

# THE ITALIAN “SYSTEM OF ACCESS TO ADMINISTRATIVE TRANSPARENCY” AND THE CULTURAL REVOLUTION OF THE OPEN DATA PARADIGM

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## **Abstract**

*The System of Access to Administrative Transparency was created with the aim of collecting in a single location all documents, information and data, which must be published based on current legislation on transparency. The basic idea is to expose to all stakeholders a specific interface that favors access, use and reuse of these elements, as a result of aggregation, enrichment and integration treatments, that can create new value services for citizens.*

*The proposed system aims to resolve some difficulties that reside in a level of formal but not substantial opening of the data.*

*The paper presents the components, the data formats used and the interconnections of SATA with other services existing in the Italian Republic; furthermore, it is proposed a possible modification of the current regulatory framework that is able to justify the adoption of the system described and to guarantees compliance whit Regulation (EU) 2016/679.*

**Keywords:** system, access, database, transparency, data, open, publication, legal ground.

## 1. Introduction

The cultural transformations operating in the Italian society in the last thirty years have progressively translated into a substantial modification of the regulatory framework relating to transparency. This framework has progressively evolved until the overturning of the general approach that had characterized the first decades of life of the Italian Republic, introducing the new principle of publicity[1], before which the activity of the public administration was essentially “secret”. In spite of this, the legislature’s intention was nevertheless to oppose a popular action, that is brought by anyone and aimed at the simple widespread control of the administration’s action. In fact, the legislation then in force recognized the legitimacy of exercising the right of access exclusively to the subjects who had a “*direct, concrete and current*” interest (be it private, public or widespread), in relation to a situation subject to legal protection and to which the document that can be shown is attributable.

This approach is quickly overcome in the last three years due to the introduction of two institutions. First of all the “classical” civic access[2], which can be exercised with regard to the documents to be published, and therefore, with the introduction of the “without subject” civic access[3]. The latter<sup>1</sup> does not provide any restriction on the subjective legitimacy of the applicant; neither, it must be motivated, setting itself the purpose of “*promoting widespread forms of control on the pursuit of institutional functions and on the use of public resources and to promote participation in the public debate*”<sup>2</sup>[2][3]. In fact, it assigns to everyone the “*right to access data and documents held by public administrations, further than those published*”<sup>3</sup>[2][3].

In the current context, the ultimate aim of these actions is to revitalize or, in some cases, rediscover the relationship between the citizen and the institutions, restoring the trust that is the basis of a representative democracy. Therefore, the legislator calls to a veritable declaration of will both the “common” citizen, and those citizens who play an active role in the institutions that make up the “Republican Governance”.

In particular, the citizen now has the assignment of exercising his control and proposal power, overcoming the mere electoral moment. All this in order to invite the established authority to make daily account of the methods of exercising his mandate, creating among other things a virtuous cycle aimed at renewing day by day the “legitimacy” of the institutions themselves.

Thus, there is a new possibility of giving quality back to politics by giving it back the character of mission and service, as well as encouraging the citizen to become aware of the force of freedom of his thought at every moment of public life.

## 2. A new proposal

Lately there have been many innovations introduced by recent legislative interventions on civic access, as well as on mandatory publications of documents, information and data using an open source format. This has determined the need to promote access, use and reuse of these elements, both by citizens and organizations and by aggregating, enriching and integrating them, so that it is possible to create new value services for the citizens themselves.

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<sup>1</sup> The Italian Republic's Legislative Decree 97 of 25 May 2016, updated the Italian Republic's Legislative Decree No. 33 of March 14, 2013.

<sup>2</sup> Translation from the original text into Italian language: “*Favorire forme diffuse di controllo sul perseguimento delle funzioni istituzionali e sull'utilizzo delle risorse pubbliche e di promuovere la partecipazione al dibattito pubblico*”. Compare the Italian Republic's Legislative Decree No. 33 of March 14, 2013, article 5, clause 2.

<sup>3</sup> Pursuant to the so-called “*transparency decree*” and in compliance with the limits relating to the protection of legally relevant interests pursuant to Article 5-bis of the Italian Republic's Legislative Decree No. 33 of March 14, 2013.

At the moment the difficulty that is most evident lies in a level of formal but not substantial openness. Since even today, many data publications are made using electronic formats that are not open and, therefore, not fully accessible via the Internet (in the sense that such formats they are not index able and therefore available through surveys carried out with specific search engines), not exportable, not directly reusable and not aggregable with other data sources, even (and above all) in consideration of their peculiarity of not being machine-readable. In this sense, even the benefits introduced by the Open by Default principle risk not producing the desired effects. In fact, in the reality, today the data available on the various institutional sites under the heading “Transparent Administration” need to be previously subjected to lengthy manual processing that (without changing the semantic value and the information contained) are designed to transform them into an electronic format actually open.

