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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
WORKING GROUP ON BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS**

Italy Phase 4: Two-Year Written Follow-up

Summary and Conclusions of the Working Group

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This document was adopted by the Working Group on 10 October 2024. The Annex contains the two-year written follow-up report submitted by Italy (initially circulated under the cote DAF/WGB(2024)39).

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Italy Phase 4: Two-year Written Follow-Up Report Summary and Conclusions

Summary of findings¹

1. In October 2024, Italy submitted its Phase 4 written follow-up report to the OECD Working Group on Bribery in International Business Transactions (Working Group). The report described Italy's efforts to implement the 48 recommendations and to address the follow-up issues identified during its Phase 4 evaluation of October 2022. In sum, Italy has fully implemented 18 recommendations, partially implemented another 7 and not implemented 23.

2. The Working Group commends Italy on several efforts to implement the Phase 4 recommendations. In April to June 2024, Italy held a series of seminars, courses and conferences that covered the Anti-Bribery Convention, foreign bribery, and related matters. A July 2023 workshop addressed further Working Group concerns about the foreign bribery offence. Additional workshops are planned for October 2024 and in 2025, and Italy is strongly encouraged to repeat the event in the future to reach more judges and prosecutors. A new section in the Ministry of Justice now monitors the press daily for allegations of foreign bribery. Italy enacted an enhanced legislative framework to protect whistleblowers in March 2023, though some whistleblowers in the private sector remain excluded.

3. Of much greater concern is Italy's decision not to address several key recommendations, some of which date back to Phase 3 in 2011. Italy has not rectified a clear contravention of Convention Art. 1 of requiring proof of foreign law for the foreign bribery offence. Fines remain unavailable against natural persons for foreign bribery; a proposed legislative amendment would only result in fines of up to EUR 30 000. For legal persons, the maximum fines for foreign bribery continue to be unfit for purpose, and will remain so even if proposed legislative amendments are enacted. The statute of limitations applicable to legal persons for foreign bribery also remains far too short.

4. Equally concerning is that Italy's foreign bribery enforcement may be declining. In 2011-2022, Italy recorded 90 investigations, 72 proceedings, and 22 convictions. In the two years since the Phase 4 Report, enforcement has dwindled to just 1 new investigation, no new proceedings, and 4 convictions. As in Phase 4, convictions largely result from *patteggiamento*, a form of non-trial resolution. The number of acquittals at trial remains disproportionately high.

Regarding preventing and raising awareness of foreign bribery

5. *Recommendation 1(a) – Not implemented*: Italy still does not have a comprehensive national strategy to fight foreign bribery which identifies the sectors and activities in Italy that are at risk of foreign bribery, and which specifies measures for addressing those risks. Italy's follow-up report only describes a collection of activities concerning training, awareness-raising, detection and legislation, all of which are described under other recommendations below. Some activities such as the Inter-Institutional Co-ordination Table are not new (see Phase 4 Report para. 21). Italy also states that it has a "coherent framework based on a long-standing anti-corruption tradition" and "long-standing and internationally endorsed anti-corruption expertise". These abstract concepts are not a concrete strategy, however. Italy acknowledges that it "has not yet formally adopted a comprehensive national strategy against foreign bribery" but that it is "now committed to conducting a thorough assessment to pinpoint the high-risk areas within Italy". The Ministry of Justice has "initiated the process of formalising [a] national strategy".

¹ The team evaluating Italy's follow-up report was composed of lead examiners from Germany (Dr. Felix Burkhart, Counsellor, Federal Ministry for Economic Affairs and Climate Action) and the United States (Mr. Charles Cain, Chief, FCPA Unit, Securities and Exchange Commission; and Mr. Andrew Gentin, Deputy Chief, Fraud Section, Criminal Division, Department of Justice). The OECD Anti-Corruption Division was represented by Mr. William Loo and Ms. Lucia Ondoli.

6. *Recommendation 1(b) – Fully implemented:* Italy has raised awareness of foreign bribery among public officials. Activities include a seminar by the National School of Public Administration; an April 2024 course on foreign bribery and reporting organised by the Community of Practice of the Persons Responsible for the Prevention of Corruption and Transparency (RPCT); an RPCT Conference on 6 June 2024; and training in June 2024 on “Transnational Perspective of Preventing and Fighting International Corruption” under the Expert Diploma Module on Prevention of Corruption and Transparency.

7. *Recommendation 1(c) – Not implemented:* The focus of this recommendation is private sector engagement. The Ministry of Foreign Affairs and SIMEST prepared an informational module to raise awareness of foreign bribery among internationally-active businesses (especially SMEs) that seek preferential loans. The Ministry’s “Global Days” on International Anti-Corruption Day 2022 was attended by private sector representatives. Confindustria, an Italian business organisation, presented its “[Zero Corruption Manifesto](#)” in a Forum on 1 March 2024 in Rome. Italy states that companies can adopt the Manifesto. However, the document is only a general, aspirational anti-corruption statement. It also does not specifically address foreign bribery. Confindustria also prepared two papers on the role of education and digital technologies in fighting corruption. However, the papers were presented in OECD committees, not the private sector. Three universities began offering master’s degrees in anti-corruption to students but degree programmes are not private sector engagement. None of the efforts described above specifically targeted companies in risk sectors, or provided guidance on how to mitigate the risk. The Ministries of Justice, Economy and Foreign Affairs did not take steps such as outreach by embassies or publishing guidance, as would be expected. Italy also refers to the Ministry of Justice’s verification of corporate “models” under Legislative Decree (LD) 231/2001, but this process was already in place at the time of the Phase 4 Report. Finally, Italy states that guidelines for business organisations to address foreign bribery are under development in consultation with the private sector.

8. *Recommendation 1(d) – Not implemented:* This recommendation specifically asked Italian authorities to proactively promote anti-corruption compliance programmes. The follow-up report describes activities not by the government but Confindustria, a business organisation. These activities also either took place before the Phase 4 Report or did not concern anti-corruption compliance. Italy adds that a *tavolo tecnico* and a Ministry of Justice working group “have adopted a constructive approach aimed at encouraging the adoption of [compliance programmes]”. But there are no details on what concrete actions Italian authorities have taken to promote compliance programmes.

9. *Recommendation 1(e) – Not implemented:* This recommendation asked Italy to issue guidelines to MAECI officials on how to support Italian companies operating abroad that may experience bribe solicitation. Italy has still not done so. Its follow-up report merely repeats its awareness-raising activities described under recommendation 1(c). Initiatives such as training on high-risk areas and inspections of foreign missions deal primarily with not foreign bribery but corruption committed by MAECI officials (e.g. related to visas and citizenship). Italy states that a network of *Guardia di Finanza* experts are “equipped” to assist Italian companies, but there are no guidelines to these experts on the assistance that they give.

Regarding detecting and reporting foreign bribery

10. *Recommendation 2 – Fully implemented and converted to follow-up:* On 8 September 2024, the Ministry of Justice (MOJ) created a new section to conduct daily press reviews on the topic of national corruption and foreign bribery. The High Council of the Judiciary and *Guardia di Finanza* are considering similarly initiatives. Italy intends to implement a procedure whereby the MOJ would forward relevant press information to all Prosecutors General for dissemination to line prosecutors. The Working Group will follow up in future evaluations whether actual foreign bribery allegations reported in the media are successfully detected by these initiatives and are forwarded to law enforcement.

11. *Recommendation 3 – Fully implemented:* This recommendation asks Italy to “consider” adopting a policy on self-reporting. Italy concluded that Legislative Decree 24/2023 protects whistleblowers against

retaliation and thus increases the incentive to report wrongdoing to competent authorities. Furthermore, there have not been cases in which the perpetrators of foreign bribery have been exonerated. Legislative amendment on self-reporting was “therefore deemed unnecessary”.

Regarding whistleblowing

12. *Recommendation 4(a) – Fully implemented and converted to follow-up:* Protection of public sector whistleblowers was enhanced in March 2023 with the enactment of LD 24/2023 (Whistleblower Protection Law, WPL). The WPL contains broad definitions of reporting persons and retaliation (Arts. 2(1)(m), 3(3)-(4) and 17(4)). Remedies for retaliation include annulment, reinstatement, and compensation for damages, with a reversal of the burden of proof (Arts. 17(2) and 19(4)). The application of whistleblower protection in the public sector will be examined in a future evaluation.

13. *Recommendation 4(b) – Partially implemented:* The WPL protects only some but not all private sector whistleblowers (WPL Arts. 2(1)(q) and Art. 3(2)).² As before, whistleblowers who report foreign bribery or related offences are not protected if their company does not have an “organisational model” under LD 231/2001. Entities subject to certain EU acts are also excluded when the report does not concern EU-law related violations. If the company has an organisational model, then the whistleblower is protected if he/she reports internally in the company, and not externally to ANAC or judicial authorities. Italy mentions further options for external reporting but only of violations of EU law. Sanctions for retaliation have been slightly increased (from EUR 5 000-30 000 to EUR 10 000-50 000; WPL Art. 21) but remain low and may not be sufficient to deter the most senior managers or officials. Fines can be imposed only on individuals, not private sector entities.

14. *Recommendation 4(c) – Partially implemented:* ANAC published guidelines on the external reporting channel and general explanations on the WPL. It is developing guidelines for internal channels. The business organisation Confindustria published an “Operational Guide”, and organised or participated in seminars for companies on the WPL. Little has been done, however, to raise awareness of the protection and remedies available under the WPL among private sector whistleblowers (e.g. company employees). ANAC provides some information on its website and has participated in private sector events. It trains NGO personnel designated to support whistleblowers. ANAC states that these initiatives generated positive feedback but it is not yet possible to determine their impact on awareness.

Regarding money laundering

15. *Recommendation 5(a) – Fully implemented:* Italy adopted in October 2024 a section of the money laundering National Risk Assessment (NRA) that specifically covers the risk of money laundering predicated on foreign bribery.

16. *Recommendation 5(b) – Fully implemented:* The UIF (financial intelligence unit) issued a new edition of the anomaly indicators on 12 May 2023. Unlike in the past, the indicators do not refer to specific offences. Nevertheless, some of the indicators are relevant to detecting foreign bribery. For example, indicator 7 focuses on politically exposed persons (PEP). Sub-indicator 7.4 concerns transfer of funds by an entity operating in an area under a PEP influence. Sub-indicator 7.5 relates to international transfers. Indicator 8 deals with transfers to an entity linked to a PEP.

17. *Recommendation 5(c) – Fully implemented:* UIF staff received training that specifically covered foreign bribery, including: a 15-17 May 2024 seminar attended by 20 staff on “International corruption: strategies and tools to combat it”; a 6 June 2024 event organised by the National School of Administration dedicated to Italy’s contribution to preventing and fighting corruption at the international level; university master’s courses in 2022 and 2023 that covered international corruption; and a seminar organised by the Ministry of Foreign Affairs for all UIF employees on 2 May 2023.

² See also ANAC, [Guidelines on Whistleblowing](#), Delibera n. 311 of 12 Jul. 2023, p. 47.

18. *Recommendation 5(d) – Partially implemented:* Since Phase 3 in 2011, the Working Group has asked Italy to maintain statistics on suspicious transaction reports (STRs) that result in or support bribery investigations, prosecutions and convictions. In its current follow-up report, Italy states that five “proceedings” for foreign bribery resulted from STRs. It has not indicated the number of investigations and convictions resulting from STRs. Additionally, the figures in the follow-up report represent the number of proceedings originating from STRs *as of 15 June 2024*. Italy has not provided statistics of STR usage in foreign bribery matters over a period of time that it could use for analytical purposes. Finally, Italy contacted “judicial offices” and obtained the figures solely for the purpose of the follow-up report. Such an *ad hoc* process implies that Italy is unlikely to use statistics regularly in the future to monitor and evaluate the performance of its STR system in detecting bribery and other crimes. The manual nature of the exercise also calls into question the data’s accuracy. Italy also refers to the annual reports and website of the financial intelligence unit. However, these sources do not contain STR statistics pertaining specifically to bribery investigations, prosecutions and convictions.

Regarding accounting and auditing

19. *Recommendation 6(a) – Not implemented:* This recommendation asked Italian authorities to train external auditors on the detection of foreign bribery. Italy’s follow-up report describes training for accountants and auditors organised since end-2022 by the Ministry of Economy and Finance (MEF), the National Council of Chartered Accountants and Accounting Experts, and the Order of Chartered Accountants and Accounting Experts of Rome. The training did not address foreign bribery detection. In 2023, 126 auditors (approximately 0.1% of the total in Italy) attended a non-mandatory MEF training on “regulatory aspects of corruption”. Italy cannot confirm whether the course addressed foreign bribery.

20. *Recommendation 6(b) – Not implemented:* Italy’s report refers to the training described under recommendation 6(a). The training did not raise awareness among accountants and auditors of their duty to report foreign bribery and the protection for those who report, as requested by this recommendation. Italy further states that auditors must apply the ISA-Italy 250 standard on non-compliance with laws and regulations, but this was already noted in the Phase 4 Report.

21. *Recommendation 6(c) – Not implemented:* Italy has not taken steps to address this recommendation to protect all auditors who report foreign bribery to competent authorities from legal action. LD 231/2007 Art. 35(4) protects auditors who report suspected money laundering to regulatory authorities, and not the reporting of foreign bribery to law enforcement. This provision was also already in force at the time of the Phase 4 Report. The “Code of Ethics and Independence” for statutory auditors merely states that auditors “should communicate [non-compliance with laws] to the competent authority when required by laws or regulations or when deemed necessary in the general interest” (R360.13). The Code does not protect auditors who report from legal action. Italy states that it will consider possible legislative measures.

Regarding tax

22. *Recommendation 7(a) – Fully implemented:* The Revenue Agency published the [OECD Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors](#) on its intranet site. In June 2024, the Agency trained 500 tax auditors on topics such as the Working Group, foreign bribery, OECD Handbook, risk indicators, and investigative techniques.

23. *Recommendation 7(b) – Not implemented:* The Phase 4 Report (para. 304) found that Italian tax authorities did not systematically re-examine the tax returns of those sanctioned in foreign bribery cases. Italy has not taken any action since to address this issue. It refers to various legislative provisions that have not been amended since the Phase 4 Report. Italy rightly points out that the implementation of this recommendation requires “a constant dialogue” between the judicial and tax authorities. However, it merely states that both authorities already co-operate, and that the Revenue Agency “routinely analyses the reports received from the judicial authorities”. It has not taken any steps to ensure future co-operation on the re-examination of tax returns when a foreign bribery investigation commences.

Regarding export credits and official development assistance

24. *Recommendation 8(a) – Partially implemented:* SACE and SIMEST have undertaken some initiatives to implement this recommendation, but further efforts are needed. Concerning awareness-raising among staff and clients, since December 2023, SACE has regularly trained staff on the anti-bribery legal framework and internal procedures for enhanced due diligence. SIMEST conducts compulsory training “in the field of anti-money laundering and anti-corruption” but not specifically on foreign bribery. Both SACE and SIMEST have “anti-corruption” webpages that mention the Convention and remind clients that the national legislation covers foreign bribery. SACE and SIMEST do not yet adequately train staff on detecting potential foreign bribery in a supported transaction, for example by helping them recognise red flags. SIMEST refers to staff training on its crime prevention model under LD 231/2001. However, the model concerns the liability of SIMEST for crimes committed by its employees. It does not deal with SIMEST clients bribing foreign officials. The Phase 4 Report (para. 77) deemed such training insufficient.

25. *Recommendation 8(b) – Partially implemented:* SACE’s internal guidelines now state that the litigation department shall report all credible evidence or reasonable suspicions of foreign bribery received from employees to the judicial authorities. SIMEST, however, continues not to have an *express* obligation to report such matters. Italy adds that “SIMEST is already subject to obligations to report evidence of foreign bribery to law enforcement authorities under the applicable law”, but does not provide the relevant provision(s). An additional obligation to report suspected money laundering to financial intelligence authorities does not address the reporting of foreign bribery to law enforcement. Nevertheless, SIMEST commits to amending its internal guidelines by 2025 Q1 to add a mandatory reporting obligation.

26. *Recommendation 8(c) – Fully implemented and converted to follow-up:* SACE has commendably revised its internal guidelines to detail the cases in which enhanced due diligence must apply. The measures described as examples in SACE’s training include inquiries into the intermediaries used and commissions paid. The Working Group will follow up the application of these measures, including to joint-venture partners. SIMEST is strongly encouraged to follow through its stated intention to adopt an enhanced due diligence model. Italy reports that SIMEST has already put in place certain measures.

27. *Recommendation 9 – Partially implemented:* The *Cassa Depositi e Prestiti* (CDP) has a standard contract which specifies that breaches of anti-bribery or anti-corruption laws are a “default event” (Art. 12.9). Such breaches would allow the CDP to terminate the contract and seek the return of paid funds (Art. 13). However, Italy’s other ODA agency, the Italian Agency for Development Co-operation (AICS), merely repeats information in the Phase 4 Report. Training courses for its auditors and accountants are not specifically related to preventing and detecting foreign bribery committed by ODA project partners. The AICS plans to amend its internal guidelines and standard contracts to implement the Working Group’s recommendation.

Regarding the foreign bribery offence and defences

28. *Recommendations 10(a), 10(b) and 10(c) – Fully implemented and converted to follow-up:* On 3-4 July 2023, the Italian School for the Judiciary held a [workshop](#) that specifically addressed the treatment of circumstantial evidence and the level of details about the corrupt agreement that must be proven in foreign bribery cases. A second workshop is planned for 14 October 2024. This initiative is commendable but needs to continue regularly in the future to reach more judges and prosecutors. Furthermore, the Working Group will assess the success of these workshops by examining how Italian courts in future foreign bribery cases treat the issues of circumstantial evidence and proof of the corrupt agreement. Recent case law examples provided by Italy are not relevant to the level of details about the corrupt agreement that must be proven for the foreign bribery offence.³ A second case provided by Italy⁴ does not

³ Cass. Penale [15641/2024](#), [14027/2024](#), [1245/2024](#) and [44142/2023](#).

⁴ Cass. Penale [17514/2024](#).

deal with the two narrow factual issues in the Oil and Gas (Algeria) Case, namely the fungibility of the bribe money and legal title over the bribe. The case also does not refer to the Oil and Gas (Algeria) Case.

29. *Recommendation 10(d) – Fully implemented and converted to follow-up:* The Phase 4 Report considered the Oil Prospecting (Nigeria) Case, in which an individual entered into a corrupt agreement with Nigerian officials. Two companies later allegedly became aware of the agreement but nevertheless provided the funds used to pay the bribe. The companies were found not guilty of bribery partly because their actions occurred during the “executive phase” of the corrupt agreement, i.e. after the agreement had been made. However, two recent Supreme Court decisions appear to have substantially narrowed this concept.⁵ The Working Group should monitor whether Italian courts continue this approach in future cases.

30. *Recommendation 10(e) – Not implemented:* The Supreme Court has held since 2009 that Italy’s foreign bribery offence requires proof of foreign law. The Phase 4 Report (paras. 134-137) referred to several instances in which Italian judges applied this requirement in foreign bribery cases. Since then, the requirement has been applied in at least one other foreign bribery case. Such a requirement is a clear contravention of Convention Art. 1. The Working Group therefore called for urgent legislative action to rectify this issue, but Italy’s Ministry of Justice has decided against doing so. The follow-up report points to the fact that handing over the bribe to a person other than the public official can be considered by a judge at their discretion, and suggests this somehow overcomes the need to prove foreign law. However, it is completely unclear how a discretionary judicial act would overcome the mandate of the Italian Supreme Court, and at any rate would not satisfy the recommendation. Italy adds that “the court must ascertain the rules of foreign law that are useful for establishing whether the corrupt official performs functions or activities corresponding to those of public officials or persons in charge of a public service, according to domestic law”. But this merely reaffirms that Italy’s foreign bribery offence requires proof of foreign law and underscores the seriousness and urgency of the Working Group’s recommendation. Nevertheless, Italy undertakes to seek a viable solution, in compliance with the general principles of the Italian legal system, to the issue of an autonomous definition of a foreign public official.

31. *Recommendation 11 – Not implemented:* The Phase 4 Report identified three concerns about Italy’s “effective regret” defence to foreign bribery. Italy has not taken any steps to implement the recommendation. It considers that legislative action is unnecessary because the defence has not been applied in a foreign bribery case. It also cites a recent Supreme Court case as an example of the defence’s application.⁶ However, the case does not deal with the three concerns identified in the Phase 4 Report.

Regarding sanctions and confiscation

32. *Recommendation 12(a) – Not implemented:* Undue inducement (Criminal Code (CC) Art. 319quater) is one of Italy’s seven active foreign bribery offences. It applies when a public official abuses his/her capacity or powers and thereby induces an individual to unduly give or promise bribes. Both the official and the individual are guilty of the offence. But the maximum penalty for the briber is significantly lower than that for other bribery offences. Nevertheless, Italy has not taken any action to ensure that the sanctions against a briber for undue inducement are sufficient in practice. Instead, it merely disagrees with the Working Group’s recommendation. Italy also refers to statistics on sanctions imposed in practice. But the statistics do not support a conclusion that the sanctions are sufficient since the circumstances of the cases involved are unknown. Nor do the data distinguish between sentences imposed against a briber as opposed to a bribed official. It is also unclear whether any of the sentences imposed were suspended.

33. *Recommendation 12(b) – Not implemented:* Italy is one of only three Working Group countries that cannot impose fines against natural persons for foreign bribery. Italy states that a bill will be submitted to

⁵ Cass. Penale [28988/2022](#) and [168/2023](#).

⁶ Cass. Penale [8959/2023](#).

Parliament “shortly” proposing that foreign bribery be punishable by a fine of EUR 5 000-30 000 in addition to imprisonment. If enacted, this would be an improvement but the maximum fine would be insufficient. Italy also argues that confiscation could be imposed against an offender. However, the Working Group has long held that confiscation is not a substitute for adequate fines. This is because confiscation does not have deterrent effect since it merely returns the offender to the same financial position as if the crime had not been committed.⁷ In any event, the Working Group only considers enacted legislation when assessing the implementation of the Convention.⁸

34. *Recommendation 12(c) – Not implemented:* CC Art. 322ter(2) states that in bribery cases the quantum of confiscation against a briber or an intermediary should be at least the value of the bribe. However, the Phase 4 Report observed that confiscation for less than this amount was imposed in at least three out of ten post-Phase 3 foreign bribery cases. Confiscation was also not imposed against intermediaries in some instances. Nevertheless, Italy has not taken action to address this issue. Its follow-up report merely recites the statutory provisions on confiscation, none of which has been amended since the Phase 4 Report. Italy also argues that the government cannot intervene in the judiciary’s application of CC Art. 322ter(2). But it could have taken awareness-raising measures similar to those for implementing recommendations 10(a)-(c) concerning the judicial interpretation of the standard of proof of the foreign bribery offence. Prosecutors could also be reminded to ask judges to apply CC Art. 322ter(2), and instructed to appeal court rulings that are inconsistent with the provision.

35. *Recommendation 12(d) – Not implemented:* Since Phase 3 in 2011, the Working Group has found that Italy’s fines against legal persons for foreign bribery are unfit for purpose. The maximum “base” fines are too low. Many mitigating factors then apply cumulatively to radically reduce the base fine. Italy states that a bill will be submitted to Parliament “soon” proposing that the maximum fines be increased by a quarter. But this would still result in maximum fines of just EUR 387 800 to EUR 1.55 million for the seven foreign bribery offences. The available mitigating factors would remain unchanged. The bill would also propose allowing confiscation to be ordered in an amount up to twice the value of the bribe or the proceeds of bribery, or one-tenth of the company’s turnover in the year before the offence was committed, whichever is higher. But this amendment is irrelevant because confiscation by definition can only be imposed for the amount of the actual bribe and proceeds of bribery in a specific case. Moreover, confiscation cannot be a substitute for fines because it lacks deterrent effect (see para. 33). In any event, the Working Group only considers enacted legislation when assessing the implementation of the Convention.

36. *Recommendation 12(e) – Not implemented:* LD 231/2001 allows “interdictive” sanctions against legal persons, e.g. debarment, denial of government subsidies, and revocation of licences. In practice, such sanctions have not been imposed in foreign bribery cases and have thus had no impact. Italy has not taken action to address this issue. Italy’s follow up report falls short of saying that the Ministry of Justice working group has even considered recommendation 12(e), let alone taken steps to ensure that interdictive sanctions are imposed in practice to an appropriate degree. Italy also refers to Supreme Court decision 42701 which was decided in 2010, i.e. before the Phase 4 and even Phase 3 Report.

37. *Recommendation 13(a) – Not implemented:* The Phase 4 Report (paras. 283-286) observed that a company seeking a procurement contract must declare that it has not been convicted of a criminal offence. The contracting authority then verifies the accuracy of the declaration through the AVCPASS system which contains information on criminal convictions and administrative sanctions imposed in Italy. However, the AVCPASS system does not contain (a) information on whether a company has been debarred by a multilateral development bank (MDB), or (b) information on a foreign company obtained from the Irregularities Management System (IMS). In January 2024, a Virtual Company Dossier of the Economic Operator (FVOE) replaced the AVCPASS system. Italy’s follow-up report describes at length that a company continues to be required to declare whether it is excluded from seeking procurement contracts.

⁷ For example, see [Phase 3 Germany](#), Commentary after para. 112.

