



**UNODC**

United Nations Office on Drugs and Crime

# **Country Review Report of Italy**

Review by the United States of America and Sierra Leone  
of the implementation by Italy of Chapter II (articles 5-14) and  
Chapter V (articles 51-59) of the United Nations Convention against  
Corruption for the review cycle 2016-2021

## I. Introduction

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1. The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.
2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.
3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.
4. The review process is based on the terms of reference of the Review Mechanism.

## II. Process

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5. The following review of the implementation by Italy of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Italy, and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from the United States of America, Sierra Leone and Italy, by means of telephone conferences and e-mail exchanges involving Ms. Teresa Turner-Jones, Ms. Jane Ley and Ms. Marianne Toussaint from the United States of America, Mr. Shollay Davies from Sierra Leone, and Mr. Lorenzo Salazar from Italy. The members of the Secretariat were Mr. Oliver Landwehr and Mr. Yuta Miyagishima.
6. A country visit, agreed to by Italy, was conducted from 13 to 15 February 2018.

## III. Executive summary

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1. ***Introduction: overview of the legal and institutional framework of Italy in the context of implementation of the United Nations Convention against Corruption***

*Italy signed the United Nations Convention against Corruption on 9 December 2003 and authorized ratification with law No. 116 of 3 August 2009. Once ratified and in effect, international agreements such as the Convention form an integral part of domestic law and override any other contrary provision of law. Accordingly, the Convention became an integral part of the domestic law of Italy on 4 November 2009.*

*The implementation by Italy of chapters III and IV of the Convention was reviewed in the third year of the first cycle, and the executive summary of that review was published on 19 November 2013 (CAC/COSP/IRG/I/3/1/Add.6).*

*Italy is an active participant in a number of international and regional bodies that promote the development of preventive measures, including the European Union, various bodies of the Council of Europe like the Group of States against Corruption (GRECO) and the Venice Commission, the Organization of Economic Cooperation and Development (OECD), the Group of 20 and the Group of Seven, the Financial Action Task Force (FATF), the Organization for Security and Cooperation in Europe (OSCE), and the Open Government Partnership.*

*The national legal framework against corruption builds on the Constitution (arts. 28, 54, 97 and 98) and includes the Criminal Code, the Civil Code, as well as specific legislation on the public sector, money-laundering, and public procurement. Law No. 190/2012 of 6 November 2012 on preventing and combating corruption and illegal activity in public administration (the Anti-Corruption Law) introduced several reforms in the legal and institutional framework that strengthened the compliance of Italy with the Convention. Legislative Decree No. 231/2001 provides the basis for the prevention of corruption in the private sector. The anti-money-laundering legislation is contained in a Legislative Decree, which has the force of law.*

*The main institutions tasked with preventing and combating corruption in Italy are the judiciary, the various law enforcement authorities (the financial guard (Guardia di Finanza), the military police (Carabinieri) and the State police), the financial intelligence unit, the national anti-corruption authority (ANAC), the National Anti-Mafia and Counter-Terrorism Directorate (DNA), the Department of Public Administration, the Court of Auditors, and the Competition Authority (AGCM).*

## **2. Chapter II: preventive measures**

### **2.1. Observations on the implementation of the articles under review**

#### *Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)*

*Italy has a constitutional, legal and regulatory framework that addresses all the prevention provisions of the Convention. To the extent those policies establish programmes or measures for public officials, however, they do not always apply fully across the board to all public officials as defined by the Convention.*

*The Anti-Corruption Law provided for a national anti-corruption plan for the public administration to be developed by ANAC. Each public agency/administration and fully controlled State-owned enterprise must establish its own three-year plan for the prevention of corruption under the oversight of ANAC, and identify a corruption prevention officer responsible for overseeing the implementation of the plan internally. Each public agency/administration adopts an individual code of conduct building on the General Code of Conduct. These agency/administration plans are subject to public comment and review before adoption. Targeted as it is on the public administration, the national anti-corruption plan does not encompass Parliament, the judiciary and*

*Government as such. Each Minister, instead, is responsible for adopting the three-year plan within his/her ministry.*

*In addition to the Anti-Corruption Law, Italy has legislation and other measures that promote the participation of society, the management of public affairs and public property, integrity, transparency and accountability. Italy has taken a number of steps to promote general transparency throughout government and the use of open data, e.g. on transparency of procurement information.*

*ANAC is an independent collegiate body whose five members are appointed for fixed, non-renewable terms of office. Besides having significant responsibilities regarding transparency, integrity, anti-corruption plans and the development of supplemental codes of conduct for individual agencies/administrations within public administration, ANAC is responsible for overseeing public procurement and contracts. ANAC has supervisory and sanctioning powers for those in non-political positions (art. 16, Legislative Decree No. 39/2013 and Law No. 114/2014).*

*ANAC can apply administrative sanctions to public officials not complying with the obligation of adopting anti-corruption plans or codes of conduct (art. 19, Legislative Decree of 24 June 2014, No. 90). In contrast, ANAC has no competence concerning the validity of politically elected offices.*

*ANAC seems to focus very much on the integrity of procurement. This could be a result of the merger of ANAC, in 2014, with the authority for the supervision of public contracts. ANAC has no authority over Government (whose integrity regarding conflicts of interest is overseen by AGCM), members of Parliament and the judiciary. Other bodies responsible for implementing prevention measures include the Department of Public Administration, the Court of Auditors, and AGCM. The Chamber of Deputies has established an Advisory Committee on the Conduct of Deputies to help administer its code of conduct. For the judiciary, there is a High Council of the Judiciary (CSM) whose responsibilities are complemented by the Ministry of Justice through its administrative support for the court system and its role in disciplining magistrates.*

*Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)*

*Public employment in Italy is governed by the Constitution, the Civil Code, collective bargaining agreements and individual contract. The Constitution requires that almost all the positions in the public service be filled through a public competition. The competition process is established by law and implementing procedures include publication of the notice, the appointment of a selection board, the assessment of each applicant against objective criteria (including enhanced criteria for positions considered especially vulnerable to corruption) and issuing final hiring decisions. Promotions, except those that must be filled by competition, are based on internal procedures involving performance assessment, professional experience, seniority and education. Prior to the final hiring decision becoming effective, every appointment of senior*

*and middle managers within central public administrations must be reviewed and approved by internal accounting offices (concerning financial aspects) and by the Court of Auditors (concerning legitimacy). Candidates participating in a competition generally can file a complaint before an administrative court, while every civil servant can file a complaint against any decision regarding his/her position before a labour judge. Retirement qualifications are generally based on age and/or length of service.*

*The National Collective Employment Contract forms the basis for the pay scale for civil servants; this is established through negotiations between an agency representing the Government and the labour union organizations.*

*Each public agency/administration is responsible for arranging appropriate integrity training for their employees based on an assessment of the employee's developmental and career needs. The National School of Administration (SNA) is in charge of the national programme for training for civil servants. Specialized training is available for those individuals in positions deemed more at risk for corruption. There appears to be no general initial or refresher training for all public officials on the contents of the codes of conduct or provisions governing conduct in their collective agreements.*

*The Constitution establishes the legal right for any citizen holding the right to vote to be elected for the Chamber of Deputies and the Senate as long as they are at least 25 and 40 years old, respectively. The loss of the right to vote occurs as a result of various situations established by law. While not affecting candidature or election, Italy has established a number of ineligibilities, incompatibilities and disqualifications that may limit an individual from holding a parliamentary mandate after a successful election.*

*Italy has established a system to provide more transparency in the funding of candidates for elected public office and for the funding of political parties. Italy has recently switched from public funding to purely private funding for elections and parties. This will put more strain on the proper functioning of these transparency systems.*

*Italy addresses conflicts of interest in public administration and in the Government by setting out in law ineligibility and incompatibility restrictions and by including in the general code of conduct a requirement that a public servant carrying out executive functions disqualify himself/herself from participating in certain matters which may create an actual or potential conflict of interest. There are restrictions on activities following public service for some public officials.*

*There is a General Code of Conduct (Presidential Decree No. 62/2013) applicable to most public officials in the executive, except for members of Government, which should be complemented by specific codes of conduct at each agency/administration. The General Code is not applicable to employees of some economic public bodies and publicly controlled companies, although ANAC has recommended that each body adopt a code as a part of its three-year plan for the prevention of corruption. The Chamber of Deputies has already issued a code of*

*conduct. Professional and lay magistrates are subject to the legislation on the judicial system, disciplinary liability and directives issued by CSM, the self-governing body of the judiciary. The School of the Judiciary organizes specific ethics courses.*

*Members of Government and senior civil servants are required by law to file declarations disclosing certain sources of income, assets, and outside positions held along with a copy of their latest tax returns. This information is to be published, also to detect actual or potential conflicts of interest. However, in March 2017 this publication requirement was challenged by high-ranking civil servants, and it has been suspended pending a decision by the Constitutional Court. In contrast, publication of the information by holders of political offices (national, regional, municipal level) is operational. AGCM is responsible for checking for incompatibilities after appointment of a holder of political office in the executive as well as during and after leaving office. AGCM does not make the information public except when necessary to support a decision made.*

*Members of the Chamber of Deputies and of the Senate are required to file declarations containing property rights, assets recorded in public registers, corporate shares, equity interests in companies and copies of their latest tax return regarding income subject to personal income tax. Some of this information is available on the website of Parliament and on each individual member's website. Magistrates are required to file statements to CSM on the same type of information as Parliamentarians, without public access except by grounded request. CSM determines whether to allow access to the statements. There is no internal review of the statements filed.*

*Civil servants in public administration who violate the general and the administration-specific codes can be sanctioned. Disciplinary sanctions are contained in the Consolidated Law on Public Employment (Legislative Decree No. 165/2001) and the National Collective Labour Contracts. The Code for Deputies includes provisions on code violations.*

*ANAC has issued specific guidelines for the personnel, such as of the National Health Service, Universities and Port Authorities; ANAC is developing guidelines containing general criteria for all public administrations. ANAC has an advisory function on codes of conduct and conflicts of interest; an ANAC Regulation defines persons entitled to submit questions.*

*The Constitution enshrines the independence (arts. 101–104) and self-government of the judiciary through CSM.*

*The Prosecutor General of the Court of Cassation can start disciplinary action against members of the judiciary. The Minister of Justice can also start disciplinary action by referring a case to the Prosecutor General or subsidiarily starting the action if the Prosecutor General decides not to act. Disciplinary action within the judiciary is based on Legislative Decree No. 109/2006 on the Duties of Members of the Judiciary and is heard by CSM. The National Association of Magistrates can impose sanctions on its members (approximately 95 per cent of all the magistrates) for violation of its Code of Ethics (although that Code does not carry the weight of law).*

*Magistrates may hold elective public office and serve temporarily in executive positions while retaining the right to return to the magistrate position. This right is granted within the limits established by rules approved by CSM to prevent any risk of external influence over the independence of magistrates and to uphold the separation of powers.*

*Public procurement and management of public finances (art. 9)*

*Italy has a decentralized system of public procurement. At State level, the most relevant Central Purchasing Body is Consip, which was set up by the Ministry of Economy and Finance. Italy has implemented the public procurement directives of the European Union.*

*Laws regarding public procurement provide for transparency in all acts by contracting authorities and contracting entities relating to the planning of works, services and supplies. They include minimum standard time frames, the conditions for participation and the establishment of award criteria. In general, procurements require competition, although a restricted procedure where only invitees can compete is also available at the discretion of the contracting authority. The procedures fully set out legal recourses and appeals processes. There is a waiting period of 35 days between the selection and the award of the contract. Italy has screening requirements for procurement personnel selected. To enhance general transparency of procurement, ANAC collects, analyses and publishes all relevant procurement data.*

*Italy has established procedures for adopting a budget, and revenue and expenditure reports are produced regularly.*

*Regarding accounting and auditing systems, as well as systems of risk management and internal control, Italy is still moving towards a harmonized accrual accounting system. There are also no internal control and audit systems within public administration, but Italy reports it is taking steps to implement a performance audit system. At the central level, the State General Accounting Department can perform some internal audit functions; at the regional level, this function can be carried out by the accounting departments; and at the local level, independent and professional auditors can be used. The Court of Auditors can and does perform ex ante audits on legality and ex post audits on the State budget.*

*Concerning measures to preserve integrity of accounting books, records, financial statements or other documents related to public expenditure and revenues or to prevent falsification of such documents, Italy reported the use of a software for the integrated management of economic and financial accounting for central State administrations and stated that no situation had ever occurred in which accounting books were falsified.*

*Public reporting; participation of society (arts. 10 and 13)*

*Italy has created a strong legal framework for ensuring access to information through its Freedom of Information Act (Legislative Decree No. 33/2013, as amended by Legislative Decree No. 97/2016). The provisions address both proactive disclosure and disclosure upon*

*request, and for partial disclosure when full disclosure is not possible. Requests for information do not have to be justified. With one possible exception for information related to public policy concerning the financial and economic stability of the State, exemptions from disclosure protect commonly recognized interests, including personal privacy and law enforcement concerns. Specifically, regarding reports on corruption risks in public administration, ANAC publishes on its website the national anti-corruption plan which, in part, identifies the main corruption risks.*

*ANAC encourages involvement of all entities of public administration and the public to elaborate its regulatory acts, including the national anti-corruption plan. ANAC suggested to agency/administrations that they include the public in developing their three-year plan for the prevention of corruption. It also encourages public education programmes and works with civil society in promoting programmes in the schools. Italy has adopted a new law on the protection of whistle-blowers (Law No. 179/2017), and ANAC has set up an online platform and a specific office for reporting illegal acts.*

#### *Private sector (art. 12)*

*Italy has taken steps to help prevent corruption involving the private sector, including through collaborative programmes with a large private sector organization of businesses (Confindustria). Confindustria has adopted a Code of Ethics and Associative Values for its associated companies and worked on practical guidance for smaller businesses. It engages awareness-raising activities and provides advice on governance models that promote high standards of compliance.*

*Italy requires listed companies and companies whose financial instruments are widely distributed to follow International Financial Reporting Standards, as adopted by the European Union, in both consolidated and individual (separate) financial statements. Italy's false accounting offenses require the publication of accurate and complete accounting records. Listed companies, accounts of joint stock companies and a number of non-listed companies are subject to external audit and requirements for internal auditing controls.*

*There appear to be effective, proportionate and dissuasive criminal penalties for natural persons for failure to comply with accounting requirements, and pecuniary sanctions against legal persons for false accounting violations.*

*Italy has taken measures to promote development and implementation of effective compliance programmes within companies. It has established post-government employment restrictions on former public officials who have exercised authoritative or negotiating powers on behalf of the public administration; there is no post-employment restrictions on members of Parliament or magistrates. A private sector employer of a former official who benefits from the former official's actions is also subject to sanctions including voiding of contracts, return of compensation and a time-limited restriction on future contracts with public administration.*

*In 2017, Italy amended Legislative Decree No. 231/2007, introducing in the Registry of Companies a Register of Beneficial Owners of Legal Persons and Trusts. As per articles 21 and 22 of the new AML Law, comprehensive information is included in the Register not only related to the owner of legal persons and trusts but also to their managers.*

*Italy prohibits false corporate reporting by individuals and legal persons; the relevant offences require the intent of obtaining undue profit and require that the false or omitted facts in the corporate communications be material.*

*Tax deductibility of bribes is expressly excluded by law since 2002 (article 2(8), Law 289/2002).*

#### *Measures to prevent money-laundering (art. 14)*

*Legislative Decree No. 231/2007, as amended by Legislative Decree No. 90/2017 (the AML Law), is the cornerstone of the anti-money-laundering system of Italy, providing relevant measures to prevent the use of the financial system for money-laundering or terrorist financing. The new provisions implement the fourth AML Directive (2015/849) of the European Union and take into account the FATF recommendations issued at the end of the Mutual Evaluation of Italy, completed in 2016. As of August 2018, the changes to the Law were being reviewed by FATF under the follow-up procedures.*

*Italy has a domestic regulatory and supervisory regime for banks and non-bank financial institutions, which has been enhanced through its enactment of the AML Law. The primary agencies responsible for AML supervision in Italy include the Ministry of Economy and Finance, the Bank of Italy and the Ministry of Justice. A risk-based approach typically defines the frequency and types of due diligence obligations.*

*The AML Law of Italy further includes requirements for customer due diligence and beneficial owner identification/verification (art. 17 et seq.), record-keeping (art. 31 et seq.), and suspicious transaction reporting (art. 35 et seq.).*

*The financial intelligence unit of Italy is responsible for receipt, analysis and dissemination of suspicious transaction reporting related to money-laundering, associated predicate offences and terrorist financing. The financial intelligence unit establishes and updates anomalous indicators that were previously conducted by competent supervisory authorities on the proposal of the unit. The unit regularly elaborates, issues and updates patterns and schemes representative of anomalous behaviours.*

*The financial intelligence unit of Italy has the capacity to exchange information with foreign financial intelligence units through Egmont and regional networks. Domestically, the financial intelligence unit of Italy disseminates suspicious transaction reporting and the outcomes of related analysis to competent law enforcement agencies specifically indicated by the law: the Nucleo Speciale di Polizia Valutaria (NSPV) of the Financial Guard and the Direzione Investigativa Antimafia (DIA).*

*Based on the findings of the FATF Mutual Evaluation, the new AML Law improved domestic collaboration on information exchange among*

competent authorities. In particular, in addition to NSPV and DIA, information can be forwarded by the financial intelligence unit, in cases of specific interest, to the Intelligence Services. Furthermore, DNA receives from the financial intelligence unit, through NSPV and DIA, identification data of subjects reported or connected to suspicious transaction reporting. NSPV and DIA transmit to the national anti-Mafia and counter-terrorism prosecutor the reports, relevant to organized crime or terrorism. Dissemination is authorized to NSPV and DIA regardless of the crime involved.

The new AML Law, while granting the financial intelligence unit the access to law enforcement information, has subjected this access to limitations deriving from investigation secrecy.

Italy has established a declaration system to monitor cross border movement of cash and bearer negotiable instruments, requiring natural persons entering or leaving Italy with 10,000 euros or higher to declare to the customs authority of Italy (art. 3, Legislative Decree No. 195/2008). For false declarations, customs and the Financial Guard can seize amounts equal to 30 or 50 per cent of the amounts transferred over 10,000 euros, depending on the value of the undeclared amount (arts. 6 and 9, Legislative Decree No. 195/2008).

## **2.2. Successes and good practices**

- Each agency/administration/fully controlled State-owned enterprise is required to designate a corruption prevention officer and to develop a three-year plan for the prevention of corruption in accordance with the national anti-corruption plan and with the participation of society (art. 5(1)).
- Italy has developed a national coordination mechanism in the Ministry of Foreign Affairs, i.e., the Tavolo interistituzionale di Coordinamento Anticorruzione, which also cooperates with civil society and the private sector (art. 5(1)).
- Italy has developed with the OECD, through its experiences with hosting EXPO 2015, a model to manage large/ad hoc procurements (art. 5(4)).
- The separate source of non-appropriated funding for ANAC through the levying of a service charge in the public procurement process (art. 6(2)).
- Italy has a strong framework for access to information and engaged in an internal assessment of early implementation of its Freedom of Information Act (art. 10(a)).

## **2.3. Challenges in implementation**

It is recommended that Italy:

- Consider possible advantages of staggering the appointment of the ANAC college members to avoid the complete replacement of the Board every six years (art. 6(2))

- *Monitor the impact of the transition from public to private funding of political parties and candidates, and whether it makes them more vulnerable to lobbying and influencing and take remedial action as necessary (art. 7(3))*
- *Adopt enforceable asset declaration and verification systems for senior public officials for all three branches of government, and establish effective internal review systems to help identify and address conflicts of interest, incompatibilities and ineligibilities (arts. 7(4) and 8(5))*
- *Establish general codes of conduct applicable to all public officials as defined by the Convention, including members of Parliament. Italy is further encouraged to complement these codes with additional training (including general induction training), education and confidential counselling programmes, and to ensure that all agencies/administrations in the public administration fully adopt specific codes of conduct (art. 8(2))*
- *Continue addressing the already identified weaknesses in its public accounting, auditing and internal control systems as well as enact effective and enforceable protections that address the preservation of the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue (art. 9(2) and (3))*
- *Consider further addressing the issue of magistrates holding elective public office and serving temporarily in positions in the executive, taking into account the fundamental principles of independence and impartiality of the judiciary (art. 11)*
- *Continue ensuring that the legislation provides effective, proportionate and dissuasive sanctions for all cases of false accounting, regardless of intent, and that limitation periods are sufficiently long (art. 12(1))*
- *Take steps to promote cooperation between its law enforcement agencies and relevant private parties (art. 12(2)(a))*
- *Expand post-government employment restrictions to include all Members of Parliament, all Members of Government and appropriate magistrates (art. 12(2)(e))*
- *Monitor the practical application of the legislation concerning the destruction of documents, to ensure that it covers situations where documents are destroyed not to evade income or added value taxes, but to conceal offenses established under the Convention (art. 12(3))*
- *Continue the development of its AML/CFT national policy to ensure cohesive implementation of its anti-corruption strategy across the various agencies involved in the execution of its AML/CFT measures (art. 14(1)(a))*
- *Further enhance its capacity for information exchange between the financial intelligence unit and competent authorities. As far as DNA is concerned, Italy is encouraged to consider strengthening cooperation, through information exchange, in criminal investigative matters beyond the organized crime context (art. 14(1)(b))*

### **3. Chapter V: asset recovery**

#### **3.1. Observations on the implementation of the articles under review**

##### General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)

*Italy has a well-established regime for asset recovery based on the Criminal Procedure Code (e.g., arts. 740-bis, 740-ter) and cooperation mechanisms with other jurisdictions, particularly through MOUs governing asset disposition.*

*Judicial authorities of Italy have the capacity to provide information to foreign authorities, both upon request and proactively.*

*Italy has entered into several mutual agreements/arrangements to enhance international cooperation under the Convention. Such agreements include arrangements governing information exchange and asset disposition.*

##### Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)

*The AML Law of Italy sets forth customer due diligence and beneficial owner identification/verification requirements, as well as measures for politically exposed persons (PEPs). Under the AML Law, the scope of financial intermediaries and relevant entities subject to the requirements is sufficiently broad to cover the entities envisaged by the Convention (see art. 3). The AML Law provides that a risk based approach is to be applied in every instance and calibrated (ordinary, simplified, or enhanced due-diligence) to reflect the customer, business relationship, and professional service involved. Italy requires obliged entities to take into account the relevant lists of individuals/entities designated by international organizations (i.e., the United Nations and the European Union). The new AML Law also specifically establishes criteria to determine beneficial ownership (art. 20). About the triggering of enhanced due diligence measures at the request of a foreign state, Italy reported such measures are addressed through required consideration of relevant lists issued by designated international organizations. These measures may also be addressed through existing cooperation agreements between Italy and another State as well as agreements between relevant AML authorities.*

*The AML Law requires the obliged entities to conduct enhanced due diligence for, among others: customers in high-risk countries; and customers and beneficial owners that are politically exposed persons (art. 24(5)). Under the Law, politically exposed persons refer to natural persons who are or have been entrusted with a prominent public function, covering their family members as well (art. 1(2)(dd)). No distinction is made between domestic and international politically exposed persons.*

*Obligated entities are required to retain customer due diligence records for 10 years after the termination of the business relationship (art. 31(3), AML Law) in their single electronic archive. The information in the*

*archive is used for investigation and analysis by the competent authorities such as the financial intelligence unit.*

*The Bank of Italy does not allow the establishment of shell banks in Italy. It also forbids banks from Italy from setting up shell banks abroad. Opening of correspondent accounts with shell banks is prohibited, even indirectly (art. 25(3), AML Law).*

*The structure and organization of the financial intelligence unit are governed by a Regulation of the Governor of the Bank of Italy. Although the Bank of Italy provides financial/technical resources, premises, equipment and personnel, the autonomy and operational independence of the financial intelligence unit are legally protected (art. 6(1) AML Law).*

*Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)*

*The legislation of Italy permits a foreign State, without a special procedure, to initiate civil actions in its courts to establish title to or ownership of property based on the Civil Procedure Code (art. 75) and the Criminal Procedure Code (art. 74 et seq.). Further, the Criminal Procedure Code of Italy provides a framework for the recognition of foreign judgements, freezing or confiscation orders (art. 730 et seq.). The legislation of Italy also provides for the confiscation of property of foreign origin where there has been a conviction for bribery and corruption offenses (see art. 322-ter, Criminal Code).*

*Italy, through its Anti-Mafia Code (sec. 18), may initiate preventive confiscation measures (i.e., non-conviction-based confiscation) involving assets where a defendant may not be prosecuted under certain circumstances including flight or death.*

*The Criminal Procedure Code (art. 737-bis) provides the procedure to entertain a request by a foreign authority to identify, trace, freeze or seize proceeds of crime or other instrumentalities.*

*Italy considers the Convention against Corruption to be the necessary and sufficient treaty basis for international cooperation under art. 55 (1) and (2), and does not set a de minimis threshold for the cooperation. The rights of bona fide third parties are protected (sec. 52, Anti-Mafia Code).*

*Return and disposal of assets (art. 57)*

*Provisions governing the transfer of assets to a foreign state are set forth within the Criminal Procedure Code of Italy (arts. 740-bis and 740-ter). The laws of Italy permit the transfer of assets to a foreign state upon the recognition of the foreign state's confiscation judgment or decision and upon the express request of the foreign state, taking into account the rights of bona fide third parties. The laws of Italy further permit transfers to victims in a foreign state in circumstances where Italy has initiated its own confiscation proceedings. Italy successfully used domestic asset*

*transfer and international cooperation procedures to conclude the seizure and return of assets to Tunisia.*

*Except for asset return to European Union member States, there are no specific rules on deduction of expenses incurred. However, such a deduction may be possible with consideration of the activities conducted by the judicial authorities of Italy.*

*Italy has exercised on some occasions the capacity to conclude agreements with foreign jurisdictions regarding asset disposal consistent with article 57, paragraph 5.*

### **3.2. Successes and good practices**

- *Italy has the capacity to provide international cooperation in asset recovery measures in both conviction and non-conviction-based proceedings (art. 54(1)(c)).*
- *Italy has established several MOUs which govern significant areas of international cooperation including information exchange and asset disposition (art. 59).*

### **3.3. Challenges in implementation**

*It is recommended that Italy:*

- *Further consider procedures for asset disposal, designed to foster transparency and accountability in asset disposition and to prevent the re-corruping of assets transferred (art. 51)*
- *Consider establishing effective and enforceable financial disclosure systems for senior public officials. To the extent permissible under law, Italy is encouraged to make such information publicly accessible (art. 52(5))*
- *Consider the implementation of requirements for public officials to identify the existence of foreign financial accounts over which they have an interest or have signatory authority (art. 52(6))*

## IV. Implementation of the Convention

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### A. Ratification of the Convention

7. The Convention was signed by Italy on 9 December 2003; its ratification was authorized by Parliament on 3 August 2009 and the inherent Law was signed by the President of the Republic Giorgio Napolitano on the same day. Italy deposited its instrument of ratification with the Secretary-General of the United Nations on 5 October 2009, and the Convention entered into force for Italy on 4 November 2009.

### B. Legal system of Italy

8. Italy is a parliamentary, democratic republic since 2 June 1946, with a multi-party system and a unitary State, but it recognizes the political autonomy to its twenty regions, which are endowed with legislative and administrative powers.
9. The fundamental law of the Italian Republic is the Constitution of the Republic (Constitution, available at [https://www.senato.it/documenti/repository/istituzione/costituzione\\_inglese.pdf](https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf)), enacted by the Constituent Assembly on 22 December 1947 and entered into force on the 1<sup>st</sup> January 1948. Its 139 articles are divided into three main parts: The Fundamental Principles, Part I concerning Rights and Duties of Citizens and Part II concerning the Organization of the Republic, followed by 18 Transitional and Final Provisions. It is important to underline that many provisions of the Italian Constitution are not directly enforceable and need to be further implemented through the enactment of primary and secondary legislation.
10. The President of the Republic is the Head of the State and represents the national unity (Article 87 Const.). He is elected by the two chambers of Parliament in joint session for a period of seven years at the end of which he can be re-elected. He appoints the Prime Minister and five judges of the Constitutional Court. He presides over the Supreme Council of the Judiciary (“Consiglio Superiore della Magistratura”). He can veto bills and send them back to the Parliament for a new examination. He can dissolve the Parliament. The President serves as a point of connection between the three branches of government: he is elected by the lawmakers, he appoints the executive, and is the president of the judiciary.
11. The president is also commander-in-chief of the armed forces.
12. Executive power is exercised by the Cabinet under the direction of the Prime Minister (Article 92, paragraph 1 Const.), officially titled President of the Council, "Presidente del Consiglio". He is appointed by the President of the Republic and he proposes to the latter the name of the Ministers. The Cabinet (Council of Ministers, “Consiglio dei Ministri”) is the principal organ of the Government. It comprises the President of the Council, Ministers, and the Undersecretary to the President of the Council. The government must be supported by a parliamentary majority. All the Ministers are jointly responsible for the implementation of the country's legislation and can propose new bills to the Parliament. The current cabinet is composed of 18 ministers (6 of which without portfolio).
13. The Legislative power is exercised by the Parliament (article 70 paragraph 1 Const.). The Italian

Parliament is made up of two chambers, namely the Chamber of Deputies (“Camera dei Deputati”) and the Senate (“Senato”). The two Houses of Parliament have the same powers, according to a perfect bicameral system. Both Houses are elected for a maximum of five years, but they may be dissolved by the President of the Republic before the expiration of their normal term. All bills must be passed by both Houses before being turned into laws.

14. The Houses of Parliament, deliberating by absolute majority after two successive debates at intervals of not less than three months, may amend the Constitution (Article 138 Const.).
15. The Judicial power is exercised by the Judiciary. The Italian legal system, as designed by the Constitution, provides for different types of jurisdiction.
16. The Constitutional jurisdiction is assigned to the Constitutional Court, which consists of fifteen judges. One third of these judges are appointed by the President of the Republic, one third by Parliament in joint session and one third by the highest-instance ordinary and administrative courts (art. 135 Const.).
17. The Constitutional Court rules (art. 134 Const.):
  - a) on disputes concerning the constitutional consistency of laws and decisions having the force of law of the State and the Regions;
  - b) on conflicts of jurisdiction of the powers of the State, the State and Regions, and the Regions;
  - c) on charges against the President of the Republic, pursuant to the Constitution (see Article 90 Const.).
18. Ordinary jurisdiction is exercised by ordinary judges and prosecutors (Article 102 Const.). The Constitution grants the privilege of independence (Articles 101-104 Const.) and self-government of the judiciary through an ad hoc body: the Superior Council of the Judiciary, “Consiglio Superiore della Magistratura”.
19. Ordinary jurisdiction is divided into: (i) criminal jurisdiction, where judges are called to make a decision on whether the criminal proceedings instituted by a public prosecutor against a given individual are founded and (ii) civil jurisdiction, aimed at the legal protection of rights in relations between private subjects or private subjects and the public administration, if in exercising its duties, the administration prejudices the subjective right of a person.
20. Criminal proceedings are instituted by a public prosecutor (Article 107, last paragraph, Const.). Italy has adopted a strict principle of legality in prosecution matters, prescribing that a public prosecutor is under the obligation to institute criminal proceedings (art. 112 Const.).
21. This principle should be interpreted in the sense that, once the competent public prosecutor has been informed of an offence, he must conduct investigations and submit the outcome of his investigations to the judge's appraisal, making the relevant requests. This applies both when the public prosecutor requests the setting aside of the case because there is insufficient evidence to prove the alleged offence and when the public prosecutor requests the committal to trial of an individual in respect of a particular alleged offence.
22. The current Code of Criminal Procedure is in force since 1988 and has abolished the investigating judge and introduced an accusatorial system, based, amongst other principles, on equality of arms between the prosecution and the defence and on the creation of evidence before the judge during the

trial. The Code of criminal procedure has undergone a number of sectorial amendments over the years.

23. Currently, civil and criminal justice is administered by: Justices of the peace, the Courts, the Courts of Appeal, the Court of Cassation, the Juvenile Courts and the Tribunale di Sorveglianza sitting both as a single judge and as a panel of judges. (See under article 11 for further details)

24. Legal Status of International binding instruments in Italy

Article 10 [International Law], paragraph one, of the Italian Constitutions states that: (1) The legal system of Italy conforms to the generally recognized principles of international law.

Article 117 [State and Regional Legislative Power], paragraph 1, of the Italian Constitution states that: (1) “Legislative power belongs to the state and the regions in accordance with the constitution and within the limits set by European union law and international obligations.”

25. This means that international agreements, such as UNCAC, rank higher than ordinary laws. Once they have been ratified and have come into effect (through implementation order, generally included in the same ratification act) they form an integral part of Italy’s domestic law and override any other contrary provision of domestic law, save the Constitution.

26. Accordingly, UNCAC has become an integral part of Italy’s domestic law following ratification of the Convention by the Parliament on 3 August 2009 and signature by the President of the Republic Giorgio Napolitano on the same day, and entry into force on 4 November 2009 in accordance with Article 68 of the Convention.

## C. Implementation of selected articles

### Chapter II. Preventive measures

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#### Article 5. Preventive anti-corruption policies and practices

##### *Paragraph 1 of article 5*

*1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.*

##### *(a) Summary of information relevant to reviewing the implementation of the article*

27. The Italian legislation provides for several principles public officials must comply with, which are relevant in fighting misconduct. First of all, as members of the public administration, in performing administrative actions, Italian public officials are bound to principles of impartiality, efficiency, effectiveness and best value for money, in order to ensure an overall good management

(see Constitution, article 97, available at [https://www.senato.it/documenti/repository/istituzione/costituzione\\_inglese.pdf](https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf) ).

28. The impartiality principle requires that public officials shall not follow their personal interests or external influences, but solely their institutional goals: to this end they “are exclusively at the service of the Nation” (Constitution, article 98). Public officials (as well as all the entire citizenry, bound by a duty of solidarity (Constitution, article 2), have to be faithful to the Republic, its Constitution and laws. Furthermore, public officials’ duties go beyond the legal minima: i.e. they must additionally “uphold” the laws law (Constitution, article 54, par. 1). This provision is supported by the following one, which requires public officials have the duty to fulfil their functions with discipline and honour, taking an oath in those cases established by law (Constitution, article 54, par. 2). Corruption harms these principles because it undermines the duty of solidarity among citizens; breaching this solidarity principle can be even more serious when committed by public officers whose very task is to protect public function against personal interest. Finally, public officials are directly liable, under criminal, civil and/or administrative law, for breaching citizens’ rights (Constitution, article 28). Although in practice plaintiffs may find advantageous to sue the public administration the officer belongs to, the legal provision under article 28 is important in that it clearly assigns the public officials with the obligation to a) be directly liable to citizens they serve and b) ensure the people with an adequate service. Moreover, this makes the citizens (i.e. ultimate stakeholders in the administrative action), the subject that can best monitor the development of the public function, by acting as watchdog against the outcomes of public procurement.
29. Moreover, in accordance with article 5 paragraph 1 of UNCAC, Italy has adopted several tools to prevent corruption based on the principles of integrity, transparency and accountability.
30. The Italian anti-corruption system is based on two major pillars. On one hand, a) relevant legislation on transparency of the procedures of the Public Entities subject to the law; and b) specific law/s on anti-corruption (Transparency, Conflict of interest, Incompatibilities, Ineligibility, Asset/property declaration, Whistleblowing and Code of Conducts and Ethical Codes). On the other hand, the creation of a specifically dedicated National Anti-Corruption Authority (**Autorità Nazionale Anti-Corruzione, ANAC**) tasked, inter alia, with the supervision of public procurement related to works, services, supply, concessions both for classical sector and utilities sector.
31. In light of the anti-corruption acts, the Italian anti-corruption system is now based on three main principles:
- All activity of the public administration must be transparent
  - Each public agency/administration must include a corruption prevention officer (Responsabili della Prevenzione della Corruzione e della trasparenza - RPCT)
  - Each agency/administration must establish its own anti-corruption plan in accordance with the national anti-corruption plan (**Piano Triennale per la Prevenzione della Corruzione - PTPC**)
32. More precisely, the **Law n° 190 of 2012 (hereinafter “the Anti-Corruption Law”)**, aims at ensuring a more balanced approach towards anti-corruption policies and provides for a strengthened preventive policy and enhanced accountability within public administration.
33. The notion of integrity, as understood within the context of international law, has now become integral part of the Italian legal system. This development was reached thanks to the Anti-corruption

law, which came into existence in a scenario where the conceptual categories of corruption were solely of criminal law significance. In the past, the only focus was toward the incriminating situations, established by the Criminal Code (for example Art. 314 – a provision that introduces the section on “Delitti contro la Pubblica Amministrazione” crimes against public administration). Today instead, the notion of corruption is based on the awareness that the term is eclectic. It is not a coincidence that the Dipartimento della Funzione pubblica (civil service department), with directive circular n. 1 (of 25 January 2013) in response to certain interpretational issues regarding the anti-corruption law (Law n. 190/2012), has clarified extensively this concept. In fact, the department indicates that, when used with respect to prevention, the term refers to a “concept of corruption in the broad sense, inclusive of various situations in which, during administrative activities, abuse, on the part of an individual, of the power accorded to him/her, takes place, for the purposes of private gain”

(<http://www.funzionepubblica.gov.it/articolo/dipartimento/25-01-2013/circolare-n%C2%B01-del-2013>).

