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ANAC Sanctioning Powers in Public Procurement Require Actual Proof of Harm

Oversight of Contracting Authority Qualification Between Procedural Time-Bars and the Limits of Tort Liability

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Current Legal Framework as of 13 November 2026: The Italian National Anti-Corruption Authority (ANAC) has stepped up inspections on AUSA qualification statements, issuing pecuniary sanctions and operational downgrades. Administrative case law has nonetheless ruled out automatic damages for untimely enforcement action in the absence of gross negligence.

ABSTRACT

The **ANAC sanctioning power over public procurement** safeguards the qualification framework of contracting authorities and central purchasing bodies within the Single Registry of Contracting Authorities (AUSA) pursuant to Article 63 of Legislative Decree no. 36/2023. The Authority's enforcement practice imposes **pecuniary penalties of up to one million euros** for discrepancies between self-declared qualifications and actual organizational structures, identifying willful misconduct even in the form of indirect intent (*dolus eventualis*). Administrative case law nevertheless restricts punitive enforcement strictly to conduct marked by **evasive artifices**, ruling out monetary penalties for mere interpretive divergences, which warrant solely removal from the qualified registry. With respect to the Authority's civil liability, the judicial annulment of a sanction for exceeding **mandatory procedural deadlines** does not trigger automatic financial compensation. Holding the public body liable requires strict proof of inexcusable fault and wrongful harm arising from loss of chance.

Key Takeaways

- **Effectiveness of AUSA Qualification:** ANAC resolutions target inaccurate self-declarations concerning permanent organizational units, dedicated staff, and specialized training, ordering operational downgrades alongside pecuniary penalties.
- **Strict Legality of Sanctionable Offenses:** Administrative courts exclude the imposition of pecuniary sanctions for mere errors of legal characterization in the absence of fraudulent statements or evasive artifices.
- **No Automatic Right to Damages:** Judicial annulment of a sanction for breach of mandatory procedural initiation deadlines neither proves fault on the part of ANAC nor establishes harm *in re ipsa*.
- **Protection of Pending Tender Procedures:** The statutory savings clause ensures that the revocation or suspension of a contracting authority's qualification does not invalidate public procurement procedures already underway.

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Legal Principle / Editorial Headnote

ANAC's sanctioning power for breaches of qualification requirements presupposes fraudulent or contrived conduct, whereas mere annulment on grounds of procedural time-bar does not give rise to compensable harm absent inexcusable fault.

01. INTRODUCTION: OVERSIGHT OF QUALIFICATION AND THE LIMITS OF LIABILITY

Public procurement law assigns a central role to verifying the institutional capacity of contracting authorities. The exercise of the **ANAC sanctioning power over public procurement** serves as the operational safeguard ensuring the truthfulness of declarations entered into the Single Registry of Contracting Authorities (AUSA). The framework established by Legislative Decree no. 36 of 31 March 2023 moves decisively beyond mere administrative registration. Qualification now constitutes a substantive prerequisite for the **lawfulness of public contracting activity**. The legal system leaves no room for formalistic shortcuts.

The National Anti-Corruption Authority's supervisory action takes the form of score recalculations, operational downgrades, and substantial pecuniary penalties. This enforcement apparatus pursues the qualitative selection of public demand. Its objective is to prevent contracting authorities lacking suitable **permanent organizational structures** from managing complex contract awards. Even so, the exercise of punitive prerogatives is subject to clear boundaries. The Authority faces strict procedural deadlines as well as precise subjective requirements. Administrative courts have drawn firm limits around those powers.

Judicial review of the Authority's resolutions raises issues of primary systemic importance. On one side lies the need to distinguish **sanctionable evasive artifices** from conduct stemming from genuine interpretive uncertainties. On the other side stands the question of the regulatory body's tortious liability whenever a sanctioning measure is annulled. Breaching mandatory procedural time limits invalidates the punitive measure, yet it does not entail automatic pecuniary liability. Italian administrative law requires an independent and rigorous demonstration of wrongful harm.

02. CONTRACTING AUTHORITY QUALIFICATION AND ANAC'S SANCTIONING POWER IN PUBLIC PROCUREMENT

2.1 — The Architecture of AUSA Requirements Between Organizational Structure and Competencies

Article 63 of Legislative Decree no. 36 of 2023 establishes, under ANAC's responsibility, the official list of **qualified contracting authorities** and central purchasing bodies. The statutory provision structures the system across three dimensional tiers for works, services, and supplies. Possession of the required qualifications is governed by Annex II.4 to the Code. Compliance of the internal organizational model represents the precondition for launching tender procedures above the statutory minimum thresholds. Registration in the Single Registry does not operate as a mere statistical census formality.