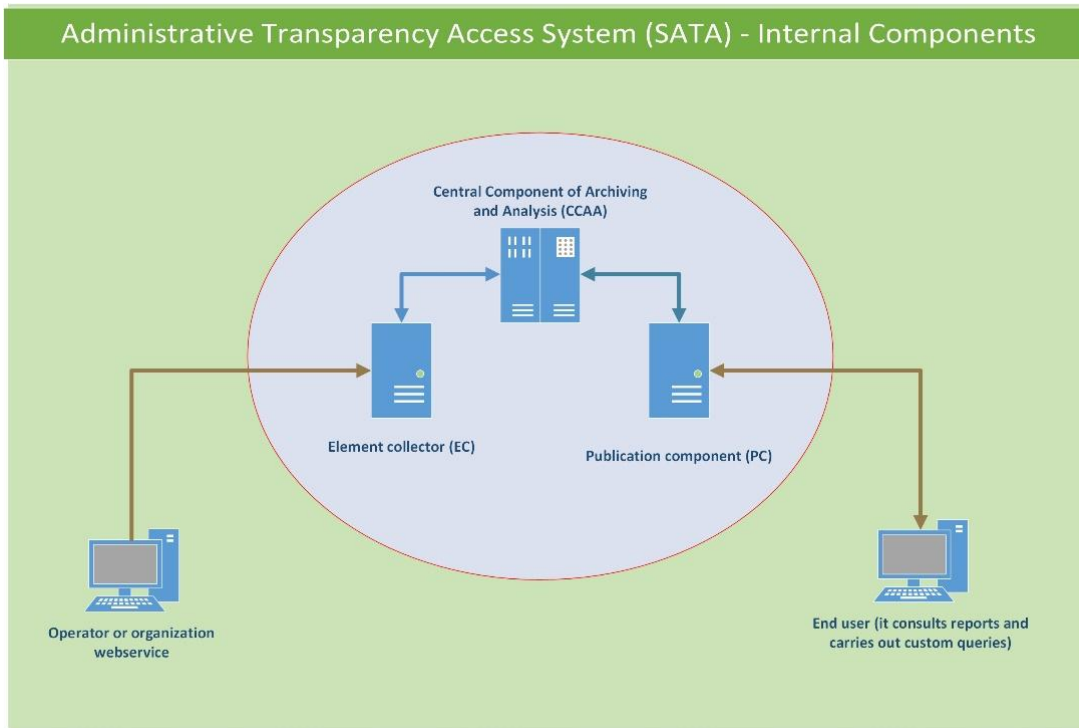
So, my proposal [4] is to establish a special centralized system called SATA, or System of Access to Administrative Transparency, which must collect in a single location all documents, information and data, subject to mandatory publication pursuant to the current law. The assignment of this system will be to provide a single interface, to which the various entities<sup>4</sup> can connect to confer the various elements provided directly to an “*Elements Collector*” (EC). This task could be manually (through an operator) or automatically (via a web service). This collector will then have the task of communicating with the “*Central Component of Archiving and Analysis*” (CCAA) that will provide for the cataloging, archiving and indexing of each element (see Figure 1). With regard to communication to the outside, the “*Central Storage and Analysis Unit*” (CCAA) will use a web service called “*Publication Component*” (PC) able to ensure the following fundamental functions:

- export of pre-filled reports;
- exposure of data according to queries generated by users, without prejudice to the need to guarantee mechanisms to protect against the phenomenon of collusion and the time window.

In order for the proposed system to be effectively implemented, a regulatory change is required that is aimed at its establishment[5]. Furthermore, it will be necessary to delegate the description of the technical characteristics to a subsequent interministerial decree, which may be updated every two years, to guarantee the correct technological and organizational updating.

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<sup>4</sup> That is, the aforementioned documents, information and data.



*Figure 1 – The SATA’s internal components*

Eventually, in order to facilitate the interaction with the regional information systems, it is possible to evaluate the possibility of setting up intermediate peripheral systems on a regional basis, which will have the purpose of acting as a collector of a large amount of information able to subsequently feed the national system SATA. These peripheral systems would take the name of SARTA, which is the Regional Access System for Administrative Transparency. In this scenario, each local Public Administration would have the obligation to confer its elements directly to the territorially competent SARTA.

### **3. Method of conferment**

At least annually, the actors involved must communicate the requested information, as well as promptly updated, upon the occurrence of significant changes occurred during the present annuity.