⁸ For example, see [Chile: Follow-up to the Phase 3 Report and Recommendations](#), para. 5.

But like its predecessor, FVOE continues not to include the information described in (a) and (b) above. Italy adds that one obstacle is whether the conduct underlying an MDB debarment constitutes a criminal offence in Italy that is eligible for debarment. But a procuring authority can readily overcome this problem by inquiring directly with the MDB in question.

38. *Recommendation 13(b) – Not implemented:* The Phase 4 Report (paras. 287-288) found that in practice Italian procuring authorities do not enforce debarment that has been ordered by a court or is required by law. Italy's follow-up report repeats that a company seeking procurement contracts must declare whether it has been debarred by an Italian court, and that a contracting authority can verify the declaration on the FVOE system. But this was already the case at the time of the Phase 4 Report; the only difference is that the FVOE system has replaced AVCPASS. More importantly, Italy has not taken any steps to ensure that debarment is enforced in practice, such as by training procuring authorities.

Regarding the statute of limitations

39. *Recommendation 14(a) – Not implemented:* Preliminary investigations in Italy must be concluded within 6 months. The period may be extended to 2 years in cases with a "multiplicity of connected facts", a large number of accused, or requiring investigation abroad. Italy states that "the time limit is the longest among those provided for in the current penal-processing system". Because of this short deadline, however, some prosecutors have been forced to take foreign bribery cases to trial while requests for MLA were still outstanding (Phase 4 Report para. 174). Italy has not taken action to address this issue because it considers that the limited period for investigations protects an individual's right to a speedy criminal investigation and proceeding. But this ignores the importance of balancing this right with society's interest in effective law enforcement. Other Working Group countries with longer investigative periods nevertheless respect the right to a speedy proceeding.

40. *Recommendation 14(b) – Not implemented:* Since Phase 3, the Working Group has stated that the five-year statute of limitations for foreign bribery for legal persons is too short. Many cases have therefore been time-barred. The limitation period for natural persons is much longer at 15 years. This led to unjust situations like in one foreign bribery case where individuals faced prosecution but the company's charges were time-barred (Phase 4 Report para. 290). Nevertheless, Italy has not taken any steps to address this issue. It refers to LD 231/2001 Arts. 22 and 59 on the interruption of the limitation period upon indictment, but these provisions were enacted before the Phase 4 Report. Italy also insists unconvincingly that a shorter limitation period for legal persons is justified because a criminal investigation "subtracts economic resource" from a company, damages its reputation, and requires the company to adapt its business activity. The MOJ working group may further consider this matter. Meanwhile, the Minister of Justice has reportedly presented a bill to reduce the statute of limitations, including for corruption offences.⁹ Italy was requested but did not provide information about the bill.

Regarding foreign bribery enforcement

41. *Recommendation 15(a) – Not implemented:* Since Phase 3 in 2011, the Working Group has recommended the creation of a national database of investigations and prosecutions to ensure co-ordination and avoid duplication. Italy has not acted on this recommendation. Instead, it insists that such a database, even if accessible only by prosecutors, would infringe the autonomy of each prosecutors' office. It would also be "contrary to the codified system and the structure of judicial power" as well as the principle of investigative secrecy. This explanation is puzzling since some line prosecutors said in Phase 4 that they contact other prosecutors' offices manually and individually before starting a case (see Phase 4 Report para. 160). Italy acknowledges that senior prosecutors also contact one another to co-ordinate. A national database, even if only available to senior prosecutors, would merely make this process more efficient. Numerous Working Group countries have similar databases without infringing prosecutorial

⁹ European Commission (2024), [Rule of Law Report: Italy](#), pp. 16-17.

independence and autonomy. Italy also refers to Code of Criminal Procedure Art. 371 which was enacted in 1988 and requires prosecutors with related investigations to co-ordinate with one another. But the point of the Working Group's recommendation is that a national database is necessary to ensure proper co-ordination and full implementation of Art. 371.

42. *Recommendation 15(b) – Fully implemented and converted to follow-up:* Despite a revision of work units in December 2023, the 3rd Department of the Milan Public Prosecutors' Office continues to be responsible for cases in Milan of foreign bribery and other offences such as transnational economic crimes, trafficking in influence, money laundering, and tax crimes. This is a positive development. The Department is assigned nine Deputy Public Prosecutors though only seven are in service. It has only one ongoing foreign bribery case, however. As mentioned below at para. 51, there are concerns that foreign bribery enforcement in Italy is declining.

43. *Recommendation 15(c) – Fully implemented:* In the Oil Prospecting (Nigeria) Case, a Convention Party wrote Italian authorities asking foreign bribery charges against one of its nationals to be dropped. The letter was eventually transmitted from Italian authorities to the prosecutors and trial judge in the case. On 23 April 2024, the Head of the Minister of Justice's Cabinet issued a circular asking Ministry officials to forward similar requests in the future to the Minister's Cabinet. The request would then be sent to Italian prosecutors without the text from foreign authorities to avoid any perception of undue interference.

44. *Recommendation 15(d) – Fully implemented and converted to follow-up:* Italy's follow-up report indicates that a number of junior ordinary magistrates and ordinary magistrates have been hired or are expected to be hired in 2022-2024. (Italy was requested but could not confirm the precise figures.) A new [Criminal Records Filing Portal \(PDP\)](#) allows the electronic transmission of documents in criminal proceedings. A second Criminal Process Application (APP) allows electronic drafting, signing and filing of measures adopted by a magistrate. A Digital Wiretapping Archive (ADI) is now used to store wiretap-related material. A Single Justice Database (Mercury) will consolidate information from the Italian and European Public Prosecutors' Offices. The Working Group will assess in a future evaluation the impact of these and other measures on delays in criminal proceedings.

Regarding money laundering and false accounting

45. *Recommendation 16 – Partially implemented:* The Phase 4 Report (para. 224) expressed concerns about a lack of enforcement of money laundering predicated on foreign bribery. In its follow-up report, Italy states that the recommendation "significantly affects prosecutorial autonomy and independence". The report also refers at length to general training on foreign bribery, money laundering offences and financial investigations offered to the judiciary and police. Some of the training dates back to 2015, well before the Phase 4 Report was adopted. However, the training did not specifically address money laundering predicated on foreign bribery and, most importantly, the insufficient enforcement of this crime.

46. *Recommendation 17(a) – Not implemented:* Italy has not taken any action to implement this recommendation. The Phase 4 Report identified five deficiencies in Italy's false accounting offences, three of which are not addressed in Italy's follow-up report. For one of the remaining two deficiencies, Italy refers to [Consolidated Law on Finance \(TUF\)](#) Art. 154bis which was enacted before the Phase 4 evaluation. The provision's definition of "managers responsible for preparing the company's accounting documents" does not clearly cover low-level managers. Even more concerning, the provision requires listed companies to nominate one manager responsible for the company's accounting documents. Other individuals in the company therefore cannot be liable for false accounting. Italy mentions two further options for capturing false accounting by lower-level managers, through the civil law notion of "de facto manager" and the criminal law provisions on participation in the offence. However, both options were already considered insufficient in the Phase 4 Report (para. 226(a)). Regarding the last deficiency identified in the Phase 4 Report, Italy states that [Supreme Court Judgment 37861/2023](#) adopted a wide definition of the term "undue

profit". But the case concerned theft and robbery, not false accounting. The Court also observed that other case law (albeit a minority) has required a profit in economic terms.

47. *Recommendation 17(b) – Not implemented:* Italy has not increased the maximum corporate fine for foreign bribery-related false accounting. Italy only states the MOJ working group will review "any critical aspect" of the corporate liability legislation. Italy also refers to confiscation, but this is not a substitute for adequate fines (see para. 33).

48. *Recommendation 17(c) – Not implemented:* In 2023 and 2024, the School for the Judiciary held workshops on "Crimes against the Public Administration", as well as courses on budgeting and accounting. However, these courses did not specifically address the inadequate enforcement of foreign bribery-related false accounting.

Regarding mutual legal assistance and non-trial resolutions

49. *Recommendation 18 – Fully implemented:* The Phase 4 Report (paras. 218-220) noted that Italy's requests for MLA in several foreign bribery cases resulted in delayed or no responses. Since Phase 4, Italy reminded its magistrates in charge and officials of the International Co-operation Office to ensure that foreign states respect deadlines, and to report cases of serious delays or failure to respond.

50. *Recommendation 19 – Fully implemented:* Judgments in foreign bribery cases, including those resolved through *patteggiamento* (non-trial resolution), are now available on this [website](#). However, some known concluded *patteggiamentos* are missing. Italy should ensure that the information available on this website is complete and up-to-date.

Regarding foreign bribery enforcement actions

51. The data suggests that foreign bribery enforcement in Italy may be declining. In 11 years between Phase 3 in 2011 and Phase 4 in 2022, Italy recorded 90 investigations, 72 proceedings, and convictions of 14 natural and 8 legal persons (Phase 4 Report para. 11). In the 2 years since, it has opened only 1 new investigation and no new proceedings. If continued, this would be a concerning trend. Of the five ongoing investigations mentioned in the Phase 4 Report, none has progressed to trial. One investigation is still ongoing but four have been discontinued without charges. Four natural and legal persons were convicted in 2022-2024.

52. As in Phase 4 (para. 12), the number of acquittals of foreign bribery at trial remains high. In 2011-2022, there were almost twice as many natural person acquittals (27) than convictions (14). Another 5 legal persons were also acquitted. In the two years since the Phase 4 Report, 10 out of 11 natural and legal persons who went to trial were acquitted. Three of the four convictions resulted from *patteggiamento*, a form of non-trial resolution.

Conclusions of the Working Group on Bribery

53. Based on these findings, the Working Group concludes that recommendations 1(b), 2, 3, 4(a), 5(a)-(c), 7(a), 8(c), 10(a)-(d), 15(b)-(d), 18 and 19 have been fully implemented; recommendations 4(b)-(c), 5(d), 8(a)-(b), 9 and 16 partially implemented; and recommendations 1(a), 1(c)-(e), 6(a)-(c), 7(b), 10(e), 11, 12(a)-(e), 13(a)-(b), 14(a)-(b), 15(a) and 17(a)-(c) not implemented. The Working Group will follow-up the issues in recommendations 2, 4(a), 8(c), 10(a)-(d), 15(b) and 15(d). The Working Group invites Italy to report back in writing in October 2026 on its implementation of recommendations 4(b), 10(e), 12(b), 12(d) and 14(b). Italy will report its foreign bribery enforcement actions annually during Working Group meetings. The Working Group will continue to monitor the follow-up issues identified in the Phase 4 Report as case law and practice develop.

Annex. Phase 4 Evaluation of Italy: Two-Year Written Follow-Up Report by Italy

Instructions

This document seeks to obtain information on the progress each participating country has made in implementing the recommendations of its Phase 4 evaluation report. Countries are asked to answer all recommendations as completely as possible. Further details concerning the written follow-up process are in the [Phase 4 Monitoring Guide](#) (part C.1).

Personal data deriving from enforcement actions are made available to the Secretariat and lead examiners, and are not circulated to the Working Group.

Please submit completed answers to the Secretariat on or before 28 June 2024.

Name of country: Italy

Date of approval of Phase 4 evaluation report: 13 October 2022

Date of information: 1 July 2024

Part I: Recommendations for Action

Regarding Part I, responses to the first question should reflect the current situation in your country, not any future or desired situation or a situation based on conditions which have not yet been met. For each recommendation, separate space has been allocated for describing future situations or policy intentions.

Recommendations for preventing and detecting foreign bribery

Text of recommendation 1(a):

1. Regarding prevention and awareness-raising, the Working Group recommends that Italy: (a) develop a national strategy to fight foreign bribery that encompasses prevention, detection, awareness-raising and enforcement (Anti-Bribery Recommendation III and IV.i);

Action taken as of the date of the follow-up report to implement this recommendation:

Italy has implemented initiatives, activities, processes, and programs in the areas of capacity building, institutional building, law building, and consensus building in order to ensure the pursuit of objectives such as the prevention, detection, awareness-raising, and repression of foreign bribery and related crimes. Specifically, in terms of capacity building, Italy is engaged in numerous professional training initiatives for its judiciary and public administration officials involved in activities to prevent and combat foreign bribery. In this context, this is clearly demonstrated by the numerous initial and continuing professional training courses conducted by the National School of Administration for all officials, and by the advanced courses provided for those who are destined to work abroad, including diplomatic officials, as well as for the National Anti-Corruption Authority (ANAC), personnel of the Revenue Agency, and the Financial Intelligence Unit (UIF). The State General Accounting Department (MEF) includes in its training offer courses on relevant topics. The training program adopted by the Ministry for 2024 includes subjects such as "Regulatory Aspects in Anti-Corruption", as well as courses on Legislative Decree 231/01, whistleblowing, and the revolving door phenomenon (*pantouflage*). In addition, the High School of the Judiciary provides specialized training for prosecutors and judges competent in the prevention and combating of international corruption. The Advanced Training Schools of the Police Forces (SPIF - School of Advanced Training for the Police Forces, SPEF - School of Economic and Financial Police, International School against Transnational Organized Crime) operate in a similar manner in favor of investigators from the four Italian police forces. Finally, the Community of Practice of Corruption Prevention and Transparency Officers (RPCT) engages through a series of meetings dedicated to the OECD convention and the fight against foreign bribery. In terms of institutional strengthening, all Italian administrations must have plans for the prevention of corruption and pay attention to the specific issue of preventing foreign bribery. An innovative example of institutional building is the establishment in 2016 of the Inter-institutional Anti-corruption Coordination Table, activated at the Ministry of Foreign Affairs and International Cooperation.

This Table has established a method of coordination, information exchange, circulation of best practices, and isolation of critical issues in this sector, promoting constructive dialogue on international anti-corruption policies. Through the adoption of a *multi-shareholder* approach, the private sector and civil society are actively involved in its activities. A concrete outcome of this methodology has been, as far as the prevention of foreign bribery is concerned, the adoption after October 2022 of several internal legal instruments within the MFA network, in order to raise awareness among all staff in service abroad and on the post-mandate appointments with reminders on the prohibition of *pantouflage* and specific measures laid down in the MFA Code of Conduct. Furthermore, MFA officials are required to fill and transmit - as a compulsory pre-inspection document - a detailed form focused on self-assessment regarding the risk of corruption. This measure is implemented within the awareness-raising and detection framework, with the aim of guiding the diplomatic missions towards a greater awareness of corruption risks and to stimulate them to adopt appropriate risk management measures, especially in the most critical areas.

With regards to detection, Italy continues to engage in and study the issue of measuring corruption. One recent example of these efforts is the event “Corruption Measurement in Italy: Analysis, State of the Art and Perspectives”¹⁰, organised by the National Statistics Institute (ISTAT) on June 6th, 2024. During this meeting, representatives from national institutions that are implementing the United Nations Statistical Framework have presented the results of their research and efforts towards the objective of making the measurement and detection of corruption more efficient. The institutions that have presented their roadmaps and efforts include: ISTAT, the National Anticorruption Authority (ANAC), UNODC, Ministry of the Interior, Ministry of Justice, Ministry of Economy and Finance, Ministry of Foreign Affairs and the Court of Appeal; and have resulted in the creation of more than one hundred indicators of all the forms of corruption laid out by the United Nations Convention Against Corruption.

In terms of legislative strengthening, Italy has already demonstrated full compliance with the provisions of the OECD Convention, particularly by including the crime of foreign bribery in the penal code (art. 322 *bis*) and by continuously updating Legislative Decree 231/2001, which is also the most replicated Italian legislative provision worldwide. On this matter, a Working Group for the revision of the discipline of administrative liability of legal persons, companies, and associations, including those without legal personality, currently regulated by Legislative Decree 231/2001 was established at the Ministry of Justice, with a measure ordered by the Head of cabinet of February 7, 2024.

On 28 June 2024, the Head of Cabinet of the Ministry of Justice sent a comprehensive circular note (attached hereto in Italian and in English)¹¹ to all the Experts integrating the above mentioned Inter-institutional Anti-corruption Coordination Table on the National Strategy against foreign bribery.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 1(b):

1. Regarding prevention and awareness-raising, the Working Group recommends that Italy:

(b) take additional measures to raise awareness of foreign bribery among public officials including those working abroad, and of their duty to report this crime to law enforcement (Anti-Bribery Recommendations IV.i and XXI.vi);

Action taken as of the date of the follow-up report to implement this recommendation:

Recalling the information provided with reference to point 7(a) below, it should be noted that the OECD Bribery Awareness Manual for use by auditors has been brought to the attention of the staff concerned

¹⁰<https://www.istat.it/it/archivio/297536#:~:text=6%20giugno%202024&text=Per%20combattere%20la%20corruzione%20%C3%A8,misurazione%20della%20corruzione%20in%20Italia>. For the English translation please see Annexes attached to this Template (hereinafter: see Annexes).

¹¹ See Annexes.

by means of publication on the Revenue Agency's intranet site.

Furthermore, the National School of Administration (SNA) at the Presidency of the Council of Ministers helped to promote awareness and education on the issue of **international corruption** through:

- A course in the catalogue open to all civil servants;
- Specialised training within the Community of Practice of those responsible for the prevention of corruption and transparency;
- Specialised module within the Expert Diploma in Prevention of Corruption and Transparency, in cooperation with the State Attorney's Office;
- A conference.

1. Course 'Tools and Strategies for Corruption Prevention: thematic seminars' (PAF - Programme of Training Activities (sna.gov.it) issue no. 4: 'International Corruption; Strategies and Tools for Countering it')

The course took place over three days, with a total of nine hours of teaching. During this period, participants had the opportunity to learn about various aspects of international corruption and to learn effective strategies for its prevention.

Speakers

The course benefited from the experience and expertise of four speakers, each of whom made a significant contribution, covering different aspects of the topic:

Giovanni Tartaglia Polcini: *Implementation of obligations against international bribery under the OECD Anti-Bribery Convention.*

Nicoletta Parisi: *Whistleblowing as a tool to facilitate the emergence of international corruption offences.*

Stefano Cavanna: *The suppression of international corruption and transnational economic crimes.*

Eufemia Esposito: *The State Police: national organisational measures and international cooperation initiatives in the fight against corruption.*

Participants

The course attracted strong interest with 127 applications. The number of active participants was 101, ensuring excellent interaction and exchange of ideas during the sessions. Most of the participants came from the Italian Revenue Agency and the Financial Intelligence Unit.

2. Specialised training within the Community of Practice of the Persons Responsible for the Prevention of Corruption and Transparency (RPCT)

The Community of Practice of the RPCTs, set up in implementation of the Fifth National Action Plan for Open Government with an inter-institutional dimension and openness to contributions from civil society, is a collaborative platform that brings together RPCTs and facilitates the sharing of knowledge and experience, as well as the identification and dissemination of good practices to effectively fight corruption (<https://sna.gov.it/home/attivita/comunita-di-pratica/comunita-di-pratica-per-rpct/>)¹².

Several training courses were developed within the Community of Practice, including a series of seminars dedicated to international corruption and the obligation to report the crime of international bribery to the competent authorities (**International Corruption** page:

<https://sna.gov.it/home/attivita/comunita-di-pratica/comunita-di-pratica-per-rpct/attivita-comunita-di-pratica-rpct/corruzione-internazionale/>¹³ is accessible from within the ACTIVITIES section

<https://sna.gov.it/home/attivita/comunita-di-pratica/comunita-di-pratica-per-rpct/attivita-comunita-di-pratica-rpct/>)¹⁴.

¹² See Annexes.

¹³ See Annexes.

¹⁴ See Annexes.

Seminars were held in April 2024 (on 3, 9 and 10 April for a total of 6 hours), in webinar mode, on the following topics:

Giovanni Tartaglia Polcini: *International Corruption: framing of the phenomenon and strategies and tools to combat it.*

Giovanni Tartaglia Polcini: *Implementation of the obligations against international bribery under the OECD Anti-Corruption Convention and the role of whistleblowing as a tool to facilitate the emergence of international bribery offences.*

Stefano Cavanna: *Indicators, tools and best practices for (transnational) corruption risk management and prevention in the most sensitive administrative contexts'.*

Participants

The individual meetings were attended by 22 civil servants, mainly Prevention of Corruption and Transparency Officers or support staff, and persons responsible for anti-money laundering activities.

The recording of the seminars was then made available on the platform reserved for participants in the Community of Practice, so that the content could be used individually even after the training had been delivered.

3. Expert Diploma Module on Prevention of Corruption and Transparency, in cooperation with the State Attorney's Office

The diploma, https://paf.sna.gov.it/scheda_corso.html?cid=3249¹⁵, aims to provide specialised training to all those who play a relevant role in the implementation of corruption risk management systems in public organisations, as provided for by Law 190/2012. A high degree of professionalism, competence and ethical and technical-legal awareness is required in order to prevent the exercise of the roles of the Head of Corruption Prevention and Transparency, of the contact persons or, more generally, of the managers actively involved in the system from being reduced to a series of formal fulfilments with no impact on the actual capacity of public organisations to counter the risk of corruption.

While in the first edition of the Diploma the topic of international corruption was addressed in only one webinar, in the second edition an entire module (4-12 June 2024) was dedicated to the *Transnational Perspective of Preventing and Fighting International Corruption*.

Speakers

Federico Ceschel: *Drivers for change from international organisations*

Giovanni Tartaglia Polcini: *The legally oriented environment in multilevel legal systems*

Gaetana Morgante: *Transnational Corruption*

Nicoletta Parisi: *International law tools for combating and preventing corruption* Vincenzo Mongillo: *Trafficking in illicit influence in the international perspective*

Lorenzo Salazar: *Witnesses*

4. Conference *The Italian Contribution to the International Combating and Preventing Corruption, Rome 6 June 2024*

The conference, the closing event of the second year of activity of the Community of Practice of the Persons Responsible for the Prevention of Corruption and Transparency (RPCT), took place in attendance at the Aula Magna of the National School of Administration on 6 June 2024. (<https://sna.gov.it/home/2024/06/06/il-contributo-italiano-al-contrasto-e-alla-prevenzione-a-livello-internazionale-della-corrruzione/>)¹⁶.

It was an opportunity to discuss the topic of preventing and combating international corruption thanks to the interventions of numerous experts, academics and representatives of institutions, who shared experiences, perspectives and strategies.

¹⁵ See Annexes.

¹⁶ See Annexes.

The event was divided into two sessions, preceded by an introductory talk by Giovanni Tartaglia Polcini. The first session, entitled 'Socio-economic and political implications: the hidden costs of international corruption', was dedicated to the profound and often underestimated impact of corruption on economies and societies globally. The speeches by Alberto Vannucci (University of Pisa), Emma Galli (Sapienza, University of Rome) and Nicola Selvaggi (Ministry of Justice and Mediterranean University of Reggio Calabria) highlighted the negative effects of corruption in political, economic and social ethical terms.

In the second session, 'Fighting Global Corruption: strategies for effective international cooperation', the speeches by Lorenzo Salazar, Roberto Ribaudo and Gaetana Morgante focused instead on *best practices* and strategies to fight corruption through legal, investigative and also cultural tools.

A recording of the event will be posted on the SNA website to allow maximum dissemination to anyone interested in the topic. (<https://sna.gov.it/home/2024/05/22/il-contributo-italiano-al-contrasto-e-alla-prevenzione-a-livello-internazionale-della-corruzione-6-giugno-2024/>¹⁷).

It is worth mentioning that the Interagency Law Enforcement Academy of Advanced Studies (SPIF) continued its training activities for police investigators of the four Italian police forces.

In particular, the SPIF, among the many activities, courses and initiatives carried out, organised on 22 May 2024 a Workshop within the project "Supporting Asset Recovery in the Western Balkans", with the aim of backing the efforts of the Western Balkans Judicial Authorities in the field of anti-corruption and fight against illicit assets.

The Economic and Financial Police School also continued with its training activities; in February 2024, high-level training courses dedicated to Ukrainian public prosecutors and police officers engaged in the fight against corruption and money laundering were launched. This initiative, organised by the Italian Ministry of Justice in cooperation with the Guardia di Finanza, the Italian School for the Judiciary and the European Union Advisory Mission Ukraine (EUAM Ukraine), provided tangible testimony of the proximity and commitment of the Italian Republic to support the rule of law as well as the judiciary in Ukraine.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 1(c):

1. Regarding prevention and awareness-raising, the Working Group recommends that Italy:

(c) implement targeted measures to further raise awareness of the risk of foreign bribery in Italian companies, including SMEs, that operate in higher risk countries and sectors, and provide guidance on how to mitigate the risk (Anti-Bribery Recommendations IV.ii, XXI.vi and Annex I.A.2);

Action taken as of the date of the follow-up report to implement this recommendation:

Confindustria actively participates in the work of The Business at OECD Anticorruption Committee and expresses the President and a Vice President. In particular, within the scope of The Business at OECD Anticorruption Committee to raise awareness among companies in the fight against corruption various initiatives have been carried out such as:

- on March 1, 2024, the "*Zero Corruption Forum*" organized by Business at OECD (BIAC) was held at LUMSA University in Rome, under the patronage of the Ministry of Foreign Affairs. The event launched the "*Zero Corruption*" campaign which calls for the inclusion of anti-corruption among the UN Sustainable Development Goals. Participants included representatives from the private sector (Confindustria invited and involved its associated company), public sector, civil society, academia, and law enforcement;

- the Paper "*Shaping the values for a sustainable future: education for the fight against corruption*":

¹⁷ See Annexes.

