



TRANSPARENCY
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Associazione contro la corruzione



**INTEGRITY PACTS AND
CIVIL SOCIETY
MONITORING
IN LAW**

Challenges
&
Opportunities

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Integrity Pact Stakeholder Event
14 December 2017, Bucharest

SUMMARY

- **The Milan case**
- **IP in Italian law**
- **IP in European law**
- **«Soft» version of IP**
- **The IP «2.0»**





THE MILAN CASE

Once upon a time...

2000 - TI-Italy proposed IP to Milan Municipality

2001 - Milan adopted Integrity Pact

Why Milan?



90s: *manipulite* and *tangentopoli*.
Starting point: **Milan**, 17 February **1992**





THE MILAN CASE

Numbers of success

From 2002 to 2014:

- ✓ **465 exclusions** from the tenders (211 in 2002)
- ✓ **166 companies** excluded
- ✓ euro **2,6 billion** euro collected from forfeiture of bid security bond

Refusal of collusive agreements (“substantial links”):

- ✓ 22 companies out of 40 were based in the **same Province** in Sicily (Southern Italy)
- ✓ 7 companies had the **same address** in Caltanissetta (Sicily)

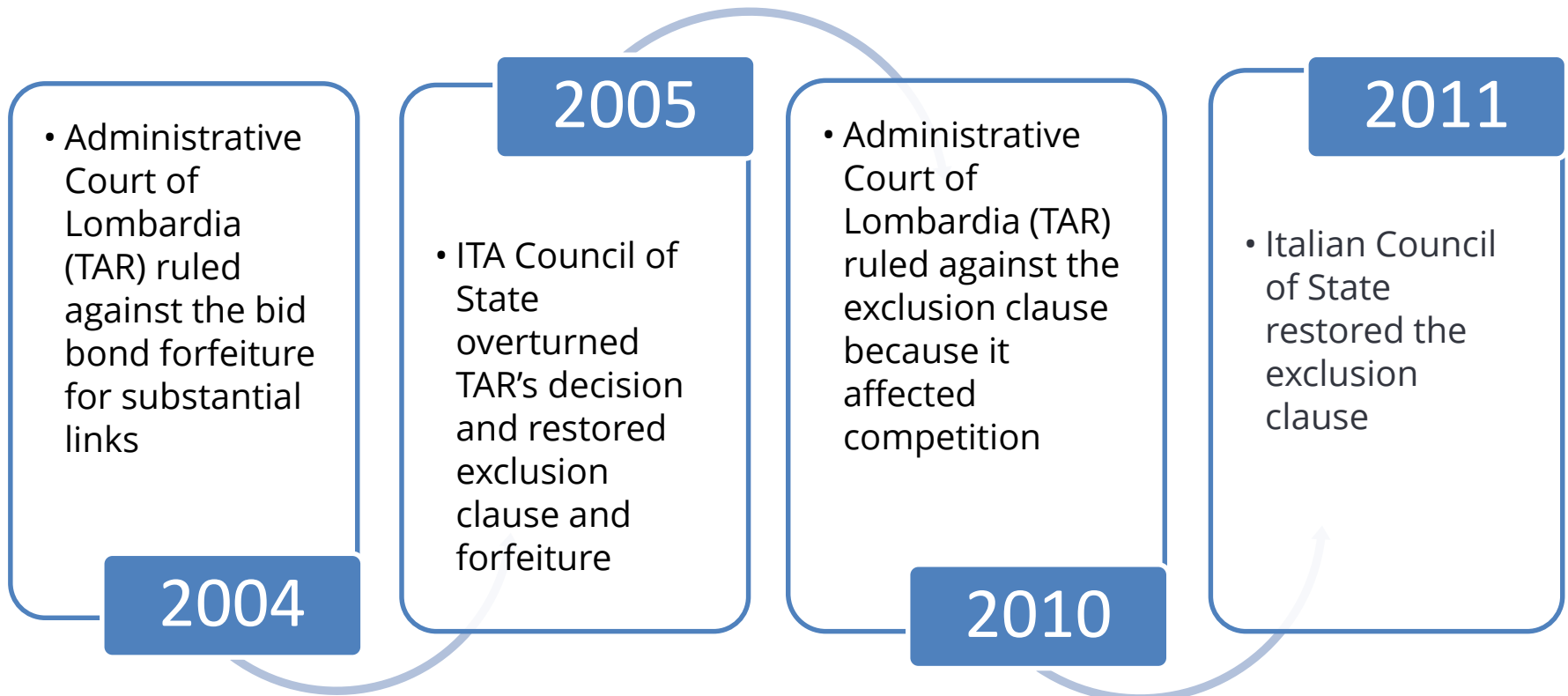




THE MILAN CASE

A hard work

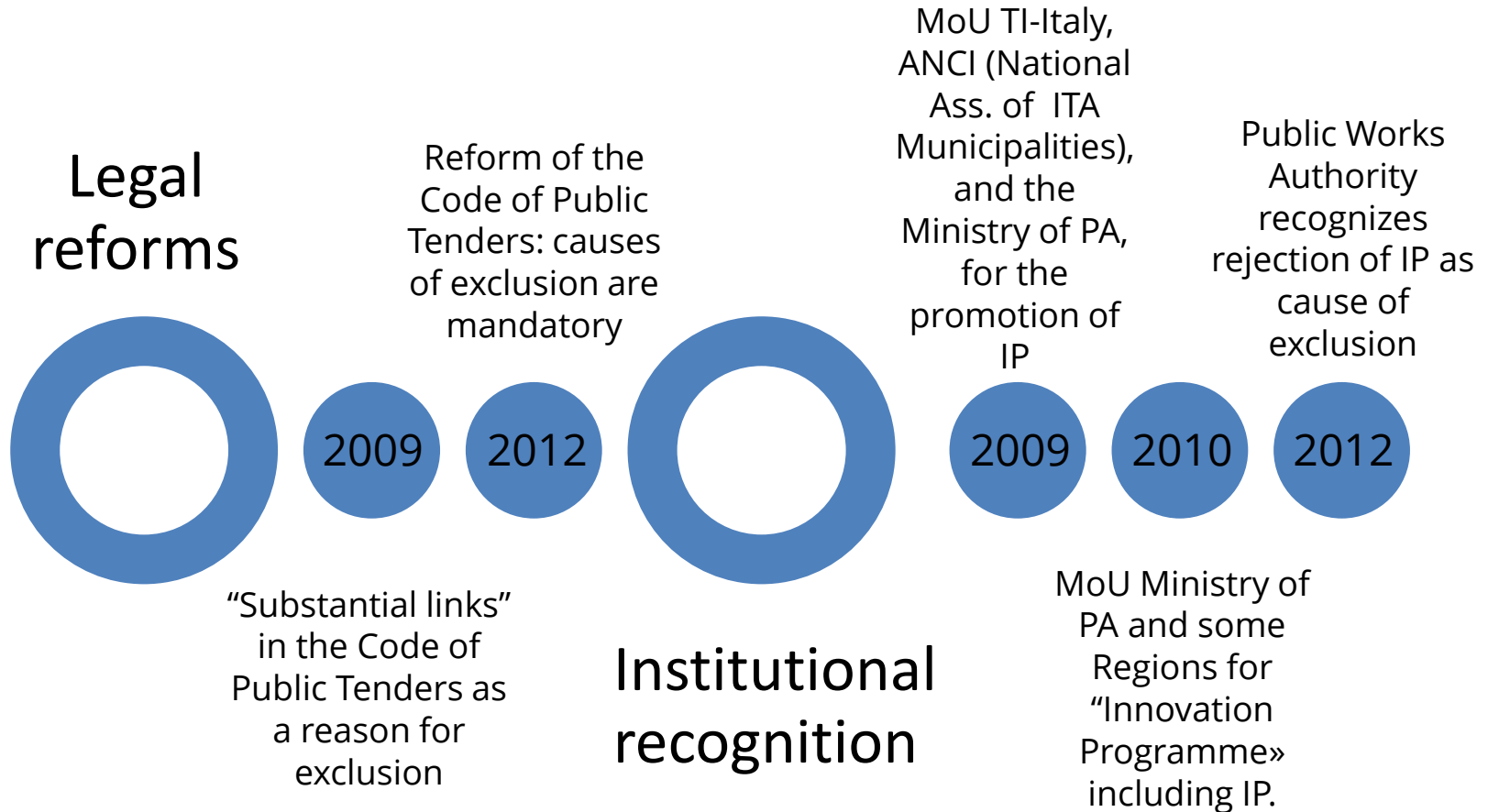
Complainants for exclusion and compensation