34. The **PNA (Piano Nazionale Anticorruzione**, or national anti-corruption plan) (in its various editions: 2013, updated in 2015 and 2016) describes corruption in a similar fashion.
35. The law a) provides, inter alia, for a national anti-corruption authority in charge of the overall policy (see answer to article 6), b) extends the scope of corruption offences, c) criminalises trading in influence through a new provision that covers also the active side of the offence, d) criminalises private sector corruption, and e) increases criminal penalties for a number of corruption-related offences. The law also provides for the ineligibility of those individuals convicted of offences against public administration. The law introduces an obligation upon administration to develop its own anti-corruption action plan, introduces provisions on enhanced transparency on public finance, and increases access to information, asset disclosures (i.e. disclosure of information related to politically exposed persons - such as elected officials and any other person with policy-making powers at national, regional and local levels).
36. Additionally, the law establishes material accountability for public administration’s reputational damage; it provides for codes of ethics; it introduces provisions on whistle-blowers’ protection and it reinforces some provisions on either conflict of interest, incompatibilities (such as introduction of cooling-off periods) and disciplinary proceedings.
37. The Anti-Corruption Law calls on sub-national public authorities to prevent corruption at regional and local level administration and in any enterprise, they may control.
38. Concerning the general anti-corruption model, it should also be noted about the norms introduced by Law n. 190/2012, an essential complement in the implementing Decrees n. 33 (on transparency) and n. 39 (on the system of ineligibility and incompatibility of positions in public administration) of 2013 law, in addition to the Presidential Decree n. 62/2013 (on rules of conduct for all public employees under contract).
39. The anti-corruption model is carried out through a complex and particularly articulated framework of relationships among multiple actors with different roles (such as the Government, Department of Public administration (Dipartimento per le Finanze Pubbliche - DFP), National Anti-corruption Authority, Court of Auditors, Prefects and, within the entities, the subject responsible for the prevention of corruption (RPC) and the independent evaluation body (Organismo Indipendente di Valutazione- OIV) and through an articulated mechanism of accountability for the implementation

of anti-corruption measures within each administration.

40. In addition, in order to focus the activity of the National Anti-Corruption Authority on its core tasks (namely transparency and prevention of corruption in public entities), the functions related to measurement and evaluation of performance were transferred to the Department of Public Administration (under the Council of Ministers' Presidency, from the date of entry into force of the law of conversion of the decree n. 90/2014. The functions of the Department of Public Administration of the Presidency of the Council of Ministers in the field of prevention of corruption as referred to in art. 1 of Law n. 190/2012, are transferred to the National Anti-Corruption Authority.
41. On the **role of media** in preventing corruption, among many other activities, in March 2017 ANAC organized an event titled "Knowing corruption to fight it. An interdisciplinary perspective on the analysis of corruptive phenomena". For the fight against corruption, only the repressive measures are not enough: actions of prevention, diffusion and consolidation of a sense of general interest in civil society and in public administration are an essential part of this struggle. To this end it is necessary to promote a critical sharing of the available scientific knowledge, so as to favour its conversion into tools to affect the corruptive phenomena or to evaluate the relative effectiveness of the prevention tools. Some results that emerged from an international research project (Anticorruption Policies Revisited - anticorrp.eu) that also involved Italy together with other European countries was presented and discussed in the seminar. The focus was on the issue of risk indicators, on the role of civil society and the media, with particular attention to those so-called 'gray' areas, in which legitimacy and illegitimacy merge. The event was attended by a large audience, of either media practitioners and civil society, and presenters were stemming from the following institutions, academia and media entities: ANAC, University of Perugia, Hertie School of Governance (Berlin), University of Pisa, Altreconomia, Scuola Normale Superiore (Pisa), Prosecutor at the Rome Public Prosecutor's Office, Avvenire, and University of Urbino.

### ***The National Anti-corruption Plan and the Three-year Plan for the Prevention of Corruption***

42. The Anti-Corruption Law introduces a system of integrity risk assessment and risk management measures based on the model proposed by Legislative Decree 231/2001. In addition, the Law requires that each public administration should establish a prevention plan devoted to, on one hand, assess the degree of risk of corruption's exposure and, on the other hand, draw tailor-made organisational measures as to mitigate such risks.
43. Each public administration should adopt a three-year Plan for the Prevention of Corruption (Piano triennale prevenzione corruzione - PTPC) based on the PNA adopted by the National Anti-Corruption Authority. The PTPC analyses and estimates any specific administration's risk of corruption and indicates appropriate preventive measures. In order to be effective, the PTPC must contain appropriate targets and adequate measuring indicators. In addition, it should be systematically integrated into the whole programming tool-kit, including: the budget, the Plan of Performance and the training Plan. The PNA is structured as a programmatic tool, updated annually by the inclusion of newly established indicators and targets. This continuous updating allows for the monitoring and detection of potential discrepancies (targets/results) arising from the factual implementation of the PNA.

### ***Incompatibilities and conflicts of interests***

44. The Anti-Corruption Law establishes a regime of incompatibilities for managerial and elective posts, both in the civil service and state-owned/controlled enterprises. The Anti-Corruption Law has also made important changes to Legislative Decree 165/2001 (the Public Employment Single Act), namely: 1) the mandatory verification of potential conflict of interests in certain situations (such as when appointing a consultant); 2) regulating the practice of *pantouflage* (aka “revolving doors”) so that public officials who have held managerial and negotiating positions in the previous three years may not exercise related duties in a private-sector entity; and 3) the voiding of contracts and/or appointments made in breach of the *pantouflage* prohibition and the banning of the private entity from business dealings with the public sector for the following three years. The Law also requires the government to issue a code of conduct to all public officials, aiming at preventing corruption in the civil service. Any breach of the code of conduct’s obligations will result in the perpetrator being bound to civil law liability law and prosecution.
45. As mentioned above, concerning the norms introduced by Law n. 190/2012, find an essential complement in the Legislative Decree n. 39/2013 (which regulates law implementation of important principles and guidelines on the system of ineligibility and incompatibility of positions in the public administration). The Legislative Decree n. 39/2013 has stepped in to regulate the hypothesis of ineligibility and incompatibility of positions in the public entities, with the clear intention to avoid any form of interference or confusion between politics and administration. The ultimate goal is to prevent corruption and conflicts of interest, and preserve the principle of impartiality of administrative action (enshrined in the Constitution).

### ***Transparency in the public administration (see answer to article 10)***

46. The Anti-Corruption Law seeks to enhance transparency in public service activities. This goal is pursued through the publication of: 1) information on administrative proceedings (even when they do not follow ordinary procedure), including the cost of public works and citizens’ services, and the duration of procedures; 2) an e-mail account for each office of the civil service, so that citizens (especially those with a specific interest) can send petitions, declarations and questions; 3) data on executive and managerial public positions’ appointments (i.e. those with considerable political discretion; and 4) reasons and justifications related to the selection of contractors in public procurement.

### ***The codes of conduct for public officials (see answer to article 8)***

47. The principles provided by the Anti-corruption law have been also enshrined at the regulatory level, through the adoption of national codes of conduct for public officials, adopted by the Presidential Decree 12 April 2013, n. 62.

(See text (in Italian) at <http://www.gazzettaufficiale.it/eli/id/2013/06/04/13G00104/sg>)

### ***Whistleblowing (see answer to article 8)***

48. For the first time, the anti-corruption law has introduced provisions on the protection of

whistleblowers reporting corruption within the public sector. The provisions refer to government employees who report wrongdoing under the conditions that they do not commit slander or defamation, and do not breach on somebody's privacy. At article 12, the Anti-Corruption Law adds Article 54b to Legislative Decree 165/2001 (See text (in Italian) at <http://www.parlamento.it/parlam/leggi/deleghe/01165dl.htm>) (Public Employment Single Act). Protection includes the prohibition of sanctions, dismissal, or any direct or indirect discriminatory measures by way of retaliation.

49. The **National Anti-corruption Plan (PNA) for the year 2016** adopted by the ANAC is published on its website at this link:

[http://www.anticorruzione.it/portal/public/classic/AttivitaAutorita/AttiDellAutorita/\\_Atto?ca=6550](http://www.anticorruzione.it/portal/public/classic/AttivitaAutorita/AttiDellAutorita/_Atto?ca=6550)

Statistics are available in Annual reports issued by the National Anti-corruption Authority, published on the website:

<http://www.anticorruzione.it/portal/public/classic/AttivitaAutorita/Pubblicazioni/RelazioneParlamento>

*(b) Observations on the implementation of the article*

50. Italy has a Constitutional, legal and regulatory framework that addresses most of the Convention's prevention provisions. To the extent those policies establish programmes or measures for public officials, however, they do not always apply fully across the board to all public officials as defined by the Convention.
51. Italy has instituted a number of changes in the last five years which are intended to develop or update its anti-corruption policies. Because they are recent, there has not always been sufficient time to determine their effectiveness. However, they do address most of the provision under review.
52. A comprehensive anti-corruption law (Law No. 190/2012 of 6 November 2012 on preventing and combating corruption and illegal activity in public administration, the 'Anti-Corruption Law') was adopted in 2012. Italy adopted a national anti-corruption plan (Piano Nazionale Anticorruzione, **PNA**) in 2013. The PNA was updated in 2015 and 2016. Targeted as it is on the public administration, the PNA does not encompass Parliament, the judiciary and Government.
53. In addition, each public agency/administration/fully controlled State-owned enterprise must establish a three-year Plan for the Prevention of Corruption (Piano triennale prevenzione corruzione, **PTPC**) based on the PNA adopted by the National Anti-Corruption Authority and taking into account the institution's specific features, risks, size etc. The PTPC analyses and estimates any specific administration's risk of corruption and indicates appropriate preventive measures. Each Minister is responsible for adopting the three-year plan within his/her ministry.
54. Moreover, each public agency/administration/fully controlled State-owned enterprise must identify a corruption prevention officer (Responsabili della Prevenzione della Corruzione e della trasparenza, **RPCT**) responsible for overseeing the implementation of the plan within each. Each public agency/administration adopts an individual code of conduct building on the General Code of Conduct established by Presidential decree. These agency/administration plans are subject to public comment and review before adoption.

55. In addition to the Anti-Corruption Law, Italy has enacted legislation and adopted other measures that promote the participation of society, the management of public affairs and public property, integrity, transparency and accountability. In particular, Italy has taken a number of steps to promote general transparency throughout government and the use of open data, e.g. with regard to the transparency of procurement information.
56. Public officials are bound by principles of impartiality, efficiency, effectiveness and best value for money, in order to ensure an overall good management of public institutions (Article 97 of the Constitution). The law also provides for codes of conducts; it introduces provisions on whistleblower protection and it reinforces some provisions on conflict of interest, and disciplinary proceedings.
57. It was concluded that Italy has implemented this provision of the Convention.

*(c) Successes and good practices*

58. Each agency/administration/fully controlled State-owned enterprise is required to designate a corruption prevention officer and to develop a three-year plan for the prevention of corruption in accordance with the national anti-corruption plan and with the participation of society.
59. Italy has developed a national coordination mechanism in the Ministry of Foreign Affairs, i.e., the *Tavolo interistituzionale di Coordinamento Anticorruzione*, which also cooperates with civil society and the private sector.

*Paragraph 2 of article 5*

*2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.*

*(a) Summary of information relevant to reviewing the implementation of the article*

**On Transparency**

60. A simpler, more efficient and more transparent country is the objective that the Italian Government set when it launched a broad reform package in 2014; as a result of a public consultation – about 40,000 mails with comments and proposals examined in early 2014. The goal of the Third Italian Open Government Partnership (OGP) National Action Plan (NAP) is to turn Italian Public Administration into a driver for growth and opportunities for citizens and businesses. In fact, for the first time, the action plan contains the commitments of administrations other than central ones: turning this plan into a country-wide initiative. Therefore, regional and municipal administrations will be involved in drafting and enforcing major anti-corruption policies. The NAP was created through a forum of actors that saw the participation of over 50 organizations from the world of associations, universities, research centers, consumers' and professional associations that worked actively with the Public Administration in proposing and drafting the actions included in the Plan. As of today the plan has been successful leading to the release of an addendum in 2017, containing 6 more actions. The actions of the plan can be monitored, by everyone and on a permanent basis online ([www.open.gov.it/monitora](http://www.open.gov.it/monitora)) and have been grouped in three different areas of the NAP: transparency and open data, participation and accountability and digital citizenship and innovation.

Among the many actions the ones we deem worthy of special attention by UNCAC are reported below.

61. Action 1 addresses the Open Data field: implementing the National Agenda for the Enhancement of Public Data as a document to design and establish an open data strategy. It aims to increase the availability, usability, access and reuse modalities of data held by public administrations. Action 7 defines the guidelines for the implementation of civic access – FOIA - to government-held files and documents as well as making sure it is widely implemented. Action 11 presents the numbers and values of tenders issued, as well as contracts awarded, by **Consip**, the Italian public procurement Agency. Making sure that the work of the Tender Committees can be tracked by all major stakeholders (PA, businesses and citizens). Additional projects fostering transparency have also been implemented, such as [www.soldipubblici.gov.it](http://www.soldipubblici.gov.it) that hosts all the online expenses regarding public administrations making them accessible in a simple way. Open Expo, also, has provided a way - through a portal - to control the financial flows, all the purchases and payments and the state of construction site of Expo 2015. Lastly, Open Cantieri presents an open, complete and updated control system on the process of building public infrastructures; through data that are produced and displayed by public sources and integrated into a single platform, managed by the Ministry of Infrastructure and Transport (MIT).
62. Meanwhile, Action 14 develops tools to support participatory decision-making in Italian PAs through guidelines for consultations and appropriate technological solutions. Actions 18 and 22 aim at defining the practices and procedures to collect the reports of public employees about cases of misconduct while ensuring the protection and confidentiality of whistleblowers in compliance with the law. In addition, it ensures the effectiveness of institutional guidance and support policies for those who take action to safeguard the public interest during their work inside a public organization. Such goal is achieved also by organizing training courses on anticorruption to all Italian public employees, in order to achieve a consistent and extensive level of awareness of the basic principles, methodological aspects and operational modalities to effectively manage the risk of corruption.
63. Actions 26 to 28 are linked to the Ministry for Economic Development (MISE) and Cities of Rome and Milan. Such actions establish an online registry, open to any natural or legal person professionally representing legal interests within the Ministry for Economic Development, including non-economic ones. Such registry provides citizens and any other interested user with the information on who the Ministry's interlocutors are and how they can interact with them, as well as, with an online agenda of the meetings. These actions are particularly relevant because we have witnessed a spillover effect from the MISE into other public institutions such as the Minister for Public Administration that adopted a Public Agenda and a transparency Register. Finally, Actions from 29 till 34 are concerned with the betterment of Italian digital structures such as the implementation of a single public identification system that allows to access digital services delivered by public administrations to citizens and businesses (SPID), a National Plan for Digital Schools and the creation of an Observatory on Digital Rights. The latter sets up an interregional task force which promotes the content of the Charter of Internet Rights.
64. On the side of its relations with civil society, ANAC has signed agreements with LIBERA (2/12/2015), with TRANSPARENCY INTERNATIONAL - ITALY (TI-It) (27/01/2016 and 25 / 01/2017), while it is about to seal one with the Association OPENPOLIS and ACTIONAID Italia.
65. LIBERA is an association known for its great commitment to solicit and coordinate civil society against the criminal phenomena of mafia and corruption; on the other hand, the Authority firmly believes that the promotion of virtuous behaviour and raising awareness on how much the corruption affects the economic-political life of the country, as well as on the daily life of citizens and on the

future of young generations, are the primary antidotes to corruptive phenomenon.

66. The agreement reached with the Association has as its object the realization of possible initiatives aimed at promoting the dissemination in civil society of the culture of responsibility, public ethics and transparency, also through the organization of information campaigns, conferences, public debates and studies.
67. The content of the agreement with TRANSPARENCY INTERNATIONAL - ITALY (TI-It) is very similar, committed to combating corruption and promoting transparency and integrity throughout the world since 1993 and in Italy since 1996 (through TI-It, its National Chapter official). In particular, it is envisaged to carry out initiatives to promote the dissemination of the culture of public ethics and transparency, including through the organization of information campaigns, conferences, public debates.
68. It should be noted that, in both protocols, the associations have been committed to help spread a correct culture around the institute of whistleblowing, sensitizing public opinion on the need to protect and promote this instrument of defense of the public interest, in compliance with the acts adopted on the matter by the ANAC.
69. In particular, the second agreement with TI-It (25/01/2017) was dedicated to whistleblowing, which governs the collaboration between the Parties in the management of reports of wrongdoings received by TI-It from reporting, not anonymous, that they are public employees and that they report illegal activities in the public administration, as well as the support provided by TI-It to the reporting party in case he decides to send the report to the ANAC. In such cases, in fact, the agreement provides that TI-It informs the notifying party about the protections provided for by law in favour of public employees who report irregularities within the entity for which they work and on the legal obligations envisaged, as well as on the channels to which he can forward the report, on the path that will follow the same according to the chosen channel and on the relative possible consequences in terms of protection of anonymity. In cases where the reporting party decides to contact the ANAC to file the report, TI-It will offer free support for circumstantiating the report and collect the documents deemed useful for a better understanding of the facts reported, provided that the reporter will send in full autonomy to the Authority the denunciation according to the modalities established by the Authority itself.
70. Agreement with the Ministry of Education, University and Research (MIUR) for the training of civil society (young people) and for the facilitation of its participation: on 5/02/2015 a multilateral agreement was signed with the MIUR, the DNA (National Anti-Mafia Directorate) and the ANM (National Magistrates Association) to promote a multi-year program of activities, with particular reference to education paths to legality and deterrence, control and the fight against mafia and organized crime.
71. In particular, thanks to the work of the National Committee which is entrusted with the concrete implementation of the Charter, also consisting of representatives of the Authority, the "Technical Tables" were set up by the Italian Ministry of Education, composed of local delegates of the signatory institutions of the Charter itself. The ANAC, not having branches on the national territory, has asked the major Italian universities to collaborate in the realization of the project identifying available teachers to take part in the initiative; therefore, 57 university professors have been appointed by the MIUR in the regional tables representing ANAC to speak to the students of corruption. An active team has thus been created throughout the national territory which, coordinated by the Regional School Coordinator (MIUR employee), is called upon to organize carrying out educational interventions in schools (mainly secondary schools). The MIUR has opened a special website "diariodellalegalita.it" in which, divided by region, all the compositions of the regional tables and

the annual programs of the initiatives that each regional technical table presented to MIUR are available.

72. An important example of facilitating the participation of civil society was the national competition organized by MIUR in collaboration with ANAC in 2017, addressed to all secondary institutes of the second degree, entitled "Whistleblower: an example of active and responsible citizenship". The object of the competition was to identify a term that translates the term "whistleblower" into the Italian language in an exhaustive and original way; following the identification of an Italian term, the students were asked to produce a paper (text, photographic, multimedia) that communicated its meaning and meaning. On November 7, 2017 the three winning schools were awarded for the best work done, even if no term has been identified that could translate the word "whistleblower" into Italian. The competition will be repeated next year.
73. Finally, always in implementation of this agreement, the Head of the Equal Opportunities Department of the Council Presidency has established a joint MIUR-ANAC working group "for the study, analysis and implementation of the general criteria for the activities addressed to the Institutions schools" (guidelines for schools for the use of ministerial funds and the management of tenders, currently in progress).
74. The National Anti-corruption Authority has launched in 2014 an open campaign to collect questions, reports and proposals on transparency: from 14 March 2014, citizens, associations and public administrations could send questions, answers and reports or claims directly to ANAC by using an online procedure.
75. From the website [www.campagnatrasparenza.it](http://www.campagnatrasparenza.it) anyone could access a special online form to communicate with the Authority.
76. However, the procedure is temporarily suspended to update the form to changes at the legislation.
77. In the field of police training it should be noted that, according to the Italian legal system, prevention and countering of corruption crimes do not fall within the exclusive and special competence of a single police force.
78. Therefore basic training developed by each of the national police forces (Polizia di Stato, Arma dei Carabinieri, Guardia di Finanza) for its members deals specifically with corruption crimes for the purpose of making the different training levels more homogeneous, in consideration of the different contexts and professional tasks.
79. In particular, in the training courses, each police force devotes special attention to ethical aspects with a view to developing a police officer's culture, sensitivity and behaviour which are coherent and respectful of the professional ethics in relation to corruption.
80. Police training also covers learning matters for the fight against corruption in a multifaceted and substantially homogeneous manner. In fact corruption is included in the curricula of both basic and refresher courses under various viewpoints referable to four main systems: the "value-based" (code of conduct and professional ethics, esprit de corps, police image enhancement, sense of responsibility), "relational" (interpersonal styles when daily approaching other people, psychological equilibrium, the ability to manage their own and other persons' stress, the communication content and target, leadership, the management of human resources), "managerial" (control of the resources available to the police officer, decision-making competencies, abilities to analyze and synthesize problems, organizational and management abilities) and "knowledge system" (legal knowledge concerning corruption).
81. The aforementioned systems are developed within specific anti-corruption training courses, seminars

and, operational modules on a case-by-case basis with a variable duration and a connotation corresponding to the reference objective and the type of the implemented course.

82. These modules cover inter alia the following:

- the UN General Assembly Resolution on Code of conduct for law enforcement officials of 5 February 1980 (A/RES/34/169);
- the Guidelines for an effective implementation of the Code of conduct for law enforcement officials (E/RS/1989/61);
- the European Code of Police Ethics adopted by recommendation 2001-10 of the Committee of Ministers of the Council of Europe on 19 September 2001;
- the role of the police in a democratic society and prevention of corruption “inside” and “outside” the police.
- Lastly, Italian police forces personnel from the various units and ranks attend courses, meetings and seminars at the European Police Academy (CEPOL) on a regular basis. These courses are focused on police ethics and prevention of corruption.

### ***On Procurement***

83. Since 1999, ANAC (former AVCP) collects, analyses and publishes all relevant procurement information. The Authority has the power of requiring that the contracting authorities as well as companies provide data and information about contracts. Such activity is performed by the Observatory within ANAC that acquires electronically data and information in a Data Base (BDNCP) concerning public contracts, formulates standardized costs and provides statistical as well as economic analyses to support the ANAC activity. It is organized in a Central Unit with Regional branches.

84. In order to reduce the administrative burdens arising from the fulfilment of the obligation to ensure efficiency, transparency and control of the administrative action for the allocation of the public expenditure and to prevent corruption phenomena, according to the Italian Digital Code (article 62 bis of Legislative Decree n. 82/2005, as emended by Legislative Decree n. 235/2010), a National Database of Public Contracts has been established at the Authority and managed by the Observatory.

85. According to Public procurement Legislation, tenders and notices are sent to the Observatory and are registered in a Database - established at the Observatory - that can be consulted by anyone having an interest to protect.

86. The “Company Data Base” (Casellario Informatico), and the data on the declarations filed by the economic operators are, inter alia, parts of the National Database of Public Contracts.

87. The Database provides different records for tenders, notices, programmes, expired and not yet expired, and the length of the storage of expired documents should be proportional to the needs of their disclosure for the exercise of the right to access administrative records and of legal claims.

88. The New Code (Legislative decree n. 50/2016) provides a strengthening of ANAC functions, in order to prevent corruption within Public Procurement: as far as transparency is concerned, the rationalization of existing ANAC database; measures to promote transparency through digital platforms; strengthened requirements for the publication of the whole public tendering process, from the design to the financial management of the contracts.

89. The data are freely available to all citizens:

(<http://portaletrasparenza.anticorruzione.it/microstrategy/html/index.htm> )

#### 1. INFORMATION COLLECTED

- Tender and contract notices
- Awarding procedures
- Awarded contracts
- Economic operators taking part in public contracts
- Contract execution

#### 2. DATA ARE PROCESSED IN ORDER TO :

1) Verify the Gap between actual and planned costs; 2) Verify the Gap between actual and scheduled times; 3) Verify dysfunctions; 4) Compute reference prices and standard costs of works, services and supplies; 5) Produce statistical reports for the European Commission.

#### 3. DATA ADVERTISED IN ORDER TO ENSURE TRANSPARENCY IN THE MARKETS FOR PUBLIC CONTRACTS:

- 3-years planning and annual programmes
- Tender and contract notices
- Awarded contracts
- List of qualified contractors
- Guidelines and reference documents for Contracting Authorities

90. ANAC publishes this data for citizen on its website: the anticorruption legislation provides the full transparency of public contracts as follows: (i) contracting authorities shall publish on their web site the most relevant information regarding public contracts; (ii) contracting authorities shall transmit such information on digital format to ANAC which publishes them on its web site, in a section freely available to all citizens ( <https://dati.anticorruzione.it/#/home>).

91. In case the information is not provided or false information has been given, administrative sanctions can be inflicted by the Authority. Actually the most of the data are already at Authority's disposal within the monitoring procedure provided by the Code of public contracts. Those data are now analysed and processed in the perspective of the anticorruption strategy, to promote transparency, simplification and competition in the entire procurement process.

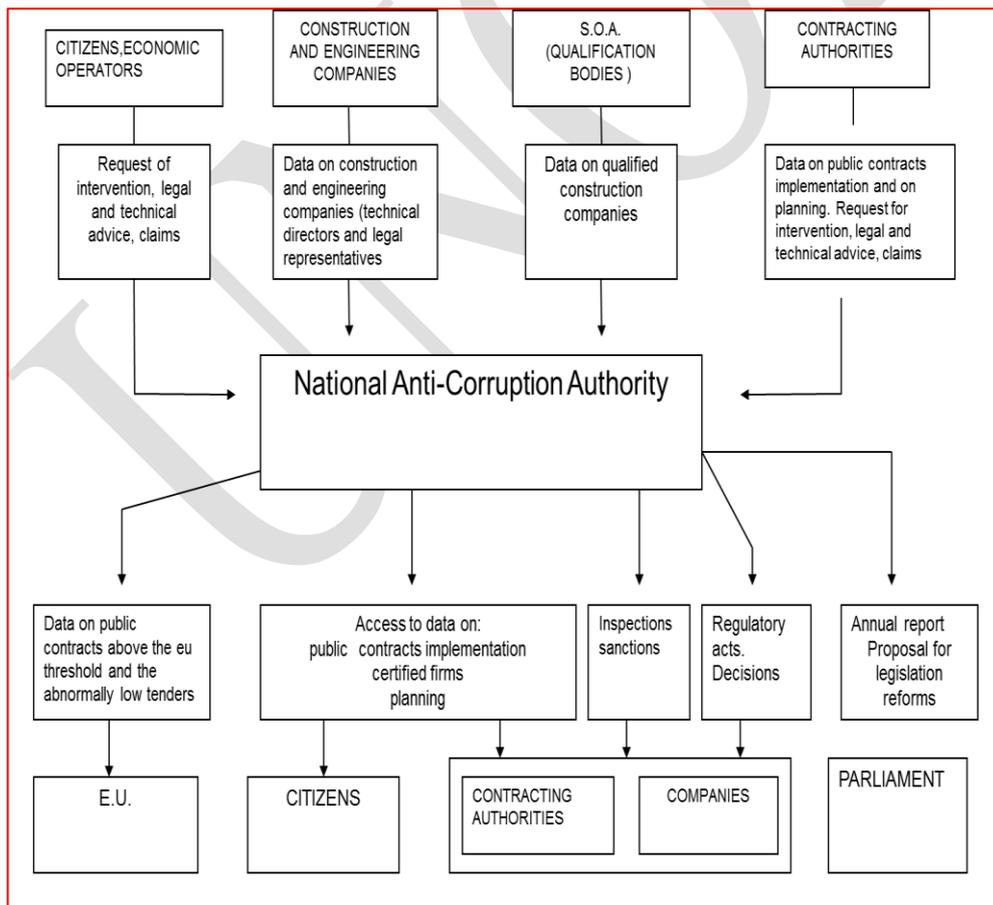
92. Through the quality of data made available by the Data Base, the Authority improved its activities, notably the Supervision activity and the Regulation activity, in order to provide guidelines on measures that need to be taken into account to promote transparency, simplification and competition in the entire procurement process and, particularly, in the pre-bidding and post-bidding phases.

93. Moreover, the ANAC uses the information for specific anticorruption purpose, by developing some indicators to detect corruption in public procurement

- Indicators stemming from the notice step

- Indicator of centralized purchasing
- Indicator of not open procedures
- Indicator of the estimated value of the contract
- Indicator of fractioning
- Indicators stemming for the awarding step
- Indicator of centralized purchasing
- Indicator of not open procedures
- Indicator of the estimated value of the contract
- Indicator of fractioning
- Indicators stemming from the execution of the contract
- Indicator of contract variances
- Indicator of contract extension
- Indicator of costs rising
- Indicator of time lengthening

## PUBLIC CONTRACTS DATA FLOW



94. With specific reference to the ANAC legislation, the National Council of Notaries (CNN) and District Notarial Councils (Public Bodies) have to conform to the norms on the “transparency”. In fact, with the decision 145 (21 Oct 2014) ANAC declared applicable the disposals on the prevention of corruption (law 190/2012 and delegated decrees) to the Professional Bodies. In fact, the national and district council have to prepare a 3-years plan on the “prevention of corruption”, “transparency” and the “conduct code” of the State officers (civil servants). They also have to designate a Responsible Officer for the prevention of the corruption, compile with the obligations concerning the transparency (al d.lgs. n. 33/2013) and the incompatibility and non-assignability of the charges (d.lgs. n. 39/2013). The CNN has always been committed in the promotion of the ethics, legality and transparency (decision CNN 2/56 5 April 2008 – in the OJ n. 177 30 July 2008 – concerning the definition of the deontological principles inspired by the European Notarial Deontological Code) and in the internal autoregulation of its own activities (CNN and Executive Committee Regulation actuating the norms contained in the laws 3 August 1949 n. 577, 20 February 1956 n. 58 and 27 June 1991 n. 220)
95. In order to guarantee the greatest transparency, the functionality and quality of the notarial performance, the CNN is carrying out in the last years a process of “digitalisation of the notary” aiming at the standardisation and simplification of the procedures and activities and considered as a sort of prevention measure of the Corruption inside the PNA (National Anticorruption Plan)
96. The recipient of the 3-year plan for the prevention of corruption are:
- members of the board;
  - members of any entities of the CNN
  - managers of CNN
  - employees of CNN (permanent positions and short-term positions)
  - members of CNN commissions
  - consultants and collaborators of CNN
  - service providers of CNN
  - anyone who, also in factual situation, operates on behalf and/or in the interest of the CNN

### ***On Training***

97. ANAC cooperates with another national body, the National School of Public Administration (SNA), to plan the training programs on ethics and anti-corruption for public entities and to share information about the results of the training activities. In general, ANAC has signed several other agreements with public institutions in order to ensure thorough and appropriate implementation of the anti-corruption provisions. An important example is the project initiated with the Ministry for Public Instructions, aimed at introducing integrity classes and courses at secondary/high school level.
98. Additionally, ANAC engages with relevant private actors to share information, data, experiences and good practices in the field of transparency and anti-corruption.
99. Other initiatives involve the adoption of Information and Communications Technology (ICT) as for

digital government actions, such as:

- promotion of open data within the public entities: see the Linee Guida Nazionali per la Valorizzazione del Patrimonio Informativo Pubblico 2016 (National Guidelines on Increasing the Value of the Public Information Asset (available at <http://www.dati.gov.it/content/linee-guida-open-data-2016>, in Italian); The document describes some actions as to dealing and releasing information in compliance with the open data standards;
- legal obligation for any public administration to set-up a peculiar part of its website (named PAT- Pubblica Amministrazione Trasparente, namely transparent public administration) to disclose information related to committed expenses and disbursements.
- set-up of dedicated websites aimed to offer as much as possible public entities' data to the citizens/customers with the aim of facilitating a democratic control of the public entities' general trends.

100. ANAC publishes open data about public contracts awarded by contracting entities and the results of its supervisory activities on its website:

<http://www.anticorruzione.it/portal/public/classic/AttivitaAutorita/AttiDellAutorita>

101. Other relevant implementation of open data websites consists in the following:

- a) [www.dati.gov.it](http://www.dati.gov.it) is an online portal for the publication of open data from public entities. It is a sort of taxonomy with metadata describing every class of information;
- b) [www.soldipubblici.gov.it](http://www.soldipubblici.gov.it) provides information about the expenses incurred by the main public entities, both at central and local level;
- c) [www.opencantieri.mit.gov.it](http://www.opencantieri.mit.gov.it) is a platform that lists and monitors in real time infrastructural projects managed by public subjects;
- d) [www.italiasicura.governo.it](http://www.italiasicura.governo.it) allows to browse data related to public works aimed to prevent hydrogeological instability;
- e) [www.opencoesione.gov.it](http://www.opencoesione.gov.it) monitors in detail projects funded by Italian cohesion policies.

102. All the above mentioned initiatives are managed by the Presidency of the Council of Ministers, as well as the involved Ministries and the Agency for Digital Italy.

*(b) Observations on the implementation of the article*

103. Italy has undertaken measures to establish and promote effective practices aimed at the prevention of corruption, including establishing standards of conduct, providing training and education of public officials, as well as providing for whistleblower protection.

104. It was noted that the web-based platform on transparency has been suspended, pending a judgment from the Constitutional Court.

105. It was concluded that Italy has implemented this provision of the Convention.

*Paragraph 3 of article 5*

3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.

*(a) Summary of information relevant to reviewing the implementation of the article*

106. Significant functions and powers of regulation, supervision and control are attributed to the National Anti-corruption Authority (see answer in article 6). The Authority, in addition to the already existing regulatory powers, has also been called upon to formulate guidelines for the preparation of the Three-year Program for Transparency and Integrity, as well as the codes of conduct for entities.
107. In terms of the effectiveness of the law, it is important that one single agency (ANAC) is tasked with the supervision of the implementation and control over the efficiency of the measures indicated in the above-mentioned plans, and their compliance with transparency obligations. In practice, the assessment powers may materialize in different ways in an inspection (for example through the request of information, records and documents to the inspected entities). In fact, they may bring to issuing an order to adopt or remove certain acts or behaviours that are in contrast with the measures indicated under the above plans. Similarly, for activities related to prevention of corruption, the Authority is the recipient of the communication by the Prefect on the dismissal of the Secretary of a local authority.
108. Moreover, in the framework of Law n. 190/2012 (See text in Italian at <http://www.gazzettaufficiale.it/eli/id/2012/11/13/012G0213/sg>), the Authority has a continuous relationship with the various entities which, first of all, have the obligation to appoint the responsible for corruption prevention (RPC) who has the important tasks of: 1) proposing the corruption prevention plan for adoption by the relevant political body; 2) verifying its correct implementation and its continuing suitability, as well as 3) reporting annually the results of the activity.
109. It is evident that the RPC, together with the OIV, are important figures, with a significant set of responsibilities on the prevention of corruption as well as in the assessment of transparency compliance. It is worth noticing that the corruption prevention manager can be sanctioned if the organization is convicted of corruption, unless he/she proves that the anti-corruption plan was “diligently implemented”.
110. According to article 213, par. 3, of Legislative Decree n. 50/2016, and in full compliance with its role of independent Authority, ANAC shall:
- c) report to the Government and Parliament, by specific act, about particularly serious phenomena of non-compliance or distorted application of sectorial legislation;
  - d) advise the Government on proposals regarding changes that are required in relation to current sector regulations.
111. ANAC has made use of this power of intervention several times (this competence was provided for already in the previous legislation) to propose amendments to existing legislation or to intervene during the discussion of a Bill in Parliament or the adoption of a legislative decree or a regulation by the Government. In other cases, the Authority, having found in its supervision activity specific

situations of particularly serious phenomena of non-compliance or distorted application of sectorial legislation, proposed amendments to legislation to avoid this phenomena.

112. For 2017, the Authority has issued the following reports:

- Report to the Government and Parliament no. 6 of 20/12/2017 - ref. Concerning the regulations concerning the right of civic access and the obligations of publicity, transparency and dissemination of information by public administrations, contained in Legislative Decree No. 33/2013, as amended by Legislative Decree 97/2016
- Report to the Government and Parliament no. 5 of 29/11/2017 - ref. Concerning the art. 5, paragraph 1 D.P.R. November 14, 2002, n. 313 containing the Consolidated Law on legislative and regulatory provisions on criminal records, the register of administrative sanctions based on offenses and the related pending charges.
- Report to the Government and Parliament no. 4 of 29/11/2017 - ref. Concerning the in-house companies of the State administrations and the similar control in light of the art. 9, paragraph 1 of Legislative Decree 19 August 2016, n. 175
- Report to the Government and Parliament no. 3 of 08/11/2017 - ref. Concerning the art. 49, co. 7, of the d.l. 24 April 2017, n. 50 conv. in law, with amendments, 21 June 2017, n. 96
- Report to the Government and Parliament of 25/10/2017 - ref. on the procedures for the direct assignment of regional rail transport services
- Report to the Government and Parliament no. 2 of 01/02/2017 - ref. Proposal to amend articles 83, paragraph 10, 84, paragraph 4 and 95, paragraph 13, of Legislative Decree 18 April 2016, n. 50
- Report to the Government and Parliament no. 1 of 18/01/2017 - ref. Further proposals to amend Legislative Decree 8 April 2013, n. 39 «Provisions regarding the non-assignability and incompatibility of positions with public administrations and with private bodies in public control, pursuant to art. 1 paragraphs 49 and 50 of the Law of 6 November 2012, n. 190». Approved by the Authority's Board with resolution no. 24 of 18 January 2017

113. A full list of reports, since 2001, is available at: <http://www.anticorruzione.it/portal/public/classic/AttivitaAutorita/AttiDellAutorita/Segnalazione>

114. In addition, Law no. 190/2012 attributes to ANAC competence for reporting to the Parliament about the effectiveness of the existing disposition in matter of anticorruption. Moreover, Legislative Decree no. 39/2013 identifies ANAC as the entity in charge of the supervision on the proper implementation of the discipline in matter of ineligibility and incompatibility. Therefore, ANAC sent to the Parliament no. 5 reporting acts (so-called Atti di segnalazione) containing comments and proposals to amend the dispositions.

115. Other laws in matter of anticorruption attribute to ANAC the opportunity to integrate the legislative text through specific guidelines (so-called Linee guida). For instance, the recently adopted Law no. 179/2017 (Whistleblowing Law) confers to the Authority the task of the drawing-up of the guidelines relative to alerts' submission and management procedures.

