



PROTOCOL OF ACTION

COLLABORATIVE SUPERVISION WITH THE COMMISSIONER-GENERAL EXPO OSAKA 2025

RECITALS

- Article 213 of Italian Legislative Decree No. 50 of 18 April 2016 (hereinafter, the 'Code') defines the functions of the National Anti-Corruption Authority (Autorità Nazionale Anti-Corruzione - ANAC);
- Article 213, paragraph 3(a) of the Code states that the Authority is to monitor public contracts, including those of regional interest, for works, services and supplies in ordinary sectors and special sectors, and contracts that are secret or require special security measures, as well as contracts excluded from the scope of application of the Code;
- The aforementioned Article 213 paragraph 3(h) states that, for tenders of particular interest, the Authority is to carry out collaborative supervisory activities implemented upon the conclusion of memoranda of understanding with the requesting contracting authorities, aimed at supporting them in the preparation of the acts and in the management of the entire tender procedure;
- The supervisory activity carried out pursuant to Article 213 paragraph 3(h) is aimed at strengthening and ensuring the fairness and transparency of the awarding procedures implemented by the contracting authorities, at reducing the risk of litigation in the course of execution, and at deterring further corrupt conduct or, in any case, conduct in conflict with the provisions governing the sector. This activity is carried out in the presence of the conditions and according to the procedural methods governed by the ANAC Regulation on the exercise of collaborative supervision activities in the field of public contracts, as set out in Resolution 160 of 30 March 2022, published in Italian Official Journal No. 89 of 15 April 2022 (hereinafter, the "Regulation");
- Article 3 of the Regulation states that contracting stations, before launching a tender procedure, may ask the Authority to carry out prior surveillance activity aimed at supporting them in the preparation of tender documents, verifying their compliance with sector regulations, identifying suitable clauses and conditions to prevent attempts at criminal infiltration, and monitoring the conduct of the entire tender procedure;
- Article 4 of the Regulation identifies specific prerequisites for the activation of collaborative supervision, which, as a particular form of verification of a mainly preventive nature, in order to be exercised effectively, cannot address the totality of the tenders called by a contracting authority, but must focus on specific cases at high risk of corruption.

To this end, the aforementioned Article 4 indicates as being of particular interest:

- a) contracts awarded as part of extraordinary work programmes for major sporting, religious, cultural or economic events;
- b) contracts awarded following natural disasters;
- c) work on the construction of large strategic infrastructures;
- d) the contracting of works exceeding € 100,000,000 or of services and supplies exceeding € 15,000,000 that are part of work programmes carried out by means of investments of Community funds.

Even in cases not listed above, the Authority may order the granting of requests for collaborative vigilance, in the presence of recurring indications of a high risk of corruption, or, in other words, of anomalous situations that are symptomatic of unlawful conduct or criminal events.

CONSIDERING THAT

- With a Prime Ministerial Decree of 15 June 2022, registered at the Court of Auditors on 27 July 2022, the Section Commissioner-General for Italy for Expo 2025 Osaka was appointed and, at the same time, the Section Commissariat-General for Italian participation in Expo 2025 Osaka (hereinafter the 'Commissariat') was established;
- With the aforesaid Prime Ministerial Decree, Paolo Glisenti was appointed Section Commissioner-General for Italy for Expo 2025 Osaka (hereinafter the 'Commissioner'), who is entrusted with the tasks indicated in Article 2 of the same Decree;
- Article 4, paragraph 5 of the aforesaid Decree states that, in order to ensure the proper conduct of the procedures for the acquisition of goods, services, and works in compliance with the regulations in force and, in particular, with Article 1, paragraph 382, fourth sentence, of Italian Law No. 234 of 30 December 2021, with respect to the projects included in the National Recovery and Resilience Plan, the Commissioner shall request the National Anti-Corruption Authority (ANAC) to establish a Memorandum of Understanding for 'collaborative supervision' activity;
- Article 1, paragraph 382 of Italian Law No. 234 of 30 December 2021 states, in the last sentence, that the provisions on public contracts applicable in the performance of the projects included in the NRRP shall apply to the supply, service and works contracts to be concluded in implementation of this paragraph;
- Pursuant to Article 11 of the Regulation, the same applies, where compatible, among other things, to the activity of prior supervision carried out with regard to entities that may operate in derogation from the regulations on public contracts and that enter into specific protocols of action with the Authority;
- The Commissioner, with memorandum no. COMEXPO2025/U/00031 of 12 September 2022, acquired at the general protocol of the Authority on the same date under no. 71991, requested the ANAC to activate the collaborative supervision in relation to a series of awarding procedures to be carried out for the implementation of the work that it is responsible for, in order to strengthen and ensure the correctness and transparency of the awarding procedures, reduce the risk of litigation during the execution, with a deterrent effect of corruptive conduct or in any case contrasting with the provisions governing the sector, especially with reference to work of a significant economic amount and falling within the scope of sectors particularly subject to the risk of corruption;

