

Overall Score:

78 - Moderate

Legal Framework Score:

84 - Strong

Actual Implementation Score:

71 - Moderate

Category 1. Non-Governmental Organizations, Public Information and Media

1.1. ⁸⁸Anti-Corruption Non-Governmental Organizations

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

67

01a. In law, citizens have a right to form NGOs focused on anti-corruption or good governance.

Yes | No

Comments:

The Constitution ensures the general right of citizens to assemble and to form associations for ends which are not forbidden to individuals by criminal law. The constitution protects the right of citizens to assemble with the objective of promoting good governance and protesting corruption.

References:

Italian Constitution, Title 1, Articles 17 (Right to Assembly) and 18 (Right of Association)

Art. 17 – Citizens have the right to assemble peaceably and unarmed. No previous notice is required for meetings, including those held in places open to the public. In case of meetings held in public places, previous notice shall be given to the authorities, who may prohibit them only for proven reason of security or public safety.

Art. 18 – Citizens have the right to form associations freely and without authorization for those ends that are not forbidden by criminal law. Secret associations and associations that, even indirectly, pursue political aims by means of organizations having a military character shall be forbidden.

(source www.senato.it)

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. Non-governmental organizations (NGOs) are defined here as any organized group that is separate from the state working on issues of governance, transparency, and/or anti-corruption.

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.

01b. In law, anti-corruption/good governance NGOs are free to accept funding from any foreign or domestic sources.

Yes | No

Comments:

The theme of funding nongovernmental organizations is relevant more for counter-terrorism issues than for corruption.

References:

Art. 41 of Constitution: Private economic enterprise free. It may not be conducted in conflict with the public interest or in such a manner that could damage safety, liberty, and human dignity. The law determines appropriate planning and controls so that public and private economic activity are directed and coordinated towards social ends. Private organizations can receive funding from any legal source.

(Source www.senato.it)

http://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf

Yes: A YES score is earned if anti-corruption/good governance NGOs 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 NGOs focused on anti-corruption or good governance.

01c. In law, anti-corruption/good governance NGOs are required to disclose their sources of funding.

Yes | No

Comments:

There is no legal provision that requires CSOs to make publicly accessible their sources of funding. This is true both for anti-corruption nongovernmental organizations (NGOs) and for any other types of civil service organizations (CSOs). Law 398/91 requires that sport associations use bank transfers 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 concerning these types of associations, law 398/91 is applied to other types of associations. Such a law does not require the disclosure of the source of funding but should allow auditors, at any given moment, to see payments to and from the organization (and identify those who have made the payments).

References:

Law No. 398/91 for the fiscal regulation of amateur sport associations, art. 2.

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

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

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

100

02a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance NGOs.

100 | 75 | 50 | 25 | 0

Comments:

The government does not interfere with the constitution of nongovernmental organizations (NGOs) that are engaged in good governance. To date, there are some associations working on corruption and good governance in Italy: e.g. Transparency International-Italy Chapter, Liberia (against organized crime and its impact on society and governance), Avviso Pubblico, and Research Centre on Security and Crime (RiSSC).

References:

Report, Transparency international, June 2010 Progress Report 2010, Enforcement of anti-bribery convention

See also the websites of some of the most important NGOs acting in Italy against corruption:

www.transparency.it

www.libera.it

www.avvisopubblico.it

100: NGOs 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: NGOs 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 NGO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

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

02b. In practice, anti-corruption/good governance NGOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

Comments:

There is a dialogue between some nongovernmental organizations (NGOs) and the government, with little practical results. The Anti-corruption Service has signed several memorandum of understandings with different private and public parties in regard to cooperation in fighting corruption. However, this is not reflected immediately in the political process.

References:

Memorandum of understanding between the Anti-corruption Service and Transparency

International: http://www.anticorruzione.it/Portals/altocommissario/Documents/Protocollo_intesa_ANCI_Patto_di_integrita_1.pdf

Public Campaign, "Corrotti – give back the stolen": <http://www.libera.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/3915>

Public Campaign, "Anti Corruption Bill," <http://www.iffattoquotidiano.it/2010/09/11/per-fermaretutti-questi-%E2%80%99Cturbetti%E2%80%99D/59313/>

Interview with Mrs. Brassiolo, President of Transparency International-Italy, March 23, 2011, Milan

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

75:

50: Anti-corruption/good governance NGOs are active, but may not be relevant to political decisions or the policymaking process. Those NGOs 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 NGOs are effectively prohibited from engaging in the political process. Those NGOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

02c. In practice, no anti-corruption/good governance NGOs have been shut down by the government for their work on corruption-related issues during the study period.

Yes | No

Comments:

There is no evidence of nongovernmental organizations (NGOs) being shut down by the Government for their actions. On the contrary, the Anti-Corruption service of the ministry of Public Function has recently signed about 20 memorandums of understanding with private/public bodies to promote cooperation and dialogue on corruption.

References:

Interview with Mrs. Brassiolo, President of Transparency International-Italy, March 23, 2011, Milan

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

No: A NO score is earned if any NGO 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 NGO's work may not be explicit, however the burden of proof here is low. If it seems likely that the NGO 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 anti-corruption/good governance NGO activists safe when working on corruption issues?

100

03a. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been imprisoned.

Yes | No

References:

Interview with Mrs. Brassiolo, President of Transparency International-Italy, March 23, 2011, Milan

Yes: A YES score is earned if there were no NGO 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.

03b. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been physically harmed.

Yes | No

References:

Interview with Mrs. Brassiolo, President of Transparency International-Italy, March 23, 2011, Milan

Yes: A YES score is earned if there were no documented cases of NGO 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.

03c. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been killed.

Yes | No

References:

Interview with Mrs. Brassiolo, President of Transparency International-Italy, March 23, 2011, Milan

Yes: A YES score is earned if there were no documented cases of NGO 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

04a. In law, citizens have a right to organize into trade unions.

Yes | No

Comments:

Trade unions are free to organize. In Italy there are three main trade unions – General Confederation of Italian Labour (Confederazione Generale Italiana del Lavoro – CGIL), Italian Confederation of Workers' Unions (Confederazione Italiana Sindacati Lavoratori – CISL) and Union of Italian Workers (Unione Italiana del Lavoro – UIL) – and many minor trade unions. Despite the fact that first provision of the article (the freedom of workers to organize in trade unions) is fully respected, the remaining part of the article has yet to be implemented. One of the causes of this delay seems to be the resistance of trade unions to the registration, which would submit them to the controls of the Court of Accounts.

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.

04b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

Although there are no clear figures, and some suspicion of their exaggeration, Italian Trade Unions are widely representative, as they account for around 12 to 14 million workers.

One of the strongest criticisms of trade unions in Italy is that they protect the interests of associates (but no more of the interests of workers in general) and their lack of transparency.

For a list of main Italian trade unions: it.wikipedia.org/wiki/Sindacato

References:

Il velino, Saviana S., 2010, "Cgil, parte l'era Camusso. Epifani: Sarà un grande segretario," <http://www.ilvelino.it/articolo.php?id=1230078>

Fedee, 2010 "Trade unions across Europe," <http://www.fedee.com/tradeunions.html#Italy>

Il Giornale, Angeli F. 2010, "Zuffa tra sindacati: Cisl accusa Cgil di gonfiare il numero degli iscritti stranieri," http://www.ilgiornale.it/interni/zuffa_sindacati_cisl_accusa_cgil_gonfiare_numero_iscritti_stranieri/cronaca-attualit-sindacato-stranieri-immigrazione-tessere/10-05-2010/articolo-id=444352-page=0-comments=1

Wikipedia, 2010, list of Italian Trade Unions, it.wikipedia.org/wiki/Sindacato

2) David G. Blanchflower, 2006. "A Cross-Country Study of Union Membership. IZA Discussion Papers," <http://ideas.repec.org/p/iza/izadps/dp2016.html>

100: Trade unions are common and are an important part of 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.

1.2. Media's Ability to Report on Corruption

5. Are media and free speech protected?

100

05a. In law, freedom of the media is guaranteed.

Yes | No

Comments:

The independence of the media with respect to the owners is a difficult problem in Italy. There are restrictions regarding privacy, but in general this does not affect the freedom of the press. Internet accessibility and limits on the ability of the government to censor are important elements of such freedom.

References:

Art. 21 of the Constitution

Art. 21: (1) Everyone has the right to freely express thoughts in speech, writing, and by other means of communication. (2) The press may not be controlled by authorities 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 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.

05b. In law, freedom of speech is guaranteed.

Yes | No

Comments:

Again, there is are unresolved conflicts of interest between the current Prime Minister Silvio Berlusconi and his media companies.

However, this, in general, does not affect freedom of speech, including for ideologies and religions. On the contrary, there is a general tolerance on what people – in particular politicians – can say publicly, a sort of excess of freedom that excludes any responsibility for what is said.

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 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

06a. 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 and survival of nationwide print media entities. In Italy, ownership of the major 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 automotive sector (Fiat), finance, insurance and tourism, and also publishes one of the widest-circulating free newspapers in the country.

The other major 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. The Gruppo Mondadori (Berlusconi's group) is the largest Italian publisher of periodicals, with a 42 percent market share and 50 titles.

It should be noted that Italy ranks below the 40th position in the "Report sans frontieres" on global freedom, and Italy's civil liberties rating declined from 1 to 2 in the freedom of information report (www.freedomhouse.org) "due to the further concentration of media outlets under Prime Minister Silvio Berlusconi and persistent interference by organized crime networks in the functioning of private businesses."

References:

AGCOM – annual report 2010

<http://www.agcom.it/default.aspx?DocID=4714>

<http://www.disinformazione.it/libertadistampa.htm>

<http://www.freedomhouse.org/template.cfm?page=363&year=2009>

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.

06b. In law, where a print media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes | No

Comments:

No print license is necessary in Italy, (except for the cases of publications with content against the law). Yet, to begin printing it is necessary to register in a Registry of Communication Operators (Registro degli operatori di comunicazione) held by the Communications Regulatory Authority (Agcom), an independent authority, which was established by Law no. 249 of July 31, 1997. The purpose of this registration is to control ownerships, concentration, and limit the participation of foreign societies in Italian media.

References:

Art. 21 the Constitution Communications Regulatory Authority (AGCOM)

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.

06c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Printing licenses are not required, in particular for electronic journals. For press printing, there is a duty to register with the Press Office (Ufficio Stampa) of the Tribunal (according to law 47/1948). The procedure is very easy and quick.

References:

http://www.interlex.it/stampa/0162_3.htm

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.

06d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:
Licenses are not required. For press printing (newspapers with periodical printings) there can be a minimal cost to register.

In the recent years also Italy has faced a profusion of Web-media content. Setting up a web journal or a web-TV outlet is free.

References:
<http://www.ipse.com/quoton.html>

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?

56

07a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:
According to Freedom of the Press 2010: A Global Survey of Media Independence, “heavy media concentration and official interference in state-owned outlets continues to define Italy as being Partly Free.”

The Italian legal system ensures the freedom of setting up media companies, but holds a strict control on licenses.

The new law decree has extended the regulations also on video and radio broadcasting. Draft versions of the law decree also contain regulations on the Internet and email. These led to a strong reaction against the law.

Also some private pay-per-view TV outlets have raised many complaints about the law, which increase the rates of commercial advertising in broadcasting for public and private media companies, but reduces the rates for pay-per-view channels (i.e., SKY, which is constantly gaining shares from Mediaset and Rai – the public broadcast service).

References:

<http://www.freedomhouse.org/template.cfm?page=70&release=1177>

<http://www.medialaw.it/in-primo-piano/tra-polemiche-e-marce-indietro-cosi-cambia-il-testo-unico-della-tv.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.

07b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes | No

Comments:

In law, there are different types of broadcasting licenses: one for “network operators” (operatore di rete) — which are those who hold the infrastructures for broadcasting; one for “service providers” (fornitori di servizi) — which are those who sell media services (decoder, pay-tv, and in general any pay-per-view broadcast); and one for “content provider” (fornitore di contenuti) — i.e., the editor who is 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. Everyone can bring a case before a court (art. 24 and 125 of the Constitution).

References:

Law by decree no. 177/2005, Consolidated Act on Broadcast (Decreto Legislativo 177/2005, Testo Unico della radiotelevisione), updated with law decree n.44 of 15/03/2010

Deliberation of the Communications Regulatory Authority (Agcom)

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

Art. 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.

07c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

Comments:

According to the new law decree, the release of a license is up to the Communication Regulatory Authority (AGCOM), instead of the ministry. There is no longer a time period (which was formerly 60 days) for checking the requirements. However, the companies can start broadcasting.

Extract from AGCOM website:

“Audiovisual contents and media Directorate.” This deals with all content issues, controlling the whole procedural flow (Regulation, Monitoring and Conflict Resolution).

Examples of the issues dealt by the Directorate:

Regulation of licence and authorisation regime for contents and access to multimedia platforms;

Protection of pluralism of information and competition in the media sector;

Protection of minors

Monitoring of European and independent productions quota in the media;

Right of reply compliance;

Protection of intellectual property rights;

Advertising regulation;

Public broadcasting.

Market analysis and competition Directorate

This carries out all market analysis activities and communicates with the Competition Authority for the opinions as requested by the law 249/97; it is also responsible for issues such as cost accounting and other technical issues.

Consumers Protection Directorate

This directorate is responsible for dealing with consumer complaints and relations with Consumers Associations; it also gives opinion to the Competition Authority regarding misleading advertisements and it is in charge of issues such as Quality of Services Agreements of the operators and conflict resolutions.

References:

Global Integrity report 2008

<http://www.medialaw.it/in-primo-piano/tra-polemiche-e-marce-indietro-cosi-cambia-il-testo-unico-della-tv.html>

<http://www.agcom.it/Default.aspx?message=contenuto&DCId=295>

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.

07d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

Comments:

Citizens can obtain a broadcast (radio and TV) media license at a reasonable cost. In particular, web TV and radios requires no license.

With regards to digital TV frequencies, Italy is a unique case in the world, because licenses have been given for free to former analog TV media companies, de facto limiting concurrence by Europe. The competition for assigning the free frequency has yet to be done by the Minister for Economic Development.

Today, local broadcasting companies complain about the exclusion from useful frequencies in favor of majors and TCL companies complain about the too-high expectation of earnings from the free frequency competition (expected to bring in Euro \$2.4 billion (US\$2.8 billion).

References:

<http://www.finanzainchiaro.it/dblog/storico.asp?s=Osservatorio+Nazionale>

TV Digital Divide, by quezal, 2010 "DGTVi, il digitale terrestre e il paese che non c'è," DGTVi <http://www.tvdigitaldivide.it/category/tv-digitale-terrestre/page/2/>

TV Digital Divide, by quezal, 2011, "Asta LTE, governo prepara nuova legge anti-ricorsi tv locali," <http://www.tvdigitaldivide.it/author/quezal/>

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained online 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?

100

08a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

Comments:

Internet access is free.

References:

http://www.oecd.org/document/44/0,3343,en_2649_34225_43435308_1_1_1_1,00.html

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.

08b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

References:

http://www.oecd.org/document/44/0,3343,en_2649_34225_43435308_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?

83

09a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

Yes | No

Comments:

Publishing of wiretaps is forbidden.

In June 2010, a draft law (the so-called legge Alfano), would have significantly limited what the Italian media can report. In particular, it would have prohibited the publication or broadcast of any information about the indictment of any individual on any charge until the case comes to court. An Italian newspaper publishing an article on, for example, "Bernard Madoff arrested and charged with record-breaking \$50 billion fraud" would have risked heavy fines if Bernard Madoff were an Italian citizen. Supporters of the new law claimed it would guarantee individual privacy.

Following strikes and media strong reaction, and due to the strong criticism from the magistrates (the law had a direct impact on investigations, by canceling one of the most powerful tools in fighting crime, as recognized at international level) and the President of the Republic, the law was modified.

However, the limitations now apply to the possibility of reporting information on crimes, scandals and other cases of public interests.

References:

Art. 21 of the Constitution: Everyone has the right to freely express their thoughts in speech, writing, or any other form of communication. The press may not be subjected to any authorization or censorship. Seizure may be permitted only by judicial order stating the reason and only for offenses expressly determined by the law on the press or in case of violation of the obligation to identify the persons responsible for such offenses.

In such cases, when there is absolute urgency and timely intervention of the Judiciary is not possible, a periodical may be confiscated by the criminal police, which shall immediately, and in no case later than 24 hours, refer the matter to the Judiciary for validation. In default of such validation in the following 24 hours, the measure shall be revoked and considered null and void. The law may introduce general provisions for the disclosure of financial sources of periodical publications. Publications, performances, and other exhibits offensive to public morality shall be prohibited. Measures of preventive and repressive measure against such violations shall be established by law.

see also

http://www.repubblica.it/rubriche/la-legge-bavaglio/2010/05/24/news/italy_under_threat_the_press_freedom-4296314/

<http://www.repubblica.it/static/speciale/2010/legge-intercettazioni/index.html?ref=HREA-1>

http://www.repubblica.it/politica/2010/06/09/news/intercettazioni_limiti_e_nuove_regole_ecco_il_testo_del_ddl_del_governo-4699834/

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.

09b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

In general, the freedom of information is guaranteed in Italy, despite publicly stated complaints by some politicians against “unfriendly” journals. However, there is a perception of reduced capacity of journalists to carry out serious investigations.

With some exceptions: l'Espresso (espresso.repubblica.it), Report (www.report.rai.it), and journalists such as Claudio Gatti, Marco Travaglio, and Gianluca De Feo (just to name the most well known) publish accurate investigative reports on white collar crimes in Italy.

References:

http://www.repubblica.it/rubriche/la-legge-bavaglio/2010/05/24/news/italy_under_threat_the_press_freedom-4296314/

<http://www.repubblica.it/static/speciale/2010/legge-intercettazioni/index.html?ref=HREA-1>

http://www.repubblica.it/politica/2010/06/09/news/intercettazioni_limiti_e_nuove_regole_ecco_il_testo_del_ddl_del_governo-4699834/

for some example of investigative journalism see, for instance: www.espresso.repubblica.it, www.ilgiornale.it; www.ilfattoquotidiano.it; www.report.rai.it

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.

09c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

There is no prior government restraint (pre-publication censoring) on publishing corruption-related stories. Nevertheless, the Government is attempting to reduce the opportunities for publication of wiretaps. (It is also attempting to reduce the opportunities for using wiretapping for investigation, despite it has been demonstrated at global lever to be one of the most powerful tools for investigations).

From the Freedom of Press report 2010-Italy: “In June 2008, the lower house of Parliament approved a bill that would impose heavy fines or jail terms on journalists who use transcripts from wiretaps without a judge’s permission. It had yet to pass the Senate at the end of 2009. The International Press Institute noted that the bill could ‘limit journalists’ ability to provide the public with vital information.” The draft law contains “provisions that restrict journalists’ right to report on police investigations, and includes heavy punishments for breaching these restrictions.” Reporters would face up to three years in prison and editors could be fined up to Euro 465,000 (US\$576,000) for making reference to

preliminary police investigations, reporting on official investigation documents before hearings have begun, and publishing leaked police wiretaps. The European Federation of Journalists also criticized the draft law, stating, 'Journalists are not supposed to hide information, whether the source is public or private, and their sources should be protected. Berlusconi's draft law is contrary to international conventions and to the case-law of the European Court of Human Rights.'

Tensions between the press and prime minister escalated in 2009, as Berlusconi repeatedly tried to interfere in journalists' efforts to cover conflicts between his private and political life. Berlusconi's private life came under intense scrutiny during the year after his wife filed for divorce and accused him of consorting with minors.

Becoming Italy's first head of government to take legal action against Italian and European media, Berlusconi sued several foreign newspapers for their coverage of his private life, particularly the claim that he had a sexual relationship with an 18-year-old girl. The Italian media group L'Espresso, which owns the newspaper La Repubblica, sued Berlusconi for defamation after the prime minister called the paper "subversive" and encouraged advertisers to boycott it. La Repubblica has been investigating the prime minister's personal life, including accusations that he had paid for sex. Videocracy, a documentary criticizing Berlusconi's media dominance, was boycotted in August by Mediaset as well as RAI, the state broadcasting network, with both refusing even to air the trailer.

In addition, the newspaper Il Giornale, which is owned by Berlusconi's brother, attacked the Catholic paper Avvenire after it ran stories criticizing the prime minister's behavior. On October 3, almost 300,000 people turned out in Rome for a protest against Berlusconi's harassment of the media that was organized by the European Federation of Journalists' Italian affiliate."

References:

Freedomhouse, 2010, Freedom of the Press 2010 (<http://www.freedomhouse.org/template.cfm?page=251&year=2010>).

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?

80

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

Yes | No

Comments:

The Communication Regulatory Authority (AGCOM — Autorità per le Garanzie nelle Comunicazioni) is the independent regulator of the Italian communications sector. It was established on July 31, 1997, by Law n. 249/97.

According to the law, AGCOM carries out regular audits of the communication market, in order to ensure the plurality of information and anti-trust.

References:

Law 31 July 1997, n. 249, Institution of Communication Regulatory Authority and rules on systems of telecommunication and broadcast ("Istituzione dell'Autorità per le garanzie nelle comunicazioni e norme sui sistemi delle telecomunicazioni e radiotelevisivo" (in part. art. 1, § 6, lett. c), n. 1)).

Yes: A YES score is earned if print media companies are required by law to publicly 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 publicly disclosed.

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

Yes | No

Comments:

The Communications Regulatory Authority (AGCOM — Autorità per le Garanzie nelle Comunicazioni) manages the ROC (Registro degli Operatori di Comunicazione), a public registry that reports media ownership, 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, Institution of Communication Regulatory Authority and rules on systems of telecommunication and broadcast (“Istituzione dell’Autorità per le garanzie nelle comunicazioni e norme sui sistemi delle telecomunicazioni e radiotelevisivo”)

Yes: A YES score is earned if broadcast media companies are required by law to publicly 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 publicly disclosed.

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

100 | 75 | 50 | 25 | 0

Comments:

The Freedom House Press Report 2010 down-rated Italy from Free to Partially Free, due to the “an unusually high concentration of media ownership.” There is a big debate in Italy about the limits of the right of information, which is sometimes misused for influencing public opinion for or against political leaders.

References:

Newspaper Il Giornale, “Santoro claims the right of spying,” October 2010, http://www.ilgiornale.it/interni/santoro_rivendica_liberta_dossieraggio/adsl-atletica-uu/14-10-2010/articolo-id=479897-page=0-comments=1

Freedom House Press Report 2010, http://it.wikipedia.org/wiki/Freedom_House
www.freedomhouse.org/images/.../FOTP2010Global&RegionalTables.pdf

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:

All political parties and independent candidates have some access to media outlets. On balance, the national media coverage reflects the interests of the electorate. Media group Mediaset supports its owner, Silvio Berlusconi, in particular during electoral campaigns. Also, the news from the main public television channel (RAI 1, TG1) is unbalanced in favor of Prime Minister Berlusconi.

