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Giovanna Maria Flavia Nitti

Università degli Studi di Bari "Aldo Moro"
Faculty of Law
Department of Commercial Law
giovanna.nitti@uniba.it

INTEGRITY PACTS AND LEGALITY RATING: PROMOTING BUSINESS ETHICS IN PUBLIC PROCUREMENT

Summary: The use of CSR instruments in the public procurement sector has dramatically increased in the recent years. Nevertheless, a certain level of ambiguity raised questions on their juridical nature and actual impact. This study tries to answer these questions by focusing on two recently implemented measures aimed at making investments delivered through public procurement sustainable from an anti-corruptive perspective: integrity pacts and the legality rating for enterprises. Their impact, possible problems of legitimacy and relation with CSR have been analysed through a review of Italian and European Jurisprudence, legislation, literature and official data.

Keywords: integrity pacts, legality protocols, legality rating, CSR, public procurement.

JEL Classification: K42, K23.

Introduction: the context

Through the European Structural and Investment Funds for 2014-2020, the EU is investing 454 billion euro overall in its Member States [European Commission, 2015a, p. 2]. Almost half of this investment is delivered through public procurement.

According to experts, corruption in public procurement costs the European Union up to 5 billion euro per year [Bąkowski, Voronova, 2017, p. 3].

The insufficiency of traditional legal instruments alone in counteracting this phenomenon – not because of legislative voids or inadequacy, but because of the necessity for a different and complementary approach – suggests that the system needs help. Indeed, when public procurements are affected by corruption, it is

likely that clean and competitive companies are not encouraged to bid, while citizens endure bad services and their money, as taxpayers, is wasted.

In this paper, it is argued that, in order to make investments delivered through public procurement more sustainable in an anticorruption perspective, it can be useful to make legality 'more convenient' than illegality[1].

From this viewpoint, the use of incentivizing CSR measures may be crucial and the impact of a syncretised action in the pursuit of socially sustainable objectives (in combination with private interests) may be extremely positive.

Certainly, the debate on Corporate Social Responsibility is not immune to ambiguities and uncertainties [Angelici, 2011, p. 159; Angelici, 2018, pp. 3-19; Denozza, 2013, p. 49 *et seq.*; McCusker, 1999, pp. 140-146]. Nonetheless, after alternative phases, CSR perspectives re-emerged even stronger over the last 10-15 years, probably under the influence of the changed socio-economic context.

As a matter of fact, it is possible to observe the introduction of measures aimed at encouraging CSR diffusion both at national and European level.

An important example of this tendency is represented by Directive 2014/95/EU of the European Parliament and of the Council of the October 22nd 2014, amending Directive 2013/34/EU regarding the disclosure of non-financial and diversity information by certain large undertakings and groups.

The diffusion of this kind of measures suggests that the promotion of socially responsible management criteria is more effective if supported by incentivizing regulatory interventions [De La Cuesta González, Valor Martinez, 2004, pp. 275-293; Libertini, 2013, pp. 33, 35, 47].

It is possible to observe an increase in the use of CSR instruments also with respect to the public procurement sector. At the same time, nonetheless, problems of vagueness of their juridical nature and uncertainty of their actual impact raised questions about their relevance.

This study tries to answer the above-mentioned problematic questions by focusing on two recently implemented measures aimed at making investments delivered through public procurement sustainable from an anticorruption perspective: integrity pacts and the legality rating for enterprises.

In order to highlight the impact of these instruments, explore their relation with CSR and, in particular, give clarifications on their legitimacy and compatibility with the Italian and European legal systems, Italian and European Juris-

[1] From a perspective in which the incentives to comply to high legality standards shall result more interesting than lowering the costs with illegal conducts (considering the risk that this choice comports).

prudence, legislation, literature and official data have been commented and interpreted.

This research also aims at demonstrating the positive impact of a multilateral and 'bottom-up' action in order to achieve both socially sustainable objectives and private interests[2], arguing that it is not always easy to achieve the former objective without the latter.