The subjects concerned must necessarily provide such data and, in the case of non-compliance, it will be determine, as appropriate, a sanctioning mechanisms aimed at ensuring the ineligibility or suspension, and the legal forfeiture of the defaulters.

As regards the subjects holding elective or managerial posts in local bodies, the obligation to submit the documentation required by the competent body will occur in two stages. The first one, upon acceptance of the candidacy (or appointment), the second one, on an annual basis, at the time of submission of the declaration of earnings subject to Italian tax on physical person income (IRPEF).

With regard to the data concerning the autonomous entities, their transfer to the SATA must be carried out exclusively by the entity itself and, in the case of failure to comply with the regulatory provisions, the sanctions will apply to its legal representative.

#### 4. Logistics placement

The System of Access to Administrative Transparency will have to find a suitable logistic location; specifically, my proposal is to provide for its placement in the National Demographic Services Center at the Italian Ministry of the Interior<sup>5</sup>.

Given that “with reference to the functions performed by the CNSD and the telematics infrastructure necessary to guarantee the National Center's connectivity to the structures involved, the services offered by the CNSD constitute the national reference point for maintaining the coherence and alignment of information summary data of citizens and the reference point of the whole system of personal data”<sup>6</sup>[6].

#### 5. Data contained

The System of Access to Administrative Transparency must be able to exchange information with the various autonomous bodies using XML-SOAP and XBRL format (used for sending only the balance sheet data). Likewise, it must be able to communicate with the INA/SAIA System, with the ANPR (the Italian National register of the resident population) [7]and with the SPID system (the public identity system of Italian Republic)[8], according to the data formats used by these systems.

As foreseen by the Open by Default principle, the license chosen must be the Italian Open Data License v2.0 (IODL) [9], which due to its characteristics guarantees the maximum degree of openness and allows the free re-use of the information displayed.

Initially, in the SATA system must be present at least the elements relating to the subjects who apply to hold elective or managerial posts in the various local bodies, as well as those related to the data of the various autonomous bodies, as follows:

- A. data concerning candidates**, that is: personal data, income situation, balance sheet, register of loans, register of expenses, data related to the performance of the mandate;
- B. data concerning the autonomous bodies**, that is: economic-financial documentation, register of the resolutions, archive of records, archive of calls for tenders and results, list of real estate, register of external appointments, register of subsidiaries, publicity of board works, Preliminary telematics register.

Furthermore, it is required that this system also incorporates the “*Register of local and regional administrators*”<sup>7</sup>, which will then be configured as a microscopic subset of information.

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<sup>5</sup>This body was set up by Decree of the Italian Ministry of the Interior of 23 April 2002 at the Central Directorate for Demographic Services, and is currently in charge of the unitary management of IT activities and infrastructures belonging to the same Central Management.

<sup>6</sup>Translation from the original text into Italian language: “In riferimento alle funzioni svolte dal CNSD e all'infrastruttura telematica necessaria per garantire la connettività del Centro Nazionale verso le strutture coinvolte, i servizi offerti dal CNSD costituiscono il punto di riferimento nazionale per il mantenimento della coerenza e dell'allineamento delle informazioni anagrafiche sintetiche dei cittadini e il punto di riferimento di tutto il sistema delle informazioni anagrafiche”.

<sup>7</sup>This operation requires a specific modification of the art. 76 of the aforementioned Italian Consolidated text of local authorities (TUEL)[5].

## 6. Penalties

The gained extensive experience of the last thirty years on the subject [10], have unfortunately shown that, in the absence of a serious sanctioning rule that acts as a real deterrent of incorrect behavior, the effective value of a regulatory compound aimed at guaranteeing to all citizens transparency and awareness (in relation of the subjects who hold an elective or directive task), it will be nullified.

In this sense, I believe that the changes introduced by the so-called Italian “*Transparency decree*” of 2013 [2], although improving the current situation, are not sufficient. In fact, they are limited to the introduction of a pecuniary administrative fine ranging from 500 to 10,000 euros charged to the person responsible for the failure to notify. The relevant provision is also published on the Internet site of the institution.

Therefore, the SATA regulatory framework must come from an amendment to the TUEL<sup>8</sup>[5], in order to define rules for the minimum protection of civil rights of citizens, in compliance with democratic principles, and formal and substantive equality. The objective, the purpose, the characteristics and the sanctioning mechanisms of the SATA system should be described at the same time.

