

University of Naples Parthenope

SIAC 2019

**Transparency and legality of the civil servant activities:  
Legislative and economic outlines from the EU-  
anticorruption experiences**

Sarajevo, 16<sup>th</sup> July 2019

**TRANSPARENCY AND PREVENTION OF CORRUPTION  
IN THE PA. THE CASE OF ITALY**

Federica Cacciatore

Expert – Italian Government, Dept. of Public Function  
f.cacciatore@governo.it

1. Introduction
  - \* Transparency and Anticorruption
  - \* Typologies of transparency & main tools
2. Transparency policies & reforms in Italy
3. Anticorruption beyond transparency: main tools
4. Some evidence on the overall impacts

# TRANSPARENCY & ANTICORRUPTION: THE CONNECTION

**Government transparency** refers to the extent to which external actors are able to regularly access information that allows them to understand what is going on in government.

It is a means to achieve multiple objectives, from improving financial performance to preventing corruption and fostering greater trust in government.

## \* **PROACTIVE TRANSPARENCY**

Information, documents and data are released without any specific request by citizens

## \* **REACTIVE TRANSPARENCY**

Information, documents and data are released only upon citizens' request

## \* **PROACTIVE TRANSPARENCY**

Mostly, info publishing obligations & open data

Institutional websites

Datasets, machine-readable, available in bulk, with data that can be reused

## \* **REACTIVE TRANSPARENCY**

Procedural transparency upon request; FOI

Upon request by interested parties

Availability of data and documents owned by the P.A.

		P.A.'s POSITION	
		<i>passive</i>	<i>active</i>
TRANSPARENCY'S SCOPE	<i>particular</i>	Access to procedures	Website publication
	<i>general</i>	FOI (civic general access)	Open data

Source: adapted from F. Di Mascio, A. Natalini, P. Rubecchini (2017), 'Quattro trasparenze per una amministrazione ancora chiusa', *Giornale di diritto amministrativo*, Gli Speciali, 4-10.

## ⇒ LIKELY INCENTIVES FOR GOVERNMENTS?

**Majoritarian** systems → **REACTIVE** disclosure might be used by oppositions to counteract a partisan monopoly of government

**Consensual** systems → **PROACTIVE** disclosure might support information sharing among élites and intra-coalition monitoring and assessments

## ITALY IN THE LATE 80s:

- \* Widespread corruption
- \* High political competition



**Political  
uncertainty**

- ✓ Need for *politicians* and *institutions* to show credible commitment to public integrity
- ✓ Pressures from *civil society associations* and *interest groups*

# TRANSPARENCY REFORMS IN ITALY: THE NORMATIVE FRAMEWORK

PERIOD	WHAT	MAIN PROVISIONS	TYPE OF TRANSPARENCY
Before 1990	Transparency issues did not feature in the political agenda. The general principle of administrative secrecy was in force.	Law no. 3/1957	None
Early 90s	Unrestricted FOI was introduced at the local level	Law no. 142/1990	Reactive
	<b>Right to access documents (involved parties)</b>	<b>Law no. 241/1990</b>	<b>Reactive</b>
	Establishment of the Commission for the access to administrative documents (CADA)		
	Establishment of Public Relations Offices (PROs)	Leg. Decree no. 29/1993	Reactive
2000s	Introduction of publication obligations regarding managing information (mostly, public assets)	Leg. Decree no. 150/2009	Proactive
	Regulation of the functioning of the Independent National Commission for Evaluation, Transparency and Integrity ( <b>CiVIT</b> ) → (Law no. 190/2012) National Anticorruption Authority ( <b>ANAC</b> )		
Early 10s	<b>Open data by default</b>	<b>Law Decree no. 179/2012</b>	Proactive
	Agency for Digital Italy ( <b>AgID</b> ) entrusted with an oversight role		
	Dedicated website <a href="http://www.dati.gov.it">www.dati.gov.it</a>	<b>Leg. Decree no. 33/2013</b>	<b>Proactive</b>
	<b>Code of transparency, enlarging the scope of publication obligations to different areas (from 96 to 240 appr.)</b>		
	Citizens (indistinctly) entrusted with civic access right on lacking information		
<b>From 2016</b>	<b>FOI</b>	<b>Law no. 124/2015</b> <b>Leg. Decree no. 97/2016</b>	<b>Reactive</b>

# TRANSPARENCY REFORMS IN ITALY: THE NORMATIVE FRAMEWORK

- \* Procedural access for interested parties (Law no. 241/1990)
- \* Civic access right limited to lacking info on the websites (Law no. 33/2013)
- \* FOI extended to everyone (Leg.Decree no. 97/2016), but with some limitations...