IP IN ITALIAN LAW

First steps





IP IN ITALIAN LAW

Main achievement

2012 - Anti-Corruption Law (190/2012):

“Contracting authorities may provide in the tender notices or letters of invitation, that non-compliance of the provisions contained in the protocols of legality or in integrity pacts is a cause for exclusion from the bid.”





IP IN EUROPEAN LAW

Friendly context

1. The exclusion of a company for not having signed the IP in a tender procedure is judged in line with fundamental rules and general principles of the FEU Treaty by **the European Court of Justice** ([Judgment of the Court 22 Oct 2015, C 425/14](#)). The judgment is binding for legislators, judges, public officers of MS and is a strong landmark for the interpretation of the secondary legislation (directives) and national laws.

2. Several **legal literature and articles** confirm the interpretation of the European Court of Justice.





IP IN EUROPEAN LAW

Friendly context

3. The IP integrates **conditions of exclusion** of Art. 57 of the **Directive 2014/24/UE**.
4. IP is considered a tool to prevent corruption. The **action against corruption** is among the general objectives of the new European laws on public tenders (Directives 2014/24/UE, 2014/25/UE, 2014/23/UE) and national legislation must contribute to the same scope.





«SOFT» VERSION OF IP

Differences

Actors

- Monitor is not included

Phases

- Focus on tender phase

Sanctions

- No sanctions for the CA





«SOFT» VERSION OF IP

A widespread tool

Application by several local, regional and national bodies.



69/111 capital cities of
Italian provinces have IP
62%

95/111 provinces have IP
in their territories
85%





THE «IP» 2.0



PATTO DI INTEGRITÀ

inerente le opere e gli interventi per la
realizzazione del secondo lotto della
metropolitana leggera di Cagliari, Linea 3
– collegamento Repubblica / Matteotti /
Stazione

Premesso

che i **Patti di integrità** (di seguito PI) sono accordi sottoscritti dall'Autorità appaltante, dai soggetti partecipanti alle gare e da un Organismo indipendente, i quali si vincolano al rispetto di **condotte improntate a principi di trasparenza e legalità** nelle **varie fasi della programmazione, negoziazione ed esecuzione di un insieme di opere e attività** funzionali alla realizzazione di un Progetto;

che nell'ambito dei PI l'Organismo indipendente svolge **funzioni di controllo, monitoraggio e pubblicizzazione** di tutte le fasi di attuazione del Progetto e del PI;

che i PI, come quello presente, rispondono a **finalità di interesse generale** stabilite





THE «IP» 2.0

What is innovative

➤ **Transparency:**

- monitor regularly informed about all the procedures and people involved
- communication of all payments to the monitor
- consultation of all documents
- the monitor *can* participate to restricted meetings of the Selection Commission

➤ **Publication** of additional documents by the monitor (with previous agreement)

- Possibility of reporting through a **specific monitor's reporting platform**
- Promotion of adoption of **anticorruption tools by bidders**



CONCLUSIONS

Opportunities

Previous knowledge of the tool

Extensive legal literature

Consensus and straightforward introduction

Flexibility

«Soft» version bias

New clauses still need specific compliance analysis

Challenges



Thank you!

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