The corrective Legislative Decree no. 209 of 31 December 2024 substantially reshaped the scope of qualification[D1]. The legislative reform separated qualification for contract design and award from qualification covering contract execution alone. On the training front, the National School of Administration (SNA) now accredits private for-profit entities as well. The legislature also introduced six-monthly monitoring of **average decision-making times**. Exceeding the 160-day threshold compels the public administration to adopt an internal reorganization plan.

Specialized legal scholarship has highlighted the repercussions of this framework on the contracting autonomy of public authorities[D2]. Access to the public procurement market remains conditional upon pre-established dimensional and professional standards. Implementing regulations issued by the Authority through Resolution no. 334 of 2025 set stringent parameters for the permanent organizational structure and for certified digital procurement platforms[D3]. Acting in its advisory capacity, the Council of State (*Consiglio di Stato*) voiced reservations regarding the organizational sustainability of oversight mechanisms and the bureaucratic burdens placed on smaller municipalities[1].

The truthfulness of self-declarations is backed by the mandatory rule enshrined in Article 63(11) of Legislative Decree no. 36/2023. That provision states in categorical terms that *"Under no circumstances may the entities concerned substantiate possession of qualification requirements by resorting to artifices designed to circumvent their function."* The legal order prohibits operational shams. A finding of *"statements willfully aimed at demonstrating possession of non-existent qualification requirements"* triggers pecuniary sanctions ranging from EUR 500 to EUR 1 million. In the most serious instances, **suspension of the qualification** already obtained applies as well.

2.2 — Mens Rea in Sanctioning Resolutions: From Indirect Intent to Gross Negligence

The concrete exercise of sanctioning powers emerges clearly from recent determinations adopted by the Authority's Board. By Resolution no. 347 of 9 September 2026, ANAC sanctioned a municipality for breaching Article 63(11) of the Public Contracts Code[D4]. The local authority had self-certified a permanent organizational structure and a dedicated workforce of 90 employees. Inspection findings revealed the actual presence of only 44 staff members assigned to procurement duties. Furthermore, the permanent organizational unit had been established only *ex post* within the municipality's integrated activity and organization plan.

The Authority inferred the **subjective element of indirect intent** (*dolus eventualis*) from precise and concordant circumstantial indicators. The glaring numerical gap between declared human resources and actual staff precluded any plausible plea of good faith. Both the ease of internal verification and the concrete advantage gained by accessing a higher qualification tier substantiated the finding of culpable conduct. ANAC recalculated the municipality's scores: in the works sector, its score dropped from 64.05 to 57.00 points, while retaining tier one status. In the services and supplies

sector, however, its score plunged from 42.31 to 34.07 points, entailing an **operational downgrade** from level SF1 to level SF3.

The calculation of the pecuniary penalty illustrates the sentencing criteria applied by the supervisory body. The Authority computed a baseline fine of EUR 12,031.00. Nonetheless, it granted a 20% mitigating reduction for the **entity's cooperative conduct**, consisting in the subsequent creation of the dedicated unit within its organizational plan. The final fine was set at EUR 9,625.00, accompanied by a referral of the case file to the Public Prosecutor's Office and the Financial Police (*Guardia di Finanza*) regarding potential criminal liability for ideological falsehood in public documents.

Comparable strictness informs the subsequent Resolution no. 416 of 28 October 2026[D5]. In that proceeding, the Authority ascertained a fundamental deficiency in staff training credentials. The public administration had counted a university master's degree completed outside the relevant three-year reference window. Score rectification led to the complete loss of qualification for services and supplies, as the score fell to 28.38 against the minimum threshold of 30 points. In the works sector, the municipality regressed from tier L1 to tier L3, triggering **automatic statutory forfeiture** (*decadenza*) of its qualification to award public-private partnership contracts. The fine was set at EUR 4,745.00 after applying the statutory reduction reserved for municipalities with fewer than 15,000 inhabitants.