**REACTIVE**  
transparency  
provisions



# TRANSPARENCY REFORMS IN ITALY: THE NORMATIVE FRAMEWORK

## \* ...Limitations of the FOI 'Italian Style':

**What is foreseen in principle:** everyone has "the right to access data and documents owned by public administrations, further than those that are object of publication [...], in accordance with the limitations related to the protection of legally relevant interests". *Release must take place within 30 days.*

**REACTIVE**  
transparency  
provisions



**Who sets up such limitations and exclusions:** ANAC, through its Guidelines (*Delibera n. 1309/2016*) adopted in agreement with the Data Protection Authority.

## \* ...Limitations of the FOI 'Italian Style':

**Which kinds of limits:** some are related to the need to balance transparency and public interests, such as:

- ⇒ public security and law and order
- ⇒ national security
- ⇒ defense and military issues
- ⇒ international relations
- ⇒ politics and the financial and economic stability of the State
- ⇒ investigations into crimes and prosecution of criminals
- ⇒ normal conduct of inspections

**REACTIVE**  
transparency  
provisions



## \* ...Limitations of the FOI 'Italian Style':

**Which kinds of limits:** others are related to the need to balance transparency and private interests, such as:

- ⇒ protection of personal data
- ⇒ freedom and secrecy of correspondence
- ⇒ commercial and economic interests of individuals or legal entities, including their intellectual property, copyright and trade secrets

Plus, the **rule of law**, through which other matters are subtracted from total disclosure.

**REACTIVE**  
transparency  
provisions



\* ...the latest provisions:

## Creation of a **Competence Centre for FOIA:**

Within the Department of Public Function.

- ⇒ **Aim:** to provide the P.A. with a shared knowledge base (legal, procedural, organizational and technological) relating to FOIA implementation.
- ⇒ **Website:** <https://www.foia.gov.it>, where administrations can access an updated set of contents, tools, and guidelines, related in particular to:
  - \* the main normative provisions;
  - \* practical indications, FAQs and procedural tools, provided by the Competence Centre for FOIA (including a series of videoclips with experts explaining its functioning – [\*FOIA in pillole\*](#));
  - \* an Observatory on the implementation of FOIA (including monitoring data gathered and processed by the CC).

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# TRANSPARENCY REFORMS IN ITALY: THE NORMATIVE FRAMEWORK

- \* Open data by default & dedicated website  
<https://www.dati.gov.it>  
(Law Decree no. 179/2012)
- \* Obligations for P.A. to publish information  
on their website  
(Law 150/2009 and Leg. Decree 33/2013)

**PROACTIVE**  
transparency  
provisions



# TRANSPARENCY REFORMS IN ITALY: THE NORMATIVE FRAMEWORK

## \* Publishing obligations:

**To whom they apply:** all levels of government (state – ministries, government -, regional, local), independent authorities, universities, agencies, public bodies in general.

**PROACTIVE**  
transparency  
provisions



## Consequences for non-compliance:

### ⇒ **Sanctions**

Non-submission or incomplete publication is punished with a fine from 500 to 10.000 euros imposed by ANAC + act is published on the p.a.'s website & on ANAC's website.

