

Rep. N. 5399 Prot. n. 82661 on 16.09.2016

**LEGAL REGULATIONS**  
**between**  
**Alma Mater Studiorum – University of Bologna**  
**and**  
**Magna Charta Observatory Foundation**

On the date 16.09.16 at Alma Mater Studiorum – University of Bologna, between Alma Mater Studiorum - University of Bologna (hereinafter “University”) with headquarters in Via Zamboni n. 33, Bologna in its legal representative Marco Degli Esposti, General Director, delegated by Board on 31.05.2016

and

the Magna Charta Observatory Foundation (hereinafter “Observatory”) with headquarters in Via Zamboni n. 33, Bologna in its legal representative Francesco Ubertini, member of Council, designed by Council on 04.03.2016

**viewed**

- Law no. 190/2012 on "Measures for the prevention and repression of corruption and lawlessness in public administration";

**viewed**

- D.L. n. 90/2014 converted into Law no. 114/2014 and in particular art. 19 paragraph 9 that attributes the National Anti-corruption Authority - A.N.AC. with the functions concerning the prevention of corruption and art. 24-bis, converted with amendments by Law no. 114/2014, amending Article. 11 of Legislative Decree N. 33/2013, by extending the substantive scope of the rules on transparency;

**evaluated**

- The necessity, after D.L. n. 90/2014 came into effect, to provide guidance on the application of the rules of transparency and the prevention of corruption also with regard to mixed, private/public companies even if the same are not the direct beneficiaries of the provisions contained in the D.L. n. 33/2013;

**viewed**

- A.N.AC.'s determination n. 8 on June 17, 2015 concerning the “Guidelines for the implementation of the legislation on prevention of corruption and transparency in the conduct of economic public corporations, and mixed private/public companies and entities controlled and funded by public administrations;

### **granted that**

- In 1988 University of Bologna, as custodians of the University Magna Charta and the European conference of Rectors (CRE), approved the constitution of the Observatory of the Magna Charta on the values and fundamental rights of university, a nonprofit foundation with headquarters in Bologna which aims to collect information, express opinions, draw up documents and take appropriate action concerning the respect, tutelage and promotion of the fundamental rights and values of the University established in the Magna Charta Universitatum.
- The foundation is administered by a Council, which assumes legal and financial responsibility and may nominate an administrative committee from its own members to carry out administrative and financial activities and do fundraising to reach the Observatory's objectives. The Council shall be formed by a minimum of eleven and a maximum of fifteen members who have been selected among those who actively promote the Observatory's objectives, with the right to appoint two members, one each at the European University Association (EUA) and the University Academic Senate.
- The members of the Council shall fulfill their mandate *ad personam* (personally) and affiliation to one of the proposing organizations is not required. The Council also nominates a President and a Secretary General.

### **noted that**

- The Observatory is an international foundation characterized by its presence in the social structure of the University of Bologna, as well as in other national and international universities and relevant organizations. It pursues the typical social and cultural aims of the participating foundations created to ensure the promotion and enhancement of common and shared values of its individual founders and associates
- University participation in the foundation is to be considered necessary and consistent with the strategic role long played by the University since it decided to create the Magna Charta to ratify the autonomy and academic freedom of the university and support the values that represent its true spirit
- The Observatory defines itself as a private foundation, which is funded by a public entity (the University) but not controlled by it. The University participates as an associate along with other national and international universities and organizations who share and support the Foundation's mission and is therefore the recipient of legislation on the prevention of corruption and transparency, limited to the requirements for publicly funded, private institutions
- The University contributes to Foundation funding by supplying an annual contribution in its role as custodian and promoter of the Magna Charta

- The activities conducted by the Observatory do not qualify as public interest as defined by art. 11 co. 2 of Legislative Decree no. 33/2013, since it aims to contribute to the dissemination and protection of the rights and values defined in the University Magna Charta and is set up as cultural activity in the interest of its founders and therefore is not subject to the disclosure requirements provided in Articles 15 to 33 of Law 190/2012, but only to the disclosure requirements related to its own organization, as required by ANAC's determination n. 8 on June 17<sup>th</sup> 2015 (section 2.1.3, 7th paragraph);
- The Observatory is not required to appoint a Head of Corruption Prevention, or to adopt the three-year plan of Corruption Prevention or the three-year program for transparency and integrity;