Business at OECD Anti-Corruption and Education Committees, believing that education and training are crucial tools in the fight against corruption, set out to explore how governments, the private sector, and civil society can better harness education and training towards this end. They drafted a paper that underscores the importance of training in the fight against corruption and provides use cases of virtuous companies in the field of Responsible Business Conduct. The document looks at education in the broader sense, including, School, university, corporate, non profit organizations and public administrations and collected the use-cases highlighted as best practices (the paper includes two Italian companies: Autostrade per l'Italia, SNAM).

- the paper "*Stepping up the game: Digital Technologies to promote the fight against corruption*" (available at the link <https://www.businessatoecd.org/blog/stepping-up-the-game>): the project, co-led by Committees on Anti-Corruption and Digital Economy Policy, explores innovative approaches and providing solutions to curb bribery and corruption. The document offers an overview of various digital tools and their applications in the public and private sectors and features a unique collection of use cases highlighting how companies are already deploying digital technology in corporate compliance and anticorruption efforts. Among the use-cases highlighted as best practices, the paper includes 2 Italian companies, (Autostrade per l'Italia and SNAM) Confindustria disseminated these documents to its working groups that follow the topic.

It is worth highlighting that **several leading Italian Universities** have chosen to include a master's degree in anti-corruption in their university training courses and these initiatives demonstrate the awareness-raising activity that is being promoted and is proceeding in this area, starting from university education and involving the various experts in the subject.

- **The LUISS Guido Carli University of Rome**, for the Academic Year 2024/2025, has scheduled a second-level university master's degree in "Compliance and Corruption Prevention in the Public and Private Sectors".
- **The University La Sapienza - ROME1**, for the Academic Year 2023/2024, has envisaged a 2nd level university master's degree in "Corruption and the Institutional System", with a Module (20 hours) dedicated to "International fight against corruption".
- **The Tor Vergata University of Rome** was awarded recognition at the *Global Anti-Corruption & Integrity Forum 2023* (see Related Economics PE News <https://economia.uniroma2.it/in-evidenza/655-4735/il-master-anticorruzione-diretto-dal-prof-emiliano-di-carlo-riconosciuto-best-practice-internazionale-dalloce>) for its **Anti-Corruption Master, which was included among the 18 best practices identified in the OECD report.**

The post-graduate training programme offered by the Department of Management and Law proposes a specific course on anti-corruption, aimed at encouraging – through a combination of theory and practice – the dissemination of a culture of integrity, nurturing the growth of future leaders capable of guiding the management of business entities and public administrations towards achieving the common good, for the recovery and resilience of the Italian system.

According to the international organisation, the main novelty of the multidisciplinary and cross-sectoral approach adopted by the Anticorruption Master's Course consists in its special formula: cultural change (which is essential to combat any kind of bad governance or 'deviation from the common good') must be based on a combination of operational tools and individual behaviour.

In order to effectively design the "system of the common good", the Anticorruption Master's course is divided into 12 training modules that include project work, sharing of experiences, case studies and concrete examples of how it is possible to transform words into actions. Therefore, it was recognised by the OECD as capable of helping participating students in nurturing their personal virtues along with their operational skills.

(information available at: <https://economia.uniroma2.it/in-evidenza/655-5059/education-for-the-fight-against-corruption-il-master-anticorruzione-coordinato-da-emiliano-di-carlo-tra-le-18-best-practice-internazionali-del-volume-ocse>).

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 1(d):

1. Regarding prevention and awareness-raising, the Working Group recommends that Italy:

(d) take a more proactive approach and encourage (i) companies, including state-owned enterprises, to develop and adopt adequate internal controls, ethics and compliance programmes or measures for the purpose of preventing and detecting foreign bribery, and (ii) business organisations and professional associations, where appropriate, in their efforts to encourage and assist companies, in particular small- and medium-size enterprises, in developing internal controls, ethics, and compliance programmes or measures for the purpose of preventing and detecting foreign bribery. (Anti-Bribery Recommendation XXIII.C.i-ii and Annex II.B);

Action taken as of the date of the follow-up report to implement this recommendation:

European and national institutions have paid increasing attention to the corporate accountability regime, which is required to comply with increasingly high standards of transparency and integrity. Companies responded to this trend by developing an integrated view of compliance and introducing accurate programs to prevent and manage the risk of non-compliance with mandatory and regulatory standards. Reference is made to the organizational models provided for by LD 231/2001 that represented a turning point and still represent an important safeguard of legality. They have allowed companies to gain confidence with the implementation of organizational and procedural measures suitable for preventing offenses, but also for tracing them when they occur. As is well known, the predicate offences of the administrative liability of entities include those of corruption, including foreign bribery. When economic relations take place on a transnational level, there is a growing focus on the soundness of the internal control systems adopted by the economic operators, to ensure competition unfolds on a level playing field.

The adoption of effective anti-corruption policies is also essential for Italian companies to be competitive on international markets. In this scenario, in order to provide concrete support to companies in the adoption of an organizational model, Confindustria, since 2002, has defined some important operational tools such as the Guidelines for the construction of the “231 organizational models”, updated several times over the years to provide companies with continuously updated information (lastly updated in 2021) and has participated in multiple training events for companies and professionals, to raise awareness among all stakeholders on the importance of adopting an organizational model.

Also, regarding SMEs and their sustainability, including the governance factor that has the fight against corruption as one of the fundamental elements, Confindustria participated in the European Sustainability Reporting Advisory Group (EFRAG) consultation on the draft voluntary standard for the sustainability reporting of SMEs. It involved Associations and companies to provide observations on the proposed reporting system in order to make it understandable and simple for SMEs and make it a tool capable of supporting them in responding to the many requests they receive from commercial counterparts on their sustainability.

Furthermore, Confindustria has undertaken several informational and training initiatives for companies, both large and small, aimed at providing concrete support during this transitional phase, aligning with the new disclosure requirements. Confindustria’s efforts are grounded in the belief that it is necessary to foster a sustainability culture as a driving force for growth and competitiveness.

Lastly, Confindustria has forged an agreement with Deloitte to deliver a range of supportive services to its associates, spanning from training on the regulatory framework to consultancy on report preparation. This ensures that companies gain a comprehensive understanding of ongoing changes and possess the necessary tools to measure and communicate their sustainability efforts.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 1(e):

1. Regarding prevention and awareness-raising, the Working Group recommends that Italy:

(e) develop guidelines for MAECI officials on how to support Italian companies operating abroad that may experience bribe solicitation in the course of international business (Anti-Bribery Recommendation XII.ii and Annex I.A.3).

Action taken as of the date of the follow-up report to implement this recommendation:

In terms of raising awareness in the private sector and consensus building, Italy has actively engaged in concrete initiatives to disseminate values. A paradigmatic example is the collaboration between SIMEST (Italian Society for Enterprises Abroad) and the Ministry of Foreign Affairs within the framework of the National Recovery and Resilience Plan (NRRP). The MFA, as the central administration responsible for implementing a significant measure (M1.C2.I5) of "Refinancing and Redefining the 394/81 Revolving Fund managed by SIMEST" aimed at providing low-interest loans to Italian companies operating in foreign markets, has strengthened a specific anti-corruption measure. Specifically, to raise awareness among businesses (especially SMEs) operating abroad and benefiting from these internationalization loans, an informational module titled "Raising Awareness Among Italian Companies Benefiting from Internationalization Loans on the Consequences of Corruption of Foreign Public Officials" has been integrated into all financing procedures. This approach has been conceived as a moment of value and cultural sharing, addressing both the risk of corruption and the regulations safeguarding integrity.

Another example of best practices in Italy's awareness-raising initiatives is the Italian Business Integrity Day (IBID), organized in collaboration with the Italian Chapter of Transparency International. During this event, Italian companies operating abroad have the opportunity to present their strategies to prevent and combat illegal behaviors and corruption, demonstrating a tangible commitment to integrity and transparency. In the upcoming sessions of IBID, Italy plans to abide to the recommendations received by proposing a format where the host countries for the event will be specifically chosen amongst territories that may benefit the most from such anti-corruption initiatives and events, in consideration of their social and economic situation.

The organization of additional initiatives, such as the International Anti-Corruption Day¹⁸, has also provided an opportunity for high-level collective reflection on Italy's commitment to preventing and repressing corrupt behaviors, a sector that has often seen the country's image damaged due to widespread negative perception in the past.

Another testament to this commitment is the presentation of the goal set by the Zero Corruption Manifesto, organized by the BIAC (Business Integrity Committee) at the OECD. The manifesto aims for the ambitious result of completely eradicating corruption by promoting responsible conduct and developing a culture of integrity and transparency in all contexts, both jurisdictional and otherwise, with a view to preserving and protecting respect for human rights. In particular, Confindustria has contributed by also transmitting the Operational Guide and focusing on activities related to whistleblowing.

Furthermore, on February 29th, 2024, the "Zero Corruption Forum" of BIAC took place in Rome, sponsored by *Autostrade per l'Italia* and supported by the Italian MFA, attended by representatives of the OECD, Italian institutions, universities, as well as top managers of large companies. The campaign promoted by the BIAC, which represents the private sector with over 10 million companies in over 55 countries, has the aim of spreading the Manifesto, which promotes treating anti-corruption as point 18 of the Sustainable Development Goals (SDGs), considering corruptive behaviour as one of the main causes of inequalities in the world¹⁹.

The activity of the Italian MFA in this sector is described as leading the main multilateral anti-corruption

¹⁸ https://www.esteri.it/it/sala_stampa/archivionotizie/approfondimenti/2022/12/diretta-streaming-la-diplomazia-giuridica-al-servizio-della-pace-e-della-sicurezza-internazionale-limpegno-dellitalia-nel-contrasto-alla-corruzione/ - See Annexes.

¹⁹ https://www.ilmessaggero.it/italia/al_via_la_campagna_zero_corruption_l_evento_ocse_ospitato_dalla_lumsa-7965272.html?refresh_ce - See Annexes.

fora (e.g., OECD-WGB and G20 ACWG) and also as playing a coordinating role, serving as a tool to enhance the resources and expertise of each institution. This enables an organization such as the Anti-Corruption Table to carry out a census in identifying best practices or in detecting systemic issues. Naturally, for the purposes of preventing and repressing corruption, this can only occur through an open and constructive inter-institutional dialogue, aimed at raising the bar of diplomatic and legal commitment to support a legally-oriented global economic environment.

In 2023 the BIAC (Business at OECD, the institutional stakeholder of the OECD representing the private sector) has published the document "*Shaping the Values for a Sustainable Future. Education for the Fight Against Corruption.*"²⁰

The document presents 18 international initiatives, both from the public and private sectors, as best practices in the field of training for corruption prevention and promoting a culture of integrity. Among these, the National School of Administration (SNA) is mentioned not only for its extensive educational offerings on corruption prevention but also for the Community of Practice for RPCT and the research project "*Training for Transformation*", two initiatives carried out by the SNA in implementation of the Fifth National Action Plan for Open Government promoted by the Open Government Partnership.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 2:

2. Regarding the detection of foreign bribery allegations in the media, the Working Group recommends that Italy ensure that the Italian and foreign media is regularly monitored for foreign bribery allegations and that all relevant media reports, including those provided by the Working Group, are forwarded immediately to law enforcement (Anti-Bribery Recommendation VIII and XXI.iv).

Action taken as of the date of the follow-up report to implement this recommendation:

The High Council of the Judiciary and the Ministry of Justice provide a daily press review service of the main national and international newspapers. This activity makes it possible to constantly monitor the coverage of international corruption investigations, which is regularly – that is, on a daily basis – brought to the attention of a wide audience of magistrates, who – also in accordance with the principle of mandatory prosecution – can draw from the review useful elements for the ex officio initiation of criminal proceedings.

It should also be noted that the Italian Finance Police (*Guardia di Finanza*) has always been committed to combating corruption phenomena in the framework of activities aimed to protect national and the EU public spending. In April 2015, the Special Anti-Corruption Unit was set up as a special Department of the Corps entrusted with the task of corruption prevention, elaboration of operative projects and analysis and support to the territorial Departments in the sector.

In its current structure, the aforementioned Department includes:

- a Public Contracts Monitoring Section, which is entrusted with the functions of analysis, preparation of operational reports and development of projects;
- an Anti-Corruption and Transparency Group, structured in two sections, which also carries out investigative activities.

In addition, the Ministry of Justice is discussing with the Guardia di Finanza the implementation of a periodic monitoring activity in order to identify information on cases of international corruption so as to convey it to the competent judicial authority for the initiation of the relevant investigations. This initiative

²⁰ <https://www.businessatoecd.org/hubfs/Shaping%20the%20values%20for%20a%20sustainable%20future%20-%20Education%20for%20the%20fight%20against%20corruption.pdf?hsLang=en>

is currently being considered and studied by the Guardia di Finanza, which has shown its willingness to follow up on this proposal.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

In order to comply with this recommendation by October 2024, the aforementioned Special Anti-Corruption Unit of the Guardia di Finanza will be tasked to:

- acquire and analyse big data from the media for the detection of possible cases of international corruption.

To this end, the Department will be equipped with hardware and software tools and related staff training, targeted for this monitoring function;

- develop, within the framework of investigations, the in-depth examination of the findings emerging from the above-mentioned analysis activities.

Text of recommendation 3:

3. Regarding the self-reporting of foreign bribery, the Working Group recommends that Italy consider measures to encourage persons who participated in, or have been associated with, the commission of foreign bribery, to supply information useful to competent authorities for investigating and prosecuting foreign bribery, and ensure that appropriate mechanisms are in place for the application of such measures in foreign bribery investigations and prosecutions (Anti-Bribery Recommendation X.iii and XV.ii).

Action taken as of the date of the follow-up report to implement this recommendation:

With reference to the recommendation at issue, it should be noted that Legislative Decree 24/2023, on the regulation of 'whistleblowing', introducing a regulatory system aimed at encouraging the reporting of wrongdoing by employees belonging to both public and private administrations, brings about a significant change in terms of a greater incentive to report wrongdoing of which one has become aware. Specifically, this includes both protective measures, aimed at encouraging employees who have become aware of irregularities or offences in their organisation to report such episodes to the judiciary, ANAC or, in general, to the appropriate bodies, as well as the possibility of punishing such offences through administrative, pecuniary or criminal sanctions. Although no specific measures on self-reporting have been activated, the purpose is broadening and strengthening the sources of detection of cases of foreign bribery.

In addition to the above, it should be noted that no cases were found in which the perpetrators of international bribery were exonerated or relieved from liability. As a result of this piece of evidence, it was deemed unnecessary to proceed with a legislative amendment and the issue may be the subject of follow-up evaluation.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 4(a):

4. Regarding whistleblowing, the Working Group recommends that Italy:

- (a) enhance its framework to protect and/or provide remedy against any retaliatory action to whistleblowers in the public sector (Anti-Bribery Recommendation XXII);

Action taken as of the date of the follow-up report to implement this recommendation:

With Legislative Decree No. 24 of 10 March 2023²¹, the Italian legislator included in a single legislative text the entire regulation of whistleblower channels and protections provided for whistleblowers in both the public and private sectors.

(I) Entities required to comply with Legislative Decree 24/2023

Legislative Decree 24/2023 includes in the **public sector**: the public administrations referred to in Article 1, paragraph 2, of Legislative Decree 165/01; the independent administrative authorities of guarantee, supervision or regulation; public economic entities; publicly controlled companies, even if listed; in-house companies, even if listed; bodies governed by public law; concessionaires of public services.

The rationale for including bodies governed by public law and public service concessionaires within the public sector transposes recital 52 of the directive, according to which *'in order to ensure, in particular, compliance with public procurement rules in the public sector, the obligation to establish internal reporting channels should apply to all contracting authorities and contracting entities at local, regional and national level, depending on their size'*.

(II) Who is entitled to report

According to the combined provisions of Article 1 and Article 2 of Legislative Decree 24/2023, the whistleblower is the natural person who reports, discloses or denounces to the judicial or accounting authorities, violations of national or European Union regulations that harm the public interest or the integrity of the public administration or private entity, of which he has become aware in a public or private employment context.

Compared to the previous legislation, the range of persons entitled to report has been considerably broadened: not only public employees, but also all persons working in the employment context of a public or private sector entity, such as: employees of private sector entities, self-employed workers, collaborators, freelancers, consultants, volunteers and trainees, including unpaid ones (e.g. interns and trainees). Finally, the protection extends to shareholders and persons with functions of administration, management, control, supervision or representation, even where such functions are exercised on a *de facto* basis, in public or private sector entities.

(III) When you can report

It is possible to report not only when the legal relationship is ongoing, but also

- when the employment/legal relationship has not yet started, if information on violations was acquired during the selection process or in other pre-contractual stages;
- during the probationary period;
- after the termination of the legal relationship, provided that the information on violations was acquired before the termination of the relationship.

(IV) The object of the report

Unlike the previous legislation, the new rules have provided for a typification of the unlawful conduct that can be reported, excluding mere irregularities and providing, in Article 2(1)(a) of Legislative Decree 24/2023, that conduct, acts or omissions detrimental to the public interest or the integrity of the public administration or private body may be the subject of reports, consisting of:

(a) **Violations of national regulatory provisions**, as follows:

- administrative, accounting, civil or criminal offences;
- unlawful conduct within the meaning of Legislative Decree No. 231 of 8 June 2001 (these are the so-called predicate offences referred to in Articles 24 et seq. of Legislative Decree No. 231/01) or violations of the organisation and management models provided for therein.

²¹ See Annexes.

b) Violations of European regulatory provisions, listed as follows:

-offences falling within the scope of the European Union or national acts indicated in the annex to Legislative Decree 24/2023 or of national acts implementing European Union acts relating to the following areas: public procurement; services, products and financial markets and prevention of money laundering and the financing of terrorism; product safety and conformity; transport safety; environmental protection; radiation protection and nuclear safety; food and feed safety and animal health and welfare; public health; consumer protection; protection of privacy and protection of personal data and the security of networks and information systems;

-acts or omissions affecting the financial interests of the Union as referred to in Article 325 of the Treaty on the Functioning of the European Union;

- acts or omissions affecting the financial interests of the Union as referred to in Article 26, paragraph 2, of the Treaty on the Functioning of the European Union;

-acts or conduct that frustrate the object or purpose of the provisions of the Union acts.

It is important to emphasise that the report may also concern information on conduct aimed at concealing the above-mentioned breaches as well as well-founded suspicions and unlawful activities not yet committed but which the whistleblower reasonably believes may occur on the basis of concrete elements.

On the other hand, as already mentioned, the exclusion of irregularities from the objective scope of whistleblowing would seem to represent a step backwards compared to the previous legislation, since all cases of *maladministration* would remain outside the scope of the report, which, while not constituting typical violations, could in any case be symptomatic of such violations and, sometimes, even constitute acts preparatory to their commission. A solution suggested by the ANAC Guidelines is to consider that irregularities become reportable to the extent that they constitute '*concrete elements*' such as to lead the whistleblower reasonably to believe that one of the breaches provided for by the decree could be committed or is about to be committed.

(V) The subject of the report and the channels that can be used: differences between the public and private sectors.

It should be noted that the legislator has introduced, in Article 3 of Legislative Decree 24/2023, by means of rather complex formulations, a diversification between the public and private sectors with respect to the subject of the report and the use of reporting channels.

Specifically, Legislative Decree 24/2023 recognises the possibility, within the public sector, of reporting any type of violation (id est violations of national law and violations of European law) through all channels, i.e. through the internal channel, the external channel, public disclosure as well as reporting to the judicial authority.

In contrast, within the private sector, a heterogeneous framework has been introduced in which the possible subject of the report as well as the channel that can be used is differentiated according to the characteristics of the different subjects.

More specifically, in private law entities that have employed an average of at least fifty employees in the last year, as well as in private entities that, irrespective of the threshold of the average company workforce employed in the last year, operate in the so-called sensitive sectors, potential breaches of European law, as listed above, can be reported through the internal channel, the external channel, public disclosure as well as the reporting to the judicial authorities.

In contrast, within the private sector, a heterogeneous framework has been introduced in which the possible subject of the report as well as the channel that can be used is differentiated according to the characteristics of the different entities.

More specifically, in private-law entities that have employed an average of at least fifty employees in the last year, as well as in private-law entities that, regardless of the threshold of the average company workforce employed in the last year, operate in the so-called sensitive sectors, potential breaches of European law, as listed above, can be reported through the internal channel, the external channel, public disclosure as well as reporting to the judicial authority.

In private sector entities that fall within the scope of application of Legislative Decree No. 231/2001 and adopt organisation and management models, instead, provided for therein, and that, in the last year, have not reached an average of at least fifty employees, one may report - solely through the internal channel - potential breaches relevant under the regulations of Legislative Decree No. 231/2001 as well as breaches of the organisation and management models provided for therein.

In private-sector entities that fall within the scope of Legislative Decree No. 231/2001 and adopt organisation and management models provided for therein, and which, in the last year, have reached an average of at least fifty employees, one may report - solely through the internal channel - breaches relevant under the legislation referred to in Legislative Decree No. 231/2001 as well as breaches of the organisation and management models provided for therein and - also externally and publicly - breaches of the rules of Euro-unitary law.

It is worth pointing out that, despite the fact that Article 3(2)(b) is the result of a decidedly cumbersome and complex formulation, it is clear that unlawful conduct relevant under Legislative Decree No. 231/2001, as well as violations of the organisation and management models provided for therein, can only be reported through the internal channel established within each private entity.

Although, therefore, the legislator's declaration of intent was to standardise the protection regime provided for the public and private sectors, the regulatory choices described above denote, in fact, a differentiation that inevitably has repercussions on the protection recognised. In cases such as those just mentioned, for the private sector, there is an obvious and questionable gap in protection.

(VI) Reporting channels.

Legislative Decree 24/2023 provides that reports may be submitted through the following channels:

- **Internal channel.** Public sector entities and private sector entities, as defined above, activate their own internal reporting channels, which guarantee, also through the use of encryption tools, the confidentiality of the identity of the person making the report, of the person involved and of the person mentioned in the report, as well as of the content of the report and of the relevant documentation. Reports may be made in writing, including by computer (e.g. computer platforms based on cryptographic systems), or orally through telephone lines or voice messaging systems, but also, at the request of the person making the report, through a face-to-face meeting set within a reasonable period of time.

Compared to the previous legislation, the procedure following internal reporting is now defined.

In particular:

- within 7 days of submission, the subject/office in charge of acquiring and handling the report must issue an acknowledgement of receipt of the report to the reporting person, maintain contact with the latter and, where necessary, request additional information, assess the existence of the reported facts, thus ensuring diligent follow-up

- within 3 months, feedback must be provided to the reporting person;

- within 7 days, the report received by a person other than the one designated to receive and handle the internal report must be forwarded to the latter.

• **External channel.** The competent authority to receive external reports, both from the public and private sectors (albeit with the limitations described above), is, pursuant to Article 7 of Legislative Decree 24/2023, the ANAC.

It should be noted, however, that Article 6 provides that an external report may be submitted to the Authority only where at least one of the following conditions is met

(a) there is no mandatory activation of the internal reporting channel within the work context, or this channel, even if mandatory, is not active or, even if activated, does not comply with the regulatory provisions;

b) the reporting person has already made an internal report and the report has not been followed up;

(c) the reporting person has reasonable grounds to believe that, if he or she were to make an internal report, the report would not be effectively followed up or that the report might lead to the risk of retaliation;

(d) the reporting person has reasonable grounds to believe that the breach may constitute an imminent or obvious danger to the public interest.

- **Public disclosure.** Public disclosure means placing information about violations in the public domain through the press, electronic media (including social networks) or otherwise through means of dissemination capable of reaching a large number of people.

Public disclosure may be used if:

(a) the reporting person has previously made an internal and external report or has made an external report directly and no response has been received within the prescribed time limits as to the measures envisaged or taken to follow up the reports

(b) the reporting person has reasonable grounds to believe that the breach may constitute an imminent or obvious danger to the public interest;

(c) the person making the report has reasonable grounds to believe that the external report may involve a risk of retaliation or may not be effectively followed up because of the specific circumstances of the case, such as where evidence may be concealed or destroyed or where there is a well-founded fear that the person who has received the report may be in collusion with or involved in the infringer.

Having described the reporting channels in this way, it should be concluded that, compared with the previous legislation, the choice of reporting channel is no longer left to the discretion of the whistleblower since, in accordance with the Directive, the national legislator favours the use of the internal channel as a priority and, only if one of the above-mentioned conditions is met, is it possible to make an external report or public disclosure.

(VII) The reasonable belief of reporting truthful information.

In order for the whistleblowing report/public disclosure to fall within the scope of the whistleblowing legislation and, consequently, for the measures of protection to be recognised, in addition to the requirements described above, it is necessary that - at the time of the report/public disclosure - the whistleblower had reasonable grounds to believe that the information on the reported breaches was true and fell within the objective scope of Article 1 of Legislative Decree 24/2023.

What matters, therefore, is that the whistleblower's belief that an offence has been committed or is about to be committed be characterized by objective elements such as to give rise to the reasonable belief in the reporter that the facts represented are true and are not the result of mere rumours or manifestly false news or news in the public domain.