1. A glance at the legality rating for enterprises

With regard to the Italian legal system, a certain success has been obtained by the 'legality rating for enterprises', a rating from whose attribution derives benefits in the following areas:

- in the access to bank credit (costs and time reduction in the access to credit and preferential assessment within the verification of creditworthiness);
- in obtaining public funding[3];
- in public procurement (a preferential score can be assigned to the rating holder)[4].

The instrument in exam, introduced by Article 5-*ter* of the Law Decree No. 1 of January 24th 2012 (converted, with amendments, by Law No. 27 of March 24th 2012), is a synthetic indicator which aggregates various information concerning the ethical behaviour of companies.

In other words, it is an instrument aimed at promoting ethical behaviour through incentivizing techniques. It recalls the functionalist theory of Norberto Bobbio according to which law cannot be reduced to a merely coercive system to discourage illegal acts, but should also promote socially desirable acts by providing for incentives [AGCM, 2017b, p. 16].

It is possible to request the rating (which lasts for two years from the date of issuance and is renewable upon request) to the AGCM (Italian Competition Authority), for companies which are operating in Italy, registered in the registry of

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[2] It is worth mentioning a 'bottom up' perspective of CSR intended as 'Consumer Social Responsibility', corroborated by the fact that EU law sources are turning towards a 'responsible' consumer model, influenced by the socio-economical concept of 'citizen-consumer' [Vessia, 2018, pp. 3-6]. In fact, consumers, as it has been observed, operate as both consumers and citizens [Foltyn-Zarychta, Zerbe, 2018, p. 1].

[3] The methods to obtain the advantages concerning these two first areas were identified by Decree No. 57 of February 20th 2014, signed by the Minister of Economics and Finance and the Minister of Economic Development. This regulation specified how to take into account the legality rating in granting public funding and in the access to bank credit.

[4] This aspect emerged in a second moment, with the new Public Procurement Code.

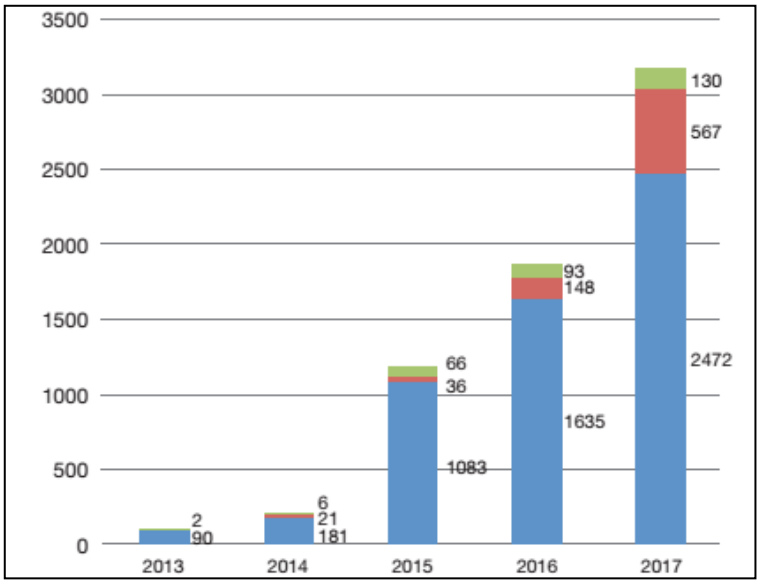
businesses for at least two years and that have achieved a minimum turnover of two million euro in the fiscal year before the request.

The Authority continuously updates the guidelines on the subject: the latest version came into force on May 29th 2018. Amongst the main innovations included therein, it is worth mentioning:

- the simplification of the rating issuance process;
- the direct access of the Competition Authority to the national anti-mafia databases in order to conduct the necessary anti-mafia checks before issuing the rating [AGCM, 2018].

It has been observed that the competence of the Competition Authority for the attribution of the rating is most probably related to the fact that a company's reputational profile is strictly connected to the way in which a company is placed on the market. Furthermore, the rating may contribute to restore a situation of unfair competition deriving from the adoption of unfair competition practices, civil or administrative irregularities or even illegal practises [Giannelli, 2018, p. 4; Massarotto, 2015, pp. 339-341].