116. Also, the Public Contracts Code assigns to ANAC the power to issue binding rules. In particular, in several articles of the code there is a referral to implementing acts of ANAC. These acts should be considered as binding for the contracting authorities and for the economic operators, i.e. they have the value of law. Until now ANAC has issued 3 binding guidelines and 2 standard calls for tenders:

- Guidelines n. 3 on the official responsible for the public procurement process (RUP);
- Guidelines n. 5, institution of the register for the commissioners;
- Guidelines n. 7, institution of the register for the in-house undertakings;
- Standard calls for tenders for services and supplies;
- Standard calls for tenders for cleaning services.

117. Moreover, the code provides that ANAC proposes the content of several minister decrees, such as:

- The decree on the functions of the director of works and of the director of the execution of services or supplies;
- The decree on the qualification of the economic operators for works.

118. Finally, art. 213, co. 2 of Legislative Decree n. 50/2016 provides that ANAC through flexible regulation tools ensures the promotion of efficiency. In this respects ANAC has issued several non-binding guidelines:

- Guidelines n. 1 on the technical services;
- Guidelines n. 2 on the most economically advantageous tender;
- Guidelines n. 4 on the below European thresholds;
- Guidelines n. 6 on the serious professional malpractices;
- Guidelines n. 8 on the awarding contracts for non-fungible goods and services.

*(b) Observations on the implementation of the article*

119. The ANAC has been given a central role in evaluating various administrative anti-corruption measures. ANAC has the authority to propose amendments to anti-corruption laws when its analyses lead to a conclusion that they are inadequate or have lacunae. ANAC can initiate specific studies on particular sector and can request information on how the prevention strategies are working, in order to determine where it should take action.

120. Italy's relevant legal instruments and administrative measures for the prevention of and the fight against corruption have also been evaluated by the various international anti-corruption bodies in which Italy is a member, in particular the Council of Europe's GRECO and the OECD's Working Group on Bribery.

121. It was concluded that Italy has implemented this provision of the Convention.

#### *Paragraph 4 of article 5*

4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption.

#### *(a) Summary of information relevant to reviewing the implementation of the article*

122. ANAC fully cooperates with the corresponding international bodies and in general with international and foreign peer agencies in the field of anti-corruption, with the goal to share information and methodologies for the implementation of anti-corruption strategies

(See <http://www.anticorruzione.it/portal/public/classic/AttivitaAutorita/AttivitaEuropa>).

123. Concerning the Country as a whole, Italy is actively involved in the G7, G20 and OECD anticorruption fora. In the respective competent working groups, the Italian Ministry of Foreign Affairs and International Cooperation (MAECI) promotes a holistic view of corruption, also in terms of nexus to the organized crime, money laundering and terrorism financing and stressing the need of balancing prevention and repression.

124. The MAECI, in accordance with other Public Administrations and with ANAC, through a national coordination mechanism enshrined in the Directorate General for Global Issues, harnesses the contribution by Italy to the anticorruption strategies of multilateral fora and the full implementation and monitoring of the obligations and commitments undertaken by the country in those frameworks.

125. Recent highlights of anticorruption legal diplomacy, supportive of legally shaped economic environments in a multilevel order, are as follows:

- **In the OECD framework**

126. On 16 March 2016 in Paris, the Italian Minister of Justice Andrea Orlando chaired the Anti-Bribery Ministerial Meeting, the first such conference in a decade. Ministers from all 41 State Parties to the Anti-Bribery Convention and from key partner countries participated, along with the heads of other international organizations and leaders from the private sector and civil society. Ministers have reaffirmed their commitment to continue the implementation of the Convention and called for robust enforcement of their anti-foreign bribery laws. In all, 50 countries have joined a Ministerial Declaration focused, inter alia, on improving international cooperation, promoting better whistleblower protection, strengthening public-private-civil society partnerships against corruption as requested by art. 13 of the UNCAC, and enriching the dialogue on voluntary disclosure and settlement procedures in corruption cases.

<http://www.oecd.org/corruption/oecd-anti-bribery-ministerial-declaration.htm>

- **In the G20 framework**

127. In 2014 Italy co-chaired the ACWG together with Australia. In this context the co-chair steered the definition and adoption of G20 High Level Principles on Beneficial Ownership Transparency

(BOT), to ensure tackling the risks raised by the opacity of legal persons and legal arrangements, protecting the integrity and transparency of the global financial system in order to prevent the misuse of these entities for illicit purposes such as corruption, tax evasion and money laundering.

128. [http://www.bmjv.de/SharedDocs/Downloads/EN/G20/G20%20High-Level%20Principles%20on%20Beneficial%20Ownership%20Transparency.pdf;jsessionid=82286ECB6D10E8A2066E83C3395202DA.1\\_cid334?\\_blob=publicationFile&v=1](http://www.bmjv.de/SharedDocs/Downloads/EN/G20/G20%20High-Level%20Principles%20on%20Beneficial%20Ownership%20Transparency.pdf;jsessionid=82286ECB6D10E8A2066E83C3395202DA.1_cid334?_blob=publicationFile&v=1)
129. In 2015 under Turkish and US co-Presidency, Italy contributed to the definition of the G20 Principles for promoting integrity in Public Procurement, particularly vulnerable to waste, misconduct, corruption and collusion which lead to inefficient allocation of public resources and a diminution of trust by citizens in the good governance. The initiative aimed at enhancing systems of procurement based on transparency, competition and objective criteria in decision-making to prevent corruption, also through the new technologies (e-procurement) in line with relevant international standards such as those contained in Article 9 of the UNCAC.
- [http://www.bmjv.de/SharedDocs/Downloads/EN/G20/G20-Principles%20for%20Promoting%20Integrity%20in%20Public%20Procurement.pdf;jsessionid=A314F9A63B4B8C8F642E007F2BD42617.1\\_cid324?\\_blob=publicationFile&v=1](http://www.bmjv.de/SharedDocs/Downloads/EN/G20/G20-Principles%20for%20Promoting%20Integrity%20in%20Public%20Procurement.pdf;jsessionid=A314F9A63B4B8C8F642E007F2BD42617.1_cid324?_blob=publicationFile&v=1)
130. At the outset of the Chinese Presidency (ACWG January 2016 meeting in Beijing) Italy presented to the ACWG the Guidelines of its Asset Recovery system and its technical assistance experience, developed in capacity building programs on fighting and cracking down organized crime and corruption, in line with articles 51-62 of the UNCAC. UNODC has showed remarkable interest to such programs. See: presentation on Italian Experience and Framework on Asset Recovery.
131. At the October 2016 session in Paris, Italy fostered the adoption of the following language in the G20 ACWG 2017/2018 Implementation Plan: G20 countries will promote the establishment of integrity partnerships between institutions to share good practice and promote an anti-corruption culture, including the following pillars: law enforcement, institution building, capacity building, value dissemination. In the same document, in the paragraph on practical cooperation, Italy promoted the adoption of the following innovative commitment: With the support of UNODC, the ACWG will consider possible actions to address the links between corruption, money laundering and organized crime.
- [http://www.bmjv.de/SharedDocs/Downloads/EN/G20/G20%20ACWG%20Anti-Corruption%20Implementation%20Plan%202017-2018.pdf;jsessionid=A314F9A63B4B8C8F642E007F2BD42617.1\\_cid324?\\_blob=publicationFile&v=1](http://www.bmjv.de/SharedDocs/Downloads/EN/G20/G20%20ACWG%20Anti-Corruption%20Implementation%20Plan%202017-2018.pdf;jsessionid=A314F9A63B4B8C8F642E007F2BD42617.1_cid324?_blob=publicationFile&v=1)
132. In 2017 the Italian contribution, developing these themes, focused on two main points:
- a) At the ACWG meeting in Brasilia, Italy presented its methodology of technical assistance and training covering anticorruption. Our system fosters the spread of advanced, homogeneous and comparable anti-corruption Knowledge Management and Sharing (KMS). It is a critical part of anti-corruption prone organizations' fabric and can be used to increase innovation, improve organizational effectiveness, build the institutional memory and enhance organizational agility.
  - b) At the last meeting in Vienna, Italy gave a presentation on the links between organized crime and corruption, in view of possible ACWG action.
133. In the same 2017 exercise, Italy presented the main features of the legal regime on the liability of legal persons (d. lgs. 231/2001), in line with art. 26 of the UNCAC, which applies also to non-economic public bodies, with the exclusion of the State and local public entities. The discipline

covers State-owned and public companies too. It aims at promoting effectiveness of liability, with appropriate sanctions - effective, proportionate and dissuasive - whenever an adequate organizational model to prevent corruption is lacking (See: Administrative Liability presentation). Such presentation offered inputs to the adoption of the G20 High Level Principles on the Liability of Legal persons for Corruption at the Hamburg Summit.

- **In the G7 framework**

134. In continuity with the anticorruption workstream launched by the Japanese Presidency and wishing to provide a synergic contribution to G20 activity in this field, the Italian Presidency promoted the adoption by consensus of Key Messages on Integrity in the Public Sector, in line with the purposes stated in art. 1(c) of the UNCAC.

<http://www.g7italy.it/sites/default/files/documents/G7%20Key%20Messages%20on%20Public%20Integrity/index.pdf>

135. The negotiation took place within a network of G7 anticorruption officials, between January and May 2017. The Presidency emphasized that the G7, leveraging its common values and high standards, could play a specific role by advocating in favour of a full-fledged culture of transparency and integrity as crucial factors to ensure a proper use of public resources and full accountability to citizens.

136. In the same context, the Italian Presidency hosted an anticorruption flagship event, the “High Level Workshop on Corruption Measurement” (Rome, 27 October 2017) with the intention to obtain an accurate and reliable representation of the effective levels of corruption and trace the nexus between corruption and economic and social variables, in order to fine-tune prevention and repression strategies. The workshop saw the participation of almost 200 officials and experts, delegates from G7 partners and international organizations, legal practitioners and scholars, business and civil society representatives, ordinary and accounting magistrates, and law enforcement agencies (See: Chair’s Summary).

- **In the OSCE framework**

137. Italy has actively participated in the discussion on public governance and anticorruption, as agenda items of the 24th and 25th session of the OSCE Economic and Environmental Forum (respectively, Prague 14-16 September 2016 and Vienna 23-24 January 2017).

138. As far as ANAC is concerned and the most recent (2017) international activity carried out by the Agency, you may wish to note the following:

1. Bilateral activities

- Canada: visit Prof. Jerry Ferguson for experience exchange (19 May);
- Colombia: ANAC delegation visit (24 May);
- France: gathering information on the Italian anti-corruption and functioning system, at the request of their anti-corruption Authority; start of relationships with the Haute Autorité pour la transparence de la vie publique;

- Ghana: training visit by lawyers winners of an award banned by international law firms on anti-corruption (April 13);
- Kazakhstan: collection of information on the Italian Anti-corruption system, on the functioning of the Authority and on the Italian Public Administration system, at the request of the OSCE delegation;
- Mexico: negotiations and signing of the Memorandum with the Secretariat de la Funcion publica (15 March);
- Montenegro: Memorandum of Understanding (signed on 3 July 2015); drafting of the Twinning Project contents on "Supporting the implementation of integrity measures": contract drafting, activity organization of the Twinning Project;
- Nepal: meeting with the Nepali Chief Commissioner for an exchange of experiences in the fight against corruption (June 16th);
- Serbia: development of the Memorandum and organization of the Twinning Project (18 July);
- Sweden: visit by the Minister for Public Administration to exchange ideas on anti-corruption policies (December 15, 2015);
- Tunisia: organization of the Tunisian delegation institutional mission, to be held presumably at the end of September;
- Ukraine: visit of the Embassy delegation (27 January); visit of the delegation of the State fiscal Department (tax and customs sector), during which the anti-corruption system deriving from the law 190 was described, the powers and prerogatives of ANAC;
- Vietnam: visit of the Commission delegation for home affairs (13 July);

## 2. Multilateral activities

139. **OECD:** Meeting of Ministers of Justice (March 15); Drafting of successive drafts of proposals to complement the proposal of the Italian delegation on the update of the Recommendations of 1998 on Public Integrity by the Working Party of Senior Public Integrity Officials (SPIO); ANAC intervention in the Integrity Symposium (Integrity Week, April 18-22); Drafting of the responses to the OCDE questionnaire and subsequent clarifications in preparation for the OECD visit to Italy; hearing of ANAC as an Italian delegation component with the OECD technical mission to the MEF (May 24)
140. Council of Europe/**GRECO:** The Italian delegation to GRECO is composed by both the Ministry of Justice and ANAC. ANAC regularly participates in each GRECO session. Preparation of the answers to the questionnaire in preparation for the visit of GRECO in Italy (IV round of evaluation on "Corruption prevention in respect of Members of Parliament, Judges and Prosecutors"); Participation in the two working sessions of GRECO (March and June) as a member of the Italian delegation.
141. Within the GRECO (anti-corruption Group within the Council of Europe), Italy has carried out with great commitment the relevant activities to be performed according to the GRECO's Rules of Procedure and - at the domestic level - in order to comply with GRECO recommendations. Moreover, Italy has received so far wide appreciation of the adequacy of our institutions in preventing and combating corruption with the principles set out in the provisions of the Criminal Law Convention

on Corruption (ETS No. 173). It must be added that the members of the Italian delegation, as required by the aforementioned GRECO's procedure, participate, on a regular basis, as rapporteurs appointed for the evaluation and compliance procedure of the other countries.

142. In particular, in relation to the third-evaluation round, as to the issues concerning the new incriminations and funding of political parties, the discussion held in December 2016 of the first compliance report of the GRECO recommendations led to a positive confirmation of the implementation of the majority of them.
143. It is worth mentioning that, with respect to the recommendations considered not fully implemented, significant legislative steps have been taken in line with GRECO directive.
144. Firstly, by the Legislative Decree n. 38/2017, implementing the Framework Decision of the Council of 22nd of July 2003 on fighting corruption in the private sector, Italy has complied with the principles set forth in the Criminal law Convention on corruption. The bill provides for the introduction of the offence of active and passive bribery in the private sector.
145. In particular, art. 2635 of the Civil Code has been amended in order to include, among the authors of passive corruption, also persons working and exercising executive functions in companies or private entities.
146. The provision now considers that "outsiders" perpetrating acts like offering, promising or giving undue money or advantages to the aforementioned persons shall be held equally liable under criminal law.
147. In addition, a new provision has been introduced – art. 2635 bis – that punishes also the conduct of instigation to bribery among private individuals, both active and passive.
148. Secondly, it has to be mentioned about the bill n. 103 /2017 on a structural reform of the Criminal Procedural Code, also known as Orlando reform, which provides for an extensive reform of the time limitation regime in Italy, also with regard to corruption offenses. More specifically, it has increased the time of limitation period specific for corruption offenses, including the offense of international corruption (art. 322 bis c.c.), up to the level of the maximum sanction plus one half (instead of the current maximum plus one quarter);
149. The adoption of the third-round second compliance report will be discussed during the GRECO Plenary scheduled in June 2018.
150. **PACE** (Parliamentary Assembly of the Council of Europe): the highest representatives of ANAC (President and Councillors), actively participated in, advised and supported the preparation of the PACE report on "*Promoting integrity in governance to tackle political corruption*" (Doc. 14344, 16 June 2017). Additionally, ANAC co-organized and participated in the official presentation of the Report, that was held in Rome (October 2017), during the "Parliamentary seminar on parliamentary integrity promoting transparency and accountability measures for members of parliament", hosted by the Italian Parliament, organised by the Parliamentary Assembly of the Council of Europe for the Parliament of Albania and the Parliament of Bosnia and Herzegovina, with the participation of a parliamentary delegation of Serbia, thanks to the contribution of the OSCE Mission in Serbia.
151. Regarding the European Union context, it should be recalled, above all, the fact that Italy proposed and brought to an adoption the European Union Convention against Corruption of 1997 and has always supported all the initiatives in the field of anti-bribery and antifraud, also promoting the reinforcement of the European Antifraud Office (OLAF).

152. On the most recent initiatives relevant to ANAC, the Agency has: participated in the workshop "Experience sharing workshop on corruption in public procurement at the local and regional level" (Athens, February 24<sup>th</sup> and 25<sup>th</sup> 2016) representing Italy; prepared a Memorandum for the exchange of information with the European Investment Bank; signed a Memorandum for the exchange of information with OLAF (20 April 2016); took part into an event on Corruption Indicators (June 2016).
153. Additional specific activities carried out between ANAC and **EU institutions**:
- e-SENS (Electronic Simple European Networked Services) <2013-2017> <https://www.esens.eu/> : improving, and extending electronic interaction between Citizens and Public administrations
  - H2020 TOOP <http://www.toop.eu/> : The Once Only Principle <2017-2020>: on reducing administrative burden for individuals and businesses by re-organizing public sector internal processes; the project is part of the EU eGovernment Action Plan 2016-2020.
  - ANAC is part of the editorial team for e-CERTIS 2.0 EC portal that specifies the different certificates and attestations requested as evidence in procurement procedures across the 28 Member States, one Candidate Country (Turkey) and the three EEA countries (Iceland, Liechtenstein and Norway), and supports the VCD development.
  - ANAC was involved in the EC EXEP (Experts in Electronic Procurement) workgroup activities, mainly for the development and diffusion of the European Single Procurement Document and of the contract Registries.
  - ANAC is part of the Italian Consortium awarded two CEF e-procurement calls for the development of an infrastructure that supports e-procurement in Italy and at the EU level.
  - During 2017 ANAC participated in the development of EU ISA Core Criterion Core Evidence Vocabulary, intended to support the exchange of information between organizations defining criteria and organizations responding to these criteria by means of evidence.
  - ANAC was involved in the activities of DCAT-AP and Core Public Organization Vocabulary.
154. **World Bank**: Talks for the possible signature of a Memorandum on the promotion of the potential of our Public Procurement Database; Meeting (5 July 2016) for the organization of the visit to Washington (December 5, 2016).
155. **International Monetary Fund**: Preparation of the answers to the questionnaire in preparation for the IMF visit to Italy; IMF Hearing (May 19, 2016)
156. **International Labour Organization**: Drafting (June 2016) of the replies to the questionnaire on the application in Italy of ILO Convention 94-1949 "Work clauses (public contracts)" at the request of the Ministry of Labour.
157. **UNCAC**: Drafting (May 2016) of the document on Italian anti-corruption legislations for UNODC, requested by the Italian Representation at the International Organizations in Vienna.
158. **OSCE** - Italy together with OSCE is implementing a project to create the preconditions for establishing a network of legislative and executive anti-corruption bodies in Bosnia and Herzegovina. 28 on site visits, 5 regional workshops, a study visit to Italy and a state-wide conference on the roles of parliamentary anti-corruption commissions and governments' anti-corruption bodies will be held

following project implementation. Conclusions from the regional workshops will be presented and new commitments will be addressed. Approximately 150 participants will be invited to the event.

159. In the framework of the "Berlin Process", an exercise that represents the will of the European Union to become a point of reference for European integration and for the economic growth of the Western Balkans, ANAC chaired the session of the Trieste summit on anti-corruption, and reported the results to the Summit of the Heads of State. Before the summit ANAC coordinated, together with the Commission, a preparatory seminar by on 12 and 13 June in Trieste, and after the anti-corruption seminar on 12 July, chaired two follow-ups seminars: one in Skopje on 12-13 November and the other in Tirana on 11-12 January 2018.
160. **EPAC/EACN:** In November 2017, a representative of ANAC took part (for the first time) in the European Partners against Corruption (EPAC) and European contact-point network against corruption (EACN) annual conference. The event was an opportunity for ANAC to establish and reinforce a network of contacts and potential partnerships with peer European ACAs and present the preliminary conclusions of the G7 Anti-corruption event (hosted in Rome by the Italian MFA on behalf of Italy – the then G7 Presidency holder – in October 2017).
161. Italy is a member of the Open Government Partnership since 2011 and after having presented and implemented three national actions plans, in 2017 stood for being elected in the OGP Steering Committee and was successfully rewarded by its peer to receive enough support to enter the Steering Committee in October 2017 for a three year mandate.
162. Italy also holds the chairmanship of the OECD Public Governance Committee that deals with matters related to public sector modernization including digitalization, open government policies, and public integrity measures and that recently approved the OECD Recommendation on Open Government in 2017 and on Public Sector Integrity in 2016.
163. An important example of international cooperation is the cooperation between ANAC and OECD to collaborate in developing new methodological knowledge aimed at increasing transparency and integrity in the tender procedures, used for the EXPO 2015. Joint working sessions, on-site visits, public events and two analysis reports have been delivered within the framework of a Memorandum of Understanding signed in October 2014 between the two organizations  
  
(<http://www.anticorruzione.it/portal/public/classic/AttivitaAutorita/ProtocolliIntesa/2014> ).
164. In exercising its role, the OECD has used the analytical frameworks previously developed and linked it to the OECD Recommendation on Public Procurement, namely: the 2009 Guidelines and the 2012 Recommendation for Fighting Bid Rigging in Public Procurement  
  
(<http://www.oecd.org/daf/competition/guidelinesforfightingbidrigginginpublicprocurement.htm> ).
165. The Memorandum of Understanding between the ANAC and the OECD has been conceived as a kind of pilot project that may provide a more general control template for institutional cooperation on the supervision of public contracting procedures and of their subsequent performance; all of this is in accordance with the highest possible standards and leading international best practices.
166. Indeed, just as in the case of EXPO 2015, this project creates a range of rules particularly fit to balance the interest for speedy and complex works with the risk of integrity these may imply.
167. For this reason, within the framework of the Memorandum of Understanding and building on the EXPO Milano 2015 experience, the ANAC and the OECD have drawn more general lessons learned

and principles and suggested them as a possible model for the international community and actors involved in delivering large one-off events (such as universal expositions, sporting, political cultural and other grand events).

168. In a complex context, the strong commitment by the Italian government, the new smart regulation in the fields of transparency and anti-corruption, collaboration from all the institutional players involved in EXPO, the checks carried out by the Italian National Anti-Corruption Authority (ANAC), and the contribution of the OECD's methodological experience allowed the major event to be opened on time and in compliance with integrity in works and services tendering procedures.
169. After the conclusion of EXPO, ANAC and the OECD have issued the "High-level principles for integrity, transparency and effective control of major events and related infrastructures" ([https://www.anticorruzione.it/portal/rest/jcr/repository/collaboration/Digital%20Assets/anacdocs/Attivita/AttivitaInternazionale/High Level Principles Publication.2016.pdf](https://www.anticorruzione.it/portal/rest/jcr/repository/collaboration/Digital%20Assets/anacdocs/Attivita/AttivitaInternazionale/High%20Level%20Principles%20Publication.2016.pdf)).
170. The principles represent a further legacy of the EXPO experience, by outlining a general model of institutional synergies, integrating and collaborating checks to prevent and fight the occurrence of illegality, and guaranteeing that works are completed on schedule. The Principles will be open to subsequent accession, development and integration by various stakeholders from the international community.

*(b) Observations on the implementation of the article*

171. Italy is participating in a large number of relevant international and regional organizations to promote and develop the measures referred to in article 5. These organizations include *inter alia* the G20, G7, OECD, OSCE, Council of Europe, and European Union institutions.
172. It was concluded that Italy has implemented this provision of the Convention.

*(c) Successes and good practices*

173. Italy has developed with the OECD, through its experiences with hosting EXPO 2015, a model to manage large/ad hoc procurements.

## **Article 6. Preventive anti-corruption body or bodies**

### *Paragraph 1 of article 6*

*1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:*

- (a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;*
- (b) Increasing and disseminating knowledge about the prevention of corruption.*

*(a) Summary of information relevant to reviewing the implementation of the article*

***History and Organization***

174. In 2009, an Independent National Commission for Evaluation, Transparency and Integrity (aka **CiVIT**, Commissione indipendente per la valutazione, la trasparenza e l'integrità delle amministrazioni pubbliche) was set up by the Law n. 15/2009 and additionally regulated by the Legislative Decree n. 150/2009.
175. Since its institution in December 2009, CiVIT has been operating in the areas of transparency and integrity to prevent corruption; improvement and enhancement of performance and more in general, quality of services. The Anti-corruption law, n. 190 (approved by the Parliament on October 31st 2012 and entered into force on November 28th 2012), qualifies CiVIT as the Italian Anti-corruption Authority, thus giving authority to execute the article 6 of the United Nations Convention against Corruption (UNCAC).
176. Afterwards, by Law n. 125 (approved by Parliament on October 29th 2013 and entered into force on October 31st 2013), CiVIT was re-named as **ANAC**, the **Autorità Nazionale Anti-Corruzione** (the National Anti-Corruption Authority) for the evaluation and transparency of public entities.
177. The institution was further empowered in the last three years. The law of 24th June 2014, n. 90 (aka on "Urgent measures for the simplification and administrative transparency and for the efficiency of the courts") introduces innovative and impactful measures in the anti-corruption system and within the ANAC activities. According to art. 19 of the decree, the Authority for the Supervision of Public Contracts (in Italian the *Autorità per la vigilanza sui contratti pubblici* or AVCP) was abolished. The tasks and functions carried out by the AVCP were then transferred to ANAC.
178. The integration of the functions of the two institutions into one and the consequent extension of the powers of ANAC have set more effective conditions to oversee contracts and public procurement, which represent a significant part of the corruption phenomenon.

***Functions and Powers***

179. According to the Anti-corruption law, ANAC analyses causes and factors of corruption to point out actions to prevent and fight corruption. ANAC is a prevention body and does not have law enforcement powers.
180. The main functions of ANAC are the following: to adopt the National Anti-corruption Plan; to analyse the causes and factors of corruption and identify measures to prevent it; to monitor the implementation and effectiveness of public entities' anti-corruption plans and the compliance to transparency rules. Regarding these functions, the Law assigns to ANAC inspection powers: the power to enquire, to demand the exhibition of documents, to command the adoption of acts as well as the removal of acts and behaviour contrasting with law and with transparency rules. ANAC also gives optional advices to the state bodies and all the public entities on the compliance of public employees with the code of conduct; defines criteria, guidelines and standard models for the code of conduct regarding specific administrative areas; reports annually to the Parliament on the actions against corruption; and evaluates criminality in public entities and effectiveness of the measures adopted.

181. The decree law n. 90 of 2014 has furthermore introduced the possibility for ANAC to impose a pecuniary sanction against those public entities lacking anti-corruption plan, the transparency program and/or the code of conduct.
182. Moreover, with specific reference to effectiveness of the law, ANAC has the power to control over the implementation and the efficiency of the measures identified in the organizations' plans and over the compliance with obligations of transparency. Hence, ANAC has the power to order a public entity to comply with the anti-corruption and transparency legislation. More exactly, such power has been clarified by the resolution of ANAC (n. 146/2014, See text in Italian at <[http://www.anticorruzione.it/portal/public/classic/AttivitaAutorita/AttiDellAutorita/\\_Atto?id=0c3a66f40a77804267604f703a9b9b98](http://www.anticorruzione.it/portal/public/classic/AttivitaAutorita/AttiDellAutorita/_Atto?id=0c3a66f40a77804267604f703a9b9b98)>), which has given specific indications in case the entities are not complying with ANAC's decision in the field of anti-corruption and transparency. In parallel, ANAC can publish on its website the final decisions on the adoption or removal of those acts or behaviour in contrast with the anti-corruption measures (this is considered a sort of "reputational" sanction).
183. The Authority achieves its goals by mainly fulfilling a regulatory and supervising function, in order to adopt a systematic, harmonized and holistic approach in the field of corruption prevention. In this way, many concerns have been addressed and solved through interpretative resolutions *erga omnes* (of general nature).
184. Concerning transparency (regulated by Legislative Decree n. 33/2013), the Authority can impose pecuniary sanctions for the violation of the obligations on publications of elected offices (Article 14) and related to data on supervised public agencies, publicly controlled private agencies as well as investments in private companies (article 22).
185. In addition, the Authority is tasked with the interpretation of the complex legal framework on "the ineligibility and incompatibility of positions in the public administration", as well as the supervision on the correct enforcement of the legislative discipline.
186. ANAC, in the execution of the anti-corruption inspection powers, can rely on the support and collaboration of the "Guardia di Finanza" (financial police) for investigations and inspections.
187. In order to properly exercise all these powers, the Authority is the receiver of relevant information on corruption and misconduct within the public administration from different actors (for example, it receives complaints from whistleblowers). In prosecuting corruption or similar financial crimes, the public prosecutor must inform ANAC (ex. art. 7, Law of 27 May 2015, n.69). Administrative judge dealing with litigations on public procurement have a similar duty: they must inform ANAC about the facts related to misconducts or violation of transparency rules (art. 32 bis Anti-corruption Law). Finally, even the Prefetto (Prefect - the government local representatives) has to inform ANAC whenever, for anti-mafia reasons, a resolution of "commissariamento" (i.e. replacement of an elected official with a special ad interim "commissioner") is adopted (see below).
188. According to the anti-corruption law, ANAC analyses causes and factors of corruption in order to conceive appropriate actions to prevent and fight corruption. In doing so, ANAC carries out the following activities:
- It cooperates with relevant international organizations and foreign peer agencies;
  - It approves the national anti-corruption plan (prepared by the Department for Public Administration), including the guidelines for the anti-corruption three-year plans of

public entities;

- It analyses causes and factors of corruption and establishes tailor-made actions to prevent and fight corruption;
- It monitors the compliance and effectiveness of public entities' anti-corruption plans and transparency rules;
- It gives optional advice and counselling to the State bodies and national public entities on the authorizations for executive officials to hold external assignments;
- It defines code of conduct criteria, guidelines and standard models for specific administrative areas;
- It verifies that the removal of the Secretary of a local authority, communicated to ANAC by the Prefect, is not connected to corruption.

189. With respect to tender procedures carried out in accordance with the Italian laws on public procurement, the tasks of ANAC are as follows:

- a) to supervise the developments in the execution of public contracts, in cooperation with local monitoring entities (so called Osservatori regionali sui lavori pubblici);
- b) to prepare, develop and guide the implementation of the legislation concerning public contracts and the standard tender documents;
- c) to gather information related to the contract and the tender proceedings;
- d) to compile and publish statistics related to the quantity, price and other elements;
- e) to regulate the principles and the main provisions;

ANAC also reports annually to Parliament

<[https://www.anticorruzione.it/portal/public/classic/Comunicazione/News/\\_news?id=1722f2b50a7780420cad8e2bc693e998](https://www.anticorruzione.it/portal/public/classic/Comunicazione/News/_news?id=1722f2b50a7780420cad8e2bc693e998)> (in Italian).

In this report, ANAC presents its analyses on the prevention activities; on the supervisory measures that it has issued, and on their overall effectiveness in the fight against corruption.

190. ANAC can provide advice on general issues concerning the anti-corruption legislation. ANAC answers only to qualified subjects (such as the manager for prevention of corruption and transparency or the legal representative of the public entity), according to the rules specified in the regulatory act of 20th July 2016.

[http://www.anticorruzione.it/portal/public/classic/AttivitaAutorita/AttiDellAutorita/\\_Atto?id=5b08f05c0a7780422fa38952f488493d](http://www.anticorruzione.it/portal/public/classic/AttivitaAutorita/AttiDellAutorita/_Atto?id=5b08f05c0a7780422fa38952f488493d)

[http://www.anticorruzione.it/portal/public/classic/AttivitaAutorita/AttiDellAutorita/\\_Atto?ca=6635](http://www.anticorruzione.it/portal/public/classic/AttivitaAutorita/AttiDellAutorita/_Atto?ca=6635)

### *Scope of ANAC's Competence*

191. ANAC has no authority over Members of Parliament, Government and Judiciary.

192. As far as the Members of the Government are concerned, the Italian Competition Authority (Autorità Garante della Concorrenza e del Mercato, hereinafter **AGCM**) is competent to apply the

Italian regulations on conflict of interests (Law No. 215 of 20 July 2004).

193. With Law No. 215 of 20 July 2004, the will of Parliament sought to ensure that the decisions of government officials be guided exclusively by the public interest. The point is for the decision-making of the President of the Council and the Ministers and Undersecretaries of State and Special Government Commissioners to be insulated from conflicts of interest, which arise whenever office-holders are also bearers (directly or indirectly) of private interests that could conflict with public interests.
194. The law gives AGCM the power to intervene in case of: a) situations of incompatibility between the office of government and the ownership of other offices, functions, activities, etc.; and b) cases of conflict of interest in the strict sense.
195. As a preventive measure, the law already incorporates a listing of inherent incompatibilities between public positions and other roles. These are public offices, professional activities etc. which cannot coexist with public offices.
196. The incompatibilities can last during the twelve months following the end of the term of office.
197. Situations of incompatibility are checked by AGCM in the immediate aftermath of the appointment and are constantly being monitored, both during and after leaving the office.
198. Conflicts of interests, in the strict sense, primarily concern the so-called case of conflict for impact on the assets which manifests itself whenever government actors omit mandatory actions or shape their decision-making in ways that favour their personal assets or those of their relatives, with detriment of the public interest.
199. Compliance with the rules on conflict of interests is checked by AGCM by monitoring all of the activities of government and particularly the legislative activities.
200. From the point of view of sanctions, the law provides that AGCM can apply a pecuniary sanction against the economic entity that has benefited from the act performed in conflict situations.
201. AGCM submits every six months a report to the Presidents of the two Houses of Parliament.
202. In these reports, the AGCM has on several occasions called for further improvements to the conflict of interest control system and expects that in the course of the new legislature this issue will be dealt with again, as had already been done in the previous one.
203. Below is a summary of the activities carried out by AGCM for the past ten years.

GOV.	PRESIDENT OF THE COUNCIL OF MINISTERS	DECLARATION OF ASSETS		INCOMPATIBILITIES (RESOLVED)		CONFLICT OF INTERESTS (RESOLVED)	
		HOLDERS OF GOVERNMENT OFFICE	RELATIVES	WITHOUT INVESTIGATION PROCEDURE	WITH INVESTIGATION PROCEDURE	WITHOUT INVESTIGATION PROCEDURE	WITH INVESTIGATION PROCEDURE

59°	Berlusconi III	101	525	98	3	4	1
60°	Prodi II	106	495	113	0	0	0
61°	Berlusconi IV	66	317	107	13	20	0
62°	Monti	51	269	187	1	1	0
63°	Letta	69	372	92	1	0	0
64°	Renzi	64	330	66	1	2	0
65°	Gentiloni Silveri	66	318	66	0	1	0

204. As regards, more specifically, Art. 6.1, it stresses that the Competition Authority shall apply the law No. 215/2004 towards members of the Government. Among the provisions contained in law No. 215/2004, the rules on post-office incompatibilities (so-called *pantouflage*) are noted here. The possibility that can be attributed to the holder of Government Office, once ceased from Office, jobs, assignments etc. has, in fact, links particularly evident with the topic of prevention of corruption, since the action of Government could be influenced by concrete prospect of promised or expected benefits in the period immediately following the completion of the government mandate.

#### ***ANAC's Work in the Field of Public Procurement***

205. The merge of ANAC with the Authority of the Supervision of Public contracts gave ANAC staff of 300 persons. The staff is recruited, basically, by open national competition and it is composed mostly of lawyers, engineers, and economists.

206. The new institutional mission, after 2014, has required a deep revision of the organization and an intervention on the activities carried out by the Authority, in order to increase its effectiveness, as well as to obtain a reduction of costs. In this contest the Authority has adopted a Reorganizational Plan sent to the Government for approval at the end of December 2014.

207. The Plan led to the establishment of a new Authority that has integrated the functions and the resources of the previous two and, moreover, that has different and additional powers and tasks. The Plan was approved by the Government in February 2016.

208. As already explained, the Legislator chose to anchor the supervision on public contracts already

performed by the Authority for the Supervision of Public Contracts (AVCP) in the system of corruption prevention outlined by Law No. 190/2012. Therefore, Art. 19 of the decree Law n. 90/2014 settles the suppression of the AVCP, as well as the transfer of its functions and resources to the ANAC.

209. The Code of Public Contracts (Legislative Decree n. 50/2016) identifies (article 213) ANAC as the responsible entity for the supervision and regulation of public contracts to ensure compliance with the principles of transparency, legitimacy and competition of the operators in the public procurement market, in order to prevent corruption. Thus, the whole strategy of corruption prevention is now concentrated in one single institution .
210. The creation of a unique safeguard for the protection of legality in public management comes from the need to control a highly economic and strategic sector, exposed more than any other sector to the risk of penetration by illegality and maladministration.
211. ANAC achieves its goals by mainly fulfilling regulatory activities of the sector, also including an advisory function in order to prevent disputes, and supervising activities, along with inspection and sanctioning powers. These competences are followed by important monitoring activities through the collection of data on tenders and on the companies operating in the sector: for this purpose an Observatory for public contracts operates. These data are made public through the institutional website, in order to increase the transparency of the market.
212. ANAC operates, essentially, at three different levels: a) constant supervising and prompt reporting to the competent authorities of irregularities or illegal situations, through the inspection function, also eventually sanctioning certain behaviours; b) interpretation of the law, also issuing preventive advices (the so-called "pre-litigation") in order to prevent disputes; and c) information gathering and continuous monitoring of the awarding and execution of public contracts.

### ***ANAC's Work on Measuring Corruption***

213. As early as 2014, ANAC started a collaboration with the Territorial Cohesion Agency and the Department for Cohesion Policies of the Presidency of the Council of Ministers, aimed at developing a new methodology for measuring and combating corruption. To this end, using a team of analysis and assessment experts on the subject of legality and transparency with multidisciplinary skills and an inter-institutional group of representatives appointed by the other administrations involved on the issue of combating corruption, ANAC has developed a project on the access to financing through the ESI Funds.
214. The objective is to improve the measurement of the level of diffusion of corruption and of the level of countering to it. To this end, objective and subjective measurement indicators have been drawn up, which will allow to identify the risk of corruption and the level of countering of the same in the sectors of administrative activities (e.g. management of contracts, research funding, town planning and territorial governance, etc.).
215. The data necessary for the calculation of the indicators will be provided by the same administrations involved, extrapolating them from their databases and inserting them in appropriate platforms managed by ANAC.
216. The latter will be designed in such a way to allow free access to information on the risk of corruption and construction of open data catalogues with the indicators produced and the basic

information published, so as to allow individual administrations and citizens themselves to consider the levels of corruption risk related to their activities, enabling planning any corrective and counteractions. In this way, a greater participation of citizens will be guaranteed, as well as the widespread control over the performance of the administrations in terms of combating corruption.