2.3 — The Savings Clause for Pending Tender Procedures

Loss or suspension of qualification raises a delicate issue of stability for procurement procedures already initiated. A public administration suffering a score reduction or tier revocation loses standing to launch new tenders above its residual threshold. The statute directly addresses the fate of **pending tender procedures**. Article 63(12) of the Code lays down an unequivocal protective rule: *"Where qualification lapses or is suspended, ongoing procedures shall nonetheless be brought to completion."* Preserving prior procedural acts safeguards legal certainty in economic transactions.

This statutory rule serves a dual requirement of economic public policy. First, it protects the legitimate reliance of **competing economic operators** that have invested financial and technical resources in preparing their tenders. Second, it shields participating local authorities that delegated central purchasing functions under cooperation agreements. Retroactive invalidation of tender documents would inflict severe prejudice upon the public purse. Accordingly, the disqualifying effect operates strictly prospectively, barring only the publication of subsequent contract notices.

> **Preservation of Ongoing Public Procurement Procedures**
>
> Loss or suspension of a contracting authority's qualification does not invalidate tender procedures already published. Article 63(12) guarantees the completion of pending award proceedings, confining the prohibitory effect strictly to future calls for competition.

The underlying rationale of this provision confirms the organizational nature of the qualification regime. The legislature seeks to upgrade the administrative spending capacity of public bodies progressively without paralyzing the execution of public works. Whenever ANAC ascertains that a **central purchasing body** lacks the statutory requirements, removal from the qualified registry is mandatory. Yet award procedures already underway retain full validity and legal effectiveness. Protection of competition thus coexists harmoniously with the administrative law principle of preservation of legal acts.

03. STRICT LEGALITY OF VIOLATIONS AND JUDICIAL REVIEW OF PECUNIARY SANCTIONS

3.1 — The Substantive Boundary Between Evasive Artifices and Interpretive Errors

The boundary separating organizational disqualification from punitive liability was delineated by the Regional Administrative Court (*TAR*) for Lazio, Rome, in Judgment no. 2878 of 7 February 2025[2]. The dispute concerned a limited-liability consortium company operating as a central purchasing body on behalf of numerous municipalities. ANAC had challenged the absence of joint analogous control (*controllo analogo congiunto*) as well as a lack of statutory aggregation requirements. Under the contested resolution, the Authority ordered removal from the qualified registry while imposing a **pecuniary sanction of EUR 93,000.00** coupled with suspension of qualification until 30 June 2025.

The administrative court partially upheld the challenge, decoupling the assessment of organizational status from the punitive sanction. The court confirmed the lawfulness of removing the entity from the list of qualified central purchasing bodies. Indeed, the consortium lacked both the structural features of an *in-house* entity and the aggregation model prescribed by statute. At the same time, the Regional Administrative Court annulled the pecuniary fine and the prohibitory suspension in full. Article 63(11) of the Code defines the administrative offense strictly by requiring conduct marked by **artifices or willful misstatements**. That punitive provision does not penalize genuine interpretive disagreements.

> ANAC's power to impose pecuniary sanctions requires fraudulent or contrived conduct, since a mere error of legal interpretation warrants removal from the qualified registry without justifying punitive measures.

This ruling establishes a principle of strict legality governing the ANAC sanctioning power over public procurement. A mismatch between the corporate governance model adopted and statutory requirements does not equate to a false statement of material fact. Likewise, listing historical tender identification codes generated automatically by the digital system does not amount to fraudulent conduct. Where a contracting authority misinterprets a complex organizational rule, the legal order restores compliance by removing the entity from the registry. Imposing **punitive pecuniary fines** remains confined to cases involving deliberate simulation of qualification credentials.

From a systemic standpoint, this judicial approach aligns with recent scholarly analysis on delineating gross negligence in public procurement[D6]. Viewed in light of the principle of the result and the principle of mutual trust enshrined in Articles 1 and 2 of Legislative Decree no. 36/2023, establishing inexcusable negligence calls for a sequential three-step inquiry. First, one must weigh the **normative and technical complexity** of the regulatory setting, given that layered rules or conflicting interpretations broaden the sphere of excusable error. Next, review must examine the documentary thoroughness of the preliminary inquiry conducted and the degree of departure from the **standard of professional diligence** commensurate with the required qualification tier. Whenever a contracting entity discloses accurate factual data yet commits a characterization error under newly enacted rules, its conduct falls within the protective ambit of the trust principle and escapes punitive enforcement.

3.2 — When and How Should an ANAC Sanction Be Challenged on Procedural Grounds?