Since its introduction in 2012 until the end of 2017, more than 6,500 rating applications have been examined. In the following graph the trend of the procedures for the rating attribution in 2017 is displayed.



Legend: green: rejections/revocations; red: renewals/score variations; blue: new attributions.

Fig. 1. Concluded procedures (2017)

Source: AGCM [2017a, p. 268].

The applications for renewal and score variation doubled in comparison to 2016: on the basis of the 2017 data, over half of the rating holders asked for the renewal before the expiry date [AGCM, 2017a, p. 268]. This says a lot about the interest on the rating benefits.

The instrument continues to attract an increasing number of companies, so that already in the first half of 2018 it was released by the AGCM to about 2000 applicants.

These data, if projected over the entire year, indicate an increase of 40% of the requests in comparison to 2017, which is accompanied by a + 85% of the number of companies that, at the expiry of the held rating, requested a renewal [AGCM, 2018].

Investing in this tool means to make a reputational investment. In a historical moment in which reputation can constitute a crucial asset for companies, investing in the legality rating is an efficient way not just to obtain the aforementioned advantages, but also to prevent a reputational risk.

2. A focus on integrity pacts

Integrity pacts and legality protocols share anti-corruption purposes with the legality rating for enterprises.

These instruments recall Transparency International's 'Integrity Pact' [Saitta, 2015, p. 244] developed in the 1990s [Transparency International, no date]. Nonetheless, a great role in their development has also been marked by the definitely more traditional codes of conduct[5].

Transparency International's integrity pacts are negotiating agreements signed by the contracting authority, by the participants to the tender and by an independent control body in the framework of a public procurement procedure [Szloboda, 2015, p. 7]. Almost since the beginning of their development, they figure among the best practices of the OECD in procurements as instruments able to increase transparency and integrity in public tenders [OECD, 2015].

In Italy, the diffusion of legality protocols was primarily due to the need to intensify the effectiveness of legal protection in the fight against illegality in sectors of public interest. In fact, the traditional measures provided by the legislation on public procurement and by the Anti-mafia Code (Legislative Decree No. 159, September 6th 2011, as amended in 2017[6]) are not always sufficient.

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[5] For a detailed study on codes of conducts and their evolution, see Rossi [2008, pp. 27-63].

[6] By Law No. 161, October 17th 2017.

Nonetheless – above all for what concerns the so-called 'second generation legality protocols' – their diffusion is due to the need to extend legal protection beyond the scope of mafia infiltration [Peirone, 2015]. Amongst the new aims, the promotion of fair competition in the adjudication phase and the correct and transparent execution of the contract in the phase following the awarding.

This extension is made possible through the provision of specific behavioural obligations (both for the contracting authority and for the economic operators) which raise the standards of conduct beyond the ones prescribed by law.

Finally, at EU level, the aim of pursuing the anticorruption purposes of European policies in the public procurement sector could also be added to these two functions, as it will be explained further on.

In the Italian legal system, legality protocols and integrity pacts were operative even before a law consecrated them. In fact, some contracting authorities already contemplated in tender notices, as a condition for participation, the prior acceptance of the adopted 'code of conduct' (specifying that a breach of the obligations contained therein would have also integrated the defeasance clause pursuant to Art. 1456 c.c.).

Furthermore, already in 2005, the Italian State Council had recognized, by way of interpretation, the legitimacy of the aforementioned practise[7].

Although legitimized by the interpretation of the State Council, nonetheless, the exclusion from a public tender for the lack of acceptance of a code of conduct had been disregarded by law. Following the introduction in 2011 of par. 1-*bis* to Art. 46 of the previous Public Procurement Code, in fact, it was established that calls for tender could not contain further exclusion causes with respect to "those provided by this code and by other legal provisions in force, under penalty of nullity of the same"[8].

The situation has changed just with Law No. 190/2012 which expressly permitted that "contracting authorities may provide in calls for tenders or letters of invitation that failure to comply with the provisions contained in the legality protocols or in the integrity pacts constitute grounds for exclusion from the tender" (Art. 1, par. 17, Law No. 190/2012).