217. Furthermore, the platforms will allow to improve the supervisory levels and the effectiveness of ANAC's action in its areas of intervention.
218. Additionally, in recent years, ANAC has calculated, following specific statistical surveys, numerous “reference prices” of goods and services with the greatest impact on national public expenditure. On the basis of Italian legislation, reference prices are calculated taking into account the conditions of greater efficiency and essentially constitute the maximum award prices in public tenders. Their publication and application enhance transparency and accountability of public administration purchases, thus preventing inefficiency and any corrupt behaviour. The analysis of the efficiency of public contracts, made possible by the numerous information gathered to support this regulatory activity, also allows the development of “price overspending” indices, which signal potential anomalies of public contracts. The development of further indicators concerning the same contracts on the basis of other useful information collected (relating to: the contractors, the territorial context, the dimensional data of the contract, the contractor selection procedure, the use of extensions/renewals) further increases the information contained in price overspending indicators. The combined use of all the indicators, in an organic “red flags” system, considerably strengthens their effectiveness, since their simultaneous analysis makes it possible to identify even more anomalous situations in a more targeted way, especially in cases where the different indices converge same direction, so as to direct the supervisory activity towards potentially more critical situations, in order to verify if the administrative action is really affected by situations of inefficiency and/or even corruption.

### ***Cooperation with the Prosecution Service***

219. Law no. 69/2015 sets forth the obligation for judicial authorities to provide ANAC with information. More precisely the law provides the obligation of the prosecutor to inform ANAC, when exercising the functions of prosecutor, in relation to crimes against public administration, including corruption. The administrative judge has also to forward to ANAC information about infringements of the rules of transparency, within the disputes concerning public contracts.
220. The information provided by the prosecutor represents a valid tool for ANAC, to carry out further investigations on the on-going activities, to carry out new inquiries aiming at preventing and combating corruption and the illegality in public procurement sector, and to ensure compliance with anticorruption plans by public administration.
221. The information provided allows the President of ANAC to promptly intervene through new legal institution named “extraordinary company management, support and monitoring measures” (misura straordinaria di gestione, sostegno e monitoraggio delle imprese) more commonly referred to as “compulsory external administration of public contracts” (commissariamento degli appalti), provided by article 32, paragraph 1, of law decree no. 90/2014; it was intended for application where contracts and concessions had been obtained by illicit, corrupt means (subsection/paragraph 1) or obtained by companies disqualified because of mafia infiltrations (subsection/paragraph 10). In particular, according to art. 32 of the Decree, in the event that the judicial authority processes certain

crimes against the public administration, that is, in presence of detected anomalous situations and nevertheless symptomatic of illegal conducts or criminal events attributable to a company awarded a contract for the construction of public works, services or supplies, the President of ANAC proposes to the competent Prefect, either: to order the renewal of the corporate bodies by replacing the person involved and, if the company does not abide by the terms established, to provide for the extraordinary and temporary management of the contractor only for the full implementation of the contract covered by the criminal proceedings; or to engage in the extraordinary and temporary management of the contracting company limited to the complete execution of the contract subject to criminal proceedings.

222. Pursuant to Article 32 (paragraph 1, of the Decree Law of 24 June 2014, n. 90), the President of the ANAC informs the Public Prosecutor of the presence of "Detected irregular or otherwise symptomatic of illicit conduct or criminal events" which can be attributed to companies referred to in the same art. 32, paragraph 1.
223. In order to allow ANAC to activate its supervision powers (including the procedure referred to in Article 32, paragraph 1, of the Decree Law of 24 June 2014, n. 90), the Public Prosecutor's office transmits a copy of the requests for indictment, accompanied by eventual orders for application of precautionary measures and investigative measures that have supported them, in relation to the crimes in Article 129, paragraph 3, of the implementation, coordination and transitional provisions of the Code of Criminal Procedure (as amended by article 7 of the law of 24 May 2015, n. 69).
224. In all cases where ANAC's preliminary examination and/or inspection activity concerning public contracts or anti-corruption find irregularities relevant to criminal conducts, ANAC transmits it without delay to the Public Prosecutor, communicating the state of the proceedings, the expected completion of the same, and subsequently, its own conclusions in order to allow a timely initiation of investigations.

*(b) Observations on the implementation of the article*

225. As required by this provision, Italy has formed a body, the ANAC, to operate as a regulatory and oversight body for the implementation Anti-Corruption policies (for at least public administration), including the general code of conduct and national Anti-Corruption plan and to oversee other public entities' Anti-Corruption plans.
226. Besides having significant responsibilities in the area of transparency, integrity, anti-corruption plans and the development of supplemental codes of conduct for individual agency/administrations within public administration, following a 2014 restructuring, ANAC has also been given very significant responsibilities for the oversight of public procurement and contracts. ANAC is headed by a collective body whose five members are appointed for fixed, non-renewable terms of office to help ensure independence. ANAC has supervisory and sanctioning powers for those in non-political positions (art. 16 of Legislative Decree No. 39/2013 and Law No. 114/2014).
227. ANAC can apply administrative sanctions to public officials not complying with the obligation of adopting anti-corruption plans or codes of conduct (art. 19, Legislative Decree of 24 June 2014, No. 90). In contrast, ANAC has no competence concerning the validity of politically elected offices.
228. Although other sectors like health care and universities have been studied, ANAC seems to focus very much on the integrity of procurement. This could be a result of ANAC's merger, in 2014, with

the authority for the supervision of public contracts. A large part of the workforce actually comes from that institution. ANAC has no authority over Government (whose integrity regarding conflicts of interest is overseen by the Italian Competition Authority), members of Parliament, and the judiciary.

229. In addition to ANAC, there are other bodies responsible for the implementation of prevention measures. For public administration, these include the Department of Public Administration, the Court of Auditors and the Competition Authority. The Chamber of Deputies has established an Advisory Committee on the Conduct of Deputies to help administer its code of conduct. For the judiciary, which is a unitary system of judges and prosecutors, there is a High Council of the Judiciary whose responsibilities are complemented by the Ministry of Justice through its administrative support for the court system as well as its role in disciplining magistrates.
230. It was concluded that Italy has implemented this provision of the Convention.

### *Paragraph 2 of article 6*

*2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.*

### *(a) Summary of information relevant to reviewing the implementation of the article*

#### **Independence**

231. ANAC is an independent collegiate body. The Anti-Corruption Laws states that ANAC is fully autonomous and independent in its evaluations.

LEGISLATIVE DECREE October 27, 2009, n. 150

Implementation of the law March 4, 2009, n. 15, on the optimization of the productivity of public work and the efficiency and transparency of public administrations

#### **Art. 13**

#### **National Anti- Corruption Authority**

1. (The Commission established pursuant to Article 4, paragraph 2, letter f) of Law No. 15 of March 4th, 2009, and renamed the National Anti-Corruption Authority pursuant to Article 1 of the Law of 6 November 2012, n 190 and Article 19 of Decree-Law of 24 June 2014, No. 90,) operates in a position of independent judgment and evaluation and in full autonomy, in collaboration with the Prime Minister's Office - Department of Public Administration and with the Ministry of Economy and Finance - Department of General Accounting of the State and possibly in conjunction with other public bodies or institutions. 2. By agreement between the Conference of Regions and the Autonomous Provinces, Anci, Upi and ((the Authority)) are defined the protocols of collaboration for the realization of the activities referred to in the

paragraphs 6 and 8.

2. The Authority is a collective body composed of the President and four Members chosen from highly professional experts, even those outside the administration, with proven skills in Italy and abroad, both in the public and private sectors, of notorious independence and proven experience in the fight against corruption. The president and the members are appointed, taking into account the principle of equal gender opportunities, by decree of the President of the Republic, after deliberation of the Council of Ministers, after favourable opinion of the competent parliamentary committees expressed by a majority of two thirds of the members. The president is appointed on the proposal of the Minister for Public Administration and Simplification, in agreement with the Minister of Justice and the Minister of the Interior; the members are appointed on the proposal of the Minister for Public Administration and Simplification. The president and the members of the Authority cannot be chosen from among persons who hold public office or office in political parties or trade union organizations or who have held these positions and positions in the three years preceding the appointment and, in any case, must not have interests of any nature in conflict with the functions of the Authority. The members are appointed for a period of six years and cannot be confirmed in office.

232. ANAC is composed of five members. The Minister for Public Administration select ANAC's members and the competent parliamentary commission must then approve them by a two-thirds majority. The candidates are then approved by the Council of Ministers and officially appointed by the President of the Republic.
233. The President of ANAC is appointed under proposal of the Minister of Public Administration, the Minister of Justice and the Minister of the Interior; the proposal is approved by the competent parliamentary commission by a two-thirds majority. The candidate is then approved by the Council of Ministers and officially appointed by the President of the Republic.
234. This procedure is meant to ensure ANAC's independence from the executive.
235. Members of the board are appointed for six years and for one time only. They cannot perform any professional or advisory activity on their own interest, cannot have governing or other responsibilities in public or private entities, and cannot be elected or take responsibilities in political parties.
236. According to law 266/2005, since 2006, **financial autonomy** as also been recognized to AVCP and then to ANAC, on the basis of a contribution fee charged to operators and contracting authorities who take part in awarding procedure.
237. By law, the Authority must perform the functions "in complete autonomy and with independent judgment and evaluation". So the authority enjoys functional independence, and it is not bound to the directives of the Prime Minister; ANAC is completely excluded from the power of direction and control of the Government (Consiglio di Stato, opinion n. 1081 of 2010).
238. Indeed, the Council of State, in the opinions of the Special Commission, rendered on the Guidelines and Regulations issued by ANAC in implementation of the new Code of Contracts, Legislative Decree No. 50/2016, has clearly highlighted the nature of ANAC's independent authority; in particular, the Council of State has underlined how the power to issue regulations falls within the typical power of the independent authorities in general and those of regulation in particular as a corollary of the attributions recognized to them by law, strictly connected to the element of independence that connotes them, translating into the recognition of the power to directly exercise

the tasks of regulation and control of the sectors to whose protection they are responsible (opinion of September 14, 2016, 1920)

<https://www.giustizia-amministrativa.it/cdsintra/cdsintra/Notiziasingola/Ilcodicedeicontrattipubblici/PareriresidalConsigliodiStato/index.html>.

239. The Council of State in opinion no. 1708/2016 ([https://www.giustizia-amministrativa.it/cdsavvocati/faces/elencoProvvedimentiCollegiali.jsp?adf.ctrl-state=12nmultdgl\\_49](https://www.giustizia-amministrativa.it/cdsavvocati/faces/elencoProvvedimentiCollegiali.jsp?adf.ctrl-state=12nmultdgl_49)) made on the occasion of the adoption of the new role of the National Anti-Corruption Authority, has had a way to clarify how it cannot "doubt that ANAC is in effect an independent authority, given that this qualification now promises directly from the positive order, given the provisions of art. 22 of the d.l. 24 June 2014, n. 90 that expressly inserts the ANAC in the list of independent authorities subject to the rationalization discipline.

### **Members**

240. The independence of the Authority is guaranteed, at the institutional level, first of all by the collegial structure (which is considered to make it less subject to external pressures than the single-monocratic organs), and secondly, by the special procedures for appointing members, in which the power of the Government is decreased and balanced by the participation of the Parliament.
241. The mandate of the Board of the Authority (President and Councillors) is longer than five years (which is the typical term for MPs), in order to emphasize the distance and independence from the parliamentarians and the government which take part in the appointment procedure. The Law does not provide for the terms to be staggered, but actually there is a difference of a few months between the terms of the President and the Board.
242. The President, Mr. Raffaele Cantone, was appointed on 4th April 2014 (see at: [http://www.anticorruzione.it/portal/public/classic/Autorita/Presidente/\\_DecretoPresDellaRepubblica](http://www.anticorruzione.it/portal/public/classic/Autorita/Presidente/_DecretoPresDellaRepubblica)), while the members of the Board (Mr. Michele Corradino, Prof. Francesco Merloni, Prof. Ida Angela Nicotra, Prof. Nicoletta Parisi) have been appointed on 11th July 2014 (see at: <http://www.anticorruzione.it/portal/public/classic/Autorita/Composizione>).
243. The Law does not provide for the possibility of revoking or replacing the President or the Members of the Board during the mandate. This is an important guarantee for the independence of the Authority.
244. However, it is obvious that the President and the members of the Board cannot exercise a professional or consulting activity, be directors or employees of public or private bodies, or cover other public offices of any kind; also, they cannot hold offices in political parties. Article 13, par. 3 of Legislative Decree 150/2009 provides that the President and the board members of the Authority cannot be chosen from among persons who hold public office or office in political parties or trade union organizations or who have held these positions in the three years preceding the appointment and, in any case, must not have interests of any nature in conflict with the functions of the Authority.
245. ANAC has self-regulated the procedure for the case of incompatibility in the Regulation of 3 March 2015 (article 4).

***“Regulation of 3 March 2015 on the functioning of the National Anti-Corruption Authority Board”***

#### ***Art. 4 Incompatibility and termination of the office of the members of the Board***

1. If the President or a Member of the Board of the authority meets one of the causes of incompatibility provided for by the law, the Board, having carried out the appropriate examination and after hearing the interested party, sets a deadline by which s/he can opt (in or out). After this deadline has expired, if the cause of incompatibility has not ceased, or if the person concerned has not submitted his/her resignation, the Board declares its forfeiture. The President informs the competent authorities to initiate the appointment procedure for the substitute. If the incompatibility concerns the President, the same procedure is initiated and continued by the Board.

2. The member under examination does not take part in the meetings in which the resolutions referred to in the preceding paragraph are adopted.

3. Resignation shall be presented to the Board, which shall decide a deadline for irrevocability. Once the resignation is final, the Board promptly informs the competent authorities to start the appointment process.

4. In the event of termination of office of the President or of Member of the Board for reasons other than those referred to in the preceding paragraphs of this article, the Board shall inform the competent authorities to initiate the appointment process.”

246. In addition, ANAC has adopted a specific Code of Conduct for the Board, different from the Code approved for officials and managers of the Authority (see at <http://www.anticorruzione.it/portal/public/classic/AmministrazioneTrasparente/DisposizioniGenerali/AttiGenerali/CodDiscipComportamento>).
247. Article 4 of the Code provides that each year, President and members of the Board submit a declaration of non-existence of the causes of incompatibility provided for by the current legislation between the mandate of a member of the Board and the holding of public elective offices or offices in political parties or trade unions at European, national, regional and local level, the performance of offices of directors or employees of public or private bodies, the assignment of other public offices of any kind, the exercise of any professional activity or consultancy.
248. In accordance to article 7, the President and the members of the Board must declare annually all economic, commercial, professional and consultancy activities carried out, either personally or by the spouse, the cohabitant and the relatives within the second degree, which may cause conflict with the duties relevant to their mandate. In particular, they disclose all interests, capital shares and holdings held in entrepreneurial activities, not purchased on regulated markets.
249. For the application of the provisions contained in this Code, a Committee of Guarantors is established, with advisory and assessment tasks, and carries them out in total autonomy of judgment. The Committee shall be composed of three members chosen by the Board unanimously, including retired magistrates from higher courts, university professors of relevant legal matters, senior management officers in retirement and lawyers with at least twenty-five years of activities.

#### ***Resources***

250. The financial resources of ANAC come from the following sources: transfers from the State, contributions due from Società Organismo Attestazione, collection of penalties, contributions due at the time of filing of the award.

251. Article. 1, paragraphs 65 and 67 of the Law of 23 December 2005, n. 266 governs the financing system of the former AVCP. In particular, paragraph 65 provides that the Authority's operating expenses "... are financed by the relevant market, for the part not covered by financing from the State budget, in accordance with the procedures established by the laws in force and the amount of contributions determined with deliberation ...".
252. Pursuant to the paragraph 67, the Authority "... for the purpose of covering the costs related to its functioning pursuant to paragraph 65, determines annually the amount of the contributions due to it by the public and private subjects subject to its supervision, as well as the related methods of collection, including the obligation to pay the contribution by the economic operators as a condition of admissibility of the offer in the context of the procedures aimed at the construction of public works ..... The Authority for the supervision of works public can also identify which services are payable for consideration, according to rates determined on the basis of the actual cost of the services themselves. The contributions and tariffs provided for in this paragraph are predetermined and public. Any changes in the methods and the measure of the contribution and tariffs, in any case within the maximum limit of 0.4 per cent of the total market value pertaining to the market, may be adopted by the Authority pursuant to paragraph 65".
253. In 2016 the total value of public procurement contracts amounting to € 40,000 or more for the ordinary and special sectors stood at around € 111.5 billion (source report to the Parliament presented to the Chamber of Deputies on July 6, 2017 page 140).
254. The Authority's final financial statements for the year 2016 closed with an administrative surplus of € 88,063,730.82 of which € 9,520,836.15 restricted and € 78,542,894.67 available.
255. Legislative Decree 163/2006 extended the supervision of the suppressed AVCP also to contracts stipulated by the contracting authorities for the supply of goods and services.
256. Article. 19 of the Decree Law of 24 June 2014, n. 90, converted with amendments by the law 11 August 2014, n. 114, with effect from 25 June 2014, has abolished the Authority for the supervision of public works, services and supplies contracts (AVCP) and ordered the transfer of the tasks and functions carried out by the National Anti-corruption Authority (ANAC).
257. Article. 213, paragraph 12, of the Legislative Decree 18 April 2016, n. 50 leaves the self-financing system of the ANAC unchanged, pursuant to art. 1, paragraph 67 of the Law of 23 December 2005, n. 266.
258. Based on the resolution currently in force, they are required to pay the Authority's contribution:
- a) the contracting stations referred to in art. 3, paragraph 1, letter o), of Legislative Decree No. 50/2016, which initiates a procedure for the selection of the contractor for the execution of works or for the acquisition of services and supplies, even if the assignment procedure is carried out abroad, whose bid amount is higher than € 40,000;
  - b) economic operators, as per art. 3, paragraph 1, letter p) of Legislative Decree No. 50/2016 which intend to participate in procedures for the choice of the contractor for amounts exceeding € 150,000 activated by the subjects referred to in letter a);
  - c) the company attestation body referred to in art. 84 of Legislative Decree 50/2016.
259. The Authority is the recipient of a transfer of resources from the State quantified, for the year 2018, in € 5.229.355 and in € 4.268.826 for the years 2019 and 2020.
260. The Authority also collects the penalties issued by the same for the failure to adopt the code of

conduct, for failure to adopt and / or non-updates of the PTPC (“Piano Triennale di Prevenzione della Corruzione” / Triennial Plan of Corruption Prevention) and PTTI (“Programma Triennale per la Trasparenza e l’Integrità” / Triennial Program of Transparency and Integrity) plans, as well as for failure to comply with the procedure for whistleblowing (for this the last sanction still needs to be determined who is the beneficiary of the same).

261. The Arbitration Chamber for public contracts relating to works, services and supplies is established at the Authority (Article 210 Legislative Decree 18 April 2016, No. 50). The award pronounced by the arbitration board on disputes relating to subjective rights, deriving from the execution of public contracts relating to works, services, supplies, is pronounced with the last signature and becomes effective with its deposit with the Arbitration Chamber for contracts public. Within fifteen days of the ruling of the award, an amount equal to one per thousand of the value of the relative dispute shall be paid by the arbitrators and charged to the parties. This amount is directly paid to the ANAC.
262. The financial statements prepared by the Authority are approved by the Council Resolution. The budget is presented to the Council with an opinion given by the auditors. The reviewers are chosen from:
- a) The Chairman within a triad reported by the Ministry of Economy and Finance;
  - b) a Component within a reported three-tier of the Public Function;
  - c) a Component chosen directly by the Board.
263. With the law of 31 December 2009, n. 196 "Law of accounting and public finance", general principles and budgetary layouts have been established to be followed by all public administrations. The Authority is one of the public administrations required to apply the law.
264. The Authority is part of the public administrations referred to in art. 1, paragraph 3, of the law of 31 December 2009, n.196 and subsequent modifications identified by the National Statistical Institute (ISTAT) and inserted in the consolidated income statement for the quantification of the total expenditure for the purposes of achieving the public finance objectives. Therefore the Authority must comply with all the legal references that provide for, in order to comply with Community legislation on the containment of the public debt, reductions or containment of expenditure (e.g. containment of costs for service machines, blocking of salaries, reduction of rents, roof to public wages, etc.).
265. Article. 19, paragraph 3, of the Decree Law of 24 June 2014, n. 90 converted with amendments from L. 11 August 2014, n. 114, also provided that following the abolition of the Supervisory Authority on public contracts for works, services and supplies and the simultaneous transfer of tasks and functions performed to the National Anti-Corruption Authority, operating expenses had to be reduced by 20%.
266. With the reorganization, a reduction in operating expenses of over € 11.2 million had to be guaranteed.
267. The law 1 December 2016, n. 225, of conversion of the Decree 193/2016 "Provisions on tax matters and for the financing of indifferent needs" has relaxed the restriction on the containment of the Authority's operating expenses through the introduction of art. 7-ter "Exemption of the National Anti-Corruption Authority from the restriction on operating expenses reduction" which reads "From the date of entry into force of the law converting this decree, does not apply, within the limit of 1 million euros for the year 2016 and 10 million euros a year from the year 2017, for the National Anti-

Corruption Authority, the restriction on the reduction of operating expenses referred to in Article 19, paragraph 3, letter c), of the decree-law of 24 June 2014, n. 90, converted, with amendments, by law 11 August 2014, n. 114”.

*(b) Observations on the implementation of the article*

268. The National Anti-corruption Authority (ANAC) is an independent collegiate body. The Anti-Corruption Law states that ANAC is fully autonomous and independent in its evaluations.
269. A number of mechanisms are in place to ensure the independence of the ANAC. These include the appointment and tenure of the members, who are appointed for six-year terms (one year longer than the parliamentary elections), and a separate source of non-appropriated funding through the levying of a service charge in the public procurement process.
270. It was noted that the appointment of the five members of ANAC is not staggered, so the whole Board resigns at the same time (or with a few months' difference). This seems unfortunate as it entails a complete loss of the experience and institutional memory of the outgoing board.
271. Therefore, it was **recommended** that Italy consider possible advantages of staggering the appointment of the ANAC college members to avoid the complete replacement of the Board every six years.

*(c) Successes and good practices*

272. The separate source of non-appropriated funding for ANAC through the levying of a service charge in the public procurement process.

*Paragraph 3 of article 6*

3. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.

*(a) Summary of information relevant to reviewing the implementation of the article*

273. Italy communicated the following information to UNODC, which is accessible in UNODC's Online Directory of Competent National Authorities under the United Nations Convention Against Corruption:

Type	Prevention Authority		
Name of authority	National AntiCorruption Authority – A.N.AC		
Postal address	Via Minghetti No. 10	City	Rome
Zip code	00187	Country	Italy
Telephone		Fax	
Email		Website	www.anticorruzione.it

Office hours	From 08:00 to 19:00	Timezone	+1
Languages	Italian, English		

*(b) Observations on the implementation of the article*

274. It was concluded that Italy has complied with this provision of the Convention.

## Article 7. Public sector

### *Paragraph 1 of article 7*

*1. Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials:*

*(a) That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;*

*(b) That include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;*

*(c) That promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;*

*(d) That promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions. Such programmes may make reference to codes or standards of conduct in applicable areas.*

### *(a) Summary of information relevant to reviewing the implementation of the article*

275. Italy has developed systems for the recruitment, hiring, retention and promotion of civil servants, which will be outlined in the answers that follow.

#### **Subpara. (a)**

276. In relation to subparagraph 1 (a), the Italian system of recruitment of civil servants is ruled by article 97 of the Constitution, which provides that employment contracts with the public administration may be granted only upon completing a public competition, except cases established by law. This principle is confirmed by Legislative Decree n. 165 and, namely, by article 35, where it is envisaged that recruitment in public entities is carried out with an individual contract of employment:

a. through selective procedures in order to assess the required professional skills, and which

ensure adequate access for external candidates;

b. by appointing people enlisted in rankings for lower profiles.

277. Recruitment procedures in public entities must ensure adequate transparency and impartiality of selections, as well as objective and transparent mechanisms to verify the fulfilment of the requirements to respective positions. To this purpose, it is foreseen that examination boards are composed exclusively of experts with acknowledged competencies on the subjects of the examination.
278. With reference to senior management, all senior civil servants are enlisted in sections for every national administration, subdivided in subsection for top managers and middle managers. For local governments and local authorities, senior management is regulated according to their own regulations in accordance with the general principles established by national law.
279. Middle managers are selected through specific and focused public competition or through a fast programme called “corso-concorso”, whereas for senior managers there are two main channels: on one hand, the possibility to run a public competition for as many as 50% of available positions (art. 28 bis Legislative Decree 165/2001), on the other hand, middle managers may be appointed to senior positions and after five years gain the formal rank. There is also a channel of external appointments thanks to which external professional can be hired with fixed-term contracts with particular and proven skills and qualifications, which cannot be found within the human resources of the administration. In any case these external appointments may be made only within a given percentage limit (i.e. between 8% and 10% of the whole amount of managerial positions).
280. The **appointment of managerial positions** is carried out by decree of the President of the Council of Ministers or of the political body responsible for the public entity on the basis of a motivated proposal which identifies the best candidate, the objectives to be achieved and the duration of the mandate. The appointment decision is formalized by an individual contract of employment. Every appointment of senior civil servants is subject to administrative and accounting controls run by audit services.
281. Generally speaking, every appointment within central public administrations consists of a decree issued by the political body (whether it is appointed a top public manager) or by the director who is in charge of the administrative structure - directorate/department (whether it is a single unit/office within the directorate/department). Before becoming fully effective, these decrees are sent to internal accounting services (so-called Uffici centrali di bilancio) for financial controls (to make sure that there is budget coverage) and to an external judicial body (the Court of Auditors or “Corte dei Conti”) to ensure that the decree is compliant with law provisions. Without their approval, the appointment will not have any effect. Both of them may ask the administration for clarifications with regard to any relevant aspect, and there will be a chance of dialogue between these bodies and administration before reaching the final decision. Only after the positive check carried out by these bodies the public manager will be effectively in charge of the office and will be able to issue any kind of administrative act.
282. In order to ensure transparency and impartiality of recruitment procedures, rules have been issued (see Legislative Decree n. 33/2013) which clarify all the phases of the procedure, from the publication of the notice of competition, to the appointment of the selection board, the assessment criteria and the final hiring.
283. In order to foster awareness of public competitions among all citizens, adequate advertising of

the selection is required, including through the publication of the notice in the Official Gazette of the Italian Republic.

284. The candidates who take part in the competition procedure are generally entitled to file a complaint in front of an Administrative Court, while every civil servant can file a complaint against any decision pertaining his position in front of a labour judge.
285. The judicial review is ensured by labour judges in the course of a special procedure that, on one hand, is fully the same as for private workers, on the other hand is quicker than for ordinary cases not labour-related. Complaints may refer to salaries, appointments, change of offices or of duties, disciplinary punishment, more generally may pertain to any aspect related to the job of the civil servant. Civil servants, then, file their complaints individually with the necessary assistance of an attorney in front of Labour court. Subsequently, this complaint, together with appropriate reply by the employer administration, is discussed in an initial oral hearing during which the judge may ask for evidence collection or further inquiries. Otherwise, on the basis of written and oral notes and replies the judge issues his final ruling. It must be said that against first degree ruling the parties might file for appeal and eventually recourse to the Supreme Court.
286. It must be noted that according with art. 63 Legislative Decree 165/2001 any complaint regarding public competitions (necessary to become civil servant) and labour issues regarding special careers like police officers, diplomats, judges are exclusively reserved to the jurisdiction of administrative judges.
287. With reference to the retention and promotion measures taken by Italian Public administration it must be noted that the general legal framework of civil servants provides that any public administration is responsible for arranging for appropriate training for their employees in view of the development of careers (art. 7 Legislative Decree 165/2001). Access to training is granted upon request and after an objective assessment of the needs of the employee and of the service of the employee. The National School of Administration (Scuola Nazionale d'Amministrazione - SNA) is in charge of the national programme for training of civil servants.
288. Furthermore, career development is handled through internal competitive procedures, except for positions that are necessarily assigned upon general public competition. The internal procedures are generally based on performance assessment, professional experience, seniority and education, thus ensuring impartial and objective criteria of promotion.
289. Since 2009, Italy has also launched and developed a large reform for the introduction of **performance appraisal** within the public administration. The legal framework (Legislative Decree 150/2009) was recently undergoing an important revision thanks to an upcoming Legislative Decree that is supposed to enhance the system of performance measurement, at individual and organizational level, as well as the relevance of performance-related salary, acknowledging growing importance to this matter as a decisive tool to improve the civil service effectiveness and attractiveness.
290. Legislative Decree 150/2009 has been recently reformed by Legislative Decree 74/2017 which introduces changes in the performance appraisal system of public administration. First and foremost, the performance cycle has been further integrated with the budget cycle. Then, a step has been taken in the process of “professionalising” OIVs (independent body for performance assessment): these special bodies are compulsory in every central public administration and have to be appointed within an official list held by the Department of Public Administration. These bodies have the task to ensure the correct implementation of the performance management cycle and focus their attention on the

better use of management instruments in the administration. Moreover, professional trainings are compulsory along with the network of OIVs in order to spread best practices. As to the performance appraisal criteria, individual performance dimension will continue to be referred to both individual goals and behaviours, while greater emphasis will be put on organizational results.

291. With reference to **retirement**, it must be said that the statutory law provides a binding legal framework according to which civil servants may file for formal retirement either when they reach an age ceiling (that is nowadays set at 67 years on average) or after a certain amount of years of contribution (on average 42 years). A recent special provision, the law of 29 March 2019, n. 75, introduced the “*Quota 100*” system which allows early retirement to all those who have at least 38 years of contributions with a minimum age of 62 years.
292. In relation to subparagraph 1 (a), it must be drawn attention to the successful experience of special programmes for young public managers, on the wake of the best practice of French ENA: the National School of Administration has held so far six rounds of selection and training that have enrolled hundreds of talented young public managers (see more at <<http://sna.gov.it/it/cosa-offriamo/corso-concorso/>>).

**Subpara. (b)**

293. In relation to subparagraph 1 (b), the Anti-corruption Law (Law n. 190/2012) identifies four types of proceedings considered especially vulnerable to corruption:
- a) authorization or concession;
  - b) choice of the contractor for the assignment of works, supplies and services, in accordance with the public tender law issued in compliance with EU regulations;
  - c) granting and disbursement of subsidies, grants, subsidies, financial aids and the attribution of economic benefits of any kind to public and private persons and entities;
  - d) selective competitions and tests for staff recruitment and career progression.
294. Positions related to these areas are the ones that receive greater attention both in the selection of subjects to whom assignments must be endowed with specific professionalism and experience, and on the ways in which they are to be carried out to ensure maximum transparency of all stages of the procedure. To this end, it is established that public entities define appropriate procedures to select and train, in cooperation with the National School of Administration (SNA), employees delegated to operate in these sectors as well as staff **rotation** on the basis of the criteria established by Anti-Corruption Authority.
- (to this regard see:  
<[http://www.anticorruzione.it/portal/public/classic/AttivitaAutorita/AttiDellAutorita/\\_Atto?ca=6550](http://www.anticorruzione.it/portal/public/classic/AttivitaAutorita/AttiDellAutorita/_Atto?ca=6550)> at page 26)
295. The Anti-corruption Law introduces the staff rotation among the measures to prevent corruption. It concerns all the civil servants, managers and officials who operate in proceedings and areas considered especially vulnerable to risk (art. 1, co. 5, lett. b)).
296. The same law assigns to ANAC the function to define criteria that the administrations have to follow to implement the measures (art. 1, co. 4, lett. e)).
297. ANAC therefore in the 2016 PNA strengthened the system of staff rotation and clarified that the

rotation can be applied not only in the proceedings recalled in the § 136 but in any areas and proceedings identified by each administration as particularly exposed to corruption on the basis of a risk assessment.

298. The main criteria proposed by ANAC are, with due regard to the size, the structure and the staffing of the administration: 1) the implementation of the measures should be gradual, in order to mitigate the possible slowdown in activity; 2) the administration has to establish the frequency with which to implement the rotation; 3) it is important to distinguish, if it is possible, between the territorial rotation (moving staff among different structures in different territorial areas. It could be possible in big administrations, like Ministry with decentralized levels) and the functional rotation (move staff within the same organizational unity without territorial moves).
299. Like the other preventive measures, the implementation of the staff rotation is decided autonomously by each administration.
300. Bearing in mind the effect of the rotation on the whole organizational structure, ANAC recommended the administrations to adequately program the application of the measure to describe it in the Triennial Plan of Prevention of the Corruption (PTPC). Each administration chooses the offices to submit to rotation, first of all those more vulnerable to the corruptive risk, and indicates how to implement the measures.
301. Administrations are also called to point out in the PTPC: a) the provisions for monitoring the staff rotation by the Manager responsible for the prevention of the corruption; and b) how to coordinate rotation and civil servants' training.
302. ANAC also clarified that if it is not possible to implement rotation - for example, for the small size of the administration or for the absence of skilled employees - the administrations shall adequately explain in the PTPC the reasons for the non-application of the measures on rotation and have, in any case, to adopt alternative preventive measures in order to obtain the same results of staff rotation, to start from transparency and "segregation of functions".
303. It is noteworthy to recall that the Legislative Decree 39/2013 represents a full body of provisions to prevent conflict of interests of people appointed in managerial positions.
304. In relation to subparagraph 1 (b), measures for civil servant positions or public sectors considered to be especially vulnerable to corruption can be found in the National Anti-corruption Prevention Plan (updated on a yearly basis: see more at: [http://www.anticorruzione.it/portal/public/classic/AttivitaAutorita/AttiDellAutorita/\\_Atto?ca=6550](http://www.anticorruzione.it/portal/public/classic/AttivitaAutorita/AttiDellAutorita/_Atto?ca=6550)) and in the report to the Parliament of the National anti-corruption authority (see more at <https://www.anticorruzione.it/portal/public/classic/AttivitaAutorita/Pubblicazioni/RelazioneParlamento> >).

#### ***Subpara. (c)***

305. In relation to subparagraph 1 (c), the Department of Public Administration verifies that the organizational models adopted by public authorities:
- pursue the aim of downsizing the cost of public labour and enhance efficiency;
  - are consistent with workforce planning and financial programming documents in order to pursue the best employment of civil servants;

- ensure integrated controls on public expenditure for public labour thanks to the interconnection with the Ministry of Economics and Finance.

306. Public employment legal framework is ruled by several bodies of provisions: the Constitution, the Civil Code, the collective agreement and the individual contract. The National Collective Employment Contract forms the basis for determining the pay scale for civil servants, which is bargained at the national level between the Agency tasked for negotiating on behalf of the Government (Agenzia Rappresentanza Negoziabile Pubbliche Amministrazioni - ARAN) and labour union organizations, and regulates the industrial relations system at national, regional and corporate level, except for special categories of civil servants that are ruled by specific provisions (e.g. police forces, judges, etc). According to an agreement between the Government and the Unions, future pay scales for civil servants might be linked to the consumer price index (indice dei prezzi al consumo armonizzato - IPCA).
307. For senior civil servants, monthly salary is expected to reward all the functions and duties performed by the manager. For non-executive staff, pay scale is divided in pay range for each professional profile. Performance bonuses are additional to basic salary and are granted on the basis of appraisal systems.
308. It is worth noting that an overarching reduction of pay scale has been accomplished recently (through the Legislative Decree 201/2011 and decree-law 66/2014) so that there is a general limit for civil servants remuneration set at € 240,000 per year: special instructions have been undertaken to ensure full compliance to this new regulation.
309. In relation to subparagraph 1 (c), official statistics on the matter of remuneration of civil servants are issued twice a year by ARAN (can be found at :  
<http://www.aranagenzia.it/statistiche-e-pubblicazioni/rapporti-sulle-retribuzioni.html>).

***Subpara. (d)***

310. Legislative Decree n. 150/2009 governs the process of evaluating the performance of civil servants, managers and non-managers in Italy.
311. The individual assessment aims to enhance the contribution of the officer to the achievements of the organization, depending on: the rate of objectives achieved, and in terms of quantity-quality of services performed, to both internal and external users.
312. The individual assessment takes into account two essential components: 1. extent to which objectives have been achieved; and 2. behaviour and skills demonstrated in the pursuit of those goals.
313. The two components have a different impact on the overall evaluation depending on whether the evaluated role is managerial or not. As for the latter, the individual assessment is more closely linked to the extent to which objectives of the organization have been achieved. Among the goals envisaged for managers, mention must be made of the ones related to the adoption of appropriate measures to combat corruption.
314. Accordingly, the evaluation outcome impacts on: the delivery of performance-related bonuses; the allocation of management positions; and the career advancement.
315. Legislative Decree 150/2009 has been recently reformed by Legislative Decree 74/2017 which introduces changes in the performance appraisal system of public administration (see under (a)).

316. The National School of Administration (SNA) is the institution for the education and training of public officials; inter alia, it provides the staff with appropriate training to enhance the awareness of the risk of corruption inherent in the performance of their functions.
317. In 2015 the school has provided 85 training courses on anti-corruption, for a total of 1351 hours and 2653 participants. In 2016 the training courses have increased: the school has provided 123 courses, for a total of 1641 hours and 4538 participants.
318. Law no. 190/2012 requires that central public administrations define and transmit to the Department of Public Service appropriate procedures, in collaboration with the Public Administration Secondary School, for selecting and training employees assigned to work in sectors particularly exposed to corruption (art. 1, paragraph 5, lett. b) and that the manager for corruption prevention and transparency identifies the staff to be included in the training programmes given by the same School (art. 1, co. 10, lett. c).
319. ANAC has also signed an agreement with the National Agency for Regional Health Services (AGENAS) for the training of employees of the National Health Services on the topics of ethics and lawfulness.
320. Law 190 of 2012 assigns SNA (first called High School of Public Administration and then SNA - National School of Administration), as the sole subject appointed to state public education, pursuant to Article 21 of Decree Law No. 90/2014 converted into Law No.114/2014, which abolished the schools of the Ministries of the Interior, Defense, Foreign Affairs and Economics and Finance (and the related functions were transferred to the SNA), the role of referent for the anti-corruption training of employees of public administrations.