- In the aforementioned request, it is emphasised that one of the tasks of the Commissariat is to support the action of the Commissioner-General in order to fulfil the international obligations stemming from the 1928 Convention and the signing of the participation contract, with particular reference to the design and subsequent creation and management of the national pavilion. In particular, the Commissariat intends to carry out, also through the use of public administration central purchasing bodies, after signing specific agreements, a competition regarding ideas for the design of the pavilion and a series of European tenders for the supply of personnel, verification of the design, construction of the pavilion, project management, communication, management of the events scheduled at the pavilion and the catering service;
- The Board of the Authority, at its meeting on 19 October 2022, resolved to approve the request for collaborative supervision pursuant to letter a), paragraph 1, art. 4 of the current Regulation on the exercise of collaborative supervision activities in the field of public contracts, since these are assignments falling within the scope of a major event with economic content and, in any case, an activity envisaged by a regulatory provision contained in the aforementioned Prime Ministerial Decree of 15 September 2022;
- Considering it necessary, therefore, to proceed with the adoption of the acts resulting from the aforesaid decision and thus to formalise the collaborative supervision protocol,

NOW THEREFORE

the National Anti-Corruption Authority (hereinafter also 'the Authority') in the person of its Chairperson, Mr Giuseppe Busia

AND

the Commissioner-General for Expo 2025 Osaka, Dr Paolo Glisenti,

sign this

PROTOCOL OF ACTION

Article 1

(Recitals)

1. The recitals form an integral and substantial part of this Protocol of Action.

Article 2

(Purpose)

1. This Protocol governs the performance of the activity of collaborative supervision, as better indicated in the following articles, aimed at verifying, on a preventive basis, the compliance of tender documents with the regulations governing the sector, and the identification of clauses and conditions suitable to prevent attempts of criminal infiltration.

2. For the purposes of the effectiveness of such supervision, the following articles identify, within particularly critical areas or relevant actions/measures, a limited number of assignments on which to carry out the activity of prior verification of the acts governed by the Regulation on the exercise of collaborative supervision activities in the field of public contracts set forth in Resolution No. 160 of 30 March 2022, published in the Italian Official Journal No. 89 of 15 April 2022.
3. The prior verification procedure referred to in this Protocol will be carried out in accordance with the procedures and time limits set out in the aforementioned Regulation on the exercise of collaborative supervision in the field of public contracts, with the aim of ensuring the timely activation of the procedures and related formalities.

Article 3

(Subject)

1. The work that the Authority will carry out concerns the public contract sector and will focus on the following procedures:
 1. design, design verification, construction and decommissioning of the Italian Pavilion;
 2. administration of personnel;
 3. project management;
 4. communications;
 5. management of events scheduled at the pavilion;
 6. catering service.