More specifically, the sanction mechanism envisaged must provide for the amendment of art. 60 of the aforementioned Italian legislative decree [5], containing “*Ineligibility*”, through the introduction of a phrase stating the ineligibility of the subjects who at the time of acceptance of their candidacy have not provided for the transmission of the documentation provided<sup>9</sup>. Similarly, is required an amendment to art. 59 of the TUEL[5], on “*Suspension and forfeiture of rights*”, aimed at introducing a wording that includes first of all the suspension and later, in the event of continued non-compliance, the forfeiture of the right of those subjects<sup>10</sup>. This is the case in which they omit the annual presentation (concomitantly upon delivery of the tax return subject to IRPEF) of the prescribed documents.

## 7. A database example

The following is an example of a database with the purpose of presenting a sub-section of the information contained in the SATA system, namely those relating to the publicizing of information concerning the representatives of the people. This set of information is divided into six typological sets, namely: a) personal data, b) income situation, c) financial position, d) register of loans, e) register of expenses, f) data related to the performance of the mandate. For each of these information blocks, the data to be analyzed were defined and an extract of the logical scheme was presented.

**Personal data** → the information covered in this section (which uses sex tables) are those related to the registry of the person holding electives, namely: name, surname, place and date of birth, tax code, and elective positions held over time (see Figure 2).

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<sup>8</sup> Specifically, I would envisage a change to the contents of Title I “*General provisions*”, of Part I “*Institutional order*”, of Legislative Decree no. n. 267/2000 and s.m.i. (commonly known as the “*Single Text of Local Authorities*”).

<sup>9</sup> A sanctioning mechanism having similar force must be provided for subjects holding executive positions in autonomous entities.

<sup>10</sup> Same as above.

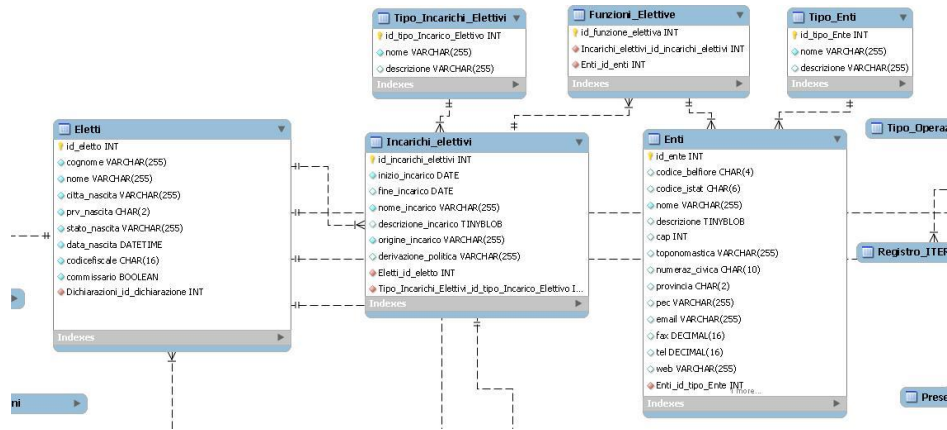


Figure 2 - The portion of the SATA database related to the personal data

**Income situation** → the information processed in this section (which uses eight tables) are those relating to the income situation of the person who perform an elective appoint, namely: salary and reimbursements and / or attendance fees received in any capacity by the body (see Figure 3).