An ANAC sanctioning resolution must be challenged before the administrative court within the mandatory sixty-day statutory forfeiture period (*decadenza*) running from formal service. The statement of claim must plead breach of

mandatory deadlines for initiating or concluding the sanctioning proceeding, infringement of the right to be heard, and absence of fault or willful misconduct in certifying qualification requirements.

Judicial proceedings follow the specialized rules governing litigation before the administrative courts. The Sanctioning Regulation approved by ANAC Resolution no. 271 of 2023 structures the chronological sequence of investigations[D7]. Article 11 sets a 90-day **mandatory deadline for serving notice of charges**, running from receipt of complete documentation. Exceeding that peremptory timeframe extinguishes the Authority's power to punish in the specific case. Article 13 in turn establishes a 180-day time limit from service of the statement of objections for adopting the final decision.

Counsel representing the contracting authority or economic operator must raise targeted procedural pleas. The sanctioned party bears the burden of timely pleading the belated service of the notice opening the investigation. During the fact-finding phase, Articles 15 and 16 of the Regulation allow a **maximum procedural suspension of 45 days** for oral hearings or supplemental written submissions. Should the Authority exceed those statutory windows without adequate justification, the final measure is vitiated by breach of law. Judicial review of legality consequently annuls the punitive resolution.

On the substantive merits, the primary defense rests on the absence of the required mental element. Defense counsel must demonstrate that no fraudulent conduct or factual artifice occurred. Where charges concern complex organizational requirements, a good-faith interpretive error bars the application of Article 63(11). Counsel should seek annulment of the pecuniary sanction as primary relief and, in the alternative, a **proportionate recalculation of the penalty** in accordance with the sentencing criteria set forth in Law no. 689 of 1981.

04. CIVIL LIABILITY OF THE AUTHORITY AND PROOF OF WRONGFUL HARM

4.1 — Mandatory Procedural Deadlines and Excusable Error

Judicial annulment of a sanctioning resolution for breach of mandatory time limits reopens the debate over the civil liability of public authorities. The Council of State (*Consiglio di Stato*) addressed this precise issue in Judgment no. 1569 of 27 February 2026[3]. An economic operator had sued the Authority claiming **compensatory damages totaling EUR 672,462.21**. The claim arose out of the prior judicial annulment of a two-month disqualifying ban imposed by ANAC after expiry of the mandatory ninety-day deadline from receipt of the contracting authority's report.

The claimant company alleged that it had been prevented from competing in four separate public tenders while the prohibition remained in force. Nevertheless, the Council of State upheld the dismissal of the damages action. The appellate panel ruled out any **culpable fault attributable to ANAC**. The Authority had postponed initiating the sanctioning proceeding pending resolution of parallel litigation concerning the revocation of a provisional contract award. Although held unlawful in the annulment judgment, that procedural choice constituted an excusable error in light of the case law prevailing at the relevant time.

Rules governing prohibitory sanctions intersect directly with statutory grounds for exclusion from tenders. Regulatory amendments introduced by ANAC Resolution no. 65 of 10 January 2024 clarified that electronic registry entries require willful misconduct or gross negligence and produce disqualifying effects for up to two years[D8]. As previously examined regarding entries in the ANAC electronic procurement record, compliance with procedural time limits protects the legal certainty of undertakings. Even so, a temporal defect vitiating an administrative act does not automatically equate to an **aquilian tort generating liability in damages**.

The judgment reaffirms that public authority liability presupposes a finding of inexcusable fault. Unlawfulness of a sanctioning measure creates no irrebuttable presumption of culpable wrongdoing. An independent authority exercising complex **regulatory and sanctioning powers** answers in damages only where the infringement stems from manifest negligence. Whenever genuine interpretive divergences surround the timeliness of administrative action, fault on the part of the supervisory body is entirely excluded.

A notable systemic symmetry thus emerges alongside the scholarly delimitation of gross negligence in managerial procurement decisions[D6]. Review of the subjective element must be conducted strictly from an ***ex ante*** **perspective** capable of neutralizing hindsight bias driven solely by the subsequent annulment of the measure. Technical reasonableness requires distinguishing reckless or evasive conduct from determinations adopted amidst uncertain legal standards. Consequently, procedural delay accrued while awaiting a prejudicial judicial ruling does not automatically constitute an inexcusable departure from institutional diligence.