On October 2010 the Authority for Communications (AGCOM — Autorità per le Garanzie nelle Comunicazioni) adopted three resolutions to force TG1 (prime time news on the first channel) and Mediaset TG4 and Channel 4 to present a different balance of political groups in the TV.

According to the resolutions, Berlusconi, his ministers and his party had, in the period July-September 2010, on the TG1 63 percent, 42 percent and 45 percent of the coverage. On TG4, their coverage amounted to 84 percent, 73 percent and 70 percent. On Channel 4 (Retequattro) they received 76 percent, 54 percent and 55 percent. The rest was divided between other parties of the leading coalition and the opposition.

References:

AGCOM – resolutions nr 220/10/SP, 221/10/SP, 222/10/SP, 2010

<http://www.agcom.it/Default.aspx?message=visualizzadocument&DocID=5394>

<http://www.agcom.it/Default.aspx?message=visualizzadocument&DocID=5395>

<http://www.agcom.it/Default.aspx?message=visualizzadocument&DocID=5396>

<http://www.agcom.it/Default.aspx?message=contenuto&DCId=252>

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:

All political parties and independent candidates have some access to media outlets. State-owned Media group RAI is more balanced than private media companies. However, the first channel news (TG1) is unbalanced in favor of the Prime Minister, Silvio Berlusconi. On October 2010 the Authority for the Communications (AGCOM — Autorità per le Garanzie nelle Comunicazioni) adopted a resolutions to force TG1 to balance — as a public service — the presence of political groups in the TV.

According to the resolutions, Berlusconi, his ministers and his party have received on TG1, in the period July-September 2010, 63 percent, 42 percent and 45 percent of time. The rest of the coverage was divided between other parties of the leading coalition and the opposition.

References:

AGCOM, resolutions nr 220/10/SP, 2010

<http://www.agcom.it/Default.aspx?message=visualizzadocument&DocID=5394>

<http://www.agcom.it/Default.aspx?message=contenuto&DCId=252>

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

Comments:

According to the report, in Italy “Journalists occasionally face physical threats or attacks from organized crime networks and other political or social groups,” but no journalists have been imprisoned for investigating corruption.

“In June 2008, the lower house of Parliament approved a bill that would impose heavy fines or jail terms on journalists who use transcripts from wiretaps without a judge’s permission. It had yet to pass the Senate at the end of 2009. The International Press Institute noted that the bill could ‘limit journalists’ ability to provide the public with vital information.’ The draft law contains ‘provisions that restrict journalists’ right to report on police investigations, and includes heavy punishments for breaching these restrictions.’ Reporters would face up to three years in prison and editors could be fined up to Euro 465,000 (US\$576,000) for making reference to preliminary police investigations, reporting on official investigation documents before hearings have begun, and publishing leaked police wiretaps. The European Federation of Journalists also criticized the draft law, stating, ‘Journalists are not supposed to hide information, whether the source is public or private, and their sources should be protected. Berlusconi’s draft law is contrary to international conventions and to the case-law of the European Court of Human Rights.’”

Tensions between the press and prime minister escalated in 2009, as Berlusconi repeatedly tried to interfere in journalists’ efforts to cover conflicts between his private and political life. Berlusconi’s private life came under intense scrutiny during the year after his wife filed for divorce and accused him of consorting with minors. Becoming Italy’s first head of government to take legal action against Italian and European media, Berlusconi sued several foreign newspapers for their coverage of his private life, particularly the claim that he had a sexual relationship with an 18-year-old girl.

The Italian media group L’Espresso, which owns the newspaper La Repubblica, sued Berlusconi for defamation after the prime minister called the paper “subversive” and encouraged advertisers to boycott it. La Repubblica has been investigating the prime minister’s personal life, including accusations that he had paid for sex. Videocracy, a documentary criticizing Berlusconi’s media dominance, was boycotted in August by Mediaset as well as RAI, the state broadcasting network, with both refusing even to air the trailer.

In addition, the newspaper Il Giornale, which is owned by Berlusconi’s brother, attacked the Catholic paper Avvenire after it ran stories criticizing the prime minister’s behavior. On October 3, almost 300,000 people turned out in Rome for a protest against Berlusconi’s harassment of the media that was organized by the European Federation of Journalists’ Italian affiliate” (source: <http://www.freedomhouse.org/template.cfm?page=251&year=2010>).

References:

Freedomhouse, 2010, Freedom of the Press 2010 (<http://www.freedomhouse.org/template.cfm?page=251&year=2010>).

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:

"Journalists occasionally face physical threats or attacks from organized crime networks and other political or social groups. According to Reporters Without Borders (RSF), there are currently about 10 journalists under police protection for their writing on organized crime. Roberto Saviano, a journalist who wrote the best-selling book Gomorrah about the Neapolitan mafia, or Camorra, has been under police protection for threats on his life since the publication of the book in 2006."

References:

Freedom House Press Report 2010,
<http://www.freedomhouse.org/template.cfm?page=251&year=2010>

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

Comments:

"Journalists occasionally face physical threats or attacks from organized crime networks and other political or social groups. According to Reporters Without Borders (RSF), there are currently about 10 journalists under police protection for their writing on organized crime. Roberto Saviano, a journalist who wrote the best-selling book Gomorrah about the Neapolitan mafia, or Camorra, has been under police protection for threats on his life since the publication of the book in 2006."

Before 1992 there had been cases of organized crime murder of journalist.

References:

Freedom House Press Report 2010,
<http://www.freedomhouse.org/template.cfm?page=251&year=2010>

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

1.3. Public Requests for Government Information

12. Do citizens have a legal right to request information?

100

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

Yes | No

Comments:

The access to public documents and records is regulated by Law 241/1990 "New provisions on administrative

procedure and right of access to documents” (as amended in 2005, 2007, and 2009), and its related regulation, adopted with the Decree of the President of the Republic (DPR) n. 184/2006, “Regulation on Access to Administrative Documents.”

References:

Art. 2 of the DPR n. 184/2006

Art 22 of Law 241/1990

Yes: A YES score is earned if there is a formal right to request 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 a request for a basic government record is denied.

Yes | No

Comments:

There is a system of appeal against the denial of access:

the appeal before the administrative court (Tribunale Amministrativo Regionale);

the request to the ombudsman;

for documents of national interest, an appeal to the special Commission of the Presidency of the Council of Minister

References:

Art. 24 of the Constitution Art. 24: Anyone can take judicial action to protect individual rights and legitimate interests

Art. 12 of Decree of the President of the Republic (DPR) n. 184/2006 “Regulation on Access to Administrative Documents”

Arts. 25 and 27 of Law 241/1990 “New provisions on administrative procedure and right of access to documents” (as amended in 2005, 2007, and 2009)

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

Comments:

The general rules for the right of access apply also for government records. The law (art 25) and the regulation state the procedures for the request.

References:

Art 25 of Law 241/1990 “New provisions on administrative procedure and right of access to documents” (as amended in 2005, 2007, and 2009) and Decree of the President of the Republic (DPR) 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 to information requests effective?

67

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

100 | 75 | 50 | 25 | 0

Comments:

According to the field test, in Italy, only 1 information request in 6 have been answered in the month (Ministry of Foreign Affairs – Cooperation and Development Office; request, Feb. 22, 2010; reply, March 24, 2010).

References:

Interview with Davide Del Monte, researcher, Transparency International Italy, 2011, Milano

Access Info project “6 Question Campaign”, 2010, report <http://www.access-info.org/en/budget-transparency/73-the-6-question-campaign>

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 information request mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Access to the documents is free of cost. There can be costs charged for copying the documents and for supporting activity by the secretariat, plus costs of posting the request (by ordinary or registered mail).

References:

Interview with Davide Del Monte, researcher, Transparency International-Italy, 2011, Milano

Access Info project, “6 questions Campaign,” 2010, report <http://www.access-info.org/en/budget-transparency/73-the-6-question-campaign>

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 NGOs. 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 NGOs trying to access this information.

13c. In practice, responses to information requests are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

According to the field test, of 6 information requests made, the only answer received had partial information. In three cases the answer was to send the request to some other office. In one case, the second office answered that the request be sent to the first office.

References:

Interview with Davide Del Monte, researcher, Transparency International-Italy, 2011, Milano

Access Info Project, "6 question Campaign," 2010, report, <http://www.access-info.org/en/budget-transparency/73-the-6-question-campaign>

100: Responses to information requests typically address the requestor's questions in full and are not redacted or edited to remove sensitive information.

75:

50: Information requests are sometimes met with sufficient responses, but responses to information requests may be vague or overly general when sensitive information is sought.

25:

0: The government rarely or never replies to information requests with meaningful responses. If and when responses are issued, they are so overly general or heavily redacted as to render them useless.

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

100 | 75 | 50 | 25 | 0

Comments:

Although there is no clear information, the conclusion is that there is some resistance to reacting promptly.

References:

Interview with Davide Del Monte, researcher, Transparency International-Italy, 2011, Milano

Access Info project, "6 Questions Campaign," 2010, report, <http://www.access-info.org/en/budget-transparency/73-the-6-question-campaign>

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.

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

100 | 75 | 50 | 25 | 0

Comments:

According to the European studies, the costs are affordable for an average family.

References:

European Court of Justice, 2009, Study on the cost of justice in Europe. https://e-justice.europa.eu/attachments/cost_study_italy_en.pdf

Interview with Davide Del Monte, researcher, Transparency International-Italy, 2011, Milano

Access Info project, "6 Questions Campaign," 2010, report, <http://www.access-info.org/en/budget-transparency/73-the-6-question-campaign>

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.

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

100 | 75 | 50 | 25 | 0

Comments:

The reports of the Commissions 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.

At the government level, the situation is less transparent. In the field test, only one (incomplete) answer contained the reasons for the lack of information. In other cases, there was no reply or no reason given.

References:

ARPA EMILIA ROMAGNA, Regional Report on Access to Administrative Documents and Environmental Documents, <http://www.iuav.it/Facolta/facolt-di/OSSERVATOR/approfondi/Documenti/relaz.-arpa.pdf>

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.

2.1. Voting and Party Formation

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

References:

Arts. 1 and 48 of 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 residing 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

References:

Articles 60 and 61 of the Constitution

Article 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.

Article 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:

Data on elections at the national, regional and local level are available for free online.

Data of the past regional and national elections show that around 48 million citizens had the right to vote, and that between 60 percent and 80 percent of citizens voted in the last regional and national elections, respectively in 2010 and 2008.

References:

Ministry of Interiors, Electoral Archive (Archivio Storico Elezioni), 2010, <http://elezionistorico.interno.it/index.php?tpel=C>

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:

The report describes Italian elections as a democratic exercise. No problems have been reported regarding secrecy of the ballots.

References:

Office for Democratic Institutions and Human Rights, ITALY-PARLIAMENTARY ELECTIONS, April 9 & 10, 2006, OSCE/ODIHR Election Assessment Mission Report, <http://www.osce.org/odihr/elections/italy/19405>

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:

Elections are scheduled regularly.

The archives of the Ministry of Interiors show the dates of elections at the national, regional and local level. For example, it lists parliament elections going back to 1948.

References:

Ministry of Interiors, Electoral Archive, Archivio storico elezioni, <http://elezionistorico.interno.it>

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

References:

Art 49 of Constitution: All citizens have the right to freely associate in parties to contribute through democratic processes to the determination of 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

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 needed time to carry out that function and to conserve his place of work.

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 members in active service, functionaries and agents of the police, diplomatic and consular representatives abroad.

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

Comments:

From the OCSE Report on Italian Elections:

“Political groups operate freely in Italy; there is no requirement for parties to register with authorities. Parties wishing to contest a particular election, however, must register a logo with the Ministry of Interior. Registration of the logo may be denied if it is too similar to an already registered logo or if it contains religious or fascist symbols.”

References:

Office for Democratic Institutions and Human Rights, ITALY, PARLIAMENTARY ELECTIONS, April 9-10, 2006, OSCE/ODIHR Election Assessment Mission Report, <http://www.osce.org/odihr/elections/italy/19405>

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:

At the national level, the last reform of the electoral system has eliminated the possibility that the voters themselves may select the candidates. It is now possible only to vote for a list or a political party. The lists of candidates have been decided by the parties' political leaders, who are able to influence candidates' chances through electioneering and gamesmanship.

This system, chosen by Silvio Berlusconi and his coalition to increase control over members of parliament, has significantly reduced concretely the possibility for citizens to run successfully for public office.

At local level, the possibility to run for political office is real.

References:

Office for Democratic Institutions and Human Rights, ITALY, PARLIAMENTARY ELECTIONS, April 9-10, 2006, OSCE/ODIHR Election Assessment Mission Report, <http://www.osce.org/odihr/elections/italy/19405>

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. A system of party lists may discourage or prevent independent 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.

100 | 75 | 50 | 25 | 0

Comments:

The balance between the major party and the opposition is very close. "Silvio Berlusconi's conservative government narrowly survived a censure motion in parliament that had brought it to the brink of disaster. Earlier this afternoon the Chamber of Deputies, the lower house of parliament, voted by 314 to 311 against a motion of no confidence that could have forced the prime minister to resign from office." (From the Economist, Dec.14, 2010)

Current composition in the Chamber of Deputies is 316 (majority) vs 292 (opposition). Members of the opposition can present bills as any other member of the parliament.

References:

The Economist, "Berlusconi scrapes through," http://www.economist.com/blogs/newsbook/2010/12/italys_confidence_votes

Composizione della Camera – Distinzione dei deputati per gruppo e per fasce di età, Camera dei Deputati, 2010, OpenPolis http://parlamento.openpolis.it/gruppi_camera

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.

2.2. Election Integrity

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

100

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

Yes | No

Comments:

The 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). During elections, a special agency is set up.

A central office is set up in the Corte di Cassazione: the National Central Election Office (Ufficio elettorale centrale nazionale). Local offices are set up in appeals courts (corti d'appello) or tribunals.

In general, Criminal Courts have jurisdiction over criminal behaviors (including corruption), under the consolidated Act on Elections (arts. 94-114 of D.P.R. March 30, 1957, n° 361).

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), Arts.12 and 13 of D.P.R., March 30,1957, n° 361

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 exists 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:

The judges are protected from political interference by the Constitution (art. 101). But there is no law that protects the Central Agency (Direzione Centrale) from political interference, as it belongs to the Ministry of the Interior. Substantially, though, the agency has never been the subject of complaints or actions about 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:

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:

Political elections took place in 2008, and there is no evidence of problems with political interference.

References:

Report, OSCE/ODIHR, March 10, 2008, "Italy, Parliamentary Elections, April 13-14, 2008, OSCE/ODIHR Needs Assessment Mission Report", <http://www.osce.org/item/30116.html>

Report, OSCE/ODIHR, June 9, 2006, Assessment Mission Report on the April 9-10, 2006, Parliamentary Elections in Italy, <http://www.osce.org/item/19409.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

Comments:
The last political elections were in 2008.

References:
Report, OSCE/ODIHR, March 10, 2008, "Italy, Parliamentary Elections, April 13-14, 2008, OSCE/ODIHR Needs Assessment Mission Report", <http://www.osce.org/item/30116.html>

Report, OSCE/ODIHR, June 9, 2006, Assessment Mission Report on the April 9-10, 2006, Parliamentary Elections in Italy, <http://www.osce.org/item/19409.html>

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

Comments:
All data on elections are available online.

References:
Archive of Election, viewing data, <http://elezionistorico.interno.it/>

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:

Members of the parliament has been found guilty for breach of electoral laws.

References:

Il Fazio Liberalo, June 12, 2009, "Penati (Pd) nuovamente condannato per la campagna elettorale con soldi pubblici. E lui risponde "Giustizia a orologeria," <http://fazioso.wordpress.com/2009/06/12/penati-pd-nuovamente-condannato-per-la-campagna-elettorale-con-soldi-pubblici-e-lui-risponde-giustizia-a-orologeria/>

Radical web, Carmelo Impusino, July 13, 2010, "Indagati, condannati, imputati del Pdl nel 2010. Facciamo la conta," <http://radicalweb.org/2010/07/indagati-imputati-condannati-del-pdl-nel-2010-facciamo-la-conta/>

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:

Ministry of Interior, Complete guide to the current electoral system, http://www.interno.it/mininterno/export/sites/default/it/temi/elezioni/app_sottotema005_sistema_elettorale.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 Regional Administrative Court is competent on elections from local up to Parliamentary elections, which are under jurisdiction of the Parliament itself or, for criminal aspects, to criminal justice.

This specific aspect of jurisdiction requires a new law to define competences (see Constitutional Court, 19 October 2009 n. 259)

References:

http://www.giustizia-amministrativa.it/documentazione/studi_contributi/CONTENZIOSO_ELETTORALE.htm

Art. 6 of law 1034/1971 (Regional Administrative Courts)

Art. 87 of d.p.r. n. 361/1957

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

References:

Report, OSCE/ODIHR, March 10, 2008, "Italy, Parliamentary Elections, April 13-14, 2008, OSCE/ODIHR Needs Assessment Mission Report", <http://www.osce.org/item/30116.html>

Report, OSCE/ODIHR, June 9, 2006, Assessment Mission Report on the April 9-10, 2006, Parliamentary Elections in Italy, <http://www.osce.org/item/19409.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:

Report, OSCE/ODIHR, March 10, 2008, "Italy, Parliamentary Elections, April 13-14, 2008, OSCE/ODIHR Needs Assessment Mission Report", <http://www.osce.org/item/30116.html>

Report, OSCE/ODIHR, June 9, 2006, Assessment Mission Report on the April 9-10, 2006, Parliamentary Elections in Italy, <http://www.osce.org/item/19409.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 overtly 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

Comments:

To complement the election law, a new decree was adopted by the government on Feb. 15, 2008 and approved by Parliament on Feb. 26 to regulate a limited number of technical issues. These include [...] the possibility for OSCE observers to monitor the parliamentary elections, in line with 2006 OSCE commitments.

References:

Decree by Law, Feb. 15, 2008, no. 24, "Disposizioni urgenti per lo svolgimento delle elezioni politiche ed amministrative nell'anno 2008," art. 3

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:

Report, OSCE/ODIHR, March 10, 2008, "Italy, Parliamentary Elections, April 13-14, 2008, OSCE/ODIHR Needs Assessment Mission Report", <http://www.osce.org/item/30116.html>

Report, OSCE/ODIHR, June 9, 2006, Assessment Mission Report on the April 9-10, 2006, Parliamentary Elections in Italy, <http://www.osce.org/item/19409.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
2.3. Political Financing Transparency

20. Are there regulations governing the financing of political parties?

50

20a. In law, there are limits on individual donations to political parties.

Yes | No

Comments:

According to Law 51/2006, private contributions to political parties lower than Euro 50,000 (US\$71,539) are not subject to declaration.

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

Law 51/2006.

Yes: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also 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 in a discriminatory manner.

20b. In law, there are limits on corporate donations to political parties.

Yes | No

Comments:
According to Law 51/2006 private contributions to political parties lower than Euro 50,000 (US\$71,539) are not subject to declaration.

Public companies are not allowed to finance political parties.

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

Law 51/2006

Yes: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

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

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

Yes | No

Comments:
There are limitations on expenditures for elections, but not general limitations.
Political parties are not subject to financial/audit rules of, for example, private/public companies.

References:
Law 515/1993 (as amended by law 22 of January 27, 2006), article 7, "Discipline in the electoral campaigns for the election of the House of Deputies and the Senate of the Republic."

Yes: A YES score is earned if there are any limits in size on political party expenditures during the course of an election.

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

20d. In law, there are requirements for the disclosure of donations to political 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 Euro 50,000 (US\$71,539).

Law 515/1993: Anyone who runs in the elections has the duty to report to the presidents of the two chambers all donations received and their sources. The sums to be reported are over Euro 20,000 (US\$28,617) for private donations, any any sum for legal persons' donations.

The Court of Accounts (Corte dei Conti), the highest court responsible for public issues, has the duty to verify such reports. Furthermore, every year, the representatives of the treasuries of political parties must send to the President of the Deputy Chamber the general financial report of the party. This report is handled an audit committee and is published in the Official Gazette of the State. The law sets forth the rules of sound financial management. Moreover, the financial report has to be published in two newspapers, one of which should have 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.

No: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

20e. In law, there are requirements for the independent auditing of the finances and expenditures of political parties when financial irregularities are uncovered.

Yes | No

Comments:

The presidents of the two chambers set up the board of auditors, which is made up of five independent experts who are selected from professional auditors (revisori ufficiali dei conti). The board is tasked with verifying the compliance of the annual financial report of political parties.

But while there is a law, in practice, this check is only a formality (i.e., the documents are formally correct) and not one of merit (i.e., in regard to how money has actually been spent in compliance with the law). The expenditures of political parties are out of control.

References:

Law 2/1997, art. 8, Annexes A and B, "Regulations on voluntary contributions to movements and political parties" (Norme per la regolamentazione della contribuzione volontaria ai movimenti o partiti politici)

Yes: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures when irregularities are uncovered. 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' finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for parties to self-audit.

20f. In law, there is an agency or entity that monitors the financing of political parties.

Yes | No

Comments:

As stated above, controls are only formal and do not go into depth on political parties' management.

In law, the Presidents of the Chambers and the Court of Accounts analyze the political economy through the annual reports provided by parties, which includes the sources of financing. This system of audits (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 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. Although a control system exists (through ordinary judicial system), there is no specific agency or entity that monitors the financing of political parties.

References:

Law 515/1993 "Regulations on Electoral Campaigns for the Chamber of Deputies and the Senate of the Republic," (Disciplina delle campagne elettorali per l'elezione alla Camera dei deputati e al Senato della Repubblica).

Law 2/1997, "Regulations on voluntary contributions to movements and political parties" (Norme per la regolamentazione della contribuzione volontaria ai movimenti o partiti politici)

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 the financing of political parties. 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. A NO score is also earned if this monitoring is solely carried out by the media and non-governmental organizations.

21. Are there regulations governing the financing of individual political candidates?

60

21a. In law, there are limits on individual donations to political candidates.

Yes | No

Comments:

There are no limits to private contribution to political parties, although some regulation exists.

Following some serious scandals, Law 195/74, art. 7, forbade any form of contribution to political parties or parliamentary groups from public administrations; public or private companies with public holdings of 20 percent or controlled; and private companies, with the exception of contributions adopted by the managing bodies and included in the budget.