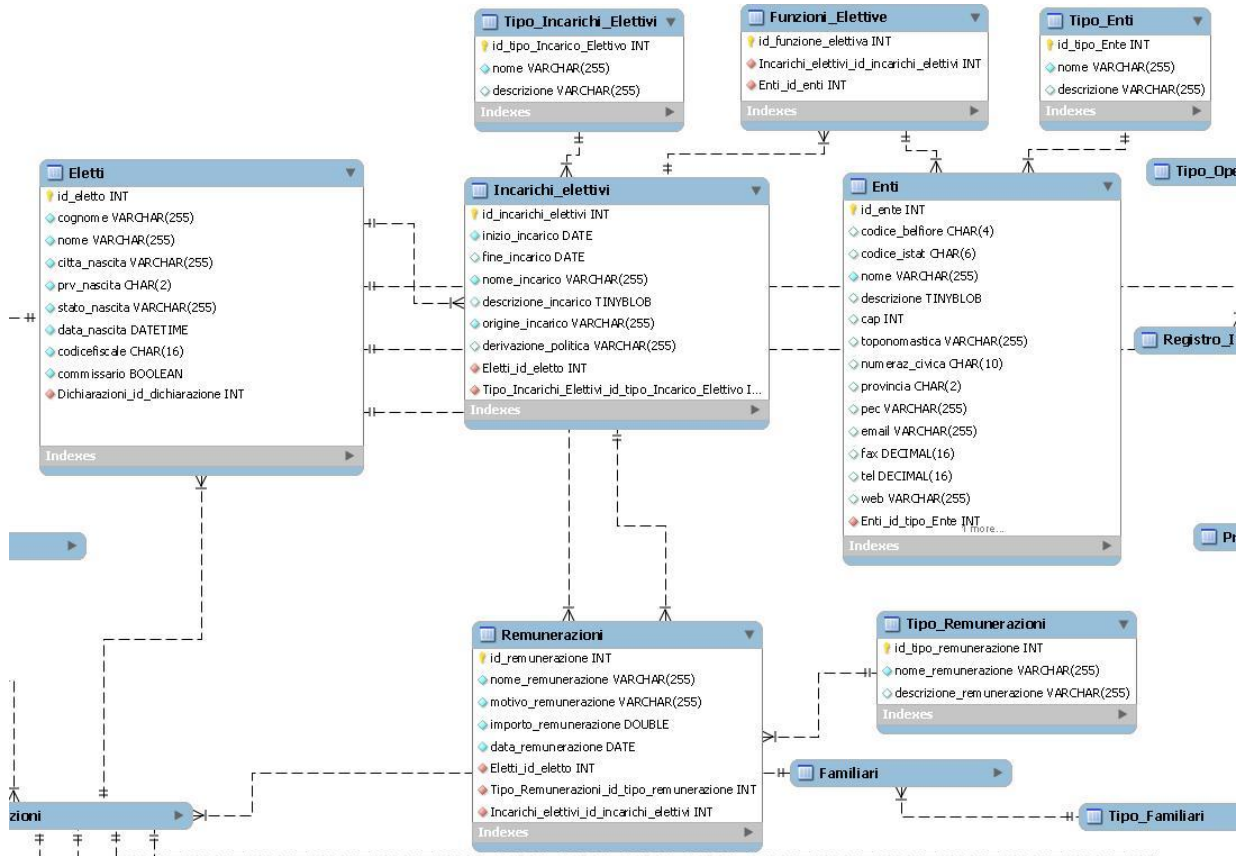


Figure 3 - The portion of the SATA database related to the income situation

**Financial position**→the information covered in this section (which uses twenty-one tables) are those related to the financial position of the person who perform an elective appoint. This section refers to the declarations submitted by the subject in question and related to his/her person, rather than the declaration of the non-separated spouse and of the relatives within the second degree, if consenting (see Figure 4).

