a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The Agency has a central seat, 19 regional departments, two provincial departments and 386 local offices.

References:

<http://www.agenziaentrate.it/llwcm/connect/Nsi/Agenzia/Chi+siamo/Organizzazione/Organizzazione+territoriale/>

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

See the 2006 balance.

References:

http://www.agenziaentrate.it/llwcm/resources/file/ebdb4709659d05e/Bilancio_2006.pdf

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

60. In practice, are tax laws enforced uniformly and without discrimination?

50

60. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

Tax evasion is a serious problem in Italy. Although there are no clear figures, the opportunities for professionals (from lawyers to building contractors, from hydraulics to dentists) to evade are very high.

References:

http://www.agenziaentrate.it/ilwwcm/resources/file/ebdb4709659d05e/Bilancio_2006.pdf;

http://www.boston.com/news/world/europe/articles/2007/08/03/in_fight_against_tax_evasion_italys_premier_turns_to_priests/

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

61. In law, is there a national customs and excise agency?

100

61. In law, is there a national customs and excise agency?

YES | NO

References:

Decree 300 of July 30, 1999, art. 57;
www.agenziadogane.it

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

62. Is the customs and excise agency effective?

75

62a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

In 2005, Agenzia delle Dogane had around 10,000 professional staff, 25.6 percent below the number foreseen in the law (more than 13,000), thus reducing the capacity of the agency.

References:

Report by Agenzia delle Entrate:

I risultati più significativi della Agenzia delle Dogane

http://www.agenziadogane.it/wps/wcm/connect/resources/file/ebce830cfc93762/risultati_agenzia_dogane.pdf?MOD=AJPERES

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The agency has a regular source of funding, the state, but in the past years the amount has been reduced according to general cuts in the state balance, and not because of political considerations.

References:

Report by Agenzia delle Entrate:

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

63. In practice, are customs and excise laws enforced uniformly and without discrimination?

100

63. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

The agency acts in a fair way, there have been no complaints of discrimination.

References:

Report by Agenzia delle Entrate:

I risultati più significativi della Agenzia delle Dogane

http://www.agenziadogane.it/wps/wcm/connect/resources/file/ebce830cfc93762/risultati_agenzia_dogane.pdf?MOD=AJPERE

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

V-4. State-Owned Enterprises

64. In law, is there an agency or equivalent mechanism overseeing state-owned companies?

100

64. In law, is there an agency or equivalent mechanism overseeing state-owned companies?

YES | NO

Comments:

Shareholding and privatizations are managed by the Division VII of the Department of the Treasury of the Ministry of Treasury.

References:

Decree 332 of May 31, 1994

YES: A YES score is earned if there is an agency or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if this function does not exist.

65. Is the agency or equivalent mechanism overseeing state-owned companies effective?

40

65a. In law, the agency or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | NO

References:

The agency belongs to the Minister of Economics.

YES: A YES score is earned only if the agency or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency or equivalent mechanism is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

65b. In practice, the agency or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

See the number of staff in http://www.mef.gov.it/web/docu_indici/area_concorsi_e_bandi/area_dirigenziale.asp

100: The agency or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65c. In practice, the agency or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Budget of the offices of the Ministry of Economics is part of the budget of the state see <http://www.mef.gov.it/web/DFP/index.asp?doc=700>: financial documents of the past years (2007 included)

100: The the agency or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The the agency or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

65d. In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

References:

The agency has no jurisdictional powers and cannot initiate investigations.

100: When irregularities are discovered, the agency or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

65e. In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

The agency has no power to impose penalties.

100: When rules violations are discovered, the agency or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

66. Can citizens access the financial records of state-owned companies?

100

66a. In law, citizens can access the financial records of state-owned companies.

YES | NO

Comments:

The law and the regulation set the duty to make available to the public the approved annual budget the day after its approval, and to publish a notice in a national newspaper.