Political parties used to be obliged to register in their budget any private contribution above lira 1,000,000 (US\$745). Now the limit (for the declaration) is Euro 50,000 (US\$72,159).

The limit of private contributions existed only for electoral campaigns. Law 515/93 limited private contributions to individual candidates to Euro 13,000 (US\$18,761). However, the limit has been canceled with law n. 22, passed on Jan. 27, 2006.

References:

Law 195/74 "State contribution for financing of political parties," art. 7 and 8
L. 659/1981, "Amendments of law 195/74" art. 4, §3

Law 515/1993, "Regulations on electoral campaign for the Chamber of Deputies and the Senate of the Republic," art. 7

Law 22/2006 "Urgent regulations for the voting of some electors, for electronic vote, for OSCE observers during elections"

Yes: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also 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 candidates in a discriminatory manner.

21b. In law, there are limits on corporate donations to individual political candidates.

Yes | No

Comments:

There is no law that is specific to corporate donations. Law 515/93 limited private contributions to individual candidates to Euro 13,000 (US\$18,761), and could apply to corporate donations as well. However, the limit has been canceled with law n.22, passed on Jan.27,2006.

References:

Law 195/74, "State contribution for financing of political parties," art. 7 and 8
L. 659/1981, "Amendments of law 195/74," art. 4, §3

Law 515/1993, "Regulations on electoral campaign for the Chamber of Deputies and the Senate of the Republic" art. 7

Law 22/2006, "Urgent regulations for the voting of some electors, for electronic vote, for OSCE observers during elections"

Yes: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

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

21c. In law, there are requirements for the disclosure of donations to individual political candidates.

Yes | No

Comments:

The following regulations apply only during electoral campaigns.

Funding for the campaign must be collected by an electoral agent (mandatario elettorale), whose name must be communicated to the regional committee of elections (Collegio regionale di garanzia elettorale). Any transaction must be recorded in a unique bank/post account, and disclosed to the regional committee of elections and, in case of elections, to the electoral office of the Presidency of the Chamber of the Parliament. The declarations must also contain the contributions exceeding Euro 50,000 (US\$72,154) from a single donor, from outside the electoral campaign.

References:

Law 195/74, "State contribution for financing of political parties," art. 7 and 8
L. 659/1981, "Amendments of law 195/74" art. 4, §3

Law 515/1993, "Regulations on electoral campaign for the Chamber of Deputies and the Senate of the Republic," art. 7

Law 22/2006, "Urgent regulations for the voting of some electors, for electronic vote, for OSCE observers during elections"

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

No: A NO score is earned if there are no requirements mandating the disclosure of contributions to individual political candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

21d. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates when irregularities are uncovered.

Yes | No

Comments:

The law defines a structured monitoring system for electoral expenditures: controls are made by the presidents of the two Chambers, by the Collegio regionale di garanzia elettorale, an ad hoc college (Collegio) set up in any region, the Court of Accounts, and the Board of Auditors. Members of these bodies must comply with specific professional requirements.

The Collegio is made of three selected magistrates. The regional College is made up of the President of the Court of Appeals, plus three selected magistrates and three auditors or university professors (from law, economics and administration).

References:

Law 515/1993, "Regulations on electoral campaign for the Chamber of Deputies and the Senate of the Republic," arts. 12 and 14

Yes: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. 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 an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for candidates to self-audit.

21e. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

Yes | No

Comments:

The law defines a structured 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.

Law 515/93 makes it clear (in art. 12) that controls "must be limited to checking the eligibility of expenditures and the regularity of documents."

References:

Law 515/1993, "Regulations on electoral campaign for the Chamber of Deputies and the Senate of the Republic," art. 12

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 the financing of individual political candidates' campaigns. 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. A NO score is also earned if this monitoring is solely carried out by the media and non-governmental organizations.

22. Are the regulations governing the political financing of parties effective?

13

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

There are no limits on private donations.

References:

L'espresso, Travaglio M., 2010, "Legalità, iniziamo dai partiti," <http://espresso.repubblica.it/dettaglio/legalita-iniziamo-dai-partiti/2138109>

E-article, Modena L. 2010, Dopo Mani Pulite che fine hanno fatto le tangenti? <http://www.pensierolibero.eu/tgeu/201001011063/editoriale/dopo-mani-pulite-che-fine-hanno-fatto-le-tangenti.html>

Finanza in Chiaro, by Redazione, 2010, "QUINDICI ANNI DI LEGGI AD PERSONAM" <http://www.finanzainchiaro.it/dblog/articolo.asp?articolo=7535>

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a 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 political party. However, exceptions and loopholes exist through which individuals can indirectly support 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 party; unregulated loans to 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 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.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

There are no limits to private donations. Even if each candidate has a limited budget for electoral campaign, this limit does not account what is "offered" by companies, in kind contributions and so on, only money transfers.

References:

L'espresso, 2010, Travaglio M. "Legalità, iniziamo dai partiti," <http://espresso.repubblica.it/dettaglio/legalita-iniziamo-dai-partiti/2138109>

Pensiero Libero, Modena L., 2010, "Dopo Mani Pulite che fine hanno fatto le tangenti?" <http://www.pensierolibero.eu/tgeu/201001011063/editoriale/dopo-mani-pulite-che-fine-hanno-fatto-le-tangenti.html>

Finanza in Chiaro, 2010, by redazione "QUINDICI ANNI DI LEGGI AD PERSONAM," <http://www.finanzainchiaro.it/dblog/articolo.asp?articolo=7535>

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a 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 political party. However, exceptions and loopholes exist through which companies can indirectly support 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 party; unregulated loans to 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 political parties 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.

22c. 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:

Political parties are receiving millions of euros for all elections, regardless of their actual expenditures.

References:

L'espresso, 2010, Travaglio M., "Legalità, iniziamo dai partiti," <http://espresso.repubblica.it/dettaglio/legalita-iniziamo-dai-partiti/2138109>

Pensiero Libero, Modena L., 2010, "Dopo Mani Pulite che fine hanno fatto le tangenti?" <http://www.pensierolibero.eu/tgeu/201001011063/editoriale/dopo-mani-pulite-che-fine-hanno-fatto-le-tangenti.html>

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.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

After the "Clean Hands" case of 1992, investigations of the finances of political parties have practically disappeared, in particular because of a legal framework that makes it more and more difficult for magistrates and police to investigate economic crimes.

References:

L'Espresso, Marco travaglio, Dec. 12, 2010, "Legalità, iniziamo dai partiti," <http://espresso.repubblica.it/dettaglio/legalita-iniziamo-dai-partiti/2138109>

Pensiero Libero, Loris modena, 6 January 2010, "Dopo Mani Pulite che fine hanno fatto le tangenti?," <http://www.pensierolibero.eu/tgeu/201001011063/editoriale/dopo-mani-pulite-che-fine-hanno-fatto-le-tangenti.html>

Finanza in Chiaro, 3 March 2010, "Quindici anni di leggi ad personam," <http://www.finanzainchiaro.it/dblog/articolo.asp?articolo=7535>

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties, or cooperates well with other agencies that do. 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, has limited effectiveness when investigating, or is reluctant to cooperate with other agencies in politically sensitive cases. 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, is uncooperative with other agencies, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

No sanctions have been brought against political parties in recent years.

References:

L'Espresso, Marco Travaglio, Dec. 12, 2010, "Legalità, iniziamo dai partiti," <http://espresso.repubblica.it/dettaglio/legalita-iniziamo-dai-partiti/2138109>

Pensiero Libero, Loris Modena, 6 January 2010, "Dopo Mani Pulite che fine hanno fatto le tangenti?," <http://www.pensierolibero.eu/tgeu/2010011063/editoriale/dopo-mani-pulite-che-fine-hanno-fatto-le-tangenti.html>

Finanza in Chiaro, 3 March 2010, "Quindici anni di leggi ad personam," <http://www.finanzainchiaro.it/dblog/articolo.asp?articolo=7535>

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or cooperates well with other agencies that impose penalties.

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, reluctant to cooperate with other agencies, 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 and may refuse cooperation with other agencies.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

Comments:

The Court of Account's audit powers are limited to legitimacy and compliance with documentary requirements for funding. Reports must contain the list of expenses for elections, with supporting documents to prove authenticity and regularity of all expenses. An audit usually implies the reduction of the amount of the expenditures reported by political parties. There is no audit of the merits of contributions.

References:

www.corteconti.it

"Referto ai Presidenti delle Camere sui consuntivi delle spese e sui relativi finanziamenti riguardanti le formazioni politiche che hanno sostenuto la campagna per le elezioni della Camera dei Deputati e del Senato della Repubblica del 13 - 14 aprile 2008 (art.12, comma 1, legge 10 dicembre 1993, n. 515)," http://www.corteconti.it/export/sites/portalecdc/documenti/controllo/controllo_spese_elettorali/delibera_cse_9_2009.pdf

100: Political party finances are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities. Auditing includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party 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 may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party 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.

23. Are the regulations governing the political financing of individual candidates effective?

30

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | 50 | 25 | 0

Comments:

The absence of limits in financing political parties enables donors effectively to bypass limits on contributions to an individual candidate.

See the article related to the last political elections in 2008.

References:

Article, March 13, 2008, by Primo Di Nicola e Marco Lillo, "Chi paga i partiti," <http://espresso.repubblica.it/dettaglio/Chi-paga-i-partiti/2003651/0>

L'espresso, 2010, Travaglio M. "Legalità, iniziamo dai partiti," <http://espresso.repubblica.it/dettaglio/legalita-iniziamo-dai-partiti/2138109>

Pensiero Libero, Modena L., 2010, "Dopo Mani Pulite che fine hanno fatto le tangenti?" <http://www.pensierolibero.eu/tgeu/201001011063/editoriale/dopo-mani-pulite-che-fine-hanno-fatto-le-tangenti.html>

Finanza in Chiaro, 2010, by redazione "QUINDICI ANNI DI LEGGI AD PERSONAM" <http://www.finanzainchiaro.it/dblog/articolo.asp?articolo=7535>

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. 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 particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates 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; unregulated loans to candidates (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 particular political candidate 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.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | 25 | 0

Comments:

The absence of limits in financing political parties enables donors effectively to bypass limits on contributions to an individual candidate.

See the article related to the last political elections in 2008.

References:

Article, March 13, 2008, by Primo Di Nicola e Marco Lillo, "Chi paga i partiti", <http://espresso.repubblica.it/dettaglio/Chi-paga-i-partiti/2003651/0>

L'espresso, 2010, Travaglio M., "Legalità, iniziamo dai partiti" <http://espresso.repubblica.it/dettaglio/legalita-iniziamo-dai-partiti/2138109>

Pensiero Libero, Modena L., 2010, "Dopo Mani Pulite che fine hanno fatto le tangenti?" <http://www.pensierolibero.eu/tgeu/201001011063/editoriale/dopo-mani-pulite-che-fine-hanno-fatto-le-tangenti.html>

Finanza in Chiaro, 2010, by redazione "QUINDICI ANNI DI LEGGI AD PERSONAM" <http://www.finanzainchiaro.it/dblog/articolo.asp?articolo=7535>

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. 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 an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates 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; unregulated loans to candidates (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 individual candidates 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.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Investigations on illegal financing were often revealed within wider investigations carried out by the Judicial authority.

The Commission for Elections has no judiciary or investigative powers. However, very few cases are uncovered.

References:

Manchester United, <http://manchesterunited.forumfree.it/?t=27394810>

Il corriere del mezzogiorno, Dec. 2, 2010, "Finanziamento illecito al centrosinistra. Nel mirino un'unica operazione bancaria", <http://corriere.delmezzogiorno.corriere.it/bari/notizie/cronaca/2010/2-dicembre-2010/finanziamento-illecito-centrosinistranel-mirino-unica-operazione-bancaria-1804293083755.shtml>

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns, or cooperates well with other agencies that do. 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, thought limited in effectiveness, is still fair in its application of power. It may be reluctant to cooperate with other investigatory agencies.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power. It does not cooperate well with other investigatory agencies.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

There is a long list of members of the parliament who were convicted who were then "saved" with "ad personam" laws.

References:

Manchester United, <http://manchesterunited.forumfree.it/?t=27394810>

Il corriere del mezzogiorno, Dec. 2, 2010, "Finanziamento illecito al centrosinistra. Nel mirino un'unica operazione bancaria," <http://corrieredelmezzogiorno.corriere.it/bari/notizie/cronaca/2010/2-dicembre-2010/finanziamento-illecito-centrosinistranel-mirino-unica-operazione-bancaria-1804293083755.shtml>

Beppe Grillo, list of Parliamentary convicts, <http://www.beppegrillo.it/archives/immagini/Parlamentari%20Condannati.pdf>

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or in cooperating with other agencies that do.

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, reluctant to cooperate with other agencies, 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 or may refuse to cooperate with other agencies.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

Comments:

Controls are limited to the formal regularity of the documentation.

References:

Court of Account, Board of Control over electoral

expenses, http://www.corteconti.it/export/sites/portalecdc/documenti/controllo/controllo_spese_elettorali/delibera_cse_9_2009.pdf

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities.

75:

50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns 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.

24. Can citizens access records related to the financing of political parties?

19

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Political parties are requested to submit their account balances once per year to the Parliament. They must be published in a national newspaper and on the Official Journal (Gazzetta Ufficiale).

References:

Cerdef, http://def.finanze.it/DocTribFrontend/getArticoloDetailFromResultList.do?id={70272136-51EF-4451-BFF0-1BB986706BF0}&idVersione=03&FROM_SEARCH=true&codiceOrdinamento=200000800000000&numeroArticolo=Articolo%208&idAttoNormativo=C4FC37F0-914D-43A0-9F99-CA1616BB542F

Panorama, June 26, 2010, "I conti in tasca al Partito democratico," <http://blog.panorama.it/italia/2009/06/26/i-conti-in-tasca-al-partito-democratico/>

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

75:

50: Political parties 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 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.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Data are transmitted from political parties to the audit services once a year. They are published in brief once a year in the Official Journal. Sometimes journalists can access the information and publish articles on the expenditures of political parties, but, in general, it is very difficult for the public at large to get access to financial data on political parties.

References:

Democrazialegalità, March 2008, "I bilanci irregolari dei partiti," http://www.democrazialegalita.it/redazione/redazione_bilanci_irregolari_partiti=10giugno2009.htm

Panorama, June 26, 2010, "I conti in tasca al Partito democratico," <http://blog.panorama.it/italia/2009/06/26/i-conti-in-tasca-al-partito-democratico/>

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.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Data are available for free. However, it is very difficult for the public at large to access financial data on political parties, regardless of the cost.

References:

Democrazialegalità, March 2008, "I bilanci irregolari dei partiti," http://www.democrazialegalita.it/redazione/redazione_bilanci_irregolari_partiti=10giugno2009.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 NGOs. 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 NGOs trying to access this information.

24d. In practice, the publicly available records of political parties' finances are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Only a small amount of information can be accessed by the public. Most of the information remains hidden.

References:

Court of Account, Board of control over electoral expenses, April 2008, http://www.corteconti.it/export/sites/portalecdc/documenti/controllo/controllo_spese_elettorali/delibera_cse_9_2009.pdf

100: Publicly available records of political parties' finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political parties' finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political parties' finances, when available, are so incomplete or overly general as to render them useless in understanding a party's sources of income and its expenditures.

25. Can citizens access records related to the financing of individual candidates' campaigns?

0

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

It is almost impossible to get detailed information on individual candidates' campaign. The audits of the Regional Electoral Committee (Commissione elettorale di garanzia) are seldom published, and in no cases are the amounts are published.

See, for instance, the Regional Committee of Friuli Venezia Giulia, which published the list of those who were elected and who were indicated to have paid a sanction for exceeding the limits on finances and expenditures: <http://www.consiglio.regione.fvg.it/pagine/elezioni/esitiEsperiti.asp?sectionId=0>.

References:

Freeforum, Nov. 23, 2010, <http://freeforumzone.leonardo.it/lofi/Rimborsi-elettorali-ecco-le-proteste-che-servono/D9532777.html>

Riecho Blog, Nov. 23, 2010, "Due o tre cose sui cosiddetti rimborsi elettorali ai partiti politici. Ossia, dove finiscono parte dei vostri e miei soldi," <http://riechoblog.wordpress.com/2010/11/23/rimborsi-elettorali-no-grazie/>

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

75:

50: Individual 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: Individual 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.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

It is very difficult to get data on the election expenditures of candidates.

References:

Freeforum, Nov. 23, 2010, <http://freeforumzone.leonardo.it/lofi/Rimborsi-elettorali-ecco-le-proteste-che-servono/D9532777.html>

Riecho Blog, Nov. 23, 2010, "Due o tre cose sui cosiddetti rimborsi elettorali ai partiti politici. Ossia, dove finiscono parte dei vostri e miei soldi," <http://riechoblog.wordpress.com/2010/11/23/rimborsi-elettorali-no-grazie/>

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.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

It is almost impossible to get detailed expenditures for elections.

References:

Freeforum, Nov. 23, 2010, <http://freeforumzone.leonardo.it/lofi/Rimborsi-elettorali-ecco-le-proteste-che-servono/D9532777.html>

Riecho Blog, Nov. 23, 2010, "Due o tre cose sui cosiddetti rimborsi elettorali ai partiti politici. Ossia, dove finiscono parte dei vostri e miei soldi," <http://riechoblog.wordpress.com/2010/11/23/rimborsi-elettorali-no-grazie/>

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 NGOs. 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 NGOs trying to access this information.

25d. In practice, the publicly available records of political candidates' campaign finances are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

It is very difficult to get information, regardless the quality.

References:

Freeforum, Nov. 23, 2010, <http://freeforumzone.leonardo.it/lofi/Rimborsi-elettorali-ecco-le-proteste-che-servono/D9532777.html>

Riecho Blog, Nov. 23, 2010, "Due o tre cose sui cosiddetti rimborsi elettorali ai partiti politici. Ossia, dove finiscono parte dei vostri e miei soldi," <http://riechoblog.wordpress.com/2010/11/23/rimborsi-elettorali-no-grazie/>

100: Publicly available records of political candidates' campaign finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political candidates' campaign finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political candidates' campaign finances, when available, are so incomplete or overly general as to render them useless in understanding a candidate's sources of income and expenditures.

Category 3. Government Conflicts of Interest Safeguards & Checks and Balances

3.1. ⁷³Conflicts of Interest Safeguards & Checks and Balances: Executive Branch

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

100

26a. 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 a legal defense is inviolable at every stage and moment of the proceedings. The poor are assured, through appropriate institutions, the means for action and a defense at 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 to prosecution 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.

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

75

27a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

Comments:

Current Prime Minister usually skips question time.

References:

Guardian, John Hooper, Oct. 8, 2009, "Silvio Berlusconi defiant as court throws out immunity law," <http://www.guardian.co.uk/world/2009/oct/08/silvio-berlusconi-immunity-law-overturned>

Libertà giustizia, Giorgio frasca polara, June 30, 2010, "Berlusconi in vacanza ad Antigua, salta il question time," <http://www.libertaegiustizia.it/2010/06/30/berlusconi-in-vacanza-ad-antigua-salta-il-question-time/>

La Repubblica, May 30, 2003, "Casini rimprovera Berlusconi Deve venire al question time," <http://www.repubblica.it/online/politica/question/question/question.html>

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.

27b. In law, the judiciary can review the actions of the executive.

Yes | No

Comments:

"The first and, historically, the most important task of the Court is to rule on controversies or disputes regarding the constitutional legitimacy of the laws and acts having the force of law issued by the State and the Regions (Art. 134, Italian Constitution). The Court is called on to review whether legislative acts have been enacted in accordance with the procedures stipulated in the Constitution (formal constitutionality), and whether their content conforms to constitutional principles (substantive constitutionality).

Legislative acts cover not only statutes enacted by Parliament, but also delegated legislative decrees (decreti legislativi delegati, enacted by the Government pursuant to authority delegated by Parliament), decree-laws (decreti-legge, emergency decrees adopted by the Government which expire unless converted into permanent law by Parliament), and laws issued by the Regions and the Autonomous Provinces, which have their own legislative power in the Italian constitutional system.

By contrast, enactments that are subordinate to statutes, such as administrative regulations, are not subject to direct constitutional review by the Court, but are instead subject to review for conformity with statutes by the ordinary courts. Insofar as statutes must conform to the Constitution, and regulations must conform to statutes, such regulations should also conform to the Constitution, without there being any need for constitutional review of the regulations themselves by the Court" (quoted from http://www.cortecostituzionale.it/ActionPagina_324.do).

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;

http://www.cortecostituzionale.it/ActionPagina_324.do

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).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

Comments:

This is one of the hottest points of the Italian conflict between powers (executive/legislative vs judiciary).

On one side, Berlusconi complains about being persecuted by the judiciary, in league with the right-wing parties ("the communists", according to Berlusconi speeches). On the other side, the opposition accuses the executive and the majority of the Parliament for the adoption of a long list of laws and bills "ad personam", written to protect Berlusconi, by decriminalizing some actions, reducing the statutes of limitation, creating immunity for the highest posts of the state. Berlusconi and his companies benefited from many of those laws.

Many of these laws have been subject to scrutiny by the Constitutional Court, which has rejected some of them. This has generated a strategy of delegitimization by Berlusconi and its supporters aimed at the Court. The President of the Court has replied to this by saying that the quality of the laws is worsening.

References:

La Repubblica, 2011, "Camera, via libera della giunta, sì a conflitto di attribuzione per Ruby," http://www.repubblica.it/politica/2011/03/23/news/ruby_conflitto-13990415/index.html?ref=search

La Repubblica, 2011, "De Siervo: "Troppe polemiche il Parlamento fa errori a raffica," http://www.repubblica.it/politica/2011/03/05/news/de_siervo_costituzione-13218728/index.html?ref=search

La Repubblica, 2011, "Attacchi a Consulta gravemente offensivi," De Siervo: non decidiamo su base politica," http://www.repubblica.it/politica/2011/02/10/news/de_siervo-12286950/
http://www.cortecostituzionale.it/ActionPagina_324.do#titolo6_1

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.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | 25 | 0

Comments:

There is general abuse by the executive in regard to law-making.

References:

Italian Government, Decree-law, legislative decree, <http://www.governo.it/Governo/Provvedimenti/index.asp?a=2010&m=>

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.

28. Is the executive leadership subject to criminal proceedings?

100

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

Yes | No

Comments:

The President of the Republic (with two exceptions), the Prime Minister, the Ministers and any other member of the Parliament cannot be prosecuted for the actions performed in the exercise of their institutional duties. They are instead subject to normal justice — like any citizen — for other offenses and crimes.