4.2 — The Economic Operator's Burden of Proof Between Causation and Loss of Chance

Establishing pecuniary loss caused by unlawful administrative sanctions places a stringent **burden of proof upon the injured party**. An economic operator cannot merely assert harm *in re ipsa* flowing from its inability to submit bids. Civil law principles demand specific evidence of both financial loss and direct causation. In an action for damages, the undertaking must demonstrate what the outcome of the award procedure would have been absent the contested sanction.

The Council of State drew a sharp distinction vis-à-vis European Union procurement principles. The appellant relied on Court of Justice of the European Union case law under the Public Procurement Remedies Directives, which precludes conditioning contracting authority liability upon proof of fault. The appellate court clarified that this strict-liability rule **does not apply** to ANAC. European Union remedies rules govern the liability of a contracting authority toward tenderers within a specific award procedure. They do not extend to an independent regulatory authority exercising general sanctioning powers that indirectly affect separate tender procedures.

Decision / Authority	Holding	Core Legal Principle
Council of State no. 1569/2026	Dismissed	No automatic right to damages upon annulment for untimeliness; full burden of proving fault and actual harm.
Regional Admin. Court Lazio, Rome, no. 2878/2025	Upheld	Annulment of pecuniary penalty and suspension for lack of artifices or willful misconduct in AUSA application.
Council of State, Opinion no. 1463/2024	Advisory	Critical remarks on administrative costs of efficiency monitoring and sample-based inspections.

Awarding compensation for loss of chance presupposes pleading serious and appreciable prospects of success. An undertaking alleging wrongful harm from a sanctioning measure must produce concrete documentation supporting its hypothetical bids. Failure to substantiate the consistency of that lost opportunity precludes any equitable assessment of damages. In administrative tort litigation, the economic operator must prove both the inexcusability of the Authority's

error and a **concrete probability of contract award**. Absent such evidentiary proof, the claim for damages must be dismissed.

05. CONTRACTING AUTHORITY AUTONOMY, CONDITIONAL QUALIFICATION, AND ADMINISTRATIVE SUSTAINABILITY

5.1 — The Tension Between Institutional Contracting Autonomy and Procurement Centralization

The qualification regime fundamentally reshapes the contracting capacity of public administrations. As observed in legal scholarship by Barbara Mameli, the legislature does not merely regulate award procedures, but directly restricts access to the public procurement market itself. Entities lacking the required credentials are barred from independently managing contracts above statutory thresholds. This policy design aims to curb the fragmentation of more than **30,000 contracting authorities** operating across Italy.

Centralizing public demand nonetheless generates both constitutional and competition-law friction. Standardized qualification grids risk compressing the administrative and technical discretion needed to tailor procurement contracts to local circumstances. Furthermore, European Union procurement directives themselves warn against excessive **concentration of purchasing power** and resulting barriers to market entry for small and medium-sized enterprises. Striking a sustainable balance between administrative efficiency and impartiality under Article 97 of the Italian Constitution therefore depends upon flexible corrective mechanisms.

5.2 — Ex Officio Assignment and Conditional Qualification Under ANAC Regulation no. 334/2025

To prevent operational paralysis among unqualified public bodies, the ANAC Regulation adopted by Resolution no. 334 of 30 July 2025 governs two institutional safety valves. As noted by Roberto Codebò, Part Four of the Regulation disciplines the ***ex officio* assignment** of a qualified contracting authority or central purchasing body pursuant to Article 62(10) of the Code. That mechanism operates only after an unsuccessful prior inquiry addressed to entities registered at intermediate or advanced qualification tiers. Any assignment request must also align with the three-year procurement planning instrument under Article 37 of Legislative Decree no. 36/2023.

Alternatively, Part Five of the Regulation governs **conditional qualification** (*qualificazione con riserva*) under Article 63(13) of the Code. This transitional regime applies where new public bodies are established, or in cases of mergers, major internal reorganizations, or exceptional objective circumstances. The competent ANAC office assesses remedial measures already undertaken and may request supplemental documentation within **fifteen days** of notice. On the enforcement side, Article 16 of the Regulation extends supervisory checks into the execution phase: failure to fulfill commitments undertaken entails removal from the registry and triggers sanctions under Article 44.

Whether such oversight remains organizationally sustainable is still an open question. Already in Opinion no. 1463/2024, the Special Commission of the Council of State expressed reservations regarding the feasibility of conducting widespread inspections without additional budgetary resources. Ultimately, the **ANAC sanctioning power over public procurement** is tested first against strict statutory legality and mandatory procedural deadlines. Yet its effectiveness equally depends upon the administrative capacity to verify the substantive quality of public contracting.