**whereas**

- in light of the current regulatory framework and considering that the Observatory benefits from contributions and public funding that render the adoption of a legal protocol appropriate by which measures of transparency in the management of allocated public funds are defined and general measures of corruption prevention with the view of corporate accountability and the protection of the general principles of economy, efficiency, effectiveness and transparency of the management of public resources are adopted
- The University and the Observatory have jointly decided, as required by the Guidelines referred to in A.N.AC's determination. n. 8 on June 17<sup>th</sup> 2015, to promote the execution of this Protocol suitable for governing the specific obligations and precise measurements of transparency and the prevention of corruption and indicate the time schedule for the adoption and implementation by the Foundation of the aforesaid measures;
- that more intense transparency measures must be provided in place of those previously provided for by law for publicly funded companies that do not carry out activities of public-interest, on account of the annual operational contribution that the Observatory receives from the University

**The University and the Observatory  
agree to the following:**

the preceding narrative is an integral part of this protocol;

**Art. 1  
Principles and objectives**

Under this Protocol, the Parties intend to promote and regulate specific obligations of the Observatory to ensure compliance with the necessary measures to prevent and combat corruption in accordance with current regulations.

The Parties intend to pursue their objectives of prevention and combatance of corruption and transparency required by current regulations for publicly funded foundations, in line with the context in which the Observatory does not perform activity in the public interest, is not subject to the University's power of control and supervision but receives contributions or funding from the same.

Areas of risk inherent to the Observatory's activity shall be identified and listed below, as well as further details of consequent actions to prevent and combat corruption.

## **Art. 2 Prevention of corruption**

The involved parties, in compliance with art. 1 paragraph 16 of Law no. 190/212 and considering that the Observatory does not carry out activities related to public interest but receives public operating contributions from the University as promoting partner and guardian and promoter of the Magna Charta, agree to specify the adoption of certain organizational measures by the Observatory to ensure the prevention of corruption, as well as managerial policies oriented towards transparency and anti-corruption and to protect the institutional interests and the University image as a founding member.

The relationships and behaviors between shareholders, directors, employees and collaborators as well as with third parties must be based on principles of honesty, fairness, transparency, confidentiality, impartiality, diligence, loyalty and mutual respect. These values and principles are considered fundamental, shared and recognized by the Observatory for the assertion of its mission and to promote the smooth operation, reliability and reputation of the same.

The Observatory is committed to adopt, within 6 months from the signing of this Protocol, the following actions:

### **2.1 TRASPARENCY PROCEDURES**

#### Selection for hiring of employees with temporary and open-ended contracts.

For the hiring of employees for temporary and open-ended contracts, the Observatory commits to adopt, within 6 months of the signing of this Protocol, internal guidelines which, while respecting the principles of transparency, publicity and equal treatment, also introduce selective procedures that ensure proper disclosure of selection announcements, the predetermination of the selection criteria adopted and a qualitative comparison of the applications submitted. The absence of underlying causes of conflict of interest and incompatibility with the parties responsible for selection must also be guaranteed.

Transparency must also be ensured in the procedures of internal career progression and the assignment of any economic incentives and/or awards to employees.

### Selections for collaborative assignments of study, research and consulting

For the awarding of collaborative assignments of study, research and consulting to external parties, the Observatory commits to adopt, within 6 months of the signing of this Protocol, procedures which ensure respect for the principles of transparency, disclosure, equal treatment and competition, ensuring in particular selection announcements, except for highly specialized teaching, research or trustee assignments that justify direct assignments.

### **2.2 ANTI-CORRUPTION PROCEDURES**

The Observatory orients its activity towards the adoption of actions and behaviors that ensure prevention of any form of corruption such as poor governing, violation of impartiality and integrity, favoritism, providing forms of accountability and sanctions for improper behavior and related forms of protection for the complainants.

Further preventive actions, in addition to those relating to the transparency of point 2.1, are summarized below:

#### Adoption of Ethical and Behavioral Standards

1. Directors, staff and collaborators may not accept, ask or solicit gifts, offerings or money for themselves or for others to perform any work-related tasks or to not perform due actions or engage in illegal activity, with particular regard in dealings with third parties and in contractual relationships
2. The Observatory shall ensure that, in the application of hierarchical rules in dealings with employees and collaborators, it will adopt choices and behaviors in which the exercise of the principle of authority is not detrimental to the dignity, professionalism and autonomy of the worker. The Observatory will make its own organizational choices that safeguard the professional value of employees and collaborators
3. The Observatory promotes conditions for mental and physical well being and a peaceful organizational climate in the workplace through all necessary measures in accordance with current legislation in order to ensure a proper and safe working environment to protect the health of employees, collaborators and third parties.
4. The Observatory opposes sexual and moral harassment, including the discriminatory and detrimental effects to human dignity. There is zero tolerance of any behavior with aggressive, hostile disparaging, persecutory or vexatious connotations to ensure full protection of the victim. It adopts the appropriate measures to prevent such unlawful behavior and promotes a culture of respect of individuals.