In 2008, the parliament approved a law (the so-called Lodo Alfano, from the name of the Minister of Justice and Berlusconi's Lawyer) to save Silvio Berlusconi from being brought to trial. This law applies to the President of the Republic, the Prime Minister and the Presidents of the two Chambers of the Parliament.

The law was brought before the Constitutional Court for a ruling about its legitimacy. During the judgment, both the State Legal adviser and Silvio Berlusconi went before the court to sustain the legitimacy of the law. On the other side, one of the Judges of the Court in Milano sustained the constitutional illegitimacy of this law.

The Court, with sentence 262 of October 7, 2010, declared Lodo Alfano to be unconstitutional.

References:

Art. 90: The President of the Republic is not responsible for the actions performed in the exercise of presidential duties, except in the case of high treason or violation of the Constitution. In such cases, the President may be impeached by Parliament in joint session, with an absolute majority of its members.

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

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.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

Yes | No

Comments:

Members of the Parliament are, by law, protected only for actions, opinion and votes expressed by their functions.

However, they are subject to the law like every citizen for any other crime, although they have a special "status": 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. The last part has been added by a law ("Lodo Schifani") to protect some members of the executive office.

References:

Art. 96: The President of the Council of Ministers and the Ministers, even if they resign from office, are subject to normal standards of justice for crimes committed in the exercise of their duties, 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. 68 of the Constitution: 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; nor 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.

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

56

29a. 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 Parliament (Senato della Repubblica e della Camera dei deputati); the President of the Council of Ministers, ministries and state undersecretaries; regional councillors, provincial councillors and 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: "Publicity of the financial situation of representatives and directors of some Institutions" (Disposizioni per la pubblicità della situazione patrimoniale di titolari di cariche elettive e di cariche direttive di alcuni enti).

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.

29b. 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 and town councillors (only for chief towns (capoluogo di provincia) or towns with more than 50,000 inhabitants).

References:

Law 441 of July 5, 1982 "Publicity of the financial situation of representatives and directors of some Institutions" (Disposizioni per la pubblicità della situazione patrimoniale di titolari di cariche elettive e di cariche direttive di alcuni enti).

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.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

Yes | No

Comments:

A decree of the Minister for Public Administration regulates the capacity of civil servants to receive gifts. A decree of the Prime Minister (Prodi) of 2007 regulates gifts and hospitality for members of the Government taken "in the exercise of their duties."

The decree allows civil servants to retain gifts with a value of less than euro 300 (US\$433). However, they can keep gifts of higher value, but must pay the difference.

References:

D.M. 28-11-2000 "Codice di comportamento dei dipendenti delle pubbliche amministrazioni".

Official Journal April 10, 2001, n. 84.

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.

29d. 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.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

Yes | No

Comments:

It is however a limited restriction. Members of the executive office (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, take professional job in fields related with their role in the government.

This rule does not apply to members of Parliament.

References:

Law 215/2004: "Regulations on Conflict of Interests" (Norme in materia di risoluzione dei conflitti di interessi), art. 2.4

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.

29f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | 0

Comments:

Extract from the Council of Europe report:

1. This law defines a mix of a priori incompatibilities (primarily of an administrative nature) and the a posteriori examination of individual acts of government. It does not contain preventive measures for solving a potential conflict of interest.

2. The law only declares incompatibility between the management of a company and public office, not between ownership and public office.

3. In the case of a conflict of interest, no sanctions are envisaged for owners, only for the company managers. Information on conflicts of interest must be brought to Parliament, which means that there could potentially be political sanctions.

4. Circumstances when the Anti-Trust and Broadcasting Authorities are authorized to act to resolve conflicts of interest are very carefully and narrowly defined. This refers to cases when companies under the authority of government officials act improperly, but not when the government official acts improperly, e.g. by acting to discriminate against, or weaken, a competing company.

References:

Informare per resistere, Alberto Luppichini, Nov. 6, 2010, "Conflitto di interessi/ Breve storia di una paralisi politica", <http://informarexresistere.fr/conflitto-di-interessi-breve-storia-di-una-paralisi-politica.html>

Council of Europe, Venice Commission: <http://www.venice.coe.int/docs/2005/CDL%282005%29011-e.asp>

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases 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. A zero score is also earned if heads of state and government or minister are allowed to hold private sector jobs while in office.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

Comments:

There are no studies/data on this issue. The perception is that there is no "routine acceptance" of significant amounts of gifts and hospitality by the Ministers and other members of the executive office.

However, there is evidence that some subjects abused their positions for personal gain. Very recently, two major scandals involving the former head of the Civil Protection Department, Guido Bertolaso, about his management of public money and about the personal benefits he received, were reported.

References:

Rete per la Calabria, Gabriella Passariello, Feb. 15, 2008, "Regali con i fondi regionali: il presidente del consiglio e consiglieri condannati", <http://perlacalabria.wordpress.com/2008/02/15/regali-con-i-fondi-regionali-il-presidente-del-consiglio-regionale-e-consiglieri-condannati/>

Indebitati, Giovanni Valentini, July 10, 2008, "Regali, aiuti e inviti in Sardegna — ecco le carte di Silvio e Virginia", <http://www.indebitati.it/attualita-e-politica/regali-aiuti-e-inviti-in-sardegna-ecco-le-carte-di-silvio-e-virginia/>

L'Espresso, Marco Guzzetta, Nov. 25, 2010, "Bertolaso. l'ultima vergogna", <http://espresso.repubblica.it/dettaglio/bertolaso-lultima-vergogna/2139116/>

L'Espresso, Fabrizio Gatti, Dec. 21, 2009, "Protezione civile Super Spa", <http://espresso.repubblica.it/dettaglio/protezione-civile-super-spa/2117790>

L'Espresso, Primo di Nicola, Feb. 25, 2010, "Un G8 da 500 milioni", <http://espresso.repubblica.it/dettaglio/un-g8-da-500-milioni/2121668>

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. 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.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

Comments:

Assets of the member of the executive are published but not audited.

References:

Il sole 24 ore, Nicoletta Cottone, March 15, 2010, "Ecco i redditi dei parlamentari. Le curiosità nei 730 del 2008," <http://www.ilsole24ore.com/art/SoleOnLine4/Italia/2010/03/redditi-parlamentari-berlusconi.shtml?uuid=7ac71d58-3019-11df-9b84-9f36f6ec4706>

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.

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

69

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

Yes | No

References:

Law 441/82, Articles 8 and 9 Article 8 establishes the right to access asset records for all citizens registered in electoral rolls. Article 9 sets forth 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.

30b. 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:

Data are available (on paper) at the local government offices (Prefettura), on an average of one year after the deposit of the declarations at the Parliament. At the Prefettura, data can be accessed with no delay and at no cost.

Some members of the parliament are requesting that asset forms be published online.

References:

Garante per la protezione dei dati personali, Jan. 8, 1998, Public Advertise position, <http://www.garanteprivacy.it/garante/doc.jsp?ID=1056243>

Radicali Italiani, Aug. 8, 2010, "Deputati: anagrafe patrimoniale on line, Gianfranco Fini da parere positivo. 72 deputati firmano la liberatoria per pubblicare su www.camera.it i propri dati," <http://www.radicali.it/comunicati/deputati-anagrafe-patrimoniale-line-gianfranco-fini-da-parere-positivo-72-deputati-firman>

Pietro Ichino, <http://www.pietroichino.it/?p=893>

Futuro Molise, June 8, 2010, "Sono consultabili presso la Prefettura di Isernia le dichiarazioni patrimoniali e reddituali dei titolari di cariche elettive," <http://www.futuramolise.net/societa/diritti/1151-sono-consultabili-presso-la-prefettura-di-iserchia-le-dichiarazioni-patrimoniali-e-reddituali-dei-titolari-di-cariche-elettive.html>

Prefettura-Ufficio Territoriale del Governo di Bologna,

[http://www.prefettura.it/bologna/index.php?](http://www.prefettura.it/bologna/index.php?f=Spages&s=news.php&id_argomento=158&id_sito=1168&id_avviso=13463&ttd=af31bb15c19c3e1369134c712d2a45afa24a2225f.1284519846.4206)

[f=Spages&s=news.php&id_argomento=158&id_sito=1168&id_avviso=13463&ttd=af31bb15c19c3e1369134c712d2a45afa24a2225f.1284519846.4206](http://www.prefettura.it/bologna/index.php?f=Spages&s=news.php&id_argomento=158&id_sito=1168&id_avviso=13463&ttd=af31bb15c19c3e1369134c712d2a45afa24a2225f.1284519846.4206)

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.

30c. 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:

Data are available (on paper) at the local government offices (Prefettura), on average one year after the deposit of the declarations at the Parliament. At the Prefettura, data can be accessed with no delay and at no cost.

References:

Futuro Molise, June 8, 2010, "Sono consultabili presso la Prefettura di Isernia le dichiarazioni patrimoniali e reddituali dei titolari di cariche elettive," <http://www.futuramolise.net/societa/diritti/1151-sono-consultabili-presso-la-prefettura-di-iserchia-le-dichiarazioni-patrimoniali-e-reddituali-dei-titolari-di-cariche-elettive.html>

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[f=Spages&s=news.php&id_argomento=158&id_sito=1168&id_avviso=13463&ttd=af31bb15c19c3e1369134c712d2a45afa24a2225f.1284519846.4206](http://www.prefettura.it/bologna/index.php?f=Spages&s=news.php&id_argomento=158&id_sito=1168&id_avviso=13463&ttd=af31bb15c19c3e1369134c712d2a45afa24a2225f.1284519846.4206)

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 NGOs. 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 NGOs trying to access this information.

30d. In practice, the asset disclosure records of the heads of state and government are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Declarations are a summary; however, items such as income, real estate properties, registered goods (e.g., vehicles) and quotes of ownership of companies, must be declared.

References:

La Repubblica, March 15, 2010, "I redditi dei parlamentari italiani Berlusconi guadagna 8,5 milioni", http://www.repubblica.it/politica/2010/03/15/news/redditi_parlamentari-2667170/

La Repubblica, Carmelo Lopapa, March 24, 2009, "In Parlamento con ville, Ferrari, caicchi politici più ricchi, il mistero dei nullatenenti," <http://www.repubblica.it/2009/03/sezioni/politica/redditi-parlamento/redditi-particolari/redditi-particolari.html>

100: The asset disclosure records of the heads of state and government are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the heads of state and government contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the heads of state and government are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

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

75

31a. 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 Silvio Berlusconi, is also the leader of the right-wing coalition. Government funds are not used for party activities, although political parties benefit from large amounts of money, according to laws on reimbursement for elections.

References:

No censura, Dec. 11, 2010, "Rimborsi elettorali: così i partiti derubano il paese," <http://www.nocensura.com/2010/12/rimborsi-elettorali-cosi-i-partiti.html>

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.

3.2. Conflicts of Interest Safeguards & Checks and Balances: Legislative Branch

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

67

32a. 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 then 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).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

Comments:

There have been more than 300 decisions of the Constitutional Court on legitimacy in 2010.

The Court has been requested to make fundamental decisions in the past two years because of the number of regular laws through which the current government is trying to modify Constitutional values.

Prime Minister Berlusconi complains about the "strict rules" of the Constitution, which makes difficult it difficult for him to carry out his mandate. According to the opposition, he is trying to save himself from prosecution.

References:

Constitutional Court website: <http://www.cortecostituzionale.it/actionPronuncia.do>

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.

32c. In law, are members of the national legislature subject to criminal proceedings?

Yes | No

Comments:
Authorization is required.

References:
Art. 68 of the Constitution: Members of Parliament cannot be held accountable for the opinions expressed or votes cast in the performance of their function.

In default of the authorization of the House, no Member of Parliament may be subjected to a personal or home search, nor may he be arrested or otherwise deprived of his personal freedom, nor held in detention, except when a final court sentence is enforced, or when the Member is apprehended in the act of committing an offense for which arrest flagrante delicto is mandatory.

Such an authorization shall also be required in order to monitor a Member of Parliament's conversations or communications, or to seize such member's mail.

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. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

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

14

33a. In law, members of the national legislature are required to file an asset disclosure form.

Yes | No

References:
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 and 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.

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.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

Yes | No

Comments:

This law doesn't apply to the members of the Parliament.

References:

Law 215 of July 20, 2004, "Regulations on Conflict of Interests," (Norme in materia di risoluzione dei conflitti di interessi) art. 2.4

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.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

Yes | No

References:

Decree of Prime Minister of December 2007 does not apply to members of the Parliament

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.

33d. 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 and 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 no. 441 of 5 July 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.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

There are regulations on post-employment of members of executive/legislative bodies at local level. However, Members of the Parliament (national legislative body) are not subject to these restrictions.

References:

Il corriere della sera, 2010, Rizzo S., "Poltrone a ex sindaci e assessori Gli «incroci» che aggirano i divieti," http://archiviostorico.corriere.it/2010/ottobre/04/Poltrone_sindaci_assessori_Gli_incroci_co_9_101004012.shtml

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases 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. A zero score is also earned if legislators are allowed to hold private sector positions while in office.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

References:

Astrid, 2010, B.G.MATTARELLA-I DOVERI DI COMPORTAMENTO DEI DIPENDENTI PUBBLICI, www.astrid-online.it/rassegna/12-11-2010/Mattarella.pdf

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. 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 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.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

Asset declarations of the members of the Parliament are published but not audited.

References:

Il Sole 24 ore, Nicoletta Cottone, March 15, 2010, "Ecco i redditi dei parlamentari Le curiosità nei 730 del 2008," <http://www.ilsole24ore.com/art/SoleOnLine4/Italia/2010/03/redditi-parlamentari-berlusconi.shtml>

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: 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.

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

75

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

Yes | No

References:

Law 441/82, Articles 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, non-governmental 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.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Data are available (on paper) at the local government offices (Prefettura), on average one year after the deposit of the declarations at the Parliament. At the Prefettura, the data can be accessed with no delay and at no cost.

Some members of the parliament are requesting that asset forms be published online.

References:

Garante per la protezione dei dati personali, Jan. 8, 1998, Public Advertise position, <http://www.garanteprivacy.it/garante/doc.jsp?ID=1056243>

Radicali Italiani, Aug. 8, 2010, "Deputati: anagrafe patrimoniale on line, Gianfranco Fini da parere positivo. 72 deputati firmano la liberatoria per pubblicare su www.camera.it i propri dati," <http://www.radicali.it/comunicati/deputati-anagrafe-patrimoniale-line-gianfranco-fini-da-parere-positivo-72-deputati-firman>

Pietro Ichino, <http://www.pietroichino.it/?p=893>

Futuro Molise, June 8, 2010, "Sono consultabili presso la Prefettura di Isernia le dichiarazioni patrimoniali e reddituali dei titolari di cariche elettive," <http://www.futuramolise.net/societa/diritti/1151-sono-consultabili-presso-la-prefettura-di-iseria-le-dichiarazioni-patrimoniali-e-reddituali-dei-titolari-di-cariche-elettive.html>

Prefettura – Ufficio Territoriale del Governo di Bologna,

[http://www.prefettura.it/bologna/index.php?](http://www.prefettura.it/bologna/index.php?f=Spages&s=news.php&id_argomento=158&id_sito=1168&id_avviso=13463&ttt=af31bb15c19c3e1369134c712d2a45afa24a2225f.1284519846.4206)

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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.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Data are available (on paper) at the local government offices (Prefettura), on average one year after the deposit of the declarations at the Parliament. At the Prefettura, data can be accessed with no delay and at no cost.

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[f=Spages&s=news.php&id_argomento=158&id_sito=1168&id_avviso=13463&ttt=af31bb15c19c3e1369134c712d2a45afa24a2225f.1284519846.4206](http://www.prefettura.it/bologna/index.php?f=Spages&s=news.php&id_argomento=158&id_sito=1168&id_avviso=13463&ttt=af31bb15c19c3e1369134c712d2a45afa24a2225f.1284519846.4206)

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 NGOs. 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 NGOs trying to access this information.

34d. In practice, the asset disclosure records of members of the national legislature are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Declarations are a summary, but, for example, income, real estate properties, registered goods (i.e., vehicles) quotes of ownership of companies, must be declared.

References:

La Repubblica, Carmelo Lopapa, March 23, 2009, "In Parlamento con ville, Ferrari, caicchi politici più ricchi, il mistero dei nullatenenti", <http://www.repubblica.it/2009/03/sezioni/politica/redditi-parlamento/redditi-particolari/redditi-particolari.html>

100: The asset disclosure records of members of the national legislature are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the members of the national legislature contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the members of the national legislature are overly general, lack any meaningful detail, and do not provide clear accounting of the individuals' sources of income, investments, and other financial assets.

35. Can citizens access legislative processes and documents?

100

35a. In law, citizens can access records of legislative processes and documents.

Yes | No

References:

Law 07/08/1991 no. 241: "Regulations on administrative procedures and right of access to administrative documents" (Nuove norme in materia di procedimento amministrativo e di diritto di accesso ai documenti amministrativi)

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 are exemptions to the general right that are not clearly defined by formal rules.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Almost all records are available online on the websites of the two chambers of parliament.

References:

Senate, Legislation and Documents, <http://www.senato.it/leggi/documenti/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.

35c. 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:
Senate, Legislation and documents, <http://www.senato.it/leggi/documenti/index.htm>

Chamber of Deputies, Documents, <http://www.camera.it/481>

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 NGOs. 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 NGOs trying to access this information.

64
3.3. Conflicts of Interest Safeguards & Checks and Balances:
Judicial Branch

36. Are judges appointed fairly?

100

36a. In law, there is a transparent procedure for selecting national-level judges.

Yes | No

Comments:
The prerequisites are:

professional capacity, law degree; Italian nationality; honourability (essere di condotta incensurabile); max third "tentative"

Exam, Information for pre-selection:

– written exam (three works on civil law, criminal law and administrative law);

– oral exam on: civil law (and roman law), civil procedure, criminal law, criminal procedure, administrative/fiscal/constitutional law, commercial law, labor law, European law, public and private International law, e-justice and foreign language

References:

Royal Decree Oct. 15, 1925, n. 1860

Royal Decree Jan. 30, 1941, n. 12

Decree by law April 5, 2006, n. 160

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.

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | 75 | 50 | 25 | 0

Comments:

Selections of state-level judges are highly competitive, selective, and transparent.

Jurisdiction over ordinary civil and criminal matters is exercised by magistrates belonging to the Judicial Order, which is divided into judges on the one side and magistrates of the public prosecutor's office on the other, fulfilling the roles of judges and investigators respectively.

The different types of "Judges" can be divided up as follows:

- * Justice of the Peace (Giudice di pace)
- * Court (Tribunale)
- * Assize Court (Corte di assise)
- * Surveillance Judge (Giudice di sorveglianza)
- * Juvenile Court (Tribunale dei minorenni)
- * Court of Appeal (Corte di appello)
- * Assizes Appeal Court (Corte d'assise d'appello)
- * Court of Cassation (Corte di cassazione)
- * Regional Court of Public Water (Tribunale regionale delle acque pubbliche)
- * Higher Court of Public Water (Tribunale superiore delle acque pubbliche)
- * Commissioners for the adjudication of Customary Rights

Magistrates in the Public Prosecution service can be divided up as follows:

- * Public prosecutor based at the Court
- * Public prosecutor at the Juvenile Court

* General Public prosecutor based at the Court of Appeal

* General Public prosecutor at the Court of Cassation.

The following are specific offices within the public prosecutor service:

the National Anti-Mafia Public Prosecutor and;

the District anti-Mafia Public Prosecutor.

References:

http://www.giustizia.it/giustizia/it/mg_1_8_1.wp?previousPage=mg_1_6_1&contentId=SDC478987

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.

36c. 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 over 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 or entity 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 the same body that appoints the judges (such as the Prime Minister approving judicial nominees put forward by the Minister of Justice, both of whom are part of the executive).

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

83

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

Yes | No

References:

Art. 111 of the Constitution: [...] 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).

37b. 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 filings their legal reasoning for 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.

37c. 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 over employment, assignments and transfers, promotions and discipline 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. A YES score can still be earned if the judicial disciplinary agency (or mechanism) is internal to 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.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

Yes | No

Comments:

In practice, however, things are quite different.

References:

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 discipline of judges.

Yes: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative 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 executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The High Council of the Judiciary is sometimes criticized for protecting its members, giving light sanctions, and political interference. See, for instance, the case of two young magistrates, Clementina Forleo and Luigi De Magistris.

References:

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

Luigi de Magistris, www.luigidemagistris.it/

Bliz Quotidiano, July 20, 2010, "Cricca P3, Flores D'Arcais critica Napolitano: Mette il bavaglio al Csm", <http://www.blitzquotidiano.it/politica-italiana/cricca-p3-flores-darcais-napolitano-csm-478118/>

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.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The High Council of the Judiciary is sometimes criticized for protecting its members, giving light sanctions, and political interference. See, for instance, the case of two young magistrates, Clementina Forleo and Luigi De Magistris.

References:

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

Luigi de Magistris, www.luigidemagistris.it/

Bliz Quotidiano, July 20, 2010, "Cricca P3, Flores D'Arcais critica Napolitano: Mette il bavaglio al Csm", <http://www.blitzquotidiano.it/politica-italiana/cricca-p3-flores-darcais-napolitano-csm-478118/>

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.

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

50

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

Yes | No

Comments:

According to Law no. 441/1982, art. 8 and 9, national-level judiciary asset disclosures follow the same rules that are in force for the members of parliament. Judges and public prosecutors are requested to disclose assets of themselves and their relatives to the High Council of the Judiciary (Consiglio superiore della magistratura). This body, together with the Court of Accounts, is allowed to audit asset disclosures.

References:

Law no. 441/1982, art. 8 and 9,

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.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

Yes | No

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.

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

Yes | No

Comments:

However, the High Council of the Judiciary (Consiglio superiore della magistratura), together with the Court of Accounts, is allowed to audit asset disclosures, and eventually start investigations.

References:

There is no such law.

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.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

Yes | No

References:

No restriction exists.

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.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | 0

References:

There is information on this issue, since there is no restriction in this sense.

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases 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. A zero score is also earned if judges are allowed to hold private sector jobs while serving on the bench.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

Comments:

Sometimes members of the Judiciary are sanctioned for their nontransparent actions. Magistrates can be subject to disciplinary sanctions if they behave so as to damage the reputation or trust of the judiciary.

Gifts and hospitality should not be accepted, even though the practice sometimes exists. There is no evidence in the media about this practice, but doubts have been raised about the corporatism of magistrates, who are often considered too "soft" when evaluating their colleagues. However, there is little public evidence to make a sound assessment.