However, the anti-corruption legislation, which consecrates integrity pacts and legality protocols, did not define the criteria to draft them: instead, their main features have been outlined by the contracting authorities' practises.

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[7] With the rulings No. 343 of February 8th 2005, and No. 1258 of March 24th 2005 of the V section of the State Council.

[8] As stated by Art. 4, par. 2, letter d), Law Decree of May 13th 2011 No. 70.

Generally, the breach of the obligations contained in the protocols can lead to:

- the exclusion from the public tender, followed by the application of ancillary measures (enforcement of the deposit and notification to the ANAC[9]);
- the termination of the contract (also valid, if stated, as express termination clause);
- the application of disciplinary measures, if the non-performance is attributed to the employees of the contracting authorities.

On the European level, the problems of compatibility that Art. 1, par. 17, Law No. 190/2012 might have had with the old directive on public procurement (discussed in paragraph four) seem faded with regard to the new directive (Directive 2014/24 UE). In fact, although even the new directive does not mention institutes like the ones under exam, it extends the causes of exclusion from a public tender, in a perspective in which a legality protocol may not only be included, but even used to reach some of the directive's objectives.

In particular, pursuant to Art. 26, par. 4, let. *b*), Directive 2014/24 UE, bids in relation to which there is 'evidence' of corruption or collusion are considered irregular (and therefore subject to exclusion).

Art. 57, par .4, let. *i*), goes even further, stating that contracting authorities may exclude from an invitation to tender an economic operator who has attempted to unduly influence the decision-making procedure of the contracting authority or has attempted to obtain confidential information which may adulterate the awarding procedure.

In this context, the anticorruption objectives of the directive and the ones of legality protocols and integrity pacts seem to be totally in line, so these instruments may really contribute to the compliance of the economic operators and contracting authorities with the directive's provisions.

Nonetheless, it has been observed that the exclusion causes contained in this directive are not immune to juridical problems – concerning the concept of evidence with respect to Art. 26, and the circumstance that both the causes of exclusions regard not verified offences [Vinti, 2016, p. 9]. But the exam of these issues should be object of further research.

Although both the Procurement Directives do not explicitly refer to integrity pacts or legality protocols, their use has been promoted by the European Union on other occasions [European Commission, no date a; European Commission, no date b; European Commission, 2015a, p. 2; European Commission, 2018, pp. 4-9].

[9] National authority against corruption.

In particular, in March 2015, the European Commission and Transparency International launched the pilot project 'Integrity Pacts – Civil Control Mechanism for Safeguarding EU Funds'. As explained in the EU Action Plan on public procurement 2014-2020, the project aspire to "explore and promote the use of integrity pacts for safeguarding EU funds against corruption, and as a tool to increase transparency and accountability, enhance trust in authorities and government contracting, bring cost savings and improve competition through better procurement" [European Commission, no date b; European Commission, 2018, p. 4/3].

This initiative, which aims to pilot the European Regional Development Fund (ERDF) and the Cohesion Fund, is part of the anticorruption policies undertaken by the Commission and seek to help Member States, regions and cities to effectively manage EU investments delivered through public procurement [European Commission, 2015b].

Fig. 2. EU pilot project on integrity pacts

Source: European Commission [no date a].

3. Integrity pacts and legality rating in the prism of CSR

Given the key role that public procurement is suitable to have in promoting responsible behaviour of businesses [McBarnet, 2009, p. 46; McCrudden, 2007, pp. 93 *et seq.*; Vessia, 2018, p. 14], the European Commission has recognised its importance in strengthening CSR policies impact.

The instruments under exam certainly contribute to the 'sustainability of public procurement', but can they also find space in the scope of CSR?

If the legality rating does not pose many doubts about its relation with CSR, the same cannot be easily said about legality protocols or integrity pacts.

As a matter of fact, as far as the legality rating is concerned, we are not in a context of compliance, but in a voluntary process of conformity. In fact, the adoption of ethical behaviours does not descend from the imposition of obligations, but from incentivizing mechanisms [Giannelli, 2018, p. 4][10].