Article 4

(Verification procedure)

1. The following documents are subject to prior verification:
 - a) determination to contract;
 - b) the following documents of the award procedure:
 1. contracting determination or equivalent measure;
 2. appointment of the Single Procedure Manager (RUP);
 3. contract notice or letter of invitation or invitation to tender in the case of a negotiated procedure;
 4. tender provisions;
 5. specifications;
 6. Contract/convention template;
 7. order appointing the commissioners and constituting the selection committee;
 8. list of participants in the tender procedure;
 9. list of the names of the economic operators identified as auxiliaries;
 10. exclusion measures;

11. award proposal, with attached signed European Single Procurement Document (ESPD) and supplementary declarations submitted by the provisional successful tenderer;
 12. any other act, determination or document prepared by the contracting authority in the context of the award phase, including the minutes of the tendering procedure and of the sub-procedure for the verification and exclusion of abnormally low tenders, which shall be transmitted after signature, before the adoption of measures with external relevance;
 13. contract or agreement concluded.
- c) the following acts of the execution phase:
14. variations in progress and contractual amendments;
 15. proposals for contractual termination or other acts adopted in self-defence;
 16. information on amicable agreements and settlements that are intended to be concluded, in order to verify the correctness of the procedures laid down in Italian Legislative Decree 50/2016;
 17. list of names of subcontractors, to be communicated prior to the authorisation of subcontracting.
2. However, the Authority reserves the right to request further documentation deemed useful and/or necessary for the proper performance of the collaborative activity.

Article 5

(Actions not subject to prior verification)

1. Documents listed in Article 4, paragraph 1, above that relate to procedures carried out through direct awarding with a total estimated value of less than € 150,000 are not subject to prior verification of legality.
2. The Commissioner undertakes to inform the Authority, by means of an appropriate report, of the procedures referred to in paragraph 1 concluded in the previous two months, indicating schematically the subject of the contract, the identification data of the contractor and the contractual amount.
3. In any case, the Authority reserves the right to request, in whole or in part, the acts adopted for the measures referred to in paragraph 1, in order to carry out subsequent spot checks.

Article 6

(Further forms of collaboration)

1. The Corruption Prevention and Transparency Manager of the Commissariat, also outside the procedures indicated in Article 3 of this Protocol, in the presence of recurring indications of a high risk of corruption, may promote the prior verification of the documents and acts of the stages of the tender procedure or of the performance of the contract, requesting the direct intervention, including inspection, of the Authority.

2. The Commissioner undertakes to include the following clauses in the tender and/or contractual documentation relating to each award:
 - a) Clause 1: *"The contractor or the subcontractor in the case of subcontracting shall undertake to notify the judicial authorities promptly of any attempts at extortion which may have been made, in any way, against person(s) belonging to the "supply chain", the contractor, the corporate bodies or the company directors. The aforementioned requirement is fundamental for the execution of the contract, and non-compliance will result in the express termination of the contract, pursuant to Article 1456 of the Italian Civil Code, at any time that precautionary measures are ordered or there is an indictment for the crime of malfeasance in office referred to under Article 317 b) of the Italian Criminal Code, in respect of public administration officials that have exercised functions relating to the awarding, drafting and execution of the contract"*;
 - b) Clause 2: *"The Commissioner or the contractor, in the case of subcontracting, undertake to avail themselves of the express termination clause referred to in Article 1456 of the Italian Civil Code whenever a precautionary measure has been ordered against the contractor or the members of the corporate structure, or the managers of the company with specific functions relating to the award, stipulation and execution of the contract, or if an indictment has been issued for any of the offences referred to in Articles 317 and 318 of the Italian Criminal Code"*.
3. In the cases falling under the application of the clauses referred to in letters a) and b) of the preceding paragraph, the exercise of the termination power by the Commissioner is subject to the prior communication to the ANAC, which is responsible for assessing the possible, alternative continuation of the contractual relationship, if there are conditions set forth in Article 32 of Italian Law Decree no. 90/2014.
4. This is without prejudice to the right of the Commissioner to introduce the clauses referred to in sub-paragraphs a) and b) of the preceding paragraph in further contractual agreements, also not in the cases of award of public contracts.