References:

Decree 58 of February 24, 1998, and attuative regulations: arts. 77 and 83;
see http://www.consob.it/main/documenti/Regolamentazione/normativa/regemit.htm#Art._77

YES: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

66b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

References:

see for example the financial records of some companies:
Alitalia: [corporate.alitalia.com/it/Images/pr_26_05_2005\(2\)_tcm6-9440.pdf](http://corporate.alitalia.com/it/Images/pr_26_05_2005(2)_tcm6-9440.pdf)
Enel: http://www.enel.it/azienda/investor_relations/dati_principali/
ENI: [http://www.eni.it/eni/internal.do?RID=@2xQgR%7C0?xoidcmWopk&catId=-1073760525&cntTypeId=1015&portalId=0\)=it](http://www.eni.it/eni/internal.do?RID=@2xQgR%7C0?xoidcmWopk&catId=-1073760525&cntTypeId=1015&portalId=0)=it)

100: State-owned companies always disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, or file the information behind schedule.

25:

0: Financial data is not available, or is consistently superficial or otherwise of no value.

66c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

References:

Article by Sara Carlucci all <http://blog.panorama.it/economia/2007/09/04/alitalia-deloitte-vuol-vederci-chiaro-e-prende-tempo-per-il-bilancio/>

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

66d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

see for example a public free website:

<http://www.evaluation.it/aziende/bilanci-aziende/>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

66e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Financial information on state-owned companies, as well as for other companies, is public and free.

References:

see for example:

<http://www.evaluation.it/aziende/bilanci-aziende/>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

80 V-5. Business Licensing and Regulation

67. Are business licenses available to all citizens?

100

67a. In law, anyone may apply for a business license.

YES | NO

Comments:

In general, private economic initiative is free. The exercise of an business activity is subject to registration at the Chamber of Commerce. Registration entails legal publicity and defines the existence of a business, its activity, as well as the juridically relevant events taking place during the company's life. On registration, the Chamber of Commerce relevant office, in conjunction with the Ministry of Finance, assigns a registration number to each business corresponding to the Company Tax Code. Moreover, business operation also requires certificates, authorizations or licenses, as well as a Business Start-Up statement.

References:

Art. 41 of Constitution:

Art. 41: Private economic initiative is free. It cannot be conducted in conflict with public will or in such manner that could damage safety, liberty, and human dignity. The law determines appropriate planning and controls so that public and private economic activity is given direction and coordinated to social objectives.

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required

67b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

References:

Art. 113 of the Constitution

Art. 113: Against acts of the public administration the judicial safeguarding of rights and legitimate interests before the organs of ordinary or administrative justice is always permitted.

Such judicial protection may not be excluded or limited in particular kinds of appeal or for particular categories of acts.

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

67c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Article by Maurizio Pirazzini:

Nuove imprese, visto più veloce

<http://www.ilsole24ore.com/fc?cmd=art&artId=869657&chId=30>

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

67d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Most of business activities don't require a license, and the costs for starting a business are affordable by an entrepreneur.

References:

Article by Maurizio Pirazzini:

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

68. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

68a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

Comments:

The framework is quite complicated, though laws and local regulations are public and transparent.

References:

There are a number of laws regarding public health standards, at European, national and local level, also depending on the sector of activities.

YES: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

68b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

Comments:

The framework is quite complicated, though laws and local regulations are public and transparent.

References:

There are a number of laws and local norms regulating the environmental standards for business activities, also depending on the sector of activity.

YES: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

68c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

References:

There are a number of laws and regulations on public safety standards (regarding fire, exits, spaces, materials, etc.), depending also on the sector of activity.

YES: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

69. Does government effectively enforce basic health, environmental, and safety standards on businesses?

100

69a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Carabinieri Police has a special direction named "Nucleo anti sofisticazioni", whose agents have sanitary inspection powers.

References:

see 2005 report of Carabinieri Police:

<http://www.carabinieri.it/Internet/Arma/Oggi/AttivitaOperativa/Statistica/2005/Specialita/default.htm>

More than 66,000 controls

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

69b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Carabinieri Police has a special direction named Nucleo anti sofisticazioni", whose agents have sanitary inspection powers.

References:

See 2005 report of Carabinieri Police:

<http://www.carabinieri.it/Internet/Arma/Oggi/AttivitaOperativa/Statistica/2005/Specialita/default.htm>

More than 66,000 controls

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50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

69c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Carabinieri Police has a special direction named Nucleo anti sofisticazioni", whose agents have sanitary inspection powers.