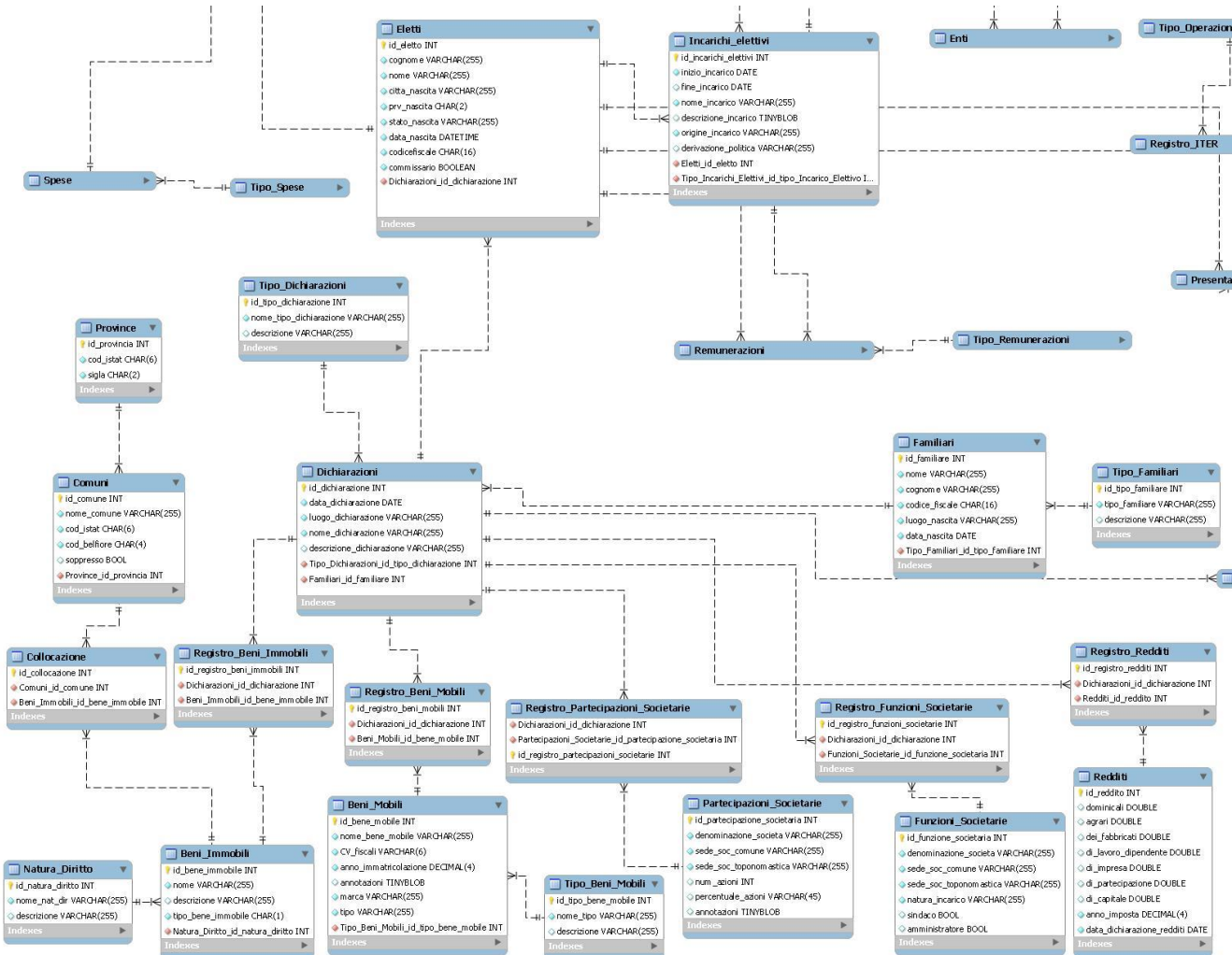


Figure 4 - The portion of the SATA database related to the financial position

**Register of loans**→the information covered in this section (which uses seven tables) are those relating to the list of loans received for any reason of the person who perform an elective appoint, namely: list of loans, gifts, benefits or other similar, for any reason received (see Figure 5).

**Register of expenses**→ the information covered in this section (which uses five tables) are those relating to the list of expenses incurred by the person who perform an elective appoint, and by its staff, namely: list of expenses, including those for staff, office, travel, telephony, computer equipment, and miscellaneous expenses (see Figure 6).