Article 7

(Collaborative supervision procedure)

1. The verification procedure is as follows:
 - a) the acts referred to in Article 4 shall be transmitted to the Authority prior to their formal adoption by the Commissioner. Communications shall take place solely through the e-mail address uos@anticorruzione.it in order to ensure speed in the supervisory process, without prejudice to the tracking of incoming and outgoing flows.
 - b) following the transmission, the Special Operations Unit (hereinafter SOU) carries out the verification of the acts subject to prior checking, which ends with the preparation of a proposal of observations submitted to the Chairperson of the Authority for approval;

- c) the comments under b) shall be communicated promptly to the Commissioner;
 - d) the Commissioner shall comply with them, amending or replacing the act accordingly and sending a feedback note, together with the documentation.
 - e) if he or she does not agree with the observations, the Commissioner shall submit the reasons to the Authority. The SOU formulates the concluding remarks and promptly transmits the opinion signed by the Chairperson;
 - f) having received the Authority's concluding remarks, the Commissioner may decide whether to comply or, in the exercise of his or her administrative discretion, not to comply by taking the steps within his or her competence.
2. With reference to the procedures for which the Commissioner makes use of the provision set forth in Article 4, paragraph 5, first sentence, of the Prime Ministerial Decree of 15 June 2022, the notifications under letters a)-f) above shall also involve the Single Central Purchasing Body identified.
3. The Commissioner, by entering into the Protocol, undertakes to adhere to the pre-litigation petitions filed, pursuant to Art. 211, paragraph 1, of Italian Legislative Decree No. 211. 50/2016, by other authorised parties during the course of the tender procedure, complying with any opinion issued by the Authority.

Article 8

(Termination of the Supervision Protocol)

1. The Board of the Authority may order the termination of the collaborative supervision protocol:
- a) when, after at least 12 months have elapsed from the publication of the Protocol, the beneficiary contracting authority has not forwarded to the Authority any tender documentation or, in any case, has not requested any intervention by the Authority itself; requests that are merely dilatory, do not fall within the scope of the collaborative supervision or, in any case, outside the Authority's competences, do not produce any interrupting effects of the aforesaid deadline;
 - b) if the contracting authority fails to comply with the obligations of prior communication of the acts and tender documents referred to in Articles 4 and 7;
 - c) if the Commissioner does not comply with the observations made by the Authority in the event that the failure to comply is considered particularly serious;
 - d) for substantiated and justified reasons of merit or expediency.

Article 9

(Duration)

1. This Protocol shall commence on the date of signature of the last Party to sign it and shall remain in force until the conclusion of the event. It is understood that, if initiated while the Protocol is in force, the collaborative supervision activity will continue, without the need to formally renew the Protocol, until the completion of the execution phase of the procedures already subject to prior verification.

Article 10

(Intermediate verifications)

1. After the first 12 months of cooperation, the Authority and the Commissioner will review the effectiveness of the activities implemented with a view, among other things, to updating or adjusting the subject matter of the cooperation.

The Commissioner, also for the purpose referred to in paragraph 1, shall send to the Authority, by 31 January of each year, a report on the proceedings/contracts that were subject to collaborative supervision in the previous year, specifying

- a) the date of publication of the acts subject to collaborative supervision;
- b) the status of the proceedings;
- c) the presence of any disputes/reservations/litigation.

Article 11

(Requests for access to documents)

1. Requests for access to documents concerning, specifically, the notes in which the Authority makes its observations in the performance of collaborative supervision under this Protocol, will be processed and examined exclusively by the Commissioner, after informing the Authority.

Article 12

(Prerogatives of the Commissioner-General for Expo 2025 Osaka)

1. The activities carried out by the Authority within the framework of the collaborative supervision governed by this Protocol of Action do not constitute or determine interference in the decision-making phase, which remains the exclusive prerogative of the Commissioner, nor in any way limit his or her responsibility in this regard. The supervisory, reporting and sanctioning powers institutionally attributed to ANAC therefore remain unaffected.

25/10/2022

**The President of the National
Anti-Corruption Authority**

Attorney Giuseppe Busia

**The Commissioner-General for Expo
2025 Osaka**

Paolo Glisenti