5.3 — Digital Databases, Automated Fact-Finding, and the Safeguard of Procedural Participation

The central role of digital procurement platforms managed by the Authority raises a further systemic issue tied to automated administrative verification. As legal scholarship has pointed out regarding the Virtual Economic Operator File (FVOE) governed by Article 24 of Legislative Decree no. 36/2023, reliance on interoperable data flows tends to replace

discretionary evaluation with standardized digital outputs[D9]. Whenever database records carry binding evidentiary weight, one observes a marked **contraction of procedural participation** guaranteed under Article 10-bis of Law no. 241 of 7 August 1990 as well as of the procedural cure / clarification mechanism (*soccorso istruttorio*) under Article 101 of the Code.

An analogous vulnerability runs across the entire ANAC digital ecosystem, ranging from tax-compliance checks in public works tenders to cross-verifications of self-declared scores within the AUSA registry. In public works contracts exceeding EUR 150,000, an unrectified digital mismatch on the certifying authority's platform can trigger cascading repercussions on SOA qualification certificates, while during contract performance under Article 96 of Legislative Decree no. 36/2023 it may halt interim payment certificates for **work-progress milestones**. Similarly, in contracting authority qualification, an anomaly affecting tender identification codes or workforce records creates no automatic presumption of falsehood.

Preventing drifts toward automated punishment requires applying the principle of mutual trust under Article 2(3) of Legislative Decree no. 36/2023 in conjunction with the **human-in-the-loop safeguard** governing automated administrative decision-making. The official in charge of the proceeding retains both the power and the duty to verify the substantive accuracy of digital records before adopting exclusionary, prohibitory, or punitive measures. Digital interoperability serves as an efficient investigative tool, yet it never relieves the proceeding authority of ascertaining the **subjective imputability of an anomaly** in the concrete case.

From the perspective of constitutional defense guarantees under Articles 24 and 97 of the Italian Constitution, the lack of standalone judicial review against intermediate database outputs makes strengthening intra-procedural participation imperative. Both for undertakings exposed to alerts in the virtual operator file and for contracting authorities undergoing AUSA tier review, an **effective participatory sub-proceeding** must be ensured. Only specific advance notice of detected discrepancies coupled with a reasonable timeframe to document data realignment allows technical synchronization lags to be separated from genuinely evasive conduct.

06. CONCLUSIONS: SYSTEMIC SYNTHESIS BETWEEN EFFECTIVE OVERSIGHT AND JUDICIAL PROTECTION

Reviewing the statutory and judicial landscape confirms the two-sided nature of the Authority's supervisory mandate. The **ANAC sanctioning power over public procurement** represents the essential instrument ensuring that contracting authority qualification reflects genuine technical and organizational capabilities. Substantial pecuniary fines and operational downgrades deter opportunistic self-declarations. Public procurement law demands transparency and accuracy when entering credentials into the Single Registry.

At the same time, the deterrent effectiveness of the supervisory body must consistently abide by rule-of-law safeguards. Administrative courts circumscribe the reach of Article 63(11), reserving pecuniary and prohibitory sanctions strictly for willful or fraudulent conduct. Regulatory ambiguities and good-faith interpretive errors lead to loss of the qualification tier obtained, yet they do not justify financial penalties. Meanwhile, preserving ongoing tender procedures under Article 63(12) prevents internal organizational shortcomings from penalizing competing bidders and disrupting the market.

With regard to compensatory remedies, administrative case law consolidates a rigorous and restrictive standard. Judicial annulment of a sanction for exceeding mandatory procedural initiation deadlines confers no automatic entitlement to damages. The economic operator retains the full burden of proving **inexcusable fault on the part of the public**

administration alongside an actual loss of chance to win the contract. The legal order thus strikes a principled balance between effective public oversight and the certainty of legal relations.