References:

Il portale del C.T.U., June 12, 2010, "Doveri di correttezza del magistrato," <http://www.ilportaledelctu.it/articolo-news-agenzia-del-territorio/item/43-doveri-di-correttezza-del-magistrato.html>

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. 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 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.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

Assets are audited with the same controls for the members of the parliament: formal regularity of the declaration.

References:

Asm, 8 luglio 2008, Luca Palamara, Giuseppe Cascini, "Lettera al direttore de il Giornale", <http://www.associazionemagistrati.it/articolo.php?id=1728>

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: 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.

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

0

39a. 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.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There is no information except in media reports.

References:

Asm, 8 luglio 2008, Luca Palamara-Giuseppe Cascini, "Lettera al direttore de il Giornale", <http://www.associazionemagistrati.it/articolo.php?id=1728>

Il Giornale, Matthias Pfaender, July 7, 2008, "Ecco gli stipendi d'oro dei Magistrati," http://www.ilgiornale.it/interni/ecco_stipendi_doro_della_magistratura/07-07-2008/articolo-id=274237-page=0-comments=1

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.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

No information is available to the public.

Il Giornale, Matthias Pfaender, July 7, 2008, "Ecco gli stipendi d'oro dei Magistrati," http://www.ilgiornale.it/interni/ecco_stipendi_doro_della_magistratura/07-07-2008/articolo-id=274237-page=0-comments=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 NGOs. 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 NGOs trying to access this information.

39d. In practice, the asset disclosure records of the national-level judiciary are of high quality.

100 | 75 | 50 | 25 | 0

References:

Il Giornale, Matthias Pfaender, July 7, 2008, "Ecco gli stipendi d'oro dei Magistrati", http://www.ilgiornale.it/interni/ecco_stipendi_doro_della_magistratura/07-07-2008/articolo-id=274237-page=0-comments=1

Asm, 8 luglio 2008, Luca Palamara, Giuseppe Cascini, "Lettera al direttore de il Giornale," <http://www.associazionemagistrati.it/articolo.php?id=1728>

100: The asset disclosure records of the national-level judiciary are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the national-level judiciary contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the national-level judiciary are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

3.4. Budget Process Oversight & Transparency

40. Can the legislature provide input to the national budget?

100

40a. In law, the legislature can amend the budget.

Yes | No

Comments:

The annual budget of the state is a law; i.e., it must be passed by the Parliament to enter into force, so there is full control of the state budget by the legislature. In sum, the 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 priorities 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: The Houses approve the annual 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 of 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.

40b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

References:

Ministry of economy, State budget, <http://www.rgs.mef.gov.it/VERSIONE-I/Bilancio-d/index.html>

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.

40c. 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 members, which checks budgetary processes. The Senate (Senato) has a permanent commission of 25 members, who hold the same functions.

It must be noted that there is closeness between the executive and the majority of members of the parliament so the parliament follows what the executive wants.

However, also members of minority groups are represented in the commission and can monitor the budget.

References:

Chamber of Deputies, Deputies and Parliamentary bodies: Composition of V Commission (Budget, Treasury and Planning), http://www.camera.it/99?shadow_organo_parlamentare=1498&tipoVis=2

Senate, Senators and Parliamentary bodies: Composition of V commission (Planning and Budget) <http://www.senato.it/leg/16/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.

41. Can citizens access the national budgetary process?

83

41a. 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

Comments:

Activity of the parliament can be followed on line and on TV /Camera Web TV).
Transcription of the debates is available on line.

Of course, the discussion on the budget is very complicated and technical, but in no way hidden for those who wants to follow it.

References:

Chamber of Deputies, <http://webtv.camera.it/portal/portal/default/default>

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.

41b. 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 parliament sources. Citizens have made their opinions known to members of parliament, but the impact of such participation is limited. Usually, the real consequences of state budget decisions for citizens appear to be clear after budgetary approval. However, many large institutions and organizations (e.g., trade unions) can play some role in providing input to the budget.

References:

Ansa, Francesco Carbone, Dec. 19, 2010, "Milleproroghe, a rischio fondi 5xmille," http://www.ansa.it/web/notizie/rubriche/economia/2010/12/18/visualizza_new.html_1648643061.html

100: Citizens, usually acting through NGOs, 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 NGOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or NGOs have no formal access to provide input to the budget debate.

41c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

Comments:

The budget is accessible on line and updated, but consists of technical documents.

References:

Ministry of Economy and Finance, "La riforma del bilancio dello stato," <http://www.rgs.mef.gov.it/VERSIONE-I/Bilancio-d/index.html>

100: Citizens, journalists and NGOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and NGOs 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.

42. In law, is there a separate legislative committee which provides oversight of public funds?

100

42a. 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 Court of Accounts, which is a part of the judiciary.

References:

Art 72 of Constitution

Regulations of the Chamber of Deputies, published in the official journal 53/1971 (last amendment in 2007)

Regulations of the Senate of the Republic, published in the official journal 53/1971 (last amendment in 2007)

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).

43. Is the legislative committee overseeing the expenditure of public funds effective?

75

43a. 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 power to start ad hoc investigations on specific aspects of expenditures. Recently, the Ministry of Economics has taken steps order increase transparency and monitoring of expenditures.

References:

References: Interview with Mrs. Germana di Falco, secretary to 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.

43b. 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 two chambers of parliament.

References:

Chamber of Deputies, Deputies and parliamentary bodies – composition of V Commission (Budget, Treasury and Planning), http://www.camera.it/99?shadow_organo_parlamentare=1498&tipoVis=2

Senate, Senators and Parliamentary bodies-Composition of V commission (Planning and budget), <http://www.senato.it/leg/16/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.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

Comments:

The commission start own "indagine" ("investigation" or "inquiry"), which means requests for documents and invitations to people to testify about specific issues. However, they have no police or public prosecutor powers: no questioning, no search and seizure. It is more like a reporter's investigation. In fact, the commission's activity ends with a report, not with a judicial action.

References:

Senate, Fact-finding investigation on draft legislation to implement Article 119 of the Constitution relating to fiscal federalism, <http://www.senato.it/commissioni/4567/106758/commelencoindagini.htm>

House of Representatives, Report on Survey, http://www.camera.it/203?shadow_organo_parlamentare=1498

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 4. Public Administration and Professionalism

4.1. ⁵⁵Civil Service: Conflicts of Interest Safeguards and Political Independence

44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

75

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

Yes | No

References:

Articles 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.

Ministerial Decree, Nov. 28, 2000, "Code of conduct for civil servants"

Decree by Law, March 30, 2001, no 165

Decree by Law, Oct. 27, 2009, no 150

http://www.prefettura.it/pisa/index.php?f=Spages&nodo=332453572&id_sito=1209

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.

44b. 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. Article 97 can provide the legal framework for enforcement of nepotism, cronyism and patronage rules. There is, however, no express law regulating nepotism, cronyism, and patronage.

References:

Art. 97 of the Constitution: "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.

44c. In law, there is an independent redress mechanism for the civil service.

Yes | No

Comments:

There is no 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: Anyone 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 indigent are assured, through appropriate institutions, the means for action and defense 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. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

No: A NO score is earned if no such mechanism exists, or if the only recourse civil servants have is directly through the courts.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

Yes | No

Comments:

Disqualification can be temporary or permanent. Art 5 of law 97/2991 establishes the collateral sanction of automatic termination of the relationship between employer and employee with a jail sentence of more than 3 years.

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).

Law March 27, 2001, no 97, "The relationship between penal sanctions and disciplinary sanctions for public officials involved in corruption-related and other crimes" (Norme sul rapporto tra procedimento penale e procedimento disciplinare ed effetti del giudicato penale nei confronti dei dipendenti delle amministrazioni pubbliche), art. 5

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 or if the ban is not a lifetime ban.

45. Is the law governing the administration and civil service effective?

47

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

In general, civil servants are immune from political influence.

There are, however, exceptions regarding top managers who are subject to removal (or transfer) according to the spoil system. Managers must be removed with a relevant justification.

In 2008, the Constitutional Court declared the illegitimacy of a law decree 262/06, in which public managers were subject to "confirmation" within 60 days, saying that administrative action must be separated from political action.

References:

Book by Gian Antonio Rizzo and Sergio Stella, May 2007, "La Casta"

Il corriere, 2010,

http://roma.corriere.it/roma/notizie/cronaca/10_dicembre_14/parentopoli-carabinieri-atac-18169774721.shtml

ILSOLE24ORE.COM, 2008, Galimberti, "Spoils system, ma controllato," <http://www.ilsole24ore.com/art/SoleOnline4/Norme%20e%20Tributi/2008/05/spoils-system-controllato.shtml?uuid=8140ce70-2721-11dd-9a87-00000e25108c&DocRulesView=Libero>

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.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

There is a growing scandal around the (not-new) phenomena of relatives being hired for public offices (in particular, universities, hospitals, ministries).

However, the vast majority of civil servants are hired with regular procedures.

References:

Corriere della Sera, 14 dicembre 2010, "Parentopoli, carabinieri nella sede Atac Alemanno: «La questione è politica»,” http://roma.corriere.it/roma/notizie/cronaca/10_dicembre_14/parentopoli-carabinieri-atac-18169774721.shtml

<http://www.libero-news.it/articolo.jsp?id=556220>

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.

45c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | 25 | 0

Comments:

Nepotism, cronyism and patronage are more present in specific sectors, for example the central public administration offices and in the universities. Competitive examinations often seem rigged in favor of specific candidates.

References:

Corriere della Sera, 14 dicembre 2010, "Parentopoli, carabinieri nella sede Atac

Alemanno: «La questione è politica»”, http://roma.corriere.it/roma/notizie/cronaca/10_dicembre_14/parentopoli-carabinieri-atac-18169774721.shtml

Lifeinitaly.com ONLY 85 ‘PARENTOPOLI’ CASES SAYS MAYOR, <http://www.lifeinitaly.com/news/only-85-parentopoli-cases-says-mayor>

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.

45d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

Comments:

Civil servants have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person’s authority, responsibility and base pay.

Sometimes, in particular in large state bodies, there are offices in the public administrations whose functions are not clearly known. However, the current Minister for Public Innovation and Administration has just started an ambitious program of reform, which should simplify administration and reduce inequality and waste.

References:

Formez, Efri Sena, 2004, Mutamento delle mansioni e tutela del dipendente pubblico, [http://db.formez.it/fontinor.nsf/0/7072232D87977649C1256E16006179CD/\\$file/Mutamento%20delle%20mansioni%20e%20tutela%20de](http://db.formez.it/fontinor.nsf/0/7072232D87977649C1256E16006179CD/$file/Mutamento%20delle%20mansioni%20e%20tutela%20de)

Report, Nov. 14, 2010, on <http://www.youtube.com/watch?v=k8OndGpOUSI>

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person’s authority, responsibility 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.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

Comments:

The Minister for Public Administration, in 2009, has started the so called “transparency action,” in order to make more accessible information on curricula, salaries and absence rates of top officials (and consultants) in all public administrations.

This represent a very good example of transparency, although not affecting the selection procedure of top level officers. However, it is a control tool.

References:

Ministry for Public administration, <http://www.innovazionepa.gov.it/lazione-del-ministro/operazione-trasparenza/dirigenti-pubblici/dipartimento-per-la-funzione-pubblica.aspx>

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.

45f. 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

References:

No documents containing an exhaustive list of government/civil servants positions has been found.

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.

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

Comments:

There is no formal redress system. Civil servants (with the exception of those in specific roles, e.g. magistrates, military) must go before a civil court to protect their interests.

References:

Tutela diritti e lavoro, <http://www.tdlnonprofit.org/pubblico.html>

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.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

Comments:

There is no problem with this. However, there is a problem in the amount of pay for some civil servant. Pay is very low for teachers, very high for some top officers, such as Mr. Catricalà, president of a national authority, who has an annual income of about euro 680,000 (US\$984,944).

References:

Cittadini Attivi, Paolin, 7 December 2010, "Professionisti con due stipendi pubblici," <http://cittadini-attivi.blogspot.com/2010/12/professionisti-con-due-stipendi.html>

La Repubblica, Ettore Livini Milano, 7 April 2009, "Online 23 mila stipendi pubblici pochi Paperoni, ma mancano i bonus", <http://ricerca.repubblica.it/repubblica/archivio/repubblica/2009/04/07/online-23-mila-stipendi-pubblici-pochi-paperoni.html>

Panorama, Marino Petrelli, 18 December 2008, "Stipendi pubblici: insegnanti ultimi, magistrati al top", <http://blog.panorama.it/economia/2008/11/18/stipendi-pubblici-insegnanti-ultimi-magistrati-al-top/>

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.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

Comments:

There are no official data on this issue. However, a number of persons sentenced for corruption are now seated in the Parliament. This makes it clear that the rule is not applied properly.

References:

il Blog di beppe Grillo, "Elenco parlamentari condannato in via definitiva," www.beppegrillo.it/documenti/parlamento_pulito.pdf

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. Some bans are only temporary.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

46. Are there regulations addressing conflicts of interest for civil servants?

53

46a. In law, senior members of the civil service are required to file an asset disclosure form.

Yes | No

Comments:

The duty to disclose assets is limited to top managers of public bodies or of private bodies in which the state participates.

According to Decree by law of March 30, 2001, n. 165 ("Brunetta Reform") the list of senior members (dirigenti) and related incomes must be published by all public administrations.

References:

Law 441/82, art. 12

Decree by law, March 30, 2001, n. 165

Yes: A YES score is earned if senior members of the civil service 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 senior member of the civil service is not required to disclose assets.

46b. 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 undersecretaries and "extraordinary commissioners" (commissari straordinari dello Stato).

References:

Law 215/2004, "Regulations on Conflict of Interests" (Norme in materia di risoluzione dei conflitti di interessi)

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.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

Yes | No

Comments:

Law 215/2004 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. In general, civil servants (including police officers) can take new jobs the day after leaving public office.

References:

Law 215/2004, "Regulations on Conflict of Interests" (Norme in materia di risoluzione dei conflitti di interessi)

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.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

Yes | No

References:

D.M. 28-11-2000, "Codice di comportamento dei dipendenti delle pubbliche amministrazioni"

Official Journal, April 10, 2001, n. 84

Decree Oct. 27, 2009 n. 150

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.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

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. The audit is only a formality.

References:

Law 441/82, art. 12

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service 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 civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

The restriction does not affect civil servants.

One of the most relevant phenomena is that police officers often leave their jobs to take security functions in private sector. The knowledge gained during a police career is then often used for private interests. Some big scandals in recent years have come from the abuse of such information and capabilities.

References:

<http://www.unicampus.it/nuovi-corsi-in-partenza/consiglio-scientifico>

OECD Report OECD GUIDELINES FOR MANAGING CONFLICT OF INTEREST IN THE PUBLIC SERVICE REPORT ON IMPLEMENTATION, www.oecd.org/dataoecd/18/35/39691164.pdf

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases 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.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

In general, Italy is not affected by petty corruption but mostly by large corruption schemes that involve top officials, members of the government, big companies and criminal organizations. This means that, in general, civil servants do not take bribes or gifts (there fore, the score of 75). Investigations often reveal large schemes and high amounts that involve big interests.

References:

Evolvendo la libertà, <http://evolvendoxlaliberta.blogspot.com/2009/12/i-regali-ai-dipendenti-pubblici.html>

Corriere della Sera, Sarzanini Firenze, Nov. 18, 2010, "A che punto sono le grandi inchieste," http://archivistorico.corriere.it/2010/novembre/18/che_punto_sono_grandi_inchieste_co_9_101118023.shtml

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. 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.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

Comments:

According to international experts, conflict of interests are usual in Italy and there is no ethical attitude in regard to this. Although there are no precise figures on this issue, in particular with regard to local administrations, the perception is that such ethics rules are not enforced, but are left to personal discretion. The existence of personal discretion should NOT be read that "most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected" (score 0). See for instance the recent scandal in Rome.

References:

COE GRECO, July 2, 2009, "Evaluation Reports/Compliance Reports adopted by GRECO", [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoEval1-2\(2008\)2_Italy_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoEval1-2(2008)2_Italy_EN.pdf)

Corriere della Sera, Alessandro Capponi, Ernesto Menicucci, Dec. 11, 2010, Parentopoli: Alemanno verso il rimpasto rischiano di saltare le teste di tre assessori, http://roma.corriere.it/roma/notizie/cronaca/10_dicembre_11/parentopoli-alemanno-pensa-rimpasto-giunta-18153894673.shtml

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.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

Civil servants are subject, just as any other citizen is, to a fiscal audit.

References:

Anti Mafia, Aaron Pettinari, 19 ottobre 2010, "Allarme Corte dei Conti: 'In Italia corruzione sempre piu' diffusa", <http://www.antimafiaduemila.com/content/view/31159/78/>

Excite, April 30, 2008, "Redditi online, Grillo e la blogosfera si infuriano," <http://web20.excite.it/redditi-online-grillo-e-la-blogosfera-si-infuriano-N8908.html>

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service 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: Civil service 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.

47. Can citizens access the asset disclosure records of senior civil servants?

88

47a. In law, citizens can access the asset disclosure records of senior civil servants.

Yes | No

Comments:

On October 9, 2009, the Government approved the legislative decree n. 150 implementing the Law n. 15 of March 4, 2009 on civil service reform and for the efficiency and transparency of public administration administration.

The reform adopt a principle of total accessibility to all the information concerning PA: proceedings, salaries, curricula, leaves of absence, tenders, evaluation.

Each public administration must publish online relevant data, including the resume, addresses and earnings of senior officers.

References:

Law 69 of June 18, 2009, "Regulations on economic development, simplification, competitiveness and on civil procedure" (Disposizioni per lo sviluppo economico, la semplificazione, la competitività nonché in materia di processo civile), art. 21

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.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Brunetta's reform is one of the most innovative actions in the public administrations (PA) since years. It aims to bring transparency and reliability in the PA.

Resumes and annual earnings (although not complete incomes) of top civil servants are available online.

References:

Ministry for Public Administration, "Curricula, addresses and remuneration of directors," <http://www.innovazionepa.gov.it/lazione-del-ministro/operazione-trasparenza/dirigenti-pubblici/dipartimento-per-la-funzione-pubblica.aspx>

Il sole 24 ore, in Guida al Pubblico impiego n. 2/2010, Cosentino M.G., "On line stipendi dei dirigenti e assenze del personale," http://www.professionisti24.ilsole24ore.com/art/Professionisti24/Pubblica-Amministrazione/2010/febbraio/pa_trasparenza.shtml

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.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:
There is free access.

References:
Ministry for Public Administration, "Curricula, addresses and remuneration of directors," <http://www.innovazionepa.gov.it/lazione-del-ministro/operazione-trasparenza/dirigenti-pubblici/dipartimento-per-la-funzione-pubblica.aspx>

Il sole 24 ore, in Guida al Pubblico impiego n. 2/2010, Cosentino M.G., "On line stipendi dei dirigenti e assenze del personale," http://www.professionisti24.ilsole24ore.com/art/Professionisti24/Pubblica-Amministrazione/2010/febbraio/pa_trasparenza.shtml

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 NGOs. 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 NGOs trying to access this information.

47d. In practice, the asset disclosure records of senior civil servants are of high quality.

100 | 75 | 50 | 25 | 0

Comments:
Only earnings are accessible online. Access to asset records requires a legitimate interest and is subject to authorization by a judge.

References:
Ministry for Public Administration, "Curricula, addresses and remuneration of directors," <http://www.innovazionepa.gov.it/lazione-del-ministro/operazione-trasparenza/dirigenti-pubblici/dipartimento-per-la-funzione-pubblica.aspx>

Il sole 24 ore, 2011, Cherchi A. "Sui siti della Pa trasparenza ma con vincoli," <http://www.ilsole24ore.com/art/norme-e-tributi/2011-03-22/siti-trasparenza-vincoli-064052.shtml?uuid=AaziYUID>

100: The asset disclosure records of senior civil servants are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of senior civil servants contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of senior civil servants are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

4.2. Whistle-blowing Protections

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

48a. 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:

"Italy does not have a free-standing whistle-blower law and there is no specific anti-corruption act."

References:

Transparency International, 2009 Report, "Alternative to silence: whistleblowers protection in 10 EU Countries"

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.

48b. 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:

Some protection mechanisms exist, but they are fragmented and are not intended specifically to protect whistleblowers.

References:

Transparency international 2009 Report "Alternative to silence: whistleblowers protection in 10 EU Countries"

Diogene Magazine, 2009, Frascini G. "L'etica del fischietto," http://www.whistleblowing.it/L%27etica%20del%20fischietto_diogenemagazine.pdf

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.

48c. 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:

Transparency International 2009 Report, "Alternative to silence: whistleblowers protection in 10 EU Countries"

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.

48d. 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:

"Some protection mechanisms exist, but they are fragmented and are not intended specifically to protect whistleblowers"

References:

Transparency International 2009 Report, "Alternative to silence: whistleblowers protection in 10 EU Countries"

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.

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

0

49a. 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:

There is no such law.

References:

Transparency International 2009 Report, "Alternative to silence: whistleblowers protection in 10 EU Countries"

Transparency International, 2010, Progress Report on Enforcement of the OECD Anti-Bribery Convention

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.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

0

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:
No such service exists.

References:
Transparency International 2009 Report, "Alternative to silence: whistleblowers protection in 10 EU Countries"

Transparency International, 2010, Progress Report on Enforcement of the OECD Anti-Bribery Convention

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.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:
No such service exists.

References:
Transparency International 2009 Report, "Alternative to silence: whistleblowers protection in 10 EU Countries"

Transparency International, 2010, Progress Report on Enforcement of the OECD Anti-Bribery Convention

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.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:
No such service exists.

References:
Transparency International 2009 Report, "Alternative to silence: whistleblowers protection in 10 EU Countries"

Transparency International, 2010, Progress Report on Enforcement of the OECD Anti-Bribery Convention

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.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:
No such mechanism exists.

References:
Transparency International, 2010, Progress Report on Enforcement of the OECD Anti-Bribery Convention

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.

8
4.3. Government Procurement: Transparency, Fairness, and
Conflicts of Interest Safeguards

51. Is the public procurement process effective?

60

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

Yes | No

Comments:

Law 215/2004 rules on the conflict of interests apply only to members of the executive office, and not for the officials.

The code of conduct for the civil servants address in general the theme of conflict of interests, but no formal law or provision exists for those public officials involved in public procurement.