References:

See 2005 report of Carabinieri Police:

<http://www.carabinieri.it/Internet/Arma/Oggi/AttivitaOperativa/Statistica/2005/Specialita/default.htm>

More than 66,000 controls

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75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

Category VI. Anti-Corruption and Rule of Law

VI-1. ⁸⁷Anti-Corruption Law

70. Is there legislation criminalizing corruption?

100

70a. In law, attempted corruption is illegal.

YES | NO

References:

Art. 322 of Criminal Code

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

70b. In law, extortion is illegal.

YES | NO

References:

Art. 629 of Criminal Code

YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

70c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

References:

Arts. 318 – 321 of Criminal Code

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

70d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

References:

Arts. 318-321 of Criminal Code

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

70e. In law, bribing a foreign official is illegal.

YES | NO

References:

Arts. 318 -321 and art. 357 of Criminal Code

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

70f. In law, using public resources for private gain is illegal.

YES | NO

References:

Arts. 314 – 316 bis of Criminal Code

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

70g. In law, using confidential state information for private gain is illegal.

YES | NO

References:

Arts. 325 – 326 of Criminal Code

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

70h. In law, money laundering is illegal.

YES | NO

References:

Art. 648 bis of Criminal Code

YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

70i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

References:

Art. 416 of Criminal Code

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

VI-2. Anti-Corruption Agency

71. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

71. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

Comments:

The commissioner is nominated by the Council of Ministers.

The prevention, search and denunciation” of economic crimes (in general), is one of the main tasks of the Tax police (Guardia di finanza).

The Tax police has a special unit (Nucleo Speciale Tutela Pubblica Amministrazione) that cooperates directly with the High Commissioner.

References:

Alto Commissario per la lotta alla corruzione

Law 3 of January 16, 2003

<http://www.anticorruzione.it/>

Guardia di Finanzia

<http://www.guardiadifinanza.it>

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

72. Is the anti-corruption agency effective?

53

72a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | **NO**

Comments:

The High Commissioner is appointed by the president of the republic, on proposal of the Council of Ministers and the prime minister.

The budget of the structure is part of the budget of the presidency of the Council of Ministers, i.e. it has no financial independence from political power

The head of the Tax police (Guardia di Finanza) responds to the Ministry of Economics and can be removed.

References:

DPR October 6, 2004, no. 258

YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

72b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | **50** | 25 | 0

Comments:

The agency has limited powers, and it is independent in using such powers. However, the past commissioner has been changed when the prime minister has changed, thus showing strict links between the two figures.

References:

www.anticorruzione.it

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

72c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | **50** | 25 | 0

References:

The High Commissioner can be removed when the government changes.
The General Commander of Guardia di Finanza can be removed by the minister of Economics.

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

72d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Although there is a spoil system to control top positions within these bodies, the large majority of officials and tax police officers are selected with correct, fair and transparent criteria.

References:

<http://www.anticorruzione.it/site/295/Default.aspx>

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

72e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

<http://www.anticorruzione.it/site/295/Default.aspx>

See the relation of the high commissioner about the functional limits of its structure:

<http://www.anticorruzione.it/Portals/altocommissario/Documents/relazione%20I%20semestre%202006.pdf>

Guardia di Finanza: see http://www.guardiadifinanza.it/Organizzazione/Chi_siamo/Personale_e_Reparti/index.html Guardia di finanza has almost 70.000 police officers

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

72f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Report by high commissioner:

Relazione dell'Alto Commissario al presidente del Consiglio dei ministri

<http://www.anticorruzione.it/Portals/altocommissario/Documents/relazione%20I%20semestre%202006.pdf>

Guardia di finanza receives regular funding.

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

72g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

References:

The high Commissione is obliged to submit reports to the prime minister every six months. Of there, only one is available to date on the website.