References & Authorities Cited

Statutory Provisions

- Article 63 of Legislative Decree no. 36 of 31 March 2023 — Qualification of contracting authorities and central purchasing bodies, sanctioning powers, and savings clause for ongoing tender procedures.
- Article 222 of Legislative Decree no. 36 of 31 March 2023 — Supervisory powers, maintenance of the electronic procurement record, and general sanctioning jurisdiction of ANAC.
- Annex II.4 to Legislative Decree no. 36 of 31 March 2023 — Requirements and scoring criteria for the qualification of contracting authorities and central purchasing bodies.
- Legislative Decree no. 209 of 31 December 2024 — Supplemental and corrective provisions amending the Italian Public Contracts Code.
- Articles 1, 2, and 24 of Legislative Decree no. 36 of 31 March 2023 — Principle of the result, principle of mutual trust, and rules governing the Virtual Economic Operator File (FVOE).
- Article 10-bis of Law no. 241 of 7 August 1990 — Advance notice of grounds barring grant of an application and intra-procedural right-to-be-heard safeguards.

Case Law Cited

1. **Council of State (*Consiglio di Stato*), Special Commission, Opinion of 2 December 2024, no. 1463** — Critical remarks regarding administrative costs of efficiency monitoring and sample-based inspections on contracting authorities. Outcome: favorable advisory opinion delivered with critical observations on qualification structure and ANAC oversight sustainability. Para.: Operative Part (*P.Q.M.*).
2. **Regional Administrative Court (*TAR*) for Lazio, Rome, Judgment of 7 February 2025, no. 2878** — Annulment of pecuniary sanction for lack of evasive artifices and confirmation of removal from the qualified registry. Outcome: challenge upheld in part; pecuniary sanction and suspension annulled while removal from the central purchasing bodies registry confirmed. Para.: 25.
3. **Council of State (*Consiglio di Stato*), Judgment of 27 February 2026, no. 1569** — Absence of automatic right to damages following annulment of an untimely ANAC sanctioning resolution and excusable error doctrine. Outcome: appeal dismissed; dismissal of the economic operator's damages claim upheld for lack of culpable fault attributable to ANAC. Para.: 2.

Legal Scholarship Cited

D1. **Antiniska Buonanno** — *Le stazioni appaltanti e la loro qualificazione modifiche DLgs 209 2024* [Contracting Authorities and Their Qualification After Legislative Decree no. 209/2024], in *Azienditalia*, 2025.

D2. **Barbara Mameli** — *Qualificazione e principi per superare automatismo* [Qualification and Legal Principles for Overcoming Rigidity], in *Urbanistica e appalti*, 2024.

D3. **Roberto Codebò** — *Il nuovo regolamento ANAC sulla qualificazione delle stazioni appaltanti* [The New ANAC Regulation on Contracting Authority Qualification], in *Igiene e Sicurezza del Lavoro*, 2026.

D4. **ANAC, Resolution of 9 September 2026, no. 347** — *ANAC Delibera 347 2026 qualificazione stazioni appaltanti* [Sanctioning Resolution on Contracting Authority Qualification], file OLD UVCP no. 4090/2025.

D5. **ANAC, Resolution of 28 October 2026, no. 416** — *ANAC Delibera 416 2026 qualificazione stazioni appaltanti* [Sanctioning Resolution on Contracting Authority Qualification], file UVS no. 219/2026.

D6. **Bruno Taverniti** — *Verso una legalità di risultato: la perimetrazione della colpa grave negli appalti di lavori tra fiducia e insindacabilità del merito gestionale* [Toward Result-Oriented Legality: Delineating Gross Negligence in Public Works Procurement Between Trust and Non-Reviewability of Managerial Merits], in *Ildirittoamministrativo.it* (ISSN 2039-6937), 2026, pp. 1–7, discussing the three-step methodological test for *ex ante* assessment of inexcusable negligence.

D7. **ANAC, Resolution of 20 June 2023, no. 271** — *ANAC Regolamento potere sanzionatorio Delibera 271 2023*, general procedural regulation governing ANAC sanctioning proceedings.

D8. **ANAC, Resolution of 10 January 2024, no. 65** — *ANAC Revisione regolamento potere sanzionatorio Delibera 65 2024*, amended rules governing the electronic procurement record.

D9. **Bruno Taverniti** — *L'automazione del fascicolo virtuale e la contrazione del contraddittorio nell'appalto di lavori pubblici: le violazioni fiscali tra qualificazione ed esecuzione* [Automation of the Virtual File and Contraction of Procedural Participation in Public Works Procurement: Tax Violations Between Qualification and Execution], in *Appalti e Contratti*, no. 6/2026, pp. 61–67, on the human-in-the-loop safeguard and participatory guarantees vis-à-vis ANAC digital databases.

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