L. 06/11/2012, n. 190

Provisions for the prevention and repression of corruption and illegality in the public administration.

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Art. 1 Comma 11.

The Higher School of Public Administration, without new or greater burdens for public finance and using the human, instrumental and financial resources available under current legislation, prepares courses, also specific and sectoral, of training of employees of public administrations on the issues of ethics and legality. On a regular basis and in agreement with the administrations, the Higher School of Public Administration provides training for public employees in the sectors where the corruption risk is high.

321. Law 190/2012 provides for the drafting of the National Anti-Corruption Plan (hereinafter also PNA), modalities through which public administrations are provided with guidelines along with prescriptive indications related to the implementation of strategies for the prevention of corruption and in particular for the drafting of the Triennial Corruption Prevention Programs (now Triennial Corruption Prevention and Transparency Plans, hereinafter also PTPCT). In the PNA, the indications given in the standard are provided, indications to the central public administrations in the field of training and the public subjects to be appealed. Below is an excerpt from the provisions of the PNA

"... based on the provisions of paragraph 5, lett. b) of the art. 1, of the l. n. 190 the central administrations must define "appropriate procedures to select and train, in collaboration with the Higher School of Public Administration, the employees called to work in sectors particularly

exposed to corruption; the paragraph 11 of the same article in parallel places on the aforementioned School the obligation to prepare training courses on ethics and legality addressed to employees and to provide periodically, in agreement with the administrations themselves, to the specific training of employees who must be identified by the person in charge of prevention, among those who work in areas at risk of corruption; therefore, central administrations must undertake appropriate initiatives to achieve with the S.N.A. adequate training paths; the coordination of the individual initiatives, including the regulation of the flow of information, is assumed by the S.N.A .... "

322. The SNA organizes and delivers, either in standard classroom mode, e-learning or blended, catalogue for all public employees or on agreement with individual administrations in compliance with the provisions contained in the related PTPCT, training courses in prevention of corruption and of new obligations imposed on public administrations.

323. Training programs specifically dedicated to the implementation of the corruption prevention system to promote the integrity of public employees and the application of the code of conduct legislation.

324. In order to make the educational offer as appropriate and coherent as possible with the specific needs of the administrations, the training courses are subdivided into four sub-groups:

- a) Anti-corruption and Risk Management Area
- b) Ethics, codes of behaviour, whistleblowing
- c) Public Contracting Area
- d) Ethics and anti-corruption modules included in the initial training courses (management competition course, legation secretaries, prefecture advisers) or compulsory (vice-prefects, legation counsellors).

A. Anti-corruption and Risk Management Area

- 1. Draw up the corruption prevention plan (7 days a year for a total of 42 hours of training for each edition).
- 2. The function of the Managers and Referrals of the anti-corruption (4 days per edition for a total of 24 hours of training for each edition) that is proposed in two different levels of detail, defined as "basic" and "advanced".
- 3. The planning and implementation of the training action as a prevention measure (2 days per edition for a total of 12 hours of training for each edition).
- 4. Prevention of corruption in public administrations "(2 days per edition for a total of 12 hours of training for each edition).

B. Ethics area, codes of behaviour, whistleblowing

- 1. Ethics, codes of conduct and disciplinary procedures in the privatized public service "(2 days per edition for a total of 10 hours of training for each edition).

2. Whistleblowing (1 day per edition for a total of 6 hours of training for each edition).
- C. Public Contract Area
1. Certificate of expert in public procurement SNA-ANAC (20 days per edition of 6 hours each for a total of 120 hours of edition training).
  2. The new code of public contracts (6 days per edition for a total of 36 hours of training for each edition).
  3. Management of the commissioned enterprises (Courses scheduled for prefectural staff).

*(b) Observations on the implementation of the article*

325. Italy has a number of provisions applicable to the recruitment, hiring, retention, promotion and retirement of civil servants, which depend upon the level and type of position held.
326. Public employment in Italy is governed by several legal texts: the Constitution, the Civil Code, collective bargaining agreements and the individual contract. The Italian Constitution requires that most positions in the public service be filled through a public competition. The process to be followed in a competition is established by law and implementing procedures that include publication of the notice of competition, the appointment of a selection board, the assessment of each applicant against objective criteria (including enhanced criteria for those positions considered especially vulnerable to corruption) and issuing final hiring decisions.
327. Promotions, except those that must be filled by competition, are based on internal procedures involving a performance assessment, professional experience, seniority and education. Prior to the final hiring decision becoming effective, every appointment of senior and middle managers within central public administrations must be reviewed and approved by internal accounting offices (concerning financial aspects) and by the Court of Auditors (concerning legitimacy). Qualifications for retirement are established by law and are generally based on age and/or length of service requirements. Candidates who take part in a competition are generally entitled to file a complaint before an administrative court, while every civil servant can file a complaint against any decision regarding his/her position before a labour judge. Retirement qualifications are generally based on age and/or length of service.
328. The National Collective Employment Contract forms the basis for the pay scale for civil servants; this is established through negotiations between an agency representing the Government and the labour union organizations.
329. Each public agency/administration is responsible for arranging appropriate integrity training for their employees based on an assessment of the employee's developmental and career needs. The National School of Administration (SNA) is in charge of the national program for training for civil servants. Specialized training is available for those individuals in positions deemed more at risk of corruption. There appears to be no general initial or refresher training for all public officials on the contents of the codes of conduct or provisions governing conduct in their collective agreements although the codes are provided to them. Officials in more at-risk positions do receive more training.
330. Regarding the training on the codes of conduct, please refer to the recommendation made under paragraph 2 of article 8.

### *Paragraph 2 of article 7*

2. Each State Party shall also consider adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to prescribe criteria concerning candidature for and election to public office.

#### *(a) Summary of information relevant to reviewing the implementation of the article*

331. Articles 65 and 122 of the Italian Constitution govern ineligibility and incompatibility: the former article for the determination of Parliament ineligibility and incompatibility; the latter article for the determination of fundamental principles on ineligibility and incompatibility at a regional level for government and representative offices.
332. The legal provisions above affect the right to stand for elections, generally guaranteed under article 51 of the Constitution and included by the Constitutional Court in the sphere of inviolable rights under article 2 of the Constitution.
333. As regards the entitlement to vote, article 48, fourth paragraph - defining the negative requirements of the right to vote - refers to the law when determining the cases of limitation of such right.

### ***Ineligibility, incompatibility and disqualification of the members of National Parliament***

#### ***Ineligibility***

334. Any Italian citizen holding the right to vote can be elected as member of the Chamber of Deputies and of the Senate, provided that such citizen is at least 25 and 40 years old, respectively (Constitution, article 56, third paragraph, and article 58, second paragraph). The loss of the right to vote produces - as a direct consequence - the loss of the right to stand for elections.
335. The causes of ineligibility as Members of the Chamber of Deputies and Senate are regulated under Presidential Decree 361/1957, containing the Consolidated Law for the election to the Chamber of Deputies, also applying to the election to the Senate by virtue of the reference contained in article 5 of Legislative Decree no. 533 dated 20th December 1993, Consolidated Law governing the election to the Italian Senate.
336. Ineligibility as Members of the Chamber of Deputies and Senate concerns: Presidents of Provincial Councils, Mayors of municipalities with a population exceeding 20,000 inhabitants, Chief and Vice-Chief of Police, and the Inspectors General of public security, heads of the Cabinet of Ministers, Government Commissioners of the Regions, Prefects, Vice-Prefects and Public security officers (Presidential Decree 361/1957, article 7, first paragraph) and general officers, admirals and officers of the Armed Forces in the constituencies of their territorial Command (Legislative Decree 66/2010, article 1485).
337. The ineligibility causes above shall not be effective in case the exercise of the relevant functions was terminated at least 180 days before the date of parliamentary term (Presidential Decree 361/1957, article 7, second paragraph). In case of early termination of parliamentary term by over 120 days, ineligibility shall not be effective in case the functions above were terminated within 7 days following

the date of publication of Parliament dissolution in the Official Journal (Presidential Decree 361/1957, article 7).

338. The acceptance of candidature as members of the Chamber of Deputies or Senate entails, in any case - for the Presidents of Provinces and the Mayors of municipalities with a population exceeding 20,000 inhabitants - the loss of the elective offices held (Presidential Decree 361/1957, article 7, fifth paragraph; Legislative Decree 267/2000, article 62).
339. According to article 53 of the Consolidated Law on local authorities under Presidential Decree 267/2000, the resignation by mayors or presidents of provinces becomes effective and irrevocable after 20 days as from the date of submission to the relevant council. In such case, the council is dissolved and a commissioner is appointed.
340. According to article 53 above, in case of permanent impediment, removal, lapse or death of mayors or presidents of provinces, the council ends its term and is dissolved. Councils remain in office until new councils, mayors and presidents of provinces are elected. Until the elections above, the offices of mayors and presidents of provinces are held by vice-mayors and the vice-presidents, respectively.
341. Vice-mayors and vice-presidents replace mayors and presidents of provinces in case of temporary impediment or absence.
342. The dissolution of municipal or provincial councils determines in any case the revocation of mayors and presidents of provinces, as well as of their local executive committees.
343. A specific case of ineligibility concerns magistrates in the constituencies entirely or partly under the jurisdiction of the offices they held in the six months preceding the date of acceptance of candidature. Ineligibility also applies in case of early dissolution of the Parliament and by-elections. In any case, in order to stand for election, magistrates shall be on personal leave at the moment of accepting their candidacy (Presidential Decree 361/1957, article 8).
344. A second set of ineligibility causes concerns those individuals that have relations with foreign Governments: diplomats, consuls, vice-consuls, embassy attachés, foreign legations and consulates, living both in Italy and abroad, as well as all those who, although maintaining the Italian citizenship, are employed by foreign Governments (Presidential Decree 361/1957, article 9).
345. A third set of ineligibility causes concerns those individuals having particular economic or business relations with the State: the subjects being either owners or legal representatives of companies being awarded contracts or contributions, administrative authorisations or concessions with a high economic value; the representatives, directors and managers of private companies receiving continuous subsidies from the State; company legal and administrative consultants (Presidential Decree 361/1957, article 10).
346. Ineligibility also applies to constitutional judges (Law 87/1953, article 7, fifth paragraph).
347. Law 175/2010 introduced a new case of ineligibility to any elective offices, linked to the breach of the prohibition to carry out electioneering involving individuals subject to preventive measures.

### ***Incompatibility***

348. A set of incompatibility between a parliamentary mandate and other offices is directly defined by the Constitution or by constitutional laws: incompatibility between the office of Member of the

Chamber of Deputies and Member of the Senate (Constitution, article 65, second paragraph), between President of the Republic and any other office (Constitution, article 84, second paragraph), between Member of Parliament and member of the High Council of the Judiciary (Constitution, article 104, last paragraph), between Member of Parliament and Regional Councillor or Executive (Constitution, article 122, second paragraph), between Member of Parliament and Judge of the Constitutional Court (Constitution, article 135, sixth paragraph).

349. Article 65, first paragraph, of the Constitution, states that the Law shall determine any other causes of incompatibility.
350. General provisions on this matter were set out by Law no. 60 of 13 February 1953, providing for incompatibility between parliamentary offices and Government or State Administration offices, positions in associations or authorities managing services on behalf of the public administration, or receiving public funds, positions in joint-stock companies with a prevailing financial activity. Subsequent specific legislative provisions clarified and confirmed such general incompatibility criteria for some specific offices.
351. Furthermore, any office as member of the Chamber of Deputies or Senate, or member of the Government, is incompatible with the office of member of legislative assemblies or executive bodies, both national and regional, in Foreign Countries (Law 60/1953, article 1-bis, as added by article 10, Law 459/2001).
352. The overlapping of parliamentary mandate with other offices is also prohibited under specific provisions contained in ordinary laws, including Law no. 78 of 27 March 2004, stating the incompatibility between the office of Member of the European Parliament and the office of Member of the Chamber of Deputies and Senate.
353. The Decree-Law no. 138 of 13 August 2011 (converted into Law no. 148 of 14 September 2011), article 13, paragraph 3, also provides for the incompatibility between the office of member of the Chamber of Deputies and of the Senate, as well as Government offices, with any other public-elected monocratic office for territorial governing bodies of public authorities having, on the date of appointment or in which elections are announced, a population exceeding 15,000 inhabitants.
354. In the end, a set of incompatibility causes was introduced by Legislative Decree no. 39 of 2013, enacted in the scope of implementation of one of the delegated laws under the anticorruption law (Law no. 190 of 2012).
355. In particular, the incompatibility between the office as Member of Parliament and the following offices is set out for:
- Top administrative offices (secretary general, head of department, director general, and similar ones) in state, regional and local administrations, as well as managerial offices in national, regional and local public authorities (article 11, paragraph 1)
  - Managerial offices in public administrations, public authorities, and in private organisations under public control (article 12, paragraph 2)
  - Chairman and Chief Executive Officer of national, regional and local private organizations under public control (article 13, paragraph 1)
  - Director General, medical director and administrative director in Local Health Authorities (article 14, paragraph 1).
356. The Members of Parliament shall notify the President of their relevant Chamber any offices held

with a view to assessing eventual causes of incompatibility. In case of incompatibility, a Member of Parliament shall choose between the parliamentary mandate and the office deemed incompatible.

### ***Disqualification (“incandidabilità”)***

357. A series of disqualifications are set out in the regulations in force, applying to electoral candidacy as members of parliament.
358. In particular, legislative decree no. 235 of 31 December 2012 includes the Consolidated Law on disqualification and prohibition to hold elective and Government offices following final judgements of conviction for certain offences.
359. This provision was enforced by the Government under the delegated power set out in article 1 of Law no. 190 dated 6 November 2012; among its guiding principles, this law sets out the temporary disqualification of those convicted for some specific offences, being understood the provisions of the criminal code on the permanent disqualification from holding public offices.
360. The text provides for the disqualification from the Chamber of Deputies and the Senate, besides stating that those who were convicted through a final judgment, also in case of application of penalties upon request of the parties (the so-called plea bargaining procedure) under article 444 et seq. of the code of criminal procedure, for three classes of final judgments relating to non-culpable, perpetrated or attempted offences, shall not - in any - case stand for election.
361. The first category concerns prison sentences exceeding 2 years for the offences under article 51, paragraphs 3-bis and 3-quater of the Code of Criminal Procedure.
362. Paragraph 3-bis refers to the following types of offences falling within criminal association:
- article 416, paragraph 6, Criminal Code (criminal organisation aimed to perpetrate offences including trafficking and slavery or servitude, or purchase or selling of slaves, as well as trafficking in illegal migrants);
  - article 416, paragraph 7, criminal code (criminal organisation aimed to perpetrate sexual offences against minors, or to perpetrate sexual violence against minor, sexual activities with minors or gang rapes against minors, or to perpetrate offences including solicitation of children);
  - article 416, criminal code, to perpetrate the offences provided for under articles 473 and 474 (criminal organisation aimed to perpetrate offences including counterfeiting and marketing of products with fake marks);
  - article 416-bis, criminal code (mafia association), including all the offences perpetrated under the conditions provided for in article 416-bis above, or to facilitate the activities under said article;
  - article 74 Consolidated Law on drugs (organisation aimed to the illicit traffic in narcotic drugs and psychotropic substances);
  - article 291-quater Consolidated Law on customs (criminal organisation aimed to tobacco smuggling).
363. Paragraph 3-bis adds to the offences above the trafficking in human beings and the placing and holding individuals in conditions of slavery or servitude, or the trade in slaves (articles 600, 601 and

602 of the criminal code), kidnapping for ransom or reward (article 630 criminal code), bargaining of votes between politicians and members of Mafia (article 416-ter Criminal Code) and organised offences for the illegal traffic of waste (under article 260 of the Environmental Code, Legislative Decree 152/2006).

364. Paragraph 3-quater concerns offences, not listed in the Code, aiming to terrorist activities.
365. The regulatory provision includes both the typical offences perpetrated by the organised crime (i.e. criminal association with purposes of terrorism including international terrorism, or subversion of the democratic order, ex article 207-bis, Criminal Code), and any common offences aggravated by the purposes of terrorism, defined under article 270-sexies of the criminal code.
366. The second category is represented by prison sentences exceeding 2 years for the offences under Book II, Title II (Offences against the Public Administration), Head I (Offences by public officials against the Public Administration) of the criminal code, articles 314 to 335-bis.
367. The third category - for which the Code is not exhaustive, as there are at least 400 special laws providing for particular criminal cases - concerns the cases of prison sentences exceeding 2 years for the offences for which imprisonment is imposed for at least 4 years under article 278 of the Code of Criminal Procedure. This article defines the determination of the penalty for the purpose of defining the supervision measures to be imposed.
368. The assessment of disqualification is carried out on the occasion of the submission of the lists of candidates and within the deadline set for their acceptance.
369. Such assessment is performed by the Central Constituency Office - for the Chamber of Deputies - and by the Regional Electoral Office - for the Senate - and by the Overseas Constituency - for the Members of Parliament to be elected abroad -, on the basis of the statutory declarations stating the absence of the disqualification condition, made by each candidate under article 46 of the Consolidated Law as per Presidential Decree 445/2000 on administrative documentation.
370. The electoral offices assess the disqualification condition also on the basis of the documents at their disposal, attesting their right to stand as candidates.
371. In case of appeals against the decisions on the assessment of disqualification, article 23 of the Consolidated Law for the Election to the Chamber of Deputies applies.
372. In case of disqualification either intervened or assessed after the submission of lists, and before the announcement of elected members, the relevant electoral offices (the Central Constituency Office - for the Chamber of Deputies - and by the Regional Electoral Office - for the Senate - and by the Overseas Constituency - for the Members of Parliament to be elected abroad) perform a statement of non-proclamation towards the disqualified subject.
373. In case a cause for disqualification either intervenes or is assessed during the elective office, the Chamber of which he or she is a member decides during the credential verification phase, in compliance with article 66 of the Constitution, according to which each House of the Parliament decides the qualifications for admission of its members and subsequent causes of ineligibility and incompatibility. To this end, the final convictions entailing disqualification, issued against members of parliament currently in office, are immediately notified to the relevant Chamber by the public prosecutor at the executing judge (article 665 Code of Civil Procedure).
374. In case the assessment of disqualification intervenes in the phase of validation of the candidates elected, the Chamber involved, also while waiting for the completion of such phase, immediately

resolves on the non-validation.

375. In case of a vacant seat, the relevant Chamber, while validating the membership of the successor, assesses the absence of disqualification conditions of the latter.
376. As regards the duration of disqualification for the mandate of Members of Parliament, it is effective as from the date in which the judgment becomes final and is in force for a period corresponding to the double of the duration of the ancillary penalty of temporary disqualification from holding public offices imposed by the judge. In any case, also without an ancillary penalty, the disqualification has a minimum duration of six years.
377. The period of disqualification increases by one third in case the offence that determines the disqualification is perpetrated through an abuse of powers or in breach of the duties related to the elective office.
378. The decision of rehabilitation of the sentenced person represents a cause of early termination of disqualification, whereas the eventual revocation of the rehabilitation decision entails the recovery of disqualification for the remaining period of time. Furthermore, the disqualification is terminated in case of “anti-mafia” rehabilitation as per article 70 of Legislative Decree 159/2011, the so-called Anti-Mafia Code.
379. Lastly, the mayors and the presidents of provinces considered as liable for the financial difficulties (bankruptcy) of the relevant local authority shall be disqualified for ten years for the national and European Parliament, for any elective offices as mayor, president of province, president of regional executive council, and as member of municipal councils, provincial councils, and regional committees and councils (Legislative Decree 267/2000, article 248, paragraph 5, as amended by Legislative Decree 149/2011, article 6, paragraph 1, and by Legislative Decree 174/2012, converted into Law 213/2012, article 3, paragraph 1, letter s).

### ***Legislative Decree 39/2013 and parliamentary offices***

380. Legislative Decree 39/2013 enforces the delegated powers set out by paragraphs 49 and 50 of article 1, Law 190/2012, and provides for specific cases of:
- disqualification, meaning the prohibition, either permanent or temporary, to confer offices to those charged of criminal judgments for the offences under Head I, Title II, Book II of the Criminal Code, as well as those who held offices in private organisations governed or funded by public administrations, or who carried out professional activities in favour of such public administrations, and those who were members of policy guidance organisations (article 1, paragraph 2, lett. g);
  - incompatibility, determining the obligation, for the subject entrusted with the mandate, to choose - within the time-limit of fifteen days - between keeping the office and holding the offices and tasks in private-law organisations governed or funded by the public administration that confers such mandate, carrying out professional activities or taking on the mandate as members of policy guidance organisations (article 1, paragraph 2, lett. h).
381. The decree does not amend the provisions on incompatibility and multiple offices, already provided for in article 53 of Legislative Decree 165/2001. The regulation on the placing in personal leave of the employees of public administrations remains therefore urgent.
382. Furthermore, the provisions on the criteria for the conferment of managerial tasks and for the

placement in personal leave - as per articles 19 and 23 bis, respectively, of Legislative Decree 165/2001 - are not affected.

383. In particular, legislative decree 39/2013 on incompatibility and disqualification includes the office as Member of Parliament among those falling within the definition (article 1) of «members of policy guidance organisations» [individuals that participate, either through elections or appointments, in political guidance organisations of national, regional and local administrations, such as President of the Council of Ministers, Minister, Vice-Minister, Undersecretary, and Special Government Commissioner, as per article 11 of law no. 400 dated 23 August 1988, Member of Parliament, President of the Local executive council or Mayor, councillor in regions, provinces and municipalities, and in associations involving local authorities, or in governing bodies of public authorities, or private organisations under public control, being them national, regional and local], to which the decree ascribes a series of cases of disqualification and incompatibility of offices.
384. Article 8 sets out that the offices of director general, medical director and administrative director in Local Health Authorities cannot be conferred to those that in the previous year held the office of Members of Parliament.
385. Article 14 sets out that the offices of director general, medical director and administrative director in Local Health Authorities are incompatible with the office of President of the Council of Ministers, Minister, Vice-Minister, Undersecretary of State and Special Government Commissioner as per article 11 of law no. 400 dated 23 August 1988, as well as director of public authorities or private organisations under public control performing activities such as audit, supervision or financing of the national health service or Member of Parliament.
386. Article 11 states that top administrative offices in state, regional and local administrations, as well as managerial offices in national, regional and local public authorities, are incompatible with the office of President of the Council of Ministers, Minister, Vice-Minister, Undersecretary of State and Special Government Commissioner as per article 11 of law no. 400 dated 23 August 1988, as well as of Member of Parliament.
387. Article 12 states that Managerial offices in public administrations, public authorities, and in private organisations under public control are incompatible, during the mandate, with the office of President of the Council of Ministers, Minister, Vice-Minister, Undersecretary of State and Special Government Commissioner as per article 11 of law no. 400 dated 23 August 1988, as well as of Member of Parliament.
388. Article 13 states that the offices of Chairman and Chief Executive Officer in national, regional and local private organizations under public control, are incompatible with the office of President of the Council of Ministers, Minister, Vice-Minister, Undersecretary of State and Special Government Commissioner as per article 11 of law no. 400 dated 23 August 1988, as well as of Member of Parliament.
389. Parliamentary procedure under way: the reform of the regulations governing the conflict of interest and the amendments to ineligibility provisions.
390. In its session of 25 February 2016, the Chamber of Deputies approved a Consolidated Law of the draft bills (Rf. 275) aimed to set out new regulations governing the settlement of conflicts of interest, replacing the regulation presently in force under Law no. 215/2004.
391. The draft bill is presently examined by the Constitutional Affairs Committee of the Senate (A.S. 2258), that on 5 July 2016 performed a series of informal hearings and published the documentation

collected on such occasion.

392. As regards the examination at the Chamber of Deputies, the concept of conflict of interest proposed by the text, having a preventive nature, differs from the one currently in force under law 215/2004, setting out an intervention that mainly occurs at a later time.
393. The recipients of the new regulation are those who hold political offices; in detail, they include the holders of national government offices (President of the Council of Ministers, Minister, Vice-Minister, Undersecretary of State and Special Government Commissioner as per article 11 of law no. 400 dated 23 August 1988); the holders of regional government offices (the Presidents of autonomous regions and provinces, and the members of autonomous regional and provincial executive councils); the Members of Parliament; regional councillors. The law provisions apply to the members of independent administrative authorities.
394. The regions shall comply with the law within six months as from its coming into force; after this term, the law will be enforced. In case of regions owning a special status and the autonomous provinces of Trento and Bolzano, these provisions apply in compliance with the statutes and the relevant implementing rules.
395. AGCM, the Italian Competition Authority, is in charge of implementing the new provisions. Its members were increased from three to five, the procedures for their election were redefined, and they shall be endowed with specific skills and professionalism.
396. In general, the new text identifies the rising of a conflict of interests in all those cases in which the holder of a government office also has a private economic interest that influences the exercise of his/her public functions, or changes the market rules relating to free competition.
397. In comparison with the provisions in force, the text confirms the obligations to declare any cases of conflict of interest, although a compulsory list of situations and assets to be declared shall be submitted, with a timing that is stricter than the present one and with precise sanctions eventually imposed. Furthermore, in comparison with the regulatory framework presently in force, the number of subjects involved is extended. Within 30 days, the Authority performs an assessment on the thoroughness and truthfulness of the statements made, and may ask for clarifications or additional information to the declarant, ensuring however compliance with the principle affirming the right to a fair hearing.
398. In case of non-compliance with these obligations, the Authority imposes - according to the severity of the breach - either a fine or a penalty.
399. The text also identifies a system of incompatibility much stricter than the regulations in force, followed by an option by the holder of the government office, without prejudice to the personal leave in case of public or public employment, and the suspension from rolls and professional lists for the entire duration of the office. In case of failure to provide an option, it is understood that the subject chose the position incompatible with the government office, and suitable dissemination of such information is made by the Authority. In order to avoid a statement of incompatibility, entrepreneurs may also opt for a trusteeship management or a sale, in agreement with the Authority. Within 30 days as from the date of receipt of the statements, the Authority assesses the situations of incompatibility and notifies the person involved; the latter shall - within 30 days - decide between maintaining the government office and maintaining the incompatible position. As from the date of notification, the holder of the government office being in a situation of incompatibility shall abstain.
400. The text also provides for the obligation to abstain following the assessments made by the

Authority, that expresses its opinion also upon request of the person involved in case the latter raises doubts on the existence of such obligation. The obligation to abstain is set also irrespective of the evaluations made by the Authority in case the person involved owns a private economic interest that may influence the exercise of public functions held, or alter the market rules on free competition. In the cases of breach of said obligations, the text sets out a fine commensurate to the advantage obtained. The decision adopted is submitted to the Council of Ministers, which may also revoke it.

401. After examining the statements made by the holder and by other subjects provided for by the law, the Authority implements its decision - according to the provisions on the conflict of interest - in case the holder of the national government office owns - including through third parties or trust companies - any relevant shares in specific sectors or when, in consideration of the concentration of financial interests and assets by the holder of the national government office in the same market sector, it is deemed that they might have an impact on the exercise of public functions held by such person, or might alter the market rules on free competition. In these cases therefore the Authority, after hearing the sector-related competent authorities, submits to the holder of the national government office - within thirty days as from the receipt of the relevant statements - a proposal for the enforcement of the measures needed to prevent the conflict of interest (trusteeship contract; sale of the main assets and businesses).
402. As regards the holder of elective offices (members of parliament and regional councillors) the text sets out new provisions on ineligibility.
403. As to regional councillors, some amendments are made to law no. 165 of 2 July 2004, providing the general principles for the implementation of article 122, first paragraph, of the Constitution; by means of this amendment, the regions shall provide for an ineligibility clause for the regional councillors owning or however controlling - including indirectly - a company performing its business exclusively or mainly through authorisations and concessions issued by the State or by the Region, with a remarkable economic value.
404. As regards the Members of Parliament, through the amendments introduced by article 10 of the Consolidated Law on the provisions for the election to the Chamber of Deputies (Presidential Decree no. 361 of 30 March 1957) ineligibility also applies to those that:
- are constrained with the State for "public contracts involving works, services and supplies of remarkable economic value " (the previous reference was updated), or administrative authorisations or concessions of a remarkable economic value, entailing the obligation to fulfil specific provisions, the compliance with general or particular rules safeguarding the public interest, which the concession or the authorisation is subject to;
  - those that have within a company - that mainly performs its business under an authorisation or a concession of remarkable economic value, entailing an obligation to fulfil specific provisions, the compliance with general or particular rules safeguarding the public interest, which the concession or the authorisation is subject to - the ownership or control, including indirect control, the exercise of a dominating position, the possibility to avail oneself of all or part of it, either directly or indirectly, the possibility to define its governance, including the power ascribed by indirect shareholding;
  - the representatives, directors and manager of companies and enterprises devoted to the profit of private parties and subsidised by the State through continuous subsidies or under guarantees of grants or interests, whenever such subsidies are not granted on the basis of a

general law of the State;

- legal and administrative consultants permanently providing their advice to the persons, the companies and the enterprises mentioned above, constrained towards the state in the ways mentioned above.

*(b) Observations on the implementation of the article*

405. The Constitution establishes the legal right for any citizen holding the right to vote to be elected for the Chamber of Deputies and the Senate as long as they are at least 25 and 40 years old, respectively. The loss of the right to vote occurs as a result of a various situations established by law. While not affecting candidature or election, Italy has established a number of ineligibilities, incompatibilities and disqualifications that may limit an individual from holding a parliamentary mandate after a successful election.
406. While the Italian provisions concerning candidature for and election to public office are very complex and layered – and thus difficult to evaluate – it is clear that Italy has fulfilled its obligation to consider adopting measures consistent with the objectives of the Convention that establish criteria in that matter. Italy has instituted a number of provisions that set out a series of reasons for disqualifications, restrictions on eligibility as well as incompatibilities between positions:
- Ineligibility: holders of certain offices like mayors and police chiefs are ineligible as members of the Chamber of Deputies and the Senate;
  - Incompatibility: someone cannot hold two offices simultaneously, e.g. that of member of the Chamber of Deputies and member of the Senate;
  - Disqualification (*incandidabilità*): persons who were convicted by a final judgment for certain offences are disqualified from candidature.
407. Disqualification is assessed prior to an individual's inclusion on the ballot and results in that individual not being allowed to become a candidate. By contrast, in case of incompatibility, a member of Parliament shall choose between the parliamentary mandate and the office deemed incompatible.
408. It was concluded that Italy has implemented this provision of the Convention.

*Paragraph 3 of article 7*

*3. Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.*

*(a) Summary of information relevant to reviewing the implementation of the article*

***Financing of Political Parties and Forms of Disclosure of Contributions and donations to Political Subjects***

409. The decree-law no. 149 of 28 December 2013 (converted by Law no. 13 of 21 February 2014)

abolished the direct public financing of political parties and introduced new transparency rules.

410. In the past, the financing of political parties was carried out in the form of funds aimed to the reimbursement of election expenses for general, European and regional elections, paid in annual instalments.
411. Legislative Decree 149/2013 set out, in particular, a gradual reduction of public financing (election reimbursement and co-financing), amounting to 25, 50 and 75 % for 2014, 2015 and 2016, respectively, until the final abrogation starting from 2017. During the transitional period, the payment of contributions is subject to the positive outcome of the controls performed by a guarantee Commission on political parties, established at the Chamber of Deputies.
412. The Commission for the Guarantee of the Statutes and for the Transparency and Control of Political Parties' Accounts, established by law no. 96 of July 2012, on the area of financing of political parties and movements, is in charge of performing controls on the regularity and the compliance with the law of the statement of accounts of political parties, according to the procedures therein set out. It is made up of 7 magistrates and ratified by the joint appointment of the Presidents of the Senate and the Chamber of Deputies, published in the Official Journal. By means of such act, the President-Coordinator of the Commission is identified among its members. The members of the Commission are selected among the magistrates of the relevant jurisdictional orders, and their qualification shall be at least Counsellor to the Court of Cassation, or similar. They shall be outplaced and supported by a special staff. The mandate of the members of the Commission lasts 4 years, and can be renewed only once.
413. Direct public contributions to political parties are replaced by tax reliefs for voluntary contributions by citizens. In particular:
- Tax deductions for donations by individuals and companies;
  - Voluntary allocation of 0.2% of the personal income tax (IRPEF) to a political party (the so-called due per mille).
414. The access to these forms of contributions is subject to the requirements of transparency and democracy set out by the Decree-Law 149/2013, which also establishes a register of political parties with a view to the access to benefits.
415. The Decree-Law 149/2013 has therefore replaced direct public donations, previously made to political parties in the form of contributions for election campaigns, with an indirect system, based on tax benefits for the voluntary contributions by citizens (tax allowances for free donations and voluntary allocation of 0.2% of the personal income tax (IRPEF)).
416. According to this new provision, in order to access the benefits provided for by the law, political parties have to enrol in a national register kept by the Guarantee Commission on Political Parties, established at the Chamber of Deputies.
417. Registration is only possible after political parties endow themselves with statutes, adopted in the form of public deeds and complying with a detailed set of transparency and democracy requirements provided for in the Decree-Law.
418. The Commission for the Guarantee of the Statutes and for the Transparency and Control of Political Parties' Accounts is in charge - as already mentioned - of checking the regularity and the compliance with the law of the statement of accounts of political parties. To this end, according to the deadlines set by the law, the legal representatives or the treasurers of the political parties that

obtained at least 2 per cent of qualifying votes during the elections for the Chamber of Deputies, or that have at least one member elected at the Chamber of Deputies or at the Senate or at the European Parliament or in a Regional Council or in the councils of the autonomous provinces of Trento e di Bolzano, shall send to the Commission the statement of accounts and the related annexes. Furthermore, the party shall send to the Commission the report containing the opinion on the statement of accounts by an audit company, as well as the minutes containing the approval of such statement of accounts by the competent body of the political party. The Commission performs its controls by also checking the compliance of the expenses incurred and of the revenue with the documentation produced as evidence.

419. In this way, a form of internal discipline within the parties is being developed, and represents an initial implementation of article 49 of the Constitution, explicitly recalled under article 2 of Decree-Law 149/2013.

420. The main measures adopted by the Decree Law 149/2013, going beyond the public financing to political parties, are therefore the following:

- The obligation for political parties to have their statutes containing the necessary procedural and substantial elements guaranteeing internal democracy;
- The control of the requirements provided for by the law is performed by the Commission for the Guarantee of the Statutes and for the Transparency and Control of Political Parties' Accounts;
- The setting up of the National Register of political parties accessing the benefits provided for by the law, accessible through the Parliament website;
- The development by each political party of a website showing the information relating to the statutes, the governing bodies, the internal functioning and the balance sheets;
- The extension of the controlling functions of the Guarantee Commission also to the compliance with the provisions set out in the statutes and transparency;
- The reduction of the resources allocated to the parties not complying with the rules on equal access to elective offices;
- The introduction of an annual ceiling for donations amounting to 100 thousand euros per each donor;
- The introduction of an allowance for donations, amounting to 26% for amounts between 30 and 30 thousand euros;
- The levying of the Municipal Property Tax (IMU) on the real estates of political parties;
- The possibility to allocate 0.2% of the personal income tax (IRPEF) to a single party (amounts listed in the Annex);
- The definition of an ad hoc self-regulation code for fundraising activities performed via telephone;
- The progressive enforcement of the abrogation of the law with the partial reduction of direct contributions that will completely cease in 2017;
- The extension of regulations on special wage subsidies and solidarity agreements to the staff of political parties.

421. The provisions above fall within a process, developed over the last few years, of a progressive reduction in the amount of direct contributions to political parties, established in 1974 and mainly paid, as from 1993, in the form of contributions for the expenses of elections campaigns. Through these provisions, the partial reform of Law 96/2012 is surpassed; according to the reform, the system of reimbursement of election expenses was sided by a co-financing by the State, proportional to the self-financing capacity of political parties, which is now abolished.
422. The part of Law 96/2012 that is kept unchanged concerns transparency and auditing of balance sheets, as well as the constraint between internal democracy and granting of benefits, here introduced for the first time.
423. As regards the alternative forms of contribution set out by the Decree-Law, they involve the strengthening of an already-existing provision (the tax deductibility of private funding) as well as a mechanism (0.2% of the personal income tax) tested in a different form for a short period in 1997 (Law 2/1997 and mostly repealed by Law 157/1999).

### ***Forms of disclosure of contributions to political subjects***

424. Article 4 of Law no. 659 dated 18 November 1981 sets out that in case of financing or contributions to the Members of national Parliament, to the Italian members of the European Parliament, to regional, provincial and municipal councillors, to the candidates to the offices above, to the internal groups of political parties, and to those that hold posts such as presidency, secretariat and political and administrative governance at a national, regional, provincial and municipal level in political parties exceeding 5,000 euros per year under any form whatsoever, including the availability of services, both the subject granting and the subject receiving the benefits shall issue a joint declaration by also signing a document filed to the presidency of the Chamber of Deputies or sent to it through a registered letter with acknowledgement of receipt. As far as the election campaign is concerned, the financing or contributions or services above, may also be declared through a self-certification by candidates.
425. At the same time, article 5 of Decree-Law 149/2013 sets out that political parties shall ensure transparency and access to the information on their organisation, bodies, internal functioning and balance sheets, including the financial statements, also through a website complying with the principles of high accessibility - also by the disabled - thoroughness of information, clarity of language, reliability, easiness of reading, quality, homogeneity and interoperability.
426. By 15 July each year, the websites of political parties will include the statutes of the relevant parties after the compliance checks performed by the Guarantee Commission, as well as - after the compliance check - the financial statements equipped with the Management Report and the Notes to the Financial Statement, the Auditor's Report or the Auditing Company Report, if any, and the minutes of the approval of the financial statements by the competent body of the political party. The documents above are also notified to the Presidents of the Chamber of Deputies and the Senate and highlighted in the official website of the Italian Parliament. The website also contains, in compliance with legislative decree no. 33 of 14 March 2013, the data relating to the assets and liabilities and the income of the holders of Government offices and Members of Parliament. With a view to such publication, the Members of Parliament and the holders of Government offices notify their assets and liabilities and their income in the forms and according to the conditions set under Law no. 441 of 5 July 1982.