References:

Law, July 13, 2004, no 215

Authority for the Supervision of Public Contracts: Department for the co-ordination of European Union Policies, 2010, THE COMPARATIVE SURVEY ON THE NATIONAL PUBLIC PROCUREMENT SYSTEMS ACROSS THE PPN, <http://www.ppnneurope.org/docs/ItalianPresidency/Comparative%20survey%20on%20PP%20systems%20across%20PPN.pdf>

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.

51b. 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. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

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.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | 0

Comments:

The whole public procurement system in Italy is affected, according to the most recent scandals in 2008-2009, by corruption and conflict of interests.

In the last two years, a huge criminal scheme was revealed that involved top officers of the Civil Protection Service of the Presidency of the Council of Ministers, members of the Parliament and members of the Authority for the Supervision of Public Contracts for works, services, and supplies (the authority in charge of public procurement).

The perception is that of a massive misuse of public resources for personal gain, but it not connected with criminal organizations (e.g., mafia).

References:

Blitz Quotidiano, <http://www.blitzquotidiano.it/tag/conflicto-interessi/>

Circolo Roussel, Nunzio Miccoli, Sept. 11, 2010, "Il conflitto d'interesse in Italia", <http://www.circolorussell.it/index.php?doc=500>

Partito Liberale, Claudio Gentile, "Appalti gestione bookshop Polo Museale Fiorentino ennesimo conflitto di interessi del Cavaliere?" <http://partitoliberale.altervista.org/blog/appalti-gestione-bookshop-polo-museale-fiorentino-ennesimo-conflitto-di-interessi-del-cavaliere/>

L'Espresso, Giorgio Bocca, April 6, 2007, "Doppio gioco", <http://espresso.repubblica.it/dettaglio/doppio-gioco/1563287>

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.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

Yes | No

Comments:

Thanks to Brunetta's reform (decreed by law 150/2009), earnings of top senior officers (including those involved in public procurement) must be published on line; see for instance, <http://www.avcp.it/portal/public/classic/Autorita/TrasparenzaAtti/PubblicitaEmolumenti>.

References:

There is no formal mandate to monitor the assets, incomes and spending habits of public procurement officials.

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.

51e. In law, major procurements require competitive bidding.

Yes | No

Comments:

In Italy, European Union (EU) Directive 2004/18 and EU Directive 2004/17 have been transposed into national law by Legislative Decree April 12, 2006, n. 163, "Code of Public contracts of works, services and supplies."

References:

Law 163/2006

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).

51f. In law, strict formal requirements limit the extent of sole sourcing.

Yes | No

Comments:

The code for public procurement (law decree 163/2006) limits the possibility of sole sourcing.

References:

Code for public procurement, law decree 163/2006, art. 53 and following

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.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

Yes | No

Comments:

The code for public procurement sets a system of review: unsuccessful bidders may appeal procurement decisions before a court. The three steps for complaint are: agreement (accordo bonario), arbitration (arbitrato), and appeal before a court (ricorso giurisdizionale).

References:

Law decree 163/2006, code for public procurement, art. 239 and following

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.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

Yes | No

Comments:

Unsuccessful bidders may appeal procurement decisions before a court. The three steps of complaint are: agreement (accordo bonario), arbitration (arbitrato) and appeal before a court (ricorso giurisdizionale).

References:

Law decree 163/2006, Code for public procurement, art. 239 and following

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.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

Yes | No

Comments:

There is no blacklisting system, but there is "white-listing" (<http://www.avcp.it/portal/public/classic/Servizi/serviziLiberi/CasellariolImprese>) of companies that have registered and have been included in the list of potential bidders.

References:

Law decree 163/2006, Code for public procurement

Yes: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

No: A NO score is earned if no such process exists.

51j. 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:

There is a "white-list" of companies.

References:

The Authority for the supervision of public works contracts, services and supplies, <http://www.avcp.it/portal/public/classic/Servizi/serviziLiberi/CasellariolImprese>

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.

52. Can citizens access the public procurement process?

100

52a. In law, citizens can access public procurement regulations.

Yes | No

Comments:

The law acknowledges European Directives 2004/17/CE and 2004/18/CE.

References:

Law decree 163/2006, Code for public procurement, art. 13, "Accesso agli atti e divieti di divulgazione."

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.

52b. In law, the government is required to publicly announce the results of procurement decisions.

Yes | No

References:

Law decree 163/2006, Code for public procurement, art. 65, "Avviso sui risultati della procedura di affidamento"

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.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Public procurement regulations are online.

References:

Legislative Decree 163 of April 12, 2006, "Code of public contracts for works, supplies and services in implementation of Directives 2004/17/EC and 2004/18/EC," <http://www.camera.it/parlam/leggi/deleghe/testi/06163di.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. 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.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Records are free.

References:

Legislative Decree 163 of April 12, 2006," Code of public contracts for works, supplies and services in implementation of Directives 2004/17/EC and 2004/18/EC," <http://www.camera.it/parlam/leggi/deleghe/testi/06163dl.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. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. 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 NGOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

Public procurements are effectively advertised, in compliance with European Union law. The Institute for Innovation and Transparency of Public Procurement and Environmental Sustainability (ITACA) publishes every year the list of major public procurements.

References:

ITACA (Institute for innovation and transparency of public procurement and environmental sustainability) Report 2009, <https://www.serviziopubblici.it/informazioni/doc/SCPrapporto2009finale.pdf>

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.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

Results of the public procurements follow the same rules as notices. Results must be published within 48 days.

References:

Ministry of Transport, June 2010, "Servizio contratti pubblici-Rapporto annuale," <https://www.serviziopubblici.it/informazioni/doc/SCPrapporto2009finale.pdf>

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.

4.4. Privatization of Public Administrative Functions: Transparency, Fairness, and Conflicts of Interest Safeguards

53. Is the privatization process effective?

33

53a. In law, all businesses are eligible to compete for privatized state assets.

Yes | No

Comments:
There are no "ex ante" exclusions.

References:
Law 410 of November 23, 2001, "Urgent measures on privatization and valorization of public estate," (Conversione in legge, con modificazioni, del decreto-legge 25 settembre 2001, n. 351, recante disposizioni urgenti in materia di privatizzazione e valorizzazione del patrimonio immobiliare pubblico e di sviluppo dei fondi comuni di investimento immobiliare) 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.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

Yes | No

Comments:
There is a general prohibition against insider trading, which includes any subject that exploits information gained in an official capacity 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 addressing privatization.

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.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

Comments:

Conflicts of interest have never been addressed seriously in Italy.

References:

Sinistra ecologia e libertà, Luigi Taddei, Feb. 12, 2010, "Gli imbarazzi e gli interessi della destra sulla privatizzazione dell'acqua," <http://www.sinistraeliberata.eu/articoli/gli-imbarazzi-e-gli-interessi-della-destra-sulla-privatizzazione-dellacqua>

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.

54. Can citizens access the terms and conditions of privatization bids?

100

54a. 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.

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

Privatizations are advertised in official journals (Italian and European), newspapers and websites.

References:

Corte dei Conti – Sezione centrale di controllo sulla gestione delle amministrazioni dello Stato Collegio di controllo sulle

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.

54c. In law, the government is required to publicly announce the results of privatization decisions.

Yes | No

Comments:

The legal framework for privatization is extremely chaotic. However, results of privatizations must be published.

References:

Main law on privatization is the law decree 332 of May 31, 1994, converted in Law 474/94

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.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Regulations are accessible online.

References:

Court of Account, Luigi Mazzillo, Feb. 10, 2010, "Obbiettivi e risultati delle operazioni di privatizzazione di partecipazioni pubbliche," http://www.corteconti.it/export/sites/portalecdc/documenti/controllo/sez_centrale_controllo_amm_stato/2010/delibera_3_2010_g

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.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:
Information is accessible online for free.

References:
Court of Account, Luigi Mazzillo, Feb. 10, 2010, "Obbiettivi e risultati delle operazioni di privatizzazione di partecipazioni pubbliche," http://www.corteconti.it/export/sites/portalecdc/documenti/controllo/sez_centrale_controllo_amm_stato/2010/delibera_3_2010_g

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 NGOs. 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 NGOs trying to access this information.

Category 5. Government Oversight and Controls

5.1. ⁹¹National Ombudsman

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55a. 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 either a national ombudsman or a national Committee on Petitions. However, it does have an extensive network of regional ombudsmen.

References:
Law of May 15, 1997, no. 127, Art. 16 (Misure urgenti per lo snellimento dell'attività amministrativa e dei procedimenti di decisione e di controllo)

Decree by Law, Aug. 18, 2000, no. 267, Art. 136 (Testo unico delle leggi sull'ordinamento degli enti locali)

Law of Nov. 24, 2000, no. 340, Art. 15 (Disposizioni per la delegificazione di norme e per la semplificazione di procedimenti amministrativi)

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.

56. Is the national ombudsman effective?

84

56a. In law, the ombudsman is protected from political interference.

Yes | No

Comments:

See for instance in Veneto Region Regional Law, June 6, 1988, n. 28, art 1. "Institution of the Ombudsman"

References:

Regional Laws and statutes of local ombudsmen ensure the impartiality and independence of this ombudsmen. They have no enforcement powers.

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.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Ombudsman must have no links with politics, but is elected by the local council. This does not exclude that there can be influences and closeness between ombudsman and politicians.

References:

La Provincia, Gabriella Bellini, Dec. 4, 2010, "Consigliere Pdl nominato difensore civico, scoppia polemica in Provincia," <http://www.laprovinciaonline.info/spip.php?article5221>
Veneto Region ombudsman, http://www.difensorecivico.veneto.it/a_normativa/regionale/28_1988.asp#1

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.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

Ombudsman mandates have a fixed length (for instance in Veneto is 5 years).

References:

Veneto region ombudsman, http://www.difensorecivico.veneto.it/a_normativa/regionale/28_1988.asp#1

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.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

For instance, Veneto ombudsman has a full-time staff of 10 people.

References:

Veneto Region ombudsman, http://www.difensorecivico.veneto.it/a_staff/

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.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

References:
Veneto Region Ombudsman, http://www.difensorecivico.veneto.it/a_staff/

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.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:
Funding is not very high. In the past year, and in the year coming, due to economic cuts to regional/local governments imposed by the central state, there will probably be important cuts in the ombudsman's budget.

References:
Emilia Romagna Region, "Relazione sull'attività svolta dal difensore civico nell'anno 2009," http://bur.regione.emilia-romagna.it/area-bollettini/bollettino-ufficiale-22-aprile-2010-1/at_download/pdf_firmatohttp://bur.regione.emilia-romagna.it/area-bollettini/bollettino-ufficiale-22-aprile-2010-1/at_download/pdf_firmato

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.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:
The ombudsman regularly publishes activity reports. Many of them are available online.

References:
Emilia Romagna Region, "Relazione sull'attività svolta dal difensore civico nell'anno 2009," http://bur.regione.emilia-romagna.it/area-bollettini/bollettino-ufficiale-22-aprile-2010-1/at_download/pdf_firmatohttp://bur.regione.emilia-romagna.it/area-bollettini/bollettino-ufficiale-22-aprile-2010-1/at_download/pdf_firmato

National ombudsman association, www.andci.it

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.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The ombudsman initiates procedures for “protecting” citizens from local administrations. However, it has no sanctioning powers so the compliance with its decisions is rather low.

References:

Trentino, June 2, 2010, “Il difensore civico: “Nei comuni trentini c’è poca trasparenza,” <http://trentinocorrierealpigelocal.it/cronaca/2010/06/02/news/il-difensore-civico-nei-comuni-trentini-c-e-poca-trasparenza-2053267>

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.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The ombudsman initiates procedures for “protecting” citizens from local administrations. However, it has no sanctioning powers so the compliance to its decisions are rather low.

References:

Trentino, June 2, 2010, “Il difensore civico: “Nei comuni trentini c’è poca trasparenza,” <http://trentinocorrierealpigelocal.it/cronaca/2010/06/02/news/il-difensore-civico-nei-comuni-trentini-c-e-poca-trasparenza-2053267>

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.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

The ombudsman's role is generally accepted by local governments. However, sometimes some agencies persist in negative behaviors, despite the presence of an ombudsman.

References:

Trentino, June 2, 2010, "Il difensore civico: "Nei comuni trentini c'è poca trasparenza," <http://trentinocorrierealpigelocal.it/cronaca/2010/06/02/news/il-difensore-civico-nei-comuni-trentini-c-e-poca-trasparenza-2053267>

Emilia Romagna Region, "Relazione sull'attività svolta dal difensore civico nell'anno 2009," http://bur.regione.emilia-romagna.it/area-bollettini/bollettino-ufficiale-22-aprile-2010-1/at_download/pdf_firmato

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 politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Trentino, June 2, 2010, "Il difensore civico: "Nei comuni trentini c'è poca trasparenza," <http://trentinocorrierealpigelocal.it/cronaca/2010/06/02/news/il-difensore-civico-nei-comuni-trentini-c-e-poca-trasparenza-2053267>

Emilia Romagna Region, "Relazione sull'attività svolta dal difensore civico nell'anno 2009," http://bur.regione.emilia-romagna.it/area-bollettini/bollettino-ufficiale-22-aprile-2010-1/at_download/pdf_firmato

Toscana Region, March 2010, "Relazione sul difensore Civico," http://www.consiglio.regione.toscana.it/difensore/relazioni/pdf/rel09_1.pdf

Piemonte Region, "Relazione annuale del Difensore Civico," http://www.consiglioregionale.piemonte.it/organismi/dif_civico/dwd/rel2009/relazione2009.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.

57. Can citizens access the reports of the ombudsman?

100

57a. In law, citizens can access reports of the ombudsman(s).

Yes | No

Comments:

Regional laws require that the ombudsman reports annually to the regional council. The report is published on the regional official journal (Bollettino Ufficiale Regionale).

References:

See for instance Regional Law 6, June 1988, n. 28, "ISTITUZIONE DEL DIFENSORE CIVICO" (Veneto), art. 13

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.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Emilia Romagna Region, "Relazione sull'attività svolta dal difensore civico nell'anno 2009," http://bur.regione.emilia-romagna.it/area-bollettini/bollettino-ufficiale-22-aprile-2010-1/at_download/pdf_firmato

Toscana Region, March 2010, "Relazione sul difensore Civico," http://www.consiglio.regione.toscana.it/difensore/relazioni/pdf/rel09_1.pdf

Piemonte Region, "Relazione annuale del Difensore Civico," http://www.consiglioregionale.piemonte.it/organismi/dif_civico/dwd/rel2009/relazione2009.pdf

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.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

Comments:
Reports are free.

References:

Emilia Romagna Region, "Relazione sull'attività svolta dal difensore civico nell'anno 2009," http://bur.regione.emilia-romagna.it/area-bollettini/bollettino-ufficiale-22-aprile-2010-1/at_download/pdf_firmato

Toscana Region, March 2010, "Relazione difensore civico," http://www.consiglio.regione.toscana.it/difensore/relazioni/pdf/rel09_1.pdf
http://www.consiglioregionale.piemonte.it/organismi/dif_civico/dwd/rel2009/relazione2009.pdf

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 NGOs. 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 NGOs trying to access this information.

5.2. Supreme Audit Institution

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58a. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

Yes | No

Comments:
From the website corteconti.it:

The "Corte dei conti" is one of the main institutions that the Constitution and the Republic laws have set up for the safeguarding of public finances. According to article 100 of Italian Constitution the Corte dei conti is responsible for the "a priori" audit of the legality of Government acts, and also for the "a posteriori" audit of the management of the State Budget. It is the public institution that carries out the external audit of the administrative and financial management of the State administrations while maintaining a full independence from the Executive. It plays the role of an impartial guarantor of the economic and financial equilibrium, and in particular, of the proper use of public funds in terms of effectiveness, efficiency and economy.

Therefore, the Corte dei conti gives all taxpayers the guarantee that their money is being used for the citizens' needs. The Corte dei conti has also a strong jurisdictional power enabling it to prosecute civil servants and public administrators who have caused financial damages and losses to the State or other public administration budgets through their heavy faulty or criminal activities.

The Corte carries out the audit functions through its Central and Regional Audit Chambers and the jurisdictional functions through its Regional Jurisdictional Chambers and Regional Prosecutors. Appeals before the Central Jurisdictional Chambers may be filed against judgments handed down by the Regional Jurisdictional Chambers. Therefore, the Corte is truly at the service of the citizens and it is essential that citizens perceive it as a democratic institution that is essential for their community. I hope that publicity of the Corte's activities and the knowledge of its role and mission help to build a careful and conscious public opinion that perceives it to be of primary importance and sees that, in a democratic State, the Corte is given autonomy and political and financial independence.

References:
Articles 100 and 103 of the Constitution

Article 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.

Article 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.

59. Is the supreme audit institution effective?

100

59a. In law, the supreme audit institution is protected from political interference.

Yes | No

References:
Italian Constitution, Article 100: The law ensures the independence from the government of the two [audit] 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.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:
The Court of Accounts is a national authority whose independence is protected by Constitutional law. No president of the Court of Accounts has been removed before the end of term.

References:
Court of Accounts, www.corteconti.it

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.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Currently, the magistrates staff consists of 494 effective units. The administrative staff is composed of 2,487 effective units (figures updated on Dec. 31, 2009). At the top of the administration of the Court there is a magistrate, the Secretary-General.

References:

Court of Accounts, 2010, Italian "Corte dei Conti," History, Organization and Functions, http://www.corteconti.it/export/sites/portalecdc/documenti/chi_siamo/brochure_storia_funzioni_cdc.pdf

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.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

The President of the "Corte dei conti" is nominated from among the Corte's magistrates who have actually exercised functions of President of Chamber, or equivalent functions with national constitutional bodies or of Institutions of the European Union, for at least three years.

The nomination procedure foresees the issue of a decree of the President of the Republic on a proposal of the President of the Council of Ministers, after having heard the opinion of the Council of the Presidency.

Once nominated, the President can no longer be revoked from his role, which he leaves because of voluntary resignation or retirement because of the age limit. Law no. 45 of 2004 set up the position of Deputy President.

The General Prosecutor of the Corte dei conti is nominated with a decree by the President of the Republic, on a proposal of the President of the Council of Ministers, and among the magistrates of the "Corte dei conti" with the role of President of Chamber of Corte dei conti, on designation of the Council of the Presidency. Law no. 45 of 2004 set up the position of Deputy General Prosecutor.

The magistrates of the Corte dei conti are recruited through a public competition on the basis of titles and examinations in which ordinary and administrative magistrates, lawyers of the State and of the free Courts, military lawyers, and civil servants and public executives in possession of the requirements necessary by law are allowed to participate. It is also foreseen that, after hearing the opinion of the Council of the Presidency, the Government can nominate some of the counselors of the Corte dei conti. Once nominated, the counselors appointed by the Government acquire the same rights, duties and guarantees of independence as the other magistrates.

References:

Court of Accounts, 2010, Italian "Corte dei Conti," History, Organization and Functions, http://www.corteconti.it/export/sites/portalecdc/documenti/chi_siamo/brochure_storia_funzioni_cdc.pdf

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.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

2010 Budget is about euro 300 million (US\$434 million).

References:

See the balance of the Court of

Accounts, http://www.corteconti.it/export/sites/portalecdc/documenti/approfondimenti_studi/affari_generali/bilancio/bilancio_2010.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.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The Court regularly publishes reports, available online for free.

References:

Court of Count, http://www.corteconti.it/documenti_per_parlamento/

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.

59g. 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, though its conclusions are typically not immediately taken into account, because political interests are more influential. The Court's decisions are taken seriously and they are promptly implemented when the court acts within its jurisdictional functions.

References:

Court of Accounts, http://www.corteconti.it/documenti_per_parlamento/

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.

59h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

Comments:

The General Public Prosecutor holds the Public Prosecutor Office at the Corte dei conti in Rome. He acts as the Public Prosecutor before the Jurisdictional Appeal Chambers in Rome. There is also a Public Prosecutor Office acting before the Jurisdictional Appeal Chamber in Palermo (Sicily).

Regional Prosecutors act before the respective Regional Jurisdictional Chamber of the Corte. In Italy, the Corte dei conti Public Prosecutor is entitled to prosecute, "ex officio" and through a compulsory action, the so-called administrative liability, a special form of liability that concerns the civil servants and public administrators whose illicit behaviors have caused damage to public finance.

Therefore, the Corte Public Prosecutor carries out the role of guaranteeing the respect of the legal system while safeguarding the State and other public financial administrations.

References:

Court of Accounts, Feb. 17, 2010, "Cerimonia di inaugurazione dell'anno giudiziario 2010," http://www.corteconti.it/export/sites/portalecdc/documenti/documenti_procura/procura_generale/relazioni_anni_giudiziari/inaugurazio

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.

60. Can citizens access reports of the supreme audit institution?

100

60a. In law, citizens can access reports of the audit agency.

Yes | No

Comments:

Law 241/90 establishes the general right for certain citizens to access government documents, including the Court of Accounts. To access the documents, citizens must demonstrate a specific right or even a qualified interest, thus excluding only the general interest. The law ensures a wide range of action for the right of access to public documents.

Art 24.1, 2, 3, 5 and 6 of law 241/90 is about documents under State Secret, fiscal proceeding, normative/general acts. All of these documents have specific procedures for publicity or access. There is a general principle of denying access if it damages someone's else rights.

References:

Law 241/90: New law on administrative proceedings and right to access to administrative documents (Nuove norme in materia di procedimento amministrativo e di diritto di accesso ai documenti amministrativi), <http://www.altalex.com/index.php?idnot=550>

A comparative view between original and amended version of the law, http://www.urp.it/allegati/Legge_241_modificata_2.pdf

Art. 22 co. 2 and 3

Art. 22.2: "Access to administrative documents [...] is a general principle of administrative action to ensure participation, impartiality and transparency [...]"

Art 22.3: "All administrative documents must be accessible, with the exceptions of art 24.1,2,3, 5 and 6."

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.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

All documents are available online for free.

References:

Court of Accounts, <http://www.corteconti.it/>

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.

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:
All documents are available online for free.

References:
Court of Accounts, www.corteconti.it

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 NGOs. 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 NGOs trying to access this information.

100
5.3. Taxes and Customs: Fairness and Capacity

61. In law, is there a national tax collection agency?

100

61a. In law, is there a national tax collection agency?

Yes | No

References:
Decree by Law of July 30, 1999, no. 300, "Reform of the organization of the government," art. 57, "institution of tax agencies" (Istituzione delle agenzie fiscali).

<http://www.parlamento.it/parlam/leggi/deleghe/99300dl.htm>

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.

62. Is the tax collection agency effective?

100

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:
At the end of 2009, the agency had more than 33,000 staff.