The motives, including personal ones, which led the person to report/whistleblow/disclose will not, on the other hand, be relevant for the purposes of protection, as set out in recital 32 of the Directive.

This determines a definitive shift from the pole of the subjective and personal dimension of the reporter to the objective dimension of what is reported.

(VIII) Protections

If the report meets all the above requirements and conditions, the protection system provided for in the decree will operate, which is divided into four forms of protection

1. Protection of confidentiality;
2. Protection from retaliatory measures;
3. Limitation of liability;
4. Support measures.

It is important to note that these protection measures are not only granted to whistleblowers but also apply to:

- facilitators. It is worth recalling that the facilitator, an absolutely innovative figure introduced by EU Directive 1937/2019, is defined by Art. 2(1)(h) as 'the natural person who assists the reporter in the reporting process, operating in the same work context and whose assistance must be kept confidential;

- people operating in the same work context as the reporting persons and who are linked to them by a

stable emotional or kinship link up to the fourth degree of kinship;

- co-workers of the reporting person who work in the same work context as the reporting person and who have a regular and current relationship with that person:

- entities owned by the reporting person and entities that work in the same context as these persons or for which these persons work.

The protection of confidentiality.

We would like to begin here with the protection of confidentiality, which, as in the past, takes on a twofold form:

- exclusion of the report and the attached documentation from the exercise of the right of documental access provided for by Articles 22 et seq. of Law No. 241 of 7 August 1990, as well as from the exercise of the right of generalised civic access provided for by Articles 5 et seq. of Legislative Decree No. 33 of 14 March 2013;

- prohibition on revealing the identity of the whistleblower.

With regard to the prohibition to disclose the identity of the whistleblower, firstly, an innovative general principle is envisaged according to which information on violations may not be used or disclosed, except for the purpose of following up violations where necessary.

It then confirms the need to ensure the confidentiality of the reporter's identity and, therefore, not to disclose the identity to persons other than those competent to receive or follow up the reports and expressly authorised to process such data. The legislator specifies that it is not only the name of the whistleblower that needs to be protected, but also any other information from which the identification of the whistleblower can be inferred, directly or indirectly.

After providing for the prohibition of disclosing the identity of the whistleblower, Article 12 governs the protection of the confidentiality of the identity of the whistleblower in judicial and disciplinary proceedings, laying down specific rules that is provided by article 54.

Further, in an innovative way with respect to the previous legislation, the decree expressly provides that the protection of the identity is also guaranteed to the natural or legal person reported (*rectius* involved) as well as to the persons mentioned in the report until the conclusion of the proceedings initiated on the basis of the report.

It is clear that this provision will require the entities to implement the IT platforms for receiving and managing the reports to ensure the aforementioned protection also for these additional persons.

Moreover, pursuant to the last paragraph of Article 12, the right of defence of the reported person must always be guaranteed in proceedings initiated against him/her following the report.

Finally, it should be noted that, in order to ensure the protection of personal data, the decree in question has provided that the acquisition and management of reports, complaints, public disclosures must always take place in full compliance with the legislation on the protection of personal data.

Protection from retaliation.

The new decree confirms the principle that any form of retaliation adopted as a consequence of the report is prohibited, since the whistleblower may not be subjected to measures that have negative effects on the employment relationship and on his person. Any form of retaliation, even if only attempted or threatened, is prohibited.

In this respect, the national legislator has adopted a broad notion of retaliation, by which is meant, pursuant to Article 2(1)(m): 'any conduct, act or omission, even if only attempted or threatened, occurring as a result of the report, the complaint to the judicial or accounting authorities or public disclosure and which causes or is likely to cause the reporting person or the person making the complaint, directly or indirectly, unjust damage'.

Article 17(4) of Legislative Decree no. 24/2023 provides, then, an illustrative and non-exhaustive list of what may constitute retaliation, ranging from dismissal, non-promotion, adoption of disciplinary measures, non-renewal or early termination of a fixed-term employment contract, damage, including

reputational damage ‘in particular on social media’ to inclusion on improper lists on the basis of a formal or informal sectoral or industry agreement, which may result in the person being unable to find employment in the sector or industry in the future.

In continuity with the previous legislation and in line with Euro-Union law, the mechanism of reversal of the burden of proof, the true cornerstone of the legislation, is confirmed, whereby it is presumed that the prejudicial acts adopted against the whistleblower were put in place because of the report. The burden of proving that such conduct or acts are motivated by reasons unrelated to the whistleblowing is on the person who has carried them out. This applies in judicial, administrative and extrajudicial proceedings. Moreover, even in the event of a claim for damages before the judicial authority, the person only has to prove that he or she made a report and suffered damage, at which point, unless proven otherwise, the damage is presumed to have resulted from the report.

It should be noted, however, that the legislator expressly wanted to exclude the following persons from the mechanism of reversal of the burden of proof: facilitators; persons in the same work environment as the person making the report who are bound to that person by a stable emotional or family relationship up to the fourth degree; colleagues of the person making the report who work in the same work environment as the person making the report and who have a habitual and current relationship with that person; and entities owned by the person making the report for whom the person makes the report as well as entities operating in the same work environment as the person making the report.

With regard to the consequences of the adoption of retaliation, the new decree states that it is up to the judicial authority to adopt all the measures, including provisional ones, necessary to ensure protection of the legal situation being asserted, including compensation for damages, reinstatement in the workplace, an order to cease the conduct in violation of the prohibition of retaliation, and the declaration of nullity of the acts adopted

(e.g. the signatory of the measure) or in any case to the person to whom the conduct and/or omission is attributable, as well as to the person who suggested or proposed the adoption of any form of retaliation against the whistleblower, thus producing an indirect negative effect on his position (e.g. proposal of disciplinary sanction).

Limitation of liability.

The disclosure made by the whistleblower is considered ‘just cause’ and, therefore, the whistleblower is not punishable criminally, civilly or administratively, if - at the time of the report - he had reasonable grounds to believe that all the information disclosed was necessary to disclose the breach and the report was made in accordance with the regulatory framework.

In particular, Article 20 of Legislative Decree No. 24/2023 provides that the person making the report or public disclosure is not punishable, not only in the event of a breach of secrecy as referred to in Articles 326, 622 and 623 of the Criminal Code and 2015 of the Civil Code, but also in the event of a breach of the provisions on the protection of copyright or the protection of personal data, as well as in the event that the same person discloses or disseminates information on the breach that offends the reputation of the person involved.

Similarly, civil or administrative liability for acquiring or accessing information on infringements is excluded, unless the conduct constitutes a criminal offence.

Finally, a closing clause is provided for, in which criminal liability and any other liability, including civil or administrative liability, is waived ‘*for conduct, acts or omissions not related to the reporting or public disclosure or which are not strictly necessary to disclose the breach*’.

Support measures

One of the main innovations introduced by the decree in question is the introduction of special support measures in favour of whistleblowers, regulated by Article 18.

In particular, a list of Third Sector entities is established at the ANAC, which provide whistleblowers with support measures consisting of information, assistance and advice free of charge on how to report and on the protection from retaliation offered by national and European Union legislation, on the rights of the person involved, and on the terms and conditions of access to legal aid.

In order to be included in this list, published on the ANAC's website, Third Sector entities that, in

accordance with the provisions of their respective statutes, carry out activities to promote legality, transparency and the protection of human, civil, social and political rights as well as consumer rights in both the public and private sectors, will have to enter into appropriate agreements with ANAC in advance.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 4(b):

4. Regarding whistleblowing, the Working Group recommends that Italy:

(b) urgently adopt an enhanced, strong and effective framework to protect and/or provide remedy against any retaliatory action to all private sector whistleblowers (Anti-Bribery Recommendation XXII);

Action taken as of the date of the follow-up report to implement this recommendation:

With Legislative Decree No. 24 of 10 March 2023, the Italian legislator intended to include in a single legislative text the entire regulation of whistleblower channels and protections provided for whistleblowers in both the public and private sectors.

The **private sector** includes entities, other than those falling within the definition of the public sector, which meet at least one of the following requirements:

- they have employed, over the last year, an average of at least fifty employees with permanent or fixed-term employment contracts;
- they fall within the scope of the acts of the Union referred to in Parts I.B and II of the Annex (so-called sensitive sectors), even if they have NOT employed an average of at least fifty employees with employment contracts of indefinite or fixed-term duration in the last year.

These are acts that intervene in the areas of financial services, products and markets, the prevention of money laundering and terrorist financing, environmental protection and transport safety. In such cases, therefore, it is the subject matter in which the company operates that is relevant rather than the threshold of the average company staff employed in the last year;

- they fall within the scope of Legislative Decree No. 231 of 8 June 2001 and adopt the organisation and management models provided for therein, EVEN if in the last year they did not have an average of fifty employees with permanent or fixed-term employment contracts.

See also paragraphs II to VIII of the previous response.

Furthermore, the regulatory framework was then completed with the ANAC Guidelines, adopted in July 2023, which set out the procedures for the submission and management of external reports, as well as indications that public and private entities can take into account for internal channels.

For Confindustria, this form of protection is a useful tool to prevent and combat illegal conduct within complex organizations and has followed the dossier since the approval process of the EU Directive, offering a constructive contribution to the work.

In particular, the Confederation directly followed the transposition phase in Italy, highlighting to the Government and the Parliamentary Committees the numerous critical issues of the first draft of the Decree. It stressed the need **to balance** the protection of *whistleblowers* with the safeguarding of companies from distorted uses of the tool, to minimise the risk of reputational damage. In this sense, the need to provide for a system of effective sanctions to discourage false complaints, strengthen the protection of the reported person, in line with the EU directive, and objectively define the conditions for reporting.

Subsequently, Confindustria started a close discussion with ANAC by participating in a hearing and responding to the prior **public consultation** on the Guidelines scheme which, in the final version,

incorporated several requests for clarification from Confindustria.

Considering that the previous legislation on whistleblowing applied only to companies that adopted a 231 organizational model and given the numerous innovations introduced by the decree - especially for the expansion of the scope of application both subjective (all public and private entities with more than 50 employees or with MO 231) and objective (e.g. violations of EU law on public procurement, protection of the environment, consumers, and the EU's financial interests), Confindustria organized a series of initiatives to inform and raise awareness among associations and companies on the issue.

In particular, in May 2023, it organized an information seminar at national level, with the participation of ANAC and the Privacy Guarantor, to present and analyze the new discipline.

In the following months, from June to December 2023, it participated in several webinars organized for companies, and guaranteed an intense consultancy activity to answer interpretative questions mainly on the establishment and management of the internal reporting channel.

Finally, it developed an "Operational Guide"²², published in October 2023, to provide companies targeted by the new rules with a series of indications and operational measures to support them in the implementation of internal reporting channels, without prejudice to the freedom of entities to adopt the most appropriate solutions for their organisation and size.

The main contents of the document are: i) necessary elements of the procedures, ii) possible options for the choice of the whistleblowing manager and iii) steps for the management of internal reports .

With regard to the management of reports, a series of concrete examples are given to support companies in choosing the most suitable subject to receive reports by identifying - in the case of an internal subject - a figure/office without operational tasks, in order to comply with the criterion of autonomy provided for the legislation.

A list of possible professional figures on which to direct the choice are: i) heads of legal or human resources functions, who already carry out control and regulatory compliance functions; ii) a committee specifically set up and composed of internal subjects (e.g. heads of control functions - compliance or Internal Audit - together with the legal functions or human resources functions, the anti-corruption manager or Ethics Committees, the 231 Supervisory Body).

In the Operational Guide, the procedure for the management of the report is then analyzed by creating sub-phases (reception, evaluation of procedure, investigation) to clarify the steps that the manager must take and which represent the most important activity for the purposes of the discipline itself and to ensure a correct follow-up to the report.

An important passage that has been studied in depth, and which has been reflected in ANAC's LGs, is that of the nature of the feedback that is due to the whistleblower.

The Decree provides that the manager of the report must provide a response, within three months from the date of acknowledgment of receipt. In this regard, also in line with Confindustria's request, ANAC specified that it is not necessary to conclude the assessment within three months, considering that there may be cases that require, for the purposes of verification, a longer time.

Therefore, it is a finding that, at the end of the term indicated, can be definitive if the investigation has been completed or of an interim nature on the progress of the investigation, which has not yet been completed.

In the latter case, in the Operational Guide, it is advisable to also communicate to the reporting person the subsequent final outcome of the investigation of the report (archiving or verification of the validity of the report with transmission to the competent bodies), to avoid that the whistleblower may claim not to have received a response .

Finally, in light of the new whistleblowing regulations, a chapter was dedicated to updating the 231 Organisational Model. In particular, the need to update the Model with:

(a)an indication of the internal reporting channels adopted;

²² See Annexes.

(b) the reference to the prohibition on retaliatory act;

(c) the respect for the confidentiality in the processing of information in relation to the management of reports;

(d) the integration of the disciplinary system by providing for sanctions against those responsible for violations for which ANAC applies administrative fines.

The Model may refer, with regard to the further aspects of application and operation of the internal channels, to the organizational act and procedures adopted by the entity.

Confindustria's activity to support companies in the correct application of the discipline is continuing through monitoring activities with its members on the most complex application issues in order to subsequently evaluate, also in comparison with ANAC, any solutions or in-depth analysis.

In addition, Confindustria has been involved as a stakeholder in the Anci Lombardia project "SAFE-IN" funded by the EU Anti-Fraud Program entitled "Strengthening Actions against Fraud: Empowering whistleblowers directive compliance".

The project was created to develop shared working methodologies and good practices to support all public and private recipients of Legislative Decree 24/23, who have been called upon to activate and manage reporting channels to reduce and combat fraud and corruption and thus protect the EU's financial interests.

The Confindustria system is contributing to the phase of detecting the procedural and organizational solutions adopted so far and the difficulties encountered for the implementation of the legislation. The ultimate goal of Anci Lombardia is to identify the training needs to design, with the support of Transparency International Italia, 2 laboratory training courses, which will be delivered in June and September 2024 free of charge.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 4(c):

4. Regarding whistleblowing, the Working Group recommends that Italy:

(c) further raise awareness and provide training on (i) the implementation of adequate measures for protecting reporting persons in the private sector, and (ii) the protection and remedies available for private sector whistleblowers (Anti-Bribery Recommendation XXII.xii).

Action taken as of the date of the follow-up report to implement this recommendation:

ANAC's initiatives in this regard since the entry into force of the new legislation:

- 1) publication of Guidelines for the external channel (July 2023)
- 2) Establishment of a technical round table with representatives of the public and private sectors with a view to the publication of Guidelines for internal channels (in progress, scheduled for end 2024)
- 3) Establishment of a register of third sector entities providing free support to whistleblowers
- 4) Establishment of a permanent table with these bodies to coordinate training initiatives
- 5) Deployment of 4 training sessions for these bodies (3 already done)
- 6) Publication on the ANAC website of all useful information on the new discipline and role of ANAC
- 7) Participation of ANAC in public and private sector events throughout the territory on the new discipline

and role of ANAC²³.

As previously mentioned, Legislative Decree No. 24 of 10 March 2023 transposed EU Directive 2019/1937 "on the protection of persons reporting on breaches of union law" into Italian law.

The regulatory framework was then completed with the ANAC Guidelines, adopted in July 2023, which set out the procedures for the submission and management of external reports, as well as indications that public and private entities can take into account for internal channels. For Confindustria, this form of protection is a useful tool to prevent and combat illegal conduct within complex organizations and has followed the dossier since the approval process of the EU Directive, offering a constructive contribution to the work.

In particular, the Confederation directly followed the transposition phase in Italy, highlighting to the Government and the Parliamentary Committees the numerous critical issues of the first draft of the Decree. It stressed the need to balance the protection of whistleblowers with the safeguarding of companies from distorted uses of the tool, to minimise the risk of reputational damage. In this sense, the need to provide for a system of effective sanctions to discourage false complaints, strengthen the protection of the reported person, in line with the EU directive, and objectively define the conditions for reporting.

Subsequently, Confindustria started a close discussion with ANAC by participating in a hearing and responding to the prior public consultation on the Guidelines scheme which, in the final version, incorporated several requests for clarification from Confindustria. Considering that the previous legislation on whistleblowing applied only to companies that adopted a 231 organizational model and given the numerous innovations introduced by the decree - especially for the expansion of the scope of application both subjective (all public and private entities with more than 50 employees or with MO 231) and objective (e.g. violations of EU law on public procurement, protection of the environment, consumers, and the EU's financial interests), Confindustria organized a series of initiatives to inform and raise awareness among associations and companies on the issue.

In particular, in May 2023, it organized an information seminar at national level, with the participation of ANAC and the Privacy Guarantor, to present and analyse the new discipline. In the following months, from June to December 2023, it participated in several webinars organized for companies, and guaranteed an intense consultancy activity to answer interpretative questions mainly on the establishment and management of the internal reporting channel.

Finally, it developed an "Operational Guide", published in October 2023, to provide companies targeted by the new rules with a series of indications and operational measures to support them in the implementation of internal reporting channels, without prejudice to the freedom of entities to adopt the most appropriate solutions for their organisation and size.

The main contents of the document are: i) necessary elements of the procedures, ii) possible options for the choice of the whistleblowing manager and iii) steps for the management of internal reports. With regard to the management of reports, a series of concrete examples are given to support companies in choosing the most suitable subject to receive reports by identifying - in the case of an internal subject - a figure/office without operational tasks, in order to comply with the criterion of autonomy provided for the legislation.

A list of possible professional figures on which to direct the choice are: i) heads of legal or human resources functions, who already carry out control and regulatory compliance functions; ii) a committee specifically set up and composed of internal subjects (e.g. heads of control functions - compliance or Internal Audit - together with the legal functions or human resources functions, the anti-corruption manager or Ethics Committees, the 231 Supervisory Body). In the Operational Guide, the procedure for the management of the report is then analysed by creating sub-phases (reception, evaluation of procedure, investigation) to clarify the steps that the manager must take and which represent the most important activity for the purposes of the discipline itself and to ensure a correct follow-up to the report.

An important passage that has been studied in depth, and which has been reflected in ANAC's LGs, is that of the nature of the feedback that is due to the whistleblower. The Decree provides that the manager

²³ See Annexes.

of the report must provide a response, within three months from the date of acknowledgment of receipt. In this regard, also in line with Confindustria's request, ANAC specified that it is not necessary to conclude the assessment within three months, considering that there may be cases that require, for the purposes of verification, a longer time.

Therefore, it is a finding that, at the end of the term indicated, can be definitive if the investigation has been completed or of an interim nature on the progress of the investigation, which has not yet been completed. In the latter case, in the Operational Guide, it is advisable to also communicate to the reporting person the subsequent final outcome of the investigation of the report (archiving or verification of the validity of the report with transmission to the competent bodies), to avoid that the whistleblower may claim not to have received a response.

Finally, in light of the new whistleblowing regulations, a chapter was dedicated to updating the 231 Organisational Model. In particular, the need to update the Model with: (a) an indication of the internal reporting channels adopted; (b) the reference to the prohibition on retaliatory act; (c) the respect for the confidentiality in the processing of information in relation to the management of reports; (d) the integration of the disciplinary system by providing for sanctions against those responsible for violations for which ANAC applies administrative fines. The Model may refer, with regard to the further aspects of application and operation of the internal channels, to the organizational act and procedures adopted by the entity.

Confindustria's activity to support companies in the correct application of the discipline is continuing through monitoring activities with its members on the most complex application issues in order to subsequently evaluate, also in comparison with ANAC, any solutions or in-depth analysis. In addition, Confindustria has been involved as a stakeholder in the Anci Lombardia project "SAFE-IN" funded by the EU Anti-Fraud Program entitled "Strengthening Actions against Fraud: Empowering whistleblowing directive compliance". The project was created to develop shared working methodologies and good practices to support all public and private recipients of Legislative Decree 24/23, who have been called upon to activate and manage reporting channels to reduce and combat fraud and corruption and thus protect the EU's financial interests.

The Confindustria system is contributing to the phase of detecting the procedural and organizational solutions adopted so far and the difficulties encountered for the implementation of the legislation. The ultimate goal of Anci Lombardia is to identify the training needs to design, with the support of Transparency International Italia, laboratory training courses, which will be delivered in June and September 2024 free of charge.

Two online webinars have already been scheduled for the staff of small and medium-sized enterprises, with particular reference to top management and managers of internal reporting channels, on the following days:

- Webinar 1. "The generation of value for companies through whistleblowing systems: ethical and governance benefits" - Thursday 20 June 10.30 – 12.30;
- Webinar 2. "Legal framework, best practices and organizational aspects of the implementation of the European Whistleblowing Directive" - Tuesday 9 July 10.30 – 12.30. Confindustria invited its members to participate. Furthermore two in-person workshops dedicated to simulating the management of a report are scheduled for September.

The **National School of Administration (SNA)** is deeply committed to the issue of the whistleblower protection. The subject is in fact dealt with in several catalogue courses dedicated to the topic of corruption in general, as well as being the subject of a thematic seminar delivered in cooperation with ANAC and extensively covered within the Expert Diploma in Corruption Prevention and Transparency, in cooperation with the State Attorney General.

In addition, an independent training course was developed within the Community of Practice of the Heads of Corruption Prevention and Transparency.

Courses in the catalogue

Whistleblower protection is covered in all courses related to the prevention of corruption, from the more general ones (*Prevention of and fight against corruption in PAs: from Law 190/2012 to the NRP*

https://paf.sna.gov.it/scheda_corso.html?cid=3210²⁴, for a total of 2910 learners distributed over the 17 editions in 2023 and 3279 learners distributed over the 15 editions in the first half of 2024), to specialised ones (*The management of corruption risk: models and techniques in the national and international context*, https://paf.sna.gov.it/scheda_corso.html?cid=3238²⁵, of which 1 edition took place in the first half of 2024 and 4 editions in 2023, with a total of 269 participants.

Thematic seminar

To complement the training course '*Preventing and Fighting Corruption in Public Administration: from Law 190/2012 to the NRP*', thematic seminars were held to examine in depth some particularly sensitive and specific aspects of the corruption prevention system adopted by Law 190/2012 and subsequent amendments (https://paf.sna.gov.it/scheda_corso.html?cid=3245²⁶). The educational objective was to provide training and information aimed at the knowledge of the legislation and case law relating to the specific issues addressed, as well as the tools for concrete operationalisation in the function of preventing corruption, also with a view to simplification and safeguarding integrity imposed by the reforms envisaged in the NRP. The seminars could be attended all or individually, with a final evaluation test.

The first edition of the thematic seminar on 'Whistleblowing - In collaboration with ANAC' took place over four days, for a total of 10 hours of teaching in e-learning - Webinar mode on the following dates: 13, 14, 17, 18 April 2023. 93 employees, including managers and officials, participated.

The second edition of the thematic seminar on 'Whistleblowing - In collaboration with ANAC' took place over three days, for a total of 10 hours of teaching in Blended mode on the following dates: 27, 28 November 2023 (webinar), 30 November 2023 (classroom in attendance). There were 34 participants.

The third edition will be delivered over two days for a total of 10 hours of classroom teaching in presence mode on the following dates: 12 and 13 December 2024. Thirty-nine applications have been received so far.

Speakers

The course benefited from the experience and expertise of five speakers, each of whom made a significant contribution, covering different aspects of the topic:

Nicoletta Parisi: *International and EU framework; - What is whistleblowing; The international discipline and the EU context; EU initiatives aimed at protecting the whistleblower; The ANAC experience; Law 179/2017; The new EU directive.*

Andrea Franzoso: *whistleblower, testimony*

Maria Giuseppina Pacilli: *Unethical conduct and its denunciation: From individual behaviour to group dynamics; Why do people behave unethically?; From moral unawareness to moral justification; Moral disengagement; The denunciation of unethical conduct and the conflict between two instances: justice or fairness?; - Strategies to promote more ethical behaviour at organisational level*

Nicoletta Parisi: *The Italian national discipline; Prerequisites for whistleblower protection; The protection status; The measure to prevent maladministration and illegality in PTPC; Comparison and discussion.*

Expert Diploma on Prevention of Corruption and Transparency, in cooperation with the State Attorney's Office

The diploma, https://paf.sna.gov.it/scheda_corso.html?cid=3249²⁷, now in its second edition, includes within the training course a module expressly dedicated to the topic of whistleblower protection.

Speakers

Alberto Vannucci: *Costs and moral benefits of whistleblowing*

²⁴ See Annexes.

²⁵ See Annexes.

²⁶ See Annexes.

²⁷ See Annexes.

Valentina M. Donini: *Whistleblowing: regulatory framework and critical application issues*

Andrea Franzoso: *Whistleblowing, a human measure to prevent corruption*

The first edition was attended by 34 participants and 26 certificates were issued after passing the final exam.

The second edition, which is currently underway, is attended by 46 participants.

Specialised training within the Community of Practice of the Persons Responsible for the Prevention of Corruption and Transparency (RPCT)

In its dimension as an inter-institutional body and open to contributions from civil society, the Community of Practice has devoted many activities to the topic of whistleblowing, with the aim not only of strengthening and enhancing the skills of RPCTs and helping to overcome the strong resistance that still hinders the dissemination of the institution, but also of identifying and implementing good practices in this area.

Also as part of the implementation of the Fifth National Action Plan for Open Government, a specialised in-depth study was launched to raise awareness and increase the awareness of anti-corruption officers on the issue of whistleblowing.