### ⇒ **Managerial responsibility**

Performance evaluation (affecting additional wage linked to personal performance)

Personal responsibility for possible damage to the P.A.'s reputation (judicial proceedings)

## \* Publishing obligations:

**What are the main areas covered:** under the section “Transparent Administration”, we find three main categories:

*(non-exhaustive lists)*

### **1) Organization and activities and asset declaration of some typologies of subjects:**

- ⇒ political and administrative bodies
- ⇒ organizational chart
- ⇒ articulation of the offices and corresponding executives in charge
- ⇒ phone numbers and contacts
  
- ⇒ asset declaration

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transparency  
provisions



## \* Publishing obligations:

### What are the main areas covered:

#### 2) The use of public resources:

- ⇒ data relating to the budget
- ⇒ details of the properties owned;
- ⇒ results of the administrative and accounting control
- ⇒ service charters and quality standards
- ⇒ average payments related to purchases of goods, services and supplies

#### 3) Other publishing obligations:

- ⇒ administrative proceedings
- ⇒ collaborators and consultants
- ⇒ vacancy notices
- ⇒ grants and subsidies
- ⇒ public procurements

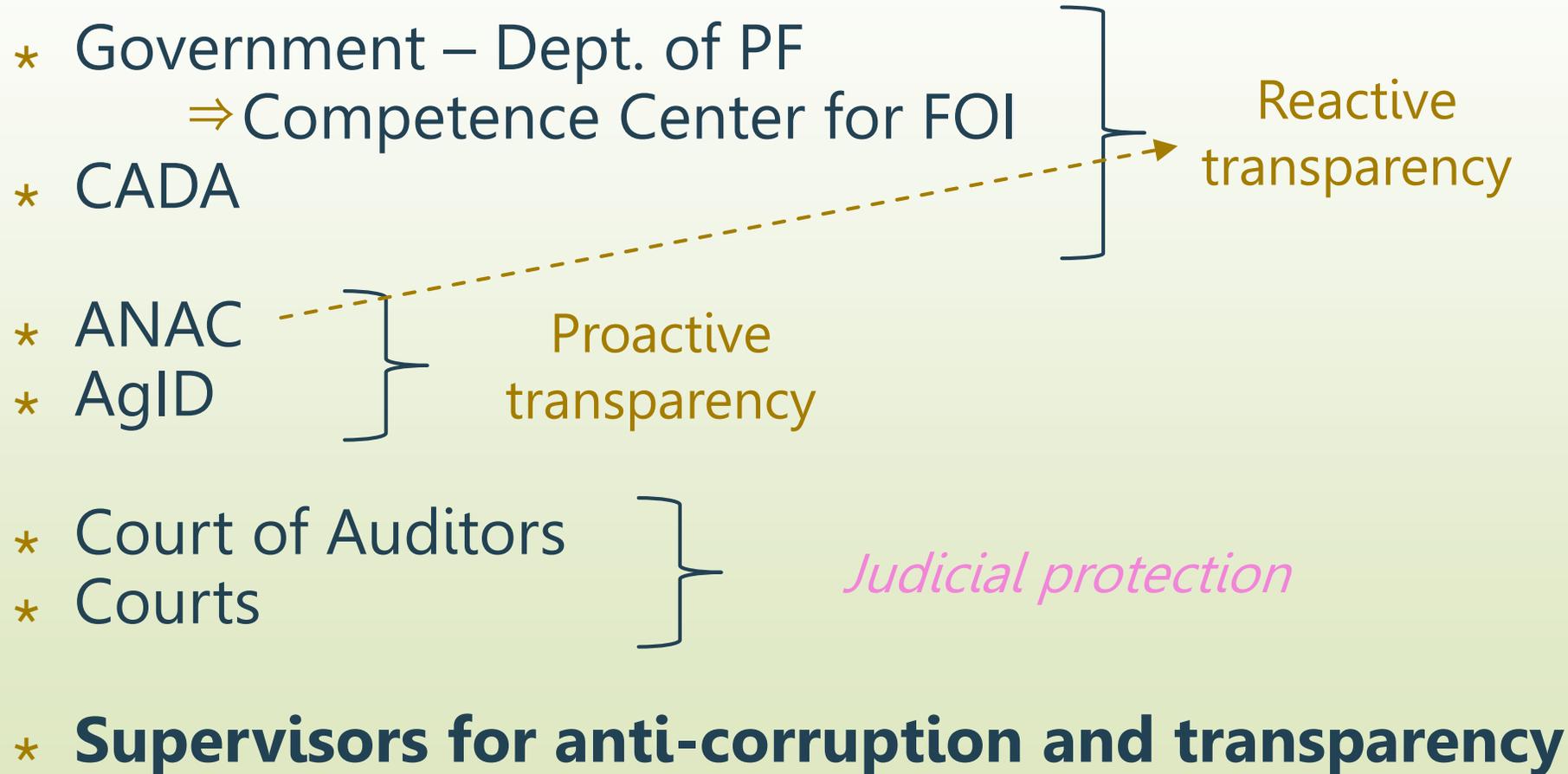
**PROACTIVE**  
transparency  
provisions



