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**DISCREZIONALITÀ, LOTTA ALLA CORRUZIONE E TUTELA DELLA
CONCORRENZA NEI CONTRATTI PUBBLICI**

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Abstract

The focus of this research is the corruption, defined as the abuse of entrusted power for private gain, and its impact on public contracts. The research proposes possible solutions against corruption and describes the role of this phenomenon in Italy.

As we know, economically, corruption depletes national wealth. The corruption leads a significant loss in terms of GDP, in terms of missed foreign investment in our country. It implies, furthermore, increasing costs (+40%) of the Great Works with supplementary costs on public budgets (60 billion euro estimated for year), according to the latest Court of Auditors estimates. In the latest report prepared by Transparency International (2015), in which is reported the Corruption Perceptions Index as measure of the perceived levels of public sector corruption worldwide, Italy was at the sixty-second place, along with other countries such as Lesotho, Senegal, South Africa and Montenegro and its score was the worst in European Union, after Bulgaria.

The research describes, in detail, the failure of regulation on public contracts sector as a result of corruption's phenomenon. The democratic system, in the nineties, after the emergence of the corrupt system as called "Tangentopoli", has tried to fight corruption through a process of hyper-regulation. This process didn't solve the problem of corruption and it has generated inefficiency in the legal system.

The Government has reduced the discretion of the public administration by creating contractual models that guarantee the respect of competition between economic operators through automatic and rigid procedures. Conversely, economic studies show that the proper use of discretion brings benefits on public choices and reduces information asymmetries that characterize public-private relationships.

The research distinguish "corruption" and "inefficiency" so that it is possible to analyze them starting from different perspectives identifying specific solutions. Corruption is a hidden phenomenon. Inefficiency can be found in the facts and statistics. In Italy people spend more than in other countries for public works, which have longer lead times and that often remain unfulfilled. In the present paper, we argue that it must be achieved a reversal of approach concerning the corruptive phenomena, so that the efficiency's improvement could implies as result the reduction of corruption. The corruption is often hidden behind the inefficiency.

Improving the efficiency, lower costs, the shortening of time and ultimately the achievement of the performance, these are the elements on which it will be possible to reduce the corruption impacts.

The research shows that if arrangements achieved full efficiency there would be no room for corruption. The contrast against corruption phenomena should be carried out of the race, because it is necessary to pursue primarily the efficiency of public procurement.

It's in the same spirit that seem to go the main provisions of the European directives on public contracts. Finally, the research shows some proposals for achieving efficiency system that also involve the reduction of corruptive episodes, implementing the principles outlined in the "*Best Value*".

The current moment of transposition of European directives is favorable for the adoption of measures needs to ensure greater system efficiency, simplification of procedures, greater discretion for contracting, balanced by the performance control systems, which may have as an indirect effect the reduction of corruption phenomena areas.