In its dimension as an inter-institutional body and open to contributions from civil society, the Community of Practice focused in its first year of activity mainly on the issue of whistleblowing, with the aim not only of strengthening and enhancing the skills of RPCTs and helping to overcome the strong resistance that still hinders the dissemination of the institution, but also of identifying and implementing good practices in this area.

Thanks to the intervention of numerous experts, representatives of civil society, academics and also whistleblowers who recounted their testimonies, the institution of whistleblowing was presented to the participants of the Community of Practice not only from a legal, but also from an operational, social, psychological, comparative and technological perspective.

The course consisted of 12 meetings that took place between July 2022 and May 2023 (<https://sna.gov.it/home/attivita/comunita-di-pratica/comunita-di-pratica-per-rpct/attivita-comunita-di-pratica-rpct/whistleblowing/incontri-whistleblowing>²⁸).

Two more operational workshops were then organised with the aim of identifying good practices to improve the management of whistleblowing and encourage the spread of whistleblowing in Italian public administrations. (<https://sna.gov.it/home/attivita/comunita-di-pratica/comunita-di-pratica-per-rpct/attivita-comunita-di-pratica-rpct/whistleblowing/laboratori-whistleblowing>²⁹).

The first workshop (conducted by Libera and Transparency International Italia between December 2022 and February 2023 for a total of 4 meetings and 8 hours of activities) focused on the human dimension of the institute and about 20 administrations participated.

The second workshop, on the other hand, took place between January and March 2023 and, also divided into four meetings and with the participation of 32 administrations, focused on the concept of the 'duty' to report.

As a concrete product of the two workshops, three good practices on whistleblowing were developed and published on the SNA website (<https://sna.gov.it/home/attivita/comunita-di-pratica/comunita-di-pratica-per-rpct/buone-pratiche/whistleblowing-buone-pratiche>³⁰).

All the training sessions on whistleblowing were then collected in a volume published on the SNA website and freely accessible under the title: *Whistleblowing and a culture of integrity: reflections of institutions and civil society for a new narrative. Pathway in the Community of Practice for RPCT 2022-*

²⁸ See Annexes.

²⁹ See Annexes.

³⁰ See Annexes.

2023, SNA, 2023, <https://sna.gov.it/home/attivita/comunita-di-pratica/comunita-di-pratica-per-rpct/in-evidenza-rpct>³¹.

In addition to the **numerous training courses** organised by the SNA, and made available on its website, on the subject of disseminating knowledge of the new regulations on the protection of whistleblowers, it is worth mentioning the **many extensive works** that have been published on the subject, including "Whistleblowing and the Culture of Integrity: Reflections by Institutions and Civil Society for a New Narrative".

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 5(a):

5. Regarding money laundering, the Working Group recommends that Italy:

(a) properly consider money laundering predicated on foreign bribery in its future national money laundering risk assessments (Convention Art. 7 and Anti-Bribery Recommendation VIII);

Action taken as of the date of the follow-up report to implement this recommendation:

The draft National Risk Assessment (NRA) currently being developed by the Financial Security Committee at the Ministry of Economy, in compliance with the FATF standards and within the framework outlined by the Supranational Risk Assessment of the EU Commission approved in October 2022, takes also into consideration, among other things, risks of money laundering arising from cases of foreign bribery. A specific part of the document is dedicated to the analysis of threats and to the construction of risk indicators based on their ranking. In this context, the document appropriately considers the threat posed by corruption starting from estimates of the amount of the phenomenon in Italy. With reference to cases of cross-border corruption, indicators relating to both passive corruption (foreign companies that corrupt in Italy) and active corruption (Italian companies that corrupt abroad) are specifically analysed, highlighting how the weight of corruption cases of Italian public officials by foreign companies (and related money laundering performed in Italy) is less significant than the weight of corruption cases of foreign public officials committed abroad by Italian companies. The analysis is based on the Public Administration Corruption Index (PACI), which uses data on confirmed, pending and convicted corruption cases and on the Bribe Payers Corruption Index (BPCI), which indicates the propensity of companies in a country to bribe abroad.

The databases held by the FIU-Italy (UIF), the case studies as well as the results of the UIF's strategic and control analysis also contribute to the NRA, by offering an assessment of phenomena, threats and vulnerabilities of the national system, based on the financial analysis of STRs.

Taking into account that, according to the "all crime approach", foreign bribery, like any other crime, is also likely to be considered in Italy as a predicate offence for money laundering, the UIF's contributions to the NRA enrich the awareness, at national level, regarding the exact extent of the risks of laundering in the country proceeds originating from cases of corruption perpetrated abroad.

Please note that the update of the NRA is still ongoing and a new official document is expected to be completed (and the general results made publicly available) in September 2024.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

³¹ See Annexes.

Text of recommendation 5(b):

5. Regarding money laundering, the Working Group recommends that Italy:

(b) provide guidance and typologies to obliged entities that explicitly address foreign bribery (Anti-Bribery Recommendation IV.ii and Anti-Bribery Recommendation VIII);

Action taken as of the date of the follow-up report to implement this recommendation:

According to article 6, par. 4, leg. decree 231/2007, the UIF issues and updates, periodically, anomaly indicators in order to support and facilitate obliged entities in identifying suspicious transactions. Anomaly indicators consist of a non-exhaustive list of operative connotations deemed to be anomalous and potentially characteristic of money laundering, associated predicate offences or terrorism financing. By drawing up and issuing anomaly indicators, as well as models and patterns of anomalous conduct with reference to specific areas of business or economic phenomena, instructions on the data and information to be contained in STRs, and feedback flows to reporting entities on the investigative results of the reports, the UIF contributes at improving the reporting activity in terms of timeliness, thoroughness and quality, and at simplifying and facilitating the fulfilment of the reporting obligations, thus also developing a widespread 'anti-money laundering culture' in the economic and financial system.

As regards specific actions taken to implement the Recommendation, on 12th May 2023 the UIF issued a new edition of the anomaly indicators, entirely renewed, which entered into force on 1st January 2024. The document aims at providing a useful tool to further improve the quality of active cooperation. It also aims to systematise and give a new look to the indicators previously issued, also introducing new typologies and new elements that take into account the evolution of new criminal forms and new risks experienced by the obliged entities and in the analysis of STRs. Unlike the past, the new anomaly indicators are addressed to all entities subject and are divided in three sections: Section A, focused on behavioural profiles and characteristics of the person to whom the transaction refers, Section B, focused on characteristics and patterns of the transaction, and Section C, specifically related to the financing of terrorism and to proliferation of weapons of mass destruction programmes.

Due to the intrinsic characteristics of the Italian AML system and the very notion of suspicion that must support the obligation to report, not linked to any specific type of crime, but focused on mere anomalies that can be symptomatic of multiple criminal behaviours, none of the indicators mentions, describes or is related to any specific criminal offence.

Nevertheless, it's worth noting that some indicators have been developed precisely to provide possible evidence of behaviours, subjective profiles or operational features potentially connected to cases of foreign bribery. From this point of view, reference must be made to indicators nos. 7 and 8, that are related to unusual, inconsistent or incoherent operations involving politically exposed persons, or persons known to hold a senior position in a public entity, or entities with a public purpose or companies controlled by the latter as well as every person who is linked to them. This could lead to the detection of anomalous operations possibly linked to foreign bribery crime. In this context, some sub-indicators (e.g. 7.4, 7.5) refer to the international character of the operation. In particular, sub-indicator 7.4 focuses on the receipt of funds sent by Italian or foreign senders, which operate in sectors where the public person or the entity holds a position of influence. Sub-indicator 7.5 is related to the operations exclusively aimed at transferring relevant amounts of funds from/to foreign countries.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 5(c):

5. Regarding money laundering, the Working Group recommends that Italy:

(c) train UIF staff specifically on foreign bribery (Anti-Bribery Recommendation IV.i);

Action taken as of the date of the follow-up report to implement this recommendation:

The UIF, since its establishment, is strongly committed to train its officials, through internal seminars, conferences and the continuous exchange of experiences with operators, the academic world and other authorities.

In this context, numerous training activities have, over the years, concerned corruption as a predicate crime of money laundering, also seen in its cross-border dimensions.

As regards specific actions taken to meet the Recommendation, approx. no. 20 UIF's employees, from the International Cooperation and STRs Divisions, attended a three-day seminar on "International corruption: strategies and tools to combat it" that was organized by the National School of Administration on 15, 16 and 17 May 2024 as part of a cycle of thematic seminars on "*Tools and strategies for preventing corruption*". The enrolment of UIF's analysts in this initiative was specifically aimed at improving the specific capacity of the UIF to analyse the phenomenon and to develop dedicated exchanges of intelligence with the Unit's foreign counterparts, also focused on cases of possible foreign bribery. On 6 June 2024 a manager from the UIF also attended an event organized by the same National School of Administration, entirely dedicated to the Italian contribution to the prevention and fight of corruption at international level, with interventions from experts, academics and representatives of institutions.

In addition to the above-mentioned specific initiatives, in recent years some analysts successfully attended inter-university master's courses, in which international corruption was also among the subject of specific modules. In particular, in 2022 and 2023, analysts of the STR Directorate obtained their degree in the inter-university Master on "Prevention and fight of corruption and organized crime" organized by the University of Pisa, and in the Master on "Security in Information and Strategic Information" organized by the University "La Sapienza" of Rome.

Furthermore, on 2 May 2023 the UIF organized an internal seminar for all its employees, on "Anti-corruption legal diplomacy", held by senior officials of the Ministry of Foreign Affairs, during which the action Italy has been leading for years to promote a "*holistic*" vision of preventing and combating corruption (including international corruption and related crimes, primarily money laundering), was illustrated, with a view to reach a coordinated approach and common initiatives among national institutions. The experience of the inter-institutional anti-corruption coordination table at the MAECI, that is a recognized "best practice" and the actions taken by the Italian delegations in international forums (including the ACWG of the G20 and G7 and the WGB of the OECD) were also presented.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 5(d):

5. Regarding money laundering, the Working Group recommends that Italy:

(d) maintain comprehensive statistics on STRs that result in or support bribery investigations, prosecutions and convictions (Anti-Bribery Recommendation VIII).

Action taken as of the date of the follow-up report to implement this recommendation:

The Italian AML system based on the obligation to report suspicious transactions is characterized by a preventive approach that is specifically aimed at keeping the economic and financial system safe from any illicit infiltration, promoting the legality and the integrity of the system. Prevention calls for inter-agency cooperation, the involvement of private operators and enhancement of their AML culture and sensitivity, transparency of disclosures and sharing of information. These factors make it possible to intercept behaviours – and their financial features - that often are just anomalous, thus being possibly linked to a number of crimes to be subsequently investigated and prosecuted by competent authorities different from the UIF. The obligation to report arises when the obliged entity (financial intermediary, non-financial operator or professional) 'knows, suspects or has reasonable grounds to suspect that

money laundering or terrorist financing is being or has been carried out or attempted'. The suspicion, based on the characteristics, size or nature of the transaction or from any other circumstance ascertained as a result of the functions carried out, also taking account of the economic capacity and the activity engaged in by the reported person, may arise from a state of doubt, or inadequate certainty, about the actual existence of a case of money laundering or predicate offence.

Therefore, STRs and the financial analysis carried out by the UIF normally provide a starting point for investigations, producing financial intelligence that can be useful to the LEAs to define, within their investigative activities, information about specific crimes (such as foreign or domestic bribery).

For the above reasons, statistical survey can be carried out by the Ministry of Justice and, even earlier, by individual Judicial Authorities.

It should be noted that monitoring was carried out to identify the number of criminal proceedings registered for foreign bribery (pursuant to art. 322 bis of the Criminal Code) originating from, or in any way related to, STRs.

The responses received from the responding judicial offices showed that a total of 5 proceedings under Article 322 bis of the Criminal Code resulting from STRs were registered.

suspicious transactions, broken down by office (3 Milan, 1 Salerno, 1 Viterbo) as in the attached excel table³².

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 6(a):

6. With respect to accounting requirements, external audit and internal company controls, the Working Group recommends that Italy:

(a) train external auditors on the detection of foreign bribery (Anti-Bribery Recommendation IV.ii and XXIII);

Action taken as of the date of the follow-up report to implement this recommendation:

Office XIII of the **General Finance Inspectorate (IGF) of the State General Accounting Department at the Ministry of Economy and Finance**, is in charge of coordinating the activities, supervisory functions and management of contractual relations in the field of statutory auditing pursuant to Legislative Decree no. 39 of 27 January 2010, and of relations with national and international bodies competent in the field of supervision of statutory auditing activities. In addition, it oversees the preparation and adoption of the professional principles of auditing, deontology, independence, professional secrecy and confidentiality required in the performance of statutory audit assignments. In this area, for the year 2024, the training offer was organised both by the MEF and by specially accredited bodies (also by the MEF) and included the subject of interest. In particular, the annual programme includes a course dedicated to: 'Regulatory aspects of anti-corruption' as well as other training initiatives concerning the administrative liability of entities (Legislative Decree 231/2001) and other topics of interest.

The **Order of Chartered Accountants and Accounting Experts of Rome** has established a commission on the Liability of entities according to Legislative Decree 231/01, which has organized a series of training activities aimed at the professional category, with the aim of raising awareness professionals on all the most delicate and problematic topics. The first work session of the conference on 8 April 2024 addressed the impact of the new Whistleblowing discipline on the 231 model. More specifically, in the document "*New discipline of Whistleblowing and impact on Legislative Decree 231/2001*" the National Council of Chartered Accountants and Accounting Experts (CNDCEC) provides

³² See Annexes.

a first interpretative response to the first application problems of the recent national legislation on the subject of whistleblowing, provided for by legislative decree no. 24 of 10 March 2023 in implementation of Directive (EU) 2019/1937, with particular reference to the effects of the new regulation on organizational models, on the methods of reporting offenses and their management, as well as on the role of the Supervisory Body and on the opportunity for the latter to be assigned the function of reporting manager. Furthermore, in the second work session "The 231 Model in companies subject to prevention measures" was discussed. It is represented that with the publication of the document "*The organisation, management and control model pursuant to Legislative Decree 231/2001 in companies subject to CAM prevention measures*", the CNDCEC addressed the issue of the adoption of organizational models in companies subjected to prevention measures or deemed to be the object of criminal infiltration attempts, in order to limit the risk of infiltration and facilitate the restoration of legality. The matter is of great interest to professionals involved in various capacities in the procedures in question: judicial administrators, consultants in charge of drafting the model, supervisory bodies.

Below you will find a list of courses held by the Order of Chartered Accountants and Accounting Experts of Rome during the period November 2022-April 2024³³:

- November 10, 2022: Commission on the liability of entities under Legislative Decree 231/01. Model 231 and the role of the supervisory body in light of the new Confindustria Guidelines - at the headquarters of the Order of Chartered Accountants;

- December 5, 2022: Commission on the responsibility of entities under Legislative Decree 231/01. Ethics and sustainability: from voluntary initiative to compliance system - at the headquarters Order of Chartered Accountants and Accounting Experts;

- May 11, 2023: Commission on the responsibility of entities pursuant to Legislative Decree 231/01. The tax control framework as a tool for the prevention of tax crimes - at the headquarters Order of Certified Public Accountants and Accounting Experts;

- October 13, 2023: Commission on the responsibility of entities ex legislative decree 231/01. The discipline ex Legislative Decree 231/01 in companies subject to criminal prevention measures - at the headquarters Order of Chartered Accountants and Accounting Experts;

- November 6, 2023: Commission on the liability of entities pursuant to Legislative Decree 231/01. The application of the regulations under Legislative Decree 231/01 in companies controlled by the P.A. - at the headquarters of the Order of Chartered Accountants and Accounting Experts;

- February 13, 2024: The state of the art of the application of model 231 - at the headquarters of the University of LINK Studies;

- March 7, 2024: Commission on the liability of entities under Legislative Decree 231/01. The application of the regulations under Legislative Decree 231/01 in groups of companies - at the headquarters Order of Chartered Accountants and Accounting Experts;

- March 20, 2024: The application of Legislative Decree 231/01 to small and medium-sized enterprises - at the headquarters Order of Chartered Accountants and Accounting Experts;

- April 8, 2024: Administrative liability for crime Legislative Decree 231/2001 and opportunities for professionals. Focus on the centrality of the organizational model - at the headquarters Order of Certified Public Accountants and Accounting Experts.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

³³ See Annexes.

Text of recommendation 6(b):

6. With respect to accounting requirements, external audit and internal company controls, the Working Group recommends that Italy:

(b) raise awareness among accountants and auditors of their duty to report foreign bribery and the protection for those who report (Anti-Bribery Recommendation IV.ii and XXIII.B);

Action taken as of the date of the follow-up report to implement this recommendation:

Please see the previous response.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 6(c):

6. With respect to accounting requirements, external audit and internal company controls, the Working Group recommends that Italy:

(c) ensure that all auditors – not only those who audit a “public interest” or “intermediate regime” entity – who report foreign bribery on reasonable grounds to competent authorities are expressly protected from legal action (Anti-Bribery Recommendation XXIII.B.v).

Action taken as of the date of the follow-up report to implement this recommendation:

The content of the recommendation can be considered to be implemented through an analysis of the duties entrusted to auditors and the board of auditors in our legal system. Pursuant to **Article 35 of Legislative Decree 231/2007 (Obligations for accountants, auditors and auditing firms)**, they are required to report suspicious transactions; among these, reference may be made to reports of conduct indicative of acts of international corruption. In this context, paragraph 4 of the aforementioned Article 35 provides that “4. *Disclosures made in good faith by obliged persons, their employees or directors for the purpose of reporting suspicious transactions shall not constitute a breach of any restriction on the disclosure of information imposed by contract or by legislative, regulatory or administrative provisions. The same communications do not give rise to liability of any kind even in cases where the person making them is unaware of the underlying criminal activity and regardless of whether the illegal activity has been carried out*”, thus making it possible to consider as protected from censure the conduct engaged in for the purpose mentioned above.

On the other hand, even the provision of **Article 46 (Reporting obligations of the supervisory bodies of the obliged parties), especially in point b)** - among other obligations - provides for the obligation to 'notify, without delay, the supervisory authorities of the sector and the administrations and bodies concerned, in accordance with their respective powers, of any facts that may constitute serious or repeated or systematic or multiple breaches of the provisions of this Title and of the relevant implementing provisions, of which they become aware in the performance of their duties'. Moreover, they are obliged to perform their assigned duties in compliance with the code of ethics resulting from discussions with the professional associations. In this regard, it is noted that our system, in any case, also protects through the code of ethics - the result of the convergence of the contributions of the professional bodies, the Ministry of Economy and Finance and the National Commission for Companies and the Stock Exchange - (Consob) - the independence, objectivity and professionalism of auditors. It should be noted that the Italian Code of Ethics and Independence was adopted by Resolution of the Ministry of Economy and Finance (State General Accounting Department - *Ragioneria Generale dello Stato*), no. RR 127 of 23/03/2023, and comes into force for statutory audits of financial statements for administrative periods beginning on or after 1 January 2023. With reference to the part of the recommendation concerning the awareness of accountants and auditors on their duty to report cases of international bribery and on the protection for those who report, reference is made to the many initiatives

carried out by the National Council of Accountants and the Council of the Order of Accountants of Rome reported under recommendation 6 a).

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 7(a):

7. Regarding tax, the Working Group recommends that Italy: (a) raise awareness of the foreign bribery offence amongst tax authorities and further train tax auditors on the detection of foreign bribery (Anti-Bribery Recommendation IV.i and XX.i);

Action taken as of the date of the follow-up report to implement this recommendation:

It is important to underline that the OECD Bribery Awareness Manual for use by auditors has been brought to the attention of the staff concerned by means of publication on the Revenue Agency's intranet site.

Italy has initiated a training program for tax auditors that will end in June 2024. The program, named "*Contrast to corruption of public officials in international economical operations*" aims to raise awareness of tax control personnel on the topics referred to foreign corruption offences.

It is focused on the following issues:

- Overview of OECD Working Group on Bribery concerning the implementation in Italy of the Convention against corruption of foreign public officials involved in international economical operations.
- Main offences against public administration.
- The crime of international corruption
- The OECD Bribery Awareness Handbook for Tax Examiners
- The OECD risk indicators for tax examiners
- Investigative techniques for combating illicit activities in the context of tax control.
- Connections between Tax offences and crime against public administration.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 7(b):

7. Regarding tax, the Working Group recommends that Italy: (b) adopt a practice of proactively reviewing tax returns when foreign bribery proceedings are initiated to ensure that individuals and companies who have bribed foreign public officials have not claimed those bribes as tax deductions (Anti-Bribery Recommendation XX.i).

Action taken as of the date of the follow-up report to implement this recommendation:

With reference to the recommendation set forth under letter b, the regulatory framework currently in force is provided below, together with the relevant effects on the concrete exercise of the tax assessment power of the **Revenue Agency Offices**.

Article 36 of Presidential Decree no. 600/1973 provides that "*Public bodies institutionally charged with carrying out inspection or supervision activities, as well as judicial, prosecutorial and judicial, criminal, civil and administrative bodies and, subject to authorisation, judicial police bodies which, by reason of or in the exercise of their functions become aware of facts that may constitute tax infringements must communicate them directly or, where provided for, in accordance with the procedures laid down by laws*

or regulations for filing a criminal report, to the command of the Guardia di Finanza (Finance Police) competent in relation to the place where the infringements are detected, providing any documentation in support thereof".

Article 33 "Access, inspections and audits" of Presidential Decree 600/1973 and Article 63 "Cooperation of the Guardia di Finanza" of Presidential Decree 633/1972, provide, inter alia, that the *Guardia di Finanza* "subject to the authorisation of the judicial authority, which may also be granted by way of derogation from Article 329 of the Code of Criminal Procedure, shall use and transmit to the tax offices documents, data and information acquired directly or referred to and obtained from other police forces, in the exercise of its judicial police powers".

The aforesaid rules, by triggering a virtuous mechanism of circulation and sharing of tax-relevant information, contribute to directing the control activities of the bodies of the Financial Administration also through the use of information, data and documents that public bodies and judicial bodies, in the performance of their institutional activities, become aware of, if relating to facts that may qualify as tax violations. With a view to increasing the effectiveness and efficiency of the controls and, therefore, the successful fight against tax evasion and fraud, the rule contributes to the identification of persons who, also through the violation of tax regulations, act not only to the detriment of the interests of the Treasury, but are also able to negatively affect the proper functioning of the financial and economic system, to the detriment of tax-abiding operators and in defiance of the physiological competitive mechanisms of the market.

The judicial investigations and the constant interlocutions with the organs of the Judicial Authority constitute, therefore, ordinary sources of trigger for the control activities of the Revenue Agency which, with the exercise of its ascertaining power, culminate in the issuance of assessment and recovery of taxable amounts and evaded taxes, both direct and indirect, with the imposition of the penalties provided for by law on the basis of the criminal nature of the taxpayer's conduct.

The aforesaid regulatory framework includes the provision contained in Article 14(4-bis) of Law No. 537 of 24 December 1993: "*In the determination of the income referred to in Article 6(1) of the Consolidated Law on Income Tax, referred to in Presidential Decree No. 917 of 22 December 1986, the costs and expenses of goods or services directly used for the performance of acts or activities qualifying as a non-culpable offence for which the public prosecutor has exercised the power of attorney are not deductible. 917 of 22 December 1986, the costs and expenses of goods or services directly used for the performance of acts or activities qualifying as a non-culpable offence for which the public prosecutor has brought criminal proceedings or, in any event, if the judge has issued a decree ordering the trial pursuant to Article 424 of the Code of Criminal Procedure or a judgement of non-suit pursuant to Article 425 of the same code based on the existence of the cause of extinction of the offence provided for in Article 157 of the Criminal Code are not allowed as deductions. In the event of a final acquittal pursuant to Article 530 of the Code of Criminal Procedure or a final judgement not to proceed pursuant to Article 425 of the same code based on the existence of grounds other than the cause of extinction indicated in the preceding sentence, or a final judgement not to proceed pursuant to Article 529 of the Code of Criminal Procedure, the higher taxes paid in relation to the non-eligibility for deduction provided for in the preceding sentence and the related interest shall be reimbursed".*

The provision inhibits the deductibility of negative income components directly related to the commission of the most serious offences (non-culpable offences) that have undergone initial examination by the judicial authorities. In particular, the hypotheses of non-deductibility are limited, for income tax purposes, only to the costs and expenses relating to goods or services directly used for the performance of acts or activities qualifying as a non-culpable offence for which the public prosecutor has brought criminal proceedings, or the preliminary hearing judge has issued the decree ordering the trial or, again, a judgement of non-prosecution due to the statute of limitations of the offence. With reference to the subject matter of the Recommendation under letter b), expenses incurred in the ordinary course of business for the purpose of bribing a public official for the purpose of awarding a public contract, as incurred ad hoc for the commission of a non-culpable offence, fall, for instance, within the aforesaid non-deductibility case.

In order to ensure that tax control activities take place on the basis of qualified assumptions as they are subject to prior scrutiny by the judicial bodies, a constant dialogue with the judicial authorities is necessary so that the Tax Administration is formally aware of the prosecution and, in general, of any

circumstance provided for by the law that may affect the contestation of the non-deductibility of costs and expenses. To this end, both the central and peripheral branches of the Revenue Agency adopt forms of cooperation with the Public Prosecutor's Offices in the territories under their jurisdiction, in order to coordinate and link their work with that of the courts.