#### Prevention of conflicts of interest and incompatibility and nonconferment of appointments and assignments

The shareholders, directors, employees and collaborators must refrain from exercising their powers if they encounter conflicts of interest and report to the competent authority to assess such situations, even potential conflict. It retains the specific regulations governing conflicts of interest relating to directors and the managing director of art. 2373 of the Civil Code.

To this end, shareholders, directors, employees and partners of the Observatory, with special attention to those in managerial positions regarding procedure, adoption of acts and final decisions, must refrain from assigned tasks and decision making where there is a conflict of interest with interests of the same, even potential, which may involve personal interests, a spouse, domestic partner, any relatives up to the second degree, or which may involve the interests of friends and acquaintances, involvement in pending lawsuits, hostile situations, or significant financial or company relations.

Mandatory abstention shall be fulfilled by complying with the duty to report the potential conflict to the appropriate superior or to the President or his delegate, who will assess each case.

In order to ensure compliance with and enforcement of the provisions of this Protocol, the Observatory, in agreement with the University, shall undertake to adopt within 6 months specific measures to regulate the ownership and content of sanctioning power regarding possible non-compliance and violation of the provisions of the Protocol and regulations, and internal guidelines established by the same.

In order to allow more informed and responsible access, disclosure and application of this Protocol to the benefit of both staff and the shareholders with which the Observatory establishes relationships, also in terms of implementation of accountability. The Observatory is committed to provide timely disclosure of the present Protocol both externally by publishing on its website, as well as internally to its employees and collaborators.

Given the non-applicability of the rules concerning nonconferment and incompatibility to the private, partially owned, not publicly controlled entities, the Observatory, in agreement with the University nonetheless sees fit to provide at least in a streamlined, flexible manner, measures to prevent situations of conflict, unfair advantage or lack of integrity concerning those in positions of governance and management (the President, councilors with executive powers, the Secretary-general) in order to incorporate and promulgate the best practices in the Observatory's activities.

In order to regulate any situations of conflict and nonconferment, the Observatory, in agreement with the University, shall undertake to adopt within 6 months specific guidelines concerning operational provisions to detect, regulate and remove these conditions impeding the performance of the functions of governance or management or similar.

### **Art. 3** **Obligations with regard to disclosure and transparency**

Independent (non-controlled) funded foundations, as well as other independent (non-controlled), publicly funded private institutions, are not directly and fully subject to the provisions on transparency regulated by art. 11, paragraph 3 of the Decree. N. 33/2013, but only limited to the "activity of public interest governed by national or European Union law."

By virtue of the provisions in the aforementioned Guidelines (ANAC determination no. 8/2015), funded foundations are subject to the transparency requirements contained in art. 1 Sections 15 to 33 of Law 190/2012 limited to the "activity of public interest governed by national or European Union law" and to the transparency requirements laid down in Articles. 14 and 15 of Legislative Decree 33/2013.

The activity conducted by the Observatory does not qualify as activity of public interest and is therefore subject only to the disclosure requirements of data relating to the administrative organization (organizational chart, company bodies and components, organizational units and functions, mailboxes and telephone numbers) and data under Articles. 14 and 15 of Legislative Decree no. 33/2013. The Parties agree, because of the annual funding provided by the University to the Observatory, to provide in any case for the adoption of all the information requirements established by the regulations for institutions that perform activities of public interest to ensure maximum transparency in the use of resources.

By virtue of the provisions in the aforementioned Guidelines, The Observatory, in agreement with the University, undertakes to comply, within 6 months from the signing of this Protocol, with the disclosure requirements of data regarding the administrative organization referred to above and the data contained in Articles. 14 and 15 of Legislative Decree n. 33/2013 and to any other disclosure requirements laid down in this Protocol.

The requirements under Article. 14 of Legislative Decree no. 33/2013 are reflected in the disclosure of data relating to job posts, income and balance sheet data relating only to members holding office with political-administrative powers, **nominated or appointed by the University and with remuneration for the assignment**, in particular:

- a) at the time of appointment or proclamation, indicating the duration of the appointment or elective office;
- b) curriculum vitae;
- c) compensation of any kind related to the assumption of office and business trips or missions paid for with public funds;
- d) data related to hiring for other positions at public or private institutions and the related compensations paid to any corresponding title;
- e) any other assignments at the expense of public funding and disclosure of the due compensation;
- f) the statements referred to in Article 2 of Law No 5. 441/1982, as well as the certificates and statements referred to in Articles. 3 and 4 of the same law, as amended by Legislative Decree. N. 33/2013, limited to the individual, to the spouse (actual, not separated) and to relatives up to the second degree should they consent, highlighting the lack of permission in each case.

