

10th Nexa Lunch Seminar

Transparency Decree

an Italian Freedom of Information Act
or “just” Open Data?

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agenda

- quick *pars destruens* (FOIA?)
- *pars construens* (Open Data)
- focus on artt. 26, 27, 29, 30 (budget data)
- conclusion

the Transparency Decree:

http://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2013-04-05&atto.codiceRedazionale=13G00076&elencoGiorni=false

(have a look at this version, including all the notes, were tens of pages of references to other laws have been copied&pasted for your convenience*)

[* in other words, there are so many references to other norms, that the Decree is hardly understandable without these notes or something like them...]

an opaque and troubled history

- the mandate to the government comes from the following law
 - *Legge 6 novembre 2012, n. 190*
- the Senate approved a first version the 15th of June 2011
- the Chamber of Deputies modified it the 14th of June 2012
 - happy birthday! ;-)
- the Senate modified it again the 17th of October 2012
- in November 2012, the government was fighting against time to implement the Decree before the new elections
 - the text was stalled several times and underwent several modifications, e.g., after the opinion of the Italian Privacy Authority
 - no public consultations/debate was organized
 - despite the fact that this Decree is explicitly designed to empower citizens and their associations in monitoring the activities of the public administration
 - several “leaked” versions stirred a strong debate, so it was not a matter of lack of interest!
- the Decree was actually published on the GU n.80 of the 5th of April 2013
 - in force as from the 20th of April 2013

the easy answer

- this Decree does NOT implement and Italian FOIA
 - we're stuck with law 241/1990
 - demanding subjective requirements (you have to show a “qualified interest” in the information you're requiring)
 - limited scope: by explicit statement, the purpose of this law is NOT to enable a generalized control on the functioning of the public administration
- the Decree is essentially just collecting, reinforcing or clarifying existing publication obligations

an easy target for jokes

Art. 3: All documents, information and data subject to mandatory disclosure under the current regulations are public and anyone has the right to know them, *of using them for free, and use and reuse them in accordance with Article 7.*

(Art. 3: Tutti i documenti, le informazioni e i dati oggetto di pubblicazione obbligatoria ai sensi della normativa vigente sono pubblici e chiunque ha diritto di conoscerli, di fruirne gratuitamente, e di utilizzarli e riutilizzarli ai sensi dell'articolo 7.)

BUT

Article 7 (Open data & re-use)

- the aforementioned data are published in *open formats* (with ref. to art. 68 CAD – Code of Digital Administration) and may be re-used as per the Italian implementation of the PSI Directive, “without further restrictions, apart from the the obligation to mention the source and respect the integrity of the data”
- don't ask me why the legislator is just making ref. to the definition of “open formats”, without using the definition of “open data”, which is available within the very same article of the CAD...
 - in any case, it becomes clear that the data published according to the Transparency Decree (including any other law mandating the publication of PSI) are open data
 - this was far from trivial and the Decree may be relevant just because of this aspect

the missing link

- the Transparency Decree (see Art. 1), aims at achieve a “distributed/diffused control” on the working of the public administration
 - mandating the proactive publication of several sets of data (or reminding that this is already mandatory)
 - making easier for citizens to require such publication, if missing
 - clarifying that such data are actually “Open Data”
- this is the missing link between transparency and open data
 - and one may be proud of such Decree, as long as s/he is not pretending that this is an Italian FOIA

Art. 5 Civic access

1. obligation of the PA ↔ right of anybody to require the (omitted) publication
2. no limitations about the subjective legitimacy to require the publication (as opposed to L. 241/90)
 - request addressed to public official Responsible for Transparency (i.e., easier to find that the responsible for PSI re-use/open data, if any...)
3. 30 days to publish (or answer) or point to existing link
4. 15 days for appeal following L. 241/90 rules in case of inertia
5. ...

(for the specialists:
what follows is the “new version” of
Art. 18 of the Development Decree of July 2012)

[Christian will answer the key question:
are the new provisions
equivalent to the old ones?]