In this regard, it should be noted that the non-deductibility of passive elements directly used for a non-negligent criminal activity may constitute one of the declaratory offences provided for by Legislative Decree No. 74 of 2000, without prejudice, in such cases, to the actual existence of the constituent elements of the various incriminatory offences in the field of tax crimes.

Lastly, it should be noted that declaratory tax offences have been included among the predicate offences of Legislative Decree no. 231 of 08/06/2001, concerning the regulation of the administrative liability of legal persons, companies and associations, including those without legal personality, pursuant to Article 11 of Law no. 300 of 29 September 2000.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 8(a):

8. Regarding export credits, the Working Group recommends that:

(a) SACE and SIMEST (i) further raise awareness of foreign bribery among their staff and clients, and (ii) provide adequate training to staff on how to detect potential foreign bribery by conducting appropriate due diligence (Anti-Bribery Recommendation IV.i, and XXI.vi; Export Credits Recommendation IV.1 and IV.5);

Action taken as of the date of the follow-up report to implement this recommendation:

SIMEST has: i) organized and carried out compulsory training courses for employees on issues in the field of anti-money laundering and anti-corruption, as well as on its Model of Organization, Management and Control pursuant to and for the effects of Legislative Decree 231/2001.

It should be noted that further training has been planned, and will be provided during the current year, with the recent regulatory provisions in the area of "Anti-money laundering and Counter-terrorism Legislation"; in addition, in order to raise awareness of the issue being recommended, it was published on the website of SIMEST specific information on Anticorruption ("Anticorruption Simest") in addition to the "Anticorruption Group Policy" already available in the "ETHICS" section of the same website.

In this section, was also included appropriate detailed information on issues 231, Code of Ethics and Whistleblowing.

In general, in the application forms and in the contracts relating to the operations of SIMEST, there are declarations relating to the absence of proceedings before the judicial authorities, among others, also with regard to the hypothesis of crime referred to in Legislative Decree 231/2001 and/or the OECD Convention on International Corruption. Finally, it should be noted that, as a result of the exponential increase in requests for funding F.394/81- PNRR, SIMEST considered it appropriate to forward also through certified mail, during 2023 and after appropriate sharing with the Ministry of Foreign Affairs and International Cooperation ("MAECI") the above Anti-corruption information. The entire SIMEST/PNRR Portfolio is covered by the scope of the Target Enterprises and today amounts to around 6,500 companies.

SACE has made great efforts to raise awareness among all relevant business functions involved in the networking, instructional and deliberative processes through the organization of in-person and online anti-corruption training courses. The training courses covered the following main topics: i) Anti-bribery legal framework, ii) Anti -bribery internal procedures, iii) Anti-bribery trigger events and enhanced due diligence and iv) Case Studies.

The training courses were delivered in 7 sessions on the following dates:

- 14 December 2023
- 16-17 January 2024
- 12 February 2024
- 26 February 2024
- 26 February 2024
- 29 February 2024
- 11 March 2024

The afore-mentioned training will be provided by SACE AML department periodically (at least, once a year) and will be considered mandatory for all relevant corporate functions.

Additionally, the training material is also available on the SACE online training catalogue³⁴.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 8(b):

8. Regarding export credits, the Working Group recommends that:

(b) SACE and SIMEST ensure that their policies and procedures expressly establish the obligation to promptly report all credible allegations or evidence of foreign bribery to law enforcement authorities, and develop guidelines for staff on this issue (Anti-Bribery Recommendation IV.i, XXI.v and XXI.vi; Export Credits Recommendation IV.6, VII.1, and VIII.1);

Action taken as of the date of the follow-up report to implement this recommendation:

SIMEST has specific Policy and Procedures (i.e Policy of Anticorruption Group, Anti-Money Laundering Group Policy, Anomaly Indicators Procedure) that determine in a timely manner the behaviors to be adopted in relation to the issues highlighted above and provide a detailed framework on the reference Legislation; in particular, reference is made in the aforementioned corpus of procedures in general to the good practices to be adopted in the field of Anti-Corruption, the arrangements for the reporting of suspicious transactions and the identification and verification of anomaly indicators for the detection of suspected money laundering terrorist financing transactions and the related information flows adopted.

It should be noted that, compared to the same, is carried out periodic alignment in accordance with the Regulatory updates of reference with contextual sharing to employees.

Regarding **SACE**, the internal guidelines have been amended to remove discretion in assessing the necessity of reporting in cases of reasonable suspicion. This change ensures that reporting is more timely and automatic. The updated wording now states: *"the litigation department shall be informed to report all credible evidence or reasonable suspicions regarding the existence of the alleged corruption offense to the relevant judicial authorities"*.

Considering the above, in case of any reasonable suspicion of corruption offenses, the relevant SACE structure informs the litigation department, which immediately informs the law enforcement authorities through the channels provided and in compliance with the applicable law.

Furthermore, the whistleblowing procedure to report any violations and the SACE 231 Organizational Model were revised in 2023 considering the new regulatory framework (Adonis Digit Flow)³⁵.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such

³⁴ See Annexes.

³⁵ See Annexes.

measures or the reasons why no action will be taken:**Text of recommendation 8(c):**

8. Regarding export credits, the Working Group recommends that:

(c) SACE take steps to explore further enhanced due diligence measures that could be applied in practice when suspicions of foreign bribery arise in connection with a supported transaction (Anti-Bribery Recommendation XXIII.D; Export Credits Recommendation V, VI, and VIII).

Action taken as of the date of the follow-up report to implement this recommendation:

Although the survey does not seem to be addressed directly to SIMEST, it is confirmed that the reporting processes following suspected corruption, as provided for in point 12 of the Group Policy "Anti-Money Laundering" in the context of the "Reporting of Suspicious Transactions", answer to how much disciplined from art. 10 co. 4 and art. 35 of the Legislative Decree 231/07. SIMEST is also considering the possibility of adopting an enhanced due diligence model already in use by *Cassa Depositi e Prestiti* to ensure that the Companies receiving funding and the Counterparties recognize and adhere to the Company's standards with a view to preventing money laundering (Anti-Money Laundering), financing terrorism, international sanctions and corruption (Bribery and Corruption).

SACE's internal guidelines have been reviewed to detail the cases in which enhanced due diligence is applied and to identify the measures to prevent and manage the anti-bribery risk and any related risks.

In particular, the main cases subject to enhanced due diligence are:

- 1) the involvement, as Principals, of (i) foreign Public Administrations; (ii) legal entities owned for more than 50% by a foreign state; (iii) legal entities subject to public contracts regulations in force in the target country;
- 2) the involvement in the transaction of third counterparties operating as insurance/financial intermediaries, agents/brokers, and, in any case, when the value of such commissions exceeds 5% of the value of the contract;
- 3) the involvement of the counterparties in investigations for international corruption in the last 5 years;
- 4) the issuance of precautionary measures/interdictory measures or administrative/penalty measures against the counterparties for their involvement in international corruption in the last 5 years, including designation on Multilateral Financial Institutions debarment lists, with particular reference to the World Bank;
- 5) suspicions of unlawful conduct linked to international corruption.

Please note that above-mentioned trigger events are not exclusive and enhanced due diligence measures can be triggered on a case-by-case basis based on the professional judgment of the AML analyst.

As a practical case, we describe below the procedure followed by SACE AML department in a specific case study.

After performing its checks, the SACE AML department ascertained that the company under scrutiny had been listed on World Bank's debarment List and subsequently disqualified from participating in projects and transactions financed by any World Bank institution for a period of 15 months - with an additional 6 months of non-conditional disqualification – due to collusive and fraudulent conducts in the context of two World Bank-funded Projects in Pakistan and the Democratic Republic of Congo.

In particular, the SACE AML department:

- verified that the corruptive/fraudulent practices were not inherent to the Project underlying SACE'S support and that World Bank funding was not involved;
- acquired a legal memorandum formally attesting the compliance of the award with local regulations;

- ascertained that the entity had introduced «integrity compliance programs» to prevent such cases;
- assigned "High" AML risk which triggered an escalation decision process which allowed SACE to monitor the counterparty³⁶.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 9:

9. Regarding official development assistance, the Working Group recommends that Italy review its development co-operation contracts and provisions to ensure that where allegations of foreign bribery are identified in the performance of an ODA contract, the contract may be suspended or terminated and public funds reimbursed (Anti-Bribery Recommendation XXIV.i and v).

Action taken as of the date of the follow-up report to implement this recommendation:

Regarding the role of the Directorate General for Development Cooperation (DGCS) and the Italian Agency for Development Cooperation (AICS) in implementing Recommendation IX of the OECD Phase 4, it is important to highlight the following.

Concerning Article 17 of the standard contract between AICS and a non-profit organization, this contains the causes for termination and refers to Articles 20 and 21 of the AICS General Procedures.

Article 21 stipulates that AICS may terminate the contract in the event of serious irregularities: however, although there is no explicit reference to corruption, the Agency is available to specify it if deemed necessary.

Additionally, the Agency has the authority, in case of suspected corruption, to initiate *ad hoc* audits and potentially report to the National Anti-Corruption Authority (ANAC) in cases involving Italian legal entities. It is also recalled that pursuant to Article 108, paragraph 2, letter b), of Legislative Decree 50/2016, the Agency may terminate a public contract only in the case of a final conviction for the offenses referred to in Article 80, paragraph 1, which includes international corruption.

In 2018, AICS adopted a Code of Ethics and Conduct and developed a Three-Year Anti-Corruption Prevention Plan. Within the framework of the Anti-Corruption Prevention Plan, all AICS personnel receive training on identifying corruption risks and implementing preventive measures.

In this context, the 2024-2026 Integrated Activity and Organization Plan provides for training on anti-corruption, with the possibility of specific training on cases of international corruption.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

AICS did not deem it appropriate to include reference to Debarment Lists in its Manual of Contractual Procedures since the controls in question, since they do not pertain to procurement procedures, do not concern Italian Civil Society Organizations (CSOs) but local partners selected by the CSOs themselves.

In addition, the internal reconnaissance revealed that:

- No debarment lists are currently consulted, with the exception of the Eu Sanctions Map, which, however, is not related to corruption but to chemical weapons, cyber-attacks, human rights violations and terrorism.

- Checks are carried out on Italian civil society organizations registered in the registration list of nonprofit entities (Art.26 paragraphs 2 and 3 of Law 125/2014 and Art. 17 of Ministerial Decree 113/2015). They

³⁶ See Annexes.

are related to:

- Anti-mafia;
- Equitalia (payment of tax contributions);
- Durc (payment of social security contributions).

Data related to Durc and Equitalia are verified before each payment addressed to CSOs.

- The requirements for inclusion in the CSO register are described within Section 4 of the guidelines ([LINEE GUIDA Elenco OSC 2021.pdf \(aics.gov.it\)](#)).³⁷ Paragraph 5 of the same section states that CSOs must not have incurred "any of the grounds for exclusion provided for in paragraphs 1-3, 5-12 of Article 80 of Legislative Decree No. 50/2016." The Agency has initiated a review of the section in light of Article 94(1)(b) of Code 36/2023.

- The Agency is considering including reference to integrity covenants within the Memoranda of Understanding to be signed by each bidder and/or contractor.

Recommendations for investigating, prosecuting, and sanctioning foreign bribery and related offences

Text of recommendation 10(a):

10. Regarding the offence of foreign bribery, the Working Group recommends that Italy:

(a) provide training and awareness-raising to judicial authorities on the treatment of circumstantial evidence in foreign bribery cases (Convention Art. 1);

Action taken as of the date of the follow-up report to implement this recommendation:

Regarding training to judicial authorities:

With particular reference to the **foreign bribery**, the Italian School for the Judiciary (SSM) has continuously included in its annual training programmes two workshops were held in **July 2023** and **October 2024**, on "**Countering International Corruption: Tools, Issues and Prospects for Reform**".

It is also important to highlight that the SSM provides magistrates, judges and prosecutors, with initial and continuing training over time.

Magistrates' continuous training plays a particularly important role and is of a "compulsory" nature, representing one of the prerequisites for successfully passing the professional evaluations, they are subject to every 4 years.

It should also be added that, while "initial training" is aimed at those who have just entered the judiciary, "**ongoing** and **decentralized** training" is addressed to those who are already in office. Ongoing training is organized by the Steering Committee of the SSM and decentralized training is held at the premises of each national Court of Appeals and courses are supervised by the Steering Committee of the SSM.

The SSM webpage contains the final report, which can be found at the following link (the document is available in English and Italian): https://www.scuolamagistratura.it/web/portalesm/avvisi?p_p_id=Avvisi&p_p_state=normal&p_p_mode=view&Avvisi_javax.portlet.action=dettaglioAvvisoAction&Avvisi_idAvviso=1194&p_auth=JYXGMzXc&p_p_lifecycle=0

Here are some of the main features of the above-mentioned course:

"In October 2022, the OECD's Working Group on Bribery (WGB) adopted the fourth Assessment Report on Italy's implementation of its obligations under the 1997 OECD Convention against International Bribery and the related recently updated 2009 Recommendation. In the same days, our country dropped one more step in the "Exporting Corruption" ranking published by Transparency International (moving from "moderate" to "limited enforcement"). A phenomenon that is certainly related but not overlapping

³⁷ See Annexes.

and endowed with solid autonomy from domestic corruption, international bribery and related offenses now constitute a kind of autonomous enclave within economic crime that has long been extensively regulated as well as closely monitored worldwide.

The course aims to explore the main international instruments that bind Italy in this regard as well as the impact produced in recent decades on domestic legislation and practices by them and by the recommendations made by their monitoring bodies, with particular attention to the OECD's WGB, unanimously considered the most specialized and penetrating on international corruption.

At the same time, issues of domestic law underlying recent jurisdictional pronouncements on the subject that have provoked heated debate inside and outside the judiciary will be addressed and debated, with particular reference to the issues of the evaluation of evidence, the liability of entities and mechanisms aimed at facilitating the emergence of international corruption crimes such as the protection of whistleblowers. The aim is to bring the debate back to the terrain of a calm legal confrontation in order to increase the awareness of practitioners on the subject and verify the opportunity or need for legislative reform interventions, also looking at those recently carried out in other countries that are our relevant economic partners”.

Features of the course organized in OCTOBER 2024:

Area: criminal field

Organization: Higher School of the Judiciary; **duration:** four sessions; **methodology:** alongside face-to-face lectures, designed in terms of dialogic presentation of the topics and followed by debate, there will usually be work among small groups of participants with case study examination; **total number of participants:** ninety in attendance and thirty online; **composition of the audience:** one hundred and twenty ordinary magistrates with criminal functions both judging and prosecuting of whom at least fifteen EPPOs.

Incompatibilities, if any: those found to have been admitted to the FFPF23006 course will be postponed from any other applicant.

Venue and date of the course: Scandicci, Villa di Castel Pulci, October 14, 2024, (opening session at 3 p.m.) - October 16, 2024 (closing session at 1 p.m.)³⁸.

The Italian School for the Judiciary (SSM) has constantly provided a course on included a course on "The **circumstantial procedure: evaluation of the evidence and grounds of the judgment**," in which not only the rule laid down in Article 192 of the Code of Criminal Procedure is explored in depth, but also the phase of the search for evidence. The reflection on the circumstantial procedure aims to synthesize the techniques for identifying, selecting and connecting circumstantial elements during the criminal investigation phase (also thanks to the contribution from sciences and new technologies) and their "transfer" in the trial confrontation. Equally important is the in-depth study of the relationship between this rule of judgment and the new requirements for the content of the grounds of the judgment, as described in the amended version of Article 546 of the Code of Criminal Procedure.

This evaluation criterion of clues is in fact fundamental where one considers that on the basis of clues, and not evidence, the curtailment of constitutionally guaranteed rights such as the deprivation of personal freedom (Art. 292 Code of Criminal Procedure), secrecy of correspondence (Art. 267 Code of Criminal Procedure) of private property (Art. 321 Code of Criminal Procedure) is permitted.

Regarding awareness-raising to judicial authorities:

As anticipated in the response to recommendation 1), with the National Strategy adopted by Italy activities, processes, and programs have been developed to combat foreign bribery through initiatives of capacity building, institutional building, law building and consensus building in order to achieve the objectives of prevention, detection, awareness and repression of foreign bribery and related crimes.

In this regard, the significant consolidation in the last two years of the Inter-institutional Anti-Corruption Coordination Table, activated at the Ministry of Foreign Affairs and International Cooperation, has prioritised the method of coordination within the institutional culture by means of the exchange of information, the sharing of good practices and the isolation of critical issues. It also encouraged

³⁸ See Annexes.

constructive discussion on international anti-corruption policies promoting a “multi-shareholder” approach by largely involving the private sector and civil society in its activities. The latter was called to share ideas for the definition of prevention and contrast policies.

The described Italian "multilevel" methodology produces effects that also affect the level of legislative strengthening.

Indeed, Italy has already demonstrated the full compliance of its legislation with the provisions of the OECD Convention, through the inclusion of the crime of foreign bribery (art.322 bis c.p.) in the criminal code and the adoption and continuous updating of the Legislative Decree 231/2001.

In any case, it is worth noting that the ongoing process of enhancement and regulatory revision continues. An illustration of this is the establishment, on February 7th, 2024, of a Working Group at the Ministry of Justice to revise the regulations governing the administrative liability of legal entities, companies, and associations, including those without legal personality, currently governed by Legislative Decree No. 231 of 8 June 2001.

The objective of this Working Group is to address specific critical aspects of the present regulatory framework pertaining to the liability of Entities. To accomplish this, it is integrated by experts identified among individuals with recognized competence and experience in the fields of corporate governance, the legal profession, the corporate business sector, and associations, including those without legal personality, in order to potentially submit ameliorating legislative proposals. **The Group is fully operational having already convened on different occasions.**

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 10(b):

10. Regarding the offence of foreign bribery, the Working Group recommends that Italy:

(b) take steps to align the level of details about the corrupt agreement that must be proven for its foreign bribery offence with that seen in practice, by taking appropriate measures including training judicial authorities, and if necessary amending its legislation (Convention Art. 1);

Action taken as of the date of the follow-up report to implement this recommendation:

The Italian School for the Judiciary (SSM) provides magistrates, judges and prosecutors, with initial and continuing training over time. Magistrates' continuous training plays a particularly important role and is of a "compulsory" nature, representing one of the prerequisites for successfully passing the professional evaluations, they are subject to every 4 years. It should also be added that, while “initial training” is aimed at those who have just entered the judiciary, “ongoing and decentralized training” is addressed to those who are already in office. Ongoing training is organized by the Steering Committee of the SSM and decentralized training is held at the premises of each national Court of Appeals and courses are supervised by the Steering Committee of the SSM.

See also the response provided for recommendation 10(a) for the specific reference to courses in the subject of interest.

Furthermore, a Coordination Committee was established at the Ministry of Justice, comprised of all the relevant ministerial Departments (Cabinet, Legislative Office, Department of Justice Affairs), which conducted a thorough examination of the recommendation and ultimately determined not to initiate any legislative changes in this regard, also considering that the SSM has in place and carries out comprehensive and far-reaching specific training activities for magistrates on the issues indicated, and that magistrates are required to continuously refresh their know-how (according to Article 25 Ministerial decree of March 2, 2021 SSM).

In any case, it is worth noting **the following recent case law rulings**, concerning cases of domestic bribery, from the simple reading of which (*as summarised below*) one can gather a definition of the features of the bribery agreement as set out in the Supreme Court's most recent case law:

- **Court of Cassation, Section 6, Judgment no. 15641 of 19/10/2023 Hearing (Entry of judgment: 16/04/2024) Rv. 286376 – 01**

Il delitto di corruzione si perfeziona alternativamente con l'accettazione della promessa ovvero con la dazione dell'utilità e tuttavia, quando alla promessa segue l'effettiva dazione, è in tale momento che esso si consuma. (Fattispecie relativa ad accordo corruttivo antecedente all'entrata in vigore della legge 27 maggio 2015, n. 69, seguito da dazioni intervenute in epoca successiva alla indicata modifica normativa "in peius", in cui la Corte ha ritenuto applicabile la norma di maggiore rigore nella vigenza della quale è stata posta in essere la dazione).

EN: The offence of bribery is committed either with the acceptance of the promise or with the giving of the benefit and, however, when the promise is followed by the actual giving, that is when it is completed. (Case concerning a corrupt agreement prior to the entry into force of Law No. 69 of 27 May 2015, followed by donations made at a time subsequent to the aforementioned legislative amendment "in peius", in which the Court held that the stricter rule under which the donation was made was applicable).

- **Court of Cassation, Sec. 6, Judgment No. 14027 of 13/02/2024 Hearing (Entry of judgment: 05/04/2024) Rv. 286373 – 01**

In tema di corruzione, la mera accettazione da parte di un pubblico agente di un'indebita utilità quale contropartita di un'interferenza illecita da attuare nei confronti di altro pubblico ufficiale non integra necessariamente il reato di corruzione propria, dovendosi verificare, in concreto, se la "presa in carico" dell'interesse del privato corruttore si sia tradotta nel compimento di uno specifico atto contrario ai doveri d'ufficio, illecito o illegittimo. (Nella fattispecie la Corte ha qualificato come corruzione per l'esercizio della funzione la condotta di un funzionario dell'Agenzia delle Entrate che aveva ricevuto una somma di denaro promettendo di intercedere presso una sua collega per la cancellazione di un'ipoteca tributaria in favore del corruttore, il quale aveva poi ottenuto il risultato voluto autonomamente e in modo legittimo).

EN: As to bribery, the mere acceptance by a public official of an undue utility in return for an unlawful interference to be carried out against another public official does not necessarily constitute the offence of direct bribery in itself, it being necessary to verify, in concrete terms, whether the "taking over" of the corrupting private individual's interest resulted in the performance of a specific act contrary to official duties, whether unlawful or illegitimate. (In the case in point, the Court qualified as bribery for the exercise of the function the conduct of an official of the Revenue Agency who had received a sum of money promising to intercede with one of his colleagues for the cancellation of a tax mortgage in favour of the bribe-giver, who had then obtained the desired result independently and legitimately).

- **Court of Cassation, Section 6, Judgment No. 1245 of 08/06/2023 Hearing (Entry of judgment: 10/01/2024) Rv. 285886 – 02 – 01**

In tema di corruzione propria, l'atto oggetto del mercimonio deve rientrare nella sfera di competenza o di influenza dell'ufficio cui appartiene il soggetto corrotto, di modo che in relazione ad esso egli possa esercitare una qualche forma di ingerenza, sia pur di mero fatto.

ENG: On the subject of direct bribery, the act that is the object of the bribe must fall within the sphere of competence or influence of the office to which the bribed party belongs, so that in relation to it he may exercise some form of interference, albeit of a mere de facto nature.

In tema di corruzione, lo stabile asservimento del pubblico ufficiale ad interessi personali di terzi, con episodi sia di atti contrari ai doveri d'ufficio che di atti conformi o non contrari a tali doveri, configura un unico reato permanente, previsto dall'art. 319 cod. pen., in cui è assorbita la meno grave fattispecie di cui all'art. 318 stesso codice, con conseguente radicamento della competenza per territorio nel luogo di inizio della consumazione.

ENG: On the subject of bribery, the stable subservience of the public official to the personal interests of third parties, with episodes of both acts contrary to the duties of office and acts conforming to or not contrary to those duties, constitutes a single permanent offence, provided for by Article 319 of the

Criminal Code, into which the less serious case provided for by Article 318 of the same code is absorbed, with consequent establishment of jurisdiction in the place where the commission of the offence began.

- **Court of Cassation, Section 6, Sentence no. 44142 of 24/05/2023 Hearing (Entry of judgment: 02/11/2023) Rv. 285366 - 02**

In tema di reati contro la pubblica amministrazione, l'accettazione da parte del pubblico agente di una indebita remunerazione per l'esercizio di un potere discrezionale non implica necessariamente l'integrazione del delitto di corruzione propria, dovendosi accertare che egli, violando le regole che disciplinano l'esercizio del potere, abbia pregiudizialmente inteso realizzare l'interesse del privato corruttore, sicché, qualora l'atto compiuto abbia comunque perseguito l'interesse pubblico tipizzato dalla norma attributiva del potere, e non sia stato violato alcun dovere specifico, è configurabile il delitto di corruzione per l'esercizio della funzione.

ENG: On the subject of offences against the public administration, the acceptance by the public agent of undue remuneration for the exercise of a discretionary power does not necessarily imply the crime of direct bribery, since it must be ascertained that he, by violating the rules governing the exercise of power has prejudicially intended to realise the interest of the private corruptor, so that, if the act performed has in any case pursued the public interest typified by the rule conferring power, and no specific duty has been breached, then it is a crime of bribery for the exercise of the function.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 10(c):

10. Regarding the offence of foreign bribery, the Working Group recommends that Italy:

(c) take steps to ensure that its foreign bribery offence is satisfied when funds are provided for the benefit of a corrupt official regardless of whether the foreign official actually receives the same funds provided by the briber, or whether the official has title and not mere access to the bribe, by taking appropriate measures including training judicial authorities, and if necessary amending its legislation (Convention Art. 1);

Action taken as of the date of the follow-up report to implement this recommendation:

The recommendations included within the Phase 4 Report have provided Italy with several aspects to be seriously considered. The wide circulation of the OECD Report both in the judicial and in the academic world, the numerous specific training actions carried out with the participation of leading representatives from the judiciary dealing with this topic, have all contributed to legislative developments; this evolution has resulted either in proposals for legislative amendments, or in shifts in the case-law of the Supreme Court, as shown by the rulings reported below.