427. The subjects obliged to provide information on assets and liabilities and income shall equip said statements with the amounts received, either directly or through the supporting committees established, however named, as donations for any amount exceeding 5,000 euros per year. Said statements are referred to in the official website of the Italian Parliament whenever published in the website of the relevant organisation.
428. The provisions under Law no. 659, article 4, third paragraph of 18 November 1981 (described above) shall not apply to the financing or contributions paid in favour of the political parties included in the register of political parties and not exceeding the annual amount of euro 100,000, made through means of payment other than cash, allowing to guarantee the traceability of transactions and the exact identity of the donor. In these cases the legal representatives of the parties benefiting from the donations shall send to the Chamber of Deputies the list of subjects that made donations or issued funds amounting to an annual value exceeding 5,000 euros, as well as the relevant accounting documents. This obligation shall be fulfilled within three months before the financing or the contribution is received. In case of non-compliance with said obligation or in case of mendacious statements, the sanctions under Law no. 659, article 4, paragraph 6 of 1981 will be imposed. The list of subjects donating the funds or contributions above, and the relevant amounts, are published in an easily accessible way in the website of the Italian Parliament. The list of subjects donating the above-mentioned funds or contributions, as well as the relevant amounts, is published as an annex to the financial report in the website of the political party.
429. The provisions mentioned above on transparency and disclosure of statutes and balance sheets shall apply to the Foundations and Associations whose members are either entirely or partly determined by deliberations of political parties or movements, as well as the foundations donating amounts or contributing to the funding of initiatives or free of charge services in favour of political parties, movements or their internal branches, or members of parliament or regional councillors in a percentage exceeding 10% of their revenue for the previous financial period.
430. According to the provisions of article 5, paragraphs 2 and 3 of Law Decree 149/2013, converted into Law 13/2014, the website of the Italian Parliament - section on “Transparency of information on political parties <<http://www.parlamento.it/1177>>” - shows the information that must be published in the official website of the Italian Parliament, in compliance with the legislation in force on financing of political parties. In particular, 2 paragraphs are complied with: par. 2 and 3, article 5 of Law Decree no. 149 of 28 December 2013 that <<http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:2013-12-28;149~art5!vig=>> - as already stated - set out the publication:
- of the communications with which political parties notify the Presidents of the Chambers of Parliament of the publication in their websites of the financial statements and related annexes (paragraph 2)
  - of the contributions exceeding 5,000 euros on an annual basis, paid in favour of the political parties listed in the national register of political parties (paragraph 3).
431. Article 5, paragraph 2, Decree-Law no. 149 of 2013 <<http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:2013-12-28;149~art5!vig=>> sets out that by 15 July each year, the websites of political parties shall include, after the compliance checks performed by the Commission for the Guarantee of the Statutes and for the Transparency and Control of Political Parties’ Accounts, the financial statements equipped with the relevant documentation. Such publication shall be notified to the Presidents of the Chambers of Parliament and highlighted in the

official website of the Italian Parliament.

432. In compliance with article 5, paragraph 3, fifth sentence, of Decree-Law no. 149 dated 28 December 2013,

<http://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=2013-12-28&atto.codiceRedazionale=13G00194&currentPage=1>

the above-mentioned section of the website [www.parlamentoitaliano.it](http://www.parlamentoitaliano.it) also contains a list of the subjects that issued funds or contributions exceeding - during the relevant year - 5,000 euros, in favour of the political parties listed in the national register of political parties as per article 4 of the above-mentioned Decree-Law no. 149 of 2013.

433. In compliance with the provisions of article 5, paragraph 3, seventh sentence, of the above-mentioned decree-law, only the information relating to the subjects that provided their written consent to publication shall be published, in compliance with articles <http://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=2013-12-28&atto.codiceRedazionale=13G00194&currentPage=1> 22, paragraph 12, and 23, paragraph 4, of the code on the protection of personal information, as per Legislative Decree no. 196 of 30 June 2003.

434. Furthermore, in accordance with Law no. 441 of 5 July 1982, Provisions on the disclosure of the financial situation of holders of elective offices and executive positions in some organisations (Article 8, paragraph 2) “all the citizens registered in the electoral rolls for the elections to the Chamber of Deputies have the right to be informed, according to the procedures defined by the President of the Chamber of Deputies, about the statements set out in the third paragraph of article 4, Law no. 659 of 18 November 1981”.

435. These are, in particular, the statements relating to the financing and contributions in whatever form paid, including indirectly, to the Members of national Parliament, to the Italian members of the European Parliament, to regional, provincial and municipal councillors, to the candidates to the offices above, to the internal groups of political parties, and to those that hold posts such as presidency, secretariat and political and administrative governance at a national, regional, provincial and municipal level in political parties. This also includes the contributions paid to parties or their political-organisational branches.

436. To this end, an archive of statements was established at the Chamber of Deputies, which can be accessed, upon request, by every Italian citizen registered in electoral rolls.

*(b) Observations on the implementation of the article*

437. Italy has established a system to provide more transparency in the funding of candidates for elected public office and for the funding of political parties. Italy has recently switched from public funding to purely private funding for elections and parties. This will put more strain on the proper functioning of these transparency systems.

438. As a matter of principle, it would seem that this change increases the dependence of political parties on private donations, thus making them potentially more susceptible to attempts to influence parties and candidates. Therefore, it was **recommended** that Italy monitor the impact of the transition from public to private funding of political parties and candidates, and whether it makes them more vulnerable to lobbying and influencing and take remedial action as necessary.

439. Moreover, while there are requirements for reporting the funding of individual candidates and for the reporting of funding and expenditures of parties, the practical transparency of such funding has a number of limitations.
440. First, the useful transparency of information that is reported by parties may be hampered by what appears to be multiple websites maintained by different entities containing different, but overlapping information. Candidates funding is reported to the Chamber of Deputies through a joint declaration of the donor and recipient and made public by it upon request to any citizen registered in the electoral rolls.
441. Second, the source of private funding is an important issue for purposes of the overall goals of the Convention and while Italy does have measures that will require some source information to be made public, they have some limitations. For example, the source of any contribution under 5000 € currently needs not be reported individually by either a candidate or a party. However, Italy confirmed that the threshold of 5000 euros applies to the sum of all donations of a certain person per year (article 5, co. 3, DL 149/2013). Individual contributions over 5000 € to a party are reported by the treasurer of the party but an individual donor must give consent to the publication in the Parliament website in case of “traceable donation” (not in cash) over 5000 euros (article 5, co. 3, DL 149/2013). Thus the actual transparency of donors to a party can be limited by the donor. All reporting by a candidate or a party occurs after an election; there is no pre-election reporting.
442. During the country visit, it was confirmed that the ceiling of 100,000 € also applies to companies and that a companies cannot give 100,000 € each to several parties. However, it is possible to give 100,000 € to a party and another 100,000 € to an individual candidate.
443. It was noted that a consolidated text which appeared to change some of the reporting requirements was not approved by Parliament.

#### *Paragraph 4 of article 7*

*4. Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.*

#### *(a) Summary of information relevant to reviewing the implementation of the article*

#### **Introduction**

444. The answer is structured as follows: in the first part, the measures adopted in order to prevent situations of conflict of interests are presented; in the second one, reference is made to *transparency* as an instrument for revealing those kinds of situations.
445. Italian legislation in matter of **conflict of interests** is concentrated on the achievement of the following objectives.
446. First of all, it has the aim of prohibiting the access to public offices to the holders of particular private interests. In this framework, reference is made to the discipline related to political offices (Legislative Decree no. 235/2012 implementing the Law no. 190/2012), and the one related to administrative offices in public administrations and private entities under public control (provided for in Legislative Decree no. 39/2013). With regard to the holders of government offices, the relative

discipline is contained in Law no. 215/2004 whose supervision is on the Antitrust Authority.

447. A further aim is avoiding holders of public offices to be involved in private businesses, reason why the principle of exclusivity of business relationship with the public administration applies and can be overcome only through specific authorization (according to art. 53 of Legislative Decree no. 165/2001).
448. Moreover, in order to avoid that holders of public offices can be influenced by a private interest in their decisions, the Code of Conduct of public officers (Presidential Decree n. 62/2013) provides, in art. 6, that the employee shall inform the senior civil servant of his office about all the business relationships, whether direct or indirect and in any way remunerated, he has undertaken during the last 3 years, specifying detailed provisions also for his relatives and/or subjects who have or may have an interest in the activity related to the office.
449. Furthermore, the employee shall disqualify himself from participating in certain matters which may create a situation of conflict of interest, even if potentially, on issues of any nature.
450. One last objective is the one of avoiding situations of conflict of interests even when employment is terminated. The revolving doors discipline (also called *pantouflage*) provides for the limitation of negotiating power with private parties for a certain defined period after the termination of public service.
451. The whole regulatory framework on conflict of interests is supported by duties of conduct and requirements of reporting and transparency.
452. The rules on administrative **transparency** in Italy serve different purposes and aims.
453. Transparency is mainly seen as full accessibility to the data and documents held by the public administrations, for the purpose of protecting the fundamental rights of citizens, promoting the participation of any interested party in the administrative activities and fostering widespread forms of control on the pursuance of the institutional functions and the use of public funds.
454. Moreover, the obligation to publish some data on the websites of public administrations is aimed at disclosing possible conflicts of interest between the public duty and private interests of a public official. To this end, the Italian legislator has provided for different dispositions summarized below.
455. With reference to incompatible duties or which cannot be conferred within public administrations and private entities under public control, pursuant to article 20 of Legislative Decree no. 39/2013 both statements on the groundlessness of causes of non-conferrable status submitted at the time of the conferment of the positions indicated in the decree and statements on the groundlessness of one of the causes of incompatibility referred to in the decree are published on the website of the public administration, public body or entity governed by private law under public control that confers the assignment.
456. Having ANAC indicated to public administrations to accept only statements with a detailed list of all assignments carried out (Resolution n. 833/2016), the publication on the web site consents a general public scrutiny over all the activities performed by subjects holding managerial posts and administrative responsibility in public administrations, public bodies and entities governed by private law under public control.
457. To disclose the involvement of public officers in private businesses the article 18 of the Legislative Decree no. 33/2013 requires public administrations to publish all the appointments granted or the authorizations given on their websites, with an indication of the term of office and the

remuneration owed to them for each appointment.

458. To make known possible conflicts of interest of holders of political offices, article 14 of the Legislative Decree no. 33/2013 requires that public administrations publish their income and asset declarations (refer to no. 335). The legislative decree no. 97/2016, amending the article 14 of the Legislative Decree no. 33/2013, extended the asset and income disclosure of holders of political offices also to senior civil servants.
459. Data and information to be published consists of: a statement on real rights on immovable properties and movable properties recorded in a public register, ownership of company shares and equity participations, ownership of companies, any company directorships or posts as internal company auditors, a copy of the latest tax return.
460. However, the duty of senior civil servants to publicly disclose income, assets and financial data has been challenged in March 2017 by some officials as violating the Italian Constitution and the European law, in particular the right to privacy, the protection of personal data and the principle of proportionality. As a consequence the publication of income and asset declarations has been suspended for all senior civil servants and members of government until the delivery of the judgment of the Constitutional Court.
461. Article 15 of the Legislative Decree no. 33/2013 ensures transparency of potential conflicts of interest of outside contractors and consultants of public administrations. It provides the publication on the website of the same administration engaging them of: a) details of their deed of appointment (object and term); b) curriculum vitae; c) any data concerning the performance of tasks or any office held in private entities regulated or financed by the public administration, or the performance of professional activities; d) remuneration, however named, related to their consultancy or collaboration relationship, especially the variable components of it, if any, or the components related to the assessment. Public administrations publish the data within three months from the appointment and for the three years following the termination of the office.
462. Some of the above listed data (recipients, reason for their engagement, amount disbursed) are also published centrally by the Office of the President of the Italian Council of Ministers - Department for public administration (pursuant to article 53, paragraph 14, second sentence, of Legislative Decree 30 March 2001 no. 165). The Department allows the consultation of the data by name.
463. Finally, it has to be pointed out that article 15-bis of the Legislative Decree no. 33/2013 is a tool to detect conflicts of interest of collaborators and consultants of companies under public control and companies under extraordinary administration. It provides the publication, within 30 days from the appointment, and for two years following their termination, of the following information: a) details of their deed of appointment, object of their work performance, reason for their appointment and the relevant term; b) curriculum vitae; c) remuneration, however named, related to their collaboration or consultancy relationship, as well as to professional appointments, including those of arbitrators; d) type of procedure followed for selecting the contracting party and the number of participants in the procedure.

### ***Conflicts of Interest: Details***

464. According to the principle of exclusive service, stated under art. 98 of Italian Constitution “public employees are at the exclusive service of the Nation”, which is to say that public employees should

abstain from providing services for their own personal interest or for that of the political party which they belong to.

465. Italian law does not provide one general definition of conflict of interest, but there are several provisions, both in the Constitution and in other laws and regulations, that directly deal with potential conflict of interest situations.

466. Therefore, regarding the Italian law:

- Provisions on conflict of interest shall apply to public employees (general category including: elected and not elected public officials; civil servants; judges; MPs and members of the Government; as well as other public office holders);
- Cases of conflict of interest are defined by the law; there are different provisions for different categories of public employees;
- Conflict of interest also deals with incompatibility and disqualification (inconferibilita'). This is to say that the discipline of conflict of interest is specified in cases in which the role of public employee cannot be accepted all (inconferibilita) or can be accepted only if the person chooses to divest from the incompatibility (for example, terminating or dismissing the position in conflict);
- Detecting and regulating cases of conflict of interest are preventive measures;
- The criminal code also provides for specific offences when administrative office is used to gain unjust material advantage for public office holders or persons associated with them;
- Incompatibility: it aims at preventing the continuation of the administrative mandate who is in particular situations of conflict;
- Disqualification (Inconferibilita): it is a general preventive measure (the illegitimate behaviour is avoided ex ante through the prohibition to accept the office).

467. According to the complex Italian legal framework, it is possible to distinguish three main areas to take into account: 1) Public Administration; 2) Judiciary; 3) Members of the Parliament and of the Government. There are different and specific legal provisions for each of these areas, and within each of these areas it is possible to distinguish different categories of individuals.

468. As far as public administration/public officials are concerned, the provisions are summarized as below:

a) Responsible for Administrative Procedure and Executives:

The article 6 bis of law 241/90 on "conflict of interest" provides that:

The Responsible of the administrative procedure and the Responsible of the offices (the executives) in charge of advices; technical evaluations; internal acts and final acts should abstain in case of conflict of interest and signal it (introduced in Chapter II of Law n. 241/1990 on Administrative procedures by art. 1, paragraph 41 of Law n. 190/2012).

b) Top executive public officials; administrative officials (Managerial positions) (Legislative Decree n. 39/2013 (adopted due to the provisions of art. 1, paragraph 49 of Law n. 190/2012)).

- impossible (inconferibile)
- not compatible (prohibition to discharge other public or political office)

c) Elected or appointed public officials in political decision-making bodies at a regional or local level (d.lgs. 39/2013 (adopted due to the provisions of art. 1, paragraph 49 of Law n. 190/2012).

- Not conferibile (art. 7)

d) Top Executive public officials in Local Health Authorities

- Impossibility (art. 7)

D.lgs. 39/2013 gives provisions on roles that cannot be mandated to by the Officials namely indicated in the abovementioned letters b), c) d): Members of the Government; Ministries; Vice Ministers; State Secretary; parliamentarians. On the contrary, Members of the Government; Ministries; Vice Ministers; State Secretaries; MPs cannot be at the same time in charge of one of the public offices listed under the abovementioned letters b), c) d).

e) Civil Servant - Public Procurement: art. 42 d.lgs. 50/2016 (Conflict of interest)

“There is a conflict of interest when the staff (civil servants) of a Contracting Authority or a service provider who, also on behalf of the contracting Authority, intervenes in the performance of the award procedure and the concessions or may in any way influence the outcome”

469. In the Italian system it is necessary to distinguish between **substantive and formal conflicts of interest**.

470. Substantive conflicts of interest do not refer to cases described by the law, so the conflict of interest must be detected on the basis of the conduct of the Official, taking into account indications provided by the General Conduct Code of Public officials and civil servants (D.P.R. 62/2013), as well as more detailed indications that should be provided by specific Code of Conduct of each public administration.

471. Formal conflict of interest (incompatibilities) refers to specific legal provisions of d.lgs. 39/2013, which describes conducts that by nature are considered as an explicit conflict of interest. So in this case it is not necessary to detect if effective conflict of interest occurs in practice, because it is enough to verify that the Official is in the position described by the law.

472. As far as Substantive conflict of interest is concerned, it is necessary to take into account:

a) Responsible for Administrative Procedure and Executives:

In this case, conflicts of interest are described in DPR 62/2013 (Regulation concerning the General Conduct Code of public officials and civil servants):

Art. 6 DPR 62/2013: For the Official the conflict of interest may concern “personal interest of any kind, even non-economic ones, such as those resulting from the wish to support political parties, trade unions or hierarchical superiors”.

Relevant personal interest may belong to himself/herself; spouse; cohabiting partner; relatives and close next-of-kins within the second degree.

In particular, for the official, specific obligations to refrain are detailed under art. 7 DPR 62/2013: so he/she must refrain

- From adoption of decisions or activities that may involve:

\* his/her own affiliates, or affiliated persons within the second degree;

\* the spouse;

\* partners;

\* persons with whom he/she has frequent attendance;

\* subjects or organizations with which he/she or his/her spouse has:

- a case pending;

- or serious hostility;

- or significant credit or debts,

\* persons or organizations of which he/she is guardian, curator, prosecutor or agent,

\* bodies, associations not recognized, Committees, companies or establishments of which he/she is an administrator or manager or manager.

- From any other case where there are serious reasons of convenience.

The final decision upon refrain of the official belongs to the head of the office.

Art. 13 DPR 62/2013: For the Executive official, the conflict of interest may concern shareholdings and other financial interests that may be in conflict with the public service that he/she carries out.

To this end, the Executive official has to declare if he/she has close relatives and affiliates within the second degree, spouse or cohabitant who exercise political, professional or economic activities that put them in frequent contact with the office to be headed or involved in the decisions or activities pertaining to the office.

It is important to notice that, being the executive also a public official, the cases of conflict of interest covered by art. 6 and 7 DPR 62/2013 also apply to him/her.

#### b) Civil Servant - Public Procurement

art. 42 d.lgs. 50/2016 (Conflict of interest)

For the Civil Servant in Public Procurement there is conflict of interest if he/she has, directly or indirectly, a financial, economic or other personal interest which may be perceived as a threat to its impartiality and independence in the context of the procurement or concession procedure. In particular, it constitutes a conflict of interest a situation which impose the obligation of abstention provided for in article 7 DPR 62/2013.

473. As far as Formal conflict of interest is concerned, it is necessary to take into account:

a) Top executive public officials; administrative officials (Managerial positions).

Disqualification (or Inconferibilita'), in case it is NOT possible to accept a public office as top executive public official or administrative official (managerial position) for:

Those who in the past two years, have carried out assignments or held positions in private bodies or entities financed by the Public Administration that assign the position (ex art. 4 d.lgs. 39/2013).

Incompatibility: it is NOT possible to continue a public office as top executive public official or administrative official (managerial position) for:

- Prime Minister
- Ministers
- Vice Minister
- Secretariat
- Government Commissioner
- Member of the Executive Council (the one that appointed the Official or the one of a homogenous administrative area - Regional/local)
- Member of the Regional Local Council (the one that appointed the Official or the one of a homogenous administrative area - Regional/local)

(art. 11 d.lgs. 39/2016) - The same incompatibilities apply to internal or external public office as executive official - managerial position (art. 12 d.lgs. 39/2016) and to administrator of private bodies under public control (art. 13 d.lgs. 39/2016)

For top executive public official or administrative official (managerial position) there is also incompatibility in case of:

- Assignments or positions in private bodies ruled or financed by the administration the public top officer belongs to
- Professional activity of the official: if ruled or financed by the administration the official belongs to

(the same incompatibility is stated for CEO of private body under public control)

(art. 9 d.lgs. 39/2016)

b) Top Executive public officials in Local Health Authorities

Disqualification (or Inconferibilita): it is NOT possible to accept a public office as top executive public official public officials in Local Health Authorities for:

- 1) Those who in the past five years have been candidates in the elections (European;

national; local elections) in constituencies including the territory of the Local Health Authority;

2) Those who in the past two years have been:

- Prime Minister
- Minister of the Health;
- Vice Minister of the Health
- Secretariat in the Minister of the Health
- Top executive in public administration or public or private bodies in charge of supervision or financing of the National Health Service

3) Those who in the past three years have been:

- Member of the Regional Local Council where the Local Health Authority is located
- Administrator/CEO in public or private bodies in charge of supervision or financing of the Regional Health Service

4) Those who in the past two years have been part of the Council or of the Executive Council of a Municipality/metropolitan area with more than 15,000 inhabitants whose territory is included in the Local Health Authority one. (art. 8 d.lgs. 39/2013)

**Incompatibility:** it is NOT possible to continue to be top executive public official public officials in Local Health Authorities for:

- Prime Minister
- Minister;
- Vice Minister;
- Secretariat;
- Government Commissioner
- Top executive in public administration or public or private bodies in charge of supervision or financing of the National Health Service.

Within a specific Region, it is also NOT possible to continue to be Top executive public official public officials in Local Health Authorities for (art. 14 d.lgs. 39/2013):

- Members of the Regional Council or of the Executive Regional Council
- Administrator/CEO in public or private bodies in charge of supervision or financing of the Regional Health Service

- Members of the Council or of the Executive Council of a Municipality/metropolitan area with more than 15.000 inhabitants whose territory is included in the Local Health Authority one

c) Elected or appointed public officials in political decision-making bodies at a regional or local level.

Disqualification (or Inconferibilita): For those that in the past two years, have been elected or appointed public officials in political decision-making bodies at a regional or local level, or either CEO of a private body under public control (of the same Region or local Authority) is NOT possible to accept a Public Office as (art. 7 d.lgs. 39/2013) :

- Top executive public official (in the same Region)
- Executive public official (managerial position) (in the same Region)
- Administrator of a public body (in the same Region).
- CEO of a private body under public control (of the same Region)

474. A) Full Time public officials or part time public officials with a part time over 50%: For them there is prohibition to discharge offices with the following characteristics:

A.1) habituality and professionalism

1. Offices that have the characteristics of habituality and professionalism pursuant to art. 60 of the d.P.R. n. 3/57, (commercial, industrial or professional activity, or employment for private individuals or accept positions in profit-making companies). The charge/assignment may be considered professional when it is carried out with the characteristics of habituality, systematicity / non-occasionality and continuity, without necessarily implying that such activity is carried out in a permanent and exclusive way (Article 5, dPR n 633 of 1972, Article 53 Of Presidential Decree 917 of 1986, Civil Code, Section V, n. 27221 of 2006, Civil Code, Sector I, n. 9102 of 2003).

Anyway, the following may be hold with the approval and according to art. 53, paragraph 4 of Legislative Decree n. 165/2001 (NOT ANAC Approval, but the approval of the public authority the officials belongs to):

(a) the assumption of offices in cooperative societies, in accordance with the provisions of art. 61 of the d.P.R. n. 3/1957;

(b) cases where the law provisions expressly allow or provide for public employees the participation and / or taking over of offices in companies controlled

or participated by public Bodies (see, not exhaustive, art. 60 of the DPR 3/1957, Article 62 of the DPR 3/1957, Article 4 of the dln 95/2012 - cases for top manager and top executives are now disciplined by d.lgs. 39/2013);

(c) accepting offices in commissions, committees, public administration bodies, if the commitment required is not incompatible with the hourly debt and / or with the fulfilment of the obligations arising out of the employment relationship;

(d) other special cases under evaluation in the case of interpretative / general acts (e.g. Circular No 6 of 1997 of the Department of Public Service, in respect of the activities of a condominium administrator for the care of his interests; Commission Regulation (EC) No 123/11 of 11 January 2002 on agricultural activity).

2. Offices that, although individually considered do not lead to a situation of incompatibility, if considered together within the solar year, represent a continuous commitment with the characteristics of habituality and professionalism, also taking into account the nature of the assignment and the expected remuneration.

#### 475. A.2) Conflict of Interest

1. Offices or assignments in Bodies/or on behalf of entities/persons in respect of which the bureau of the Official belongs to or has duties related to the granting of concessions or authorizations or null-auctions or acts of assent, however named, even in tacit form.

2. Offices held in favour of suppliers of goods or services for the administration, when the bureau the Official belongs to or is in charge of the identification of the supplier.

3. Offices held in favour of private persons who hold economic or contractual relations with the administration, in relation to the competence of the Official's bureau. Some of the cases are submitted to specific authorization.

4. Offices held in favour of private persons who have or have had significant economic interest in decisions or activities related to the bureau the Official belongs to, in the previous two years.

5. Offices held in favour of entities under the supervision, control or sanctioning functions of the bureau the Official belongs to.

6. Assignments that may damage the administration's image considering the type of business or object, or the risk of disclosure of relevant information held by the Official.

7. The assignments and activities for which incompatibility is provided by Legislative Decree n. 39/2013 or by other provisions of law in force.

8. The assignments which present a concrete conflict of interest situation even if included in the cases of authorization referred to in art. 53, paragraph 6 of Legislative Decree n. 165/2001.

9. In general, any assignment that conflicts with the nature or purpose of the public office or which may affect the impartial exercise of the functions attributed to the employee.

476. The administration's assessment of the conflict of interest situation must be carried out taking into account the qualification, the professional role and / or the professional position of the employee, his position within the administration, the competence of the allocation and the hierarchically superior one, the functions attributed or carried out in a reasonable time past. The assessment must also cover potential conflicts of interest, meaning for that abstractly configured art. 7 of d.P.R. n. 62/2013.

B) Part time public officials with a part time under 50%:

For them there is prohibition to discharge offices with the following characteristics:

B.1) Conflict of Interest

This is to say that to this public officials apply only the cases of conflict of interest, as abovementioned under paragraph A.2). On the contrary, provisions under abovementioned paragraph A.1) do not apply to them.

C) All public officials, independently from the composition of working hours.

477. The following provisions apply to all public officials, therefore they shall not accept:

1. Assignments, including those included in the authorization under art. 53, paragraph 6 d.lgs. 165/2001, which interfere with the ordinary activities carried out by the public official in relation to the time, duration and commitment required, taking into account the employment or workplace institutions which are actually useful for the conduct of the

activity; The evaluation must be carried out considering the qualification, the professional role and / or the professional position of the employee, the position within the administration, the assigned functions and the working time.

2. Offices taking place during office hours or which may presume a commitment or availability by appointment even during the service hours, unless the employee has access to permits, vacations or other abstinence from the employment or employment relationship.

3. The assignments, which are added to those already conferred or authorized, increase the risk of conflict with action in discharge of office or official duty impairment of the service activity.

4. Assignments held using means, property and equipment owned by the administration and which the employee has for office reasons or which are held in the office premises, unless the use is expressly authorized by the rules or required by the nature of the assignment conferred office by the administration.

5. Assignments in favour of public officials registered in professional and professional activities, subject to the exceptions permitted by law (Article 1, paragraph 56 bis of Law No 662/1996).

6. However, any assignment for which authorization is required has not been granted, except in the case of derogations provided for by law (Article 53 (6) (a) to (f)); Paragraph 10; Paragraph 12 according to the indications in Annex 1 to P.N.A. For assignments free of charge, Legislative Decree n. 165 of 2001). In the case of a part-time work relationship with a work performance equal to or less than 50%, the carrying out of assignments or activities which have not been the subject of communication at the time of the conversion of the report or at a later date shall be prohibited.

### ***Training***

478. Article 17 of the “Code of conduct for the public employees” (Presidential Decree no. 62/2013) contains provisions aimed at promoting the knowledge of code of conducts throughout the public service, including the measures related to conflict of interest. Public administrations are required to publish the National Code of conduct and the specific Code adopted internally which supplements and sets out in more detail the National Code of Conduct on their websites and on the intranet; to send the Codes via email to all their employees, external collaborators, consultants, holders of political offices and holders of positions of direct collaboration within political offices and to collaborators of companies providing services to the administration. A copy of the code of conduct is also delivered to employees who sign it at the time of recruitment. Moreover, the knowledge of the measures on conflict of interest is also promoted within the staff training activities on the correct

application of Codes of conduct held each year by public administrations to verify the state of implementation of the Codes, as required by Law no. 165/2001 as amended by Law no. 190/2012.

479. In the National Anticorruption Plan 2015, ANAC designed a stronger transparency regime for conflicts of interest of some specific categories of personnel of the National Health Service. The subjects included are those with functions implying responsibilities in the management of resources, subjects with powers in the decisional processes related to medicinal products, medical devices, other technologies, research, experiment and sponsorship. A standard format for the declaration of activities/interests/relations has been provided to be filed and published annually.

### ***Implementation***

480. In order to understand the actual implementation of the provisions, it is necessary to distinguish different cases of conflict of interest. In cases in which a situation is predetermined by dispositions provided for by the law (so-called presumption), there is no discretion in determining the conflict of interest (for instance, the hypotheses of incompatibility and non-conferrable status contained in Legislative Decree no. 39/2013). The subject in charge of the assessment is the Manager for the prevention of corruption and transparency, art. 15 of the Legislative Decree n. 39/2013.

481. For cases which are not explicitly considered by the law, reference is made to art. 6 bis of Law 241/1990. Additional dispositions on the matter are contained in the Presidential Decree n. 62/2013 and in the codes of conduct of the single public administrations. It is on the hierarchical superior to assess the conflict of interest.

482. The determination of a conflict of interest by a head of an office for a subordinate is taken considering the criteria included in the legislative framework described for the conflicts of interest. The criteria are assessed in order to determine whether a conflict exists. The decision is not left to a purely discretionary determination of the head of the office. To sum up, the decisions are not purely discretionary but they always refer to legal basis.

483. Also, ANAC has supervisory and sanctioning powers, as introduced, respectively, by art. 16 of the Legislative Decree n. 39/2013 and the Law n. 114/2014.

484. In relation to members of the Government, the Italian Competition Authority (Autorità Garante della Concorrenza e del Mercato, hereinafter AGCM) is competent to apply the Italian regulations on conflict of interests (Law No. 215 of 20 July 2004).

485. The Decision n. 232/2017 had as a consequence the resignation of the General Secretary of the interested municipality, in response to the assessment of incompatibility of charges found by the Authority.

486. In the case of Decision n. 1305/2016, the assessment by ANAC has caused the resignation of the Head of Human Resources of the municipality of Rome (Roma Capitale) because of violations of the code of conduct.

### ***(b) Observations on the implementation of the article***

487. Italy addresses conflicts of interest in public administration and in the Government by setting out in law a number of ineligibilities and incompatibilities restrictions and by including in the general code of conduct a requirement that a public servant carrying out executive functions disqualify

himself/herself from participating in certain matters which may create an actual or potential conflict of interest. There are restrictions on activities following public service for some public officials.

488. It appears that Italy has adopted a variety of systems to prevent conflicts of interest (substantive) and established certain forms of ineligibilities and incompatibilities (formal).
489. Again, while Italy has demonstrated that it has endeavoured to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest, the rules on conflicts of interest seem very complex and layered.
490. Moreover, it was noted that the legislation on conflicts of interests is enforced not by ANAC but by the Italian Competition Authority, which seems unusual. During the country visit, it was explained that at the time the legislation was created, ANAC did not exist yet. In addition, the task was given to the Competition Authority because of its independent status and because conflicts of interest often arise out of involvement in a company. However, the Competition Authority cannot take action against a person that has conflict of interest but only against the company.
491. It was **recommended** that Italy adopt enforceable asset declaration and verification systems for senior public officials for all three branches of government, and establish effective internal review systems to help identify and address conflicts of interest, incompatibilities and ineligibilities.

## Article 8. Codes of conduct for public officials

### *Paragraph 1 of article 8*

*1. In order to fight corruption, each State Party shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system.*

### *(a) Summary of information relevant to reviewing the implementation of the article*

492. As already mentioned under article 5, the Italian Constitution provides for rules to guarantee and promote integrity, honesty and responsibility among public officials.
493. The Constitution enshrines the principles of loyalty, discipline and honourability in the performance of a public function (Articles 28, 54, 97, 98 Constitution).
494. Article 54 provides that “All citizens have the duty to be loyal to the Republic and to uphold its Constitution and laws. Those citizens to whom public functions are entrusted have the duty to fulfil such functions with discipline and honour, taking an oath in those cases established by law.”
495. According to Art. 28 of the Constitution, officials of the State or public agencies shall be directly responsible under criminal, civil, and administrative law for acts committed in violation of rights. In such cases, civil liability shall extend to the State and to such public agency.
496. Art. 97 provides that Public offices are organised according to the provisions of law, so as to ensure the efficiency and impartiality of administration. The regulations of the offices lay down the areas of competence, the duties and the responsibilities of the officials. Employment in public administration is accessed through competitive examinations, except in the cases established by law.
497. According to Art. 98 Civil servants are exclusively at the service of the Nation. If they are

Members of Parliament, they may not be promoted in their services, except through seniority. The law may set limitations on the right to become members of political parties in the case of magistrates, career military staff in active service, law enforcement officers, and overseas diplomatic and consular representatives.

498. Over the last few years, Italy has introduced major reforms designed to modernize public administration, improve services, and increase citizens' participation in public decision-making. Reforms have included measures to foster transparency, accountability, and organisational performance.
499. The civil service reform of February 1993 instituted contract-based relations between public employees and the State. This process was known as the "privatisation of public employment", the aim of which was on one hand, to put an end to certain privileges enjoyed by public employees and on the other hand, to bring their regulations in line with those of the private sector.
500. The legislative decree n° 165/2001 establishes which are the public entities (article 1) and it identifies civil servants who are regulated by the decree itself and private labour laws (article 2) and public employees who have not been privatised (article 3), in order to guarantee their independence.
501. By means of the provisions of the "Severino Law" and the Decree of the President of the Republic n. 62/2013 (Art. 1.44) mentioned in answers to the articles 5 and 6 and 8, par. 2 and 3), Italy complies with the obligation as set forth in the convention. More recent moves in this direction are the "Legge Madia" (No. 124/2015) and the numerous legislative decrees that are to concretely implement the principles set forth. These measures are adopted with a view to reorganizing and simplifying public administration, also from the angle of the assertion of integrity as a value.
502. Recently, disciplinary procedures have been implemented against persons in public administration when found to be involved in corruption.
503. This aim is furthered by the provisions of Legislative Decree n. 116 of 20 June 2016 concerning disciplinary dismissal as implemented by Art. 17.1, subsect. s. of the aforementioned "Madia Law". In consideration of the contents of the measure currently in the form of a Legislative Decree, these disciplinary measures regarding senior administrative officials should also work toward this objective. Pursuant to the mandate as per Art. 11 of the "Madia Law", the decree also regards the hypothesized responsibilities of senior officials within the ambit of their duties (art. 4-6).

### ***Education and Training***

504. Education programs and trainings are considered to be part of the measures of prevention of corruption that all administrations have to include in their Three-years Plans for the Prevention of Corruption (PTPC). In this perspective, ANAC contribution in favouring the diffusion of a culture of legality is the one of carrying out activities of education and training, both internal and external, in the field of ethics and legality, providing specific education in matter of public contracts and promoting awareness-raising actions aimed at strengthening the relationship with civil society.
505. To this end, ANAC is engaged in important collaborations such the ones with Scuola Superiore dell'Amministrazione (SNA) and with Universities.
506. Among the main instruments helping in regulating the conducts of public officers and orienting them toward the public interest there are, in strict connection with anti-corruption plans, the codes of conduct.

507. Civil servants collective agreements (see for example the text of the collective agreement for central government administration 2016-2018 signed on 23th of December 2017) consider training as a primary instrument for the quality and effectiveness of the Public Administration and for the constant updating of employees' skills. The activities are scheduled through training plans designed on the basis of training needs identified in the relevant public administration body. In implementing the training plans, the various Ministries and bodies are supported by the National School of Administration, the Universities, and other similar public and private entities.
508. Moreover, the collective agreements oblige the employee to put first the respect for the law and the public interest. Collective agreements refer also to the code of conduct for all civil servants established by Article 54 of the Italian legislative decree number 165 of 2001 and to the specific code of conduct adopted by each public administration body. Provisions are envisaged in collective agreements and codes of conduct to promote employees integrity, honesty and responsibility and to prevent corruption. Collective agreements and codes of conduct establish rules for applying sanctions to employees who fail to comply with the provisions in question.

### ***Implementation***

509. Decision n. 232/2017 had as a consequence the resignation of the General Secretary of the interested municipality, in response to the assessment of incompatibility of charges found by the Authority.
510. In the case of Decision n. 1305/2016, the assessment by ANAC has caused the resignation of the Head of Human Resources of the municipality of Rome (Roma Capitale) because of violations of the code of conduct.
511. For another example, see Resolution no. 420 of 13 April 2016, concerning the rules of the code of conduct of a party of the Chamber of Commerce of the Benevento Chamber of Commerce, pursuant to Law 6 November 2012, n. 190.