For those not nominated by the University it is sufficient to disclose their curriculum vitae, the terms of office and remuneration, if any.

The Observatory has chosen the individual who will hold office and have political-administrative power of the Council under article 4 of its Statute.

Regarding the data of art. 15 paragraph 1 lett. d) of Legislative Decree. n. 33/2013, ANAC's Guidelines require disclosure in aggregate form of data on compensation paid to executive positions as well as collaborative assignments and consultancy in aggregate form, indicating the annual expenditure for these types of assignments with an indication of the highest and lowest levels of compensation paid to executive positions, for collaborative assignments and consulting engagements.

The Observatory also undertakes to disclose, thereby ensuring utmost transparency on the extent of its management:

- budgets, financial statements and supplementary documents
- the aggregate costs on an annual basis to employees in permanent and temporary positions
- Economic benefits and other economic advantages accrued to third parties (contributions, grants, awards and scholarships, subsidies, etc.)
- the results of staff hiring
- purchases of goods and services (subject and cost of acquisition, the chosen economic operator, duration of the contract)

Additional disclosure requirements laid down in Art. 1 Sections 15 to 33 of Law 190/2012 are not applicable because of the nature of the Observatory. In order to fulfill the requirements regarding transparency, the Observatory shall publish on its website the documents, information and data provided in the section called "transparent Foundation", ensuring accessibility open knowledge of such data as well as the right of civic access, pursuant to art. 5 of Legislative Decree. N. 33/2013, making use of easy, comprehensive, user-friendly accessibility.

The Observatory shall comply with the fulfillment of the requirements regarding transparency, in accordance with art. 5 of Legislative Decree N. 33/2013, in compliance with the framework regarding the protection of personal data and notwithstanding the limitations and conditions expressly provided by law by proceeding with the anonymisation of personal data that may be present. Any irrelevant personal data will therefore be rendered unintelligible or, in the presence of sensitive or judicial data, they will be deemed not essential in relation to the specific objectives of disclosure transparency.

#### **Art. 4** **Monitoring and control system**

In order to implement an effective counteraction and prevention of corruption to ensure effective management of the risk areas identified together with and in the observance of the rules of transparency, the involved parties agree on the identification of an external and independent body to which the Observatory shall entrust tasks of annual, periodic review of institutional activity, also with specific reference to the status of implementation and adaptation of the rules on anti-corruption and transparency defined in this Protocol and applicable to non-controlled publicly funded companies according to the criteria and procedures to be defined promptly by the Observatory.



The results of activities to verify compliance with the disclosure requirements established by this Protocol and by national standards shall be presented to the Council at the end of the year for any necessary improvement to the organizational measures adopted and shall be the subject of specific annual certification on the fulfillment of disclosure requirements drafted and published in the manner specified by the National Anti-Corruption Authority (ANAC).

Verification and certification activities will be carried out, with respect to the deadlines for the various prevention and transparency measures envisaged in this Protocol, at the end of 2017 in relation to the procedures and actions implemented throughout the course of 2017.

#### **Art. 5 Duration and final provisions**

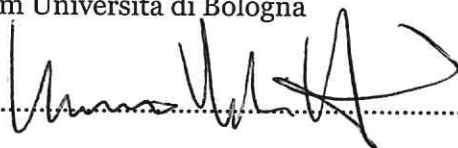
This Protocol of Legal Regulations will become effective from the signing date, but not before approval by the competent authorities of the stipulating parties and will expire on the date which coincides with the date of surrender or withdrawal of the University's involvement in the Observatory.

Precisely one year from the sign date the involved parties shall submit for reconsideration, if necessary, the provisions contained in this protocol, also taking into consideration the results achieved in that time. Each year the Observatory shall forward to the University the report provided for in Article. 4 containing the status of implementation of measures envisaged in this Protocol.

Although not provided in this Protocol, reference is made to ANAC's and other competent institutions' legislation and determinations in matters directly applicable to institutions. The provisions of this Protocol shall be deemed automatically amended and supplemented by the regulations and implementing decisions of the aforementioned institutions that arise after the signing of this Protocol.

Bologna, 16.09.2016

Alma Mater Studiorum Università di Bologna  
General Director  
Marco Degli Esposti



Observatory of the Magna Charta on the values and fundamental rights of university  
Legal representative  
Professor Francesco Ubertini