References:

See Agenzia delle Entrate, Book 2010, http://www1.agenziaentrate.gov.it/inglese/revenue_agency/pdf/book%20inglese_2010.pdf

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 tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The 2009 budget was about euro 3.5 billion (US\$ 5 billion).

References:

Agenzia delle Entrate, Book 2010, http://www1.agenziaentrate.gov.it/inglese/revenue_agency/pdf/book%20inglese_2010.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.

63. In practice, are tax laws enforced uniformly and without discrimination?

50

63a. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

Tax laws are applied without discrimination. There are no clear records, but tax evasion is a serious problem in Italy.

There is a fundamental difference between employees (i.e., who receive a salary), freelance workers (who are paid on invoices) and "black labor" (illegal employment). Tax collection for the first group is made directly via salary deduction. Tax collection for the second group is made later, according to self-declaration. Indeed, the opportunities for freelance workers and independent contractors (from lawyers to building contractors, from hydraulics to dentists) to evade are very numerous.

It must be noted, however, that "black labor" (i.e., employees not regularly registered) is widespread in Italy. These employees work in the absence of any contract or beyond contract agreement. For example, one could engage a clerk for 10 hours per week and force him to work for 20 hours without recognizing it in his salary. Black labor workers are not eligible for welfare, social protection or social security and can be fired without cause. In this case, tax evasion opportunity (for the entrepreneurs) is high because laborers are typically paid without invoices.

References:

L'Unità, 2011, Masocco F. "Con il federalismo municipale più tasse per 16 milioni di italiani," <http://www.unita.it/economia/con-il-federalismo-municipale-br-piu-tasse-per-16-milioni-di-italiani-1.276696>

L'Unità, 2011 "Draghi: «No a più tasse, frenano crescita e vessano gli onesti»,» <http://www.unita.it/economia/draghi-no-a-piu-tasse-frenano-br-crescita-e-vessano-gli-onesti-1.278073>

Panorama, 2011, "L'Italia delle tasse secondo l'Ocse" <http://blog.panorama.it/economia/2010/12/16/litalia-delle-tasse-secondo-locse/>

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.

64. In law, is there a national customs and excise agency?

100

64a. In law, is there a national customs and excise agency?

Yes

No

References:

DECRETO LEGISLATIVO 30 LUGLIO 1999, N.300, Reform of the organisation under Article 11 of the Law no. 59 of 15 March 1997 ... Omissis ... Article 63
(The Customs Agency):

1. The Customs Agency has responsibility for collecting and managing customs duties and internal taxation and dealing with appeals procedures in international trade, excise duties on production and consumption, in close cooperation with EU bodies within the framework of the harmonization and development process of the European Construction. All tasks currently carried out by the Customs Directorate General of the Ministry of Finance, including those under the Treaties of the European Union or other international acts or agreements, belong to the Agency.

2. The Agency manages the customs laboratories of analysis with entrepreneurial criteria and may advertise their services in the market.

3. In the first phase of application, the Ministry of Finance sanctions by decree the services to be transferred under the authority of the Agency.

[www.http://www.agenziadogane.it/wps/wcm/connect/83f5b20044233f68b2babb4e7aaa0be0/ammin_doganale_uk.pdf?MOD=AJPERES&CACHEID=83f5b20044233f68b2babb4e7aaa0be0](http://www.agenziadogane.it/wps/wcm/connect/83f5b20044233f68b2babb4e7aaa0be0/ammin_doganale_uk.pdf?MOD=AJPERES&CACHEID=83f5b20044233f68b2babb4e7aaa0be0)

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.

65. Is the customs and excise agency effective?

100

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The agency has a staff of about 10,000. It is divided into three levels: at the top level, in Rome, the Directorate deals with the setting operating strategies, action plans, action implementation, budget and personnel policies, strategic decisions on investments, institutional and international external relations, new technologies implementation policies, development and management control.

At the middle level, there are 14 Directorates that ensure coordination of the activities all over the territory and guarantees coordinated actions and results.

Farther down, operational tasks are undertaken by the district customs offices, which, in turn direct 102 principal customs offices, 47 secondary offices and 225 branch offices, as well as 41 excise offices (UTF) and 15 chemical laboratories.

References:

Custom and excise

Agency, http://www.agenziadogane.it/wps/wcm/connect/83f5b20044233f68b2babb4e7aaa0be0/ammin_doganale_uk.pdf?MOD=AJPERES&CACHEID=83f5b20044233f68b2babb4e7aaa0be0

Custom and excise, report activity

2009, http://www.agenziadogane.gov.it/wps/wcm/connect/26c6e0804422f3298caabd4e7aaa0be0/Libro+blu+2009_16apr2010.pdf?MOD=AJPERES&CACHEID=26c6e0804422f3298caabd4e7aaa0be0

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.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The 2009 budget is about euro 13 billion (US\$18.8 billion).

References:

Custom and excise, report activity

2009, http://www.agenziadogane.gov.it/wps/wcm/connect/26c6e0804422f3298caabd4e7aaa0be0/Libro+blu+2009_16apr2010.pdf?MOD=AJPERES&CACHEID=26c6e0804422f3298caabd4e7aaa0be0

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.

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

66a. 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:

Custom agency, 2009, "Organizzazione, attività e statistica," http://www.agenziadogane.gov.it/wps/wcm/connect/26c6e0804422f3298caabd4e7aaa0be0/Libro+blu+2009_16apr2010.pdf?MOD=AJPERES&CACHEID=26c6e0804422f3298caabd4e7aaa0be0

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.

5.4. Oversight of State-Owned Enterprises

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67a. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

Yes | No

Comments:

Ministry for Economics and Finance has competence on state-owned companies. The Ministry has also special powers in former state-owned companies in the sectors of defense, logistics (transport), telecommunications, and energy. Briefly, the "golden share" is a special power given to the Ministry of Finance to choose a member of the Managing Board, to deny qualified participations (above 5 percent), and the right of veto on very important decisions.

References:

Decree 332 of May 31, 1994, "Regulation on privatization of state-owned companies" (NORME PER L'ACCELERAZIONE DELLE PROCEDURE DI DISMISSIONE DI PARTECIPAZIONI DELLO STATO E DEGLI ENTI PUBBLICI IN SOCIETÀ PER AZIONI), art. 12

<http://www.arancia.com/cached.jsp?idx=0&id=167820>

Yes: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. 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, or if some state-owned companies are free from government oversight.

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

70

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

Yes | No

Comments:

Mechanism overseeing state-owned companies is under control of the Minister of Finance.

References:

Decree 332 of May 31, 1994, "Regulation on privatisation of state owned companies," (NORME PER L'ACCELERAZIONE DELLE PROCEDURE DI DISMISSIONE DI PARTECIPAZIONI DELLO STATO E DEGLI ENTI PUBBLICI IN SOCIETÀ PER AZIONI.), art. 12

<http://www.arancia.com/cached.jsp?idx=0&id=167820>

Yes: A YES score is earned only if the agency, series of agencies, 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, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The Department has adequate full-time staff.

References:

Department of Treasury, <http://www.dt.mef.gov.it/dipartimento/organigramma/>

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The budget of Treasury department is more than euro 20 billion (US\$30 billion).

References:

Ministry of Economics, <http://dwrgsweb-lb.rgs.mef.gov.it/DWRGSXL/pages/dlb/index.jsp>

100: The agency, series of agencies, 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 agency, series of agencies, 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.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The agency does not have powers to investigate financial irregularities. However, the agencies dealing with economic crimes cooperate with tax police (guardia di Finanza) and judges for investigation activities.

References:

Dipartimento del tesoro, http://www.dt.mef.gov.it/it/prevenzione_reati_finanziari/index.html

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The agency does not have powers to investigate financial irregularities. However, the agencies dealing with economic crimes cooperate with tax police (guardia di Finanza) and judges for investigation activities.

References:
Dipartimento del tesoro, http://www.dt.mef.gov.it/prevenzione_reati_finanziari/index.html

Guardia di Finanza, www.gdf.it

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

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

25:

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

69. Can citizens access the financial records of state-owned companies?

100

69a. In law, citizens can access the financial records of state-owned companies.

Yes | No

Comments:

The law and the regulations make it a duty to make available to the public the approved annual budget the day after its approval, and to publish a notice in the national newspaper.
The list of state-owned companies is online.

References:
Decree 58 of February 24, 1998, Arts. 77 and 83,
http://www.dt.mef.gov.it/finanza_privatizzazioni/partecipazioni/

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.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

Comments:

Financial records are updated annually.

References:
Enav, <http://www.enav.it/portal/page/portal/PortaleENAV/Home/ChiSiamo?CurrentPath=/enav/it/chisiamo/bilancio>

or

Sogin, "Responsabilità sociale d'impresa," <http://www.sogin.it/sostenibilita/responsabilita-sociale-di-impresa/>

100: State-owned companies always publicly 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, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

Comments:

State-owned companies budgets are audited according to international standards. However, this does not prevent misbehavior and opaque management practices.

References:

Università di Roma Torvergata, Dipartimento Economia, May 4, 2010, "Verso una nuova Pubblica Amministrazione: Difesa servizi S.p.A., <http://www.economia.uniroma2.it/Public/files/eprocurement/file/pastena.pdf>

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.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Enav, <http://www.enav.it/portal/page/portal/PortaleENAV/Home/ChiSiamo?CurrentPath=/enav/it/chisiamo/bilancio>

or

Sogin, "Responsabilità sociale d'impresa," <http://www.sogin.it/sostenibilita/responsabilita-sociale-di-impresa/>

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.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:
Access is free.

References:
Enav, <http://www.enav.it/portal/page/portal/PortaleENAV/Home/ChiSiamo?CurrentPath=/enav/it/chisiamo/bilancio>

Sogin, "Responsabilità sociale d'impresa," <http://www.sogin.it/sostenibilita/responsabilita-sociale-di-impresa/>

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 NGOs. 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 NGOs trying to access this information.

90
5.5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

88

70a. In law, anyone may apply for a business license.

Yes | No

Comments:
See also the attempt to simplify the procedures at <http://www.impresainungiorno.gov.it/index.html>.

References:
Article 41 of the Italian Constitution:

Article 41: Private economic initiative is free. It cannot be conducted in conflict with the public's will or in such a 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 with social objectives.

Art.38 of law decree 112/2008

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.

70b. In law, a complaint mechanism exists if a business license request is denied.

Yes | No

Comments:

Citizens can appeal before a court if a license is denied. This is part of the general right of citizens to appeal public decisions.

References:

Italian Constitution, Article 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 to particular kinds of appeal or to 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.

70c. 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

Comments:

According to the World Bank Doing Business report, opening a business in Italy takes 6 days (world ranking: 68).

References:

Il sole 24 ore, November 2010, Attilio Geroni, "Sempre più difficile fare impresa in Italia, tra gli stati Ue fa peggio solo la Grecia," <http://www.ilsole24ore.com/art/economia/2010-11-03/sempre-difficile-fare-impresa-192926.shtml?uid=AYJ47ogC&fromSearch>

Doing Business, Nov. 4, 2010, "Doing Business 2011, Making a difference for entrepreneurs," <http://www.doingbusiness.org/reports/doing-business/doing-business-2011>

Kataweb, Mariangela Tessa, July 23, 2009, "Aprire un'impresa? Basta un giorno e un solo modulo," <http://canali.kataweb.it/kataweb-consumi/2009/07/23/aprire-un%E2%80%99impresa-basta-un-giorno-e-un-solo-modulo/>

Il sole 24 ore, "Articolo 38-Impresa in un giorno," <http://www.ilsole24ore.com/art/SoleOnLine4/dossier/Norme%20e%20Tributi/2008/manovra-economica/provvedimento/038.shtml>

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.

70d. 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:
According to World Bank Doing Business 2010, Italy ranks 68th with a cost (percentage of income per capita) of 18.5.

References:
Doing Business, Nov. 4, 2010, "Doing Business 2011, Making a Difference for Entrepreneurs," <http://www.doingbusiness.org/reports/doing-business/doing-business-2011>

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.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

71a. 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.

There are a number of laws regarding public health standards, at the European, national and local levels, also depending on the industry. In particular, a number of European Directives are acknowledged in national legislation by several different acts.

References:
See Law Feb. 19, 1992, n. 142, "Compliance of duties coming from the membership to the European Union" (Disposizioni per l'adempimento di obblighi derivanti dall'appartenenza dell'Italia[...]), in part, art. 43 "Security and Safety of Workers, which acknowledges EU Directives 89/391/CEE, 89/654/CEE, 89/655/CEE, 89/656/CEE, 90/269/CEE, 90/270/CEE, 90/394/CEE, 90/679/CEE, and 91/383/CEE.

See the text of EU Council Directive 89/391/EEC of June 12, 1989, on the introduction of measures to encourage improvements in the safety and health of workers at work at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31989L0391:EN:HTML>

See the list of relevant European Instruments: http://www.inail.it/Portale/appmanager/portale/desktop?_nfpb=true&_pageLabel=PAGE_PUBBLICAZIONI&nextPage=PUBBLICAZIONI/Tutti_i_titoli/Diritto_e_normativa/Codice_comunitario_della_sicurezza/Indice/info-752430092.jspes:

See the list of national laws here: http://www.mondimpresa.it/dossier/Volume_1/Normativa/Politica_sociale/nr_3_1.htm

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.

71b. 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. There are a number of laws regarding public health standards, and a number of European Directives are acknowledged in national legislation by several different acts.

References:

See Law Feb. 19, 1992, n. 142, "Compliance of duties coming from the membership to the European Union," (Disposizioni per l'adempimento di obblighi derivanti dall'appartenenza dell'Italia[...]), in part, art. 43 "Security and Safety of Workers," which acknowledges EU Directives 89/391/CEE, 89/654/CEE, 89/655/CEE, 89/656/CEE, 90/269/CEE, 90/270/CEE, 90/394/CEE, 90/679/CEE, and 91/383/CEE

See the text of EU Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31989L0391:EN:HTML>

See the list of relevant European Instruments: http://www.inail.it/Portale/appmanager/portale/desktop?_nfpb=true&_pageLabel=PAGE_PUBBLICAZIONI&nextPage=PUBBLICAZIONI/Tutti_i_titoli/Diritto_e_normativa/Codice_comunitario_della_sicurezza

See the list of national laws here: http://www.mondimpresa.it/dossier/Volume_1/Normativa/Politica_sociale/nr_3_1.htm

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.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

Yes | No

References:

Law decree 81/2008, "Consolidated Act on safety and security in working places," (Testo Unico in materia di sicurezza e salute dei luoghi di lavoro), which harmonised, and canceled, the following laws: D.P.R. 547/55, D.P.R. 164/56, D.P.R. 303/56, Law decree 277/91, Law decree 626/94, Law decree 493/96, Law decree 494/96, Law decree 187/05

http://www.lavoro.gov.it/NR/rdonlyres/0D78BF49-8227-45BA-854F-064DE686809A/0/20080409_Dlgs_81.pdf

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.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

50

72a. In practice, business inspections by government officials to ensure public health standards are being met and are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

The problem with inspections is not of the abuse of power, but the lack of economic resources to set up a sound inspection system. Inspections are rare and random.

References:

La Repubblica, Giuseppe del Bello, June 25, 2010, "Saltano i controlli sanitari su acqua, alimenti, igiene," http://ricerca.repubblica.it/repubblica/archivio/repubblica/2010/06/25/saltano-controlli-sanitari-su-acqua-alimenti-igiene.na_004saltano.html

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.

72b. 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:

The problem with inspections is not of the abuse of power, but the lack of economic resources to set up a sound inspection system. Inspections are rare and random.

References:

La Repubblica, Giuseppe del Bello, June 25, 2010, "Saltano i controlli sanitari su acqua, alimenti, igiene," http://ricerca.repubblica.it/repubblica/archivio/repubblica/2010/06/25/saltano-controlli-sanitari-su-acqua-alimenti-igiene.na_004saltano.html

100: Business inspections by the government to ensure that public environmental 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 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.

72c. 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:

The problem with inspections is not of the abuse of power, but the lack of economic resources to set up a sound inspection system. Inspections are rare and random.

References:

La Repubblica, Giuseppe del Bello, June 25, 2010, "Saltano i controlli sanitari su acqua, alimenti, igiene," http://ricerca.repubblica.it/repubblica/archivio/repubblica/2010/06/25/saltano-controlli-sanitari-su-acqua-alimenti-igiene.na_004saltano.html

100: Business inspections by the government to ensure that public safety 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 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 6. Anti-Corruption Legal Framework, Judicial Impartiality, and Law Enforcement Professionalism

6.1. ⁸⁶Anti-Corruption Law

73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

Yes

No

Comments:

General notes on anti-corruption legislation:

Corruption is covered in the Criminal Code (artt. 317 – 322-ter), as amended by several laws. In particular, the legal framework on corruption has been changing since last year with Law 116 of August 3, 2009: Ratification of the UN Convention against Corruption (signed on the 5 of October 2009).

Currently, there is a draft law (disegno di legge) titled "Prevention and Repression of Corruption in the Public Administration," which was released by the Council of Ministers on the 1 of March 2010, and currently under evaluation of the Commissions of the Parliament.

References:

Art. 322 of Criminal Code,

Link to criminal code: <http://www.altalex.com/index.php?idnot=36653>

Yes: A YES score is earned if corruption laws include attempted acts.

No: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

Yes | No

Comments:

See also art. 317 of Criminal Code. "Concussione" is the crime committed by a civil servant or public officer who, through their authority, forces or induces someone to pay or promise to pay money or other favors for the official, or for someone else.

References:

Art. 629 of the Criminal Code.

criminal code (in Italian) <http://www.altalex.com/index.php?idnot=36653>

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.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

Yes | No

References:

Arts. 318 – 321 of Criminal Code

source: <http://www.altalex.com/index.php?idnot=36653>

Yes: A YES score is earned if offering a bribe is illegal.

No: A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

Yes | No

References:

Arts. 318-321 of Criminal Code

source: <http://www.altalex.com/index.php?idnot=36653>

Yes: A YES score is earned if receiving a bribe is illegal.

No: A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

Yes | No

References:
Art 322-bis of Criminal Code

source: <http://www.altalex.com/index.php?idnot=36653>

Yes: A YES score is earned if bribing a foreign official is illegal.

No: A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

Yes | No

References:
Arts. 314 – 316 of Criminal Code

source: <http://www.altalex.com/index.php?idnot=36653>

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.

73g. In law, using confidential state information for private gain is illegal.

Yes | No

Comments:
In particular, art 326, no. 2 says, “A person who violates the confidentiality of state information to gain a financial or other advantage is liable, on conviction, to a sentence from two to five years” (Il pubblico ufficiale o la persona incaricata di un pubblico servizio, che, per procurare a sé o ad altri un indebito profitto patrimoniale, si avvale illegittimamente di notizie d’ufficio, le quali debbano rimanere segrete, è punito con la reclusione da due a cinque anni).

References:
Arts. 325 – 326 of Criminal Code

source: <http://www.altalex.com/index.php?idnot=36653>

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.

73h. In law, money laundering is illegal.

Yes | No

Comments:

A person convicted for money laundering (riciclaggio) is liable to a sentence from 4 to 12 years, and to a fine from euro 1,032 to euro 15,493 (US\$1,493 to US\$22,427).

(Fuori dei casi di concorso nel reato, chiunque sostituisce o trasferisce denaro, beni o altre utilità provenienti da delitto non colposo, ovvero compie in relazione ad essi altre operazioni, in modo da ostacolare l'identificazione della loro provenienza delittuosa, è punito con la reclusione da quattro a dodici anni e con la multa da euro 1.032 a euro 15.493).

References:

Art. 648-bis of Criminal Code

source: <http://www.altalex.com/index.php?idnot=36775>

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.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

Yes | No

Comments:

Art 416: Three or more persons associating to commit a crime are liable to be sentenced from three to seven years.

Art 416-bis: Affiliates of criminal organizations are liable to be sentenced from seven to twelve years.

References:

Art. 416 and 416-bis of Criminal Code: "Conspiracy" and "Organised Crime"

source: <http://www.altalex.com/index.php?idnot=36766>

Yes: A YES score is earned if organized crime is illegal.

No: A NO score is earned if this is not illegal.

6.2. Anti-Corruption Agency or Equivalent Mechanisms

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74a. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

Yes | No

Comments:

There are three main agencies with a special mandate to address corruption: Tax Police (a law enforcement agency) has the primary mission of "prevention, search and denunciation" of economic crimes, including corruption. A special unit (Nucleo Speciale Tutela Pubblica Amministrazione) of Tax Police is in charge of addressing crimes relating to public officials or civil servants. Tax Police starts investigations autonomously, or under the direction of a Public Prosecutor, a judicial authority (www.gdf.it).

Court of Accounts is the jurisdictional body in matters of public accounting, to which the Constitution entrusts, exclusively, jurisdiction in matters of public accounting (Constitution, Art. 103, third paragraph). In this function, the Corte dei conti passes judgment on the personal, accounting and administrative responsibilities of the administrators and public executives for the damage caused, whether by intent or by negligence, in carrying out their functions. (www.cortedeiconti.it)

The third is the Service for Anti-corruption and Transparency (SAET) of the Ministry of Public Function. Art. 6 of law 116/2009 (Ratification of the UN Convention against Corruption (UNCAC) designates this service as national authority, as requested by UNCAC art. 6. (www.anticorruzione.it)

Art. 6 of law 116/2009 (Ratification of UNCAC) designates the service SAET as a national authority, as requested by UNCAC art. 6.

Independence and autonomy are set in the same article, in practice the Service belongs to the Council of Ministers and is directed by a civil servant belonging to the Ministry for Public Administration.

References:

Anti-corruption service: Art. 6 of law 116/2009 (Ratification of UNCAC) (www.anticorruzione.it)

Tax police: Law 189/1959, "Organization of tax police" source: <http://www.normattiva.it/dispatcher?service=213&fromurn=yes&datagu=1959-04-24&annoatto=1959&numeroatto=189&task=ricercaatti&elementiperpagina=50&redaz=059U0189&newsearch=1&classeprv=1&paginadamostrar>

Law decree 68/2001 "adjustment of tasks for tax police" source: <http://www.camera.it/parlam/leggi/deleghe/testi/01068dl.htm>

Art 103 of Constitution source: http://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf

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.

75. Is the anti-corruption agency effective?

92

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

Yes | No

Comments:

Not all of the agencies are protected from political influence by law. The court of accounts, as part of the judiciary system, is subject only to the law. The Tax Police is expressly under the authority of the Minister of Treasury, while the law ensures independence of the anti-corruption agency, which, however, is under the Ministry for Public Functions.