### ***(b) Observations on the implementation of the article***

512. It was concluded that Italy has implemented this provision of the Convention.

### ***Paragraph 2 and 3 of article 8***

2. *In particular, each State Party shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.*
3. *For the purposes of implementing the provisions of this article, each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, take note of the relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials contained in the annex to General Assembly resolution 51/59 of 12 December 1996.*

### ***(a) Summary of information relevant to reviewing the implementation of the article***

513. The Italian system is based on two different levels of Codes of Conduct: the General Code and the individual code of each public entity. All these codes have specific juridical consequences, i.e. the application of disciplinary sanctions.
514. The National Anti-corruption Law, Article 1, p. 44, establishes that each public body shall define its own code of conduct, according to the general principles of the Code issued by the Presidential Decree n. 62/2013 and the guidelines of the ANAC, with an open procedure for participation after obtaining the mandatory opinion of its own independent evaluation body. The code of conduct of each public administration supplements and sets out in more detail the Code of conduct. Further specific incompatibilities or cases of conflict of interest, related to the activities and organization of the public body, can be added
515. The same law establishes that the Authority defines guidelines and uniform standard form of the codes of conduct, related to the different typologies of public administrations and individual sectors of activities.
516. The managers responsible for each structure, the internal control structures and the disciplinary offices oversee the application of the codes of conduct.
517. The ANAC monitors compliance with the obligation of the adoption of the codes of conduct. The procedures of the Authority are established in the own regulatory acts on the supervisory and sanction powers.
518. For the above reasons, it appears clear the central role of ANAC, being involved in the whole coordination process.
519. ANAC mainly exercises its control on concrete cases and it has the power of imposing sanctions whereas the codes of conduct have not been adopted and therefore implemented. Furthermore, the Authority specified that the implementation of codes of conduct which merely reproduce the general contents of Presidential Decree n. 62/2013 has to be considered as a failure to adopt the measures.

### ***The General Code***

520. In 2013 the Presidential Decree n. 62/2013 - "Code of conduct for the public employees"- has been issued. This Decree contains rules and provisions that in general terms contribute to contrast the phenomenon of bribery.
521. The code defines the standard of conduct of due diligence, loyalty, impartiality and proper conduct public officials have to comply with. The code establishes general principles of conduct, replying those ones settled within the Constitution and specifying them, for instance by addressing the duty of abstention in case of conflicts of interest. The code also outlines the issues of gratuities, establishing a general principle according to which public officials are not allowed to receive gratuities due to the risk of corruption of the public function they exercise. The codes also establish that public officials have to fully comply with the anti-corruption plan adopted by the public administration he belongs to as well as with the transparency legal framework. The violation of the provision settled by the code, moreover, is a basis for disciplinary measures against the public official who has breached it. The public bodies have to adopt specific codes of conduct for their own sake, in compliance with the Constitutional provision and the National code of conduct for public officials. The code includes a section dedicated to senior civil servants.
522. On 2014, Decree Law n. 90 of 24 June 2014, subsequently enacted into Law n. 114 of 11 August

2014, introduced the possibility for ANAC to impose a monetary sanction to public entities considered responsible for not having adopted - inter alia- the Code of conduct.

523. In the perspective of differentiation, following the enactment of Presidential Decree n. 62/2013, "Regulations on the code of conduct for civil servants, in accordance with Article 54 of Legislative Decree n. 165 of 30th March 2001", the Authority, following a series of meetings with entities and after consulting with them, adopted Resolution n. 75/2013 "Guidelines on codes of conduct for the public sector", according to which entities should proceed with the adoption of individual codes of conduct. The guidelines aim at creating the conditions for the preparation of differentiated codes depending on the particularities of each administration, thus avoiding that the codes themselves are resolved, as already happened in the past, on the basis of previous legislation, in a generic and not very useful repetition of the contents of the general code. The contents of the guidelines can also be a benchmark for the development of codes of conduct and ethics on the part of other subjects covered by Law n. 190/2012 (public financial agencies, publicly controlled private law agencies, controlled or financed private law agencies, independent authorities).
524. First of all, Resolution n. 75/2013 points out the strong connection of the codes of conduct with the PTPC; the identification of the different level of exposure of the offices to the risk of corruption in the PTPC is preliminary to the specification of the particular obligations for these offices in the preparation of the code of conduct. The guidelines also specify the roles and responsibilities of the various figures, both inside and outside the administration, involved in various ways in the preparation phase and in the implementation of the code of conduct. The guidelines also underline that the adoption of the codes, as well as their periodic updating, shall be by public notice and with the involvement of stakeholders, the identification of which may vary depending on the peculiarities of each administration.
525. Breaches of the code shall result in disciplinary action.
526. Information about Code of conduct can be found on the website of the ANAC:  
See  
<http://www.anticorruzione.it/portal/public/classic/AttivitaAutorita/Anticorruzione/CodiciComp ortamento>

### ***Personal scope of application***

527. The Italian legislator laid down the general principles of the codes of conduct with the "Code of conduct for the public employees" (General Code), issued by the Presidential Decree n. 62/2013 and drafted by the Public Function Department of the Presidency of the Council of Ministers.
528. The provisions of the General Code, as described above at No. 332, 333 and 334, shall apply to all civil servants of the public entities specified in Article 1, co. 2, of the Legislative Decree no. 165/2001, such as central and local public administrations (ministries, regions, municipalities), educational institutions, universities, entities of the national health system and other public bodies. The Code applies to the civil servant of those public entities who are regulated by private labour laws, according to Article 2 of the decree itself. The General Code also applies to the external collaborators, consultants, holders of political offices and holders of positions of direct collaborations within political offices and to collaborators of companies providing services to the administration. The other categories of public employees, regulated by public law and identified in Article 3 of the Legislative Decree no. 165/2001, apply the principles of the Code of conduct which are compatible

with the respective systems.

529. The employees of the economic public bodies and publicly controlled companies are not subject to the Presidential Decree n. 62/2013. However these bodies and companies have to elaborate their measures and three-year plans to prevent and fight corruption, according to the National Anti-corruption Law and the general principles of the National Anticorruption Plan. And so the Authority adopted Resolution n. 1134/2017 concerning guidelines on measures against corruption for the publicly controlled companies, publicly controlled private law agencies and public economic entities. In the Resolution n. 1134/2017 ANAC has recommended the adoption of the codes of conduct too.
530. The independent authorities adopted ethic codes, which establish rules of conduct and the duty of abstention in case of conflict of interest, comparable to the General Code of conduct. Furthermore the three-year anti-corruption plans of the independent authorities point to the ethic codes as an essential tool to address and prevent conflicts of interest.
531. With regard to judges, the National Anti-corruption Law establishes that for each judiciary and the Legal Council of State, the governing bodies of the trade associations adopt an ethical code to which the members of the judiciary concerned must adhere
532. For the Members of the Parliament and of the Government, a different regulation applies. As far as Members of the Chamber of deputies are concerned, they are subject to the code of conduct approved on April the 12th 2017 by the “Giunta per il regolamento della Camera”. The Code contains the rules of behaviour of the members of Parliament, based on the values of correctness and impartiality. The Code provides that each member of Parliament carries out his duty with discipline and honour and representing the Nation. Each member of the Chamber of deputies presents a paper to the Speaker concerning the offices and positions held at the date of application and the work carried out. In a separate paper they must declare their assets at the beginning and at the end of the mandate. All the information is published on the Chamber of Deputy’s website.
533. The Senate Rules have been recently amended (21st December 2017): article 21 provides that a code of conduct for members of Senate will be adopted by the Presidency Council (Consiglio di Presidenza). The Code will establish principles and rules of conduct to follow during the parliamentary mandate.
534. The ineligibilities and incompatibilities are judged after the election: the decisions are entitled on the "Giunta per le elezioni", one of the Chamber of Deputies and one of the Senate. According with article 66 of the Constitution, in fact, "each House shall verify the credentials of its members and the causes of ineligibility and incompatibility that may arise at a later stage". Otherwise, the body that determines a disqualification (see par. 184-198 - “incandidabilità”) is the Electoral Office. Only in case a cause for disqualification either intervenes or is assessed during the elective office the Chamber of which he or she is a member decides according to article 66 of the Constitution (see par. 200).
535. The new electoral law (165/2017) established for the foreign constituency candidates (“circoscrizione Estero”) a cause for disqualification (“incandidabilità”) if have been held in the past 5 years positions for a foreign state in government, elective charges, judiciary system or armed forces.
536. Concerning the Members of the Government, the Decree of the President of the Republic n. 62 of 16 April 2013 introduced a new code of conduct for civil servants. The code of conduct, as the previous text replaced, also applies to members of the Government. For the latter, however, no specific provision is envisaged.

537. Furthermore the ANAC Resolution n. 75/2013 provided guidelines on codes of conduct for the public sector specifying some general aspects of the General Code. The document underlined, inter alia, the close link between the three-year anticorruption plan (PTPC) and the code of conduct: the identification of the offices where the exposure to the risk of corruption is higher may be helpful to value and specify additional obligations and rules of conduct.

538. In conclusion, in view of the above, the “public officials” under Article 2 (“Public official” shall mean: (i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person’s seniority; (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party; (iii) any other person defined as a “public official” in the domestic law of a State Party. However, for the purpose of some specific measures contained in chapter II of this Convention, “public official” may mean any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party.), ii) and iii), are subject to the code of conduct, according to the Presidential Decree 62/2013, the recommendations of the National Anti-corruption Plan, the guidelines of the ANAC and the three-year anti-corruption plan of each public body.

### *Individual sectors*

539. A joint working party has been set up for the carrying out of the activities aimed at supporting ANAC in the framework of inspections and, in particular, of the drawing-up of a special and specific verification programme of the **health sector** in order to identify the subjects to be inspected. The issue was the object of the agreement between the Authority and the Ministry of health signed in 2016.

540. Furthermore, with regard to the public health sector, the ANAC set up a working table with the competent Ministry and National Agency for the regional health services and elaborated the guidelines on adoption of the codes of conduct in the entities of the National Health Service, the Resolution n. 358/2017 “Guidelines on adoption of the codes of conduct in the entities of the National Health Service”.

[http://www.anticorruzione.it/portal/rest/jcr/repository/collaboration/Digital%20Assets/anadocs/Attivita/Atti/determinazioni/2017/358/Delibera\\_n\\_358\\_Lineeguida\\_Cod\\_Comp\\_sanita.pdf](http://www.anticorruzione.it/portal/rest/jcr/repository/collaboration/Digital%20Assets/anadocs/Attivita/Atti/determinazioni/2017/358/Delibera_n_358_Lineeguida_Cod_Comp_sanita.pdf)

541. The Resolution makes clear which subjects are required to the rules of the code of conduct and provides criteria to identify and manage conflict of interest. The guidelines also recall the obligations and the prohibitions set by the domestic legislation in force for the employees of the health public sector, such as the doctors’ declarations concerning relationship with pharmaceutical companies, the limits of the practice of free professional activity.

542. In the National Anticorruption Plan updated in 2017 the ANAC provided for the adoption of the guidelines on the code of conduct for the **universities**.

### *(b) Observations on the implementation of the article*

543. There is a General Code of Conduct (Presidential Decree No. 62/2013) applicable to most public

officials in the executive, except for members of Government, which should be complemented by specific codes of conduct at each agency/administration. However, this code only has 12 articles and is very limited. Each public entity is supposed to adopt its own, specific code but adoption of these individual codes has been slow and they tend to follow the generic model of the general code. The Civil Service Statute is also very general as most questions are dealt with in collective treaties negotiated with the trade unions.

544. The General Code is not applicable to employees of some economic public bodies and publicly controlled companies, although ANAC has recommended that each body adopt a code as a part of its three-year plan for the prevention of corruption. In addition, the Chamber of Deputies has already issued a code of conduct.
545. The judiciary does not have a code that applies to all magistrates including lay judges and lay prosecutors. The National Association of Magistrates has its code of ethics, which the High Council of the Judiciary uses as guidance.
546. Violations of the code may give rise to disciplinary sanctions. It is not clear whether officials in public administration or for the Chamber of Deputies have access to confidential counselling with regard to the application of their respective official codes of conduct.
547. While the Council of Europe Code was a source of inspiration, the international framework and initiatives of regional, interregional and multilateral organizations was not directly referred to in the code of conduct.
548. It was **recommended** that Italy establish general codes of conduct applicable to all public officials as defined by the Convention, including members of Parliament. Italy is further encouraged to complement these codes with additional training (including general induction training), education and confidential counselling programmes, and to ensure that all agencies/administrations in the public administration fully adopt specific codes of conduct.

#### *Paragraph 4 of article 8*

*4. Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.*

#### *(a) Summary of information relevant to reviewing the implementation of the article*

#### ***The New Whistleblower Law***

549. In November 2017 the Italian Parliament passed a law on whistleblowing (Law n. 179 of 2017, entered into force on December 29, 2017, so called “on the protection of reporters of crimes and irregularities”). The law has a twofold effect, on both the public and private sector:
1. on the public sector: it eliminates and replaces art. 54 of the single act on public employment (aka TUPI, in Italian)
  2. on the private sector: it changes article 6 of the law 231 of 2001.

550. The main points of the new law are the following:

Recipients of reports:

There are now 3 main alternative recipients of reports, namely:

- 1) the National Anti-Corruption Authority (ANAC) (introduced by Decree Law n. 90 of 2014)
- 2) the ordinary judicial or accounting authority (introduced by Law n. 190 of 2012)
- 3) the “person responsible for the prevention of corruption and transparency”

Subjects bound by the law:

The act introduces a double extension of protection, namely:

- 1) For employees of the public sector: Article 54-bis of the single act on public employment is now extended in a sense to reach the widest interpretation possible of employees of the public administration (including workers and employees of enterprises providing goods or services and performing works in favour of public administration);
- 2) (A major novelty) Article 2 of the bill extends to the private sector (through amendments to Legislative Decree n. 231 of 2001), the protection of workers who report illegalities (or violations of the organizational and managerial model of the company) which become known while performing official functions.

Object of the report and the Objectives of the mechanism:

It is specified that the law has a large scope and aims at ensuring that reports or complaints be in the interests of the integrity of both the public administration and (NEW) the private entity. In addition, the psychological opinion of the whistleblower has to be characterized by a reasonable belief, based on factual elements, that unlawful conduct has taken place indeed. Additionally:

1. It is prohibited to disclose the identity of the whistleblower, in either the disciplinary, criminal and administrative procedures.
2. After having heard the Guarantor for the protection of personal data, ANAC is tasked with the preparation of guidelines for some of the aspects of the whistleblowing system in the public sector. Indeed, the Authority shall give recommendations on the methodology as to file and manage reports/complaints, with the goal to guarantee the confidentiality of the reporting employee. There should be one or more channels which, in order to protect the integrity of the organization, allow safe reporting to those who have become aware of irregularities in the course of the functions performed. More specifically, among the possible systems used to transmit alerts while protecting the confidentiality of the whistleblower, at least one solution should be a computer-based model.

Sanctions:

Now ANAC has the power to issue sanctions (only for the public sector) in the following cases:

1. In case of discriminatory or retaliatory measures against the employee, ANAC can issue administrative fines from 5,000 to 30,000 euros, without prejudice to other responsibilities.
2. For the adoption of procedures non-compliant with the guidelines or the lack thereof, ANAC can issue a fine from 10,000 to 50,000 euros;
3. In case of failure to carry out verification activities and analysis of the reports/complaints, ANAC can issue a fine against the responsible person, from 10,000 to 50,000 euros.

ANAC decides on the penalty, taking into account the size of the organization the report refers to. In both the public and private sector, in the event of disputes related to the imposition of disciplinary sanctions or the adoption of measures with adverse effects on working conditions (whether they are demotion, dismissal, transfer, or other organizational measures), the employer holds the burden to prove that the adoption of such measures was not retaliatory (i.e. motivated by the employee's complaint/report).

There is an exclusion clause, meaning that protection is not guaranteed if:

1. the whistleblower has been found guilty, through a criminal procedure (even at first-degree/non-final ruling), of slander or defamation, or
2. the whistleblower has acted with fault or gross negligence.

Disclosure of secret information:

The new provision introduces as a "just motive" (*giusta causa*) to waive professional secrecy (Article 622 of the Italian Civil Code), scientific and industrial secrecy (Article 623 of the Italian Civil Code) and breach of the obligation of loyalty to the entrepreneur by the lender (Article 2105 of the Italian Civil Code) the case in which the whistleblower, through his/her revelation, aims at pursuing/protecting the (considered higher) interest of the integrity of both public and private organizations and the prevention and repression of maladministration.

551. Subsequent to the adoption of the law, ANAC acquires the following additional tasks:

1. the Authority is the recipient of reports concerning "measures considered retaliatory [adopted] ... by the signatories" (Article 1, paragraph 1, before last phrase);
2. the Authority shall "(...) inform the Department of the Public Function of the Presidency of the Council of Ministers as well as other guarantee or disciplinary bodies for the activities and possible actions of competence" (Article 1, paragraph 1, last paragraph);
3. During its own inspection, ANAC has now the competence to assess "the adoption of discriminatory measures" (Article 1 (6), first subparagraph);
4. ANAC obtains sanctioning powers to be applied against:
  - a) the responsible person for the adoption of discriminatory measures (Article 1, paragraph 6, first paragraph);
  - b) the responsible person to receive reports and establish reporting procedures (art. 1, section 6),
  - c) the manager, for the failure to carry out the verification and analysis procedures of the single

report received (Article 1, section 6). The recently adopted Law no. 179/2017 confers to the Authority the task of the drawing-up of the guidelines relative to alerts' submission and management procedures.

552. Beside the guidelines, ANAC has developed a specific **IT platform** to ensure greater protection and the maximum confidentiality to public employees reporting wrongdoings. The IT platform developed by ANAC will be made available to all public administration who want to use this secure system to handle the alerts they receive from their employees.
553. The IT platform developed by ANAC is one of the actions contemplated in the Third Action Plan of the Open Government Partnership, which is a multilateral and international initiative including representatives of governments and civil society organizations, that aims to promote open government, empower citizens, fight corruption, and harness new technologies to strengthen governance.
554. The council members of ANAC have undertaken many training activities relating to the law about whistleblowing, addressed to managers of public administrations and to lawyers and operators of the Courts. A couple of examples of these activities, among many others:
- a) (January 2018): The new whistleblowing discipline in the private sector. Legal, organizational and social impacts. A workshop dedicated to the new provision concerning the extension of whistleblowing to the private sector. The legal implications involve numerous business areas including: human resources, organization, legal, compliance.  
(see at <http://www.nctm.it/eventi/convegni-e-seminari/la-nuova-disciplina-del-whistleblowing-nel-settore-privato-impatti-giuridici-organizzativi-sociali>)
  - b) (November 2017, 2 days) Course: The protection of the employee reporting illegal (so-called whistleblowing). Whistleblowing in the private sector. Organized by the law bar association of Rome.  
(see at <https://www.ordineavvocatiroma.it/evento/13-00-16-00-corso-la-tutela-del-dipendente-segnalante-illeciti-cd-whistleblowing/>)
555. Moreover ANAC has presented the results of the annual monitoring on whistleblowers reporting during the following conferences:
- June 22, 2016: “Protection of public employee reporting wrongdoings: Italy invests on whistleblowing”.  
[https://www.anticorruzione.it/portal/public/classic/AttivitaAutorita/Anticorruzione/SegnalIllecitoWhistleblower/\\_presentPrimoMonitoraggioNaz](https://www.anticorruzione.it/portal/public/classic/AttivitaAutorita/Anticorruzione/SegnalIllecitoWhistleblower/_presentPrimoMonitoraggioNaz)
  - June 22, 2017: “Prevention of corruption, whistleblowing and legal protection of public employee”.  
[https://www.anticorruzione.it/portal/public/classic/AttivitaAutorita/Anticorruzione/SegnalIllecitoWhistleblower/\\_presentSecondoMonitoraggioNaz](https://www.anticorruzione.it/portal/public/classic/AttivitaAutorita/Anticorruzione/SegnalIllecitoWhistleblower/_presentSecondoMonitoraggioNaz)
556. The results of the above mentioned monitoring is an increasing number of alerts received from the date of entry into force of the law. Some alerts have given an important contribution to the consciousness of maladministration: for example, the alert concerning Regione Lazio, case “Emonet”. Moreover, the alert concerning University of Parma has taken to the adoption of an ethical and behavioral code.

## ***Other Protections***

557. The whistleblower is implicitly protected by the principle of freedom of expression sanctioned by art. 21 of the Italian Constitution, other Italian sectorial laws also provide an implicit protection such as employment law (L. 300/1970) and the Legislative Decree n. 231/2001 concerning liabilities of companies.
558. At the constitutional level (Article 21) the principle of freedom of expression regulates and governs the situation where a person has, according to its status (employee), access to particular information, due to his employment, that allows him to have a more qualified opinion compared to other external subjects. The right of expression is protected under the whistleblowing regulation only when the information disclosed is related to fraud, crime or other hazards. It is obvious, therefore, that there is no protection when the report is made in bad faith and / or relates to false statements.
559. In the field of labour law, article 1 of the Workers' Statute implicitly provides a reference to the right of expression for those who report abuses.
560. The Law 190/2012 introduced a provision (Article 54-bis) in the Act 165/2001 (General provisions on public employment organization), which protects the civil servant who reports wrongdoings:
- “1. Other than in cases of accountability for slander or defamation, or for the same title pursuant to Article 2043 of the Civil Code, a civil servant who submits a complaint to the judicial authority or the Court of Auditors, or reports to his immediate superior unlawful conduct of which he has become aware due to his employment relationship, cannot be penalized, dismissed or subjected to direct or indirect discriminatory measures, having an effect on working conditions for reasons directly or indirectly linked to the complaint.
  2. Within the context of the disciplinary procedure, the whistleblower's identity cannot be revealed without his consent, provided that the dispute of the disciplinary accusation is based on separate and further investigations with respect to his report. If the dispute is based, in whole or in part, on his report, his identity may be revealed if his knowledge is absolutely essential to the defence of the accused.
  3. The adoption of discriminatory measures shall be reported to the Department of Public Service, for the provisions of competence, by the interested party or the most representative trade union organizations in the administration in which they were put in place.
  4. The complaint is removed from access as provided for in Articles 22 et seq. of Law No. 241 of August 7 1990, and subsequent amendments”.
561. The public employee is protected from any action, which adversely affects his rights (dismissal, victimization, mobbing) linked directly or indirectly to his reporting. Provided that the report is not, however, object to false and defamatory statements or statements that can harm any interest recognized and protected by the legal system.
562. The alert may be issued directly to the judicial authorities, the Court of Auditors or to the immediate superior or to the National Anti-corruption Authority. Object of the message is any conducts that are unlawfully discovered by the public employee in the workplace, by reason of his employment. The identity of the reporting employee is subject to confidentiality, as it cannot be revealed without his consent. But confidentiality, however, is not absolute: the norm identifies the

possibility of disclosure of the identity of the employee when, during the proceedings, the accused person, absolutely needs the identity of the whistleblower for reasons of legal defense.

563. This principle found its application in Legislative Decree n. 62/2013, pursuant to which “senior officials shall, in a timely manner, adopt the measures required, on learning of the occurrence of unlawful conduct, and shall implement and conclude, if competent, the disciplinary procedures, or shall, in a timely manner, report the unlawful conduct to the disciplinary authority, while, when required, collaborating and, in a timely manner, reporting the said conduct to the criminal court or to the national audit body in accordance with the competences of the said bodies. In the event that an employee reports an unlawful act, the said official shall take all precautionary measures in accordance with the law to ensure that the reporting individual shall receive protection and that his/her identity shall not be unduly revealed during the disciplinary procedure, as per article 54 bis of Legislative Decree n. 165 del 2001” (Art. 13.8; adde Art. 8).
564. The National Anti-Corruption Plan - The P.N.A. provides for the adoption of appropriate measures to prevent the commission of offenses related to corruption. Among the measures for the prevention of corruptive phenomena, the PNA explicitly provides for the dissemination of good practices for the protection of whistleblowers; raising awareness among public employees on the positive value of whistleblowing. The main aim is to achieve a good reputation of the Public Administration, with continuous monitoring on whistleblowing and any retaliation taken against the whistleblowers.
565. With the aim of encouraging Public Entities to denounce internal wrongdoings and refer them to the Anti-corruption Authority, the Authority published ad hoc guidelines (resolution 6/2015); these provide the entities with recommendations on how to adequately protect whistle-blowers while creating awareness on the necessity of having systems of protection in place.
566. Information about whistleblower in Italy can be found on the website of ANAC: <http://www.anticorruzione.it/portal/public/classic/AttivitaAutorita/Anticorruzione/SegnalIllecito>  
Whistle blower
567. A ruling of the Supreme Court has established that an employee which has informed the judicial authorities of a potential criminal event that took place in the workplace, even without first informing their superiors, cannot be considered a just cause of dismissal, unless the libellous nature of the report is proven (Cass., Sez. Lav., sent. n 6501 del 14 marzo 2013). With regards of the burden of proof, the retaliatory nature of the dismissal constitutes an exception which needs to be raised by an employee, the lack of which detects only in the cases where the employee has shown just cause or just reasons of the dismissal.

*(b) Observations on the implementation of the article*

568. Italy has established measures and systems to protect public officials from retaliation for reporting unlawful activity or corruption. In particular, it has adopted a new law on the protection of whistleblowers (Law no. 179/2017).
569. It was concluded that Italy has implemented this provision of the Convention.

### *Paragraph 5 of article 8*

*5. Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.*

#### *(a) Summary of information relevant to reviewing the implementation of the article*

570. According to art. 14, d.lgs. 33/2013, top-executive and (regular) executive public officials are subject to publication obligation on remuneration. They have also the duty to disclose property, asset and participations in companies to the public administration they belong to.
571. In relation to the holders of political offices, including central, regional or local non-elective offices, the State, the regions and the local entities shall publish the following documents and information: a) the deed or announcement of appointment, with an indication of the term of office or the electoral mandate; b) the curriculum; c) the remuneration of whatever type related to the acceptance of the office; d) the public money spent on business travels and missions; e) the data related to the acceptance of other offices, both in public and private bodies, and the relevant remuneration received on any ground; f) other appointments, if any, remunerated with public money with an indication of the relevant amount; g) the declarations and tax return provided for in Article 2 of Law 5 July 1982, n. 441, as well as the declarations and tax return referred to in Articles 3 and 4 of the same law, as amended by this decree, only with respect to the relevant individual, his/her not separated spouse and relatives within the second degree of kinship, if they have consented to such disclosure. Evidence shall in any case be given in case of lack of consent.
572. Each manager shall notify to the administration where he/she holds office the aggregate amount of public money he/she has received. The public administration shall publish, for each manager, on its institutional website, the aggregate amount of the aforesaid remuneration.
573. In the deeds of appointment of the managers and in their relevant agreements, the goals of transparency aimed at making understandable and readily accessible to citizens any published data, including, in particular, the data of the accounts concerning the expenses and the costs incurred for the personnel, to be indicated both in an aggregate form and in details, shall be reproduced.
574. ANAC controls the correct compliance with the obligation of publication on asset declaration, exercising its powers of inspection through request of information, acts and documentation to the public entities and ordering to proceed, within 30 days, with the publication of data, documentation, and information required.
575. ANAC applies the administrative sanction from 500 to 10,000 euros in case of non-communication or incomplete communication of the information and data related to the patrimonial situation of the holder of the duty at the moment of the appointment, the stock detained in companies, his shareholdings and those of his spouse and relatives in the second degree as well as all the compensation related to the appointment.
576. The sanction is applied under the Regulation on sanctioning powers issued by ANAC. Non-submission or incomplete submission of asset declaration by the above listed subjects is punished with a fine from 500 to 10,000 euros (imposed by ANAC).

577. The act is published on the website of the administration/entity involved.
578. A list with the name of all non-compliant subjects is published on the website of ANAC.
579. Non-compliance with the obligation of publication also constitutes element of evaluation for managerial responsibility, possible cause of responsibility for damage to the reputation of the administration and are in any case evaluated for the provision of the retribution of result and accessory retribution related to the individual performance of the individuals involved pursuant to art. 47 of legislative decree n. 33/2013.
580. ANAC adopts guidelines to support public administration and all other entities to enforce the provisions on asset and declaration disclosure. It also defines criteria, models and standard schemes for the organization, codification and representation of the documents, information and data object to mandatory publication.

### ***Publication***

581. In 2016 the Legislative Decree no. 97, amending the article 14, extended the asset and income disclosure of holders of political offices to senior civil servants. However, it has to be pointed out that the disclosure of income, assets and financial data has been suspended for all senior officials until the delivery of the judgment of the Italian Constitutional Court.
582. The high level officials required to disclose information are “holders of administrative, direction or Government offices, however named, except in the case of appointments without remuneration, and to the holders of management positions, granted for whatever reason, including any appointment granted at the discretion of the political bodies without resorting to public selection processes”.
583. The definition “holders of administrative, direction or Government offices” includes e.g. the President and the members of the board of Independent Authorities; the Presidents and the Steering Board of public bodies such as the National Social Welfare Institution (INPS); members of the bodies determining the policy of public controlled companies and controlled private entities (private entities include associations, foundations and any private entity with a budget over € 500.000, whose activities has been financed for the most part by public administrations in the last 2 years and with all the members of the administrative body appointed by public administrations).
584. The definition “holders of management positions, granted for whatever reason, including any appointment granted at the discretion of the political bodies without resorting to public selection processes” refers to managerial senior positions such as Secretary General, Head of Department, General Manager and any other managerial position included those conferred on subjects who do not possess the rank of employee of public administrations (external appointments).
585. Public officials, as above identified, are subject to disclose and publish on the websites of the administrations where they hold offices the following information related to their income and asset:
- a) remuneration of whatever type related to the acceptance of the office included the public money spent on business travels and missions;
  - b) data related to the acceptance of other offices, both in public and private bodies, and the relevant remuneration received on any ground;
  - c) other appointments, if any, remunerated with public money with an indication of the relevant amount;

d) copy of the latest tax return (annually)

e) a statement on his/her real rights on immovable properties and movable properties recorded in a public register, ownership of company shares and equity participations, ownership of companies, any company directorships or posts as internal company auditors (within three months from the appointment and then annually to communicate any variation).

### ***Members of Government***

586. The law No. 215/2004 establishes transparency requirements for government office holders, spouses and relatives within the second degree. More specifically, these parties must declare to AGCM the data relating to the assets held. The obligation also applies to assets held in the three months prior to the assumption of the mandate and, furthermore, all the variations that may intervene during the course of the mandate must be communicated.

587. More generally, it should be noted that this obligation is introduced to allow AGCM to control the conduct of the holder of government offices.

### ***Details***

588. In response to requests for additional information, Italy provided the following answers on

- whether gifts of substantial value are required to be reported  
Pursuant to article 4 of the “Code of conduct for the public employees” (Presidential Decree no. 62/2013) public officials can only accept gifts or other benefits of small value, including discounts, estimated to be of 150 euros received occasionally within the limits of normal courteous relations and within the context of international habits. The Code adopted by each administration can set a smaller value or even exclude the possibility to accept gifts. Gifts and other utilities exceeding that value are immediately reported and made available to the administration to be returned or donated for institutional purposes.
- the procedure for reviewing declarations (when, who, and how), and whether such forms are reviewed at the time of filing or whether they are only reviewed upon allegation of misconduct  
The reviewing of declarations is requested to the subject obliged to present them by the same public administration which receives the declarations for the publication. It should be reminded that the declarations are made under the personal and penal liability of the signer. Provisions confer to the ANAC only the power to verify that the information and data published fully respond to the data and information the law requires to be disclosed. It is a review limited to verify the declarations in terms of publication, updating, completeness of information, readiness for consultation. The review is done by the ANAC ex officio or following a complaint.
- the process for correcting or amending declarations  
First of all, the same public administration which receives the declarations for the publication is in charge of demanding their correction. In particular the check is carried out by the Manager for corruption prevention and transparency.  
Secondly, revealing a non-compliance with publication of data for which the legislative decree no. 33/2013 provides an administrative sanction - information related to patrimonial situation, included tax return, the stock detained in companies, shareholdings, compensation related to the

appointment- the ANAC verifies the reason for the violation. Information is requested from the Manager for corruption prevention and transparency of the administration and from the Independent evaluation body. If it is found that the holder of the duty has refused to communicate the information required, a sanction from 500 to 10.000 euros is applied to him/her by the ANAC. The related decision is published on the website of the administration or body involved.

- the procedure for making declarations public, whether redactions apply, and any limitations that preclude or prevent an individual from accessing such declarations

All asset and income declarations are published on the websites of the public administration where the public official holds his/her office. All information is public.

Public administrations publish the data within three months from the appointment and for the three years following the termination of the appointment, except for the information relating to the patrimonial situation and, where permitted, the declarations of the not separated spouse and the relatives within the second degree of kinship, that are published up to the termination of the office or of the mandate. At the expiry of the period of publication, the relevant data and information are accessible with a request under the Freedom of Information Act.

- whether the declarations cover all forms of conflicts of interest and incompatibilities  
Declarations required under article 20 of the Legislative Decree no. 39/2013 refer to the non-conferrable status and incompatible assignments in public administrations and private entities under public control (refer to no. 287).

Declarations required under article 14 of the Legislative Decree no. 33/2013 can disclose different forms of conflict of interest.

- whether there exists guidance for the filing of declarations, including instructions and advice on what is reportable

With the resolution no. 241/2017 the ANAC adopted Guidelines for the implementation of article 14 of legislative decree no. 33/2013 which requires, inter alia, the publication of asset and income declarations. The Guidelines also include formats for the asset declarations and indicate that the obligation to publish the income declarations is fulfilled with the publication of the same tax return presented to the Revenue Agency or with the tax summary contained in the same tax return.

*(b) Observations on the implementation of the article*

589. Italy has established measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

590. Members of Government and senior civil servants are required by law to file declarations disclosing certain sources of income, assets, and outside positions held along with a copy of their latest tax returns. This information is to be published, also to detect actual or potential conflicts of interest. However, in March 2017 this publication requirement was challenged by high-ranking civil servants, and it has been suspended pending a decision by the Constitutional Court. In contrast, publication of the information by holders of political offices (national, regional, municipal level) is operational. There is no requirement for internal review of the information for incompatibilities or

actual or potential conflicts of interest on the part of senior civil servant positions. The Competition Authority is responsible for checking for incompatibilities after appointment of a holder of political office in the executive as well as during and after leaving office. The Competition Authority does not make the information public except when necessary to support a decision made.

591. Members of the Chamber of Deputies and of the Senate are required to file declarations containing property rights, assets recorded in public registers, corporate shares, equity interests in companies and copies of their latest tax return regarding income subject to personal income tax. Some of this information is available on the website of Parliament and on each individual member's website. Magistrates are required to file statements to the High Council of the Judiciary on the same type of information as Parliamentarians, without public access except by grounded request. The High Council of the Judiciary determines whether to allow access to the statements. There is no internal review of the statements filed.
592. It was **recommended** that Italy adopt enforceable asset declaration and verification systems for senior public officials for all three branches of government, and establish effective internal review systems to help identify and address conflicts of interest, incompatibilities and ineligibilities.

*Paragraph 6 of article 8*

*6. Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.*

*(a) Summary of information relevant to reviewing the implementation of the article*

593. Art. 16 of Presidential Decree n. 62/2013 lays down the rules related to the responsibility caused by the violation of the code of conduct, identifying 4 main types of responsibility: penal, administrative, civil and, first of all, disciplinary.
594. Sanctions applied shall respect the principle of proportionality and be based on a gradual approach. They are contained in laws, regulations, collective agreements and may provide from the simple disciplinary reprimand up to the dismissal without notice. It is on the office dedicated to disciplinary proceedings of the administration itself to deal with the issue, supported by the supervision of the Department of Public Service. ANAC is not involved in this sense.
595. Sanctions are defined by the Consolidated Law on Public Employment (Legislative Decree 165/2001) and by the National Collective Labour Contracts. The National Collective Labour Contracts provide for the following types of sanctions that apply according to the principle of proportionality with the violation committed:
- verbal or written reprimand
  - fine of equal amount variable up to a maximum of four hours of salary
  - suspension from the service without salary for up to ten days
  - suspension from the service without salary from a minimum of 11 days up to a maximum of 6 months (from the 11th day, payment of 50% of the salary)

- dismissal with or without notice

596. Pursuant to art. 55 bis, paragraph 4 of the Legislative Decree 165/2001, public administrations are required to transmit data relating to the sanctioning procedures activated to the “Inspectorate for the public administration”. The information received is collected in a database which shows, for each administration, the number of proceedings initiated, those suspended due to pending criminal proceedings, those concluded and those archived, as well as the sanctions applied, divided into:

- minor penalties (lower than the suspension from the service)
- suspension up to 10 days
- suspension over 10 days
- dismissal

*(b) Observations on the implementation of the article*

597. There are procedures available to be followed to impose discipline for those civil servants in public administration who violate the general and the administration-specific codes. Disciplinary sanctions are contained in the Consolidated Law on Public Employment (Legislative Decree no. 165/2001) and the National Collective Labour Contracts. Moreover, Art. 16 of Presidential Decree no. 62/2013 lays down the rules related to the responsibility for violations of the general code of conduct. The Code for Deputies includes provisions on code violations.

598. The National Association of Magistrates can impose sanctions on its members (approximately 95 per cent of all the magistrates) for violation of its Code of Ethics (although that Code does not carry the weight of law). The Prosecutor General of the Court of Cassation can start disciplinary action against members of the judiciary. The Minister of Justice can also start disciplinary action by referring a case to the Prosecutor General or subsidiarily starting the action if the Prosecutor General decides not to act. However, as the Code of Ethics does not carry the weight of law, disciplinary action within the judiciary is based on Legislative Decree No. 109/2006 on the Duties of Members of the Judiciary and is heard by the High Council of the Judiciary.