And indeed, contrary to past interpretations, the Supreme Court, in a very recent ruling, dated 2.5.2024 (the maxim is quoted below), expressed the view that abstract knowledge of the corrupt agreements is sufficient to recognise liability, even though the case pertained to domestic bribery.

- **Court of Cassation, Section 6, Sentence no. 17514 of 2/05/2024 Hearing**

In tema di reato di corruzione per l'esercizio della funzione ascrivibile ad un rappresentante dell'Autorità Giudiziaria, in ragione della sua connotazione come reato di mero pericolo, a nulla rileva che l'interessamento non si sia tradotto nel compimento di atti specifici, ove risulti che già ab origine nel pactum sceleris era comunque dedotta la concreta possibilità di un coinvolgimento diretto del Giudice e che era prospettata una sua possibilità di influire di fatto sulla decisione del giudizio. (Il presente procedimento riguarda fatti di rivelazione di segreti d'ufficio ed accesso abusivo a sistema informatico a carico della commercialista A.A. , nonché due distinte vicende corruttive aventi entrambe come protagonista il Giudice tributario D.D. , nel mentre deceduto, al quale era ascritto di aver messo a disposizione la sua funzione pubblica (art. 318 cod. pen.), per il tramite di intermediari (in un caso, B.B.; nell'altro, la suddetta A.A.) a favore di due imprenditori, in cambio di utilità economica, consistita nella

dazione di denaro, nel caso del corruttore C.C. , imprenditore agricolo, e di tre prosciutti, nel caso del corruttore F.F. , titolare dell'omonima impresa, oltre che - in tale secondo caso - della promessa di denaro).

EN: As to the offense of bribery, for the exercise of a function attributable to a representative of the Judicial Authority, by reason of its connotation as an offence of mere danger, it is of no relevance that the involvement did not translate into the performance of specific acts, where it appears that from the very beginning the *pactum sceleris* included the concrete possibility of direct involvement of the Judge and that his possibility of influencing the decision of the trial was envisaged. (The present proceedings concern the disclosure of professional secrets and unauthorised access to a computer system against the accountant A.A.. A.A., as well as two separate bribery events, both involving the tax judge D.D. D., in the meantime deceased, who was charged with using his public function (Article 318 of the Criminal Code), through intermediaries (in one case, B.B.; in the other, the aforementioned A.A.) in favour of two entrepreneurs, in exchange for economic benefits (consisting in the payment of money, in the case of the corruptor C.C., an agricultural entrepreneur, and three other persons, in the case of the latter, of a sum of money). , agricultural entrepreneur, and of three hams, in the case of the corruptor F.F. , owner of the company bearing the same name, as well as - in the latter case - the promise of money).

Furthermore, the above-mentioned Coordination Committee established at the Ministry of Justice conducted a thorough examination of the recommendation – also in the light of the most recent position taken by the case law cited above – and ultimately determined not to initiate any legislative changes in this regard.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 10(d):

10. Regarding the offence of foreign bribery, the Working Group recommends that Italy:

(d) take steps to ensure that liability for foreign bribery arises whenever a person offers, promises or gives a bribe to a foreign public official directly or through an intermediary, including where the person joins and becomes a party to a corrupt transaction after the official has entered into a prior “corrupt agreement” with the intermediary or another third party, by taking appropriate measures including training judicial authorities, and if necessary amending its legislation (Convention Art. 1);

Action taken as of the date of the follow-up report to implement this recommendation:

It should be noted that the Supreme Court has recently shown that it has changed its interpretive stance from the past on this specific point.

In fact, although the rulings concern cases of domestic bribery, they address precisely the issue of the third party's participation in the executive phase only, giving it relevance in terms of participation in the crime of bribery.

The following are the summaries:

- **Court of Cassation, Section 6, Judgment no. 28988 of 31/05/2022 Hearing (Entry of judgment: 21/07/2022) Rv. 283494 - 01**

In tema di corruzione, risponde a titolo di concorso il soggetto che, non essendo stato parte dell'accordo corruttivo, abbia avuto piena e consapevole compartecipazione nel reperire, creare o mettere a disposizione del funzionario infedele il prezzo della corruzione, posto che non si tratta di un'attività meramente esecutiva della pattuizione illecita, bensì è essa stessa frazione di una delle condotte tipiche mediante le quali il reato si consuma e rappresenta il momento di massima estrinsecazione dell'offesa al bene giuridico tutelato.

ENG: On the subject of bribery, the person who, not having been a party to the corrupt agreement, had full and conscious co-participation in finding, creating or making available to the unfaithful official the

bribe price is liable as an accomplice, given that this is not merely an activity that executes the illegal agreement, but is itself a fraction of one of the typical conducts through which the crime is consummated and represents the moment of maximum expression of the offense to the protected legal asset.

- **Court of Cassation, Section 6, Judgment no. 168 of 12/10/2022 Hearing (Entry of judgment: 5/01/2023) Rv. 284266 - 01**

In tema di corruzione risponde per concorso nel reato ex art. 110 c.p. il soggetto che, pur rimasto estraneo al patto illecito, abbia avuto piena e consapevole compartecipazione nel reperire, creare o mettere a disposizione del funzionario infedele il prezzo della corruzione, posto che non si tratta di un'attività meramente esecutiva della pattuizione illecita, bensì essa stessa frazione di una delle condotte tipiche mediante le quali il reato si consuma e rappresenta il momento di massima estrinsecazione dell'offesa al bene giuridico tutelato.

ENG: On the subject of bribery, the person who, while remaining uninvolved in the illicit pact, has had full and conscious participation in finding, creating or making available to the unfaithful official the price of bribery is liable for complicity in the crime under Article 110 of the Criminal Code, given that this is not merely an activity of executing the illicit pact, but itself a fraction of one of the typical types of conduct through which the crime is consummated and represents the moment of maximum expression of the offense to the protected legal asset.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 10(e):

10. Regarding the offence of foreign bribery, the Working Group recommends that Italy:

(e) urgently amend its law to make its foreign bribery offence autonomous, i.e. by not requiring proof of foreign law (Convention Art. 1 and Commentary 3).

Action taken as of the date of the follow-up report to implement this recommendation:

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Furthermore, the above-mentioned Coordination Committee, established at the Ministry of Justice, conducted a thorough examination of the recommendation and ultimately determined not to initiate any legislative changes in this regard.

It must be emphasised that the fact that the act of handing over money or other benefits to a person other than the public official, being the carrier entrusted with the delivery of the corruption price, can be considered – in the judge's free appreciation of the evidence – as an element through which the validity of the regulatory amendment requested in the recommendation can be overcome, given the fact that the action can be referred to hypotheses of complicity in the offence of the public official.

Text of recommendation 11:

11. Regarding defences to foreign bribery, the Working Group recommends that Italy take steps to ensure that under CC Art. 323ter (i) a person cannot be immune from liability by denouncing a bribed foreign public official or a less culpable individual in the criminal enterprise, (ii) the defence applies only when a person provides compelling evidence essential to proving a crime that is otherwise unavailable to the authorities, and (iii) the crime that is reported is otherwise unknown to the authorities (Convention Art. 1).

Action taken as of the date of the follow-up report to implement this recommendation:

With reference to the recommendation under review, following in-depth research of the case law of the Italian Courts, no cases were found that resulted in rulings exonerating or reducing liability in favour of perpetrators of international bribery. As a result of this evidence, it was deemed unnecessary to proceed with a legislative amendment and the issue may be the subject of follow-up evaluation.

By way of example, it can be mentioned the recent ruling of the **Supreme Court of Cassation, Chamber VI, n. 8959 of 25 January 2023**, concerning the application of **art. 343 ter**, which demonstrates what mentioned above. The Supreme Court of Cassation confirms the correct exclusion by the Court of Appeal of the recognition of the mitigating circumstance under art. 323 ter c.p. for the defendant who failed to provide cogent evidence essential to proving a crime: *“The Court of Appeals pointed out, almost verbatim, that the **defendant's conduct was totally unsuitable to constitute that incisive cooperation to unveil the activities of the co-conspirators in the bribery offences and to recover the transferred sums and utilities, as it was a modest contribution and, indeed, absolutely devoid of effect on both levels.** L.F. - continued the judges - **admitted in fact macroscopically evident responsibilities**; moreover, he admitted that C. had obtained much higher sums than those indicated in the indictment, but **he did not indicate any decisive elements capable of proving this fact.** The judges then go on to state - again, with full and indeed not manifestly illogical reasoning - that they consider it implausible that C., i.e. the corrupt party, had earmarked part of that money for the purchase of a property, since the preliminary contract was concluded in 2007 and the criminal agreement was not made until 2009, when the same C. became a water service executive.*

Moreover, even if one were to accept the defence's reconstruction of the appellant's case, according to which the pactum sceleris would have been entered into by C. after 2007, in order to secure the subsequent formal purchase of the property, its renovation and furnishing, **the recognition of the special mitigating circumstance would continue to be precluded by the considerations just set out and made by the Court of Appeals concerning the generic nature and the merely asserted but not proven nature of the defendant's statements”** (IT: La Corte d'appello ha precisato, in modo pressoché testuale, come **la Condotta dell'imputato fosse assolutamente inidonea a configurare quella incisiva collaborazione atta a svelare nei reati di corruzione l'attività dei correi e a recuperare somme e utilità trasferite, essendosi trattato di contributo modesto ed anzi assolutamente privo di effetti su entrambi i piani.** L. F. - proseguono i giudici - **ha infatti ammesso responsabilità macroscopicamente evidenti**; inoltre, ha si dichiarato che C. aveva ottenuto somme ben più alte rispetto a quelle indicate nel capo di imputazione, ma **non ha indicato elementi determinanti atti a provare tale circostanza.**

D'altronde, anche ad accedere alla ricostruzione difensiva del ricorrente, secondo cui il pactum sceleris sarebbe stato da C. stretto in epoca successiva al 2007, al fine di assicurarsi il successivo formale acquisto dell'immobile, la ristrutturazione e l'arredo dell'immobile, **il riconoscimento della circostanza attenuante speciale continuerebbe ad essere precluso dalle considerazioni appena riportate e svolte dalla Corte di appello in ordine alla genericità e al carattere meramente asserito ma non dimostrato delle dichiarazioni dell'imputato.**³⁹

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 12(a):

12. Regarding sanctions and confiscation for foreign bribery, the Working Group recommends that Italy: (a) take steps to ensure that the sanctions imposed in practice for undue inducement in foreign bribery cases are effective, proportionate and dissuasive, including by increasing if necessary the maximum sanctions available (Convention Art. 3(1));

³⁹ See Annexes.

Action taken as of the date of the follow-up report to implement this recommendation:

The recommendation under review provided an opportunity to check the trend in the application of sanctions for the offence of undue inducement.

To this end, a monitoring was conducted for the two-year period 2022-2024 on convictions for the crime of undue inducement under Article 319 *quater* of the Criminal Code, the results of which are attached⁴⁰.

The results show that:

- in the year **2022**, 38 convictions were issued and sentences of an average of 2 years and 3 months' imprisonment were imposed;
- in the year **2023**, 26 convictions were issued and sentences of an average of approximately 1 years and 10 months' imprisonment were imposed;
- in the year **2024**, 2 convictions were issued and sentences of an average of 4 years and 4 months' imprisonment were imposed.

Analysis of the data obtained and indicated above shows that the level of penalties applied already appears to be sufficiently dissuasive, and the individual penalties are effective and proportional.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 12(b):

12. Regarding sanctions and confiscation for foreign bribery, the Working Group recommends that Italy: (b) make effective, proportionate and dissuasive fines available against natural persons for foreign bribery (Convention Art. 3(1));

Action taken as of the date of the follow-up report to implement this recommendation:

In acceptance of Recommendation 12(b), a proposal for regulatory amendments was formulated, which will shortly be included in an act to be submitted to the Parliament for its review.

This proposal provides for the introduction of a final paragraph of Article 322 bis of the Criminal Code, in which for the commission of the offences referred to in the first and second paragraphs, in addition to the penalty of imprisonment, the penalty of a fine ranging from EUR 5,000 to EUR 30,000 shall also be imposed.

In the same paragraph, mirroring the provisions of Article 320 of the criminal code, it is established that (also) said fine is reduced by up to 1/3 when the offence is committed by a person "deemed to be in charge of a public service", pursuant to the third paragraph of the same Article 322 bis of the criminal code.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 12(c):

12. Regarding sanctions and confiscation for foreign bribery, the Working Group recommends that Italy: (c) take steps to ensure that it systematically seeks confiscation (i) of an amount equal to at least the value of the bribe, in cases where the actual "profit" of foreign bribery cannot be determined, and (ii)

⁴⁰ See Annexes.

against intermediaries who facilitate foreign bribery (Convention Art. 3(3); Anti-Bribery Recommendation XVI);

Action taken as of the date of the follow-up report to implement this recommendation:

In the Italian legal system, the instrument of **compulsory confiscation** is already provided for, in relation to offences aimed at damaging the proper functioning of the P.A. due to the abuse of the public position held by the public official (the offences listed in Article 322 ter of the Criminal Code also include international bribery, which is provided for and sanctioned by Article 322 bis of the Criminal Code). This instrument has a twofold function, preventive and sanctioning (it should be noted in this regard that the sanctioning character is moreover confirmed by the lack of dangerousness of the assets involved - a necessary prerequisite for security measures - and by the absence of a relationship of pertinence between the offence and the assets).

Indeed, Article 322 *ter* of the Criminal Code provides that: "*In the event of conviction, or application of the penalty at the request of the parties pursuant to Article 444 of the Code of Criminal Procedure, for one of the offences referred to in Articles 314 to 320, even if committed by the persons referred to in Article 322 bis, first paragraph, **the confiscation of the assets constituting the profit or price shall always be ordered, unless they belong to a person unrelated to the offence, or, when this is not possible, the confiscation of assets, of which the offender has the availability, for a value corresponding to such price or profit.***"

When confiscation of assets constituting the price or profit of the offence is not possible, the judge orders **confiscation by equivalent**, which consists in the dispossession of the value corresponding to such price or profit.

The confiscation of the profit obtained by the intermediary participating in the offence referred to in Article 322 bis, second paragraph, of the Criminal Code is also provided for.

Furthermore, it should be noted that, even in the event of **a ruling declaring the offence extinguished by prescription**, a consolidated orientation featuring within the case law of the Supreme Court of Cassation is the principle according to which: **in the event of a declaratory ruling, at the outcome of the appeal judgment, of extinction of the crime, the appellate judge and the Court of Cassation are obliged, in application of Article 578-bis of the Code of Criminal Procedure, to decide on the appeal limited to the effects of the confiscation ordered in the trial on the merits** (in this sense, among many others, ref. to judgements: *Sez. U, no. 13539 of 30/01/2020, Rv. 278870-02*; *Sez. 3, no. 8350 of 23/01/2019, Rv. 275756-05*; *Sez. 3, no. 5936 of 08/11/2018, dep. 2019, Rv. 274860*; *Sez. 3, no. 31282 of 27/03/2019, Rv. 277167*).

This is confirmed by **constitutional case law**, as the Constitutional Court has clarified how, for the purposes of deciding on the confiscation, the appeal judge, without being precluded from exercising its cognitive powers by the adoption of a sentence acquitting the defendant due to the statute of limitations, is required to make a **'full assessment'** of the criminal liability of the defendant, albeit incidentally and only for the purposes of deliberating on the confiscation (ref. Corte cost., sent. no. 49 of 2015; and, substantially in the same terms, Corte cost. no. 182 of 2021).

It should also be specified that the **quantum** to be confiscated by way of the **price** of the crime (which is identified with the thing or money given to the offender as consideration for its commission) is determined as a value whose quantification remains **'unaffected'** by any reduction due to the possible fulfilment by the person concerned of obligations of another nature.

Lastly, it should be recalled the principle of law according to which **the sums received, for themselves or for others, for performing an act contrary to their official duties by the bribed public official constitute the price, and not the profit, of the offence of bribery, with the result that they are fully seizable or confiscable (in this sense, Chamber 6, no. 28412 of 30/03/2022, Rv. 283666).**

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

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Text of recommendation 12(d):

12. Regarding sanctions and confiscation for foreign bribery, the Working Group recommends that Italy: (d) urgently amend its legislation to ensure that the sanctions imposed against legal persons in practice for foreign bribery are effective, proportionate and dissuasive (Convention Art. 3(1));

Action taken as of the date of the follow-up report to implement this recommendation:

In order to comply with Recommendation 12(d), a proposal for regulatory amendments was drafted and will soon be included in an act to be submitted to the Parliament for review.

This proposal provides for a twofold amendment to Article 25 of Legislative Decree No. 231/2001:

- paragraphs 3 bis and 3 *ter* shall be inserted, which, if the offences referred to in paragraphs 1 to 3 are committed by the persons referred to in Article 322 bis of the Criminal Code, penalties shall be applied to the entity that are increased by a quarter compared to those provided for under ordinary legislation
- and, above all, the confiscation referred to in Article 19(2) is ordered up to the amount of double the profit or price or, if higher, up to the tenth part of the turnover of the year in which the offence was committed.

Merely consequential is the amendment made to Article 25(4), from which the reference to Article 322 bis of the criminal code is deleted.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 12(e):

12. Regarding sanctions and confiscation for foreign bribery, the Working Group recommends that Italy: (e) take steps to ensure that interdictive sanctions are imposed in practice to an appropriate degree (Anti-Bribery Recommendation XXIV.i).

Action taken as of the date of the follow-up report to implement this recommendation:

It is important to underline that, with a measure ordered by the Head of Cabinet on 7 February 2024, a Working Group was established at the Ministry of Justice for the revision of the regulations governing the administrative liability of legal entities, companies, and associations, including those without legal personality, currently governed by Legislative Decree No. 231 of 8 June 2001.

The objective of this Working Group is to address specific critical aspects of the present regulatory framework pertaining to the liability of Entities. To accomplish this, is integrated by experts identified among individuals with recognized competence and experience in the fields of corporate governance, the legal profession, the corporate business sector, and associations, including those without legal personality, in order to potentially submit ameliorating legislative proposals.

With reference to the application of disqualification sanctions against legal persons pursuant to Legislative Decree 231/200, for administrative offences arising from the crime of bribery, however, the approach underlying Legislative Decree 231/2001 should be emphasised, which aims, rather than sanctioning the entity (including through the application of disqualification measures), to promote its compliance.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 13(a):

13. Regarding debarment from public procurement, the Working Group recommends that Italy:

(a) enhance its due diligence in public procurement by including in the AVCPASS system information obtained through verifying foreign or Italian companies operating abroad and integrated data from MDB debarments lists (Anti-Bribery Recommendation XXIV.ii);

Action taken as of the date of the follow-up report to implement this recommendation:

With reference to the recommendations above, during 2023 Italy has adopted a new Code of Public Contracts (Legislative Decree 31 March 2023, n. 36).

Therefore, the following considerations refer to the articles of the new Code and to the technical and organizational configuration adopted to implement the provisions regarding the grounds for exclusion of guilty economic operators from public procurement.

As an effect of the new code, from January 2024, the new Virtual Company Dossier of the Economic Operator (FVOE) has replaced previous AVCPass system. Using this new FVOE, contracting authorities can check the Economic Operator also during the other phases of the procurement lifecycle. Article 24 of Legislative Decree 36, in paragraph 3 regulates the operational configuration of the Virtual Company Dossier. It provides that the Issuing Bodies for evidences or information relating to the causes of exclusion must guarantee an interoperable access to their databases, making available the digital certifications to support the checks.

The exclusion grounds are exhaustively reported in articles 94 and 95 of the new Code, which consider respectively the mandatory and non-mandatory cases. These include the conviction with a final sentence or criminal decree of conviction, which has become irrevocable for the crimes, committed or attempted, provided for in 322-bis of the penal code. Namely, Embezzlement, extortion, undue inducement to give or promise benefits, corruption and incitement to corruption of members of international courts or bodies of the European Communities or of international parliamentary assemblies or of international organizations and of officials of the European Communities and foreign states.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 13(b):

13. Regarding debarment from public procurement, the Working Group recommends that Italy:

(b) take steps to ensure that debarment, when ordered by a court as an interdictive sanction or required under LD 50/2016 Art. 80, CC Arts. 32quater or 317bis, is applied to foreign bribery cases in practice (Anti-Bribery Recommendation XXIV.iv).

Action taken as of the date of the follow-up report to implement this recommendation:

The current Code makes steps forward to implement OECD recommendations, ensuring that the exclusion of the economic operators issued by a court as a disqualifying sanction is applied in practice to cases of international corruption (Anti-Corruption Recommendation XXIV.iv). From the implementation point of view, if the sanction is issued by a court in the form of a conviction or criminal decree leading to the disqualification from contracting, this information is available in the ANAC Contract Register and can be consulted by the contracting authorities through the new Virtual Company Dossier managed by ANAC.

The inclusion in the FVOE of information on Italian or foreign companies operating abroad and of complementary data coming from the exclusion lists of multilateral development banks (Anti-Corruption

Recommendation XXIV.ii) is currently more difficult to implement. On the one hand, we still need a clear regulatory framework for these cases. In fact, some doubt remains regarding the possibility of configuring, according to current legislation, the conduct ascertained by multilateral banks as a crime pursuant to art. 322 bis, or as one of the other crimes referred to in article 94 (e.g. fraud relating to the financial interests of the European communities) or as one of the serious offenses provided for in article 98, unless it broadly interprets the concept of "Sectorial Authority" reported in the art. 98, paragraph 3, letter a) - which seems to refer to independent authorities - including multilateral development banks: to do this, a specific regulatory pronouncement is required.

On the other hand, the sharing of data coming from the lists of multilateral development banks with ANAC's Virtual Company Dossier should take place through the National Digital Data Platform, to ensure a Trusted Exchange of information, pursuant to the rules and protocols established by the current technical framework interoperability between Italian public administrations.

However, it should be pointed out that, pursuant to Article 96 of the new code, paragraph 14, the economic operator has the obligation to communicate to the contracting authority the existence of facts and measures that may constitute grounds for exclusion pursuant to Articles 94 and 95, if not mentioned in the Virtual Company Dossier. The omission of this communication or its untruthfulness, although not in itself a cause for exclusion, may be relevant for subsequent registration in the ANAC register in the form of a false declaration during the tender. In fact, in the event of the presentation of a false declaration or false documentation, in the context of tender procedures and subcontracting assignments, the contracting authority reports it to the ANAC. Consequently, if ANAC establishes that they were made with fraud or gross negligence, orders the registration for the purposes of exclusion from the tender procedures and subcontracting assignments, making them available through the Virtual Company Dossier, pursuant to article 94, paragraph 5, letter e), for a period of up to two years, after which the registration is cancelled and, in any case, it becomes ineffective.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 14(a):

14. Regarding the statute of limitations for foreign bribery, the Working Group recommends that Italy:

(a) amend the CCP to provide for an adequate period for preliminary investigations (Convention Art. 6; Anti-Bribery Recommendation IX.ii);

Action taken as of the date of the follow-up report to implement this recommendation:

Italy considers that this recommendation has not to do with the issue of the statute of limitations but only concerns rules of internal criminal procedure of a horizontal nature. The rationale of the Italian legal system aims to prevent lengthy investigations with undetermined delays in order to protect the fundamental rights and guarantees of persons involved in criminal proceedings. The only exceptions in our Criminal Procedural Code (providing for longer terms in preliminary investigations) apply to crimes of an extreme gravity notably organised crime and terrorism. Any further legislative intervention in this field should apply horizontally to all offences of comparable nature and the balance with protection of fundamental rights would be undermined. Therefore, at the end of a thorough examination the Coordination Committee decided not to intervene on the law and to consider in the future possible improvements at the practical level.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 14(b):

14. Regarding the statute of limitations for foreign bribery, the Working Group recommends that Italy:

(b) increase the limitation period for legal persons for foreign bribery, and align it with the period for natural persons (Convention Art. 6; Anti-Bribery Recommendation IX.ii).

Action taken as of the date of the follow-up report to implement this recommendation:

The regulatory framework identifying the limitation period for the liability under Legislative Decree No. 231/2001 is to be considered, as of today, to be based on the regime provided for *ab origine* and limited to the five-year period. The study and comparison activities, which took place within the Coordination Committee set up at the Ministry of Justice with the contribution of the Legislative office as well as of the Justice affairs Department, have – at present – led to consider that it is appropriate to determine the duration of the limitation period differently for natural persons and for legal persons under investigation. The resolution was adopted in deference to needs related to the subtraction of the economic resource related to the possible conviction (in many cases already subject to seizure during investigations) and to the adaptability of the business activity, which is not unaffected by the damage to reputation resulting from the additional time span of the prescription period that would be introduced.