## SOME EXAMPLES

- \* Italian Presidency of the Council of ministers
- \* University of Naples Parthenope
- \* Lazio Region \*
- \* National Anticorruption Authority

# TRANSPARENCY REFORMS IN ITALY: MAIN INSTITUTIONAL ACTORS



# TRANSPARENCY REFORMS IN ITALY: NON INSTITUTIONAL ACTORS

- \* Citizens
  - ⇒ Individuals
  - ⇒ Consumer associations
- \* NGOs
- \* Academic societies
- \* Parties & Movements

# TRANSPARENCY REFORMS IN ITALY: THE SUPERVISOR (FOR EACH P.A.)

## SUPERVISOR FOR ANTI-CORRUPTION AND TRANSPARENCY (Law no. 190/2012)

- ★ Appointed by the organization's political body
- ★ Prepares the draft **Three-year Plan for Corruption Prevention and Transparency (PTPCT)**
- ★ Monitors implementation and organization's compliance with the **PTPCT**
- ★ Organizes staff training
- ★ Prepares an annual report to the political body
- ★ Reports about corruption cases to the judicial authorities
- ★ Supervises over the P.A.'s compliance with transparency obligations
- ★ Reports about cases of compliance or delayed compliance of the obligations of publication to the Independent Body of Evaluation (OIV), ANAC and, in serious cases, to the disciplinary office
- ★ Supervises over the regular implementation of the "simple civic access" (*proactive/reactive transparency duty*)

# ANTICORRUPTION BEYOND TRANSPARENCY: THE MAIN TOOLS

## 1. PNA (National Anticorruption Plan)

- ⇒ First adopted in 2013 by ANAC (then, CIVIT) upon proposal by the Dept. Of PF, and since then amended regularly
- ⇒ Based on the Guidelines issued by an interministerial committee
- ⇒ Sets out the strategic political objectives to contrast corruption nationwide
- ⇒ Provides guidelines and support to P.A.s in charge of adopting the PTPCT

## 2. PTPCT (Three-year Plan for Corruption Prevention and Transparency)

- ⇒ Adopted by the P.A.'s political body for 3 years, to be updated yearly
- ⇒ As of 2017, it encompasses the former *Three-year Transparency Programmes*
- ⇒ As of July 1<sup>st</sup>, Supervisors can upload and submit them on an *ad hoc* platform (on ANAC's website), where also a forum will be hosted

## \* PNA (National Anticorruption Plan)

### ⇒ **Strategic approach**

*Incremental risk based* approach, aiming at:

- reducing corruption opportunities, and
- supporting cooperation in detecting corruption cases.

### ⇒ **Main risk areas identified** (in 2012)

1. Recruitment and career development
2. Job, services and supplies procurement
3. Grants, permits, promotions, licences, upgrades with no economic impact
4. Grants, permits, promotions, licences, upgrades with economic impact

# ANTICORRUPTION BEYOND TRANSPARENCY: THE MAIN TOOLS

## \* PNA (National Anticorruption Plan) – Risk assessment table

Risk assessment	
Probability Assessment Indexes	Impact Assessment Indexes
<b>Procedure's level of discretion</b> (no discretion to total)	<b>Organizational impact</b> (% of personnel involved)
<b>External impact</b> (y/n)	<b>Economic impact</b> (past judgments sentencing redress) (y/n)
<b>Procedure's complexity</b> (no. of administrations involved)	<b>Reputational impact</b> (newspaper published in the past and their diffusion)
<b>Economic value</b> (no impact, internal benefits to external benefits)	<b>Organizational, economic and image impact</b> (potential organizational level to which the person at risk belongs)
<b>Procedure's fragmentability</b> (y/n)	