Instead, if the voluntary adhesion to legality protocols predisposed by the Ministry of Internal Affairs or by local prefectures may represent a reputational investment, in many cases that same adhesion is expected as *conditio sine qua non* in order to participate in certain public tenders.

In this last hypothesis, that same adhesion becomes a contractual obligation, therefore shifting to the context of compliance.

It is, then, at least questionable whether the use of legality protocols in public procurement to ensure its adoption by the participating companies falls within the scope of the CSR, considering that corporate social responsibility is associated by the prevailing literature to the absence of legal obligations [*ex plurimis*, Angelici, 2018, pp. 3-19].

The definitions that the European Commission provides on the subject also seem to lean towards a negative answer: according to the Commission, in fact, CSR is "a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis" [European Commission, 2001, p. 7][11].

From this point of view, legality protocols and integrity pacts may exceed the phenomenon of CSR, nevertheless their contractual nature does not imply that they are not suitable to contribute to the aforementioned 'bottom up' approach, involving private parties in the pursuit of socially sustainable objectives.

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[10] Nevertheless, literature does not lack of theories that exclude also the reputational investment from the scope of CSR, identifying the latter as a concept distinguished not only by voluntarism but also by altruism. From this point of view, a reputational investment would in any case aim to safeguard the shareholder value and therefore would fall in a perspective of enlightened shareholder value more than of CSR. In this sense the fascinating reconstruction proposed by Angelici [2011, pp. 163-164] who, however, recognizes the role of social pressures in the adoption of CSR tools (which, therefore, seems connected to the need to avoid a reputational risk and, not too indirectly, to the need of preserving the shareholder value).

[11] Although, with the communication of October 25th 2011 (No. 681), the European Commission defines again the CSR as "The responsibility of companies for their impact on society", perhaps opening up, despite not explicitly, to different perspectives in comparison to the notion that the Green Book ten years earlier was suitable to convey [European Commission, 2011, p. 7].

Furthermore, making a step backwards, the fact itself that the European Commission recognised the importance of public procurement in delivering CSR policies – specifying its intention to favour the better integration of social and environmental aspects in the context of the revision of the directives on the subject [European Commission, 2011, pp. 5, 10, 11] as indeed happened with Directive 2014/24/UE – may be interpreted as another sign of the evolution of the concept of CSR[12].

Is this another traceable sign of the Commission's will to overcome CSR pure voluntarism?

It is not excluded that this is going to be a possible future scenario. Nonetheless, at the moment, the definitions of CSR provided by the European Commission seem to be still inclined towards voluntarism [European Commission, 2001, p. 7; European Commission, 2011, p. 7].

4. Integrity pacts in the light of Communitarian jurisprudence

The Court of Justice of the European Union intervened on the use of legality protocols in public procurement with the ruling of October 22nd 2015 (case C-425/14), deciding on the compatibility of Art. 1, paragraph 17, of Law No. 190, November 6th 2012, with European law.

The CJEU considered admissible to establish in public calls for tender the automatic exclusion of a candidate for not having deposited, together with his offer, written acceptance of the legality protocol.

Specifically, the request for a preliminary ruling proposed by the Administrative Justice Council for the Sicilian Region concerned:

- a general judgment of compatibility of the aforementioned Art. 1, par. 17 with European law;

[12] The question whether CSR policies should be supported by a regulatory framework has been largely discussed with contrasting opinions [De La Cuesta González, Valor Martinez, 2004, pp. 275-293]. For an analysis of the problem with respect to the sector of public procurement, it has been affirmed [McCrudden, 2007, pp. 93 ff.] that "The use of public procurement to achieve increased compliance and its relationship to law is complex and multi-faceted (...). Increasingly, the need to resolve legal difficulties, and create clear rules of the game to allow CSR to flourish may require legal intervention, but this appears to give rise to a tension with the underlying principle of voluntarism, if that is defined as the absence of legal regulation". For an analysis of deficiencies of the concept of CSR merely based on voluntarism, and of the measures which shall be used to implement CSR – among which great importance is given to the use of contractual instruments which require adherence to certain codes of conduct from suppliers and customers, see McBarnet [2009, pp. 46 ff.]