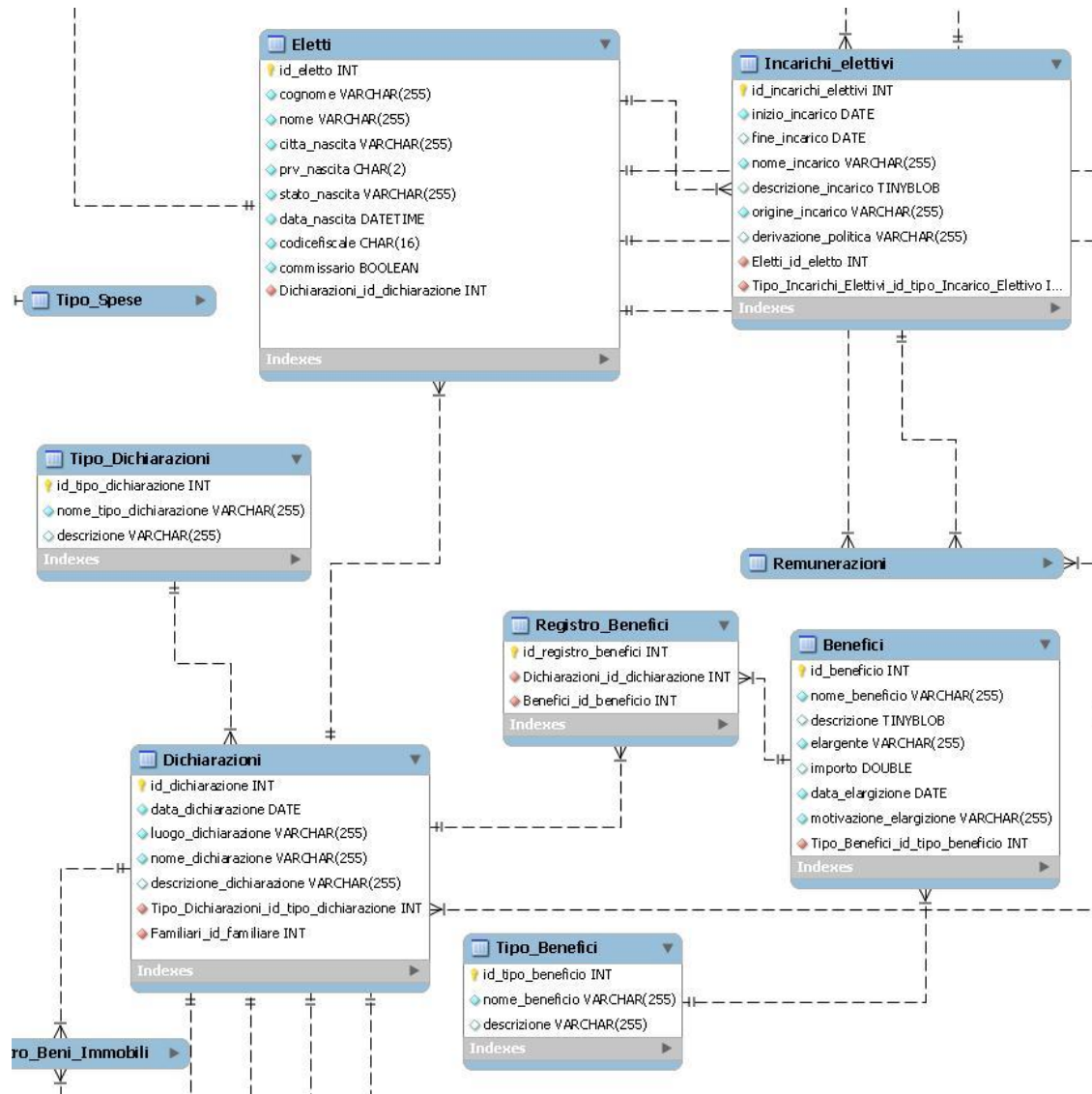


Figure 5 - The portion of the SATA database related to the register of loans

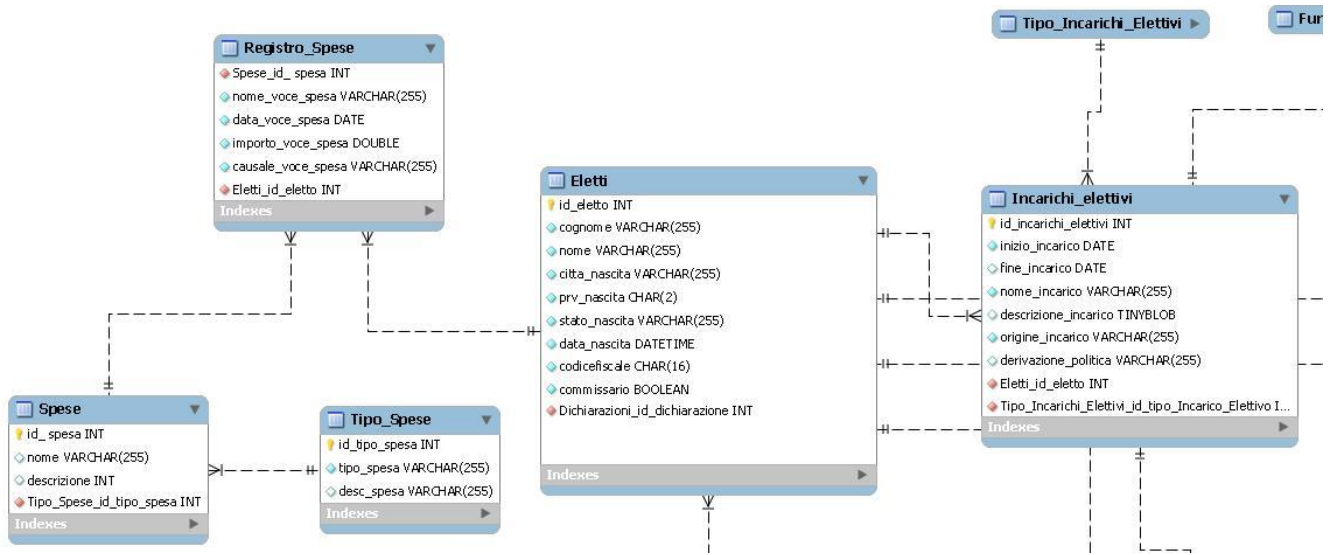


Figure 6 - The portion of the SATA database related to the register of expenses

**Data related to the performance of the mandate**→the information covered in this section (which uses sixteen tables) are those related to the analytical indicators of the ways in which the person who perform an elective appoint is carrying out his mandate, namely: the list of documents presented with the related process until its conclusion, as well as the list of the attendance at the work of the institution of which it is part and the votes cast on the acts adopted by it (see Figure 7).