# ANTICORRUPTION BEYOND TRANSPARENCY: THE MAIN TOOLS

## \* PNA (National Anticorruption Plan)

⇒ Main areas covered (last update, November 2018)

### GENERAL PART

1. Evidence from the previous assessments
2. Subjects entitled to adopt anticorruption measures
3. Annual adoption of the PTPCT
4. Role & powers of the Supervisors for CP & T
5. Personal requirements for Supervisors' appointment
6. Conditions for Supervisors' dismissal
7. Transparency and GDPR, Reg.EU no. 2016/279
8. Codes of conduct
9. *Pantouflage* (revolving doors)
10. Civil servants' turnover

### SPECIAL PART

1. Fiscal agencies
2. Management of structural funds and national budget for cohesion policies
3. Waste management
4. Simplification measures for small municipalities

# ANTICORRUPTION BEYOND TRANSPARENCY: THE MAIN TOOLS

## \* **PTPCT – standard contents**

- ⇒ Subjects, roles, responsibilities, strategic objectives
- ⇒ Context analysis (*external & internal*)
- ⇒ Integration between PC&T and other strategic policies
- ⇒ Risk evaluation and main methodologies
- ⇒ General and specific measures to fight corruption
- ⇒ Section on TRANSPARENCY
- ⇒ Monitoring activities

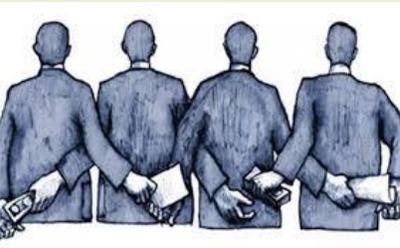
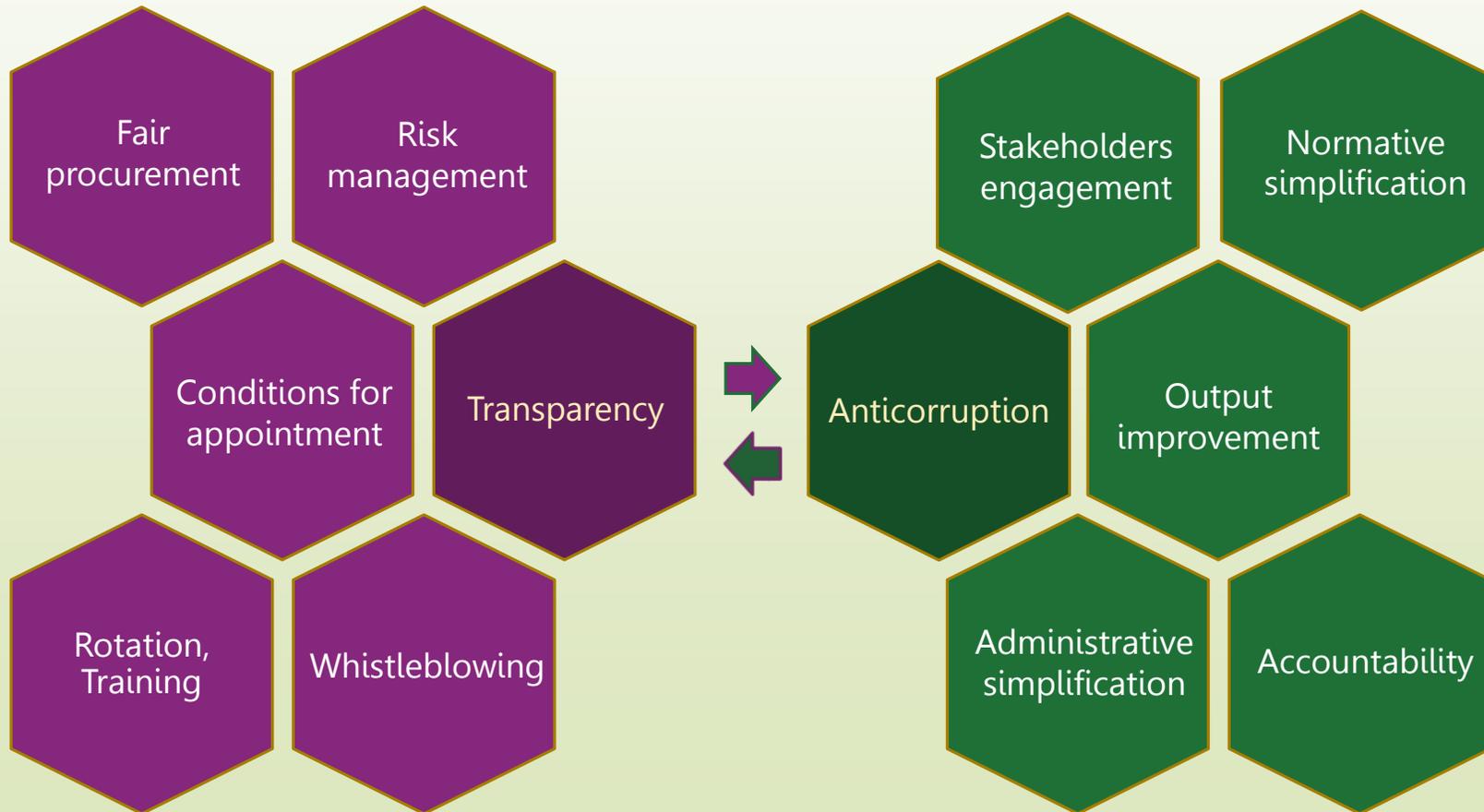
# ANTICORRUPTION BEYOND TRANSPARENCY: THE MAIN TOOLS

