



Virtual seminar
**Accountability, anti-corruption and transparency policies
in Public owned enterprises (POEs)**

4 June 2020 (10.00 – 13.00)
Webinar



Italian case study

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Relevance of the topic (for Italy)



- POEs, strongly proliferated in Italy during the last two or three decades, involving nearly all sectors of the economy

in the words of the Italian Court of Auditors, 'an emblematic case of public intervention in the economy that has progressively acquired worrisome dimensions, demanding radical measures to limit negative effects on public finances and on the economic system in general' (*Corte dei Conti, 2018, p. 17, Translation by the author*).

- According to the CPI ([Corruption Perception Index](#)), Italy is placed among the worst performing countries in the G7 (7th on 7) and the EU members (23th on 27).
- Corruption is still perceived as a key and pervasive phenomenon, affecting all sectors of society, both in the public and the private sphere (GRECO, 2017).



POEs in Italy

(numbers, 2017 data)



- 6.310 POEs in activity (2017 data) + 1.844 other entities (foundations, public institutions, not classified entities etc.)
- 847.232 people employed in POEs
- POEs generate 7,5% of the value added in the 'industry' and 'service' sectors
- 59,2% of POEs (74.1% of total employment) are controlled (> 50%) by public administrations
- 67,5% are local POEs, but POEs controlled by the national Ministry of economy and finance employs the largest share (56,5%) of people.



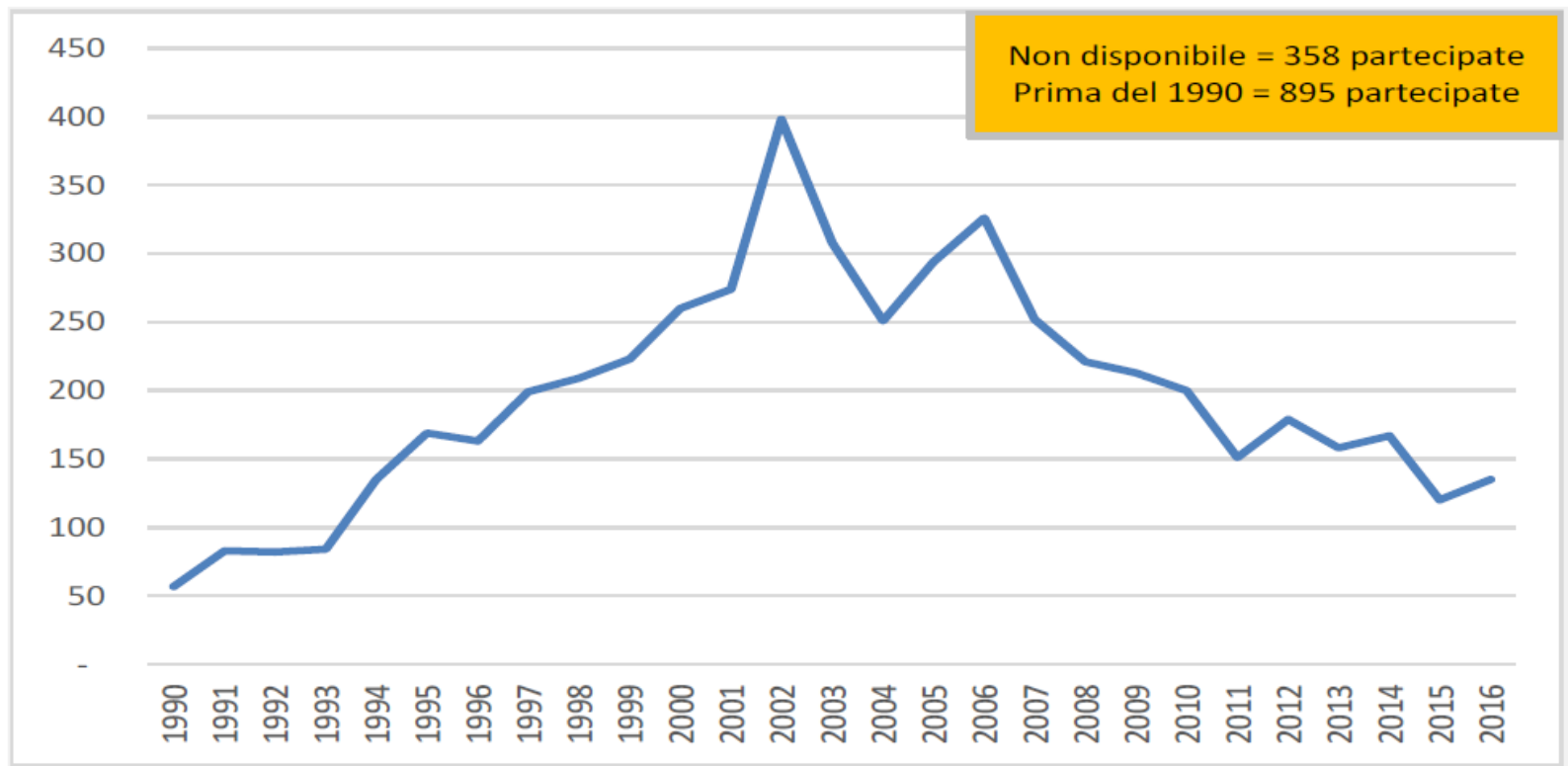
POEs in Italy (Trend)