References:

Anti-corruption service: Art. 6.2 of law 116/2009 (Ratification of UNCAC), Anti-corruption service: Art. 6 of law 116/2009 (Ratification of UNCAC) (www.anticorruzione.it) "The anti-corruption service is guarantee of autonomy and independence" (Al soggetto di cui al comma 1 sono assicurate autonomia ed indipendenza nell'attività).

Tax police: art. 1 of Law 189/1959, Organization of Tax Police: "The Tax Police is under the authority of the Minister of Treasury" (Il Corpo della guardia di finanza dipende direttamente e a tutti gli effetti dal Ministro per le finanze).

source: <http://www.normattiva.it/dispatcher?service=213&fromurn=yes&datagu=1959-04-24&annoatto=1959&numeroatto=189&task=ricercaatti&elementiperpagina=50&redaz=059U0189&newsearch=1&classeprv=1&paginadamostrar>

Court of Accounts Art. 101 of Constitution "Justice is administered in the name of the people. Judges are subject only to the law". source: http://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf

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.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The Court of Accounts is almost independent, although some of its judges are nominated by the executive (I would score 100).

The Tax Police is almost independent. Its chief is chosen by the executive, and there has been some evidence of lack of independence (for instance, the Chief during the second Berlusconi government was elected from the Parliament by Berlusconi's Party). However, in general, the police act in cooperation with the judiciary (I would score 50) in corruption cases.

The Service for Anti-corruption and Transparency is not independent (I would score 0). Its strategy is directly linked to political decisions. My final score is 50.

References:

Left, 06/08/10 "Corruzione, Governo Bocciato"

Libero Mercato, Dec. 12, 2010, "Governo premiato per la lotta alla corruzione"

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.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

Staff of the Service for Anti-Corruption of the Ministry for Public Administration can be removed. The same service has been changed by the Government. Formerly, Law 3/2003 set up the High Commissioner Against Corruption in the Public Administration, which was abolished by Decree by Law 112/2008. Its functions were transferred to the Department for Public Administration within the Presidency of the Council of Ministers.

The Department for Public Administration has established the Anti-corruption and Transparency Service in October 2008. The Minister for Public Administration and Innovation is nominated and can be removed at the will of the prime minister, while the General Commander of the Tax Police can be removed by the Minister of Economics. According to the interview, the removal is however difficult because it must be duly motivated.

Different situation for the Court of Accounts: Judges (including those of the Court of Accounts) cannot be moved without relevant justification and only by law. The President of the Court of Account is indicated by the Prime Minister but nominated by the president of the Republic, and cannot be removed.

References:

Diritto e Processo, Court decision on the non-removal of Judges "Giudici trasferibili solo per gravi motivi," (Tar Lazio

4454/2009) at

http://www.dirittoeprocesso.com/index.php?option=com_content&view=article&id=132:inamovibilita-dei-magistrati-e-garantita-dalla-costituzione&catid=39:amministrativo&Itemid=79

La Stampa (newspaper), Spini F., 2010, "La Corte dei Conti, chi lancia l'SOS sulla corruzione?" <http://www3.lastampa.it/domande-risposte/articolo/istp/367312/>

Interview with Maurizio Bortoletti, anti-corruption officer, SAET, 21/03/2011, Salerno

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.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

There is no evidence of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed do not have clear political party affiliations.

The anti-corruption service is part of the government. This, of course, affects its independence. It is not surprising to expect that the results of its findings and actions will not go against the government itself.

References:

Interview with Maurizio Bortoletti, anti-corruption officer, SAET, March 21, 2011, Salerno

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.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Tax police and Court of Accounts have full-time professional staff. The Service for anti-corruption has a full-time staff, although it is limited in number, to around 15.

References:

Guardia di Finanza (Tax Police), web presentation, 2010 http://www.gdf.gov.it/Organizzazione/Chi_siamo/Personale_e_Reparti/index.html

Court of Accounts, web presentation (who we are), 2010, http://www.corteconti.it/chi_siamo/organizzazione/

Anti-corruption service, web description, 2010, <http://www.anticorruzione.it/site/295/Default.aspx>

Interview with Maurizio Bortoletti, anti-corruption officer, SAET, 21/03/2011, Salerno

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.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

One of the strategies of the government in the past two years has been to cut resources to the services considered of little interest and too expensive. The high commissioner against corruption has been one of the first agencies canceled by the Berlusconi Government, and the Service for Anti Corruption started with a very little budget.

The service has been capable to raise resources from private and international agencies for its action, and for the next year has been “awarded” with a consistent increase of funding. Other agencies (tax police and Court of Accounts) receives regular funding.

References:

La discussione, Oct. 27, 2010, page 7, “Gli sforzi compiuti finora dal governo contro il fenomeno”. no web source.

Interview with Maurizio Bortoletti, SAET anti-corruption service, 2011, Salerno

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.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

Reports are fully available online.

According to the interview, the agencies — according to the law — publish annual reports.

References:

Interview with Maurizio Bortoletti, anti-corruption officer, SAET, 21/03/2011, Salerno

Reports are available on the websites of:

the Anti-corruption Service, <http://www.anticorruzione.it/site/322/default.aspx>,

the Tax Police, http://www.gdf.gov.it/GdF_Informa/Notizie_Stampa/index.html

the Court of Accounts, <http://www.corteconti.it/> or http://www.corteconti.it/documenti_per_parlamento/

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.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

The Tax Police and the Court of Accounts have judicial and enforcement powers provided by laws.

The Anti-Corruption Service, intended as agency according to UN Convention against Corruption, art. 6, lacks independence and has limited powers. In general, the agencies have the powers to fight corruption. Of course, the fight against corruption, to be effective, requires powers but most of all, it requires strong political will.

References:

Interview with Maurizio Bortoletti, anti-corruption officer, SAET, 21/03/2011, Salerno

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.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The Tax Police and Court of Accounts regularly monitors and investigates suspected cases of corruption. The Service for Anti-corruption and Transparency has powers of inquiry, but no investigation or law enforcement powers.

However, all the agencies actively address corruption.

References:

Court of Accounts, list of resolutions/judgements, 2010, http://www.corteconti.it/cerca_nel_sito/risultato.html

Interview with Maurizio Bortoletti, anti-corruption officer, SAET, March 21, 2011, Salerno

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.

76. Can citizens access the anti-corruption agency?

38

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The question is difficult to answer. There are no specific regulations on whistle-blowing, internal reporting, or citizens' complaints.

However, the adoption of recent laws has led to a significant reduction of cases because of the length of criminal trials, thus reducing reasonable expectations of achieving justice.

References:

http://www.flarenetwork.org/media/files/bright_corruption.pdf

Transparency International, "Alternative to Silence," www.transparency.org

Paolo Biondani "Corruzione, la grande beffa," *l'Espresso*, Nov. 30, 2010, <http://espresso.repubblica.it/dettaglio/corruzione-la-grande-beffa/2135328>

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.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

Comments:

There is no specific whistle-blowing legislation in Italy. Some protection mechanisms exist, but they are fragmented and are not intended specifically to protect whistle-blowers, as do the provisions protecting witnesses of organized crimes.

Some big private companies have established whistle-blowing procedures. In the public sector, despite recommendations by some public agencies' leaders to introduce related provisions, whistle-blowing or other kinds of internal reporting are barely considered (from the Transparency International Report "Alternative to Silence," p. 35).

References:

http://www.flarenetwork.org/media/files/bright_corruption.pdf

Transparency International, "Alternative to Silence," www.transparency.org

Paolo Biondani "Corruzione, la grande beffa", l'Espresso, March 30, 2010, <http://espresso.repubblica.it/dettaglio/corruzione-la-grande-beffa/2135328>

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.

76
6.3. Judicial Independence, Fairness, and Citizen Access to Justice

77. Is there an appeals mechanism for challenging criminal judgments?

67

77a. 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 for the purpose of contesting sentences and against measures restricting 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.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

On December 2010, the European Court of Human Rights condemned Italy for the length of the trials (5 in this case). Currently around 2,200 cases are open against Italy for the length of trials.

According to the reports, 16 percent of civil trials can last up to 20 years, and the average for criminal trial is 3.7 years (northern Italy) and 6.9 (southern Italy).

References:

Il sole 24 ore, astellaneta M. 2010, "Per l'Italia ancora cinque condanne sui processi lunghi," <http://www.ilsole24ore.com/art/norme-e-tributi/2010-12-13/italia-ancora-cinque-condanne-064343.shtml?uid=AYaTTErC>

Blog Consulenza Legate, Raciti, 2010, "Nuovo monito da Strasburgo contro i processi lumaca pendenti in Italia," <http://www.studiochira.it/blog/?tag=risarcimento-danni-da-irragionevole-durata-del-processo>

Giuda al diritto, Il Sole 24 Ore, 2010, "GIUSTIZIA: L'Italia fanalino di coda nella spesa pro-capite" <http://www.guidaaldiritto.ilsole24ore.com/ContentGuidaDiritto/Viewer.aspx?IdDocumento=12082453&IdFonteDocumentale=5&cmd=gdnews>

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.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Report, Esther Pozo Vera, Milieu Ltd, 2008, an inventory of EU member states' measures on access to justice on environmental matters, "The Aarhus Convention: How Are Its Access to Justice Provisions Being Implemented?", <http://ec.europa.eu/environment/aarhus/pdf/conf/milieu.pdf>

Interview with Silvia Varotto, Judge, March 2011

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorney fees greatly discourage the use of the appeals process.

78. In practice, do judgments in the criminal system follow written law?

78a. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

References:

Scribd. it, Santini G. and Petronio E., 2010, "L'obbligo di motivazione della sentenza, Profilo storico dal medioevo ad oggi," <http://www.scribd.com/doc/14656025/Motivazione-Della-Sentenza-Dal-Medioevo-Ad-Oggi>

Interview with Silvia Varotto, Judge, March 2011

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.

79. In practice, are judicial decisions enforced by the state?

100

79a. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

Comments:

Judicial decisions are normally enforced.

However, since 2002, in order to save certain important persons from trial or judgment, there is a general strategy by the Government to create impunity for economic crimes. Some recent laws and decisions have reduced the effectiveness of judicial decisions: de-penalizing of certain crimes (e.g. "abuso di ufficio"), reduced limits, immunities, and denial of the use of certain instruments for investigation (i.e., phone tapping).

References:

Italia Oggi, Gabutti, D., 2010, "Solo in Italia le sentenze dividono l'opinione pubblica" http://www.italiaoggi.it/giornali/dettaglio_giornali.asp?preview=false&accessMode=FA&id=1688021&codiciTestate=1

L'Espresso, Sisti L., 2007, "Corrotti impuniti e felici," <http://espresso.repubblica.it/dettaglio/corrotti-impuniti-e-felici/1808149>

L'Espresso, Biondani P., 2010, "Corruzione, la grande beffa" <http://espresso.repubblica.it/dettaglio/corruzione-la-grande-beffa/2135328>

L'Espresso, Munafò C., 2010, "Corruzione, si ferma così" <http://espresso.repubblica.it/dettaglio/corruzione-si-ferma-cosi/2137255>

Il fatto quotidiano, Travalgio M., 2010, "L'indulto occulto," <http://www.ilfattoquotidiano.it/2010/12/11/zitti-zitti-nel-silenzio-delle-tv-della-stampa/80639/>

Interview with Silvia Varotto, Judge, March 2011

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.

80. Is the judiciary able to act independently?

88

80a. In law, the independence of the judiciary is guaranteed.

Yes | No

Comments:

In law, independence of the judiciary is guaranteed.

References:

Articles 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 includes 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.

80b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

There is a dramatic struggle taking place between executive and judiciary powers in Italy.

The Council of Judges is organized into groups that clearly belong to political areas. Sentences are the object of evaluation and criticisms by politicians, judges are subject to disciplinary procedures and inquiries by the inspectors of the Ministry of Justice. Recently some judges have been investigated for links with lobbying groups of interests (Masonic-like).

The core of the problem comes from the attempt of certain groups to avoid or reduce investigations on the links between organized crime and politics. Outside this area, in general the judiciary act independently.

References:

Melting Pot Europa, interview with Palombarini, Judge, 2005, "Il silenzio dei critici sulla vicenda Forleo," <http://www.meltingpot.org/articolo5393.html>

Website 19 luglio 1992, Travaglio, de Magistris and Forleo, 2010, "Le lettere di Travaglio, de Magistris e Forleo," http://www.19luglio1992.com/index.php?option=com_content&view=article&id=3558:le-lettere-di-luigi-de-magistris-e-di-clementina-forleo&catid=20:altri-documenti&Itemid=43

Website Toghe, Reale A. (Judge), 2010, "Di cosa ha bisogno l'ANM," <http://toghe.blogspot.com/2010/12/di-cosa-ha-bisogno-lassociazione.html>

Interview with Silvia Varotto, Judge, 2011

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.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

Yes | No

Comments:

Cases are allocated on the principle of the natural judge.

References:

Article 25(1) of the Italian Constitution. Arts. 1 -50 quarter 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.

80d. In law, national-level judges are protected from removal without relevant justification.

Yes | No

References:

Article 107 of the Constitution: Judges may not be removed from office. Nor may they be dismissed or removed from office, nor assigned to other courts or functions, unless it follows a decision of the High Council of the Judiciary, taken either for the motives and with the guarantees of defense that are established by the rules of the judiciary or with their consent.

The Minister of Justice has power to invoke disciplinary action. Judges are distinguished only by their different functions. The state prosecutor enjoys the guarantees established in his favor 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.

81. Are judges safe when adjudicating corruption cases?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

Yes | No

Comments:

There are no cases of physical assault on judges during the past years for investigating corruption.

References:

ANSA, no news, <http://www.ansa.it/>

Interview with Silvia Varotto, Judge, 2011

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.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

Yes | No

Comments:

In the past (as far back as 1992), Mafia groups have killed many judges who were investigating criminal businesses, including those involving corruption. The 1992 bombings that killed judges Falcone and Borsellino were the last episode of the violent phase of the war between the Mafia and the state.

References:

Andrea Camilleri "voi non sapete", Mondadori, 2007, ANSA, no news, <http://www.ansa.it/>

Interview with Silvia Varotto, Judge, 2011

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.

82. Do citizens have equal access to the justice system?

100

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

There is no evidence of discrimination in judicial decisions.

The "pacchetto sicurezza," a set of legal measures promoted in the recent years by an extreme political party and that were aimed at increasing security in Italian cities, have attempted to make a crime out of aggravating circumstances or create special sanctions that would be linked to the origins or the legal status of the person accused.

These measures have raised many questions of compliance with the Constitution, and in several cases, the Constitutional Court has rejected or reduced the broadening of the norms.

Of course, this political strategy affects the action of the judiciary, which is obliged to apply the law.

References:

Interview with Silvia Varotto, Judge, 2011

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.

82b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

There is no sexual discrimination in accessing the justice system.

References:

Interview with Silvia Varotto, Judge, 2011.

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.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

Yes | No

References:

Article 79 ss. D.P.R. 2002 n. 115

Art. 24 of Constitution: Anyone may bring cases before a court of law in order to protect their rights under civil and administrative law.

There is an inviolable right to a defense at every stage and instance of legal proceedings.

The poor are entitled by law to proper means for action or defense in all courts.

The law shall define the conditions and forms of reparation in case of judicial errors.

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.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

Comments:

Constitution ensures that “the poor are entitled by law to proper means for action or defense in all courts.” Defense is free of charge before civil and administrative courts (with some exceptions). Defense is on charge to the State before Criminal Courts and in other specific cases.

The right of state-provided or free assistance is both for nationals and foreigners.

The costs of matters brought before criminal courts in 2008 totaled euro 88,501,771 (US\$128,168,263).

References:

Sesta opera, “Gratuito patrocinio,” <http://www.sestaopera.it/Z.SParsi/Gratuito%20patrocinio.htm>

Quotidiano di Sicilia, Liliana Rosano, Nov. 17, 2010, “Il patrocinio gratuito costa 23 milioni”, <http://www.qds.it/index.php?id=5875>

Ministry of Justice, 31 dicembre 2008, “Patrocinio a spese dello Stato nel processo penale dati nazionali-2008,” http://www.giustizia.it/giustizia/it/mg_1_14_1.wp?facetNode_1=0_10&facetNode_2=0_10_4&previousPage=mg_1_14&contentId=SST83449

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.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

In general terms, in Italy:

The average cost of a proceeding can be set around euros 5,000 (US\$7,241)

The average monthly wages are around euro 1,500 (US\$2,172)

The average yearly income of a family unit is about euro 30,000 (US\$43,446)

References:

European e-justice portal, costs of proceedings, https://e-justice.europa.eu/attachments/cost_study_italy_en.pdf

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorney fees do not represent a major cost to citizens.

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. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorney fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

References:

European e-justice portal, costs of proceedings, https://e-justice.europa.eu/attachments/cost_study_italy_en.pdf

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

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. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorney fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

Comments:

See, for example, the distribution of cases across the Italian court system.

References:

Ministry of Justice, Oct. 5, 2010, "Durata media effettiva in giorni dei procedimenti penali – Tribunale ordinario – Rito monocratico – Primo grado – Dato distrettuale – Anni 2006-2008," http://www.giustizia.it/giustizia/it/mg_1_14_1.wp?facetNode_1=0_10&facetNode_2=0_10_38&previousPage=mg_1_14&contentId=SST454245

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.

6.4. Law Enforcement: Conflicts of Interest Safeguards and Professionalism

83. Is the law enforcement agency (i.e. the police) effective?

67

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Appointments are based on formal requirements and on a competitive examination. Procedures, calls and results are published on the official journal and on the website.

References:

Polizia di Stato, Jan. 20, 2011, "Concorsi," <http://poliziadistato.it/articolo/1129-Concorsi>

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.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

There is a general complaint about the scarcity of resources for law enforcement agencies, in particular for the State Police (Polizia di Stato).

References:

Laboratorio polizia democratica, Dec. 2, 2010, "Sicurezza. Lite su risorse polizia, pd-udc: Maroni prende in giro la maggioranza ritira in aula un emendamento per nuovi fondi", <http://laboratoriopoliziademocratica.blogspot.com/2010/12/sicurezza-lite-su-risorse-polizia-pd.html>

Siap, Oct. 7. 2009, "Tagli alle risorse, polizia in piazza" http://www.siap-polizia.it/public/Dati/flash/PrimoPiano_7_10_09.pdf

Grnet, 11 settembre 2010, "Contratto Forze di polizia 2008 – 2009, sindacati: risorse esigue rispetto alle promesse del Governo," <http://www.grnet.it/polizia-di-stato/97-polizia-di-stato/1767-contratto-forze-di-polizia-2008-2009-sindacati-risorse-esigue-rispetto-alle-promesse-del-governo.html>

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.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Heads of Law enforcement agencies change with a certain regularity after political elections, according to the "spoils system."

Some former heads of agencies have been elected in Parliament.

References:

Carabinieri, July 24, 2009, "Il Comandante Generale dell'Arma dei Carabinieri," <http://www.carabinieri.it/Internet/Arma/Oggi/Comandante/La+Storia/02+La+Storia.htm>

Wikipedia, 13 September 2010, "Calendario delle elezioni in Italia", http://it.wikipedia.org/wiki/Calendario_delle_elezioni_in_Italia

Guardia di Finanza, "I comandanti generali," http://www.gdf.gov.it/Organizzazione/Chi_siamo/Organi_di_vertice/Il_Comandante_Generale/I_comandanti_generali/index.html

Polizia di Stato, Jan. 20, 2011, "Fernando Masone," http://poliziadistato.it/articolo/1503-Fernando_Masone

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.

84. Can law enforcement officials be held accountable for their actions?

83

84a. In law, there is an independent mechanism for citizens to complain about police action.

Yes | No

Comments:
Citizens can appeal through ordinary justice.

References:
Art. 28 of the Constitution: 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

84b. 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:
Aside from the general problem of the length of time it takes to get justice in Italy, justice procedures against the police for "abuse of powers" also take a very long time.

One of the most striking cases of 2000, the riots at the G8 2000 conference in Genova, Italy, has not been resolved yet. In 2010, the Appeal Court made its decision, but it is not yet definitive.

References:
Pressante, May 19, 2010, "G8 Genova, Diaz: condannati i vertici della Polizia di Stato," <http://www.pressante.com/politica-e-ordine-mondiale/italia/1657-g8-genova-diaz-condannati-i-vertici-della-polizia-di-stato.html>

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.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

Yes | No

Comments:
Police officers can be investigated and prosecuted like any other citizen.

References:
Ordinary Justice system: magistrates, public prosecutors, police

Art. 3 of the Constitution

Art. 112 of the Constitution

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.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

Comments:
There are several cases where police officers were investigated and prosecuted for corruption. However, this does not mean that a problem does not exist.

References:
Calabria online, Angela Mendicino, July 22, 2010, "Arrestato per corruzione agente di Polizia Penitenziaria," www.calabriaonline.com%2Farticoli%2Farrestato-per-corruzione-agente-di-polizia-penitenziaria_1749.htm

Il Centro, Oct. 4, 2010, "Corruzione, oggi dal giudice il funzionario di polizia arrestato," <http://ilcentro.gelocal.it/laquila/cronaca/2010/10/04/news/corruzione-oggi-dal-giudice-il-funzionario-di-polizia-arrestato-2467086>

Ficiesse, Sept. 9, 2010, "Tangenti: Verona, due ispettori GDF arrestati per corruzione," <http://www.ficiesse.it/home-page/4326/tangenti-verona-due-ispettori-gdf-arrestati-per-corruzione-portogallo-minaccia-di-sciopero-polizia-per-vertice-nato>

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.

84e. In law, law enforcement officials are not immune from criminal proceedings.

Yes | No

Comments:
There is no law that protects law enforcement officials from prosecution.

References:
Art. 111 of Constitution
Jurisdiction is implemented through due process regulated by law.

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.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

Comments:

Police are subject to investigation and prosecution. Despite the fact that there can be a degree of loyalty between police officers, in cases of serious offenses, it is difficult for law enforcement agents to avoid investigations.

See, for example, the emblematic case of the investigation of the head of police for events that happened during the disorder following the G-8 meeting in Genova. In this case, the police department (and its head) covered up the actual behavior of police officers. Ultimately the police chief himself has been condemned for his actions.

References:

Bliz quotidiano, May 19, 2001, "G8 Genova, vertici della Polizia condannati per l'irruzione alla Diaz," www.blitzquotidiano.it/.../g8-genova-condanne-polizia-diaz-382114/

Blog Sicilia, Markez, Dec. 14, 2010, "Condannato poliziotto, passava notizie ai boss," palermo.blogsicilia.it/condannato-poliziotto...ai.../21775/

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.