Art. 26 (public subsidies and other forms of economic support)

Public administrations shall publish:

1. the acts/documents that determine the criteria for the award of grants, contributions, financial aids and for the assignment of other forms of economic support of any kind to persons and public and private entities
2. the acts/documents actually conceding the aforementioned grants, if the amount is greater than one thousand euro
3. such publication is a condition for the legal effectiveness and enforceability of the grants mentioned above
 - its omission or incompleteness is detected and reported *ex officio* by the responsible public officials under their own (administrative, civil and accounting) responsibility, in relationship with the illegal grant or assignment of the economic benefit
 - the recipient or any third parties may also report the aforementioned omission or incompleteness
4. no personal data (of physical persons) will be published, in case it is possible to extract information about any health or socio-economic distress of the interested parties

Art. 27 (list of beneficiaries)

1. publication requirements (Article 26.2 and 26.3)
 - the name of the company or organization and their respective tax information or the name of the other beneficiary;
 - the amount of the award received;
 - the title on which the award is based;
 - the office and the officer or director responsible for the process;
 - the mode followed to identify the beneficiary;
 - the link to the selected project and/or CV of the selected person.
3. all than in table format that allows to export, treat and re-use the data (as per Art. 7)

the next one is arguably the
most harshly criticized article in the law
(and rightly so)

Art. 29 (“simplified” financial statement and budget)

Requirements for publication of financial statements, budget and final, and of the Plan of indicators and expected results of the financial statements, as well as data concerning the monitoring of objectives.

(Obblighi di pubblicazione del bilancio, preventivo e consuntivo, e del Piano degli indicatori e risultati attesi di bilancio, nonché dei dati concernenti il monitoraggio degli obiettivi.)

1. Public administrations publish data on the budget and the final balance of each year in summary form, aggregated and simplified, also using graphical representations, in order to ensure full accessibility and comprehensibility.

(1. Le pubbliche amministrazioni pubblicano i dati relativi al bilancio di previsione e a quello consuntivo di ciascun anno in forma sintetica, aggregata e semplificata, anche con il ricorso a rappresentazioni grafiche, al fine di assicurare la piena accessibilità e comprensibilità.)

{2. makes ref. to legislative decree 31 May 2011, n. 91 about the “Plan of indicators and expected results”, which – in turn – makes reference to legislative decree 27 October 2009, n. 150... and to an unreferenced decree that the Ministries of PA and Economics/Finance should adopt on the basis of article 17.3 of law 23 August 1988, n. 400...}

ratio legis: to ensure a minimum degree of understandability and comparability, simplified budgets and standard indicators are needed

critique: this is very nice, but also publish the rest for those who know better, please!

formal critique: the task of the Decree was to

call for proposals

I would like to assemble a team to write down a pilot proposal for a “distributed spending review” **process&platform**, backed by serious cross-disciplinary research (accounting/economics/law/sociology/...)

(all this using an artt.-26-27-30-approach, not the approach of art. 29...)

some narrow and sector specific rules,
with a huge potential

Art. 30 (real estate management)

Publication requirements concerning real estate and asset management

(Obblighi di pubblicazione concernenti i beni immobili e la gestione del patrimonio)

1. Public administrations shall disclose the information identifying the properties owned, as well as the leasing or rental fees paid or received.

(1. Le pubbliche amministrazioni pubblicano le informazioni identificative degli immobili posseduti, nonche' i canoni di locazione o di affitto versati o percepiti.)

(it's quite ridiculous to be so specific in a law,
but this is arguably justified in the
transparency domain)

of course, all these nice things are under the ubiquitous “invariance clause”:

the execution of this Act
shall not cause any new or additional
burdens on public finances

not-so-serious conclusion...

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A - B - R - A - C - A - D - A - B - R

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A - B - R - A - C - A - D

A - B - R - A - C - A

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A - B - R - A

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A - B

A

conclusion

the Transparency Decree is NOT an Italian
Freedom of Information Act

it's ludicrous not to support these norms with
financial resources

BUT this is a powerful tool for open data
activists (and “engaged researches” 😊):
it may be criticized, but it should also be
exploited to its full potential (which is significant)