Report by high commissioner:

Relazione dell'Alto Commissario al presidente del Consiglio dei ministri

<http://www.anticorruzione.it/Portals/altocommissario/Documents/relazione%201%20semestre%202006.pdf>

Guardia di Finanza makes regular reports and many media news -see for

example http://www.guardiadifinanza.it/GdiF_Informa/Comunicati_stampa/index.html

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

72h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

References:

Report by high commissioner:

Relazione dell'Alto Commissario al presidente del Consiglio dei ministri

<http://www.anticorruzione.it/Portals/altocommissario/Documents/relazione%201%20semestre%202006.pdf>

Guardia di finanza has sufficient powers

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

72i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | **50** | 25 | 0

Comments:

The problem is the reluctance of other administrations to cooperate with the High Commissioner

References:

Report by high commissioner:

Relazione dell'Alto Commissario al presidente del Consiglio dei ministri

<http://www.anticorruzione.it/Portals/altocommissario/Documents/relazione%201%20semestre%202006.pdf>

see also <http://www.anticorruzione.it/site/351/Default.aspx>

Guardia di Finanza: see 2006 report

<http://www.serviziojustweb.it/guardiadifinanza2006/>

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

73. Can citizens access the anti-corruption agency?

100

73a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Report by high commissioner:

Relazione dell'Alto Commissario al presidente del Consiglio dei ministri

<http://www.anticorruzione.it/Portals/altocommissario/Documents/relazione%20I%20semestre%202006.pdf>

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

73b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

References:

Report by high commissioner:

Relazione dell'Alto Commissario al presidente del Consiglio dei ministri

<http://www.anticorruzione.it/Portals/altocommissario/Documents/relazione%20I%20semestre%202006.pdf>

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

74. Is there an appeals mechanism for challenging criminal judgments?

67

74a. In law, there is a general right of appeal.

YES | NO

References:

Art. 111 (7) of the Constitution

Art. 111 (7): [...] Appeals to the Court of Cassation in cases of violations of the law are always allowed against sentences and against measures on personal freedom pronounced by ordinary and special courts. This rule can only be waived in cases of sentences by military tribunals in time of war.

Art. 568 and following of Code of Criminal Procedure.

Art. 323 and following of Code of Civil Procedure

YES: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

NO: A NO score is earned if there is no such process.

74b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | **25** | 0

Comments:

In general, the problem is that of the length of the process.

Most appeals are not resolved in a timely fashion, but no appeals go unacknowledged for months or years.

This is why the score is 25 not 0.

References:

Interview with Silvia Varotto, judge, Tribunal of Crema, September 2007

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

74c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The cost of appeal depends on its result. If you win, you don't pay. During the process, costs of lawyers are usually accessible to the middle class.

References:

Interview with Silvia Varotto, judge, Tribunal of Crema, September 2007

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments.

75. In practice, do judgments in the criminal system follow written law?

100

75. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

References:

Interview with Silvia Varotto, judge, Tribunal of Crema, September 2007

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

76. In practice, are judicial decisions enforced by the state?

100

76. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

References:

Interview with Silvia Varotto, judge, Tribunal of Crema, September 2007

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

77. Is the judiciary able to act independently?

88

77a. In law, the independence of the judiciary is guaranteed.

YES | NO

References:

Arts 101 and 110 of the Constitution

Art. 101: Justice is administered in the name of the people. Judges are subject only to the law.

Art. 110: Without prejudice to the authority of the High Council of the judiciary, it is the Minister of Justice which has responsibility for the organization and functioning of those services involved with justice.

YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence include financial issues (drafting, allocation, and managing the budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

77b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Political power and the media can make strong pressure for the removal of judges.

References:

Interview with Silvia Varotto, judge, Tribunal of Crema, September 2007

100: National level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

77c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

References:

Art. 25 (1) of the Constitution.

Art.s 1 -50 quater Code of Criminal Procedure

Art.s 4 -33 nonies Code of Criminal Procedure

Art. 7 ter R.D. 1941 n. 12

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

77d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

References:

Art. 107 of the Constitution

Art. 107: Judges may not be removed from office. Neither may they be dismissed or removed from office nor assigned to other courts or functions unless following a decision of the High Council of the judiciary, taken either for the motives and with the guarantees of defence established by the rules of the judiciary or with their consent.

The Minister of Justice has power to originate disciplinary action.

Judges are distinguished only by their different functions.

The state prosecutor enjoys the guarantees established in his favour by the rules of the judiciary.

YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

78. Are judges safe when adjudicating corruption cases?

100

78a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

References:

Interview with Silvia Varotto, judge, Tribunal of Crema, September 2007

YES: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

78b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

References:

Interview with Silvia Varotto, judge, Tribunal of Crema, September 2007

YES: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

79. Do citizens have equal access to the justice system?

100

79a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

References:

Interview with Silvia Varotto, judge, Tribunal of Crema, September 2007

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

79b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

References:

Interview with Silvia Varotto, judge, Tribunal of Crema, September 2007

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

79c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

References:

Art. 79 ss. D.P.R. 2002 n. 115

YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

79d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

References:

Interview with Silvia Varotto, judge, Tribunal of Crema, September 2007

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

79e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

References:

Interview with Silvia Varotto, judge, Tribunal of Crema, September 2007

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits.

79f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

References:

Interview with Silvia Varotto, judge, Tribunal of Crema, September 2007

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits.

79g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

References:

Interview with Silvia Varotto, judge, Tribunal of Crema, September 2007

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

80. Is the law enforcement agency (i.e. the police) effective?

67

80a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

In practice appointments are made according to professional criteria.

The "spoils system" makes that the heads of the three law enforcement agencies are appointed by the government, so they change according to the political party (or coalition) ruling. Nevertheless, despite the political proximity, all the present and past heads of the police forces have been selected by officers with sound professional experience.

References:

www.guardiafinanza.it
www.poliziadistato.it
www.carabinieri.it

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

80b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

References:

There are some complaints about budget cuts to police forces.

See Police Trade Union website:

<http://www.sap-nazionale.org/SAPFlash/2007/flash31/sapflash31.php?id=60&PHPSESSID=f14e1332f0703b7fb17873ea5152d4c6>

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

80c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The head of the police forces has political ties. After the political turnover in April 2006 (new prime minister) the head of state police has changed (Mr. Manganello was hired on June 25, 2007,) and is linked with the minister of Interiors; the head of tax police has changed (Gen. D'Arrigo was hired on June 1, 2007,) and is linked with the minister of Economics; the head of Carabinieri has changed (Gen. Siazzu was hired on July 6, 2006,) and is linked with the minister of Defence.

References:

www.carabinieri.it

www.guardiadifinanza.it

www.poliziadistato.it

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

81. Can law enforcement officials be held accountable for their actions?

75

81a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

References:

Citizens can appeal through ordinary justice.
Art. 28 of the Constitution

Art. 28: Officials and employees of the state and public entities are directly responsible, according to criminal, civil and administrative laws, for acts committed in violation of rights. In such cases the civil responsibility extends to the state and the public entities.

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

NO: A NO score is earned if there is no such mechanism

81b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

The only complaint mechanism for citizens against the police are the regular courts, and the times for civil or criminal trials in Italy is very long. Italy has been condemned several times by the Court of Human Rights for the length of its trials (more than 700 days for the first grade and more than 800 for the 2nd in 2003).

References:

Report: Statiche Giudiziarie Civili, by ISTAT

http://www.istat.it/dati/catalogo/20070124_00/ann0613statistiche_giudiziarie_civili04.pdf

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

81c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

References:

Guardia di Finanza

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.

81d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

References:

<http://www.repubblica.it/2007/06/sezioni/politica/sostituzione-de-gennaro/de-gennaro-indagato/de-gennaro-indagato.html>

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or

occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

81e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

References:

There is no law that protects law enforcement officials from prosecution.

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

81f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | **75** | 50 | 25 | 0

Comments:

Police is subject to investigation and prosecution. Despite the fact that there can be a form of comradeship between police officers, in case of serious offences it is difficult that law enforcement agents can avoid investigation – see, for instance, the emblematic case of the investigation on the head of police for the facts happened during the disorders following the G-8 meeting in Genova. In this case, the police (and its head) covered the real behavior of police officers, but the responsibilities and the misbehaviour, reported to the media by the victims, have come out and have brought to the criminalization of the head of the police.

References:

<http://www.repubblica.it/2007/06/sezioni/politica/sostituzione-de-gennaro/de-gennaro-indagato/de-gennaro-indagato.html>

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.