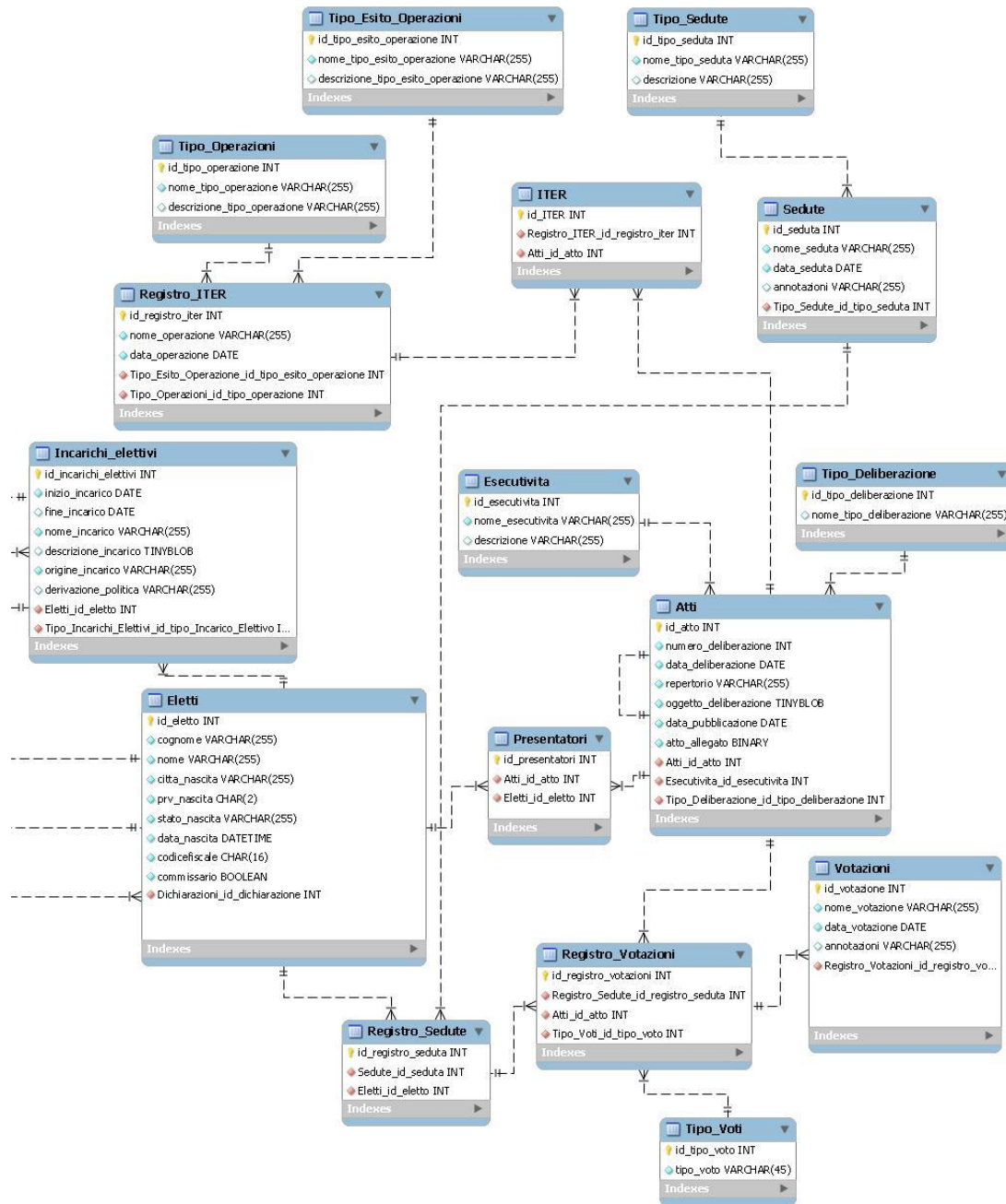


Figure 7 - The portion of the SATA database related to the data related to the performance of the mandate

## 8. Conclusions

While aware that what is proposed is still only a first draft of work, I hope that the illustrated solution can find the necessary attention in order to start a virtuous path that gradually leads to an ever-greater degree of refinement of the proposed system. In this sense, the proposed regulatory changes are necessary and inevitable in order to provide a legal ground for the processing of data of data subjects holding elective and/or directive positions in bodies, maintaining a fully compliance with the provisions of Regulation (EU) 2016/679[11].

For this purpose, it would be useful to carry out a specific pilot project at an Italian regional administration, which is favorable to its experimentation and intends to assure the necessary legislative coverage.

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