- the question whether Art. 45, par. 2 of Directive 2004/18/EC – in allowing the Member States to implement the exclusion conditions of candidates from public tenders with 'overriding requirements in the general interest' – allowed the contracting authorities to exclude those competitors whose offer lacked of the acceptance of the legality protocol attached to the tender notice.

The Court, however – due to the impossibility of applying Article 45 of Directive 2004/18 to the present case, since Communitarian thresholds had not been exceeded – did not comment on the compatibility of the legality protocols with Art. 45, par. 1 and 2 of Directive 2004/18/EC, but only with reference to the general principles of the Union.

The obligation of explicit acceptance of a legality protocol was, in any case, considered in line with the principles of equal treatment and transparency in public procurements, as it is suitable to counteract the infiltration of criminality and the distortion of competition in the mentioned field (central objectives also in European policies).

Furthermore, being applicable to any candidate, it was not considered in contrast with the principle of non-discrimination (Art. 18 TFEU).

Some doubts of legitimacy, on the contrary, arose on the compatibility of this cause of exclusion with the principle of proportionality, consecrated in par. 4, Art. 5 TEU.

In fact, this principle has a double function:

- defining the intensity of EU action in relation to the one of the Member States;
- resolving possible conflicts within the treaty itself (between the different enunciated principles) [Pocar-Baruffi, 2014, pp. 25-35].

In this second hypothesis, the focus of the problem consists in the need to reach a fair balance between protected interests [De Pasquale, 2014, pp. 49-51]. Therefore, it would be necessary to proceed with the verification of the costs of each new regulation in relation to the expected benefits, also for the Member States [Saltari, 2010, pp. 231-236].

Most probably on this basis, some of the statements contained in the protocol subject to the main proceeding were considered in contrast with Art. 5, par. 4, TUE, so that the absence of such declarations was not considered suitable to lead to the automatic exclusion of the candidate.

In particular, the Court held the contrast with the proportionality principle[13] of the clauses that lead to the automatic exclusion of bidders who did not declare:

- that they were not in a situation of control or connection with other competitors (according to the Court, this clause exceeded what was necessary to prevent collusive behaviour);
- that they had not agreed, and would not have agreed, with other participants to the tender (in fact such a clause would exclude any agreement between the participants, including those not capable of restricting competition, exceeding what is necessary to safeguard free competition in public procurement);
- to undertake not to subcontract work of any kind to other companies participating in the same procedure (also this clause exceeded what would have been necessary to prevent collusive behaviour, without leaving space for the possibility of proving otherwise).

On the contrary the clauses aimed at obtaining from the participants the declaration of not having agreed (and to commit themselves not to get subsequent agreements) with other participants to the call for tenders in order to limit or circumvent competition were considered legitimate[14].

Similarly, the European Court considered legitimate the clauses providing for the obligation to communicate to the contracting authority any pressure suffered by the contractor by another enterprise which participated to the tender in order to obtain the subcontract for the execution of the contract.

In conclusion, this ruling, besides stating the compatibility of legality protocols with European law, had the importance of having specifically indicated the limits of this instrument, contributing to its improvement.

Furthermore, it recognised the potential of legality protocols in the preservation of legality and free competition in public procurement. And this should not be seen as a mere guarantee of the public interest, but also of the competitors who have committed themselves to respect legality and comply with the rules on competition.

[13] It is worth mentioning that proportionality is a criterion for the evaluation by the CGEU of the measures taken by the Member States to implement Communitarian-derived obligations [Galetta, 1998, pp. 88 *et seq*.].

[14] And different, despite apparently assonant, from the hypothesis *sub b)*.

Conclusions

This study has been an occasion to discuss the rise, impact and juridical problems of integrity pacts and the legality rating in the public procurement sector.