- \* **PTPCT – Main implementation criticisms detected (ANAC, 2015)**
  - ⇒ With appr. 96% P.A.s having published their Programme, and appr. 63% having updated it at least once, the level of formal compliance was deemed good
  - ⇒ PTPC's overall quality was insufficient, especially regarding:
    - ⇒ *context analysis*
    - ⇒ *mapping of the procedures*
    - ⇒ *risk assessment*
    - ⇒ *coordination with measures in the Performance Plan*
    - ⇒ *engagement of external/internal actors*
    - ⇒ *PTPCT monitoring*
  - ⇒ Context variables contributed to affect their quality → type of administration, geographical location, organizational size...
  - ⇒ PTPCT's updates improved than the previous versions → learning factor

# ANTICORRUPTION BEYOND TRANSPARENCY... ...AND THE OTHER WAY ROUND

**ANTICORRUPTION does not only mean TRANSPARENCY**

**TRANSPARENCY does not only mean ANTICORRUPTION**



# TRANSPARENCY & ANTICORRUPTION POLICIES: WHAT'S NEXT?

## *Assessing the policy impacts is crucial*



- ✦ Were transparency provisions implemented properly?
- ✦ Did they effectively enhance administrative transparency?
- ✦ Did more transparency help to achieve better administrative products?
- ✦ Who benefited from them?
- ✦ Should the policy be revised/integrated/repealed?

\*\*\*\*\*

- ✦ Were anticorruption provisions implemented properly?
- ✦ Did they help to reduce corruption?
- ✦ How could this be measured and assessed?
- ✦ What about administrative traditions & the cultural environment?

## Reactive Transparency

- ⇒ Right of access: contentious before courts reduced by the CADA
- ⇒ FOI: requests were numerous in the first period  
Appr. 65% of them accepted



## Proactive Transparency

- ⇒ Publishing obligations: adoption of PTPCTs increased over the years.  
Weak bottom-up supervision by private citizens (few «simple» civic access requests)
- ⇒ Open data: data on their *quantity*, but little response on their *quality*

*For info:*

FEDERICA CACCIATORE

f.cacciatore@governo.it