However, it should be noted that a Working Group has been established at the Ministry of Justice to review the regulations on the administrative liability of legal persons, companies, and associations, including those without legal personality. This Working Group will examine any critical issues and recommendations made, including the one under examination.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 15(a):

15. Regarding the enforcement of foreign bribery, the Working Group recommends that Italy:

(a) create a national database of cases of foreign bribery and related offences that is accessible to all prosecutors (Convention Art. 5; Anti-Bribery Recommendation XI);

Action taken as of the date of the follow-up report to implement this recommendation:

The national legal system provides for absolute autonomy of the prosecuting offices in conducting and carrying out investigative activities within their territorial jurisdiction (*except for the provisions of the law providing for communication and possible avocation by the Attorney General in specific procedural conditions, and the investigative coordination powers of the Anti-Mafia and Anti-Terrorism Investigative Directorate limited to crimes within its jurisdiction*). In Italy, there are 146 first-degree prosecutor's offices that are entitled to enter in their register of offences the persons against whom investigations are being conducted for the crime of foreign bribery.

Laying the investigative power in the hands of individual offices that are not hierarchically ordered, also requires the protection of investigative secrecy within sectors and with regard to subjects that only the local or district prosecutor can autonomously determine.

It may happen that even within the same office, the legitimacy of access to the register is for the magistrate on duty limited only to the files and suspects for which he/she has been delegated by the Public Prosecutor. To give an example, it is self-evident that it is appropriate in the main prosecuting offices (Rome, Naples, Milan) with more than 100 magistrates, that the visibility of files and suspects is determined according to the decisions made by the Prosecutor in charge of the office in this regard.

In this context, a national registry/database in which investigative elements covered by secrecy are recorded, at least in the investigation phase – as established in the national legal system by the legislator – even if limited for access only to magistrates (prosecutors), could not be implemented because it would be contrary to the codified system and the structure of judicial power.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 15(b):

15. Regarding the enforcement of foreign bribery, the Working Group recommends that Italy:

(b) maintain the assignment of cases of foreign bribery and other international economic crimes within the jurisdiction of the Milan PPO to its 3rd Department, and continue to ensure that resources provided to the 3rd Department for foreign bribery cases are commensurate with the Department's workload (Convention Art. 5 and Commentary 27; Anti-Bribery Recommendation VII);

Action taken as of the date of the follow-up report to implement this recommendation:

With reference to recommendation 15 (b), it should be noted that:

- following the revision of the working units in which the Office of the Public Prosecutor of Milan is organised, adopted with measure ref. prot. no. 27107 of 5 December 2023, there are currently 9 Deputy Public Prosecutors assigned to Department III -in charge of International Affairs, Transnational Economic Crimes, Tax Crimes, Computer Crimes- (7 in service);
- even more specifically, the offences falling within the jurisdiction of the same Department III are the following:
 - international bribery (Article 322-bis of the Criminal Code - embezzlement, extortion, undue inducement to give or promise benefits, bribery and incitement to bribery of members of international courts or bodies of the European Communities or international parliamentary assemblies or international organisations and officials of the European Communities and foreign states);
 - trafficking in unlawful influence (Article 346-bis of the Criminal Code) in relation to Article 322-bis of the Criminal Code;
 - economic offences of a transnational nature pursuant to Article 3(a), (b), (c), (d) Law No. 146/2006;
 - violations pursuant to Article 55 of Legislative Decree No. 231/07 (excluding the cases referred to in paragraph 9);
 - violations pursuant to Article 11 of Legislative Decree No. 74/2000;
 - tax and fiscal offences;
 - relations with the European Public Prosecutor's Office (EPPO);
 - participation in the activities of international organisations, including OECD (WGB) and GAFI/FATF;
 - combating tax havens;
 - management of Financial Intelligence Unit (Bank of Italy) protocol;
 - management of the European Investigation Orders;
 - management of Passive Rogatory Commissions;
 - computer crimes, limited to the offences provided for in Articles 635-bis, 635-ter, 635-quer, 635-quinquies of the Italian Penal Code;
 - Article 493-ter of the Penal Code;

- the number of pending proceedings for bribery of foreign public officials is 6.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 15(c):

15. Regarding the enforcement of foreign bribery, the Working Group recommends that Italy:

(c) raise awareness of Art. 5 among relevant officials, in order to prevent communications that could potentially influence foreign bribery prosecutions and investigations based on Art. 5 factors from being forwarded to judicial authorities (Convention Art. 5 and Commentary 27);

Action taken as of the date of the follow-up report to implement this recommendation:

On 5 February 2024, a meeting was convened by the Deputy Head of the Cabinet and attended by representatives of all the Departments and Offices of the Ministry to represent and discuss the recommendation under examination, the event from which it had arisen and to agree on ways of handling requests for information from foreign authorities that would make it possible to avoid the occurrence of incidents similar to the one described in the Phase IV Report and relating to the request from the Russian Federation. Following the meeting, a Circular note was issued on 23 April 2024, signed by the Chief of the Cabinet, regulating the matter and which is attached hereto for prompt reference by the Working Group.⁴¹

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 15(d):

15. Regarding the enforcement of foreign bribery, the Working Group recommends that Italy:

(d) conclude the planned reforms to significantly increase human resources and to introduce digitisation into the judiciary (Convention Art. 5 and Commentary 27; Anti-Bribery Recommendation VII).

Action taken as of the date of the follow-up report to implement this recommendation:

With reference to the recruitment procedures for ordinary magistrates from the year 2022 to date, the following competition procedures have taken place:

During the year 2022, the competition procedure announced by **Ministerial Decree of 29 October 2019**, begun in July 2021 as a result of the pandemic emergency, and, by Ministerial Decree of 23.11.2022, **209 junior ordinary magistrates** were recruited, having passed the oral tests, and entered into service in January 2024, after completing a 12-month traineeship.

By **Ministerial Decree of 1 December 2021**, a competition was announced **for 500 positions of ordinary magistrate**: the written tests were held in July 2022, 3606 candidates handed in all the three papers, 626 candidates were admitted to the oral tests, which began on 11 December 2023, and are currently in progress, and will be completed by the end of this year.

Due to the regulatory changes made to expand the Minister of Justice's hiring scope, **600 new magistrates** may be hired, who will enter office within 12 months of their appointment as trainee ordinary magistrates.

⁴¹ See Annexes.

Furthermore, **by Ministerial Decree of 18 October 2022, a further competitive procedure was launched for 400 positions of ordinary magistrate**, whose written tests were held in May 2023, at the end of which 3147 candidates handed in all three papers. Correction of the written tests is currently underway and will be completed by spring 2024, in order to complete the entire procedure by the end of this year, at the end of which 480 new magistrates may be recruited if they successfully pass the tests.

During the year 2023, a competitive procedure with 12 positions limited to the judicial offices of the Autonomous Province of Bolzano was also announced by Ministerial Decree of 09 May 2023, and was completed in September 2023. As a result of the oral tests, 11 candidates were successful, and they will assume office in May 2024.

As per year 2024, in January the written tests of the additional **competitive examination procedure for 400 positions of ordinary magistrate, announced by Ministerial Decree 09.10.2023**, were held: the relevant assessment of such tests is underway and it is expected that the entire procedure will be completed by the year 2025.

Lastly, with **Ministerial Decree of 08 April 2024**, another competition was announced for **400 ordinary magistrate posts**, published in the Official Journal of 12 April 2024, which will take place within the current year. With regard to recruitment procedures relating to the Lay Judges - with the clarification that this falls under the exclusive jurisdiction of the High Council of the Judiciary, whose resolutions are implemented by Ministerial Decree, and without prejudice to the so-called "stabilisation" procedures - it is hereby reported that, with regard to the resolutions received to date, it appears that, in the year 2022, no. **235** Lay Judges were appointed (185 Lay Justices of the Peace and 50 Deputy Lay Prosecutors); in the year 2023, **37** Lay Judges were appointed (23 Lay Justices of the Peace and 14 Deputy Lay Prosecutors); in the year 2024 to date, **61** Lay Magistrates were appointed (47 Lay Justice of the Peace and 14 Deputy Lay Prosecutors).

In total, therefore, from 2022 to date, **333** honorary magistrates have been appointed (255 Lay Justices of the Peace and 78 Deputy Lay Prosecutors).

In total, therefore, 333 honorary magistrates (255 Lay Justices of the Peace and 78 Deputy Lay Prosecutors) have been appointed since 2022.

With reference to the recruitment of **administrative staff in the years 2022, 2023 and 2024**, please refer to the attached summary table⁴².

It is important to highlight that Italy has made significant progress in the digitalisation of the justice system, in both the **civil and criminal sectors**.

In the course of 2023, the digitisation process of **civil justice**, which was already well advanced in 2022, was completed by extending the compulsory nature of the Telematic Civil Proceeding to the Court of Cassation, the Juvenile Courts and the Public Prosecutor's Offices at the Juvenile Courts, the Superior Court of Public Waters and the Regional Public Waters Courts, Justices of the Peace and the Liquidator's Office of Civil Uses. In addition, the Notification, Execution and Protest Offices (NEP Offices) were integrated into the Telematic Civil Proceeding, digitalising also the access of the Judicial Officers to the Databases pursuant to Art. 492 bis of the Code of Civil Procedure. The Civil Proceeding is now fully digitalised, from the introduction to the final judgment. In this way, the Reform aimed at the digitalisation of the judicial system in 2023, as envisaged in the NRPP, has been fully implemented.

With regard to the digitalisation of **criminal justice**, which was included among the objectives of the NRPP, the portal for the electronic filing of documents relating to criminal proceedings and the single management application "APP" were deployed on the systems.

The Criminal Proceedings Deposits Portal allows the electronic transmission to judicial offices of deeds, documents and applications of authorised external parties, in particular defence lawyers, also in multimedia format. The typology of documents that can be filed includes over one hundred types of documents ranging from those related to the court hearing for determining jurisdiction up to the second degree, including the appeal for Cassation, which can also be filed electronically. Defence counsels are allowed, subject to authorisation, to consult the documents of the pre-trial file online – also multimedia

⁴² See Annexes.

ones, with a soon to be implemented function.

In addition to the evolution of the Criminal Records Lodging Portal (PDP), developments in the digitalisation of the criminal justice system involved the creation of the new unified and scalable system for the management of all the flows, procedures, stages and rites of the digital criminal proceedings. The new system is called APP (*Applicativo Processo Penale* - Criminal Process Application) and allows, for all the subjects qualified and involved in the criminal proceedings, the drafting, signing and digital and telematic filing of the measures adopted by the Magistrate; the system is integrated and offers automatic visibility of all the native digital acts achieved by the portals of the Lawyers (PDP) and the Police Forces (NDR portal). The APP application constitutes the solution to support the entire telematic criminal proceedings based on a flexible and scalable web-based system. This tool will be able to allow the telematic management of the trial, which will be extended in the course of 2025 also to the first degree of trial and then allow the development of further degrees. The application provides all the functions needed to guarantee the drafting of digital native acts, two-way telematic exchanges between judicial offices, and is already available throughout Italy for the Public Prosecutor's Offices attached to the Courts, for EPPO offices and for the offices of the Judge for Preliminary Investigations.

The measures adopted by magistrates and the contents of wiretapping activities are also stored in a digital system - with special security and confidentiality requirements called ADI (the Digital Wiretapping Archive), which allows the wiretapping operations ordered by the offices to be conferred and used. The archive will be the subject of an infrastructural evolution that will lead from a decentralised model implemented and operational in all the offices of the Public Prosecutor's Office to a fully centralised infrastructure, through the use of the Single Justice Database (the so-called Mercury). On the single documental system, all the contributions made by the offices of the National Public Prosecutor's Office and also of the European Public Prosecutor's Office will be transferred, with a single, accessible and strictly segmented installation, through a secure and dedicated connection (through the use of a virtual private network) to users authorised to consult it by the individual Public Prosecutors, who will maintain direct control and supervision for each logical partition.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 16:

16. Regarding the money laundering offence, the Working Group recommends that Italy take appropriate measures to effectively enforce the offence in connection with foreign bribery cases (Convention Art. 7).

Action taken as of the date of the follow-up report to implement this recommendation:

The recommendation under review significantly affects the autonomy and independence profiles of the prosecutor's office. Direct interventions, adopted through punctual regulatory provisions and targeted only at foreign bribery, appear to be at odds with a context of reference relating to the manner in which the office functions are carried out.

Remedies against possible inaction in the investigations are already provided for in the Code of Criminal Procedure; the issue of direct measures to stimulate the Judicial Police, which is already highly proactive and specialised in this field in Italy, or the Public Prosecutor, an equally professional and specialised body, to pursue the offence of money laundering more rigorously when it is linked to that of foreign bribery, is a different matter.

Additionally, activities to promote and provide a significant boost in this field have been carried out with absolute diligence both by the School for the Judiciary through training activities (courses on money laundering offences and financial investigations) and by the Italian Financial Police with regard to training activities aimed at the members of the police force with particular regard to money laundering investigations linked to domestic and foreign bribery.

Guardia di Finanza personnel participates in training activities on domestic and foreign corruption and

money laundering, throughout their career, thus receiving basic, post-training and high qualification training.

In the last three years, training initiatives on corruption and money laundering, including at an international level, have been organised at the Corps' Training Institutes for the benefit of both categories of personnel:

- in training, at the basic training Institutes (Academy, Inspectors and Superintendents School, Trainees Legions);⁴³
- in service, at the Economic and Financial Police School;⁴⁴
- outside the Corps (authorities/ officials of international entities/ bodies).⁴⁵

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Some of the above activities may be backed by specific training initiatives, also in favour of officials of Authorities, bodies, international organisations, aimed at deepening the theme of the fight against bribery of foreign public officials in international economic transactions, as well as the contents of the "OECD Manual on Bribery Awareness for Auditors".

Text of recommendation 17(a):

17. Regarding the false accounting offence, the Working Group recommends that Italy:

(a) amend its legislation to prohibit the full range of conduct described in Convention Art. 8(1) (Convention Art. 8);

Action taken as of the date of the follow-up report to implement this recommendation:

The Coordination Committee carefully examined the recommendation under review, and it considered that the parties listed in the provision of Article 2621 of the Civil Code, specifically among "managers in charge of drafting corporate accounting documents" - a category defined under Article 154 bis of the Consolidated Law on Finance -, may also include those who are not necessarily "**top managers**." This means that even "**low level management**" who meet the requirements of Article 154 bis of the Consolidated Law on Finance can be considered to be included among the active parties of the crime.

On the undue profit, it is hereby noted that at the outcome of a careful study by the Coordination Committee, in the light of the consistent and unequivocal interpretation of the case law, including of legitimacy, on the notion of **undue profit** - applicable also in the case of foreign bribery - it was deemed unnecessary to make a legislative amendment on the matter. In this regard, it is clarified that **the undue profit "may take the form of any utility, even non-economic or merely moral, and any gratification or benefit that the agent expects to derive, even not immediately, from his action"** (*inter alia*: Court of Cassation, Chamber 2, Judgment no. 37861 of the 09/06/2023 Hearing (Entry of Judgement on 15/09/2023) ref. Rv. 285190).

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 17(b):

⁴³ See Annexes.

⁴⁴ See Annexes.

⁴⁵ See Annexes.

17. Regarding the false accounting offence, the Working Group recommends that Italy:

(b) significantly increase the sanctions against legal persons for false accounting related to foreign bribery (Convention Art. 8);

Action taken as of the date of the follow-up report to implement this recommendation:

As part of the activity that the Working Group, established at the Ministry of Justice for the revision of the Legislative Decree No. 231 of 8 June 2001 is doing, any specific critical aspects of the current regulatory framework concerning the liability of Entities will be examined, in a concrete perspective of legislative reform.

The outcome of the work of the Working Group will be reported in due time as soon as available.

In addition, it is noted that with regard to foreign bribery, a proposal for legislative amendment has already been formulated (see response to recommendation 12 c), while with reference to the crime of false accounting, it is represented that it constitutes one of the predicate offenses within Legislative Decree No. 231/2001 and, precisely, in Article 25-ter (as amended by Law No. 69 of May 27, 2015, so-called anti-corruption). Said offence had already been subject to aggravation by the (some of the prescribed fines were doubled).

It should be noted, in any case, that the Italian legal system already provides for the confiscation of at least a sum or property with a value equal to the corrupt payment (art. 322 *ter*, paragraph 1, Criminal Code and, for corporations, art. 19 Legislative decree 231/2001). Similarly, the confiscation of the profit earned by the intermediary concurring in the crime referred to in Article 322 bis, second paragraph, of the Criminal Code is also provided for.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 17(c):

17. Regarding the false accounting offence, the Working Group recommends that Italy:

(c) ensure that competent authorities also give due consideration to proceeding against the involved natural or legal persons for accounting offences committed for the purpose of bribing foreign public officials or hiding such bribery (Convention Art. 8; Anti-Bribery Recommendation XXIII.A.iv).

Action taken as of the date of the follow-up report to implement this recommendation:

Italy continues to pay its full attention to this issue and, with the aim of achieving that competent authorities also give due consideration to proceeding against the involved natural or legal persons for accounting offences committed for the purpose of bribing foreign public officials or hiding such bribery. In this regard the School for the Judiciary (SSM) has continuously included the topic in the annual training programs. In this context, they have been carried out the workshop "Crimes against the Public Administration", in March 2023 and February 2024.

This training initiative, with a duration of 4 working sessions, presented a diversified teaching methodology: in fact, in addition to face-to-face lectures, designed in terms of dialogical presentation of the topics and followed by debate, working groups were set up among the participants with case study examination.

The total number of participants was 90 in-person and 30 online, and the audience consisted of 105 ordinary magistrates in criminal law functions, 10 lawyers and 5 military magistrates.

The course provided an opportunity for an overall reflection on the current state of prevention and repression of corruption and wrongdoing in the Public administration, mindful of the increasingly relevant profiles of intersection with administrative law, which for the relevant aspects in relation to crimes against the Public Administration.

It should be noted that special consideration was then also given to international corruption in light of the OECD reports on Italy.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 18:

18. Regarding MLA, the Working Group recommends that Italy take measures to ensure that outgoing MLA requests are followed up systematically and that the Ministry of Justice continues to intervene in cases of delay or inaction (Convention Arts. 5 and 9; Anti-Bribery Recommendation XIX.A.vi and x).

Action taken as of the date of the follow-up report to implement this recommendation:

The commitment of this Ministry to promptly respond to requests for assistance formulated by the Italian authorities in matters of foreign bribery and corruption remains firm, including through the necessary actions at the outcome of ascertained inefficiencies and delays. In this regard, precise indications have been issued to the magistrates in charge and to the officials of the International Cooperation Office to remind them to respect the timeframes related to the fulfilment of the obligations of the states to which the request for cooperation is addressed, and to report cases of serious delays or failure to respond to requests by the Italian judicial authorities in cases of bribery of foreign public officials.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 19:

19. Regarding non-trial resolutions, the Working Group recommends that Italy where appropriate, and consistent with data protection rules and privacy rights, as applicable, make public elements of non-trial resolutions, including: (i) the main facts and the natural and/or legal persons concerned; (ii) the relevant considerations for resolving the case with a non-trial resolution; (iii) the nature of sanctions imposed and the rationale for applying such sanctions; and (iv) remediation measures, including the adoption or improvement of internal controls and anti-corruption compliance programmes or measures and monitorship (Anti-Bribery Recommendation XVIII.iv).

Action taken as of the date of the follow-up report to implement this recommendation:

The judgements relevant to compliance with this recommendation were made available on the Ministry of Justice website in accordance with data protection rules and privacy rights:

https://www.giustizia.it/giustizia/page/it/rapporti_ocse_contrasto_corruzione

On the same page, the full, anonymised text of each judgement is available, and every ruling was summarised taking into consideration the requirements of the Recommendation.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Part II: Issues for Follow-up by the Working Group

Regarding Part II, the evaluated country is invited to provide information only with regard to follow-up issues where there have been relevant developments since the adoption of the Phase 4 report, or where follow-up issues have been specifically identified by the lead examiners. Please describe/include any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate.

Text of issue for follow-up 20(a):

20. The Working Group will follow up the issues below as case law, practice and legislation develops:

(a) application of recklessness, wilful blindness and *dolus eventualis* to the foreign bribery offence (Convention Art. 1);

Text of issue for follow-up 20(b):

20. The Working Group will follow up the issues below as case law, practice and legislation develops:

(b) “active” vs. “passive” side intermediaries in foreign bribery cases (Convention Art. 1; Anti-Bribery Recommendation Annex I.C.1);

Text of issue for follow-up 20(c):

20. The Working Group will follow up the issues below as case law, practice and legislation develops:

(c) *concussione* as a defence to foreign bribery (Convention Art. 1 and Anti-Bribery Recommendation Annex I.A.1);

Text of issue for follow-up 20(d):

20. The Working Group will follow up the issues below as case law, practice and legislation develops:

(d) the standard of proof for undue inducement (Convention Arts. 1 and 3(1));

Text of issue for follow-up 20(e):

20. The Working Group will follow up the issues below as case law, practice and legislation develops:

(e) post-Phase 3 jurisprudence on Italy’s jurisdiction to prosecute foreign bribery (Convention Art. 4);

Text of issue for follow-up 20(f):

20. The Working Group will follow up the issues below as case law, practice and legislation develops:

(f) implementation of the corporate beneficial ownership registry, including law enforcement’s access to the registry (Anti-Bribery Recommendation X.i);

With reference to the content of the Recommendation in question, it should be noted that **the register of beneficial owners of undertakings with legal personality has become fully operational**, as

detailed below.

Decree No. 55 of the Ministry of Economy and Finance dated 11 March 2022 governs the disclosure, access and consultation of data and information relating to the beneficial ownership of undertakings having legal personality, private legal persons, trusts producing legal effects relevant for tax purposes and trust-like legal institutions (see link:

https://www.gazzettaufficiale.it/atto/stampa/serie_generale/originario).

Subsequently, on 9 October 2023, the Decree of the Ministry of Enterprise and Made in Italy dated 29 September 2023, '**Certification of the operability of the system of communication of data and information on beneficial ownership**' was published.

From the date of publication of the latter decree in the Official Journal, a deadline of 60 days has been set for companies to send the notification to the register of beneficial owners.

Therefore, the deadline for companies, private legal persons, trusts and fiduciary mandates already established as at 9 October 2023, has been set as 11/12/2023.

Directors of corporations, founders, representatives and administrators of private legal persons and trustees of trusts and fiduciary mandates are obliged to comply. The possibility of delegating compliance to a professional is not foreseen, so those obliged will have to obtain a digital signature if they do not already have one. Accountants, professionals and intermediaries in general will still be able to transmit the telematic communication relating to the data and information on the beneficial owner, but this communication (the form submitted) must always be digitally signed by the person obliged to comply, as it is made by means of a substitute declaration pursuant to Articles 46, 47 and 76 of Presidential Decree 445/2000.

Companies, private legal persons, trusts and fiduciary mandates established after 9 October 2023 shall provide for the disclosure of the beneficial owner within 30 days from the date of registration in their respective registers (in the case of companies and private legal persons), or from the date of establishment (in the case of trusts and fiduciary mandates).

Failure to comply with the disclosure obligations on beneficial ownership within the above-mentioned terms will result in the application of the sanction provided for in Article 2630 of the Civil Code.

Below is the link to the website created for the beneficial ownership register <https://titolareeffettivo.registroimprese.it/home>. It should be noted that following the order of the Council of State of 17 May 2024, the consultation of data and information on beneficial ownership, as well as requests for accreditation by obliged persons and requests for access by entitled persons, is suspended. The Council of State, with the aforementioned order, has ordered the suspension of the enforceability of the judgements of the Regional Administrative Court of Lazio whereby, on 9 April 2024, the appeals lodged by trust companies and trade associations to obtain the annulment of the Ministry of Enterprises and Made in Italy (MIMIT) decree of 29 September 2023, relating to the register of beneficial owners, were rejected.

In the opinion of the Council of State, the issues involved in the case are so complex as to require in-depth studies on the merits that are incompatible with the summary nature of the interlocutory phase, and therefore, as a precautionary measure, it ordered the suspension of the enforceability of the Lazio Regional Administrative Court's rulings, which would result in a postponement of the fulfilment of the obligation to notify the beneficial owner to the companies register.

The hearing for the (oral) discussion was scheduled for 19 September 2024.

Text of issue for follow-up 20(g):

20. The Working Group will follow up the issues below as case law, practice and legislation develops:
(g) whether *concussione* is a defence to extradition for foreign bribery (Convention Art. 10);

Text of issue for follow-up 20(h):

20. The Working Group will follow up the issues below as case law, practice and legislation develops:

(h) application of CCP Arts. 697(1bis), 698 and 723(3) in extradition and MLA (Convention Arts.5, 9 and 10, and Commentary 27);

Text of issue for follow-up 20(i):

20. The Working Group will follow up the issues below as case law, practice and legislation develops:

(i) sanctions imposed against natural persons for foreign bribery (Convention Art. 3(1));

Text of issue for follow-up 20(j):

20. The Working Group will follow up the issues below as case law, practice and legislation develops:

(j) whether corporate liability can result from foreign bribery committed by lower level persons of a company, and regardless of whether the person is in a corporate unit with autonomous functional, management and spending powers (Convention Art. 2; Anti-Bribery Recommendation Annex I.B.3).

Part III: Dissemination of Evaluation Report

Please describe the efforts taken to publicise and disseminate the Phase 4 evaluation report:

The Italian translation of the report phase 4 has been prepared and published on the Giustizia website.

<https://www.oecd.org/daf/anti-bribery/italy-phase-4-report-it.pdf>

https://www.giustizia.it/giustizia/page/it/rapporti_ocse_contrasto_corruzione