- strong favour towards satellization and corporatization since the beginning of the '90s (escape argument very strong)
- private law entities clearly prevalent (75% of total participated entities and 95,5% of people employed)
- initially subject to the same laws and regulations as other enterprises
- since 2006 subject to specific and increasing limits, special norms and derogations (recruitment, control by the Court of Auditors, restriction on spending, etc.)
- only listed SOEs demonstrate no significant deviations from privately held companies
- their reform (reduction) considered as an indispensable step in the spending review of august 2014



POEs in Italy: private law companies by year of foundation



Source: Ministry of the Economy and Finance



Consolidated Code on POEs

(Legislative decree 175/2016, modified
by Legislative decree 100/2017)



- It applies only to joint stock and limited liability companies
- Restrictions and motivations to the use of POEs
- Established and maintained only if necessary for the pursuit of the institutional goals of the controlling public authority (*comply or explain*)
- POEs must be scrutinized on an annual basis
- Restrictions and limits are tighter for controlled entities (max. for in-house POEs)

(‘It brought those unlisted companies in which a public entity held equity back into the bureaucratic administration fold from which they had previously been shooed away’, Sorrentino, 2020)



POEs and anti-corruption (1)



Legislative decree 231/2001:

- provides for a new form of liability defined as **'administrative'** that is independent from the liability of the individual
- covers a large range of offences that can be committed by persons in the interest or to the advantage of the company (**active corruption**)
- establishes organisational, managerial and supervisory **conditions** that can exempt company body from liability

Private companies approach



POEs and anti-corruption (2)



Law 190/2012

Introduces for the first time in Italy an organic system to prevent corruption and illegality in the public administration (**passive corruption**).

Main contents:

- a corruption prevention plan that must identify the activities which pose a high risk of corruption;
- a person responsible for the Prevention of Corruption (compliance officer) who must assess the suitability of the corruption prevention plan and oversee both its implementation and operation and the effectiveness of the control procedures and processes;
- a code of ethics and conduct: a set of values, principles and guidelines for behavior to which employees should aspire to as part of their work;



POEs and anti-corruption (3)



Law 190/2012 (foll.)

- risk assessment and risk prevention measures, which coincide with procedures and protocols that cover sensitive issues such as conflict of interest, the authorization to make appointments outside the company, incompatibilities and ineligibility for the top positions, whistleblowing, and the rotation of staff;
- reinforcement of transparency and disclosure measures integrated in the anti-corruption strategies (obligation to publish data, documents and information regarding the organization and its activities; creation of a specific section of the internet site; civic access by citizens).



Guidelines on POEs by the National Anti-corruption authority (ANAC) 2015 and 2017



- double regime of compliance:
public controlled enterprises are obliged to comply to legislative decree n.231 as private companies,
but at the same time they are obliged to comply to law n.190
- less stringent discipline for entities only participated



2015 and 2017 ANAC Guidelines on POEs



Implementation of transparency measures in different types of POEs

	Companies under public control	Companies under public participation	Listed companies
<i>Responsible for Corruption Prevention and Transparency</i>	Yes	Not mandatory	Not mandatory
<i>Publication of mandatory information</i>	Whole organization Whole activities	Only public interest activities	Only public interest activities
<i>Website - Section "Società trasparente"</i>	Yes	Not mandatory	Not mandatory
<i>Civic access</i>	Yes	Only information related to public interest activities	Only information related to public interest activities
<i>Integration of transparency in corruption prevention measures</i>	Yes	Not mandatory	Not mandatory

Source: Bertocchi, 2017



Conclusions / future developments



- Address ambiguities and the 'grey area issue'
- Simplify and clarify the legal context
- Focus on the public mission and on the best organisational forms to achieve it
- Clarify and fortify the role and the scope of the public ownership
- Laws, regulation and codes have a role, but cannot be enough (and can also be too much..)
- Avoid “over-compliance framework” which can lead to a “conformity trap”
- Avoid risks of formal and paper based compliance
- Focus on the values that public and civil servants should adhere
- Emphasize the role of relational contracting, intrinsic motivation and trust