Paragraph one specifically focused on the legality rating for enterprises. With the support of official data, it was shown that, thanks to this instrument, the 'appeal' of sustainability grew remarkably. In fact, for an increasing number of companies, the incentives to comply with high legality standards resulted more convenient than lowering the costs with illegal conducts (but high risk). Therefore, it was highlighted how the legality rating is a clear example of the positive impact that conciliating private and public interests has on the achievement of socially sustainable objectives, an approach able to give great results.

With specific respect to legality protocols and integrity pacts, by commenting the ruling of the CJEU of October 22nd 2015 (see paragraph four) and by interpreting Articles 26 and 57 of the new public procurement directive (see paragraph two), it was observed that the raised doubts on a possible contrast of Art. 1, par. 17, Law No. 190/2012 with EU law seem resolved. In fact, as argued in paragraph two, although even the new public procurement directive does not mention institutes like the ones under exam, it clearly expands the causes of exclusion from a public tender, in a perspective in which a legality protocol may not only be included, but even used to reach some of the directive's objectives.

Furthermore, it has been shown how integrity pacts find space in the context of European policies, increasingly open to the promotion of socially responsible conducts (see the pilot project on integrity pacts and the action plan on public procurement, both cited in paragraph two).

The problem concerning the relation between the instruments under exam and CSR was considered in section 3, where it has been explained how the legality rating falls within CSR, while for integrity pacts the situation is more complex. Actually, despite the definition of CSR has certainly evolved in the recent years, it is still associated to the sphere of mere voluntariness by the prevailing literature. Furthermore, it has been pointed out how the definitions of CSR provided by the European Commission are still inclined towards voluntarism. In other words, speaking of CSR for integrity pacts and legality protocols may be hazardous or at least premature.

Nonetheless, beyond the possibility/impossibility to collocate all the different types of integrity pacts and legality protocols in the CSR landscape, an in-

creasingly strong tendency has been noted towards the inclusion of private parties in the pursuit of objectives which are traditionally a prerogative of the State but for which the classic tools provided by law are sometimes insufficient.

This perspective, although not perfectly coinciding with CSR, shares with it a fundamental premise: the ever-increasing need for a synergetic and syncretised approach in the pursuing of objectives of crucial importance for civil society.

Furthermore, the reputational advantages deriving from the examined instruments contribute to the diffusion of the idea (and, in return, are influenced by it) that from the adoption of ethically responsible conduct derive benefits not only for civil society, but also for businesses themselves[15].

In conclusion, after the complex *excursus* on the rise of these instruments in Italy and after having overcome the possible conflicts with European law, it is finally believed that both the legality rating and the integrity pacts are suitable to favour the cooperation of private economic operators in pursuing the contrast of corruptive phenomena and the promotion healthy competition in the public procurement sector.

Nevertheless, the study of these instruments led to questions for further research. First, concerning the experience with similar measures in other countries and second, as anticipated in section two, concerning the juridical and practical problems that might derive from the expansion of exclusion causes from public tenders operated by Articles 26 and 57 Directive 2014/24 UE.

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PAKTY UCZCIWOŚCI I OCENA LEGALNOŚCI: PROMOWANIE ETYKI BIZNESOWEJ W ZAMÓWIENIACH PUBLICZNYCH

Streszczenie: Niniejszy artykuł koncentruje się na dwóch ostatnio wdrożonych instrumentach, których celem jest zapewnienie zrównoważenia inwestycji realizowanych w ramach zamówień publicznych w perspektywie antykorupcyjnej: pakty uczciwości oraz ocena legalności dla przedsiębiorstw. Duży nacisk kładzie się na korzyści zsynchronizowanego podejścia w realizacji celów społecznie zrównoważonych, realizując aktywny wkład podmiotów prywatnych poprzez zachęcanie do polityk CSR i narzędzi kontraktowych. W tym kontekście zwrócono uwagę na kluczową rolę zamówień publicznych w realizacji zrównoważonej polityki pod względem społecznym. Przeglądowi poddano orzecznictwo włoskie i europejskie, ustawodawstwo oraz literaturę wraz z niektórymi oficjalnymi danymi.

Słowa kluczowe: pakty uczciwości, protokoły legalności, ocena legalności, CSR, zamówienia publiczne.