599. It was concluded that Italy has implemented this provision of the Convention.

## **Article 9. Public procurement and management of public finances**

### *Paragraph 1 of article 9*

*1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:*

*(a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;*

- (b) *The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;*
- (c) *The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;*
- (d) *An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;*
- (e) *Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Overview of the public procurement legislation**

- 600. Public procurement in Italy is governed by the Public Contracts Code (Legislative Decree 50/2016, which entered into force on 19 April 2016, hereinafter referred to as the “Code”).
- 601. The Code abrogated the former public contracts code (Legislative Decree 163/2006) with immediate effect from the date of its publication in the Official Journal and the implementing regulation (Decree of the President of the Republic n. 207/2010) save for a limited number of provisions which will be repealed upon the entry into force of the secondary sources.
- 602. The Code does not provide for a consolidated implementing regulation but for several secondary sources, such as Ministerial Decrees and guidelines issued by the National Anti-Corruption Authority (hereinafter referred to as the “ANAC”).
- 603. The Code applies to public works, supply and service contracts and concessions awarded by contracting authorities and other awarding entities, as defined by the Code (e.g. State, regional or local authorities, bodies governed by public law, public companies, etc.).
- 604. There are many provisions in support of legality, starting from strengthening and reinforcing the role of ANAC as supervising authority as well as performing its functions on monitoring, promoting, supporting the exchange of best practices and information between contracting authorities. The Code empowers the ANAC to check the observance, by the contracting authorities and the candidates, of the general principles and rules governing the awarding procedures of public procurements, including those ones excluded from its scope.
- 605. ANAC has the task of adopting general directives as guidelines, tender models, contract models and other flexible regulation instruments, offering a steady support in the interpretation and application of the Code.
- 606. The Code has implemented the EU public procurement Directives, i.e. (i) Directive 2014/23/EU on the award of concession contracts, (ii) Directive 2014/24/EU on the public procurement, and (iii) Directive 2014/25/EU, coordinating the procurement procedures for the award of the same contracts by entities operating in the water, energy, transport and postal services sectors (hereinafter together referred to as the “EU Directives”). In the EU, public procurement law is based upon the general

principles stemming from the Treaty on the Functioning of the European Union (“TFEU”), and is aimed at ensuring equal access for all operators within the EU internal market to procurement opportunities in other EU Member States, as well as fair competition for public contracts.

607. However, the scope of the Code is wider than the EU Directives, since it regulates all awarding procedures for contracts both above and below EU thresholds and it contains further rules that are not provided for by the EU Directives, although inspired by the same principles.
608. With respect to the Government Procurement Agreement (“GPA”), its purpose is to open up as much of this business as possible to international competition. It is designed to make laws, regulations, procedures and practices regarding government procurement more transparent and to ensure that they do not protect domestic products or suppliers, or discriminate against foreign products or suppliers. Since the provisions of the EU Directives and the GPA are closely aligned, compliance with the Code (which in turn implements the Directives) ensures de facto compliance by Italy with the GPA.
609. The award of contracts executed by the State, regional or local authorities and other bodies governed by public law entities, must comply with the basic principles set forth by the EU Treaty and EU Directives and in particular with the principle of freedom of movement of goods, freedom of establishment and freedom to provide services, as well as the principles deriving therefrom, such as the principle of equal treatment, non-discrimination, mutual recognition, proportionality and transparency.
610. By ensuring the opening-up of public procurement to competition, the public procurement legislation also aims at allowing contracting authorities to achieve the so-called “Best Value for Money”.
611. The provisions of the public procurement legislation should be interpreted in accordance with both the aforementioned basic underlying principles.
612. The Code distinguishes between the ordinary sector and special sectors. Special sectors include: (i) gas and heat; (ii) electricity; (iii) water; (iv) transport services; (v) ports and airports; (vi) post services; and (vii) extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels. The special sectors are subject to specific provisions, in particular with regard to the publicity of the tender documentation.
613. Specific provisions are also provided for the contracts relating to: (i) social services; (ii) cultural heritage; and (iii) research and development.
614. Public procurements in the defence and security sectors are currently governed by the Code and Legislative Decree n. 208/2011, implementing the Directive n. 2009/81/EU (“Defence Decree”). The Defence Decree sets forth special rules with regard to contracts falling in its scope of application. The relevant provisions are applicable to procedures and contracts whose calls for tender (if any) or invitation to submit the bid occurred after 15 January 2012.
615. According to article 45 of the Code, Italian contracting authorities shall allow the economic operators established in EU Member States to take part in bidding procedures.
616. With regard to economic operators established in countries which entered into international agreements on public procurement with the Italian Republic or the EU (e.g. the GPA), article 49 of the Code provides that Italian contracting authorities shall ensure to said foreign economic operators, a treatment no less favourable than that accorded by the Code for the economic operators established

in Italy.

617. Article 35 of the Code provides for specific thresholds for determining individual contract coverage and in particular:

1. EUR 5,225,000.00 for public work contracts and concessions;
2. EUR 135,000.00, for supply and service contracts and public design contests awarded by contracting authorities which are listed as central government authorities under Annex III (i.e. Ministries);
3. EUR 209,000,00 for supply and service contracts and public design contests awarded by sub-central contracting authorities; and
4. EUR 750,000,00 for social service contracts and other specific services listed under Annex IX.

The Code is also applicable to public contracts in special sectors whose value is equal to or higher than:

1. EUR 5,225,000,00 for public work contracts;
2. EUR 418,000,00 for supply and service contracts and public design; or
3. EUR 1,000,000,00 for social service contracts and other specific services listed under Annex IX.

618. On December 19th 2017, the Commission Delegated Regulations (EU) 2017/2364, 2017/2365, 2017/2366 and 2015/2367 were published, amending, respectively, Directives 2014/25/EU, 2014/24/EU, 2014/23/EU and 2009/81/CE, all approved by the European Parliament and of the Council, in respect of the application thresholds for the procedures for the award of contracts. The above-mentioned Regulations entered into force on January 1st 2018. The application thresholds for the procedures for the award of contracts are modified as follows:

- (1) the amount `EUR 418 000' is replaced by EUR 443 000;
- (2) the amount `EUR 5 225 000' is replaced by EUR 5 548 000.
- (3) the amount EUR 135 000 is replaced by EUR 144 000;
- (4) the amount EUR 209 000 is replaced by EUR 221 000;

619. Nevertheless, the Code applies to all awarding procedures, for both above threshold and below threshold procurement. Fundamentally, while the procedural rules provided for contracts above EU thresholds aim at allowing any EU entity to participate in the procedure, below such thresholds, the regime is tailored on domestic competition and the pivotal difference pertains to the advertising means of the tender notices and calls for tender which are published, in the first case, in the Official Journal of the European Union and, in the second case, on the ANAC specific website and on the contracting authority profile. As far as contracts at national level are concerned, it is also worth mentioning that below a certain threshold (Euro 40,000), the Code does not provide for any specific rules concerning awarding procedure, provided that the general principles are complied with.

620. The new Code deals with the concession contract organically. Public works/services concessions are defined as the agreement between the contracting authority and a private economic operator for the performance of works/services, where the consideration for such works/services consists either solely in the right to exploit the work/services or in this right together with payment by the competent awarding authorities, provided however, that the operating risk connected to the management of the

works/services is borne by the concessionaire.

621. The gradual move towards procedures fully managed in a digital way has been planned, with the following reduction of administrative burdens.
622. The Code distinguishes between ordinary and special procedures. Ordinary procedures include:
- a. open procedures: the contracting authority publishes a call for tender and any interested economic operator may submit a tender according to the conditions and timescales set forth by the call for tender; and
  - b. restricted procedures: the contracting authority will solicit economic operators to submit a request to participate in the tender and, subsequently, only the operators invited by the contracting authority may submit a bid.
623. The contracting authority is free to choose between open tender and restricted tender procedures. Special procedures include:
- a. competitive procedure with negotiation: the contracting authority publishes a tender notice open to all the economic operators. The potential bidders shall file their request of participation indicating the qualitative requirements listed under the tender notice. On the basis of such information, the contracting authority invites the qualified bidder to negotiate;
  - b. negotiated procedure without previous publication of the call for tender: as a matter of fact, such procedure is similar to a private negotiation, except for the fact that the awarding authority will be required to apply the general principles of transparency, non-discrimination, equal treatment and proportionality; and
  - c. competitive dialogue procedure: the contracting authority publishes a call for tender in which there is a list of both the requisites to be met by the competitors and the evaluation criteria of the bids. Any economic operator may request to participate in the tender procedure. Then, the contracting authority conducts a dialogue with the candidates admitted to that procedure, with the aim of developing one or more suitable alternatives capable of meeting its requirements, and on the basis of which the candidates chosen are invited to tender.
624. The competitive procedure with negotiation and the negotiated procedure without previous publication of the call for tender are characterized by a certain degree of flexibility in terms of a limited capacity of the participants to discuss and/or negotiate with the awarding authority the conditions as set out in the tender documentation.
625. The competitive procedure with negotiation and the competitive dialogue procedure can be carried out only upon the occurrence of specific and exceptional conditions, and namely for the awarding of works, supplies and services contracts:
- a. where the needs of the contracting authority cannot be satisfied by means of immediately available solutions;
  - b. which require the planning of new innovative solutions;
  - c. where a previous negotiation is mandatory because of the features, complexity or financial/legal regulation of the scope of the contract or because of the risks connected thereto;
  - d. where the technical specifications cannot be precisely indicated by the contracting authority; and
  - e. in the event that a previous tender procedure has been carried out but only irregular or not correct

tenders have been submitted.

626. The negotiated procedure without previous publication of the call for tender can be used only under exceptional conditions (e.g. only one operator can perform the contract because of specific skills, protection of exclusive rights, urgency, etc.). Finally, it is also worth noting that the contracting authorities may call special procedures and apply specific rules whenever they need to award standard supplies and services (so-called dynamic purchasing systems) or residential housing works.
627. Time limits to receive the requests to participate in the tender procedure and to receive the tenders are provided by the Code, depending on the type of tender procedure.
628. In general, when fixing the time limits for the receipt of tenders and requests to participate, contracting authorities shall take account of the complexity of the contract and the time required for drawing up tenders, without prejudice to the minimum time limits set by articles 60, 61, 62, 64 and 65 of the Code. Such provisions set forth minimum timescales which are basically compliant with those fixed by the EU Directives.
629. There are three sets of requirements which must be met by the bidders in order to participate in a public procurement procedure, namely:
- a. general morality requirements;
  - b. economic and financial capacity; and
  - c. technical and professional skills.
630. Requirements under letters b) and c) must be drawn up by the awarding authorities and proportionate to the subject-matter of the public procurement.
631. Generally speaking, through such requisites, the Code aims to exclude from the tender: entities which have been convicted of certain types of crimes (such as participation in a criminal organisation, corruption, bribery, fraud, etc.); entities facing bankruptcy (or entering into a proceeding for the declaration of bankruptcy); entities which failed to pay social security contributions or taxes; subjects who have been found guilty of material professional misconduct; and entities which rendered misrepresentations, etc. The Code indicates a precise list of offences causing exclusion. Furthermore, the ANAC shall specify which evidence is appropriate to demonstrate such exclusions by means of guidelines not issued yet and that will be published on the ANAC website. Means of evidence referred to in the Code are imperative just for the awarding authorities. However, other means may be used by the competitors.
632. Should a competitor make good any damage caused and adopt measures to prevent other crimes, it may be readmitted.
633. Furthermore, the awarding authorities have been granted new powers in order to demonstrate, for the purposes of the exclusion, that the company was guilty of serious misconduct putting in doubt its integrity and reliability.
634. In the event of missing, incomplete or essential irregularities of the documentation filed by the bidder, the latter is entitled to regularise the documentation within 10 days from the relevant notice received from the contracting authority.
635. Fundamentally, public contracts can be awarded on the basis of the most economically advantageous tender criterion or, in specific and limited cases, on the basis of the lowest price criterion. The most economically advantageous tender criterion consists of the best quality/price

ratio. Such criterion specifically takes into account both the economical and the technical aspects (e.g. quality, price, technical merit, aesthetic and functional characteristics) allowing the awarding authority to pursue the best trade-off.

636. Such criterion is mandatory for (i) social services, (ii) hospital, assistance and school catering, (iii) labour intensive services, and (iv) contracts to award architectural and engineering services exceeding Euro 40,000.
637. The tender documents establish the features assessed by the most economically advantageous criterion, in accordance with the nature, object and characteristics of the contract.
638. When using the lowest price criterion, the contracting authority shall give evidence of the grounds of such choice in the tender documentation.
639. A number of rules on debriefing unsuccessful bidders are set forth by article 76 of the Code.
640. In general, contracting authorities shall, as soon as possible, inform candidates and tenderers of any decisions reached concerning the award of the contract, including the grounds for any decision not to award a contract for which a call for tender was published. In particular, upon written request of the party concerned, the contracting authority shall, as quickly as possible, inform in writing:
- any unsuccessful candidate of the reasons for the rejection of its application;
  - any unsuccessful tenderer of the reasons for the rejection of its tender; and
  - any tenderer who has made an admissible tender of the characteristics and relative advantages of the tender selected, as well as the name of the successful tenderer.
641. The time taken to respond may in no circumstances exceed 15 days from receipt of the written request. However, it is worth noting that contracting authorities may decide to withhold certain information referred to in the paragraph above, regarding the contract award, where the release of such information would impede law enforcement, would otherwise be contrary to the public interest, would prejudice the legitimate commercial interests of economic operators, whether public or private, or might prejudice fair competition between them. In any case, where there is a lack of written request by the competitor, the contracting authority shall inform the unsuccessful tenderers, in writing, of their exclusion within five days from the exclusion notice.
642. Contracting authorities can carry out autonomous tender procedure only provided that they are qualified by the ANAC to do that. Non-qualified contracting authority shall necessarily purchase works, supplies and/or services from or through a central purchasing body. Such bodies can be used also by qualified contracting authorities.
643. Central purchasing bodies can:
- a. award works contracts as well as enter into and implement agreements on behalf of the contracting authorities;
  - b. enter into framework agreements which can be used by qualified awarding authorities to award public tenders; and
  - c. manage dynamic purchasing systems and electronic markets.
644. ANAC maintains a register of qualified contracting authorities, which includes the central contracting authorities (Centrali di committenza). The qualification system for determining qualified contracting authorities relates to authorities entering into a specific kind of contract, and depends on

the complexity of the contract and the value of the underlying contract (value ranges are provided in the New Code). Authorities constituting qualified contracting authorities are selected based on certain criteria regarding technical and organizational abilities.

645. Should two or more awarding authorities, who also possess cumulatively the qualifications required, jointly carry out specific public procurements and concessions, they will be jointly liable for the fulfilment of the obligations arising from the Code.
646. At State level, the most relevant CPB (Central Purchasing Body) is **Consip**, a joint stock company set up in 1997 by the Ministry of Economy and Finance (MEF), its sole shareholder.
647. Its mission is to make the use of public resources more efficient and transparent, by providing tools and skills, to public entities and economic operators, in order to allow the performance of efficient public purchases in a competitive environment.
648. Along with providing support to individual entities during the entire procurement value chain, and to train and assist end users in the use of e-procurement tools, it mainly acts as the national CPB when centralizing, implementing and awarding tenders on behalf of other Entities.

### *The review system*

649. According to Legislative Decree 104/2010 (hereinafter, referred to as the “Code of the Administrative Trial”), any dispute arising from, or connected to, awarding procedures of public works, services and supplies, including relevant claims for damages, falls within the exclusive jurisdiction of the administrative courts.
650. Any measure adopted during the awarding procedures may be challenged by any interested party before the Regional Administrative Court (hereinafter, referred to as the “Administrative Appeal”).
651. The Administrative Appeal aims at obtaining the annulment of the challenged administrative measures (e.g., call for tender, exclusion of a candidate, etc.) in order to allow the claimant to participate in the tender or to be awarded with the contract, depending on the procedural stage at which the challenged administrative measure has been adopted by the contracting authority. However, if such a result cannot be obtained (e.g. because the contract has already been performed), alternatively, the claimant is entitled to claim for damages (including the loss of chances). In the context of the same proceedings, the claimant can also ask for interim measures aimed at suspending the effectiveness of the measure challenged during the proceedings.
652. Should the Administrative Appeal be brought against the awarding measure (so-called “aggiudicazione”) and the latter be annulled, the administrative judge is entitled to declare the ineffectiveness, in whole or in part, of the contract in the specific cases listed under articles 121, paragraph 1 and 122 of the Code of the Administrative Trial (e.g. award of the contract without duly advertising the call for tender, use of negotiated procedure out of the allowed cases, inobservance of the standstill period for the signing of the contract, etc.). In such cases, should the contract not be declared ineffective because of imperative needs requiring the contract to maintain its effects, the judge may: (i) apply pecuniary sanctions ranging from 0.5% to 5% of the contract value; or (ii) reduce the duration of the contract up to a maximum of 50% of the remaining duration at the date of publication of the extract of the decision.
653. The decisions issued by the Regional Administrative Court may be further challenged before the Council of State (Court of second instance). Exceptional remedies may also be lodged against the

decisions of the Council of State (i.e. appeal to revoke the decision in the exceptional cases provided by article 395 of the Italian Civil Code and appeal before the Supreme Court for reasons of jurisdiction).

654. After the contract has been signed, any disputes arising from its performance fall within the jurisdiction of Italian Civil Courts, unless connected to the awarding procedure.
655. In 2014, new provisions have been introduced in the Code of the Administrative Trial in order to reduce the length of the judicial proceedings, so as to have a judgment in reasonable time in order to avoid the contracting authority, the awarded company and the claimant being kept in an uncertain situation for too long and, meanwhile, the contract is not performed.
656. With the entry into force of the Code, article 120 of the Code of the Administrative Trial has been amended in order to rationalise the process in the field of public tenders.
657. In particular, the Code repealed the prior notice of the intention to propose a claim and pursuant to article 204 of the Code, a special rite before the Regional Administrative Court has been introduced. In particular, it is provided that defects related to the composition of the commission and exclusion from the tender because of a shortage of subjective, economic, financial and technical requirements are immediately harmful and can be appealed before the Regional Administrative Court within 30 days from the publication of the composition of the commission or the list of unsuccessful or successful candidates. The proceedings must be defined within 30 days from the expiration of the term within which the parties separate from the claimant must appear before the judge.
658. Furthermore, failure to challenge these provisions also precludes from challenging the same by means of cross-appeal.
659. The Administrative Appeal must be filed with the Administrative Regional Court within 30 days from the relevant notification or publication or, at the latest, from the acknowledgment of the challenged deeds. Should the calls for tender not be published, the 30-day period starts from the publication of the awarding notice listing the reasons of the choice not to publish the call for tender. If such information is not included in the notice, the contract may be challenged no later than six months from the day following its signing.
660. The appeal before the Council of State must be made no later than 30 days from the notification of the challenged decision. Should the challenged decision not to be notified, the appeal shall be filed within three months from the publication of the decision.
661. In principle, the signed contract may be declared ineffective by the administrative judge as a result of the breach of the rules governing the awarding procedure. However, the ineffectiveness of a contract will generally depend on a range of further factors (e.g. public and private interests involved in the performance of the contract, the stage of performance of the contract, the possibility for the claimant to step-in the contract, etc.). Should the annulment not be obtained, the only remaining remedy will be the claim for damages.
662. In addition, it must also be highlighted that any disputes between the parties arising from the performance and interpretation of a signed contract fall within the jurisdiction of Italian Civil Courts, unless connected with the awarding procedure. Therefore, any breaches of the contract pertaining to its performance and interpretation may be challenged before the civil court.
663. The timescale of a lawsuit depends on a number of factors such as its nature, the legal issues of the case, and the workload of the courts. Nevertheless, the Code of the Administrative Trial provides

for a special procedure aimed at accelerating proceedings relating to public procurement disputes. According to such a procedure, all the deadlines for notifying or filing acts before administrative courts (except for the ordinary appeal) are halved. The time generally requested to obtain an interim measure ranges from 15 to 30 days. The time generally requested to obtain a definite court ruling ranges from one to two years. The new Code has introduced new procedural rules that should shorten such period to a few months but it will be necessary to wait for their implementation in order to evaluate the actual impact on the timings of the remedies.

664. Should an appeal against the awarding procedure be lodged pursuant to article 121, a) and b) of the Code of the Administrative Trial, the contracting authority may prevent the administrative judge from declaring the ineffectiveness of the contract provided that:

- (i) before the start of the awarding procedure, the reasons justifying the negotiated procedure without advertising a call for tender are clearly outlined;
- (ii) a notice, aimed at disclosing the intent of the contracting authority to sign the contract, is published in the Official European Journal or the Italian Official Gazette (so-called “avviso di trasparenza preventiva”); and
- (iii) the contract has been signed not earlier than 10 days from the day following the notice under (ii) above.

665. Moreover, the following solutions have been provided as alternative remedies to the judicial protection: (i) amicable agreement; (ii) arbitration; (iii) settlements; (iv) advisory technical board; and (v) pre-litigation advice issued by the ANAC obliging the parties to comply with what is established.

666. In order to guarantee the effectiveness and the speeding of the procurement procedures as well as ensuring binding timeframes in contracts fulfilment, a new special procedure is introduced by the Regional Administrative Court to be adopted in closed session. In particular it is established that procedural errors made in the composition of tenders’ Committee, as well as those related to the exclusion from the tendering procedures due to the shortage of the personal, economic/financial and technical/professional requirements, are to be considered immediately prejudicial and may be appealed to the Regional Administrative Court within 30 days from the date of publication of the Commission’s composition or from the date of the publication of the lists of candidates who have been excluded or admitted. Not appealing against these provisions hinders the right to raise an objection of illegality for the following acts of the tender procedures also including the incidental appeal.

667. Alternative remedies to judicial protection are also foreseen, such as friendly agreement, (also extended to the claims for works and service contracts, removing the appeal to the Commission and providing for the conclusion within 45 days), arbitration (providing only for the appeal to the administered arbitration as well as the establishment of a Chamber of Arbitration which regulates and holds the register of arbitrators and secretaries, drawing up the Code of Ethics for the Arbitration Camera), agreement (in case it is not possible to find other alternatives). Other solutions are also included as the advisory technical board (with non-binding assistance functions in order to achieve, during the fulfilment stage, a fast solution of legal disputes) and pre-litigation advice issued by ANAC (where ANAC provides advice on issues arisen during the tender process upon request of the contracting authority or by one of the parties concerned).

668. A bidder can fill a complaint to the National Anti-corruption Authority (ANAC). If the parties

involved in the request filed before the ANAC agree to consider ANAC's opinion as binding, the parties shall comply with it. The opinion rendered by the ANAC can be appealed before the Administrative Court of the two stage judicial review. If the ANAC judges that one or some of the tender documents are contrary to applicable laws, the ANAC may invite the procuring entity to remove the effects of such unlawfulness within 60 days. In case the procuring entity fails to resolve such unlawfulness within the above time limit, the ANAC will apply a fine ranging between EUR 250.00 and 25,000.00. The invitation to resolve the unlawfulness can be appealed before the Administrative Courts as well.

***Special measures to prevent corruption in public procurement: ANAC***

669. ANAC's mandate and functions were extended and reinforced by Decree Law 24 June 2014, n. 90, (converted into law with amendments by Law n. 114/2014) which, among other measures, provided for the abolition of the Authority for the Supervision of Public Contracts (AVCP) and its organisational and functional integration with ANAC.
670. The new institutional mission consists in the prevention of corruption in public entities and in subsidiaries and state-controlled companies through the implementation of transparency in all aspects of management; through supervisory activities in the framework of public contracts, and in every area of the public administration that can potentially develop corruption phenomena, as well as through the orientation of the behaviours and activities of public employees by means of advisory and regulatory interventions.
671. The legislator's choice to entrust ANAC of the supervision of public contracts represents a significant intervention intended to strengthen the fight against corruption in Italy.
672. The integration of the functions of the two institutions, and the consequent extension of the powers of ANAC, in fact, establishes the conditions for a more effective oversight of the scope of contracts and public procurement.
673. The new Code identifies (article 213) the ANAC as the responsible entity for the supervision and regulation of public contracts in order to ensure compliance with the principles of transparency, legitimacy and competition of the operators in the public procurement market, in order to prevent corruption.
674. The Authority supervises the entire public procurement system, at both state and regional levels. In particular, it supervises the correct application of laws and regulations, while verifying the regularity of award procedures and the efficiency of contract execution.
675. The Authority reports to both the Parliament and the Government on particularly serious cases concerning the failure to comply with public procurement legislation or its distorted application; it also proposes legislative modifications to the Government and suggests revisions of implementing regulations to the Minister of Infrastructure.
676. The supervisory activity aims to ensure the fairness and transparency of procurement procedures, to guarantee the efficient execution of contracts and compliance with the European principles.
677. It is articulated into powers of verification, also through inspections and sanctions.
678. The Authority supervises the entire public procurement system, at both state and regional levels, in order to ensure compliance with the principles of legitimacy and transparency in awarding procedures and with the effective performance of contracts as well as compliance with competition

rules and the efficiency of contract execution.

679. The supervision also affects the system of qualification of competitors participating in public procurement contracts. This is a particularly exposed area to corruption phenomena, in which the role of the Authority is crucial in terms of prevention and repression with strong punitive measures, which include, among others, suspension and cancellation of certificates, suspension and the loss of the authorization for the Società Organismo Attestazione activity.
680. ANAC introduced in 2014 the “collaborative supervision” as a particular and exceptional form of verification, above all preventive, aimed at fostering a profitable control collaboration with the contracting authorities and thus guaranteeing the correct functioning of the tender operations and the contract execution, also preventing attempts of criminal infiltration in the tenders.
681. The “collaborative supervision” is now provided in article 213, par.3, lett. h) of the New Code.
682. ANAC no longer intervenes to sanction and condemn illicit behaviour ex post (after the fact), when damage done is often difficult to remedy, but to prevent anomalies ex ante (before they occur) by guiding the administration towards better and more transparent choices. MoUs specifying the conditions and the methods for the implementation “collaborative supervision” have been signed between the ANAC and several contracting authorities.
683. ANAC has the power of requiring that the contracting authorities as well as economic operators provide data and information about public contracts in progress;
684. ANAC has the power to impose fines when any subject involved in a public contract procedure has not submitted the requested documents or has submitted counterfeit or false documents or has formulated false information about itself.
685. The sanctioning powers exercised, not only through the financial penalties applied in case of information and/or documentation not transmitted, but even through the records of the companies in the Data base of the Authority. Such records cause the exclusion of the companies in the sector from calls for tenders, in cases of misrepresentation on the requirements and conditions of participation in the tender and of misrepresentation and failure of proof of technical and economic requirements in the tender.
686. ANAC has issued several guidelines to prevent the abuse of public office and conflict of interest in the public procurement process.
687. Inter alia, the Guidelines n. 3 on the official responsible for the public procurement process (the so-called RUP), at the art. 2 set out the characteristics of the officials that can assume the function of RUP. In particular, in addition to the provisions of art. 42 of the Code, to be appointed as a RUP the public employee must not have been convicted of crimes against public administration (point 2.3). The RUP must behave in accordance to the law decree n. 62/2013, the conduct code and the anti-corruption plan of his administration (point 2.3). The RUP must have a specific training and skills (point 2.4, as declined by art. 4 for works and art. 7 for supplies and services).
688. The Guidelines n. 5 on the Awarding Commissions contains specific requirements on skills and training, such as specific professional titles and experience in the specific area related to the procedure (art. 2) and on the ineligibility and incompatibility of the commissioners (art. 3). The commissioners are drawn from a list in accordance with a rotation principle.

### ***Other measures Conflict of interest***

689. Pursuant to article 42 of the Code, appropriate measures shall be taken by the awarding authorities to prevent and resolve any conflict of interest in the awarding procedures in order to avoid any distortion of competition as well as ensure equal treatment between tenderers. Whoever find themselves in a situation of conflict of interest must inform the awarding authorities and abstain from participating in the awarding procedure, thereby avoiding incurrence of disciplinary responsibility.
690. The independence of the Awarding Commissions is encouraged choosing their components from a public register held by ANAC. The application of specific rules is also provided for secret contracts or for those ones which need special security measures, in that case the strengthening of the Court of Auditors' powers is required.

### ***Rating of legality***

691. Approved by Parliament at the end of 2012, the rating of legality is the instrument with which Italian Competition Authority attributes a score, from one to three "little stars", to the honest businesses that have a turnover of more than EUR 2 million per year and that meet a number of legal and "quality" requirements. To obtain a "little star", the owner of the company and other executives should not have previous convictions for the offences referred to in Legislative Decree number 231 of 2001 and for major crimes against the public administration as well as for tax offences. Furthermore, these persons should not have been prosecuted for crimes related to the mafia.
692. In December 2014 a MoU has been signed by the Anti-corruption Authority and National Competition Authority to combat corruption in public contracts and on new criteria to assign the legality rating to companies. The common activities consist of reporting any alleged phenomena of tampering and collusion in breach of norms in force for the protection of trade competition and to access to information collected in the national database of public contracts.
693. The article 213, par 7 of the New Code provides that ANAC collaborates with the Italian Competition Authority for this activity.
694. The rating of legality shall be considered by ANAC as an element for the evaluation of the economic operator's behaviour under the company's rating system.

### ***The White Lists (WLs)***

695. The WLs are a peculiar instrument against organized crime. In Italy, WLs were used for the first time in April 2009, after the earthquake in Abruzzo, as a tool to choose the eligible firms for rebuilding. At the beginning, the WLs were optional. As a result, the contracting parts of each public procurement can decide to apply it or not. Since their introduction, WLs have been applied in many situations. Then, the WLs were transformed into a mandatory tool, by 190/2012 Act.
696. White Lists are a preventive screening tools for certain activities which are considered high risk. In these areas, tenderers who are not on a White List are de facto black listed (i.e. excluded from the tender).

### ***Integrity pacts/legality protocols***

697. It consists of an agreement between a government or contracting authority' and all bidders for a public

698. sector contract, setting out rights and obligations to the effect that neither side will pay, offer, demand or accept bribes; nor will bidders collude with competitors to obtain the contract, or bribe representatives of the authority while carrying it out.
699. Under Article 1(17) of Law No 190 of 6 November 2012 on measures for the prevention and suppression of corruption and illegal conduct in the public administration: ‘Contracting authorities may state in public procurement notices, invitations to tender or letters of invitation that failure to comply with the clauses of legality protocols or integrity agreements is to constitute a ground for exclusion from the tendering procedure.’

### ***Transparency of the procurement procedures***

700. With regard to the transparency measures, the use of electronic means in the area of information and communication is foreseen, the full advertising of the preliminary and following stages of the procurement procedures along with the publication of the notices and the invitations to tenders.
701. The article 29 provides moreover that the contracting authorities shall publish on their websites and in the ANAC’s website acts and information about the whole single procurement process.
702. The Code also foresees the adoption of measures aiming at rationalizing databases which have been reduced to two lists, one of which is managed by ANAC, performing its monitoring and supervision functions and the other one is governed by MIT (Ministry of Infrastructures and Transport) through assessing the compliance to general requirements for economic operators in order to make them able to respond to the invitation to tender.
703. Even before the adoption of the new Code, the legislation has provided the full transparency of the procedures. According to art. 1, par 32 of Law No 190 of 6 November 2012 (Anti-corruption LAW), contracting Authorities shall publish on their web sites the following information: the subject of the contract notice; the economic operators invited to tender; the successful contractor; the amount of the award; the time limit for completion the work, service or supply; the amount paid. Each year, by the end of 31 January, the information on the previous year is published in summary tables, freely available in digital format to download, that allow to assess the data, also for statistical purposes; Contracting Authorities shall transmit such information in digital format to the ANAC that shall publish it on its web site, in a section freely available to all citizens, listed by contracting authority and Region. The Authority with its own deliberation, identifies the relevant information and the method of transmission; Each year, by the end of 30 April, the Authority shall transmit to the Court of Auditors the list of entities which have not provided and published, in whole or in part, the information in digital format. According to the Code of Public Contracts, if the information is not provided or false information has been provided, administrative sanctions can be inflicted by the Authority.
704. The Code strongly encourages the adoption of digital tools to perform procurement procedures.
705. The tracking of the entire procurement cycle phases and user’s behaviour, together with the digital storage of data and documents produced during the procedure itself, strongly enhance transparency in the entire process and the capacity to prevent and contrast corruption phenomena.
706. An important example of full digitalization of the purchasing procedure is represented by the MEPA, the public administration electronic marketplace, managed by Consip on behalf of the Ministry of Economy and Finance (MEF).

707. The MEPA is an entirely digital system that manages low value purchases, below the EU threshold, that otherwise would have low visibility, no tracking and very difficult access to data and documents.
708. During 2016 more than 600.000 low value purchases were managed on the MEPA. Thus the system builds a huge amount of digital information that can be easily accessed by monitoring Authorities and could be the base for an open data strategy that allows larger participation also by the civil society.

### *Traceability of financial flows*

709. To fight mafia penetration, Law 136/2010, Article 3, introduces the principle of traceability of financial flows, making it mandatory for contractors to have a dedicated bank or post office account for funds connected with public contracts.
710. The contracting authorities must therefore include, under penalty of nullity, a clause on the traceability of financial flows; further, the contract must contain an express rescission clause to activate whenever a transaction is carried out not via a bank or Poste Italiane Spa postal account.
711. Any payment shall contain the indication of the Competition Identification Code (CIG, Codice Identificativo Gara), assigned by the ANAC, and, if required, the Unique Project Code (CUP); the aforementioned operators communicate to Contracting Authority the dedicated bank-account number.
712. Focus on the special powers of the President of A.N.AC. Measures for extraordinary and temporary management - Law Decree 24 giugno 2014, n. 90 - Art. 32
713. The art. 32 of law decree n. 90/2014 provides an innovative and disruptive measure, aimed to the complete execution of the contract under the penal proceeding, able to immediately intervene in situations where corruption phenomena have arisen to contrast them, without interfering with the normal activity of the company:
714. “In the event that the judicial authority processes certain crimes against the public administration, that is, in presence of detected anomalous situations and nevertheless symptomatic of illegal conducts or criminal events attributable to a company awarded a contract for the construction of public works, services or supplies, the President of ANAC proposes to the competent Prefect, either:
- to order the renewal of the corporate bodies by replacing the person involved and, if the company does not abide by the terms established, to provide for the extraordinary and temporary management of the contractor only for the full implementation of the contract covered by the criminal proceedings;
  - to engage in the extraordinary and temporary management of the contracting company limited to the complete execution of the contract subject to criminal proceedings.”
715. The annual reports issued by ANAC includes information about statistics, the effectiveness of the system of public procurement and the extent to which it is based on transparency, competition and objective criteria in decision-making.

### *(b) Observations on the implementation of the article*

716. Italy has a de-centralized system of public procurement. The contracting authorities have been grouped in 35 aggregated tendering authorities. Moreover, there is a central national procurement body called Consip, which was set up by the Ministry of Economy and Finance. Italy has implemented the relevant public procurement directives of the EU, notably Directive 2014/23/EU on the award of concession contracts, Directive 2014/24/EU on public procurement, and Directive 2014/25/EU, coordinating the procurement procedures for the award of contracts by entities operating in the water, energy, transport and postal services sectors.
717. Laws regarding public procurement provide for transparency in all acts by contracting authorities and contracting entities relating to the planning of works, services and supplies. They include minimum standard time frames, the conditions for participation and the establishment of award criteria. In general, procurements require competition although a restricted procedure where only invitees can compete is also available at the discretion of the contracting authority. The procedures fully set out legal recourses and appeals processes.
718. Decree n. 50/2016 (article 32, par. 9) sets out a waiting period of 35 days between the selection and the award of the contract (the drafting of the contract). Appeals do not have a suspensive effect unless a judge decides to grant an injunction (a process called "sospensiva"), the effect of which is the suspension of the award of the contract until the definitive decision.
719. With regard to procurement personnel, Italy has screening requirements for procurement personnel selected, and they must have specific training and skills. Conflicts of interest requirements for procurement personnel are the same as for other employees in public administration. In terms of general transparency of procurement, ANAC collects, analyses and publishes all relevant procurement data.
720. It was concluded that Italy has implemented this provision of the Convention.

*Paragraph 2 of article 9*

*2. Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, inter alia:*

- (a) Procedures for the adoption of the national budget;*
- (b) Timely reporting on revenue and expenditure;*
- (c) A system of accounting and auditing standards and related oversight;*
- (d) Effective and efficient systems of risk management and internal control; and*
- (e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.*

*(a) Summary of information relevant to reviewing the implementation of the article*

721. Broadly speaking, Italy is compliant with the above provisions. Moreover, between 2009 and 2015 Italy has passed a relevant budget reform, through which public finance and accounting rules

have been revised to adapt to the new EU framework and to new institutional arrangements between central and local governments. The reform also focused on increasing further transparency of the national budget process and increasing the quality of the data on the revenue and expenditure.

***(a) Procedures for the adoption of the national budget:***

722. The applicable rules and procedures for the preparation and adoption of the national budget are laid down in here attached Law 196/2009 and subsequent modifications, in particular from Article 21 to Article 32. A kind of pre-budget statement, the Economic and Financial Document (article 7 and article 10), is submitted to parliamentary deliberation in April, updated in September (article 7 and article 10-bis) and the Draft Budget Law issued in mid-October (article 7 and articles 21-32). The Parliamentary Budget Office monitors forecasts contained in the economic and financial policy documents and makes the findings public (article 10-ter).
723. The Chamber of Deputies and the Senate, as well as the Court of Auditors, have direct access - in processable electronic format - to the relevant budget data and to other general government data (article 13 and 14). Parliamentary discussion of the national budget is regulated by the rules of procedure of the Chamber of Deputies (in English here: [http://en.camera.it/4?scheda\\_informazioni=31](http://en.camera.it/4?scheda_informazioni=31)) and Senate (in English here: <https://www.senato.it/3807>).
724. Budget proceedings are made public in a timely manner both through direct access to the main institutional actors and through the Ministry of finance open data portal “BDAP” (<<http://www.bdap.tesoro.it/sites/openbdap/cittadini/Pagine/default.aspx>>). Legal provisions for such initiatives are laid in article 6. Finally, a dedicated web and mobile application called “Bilancio Aperto” (Open Budget) is also available for the national budget and updated monthly to follow the budget execution (<<http://bilancioaperto.mef.gov.it/landing.html>>). The latter two channels include figures and tables to ease communication to the general public, in addition to detailed downloadable datasets with the whole budget up to the chapter/line item level. The proposed budget and enacted budget data are made available on these channels within 48 hours from official transmission to Parliament.
725. Moreover, there are specific provisions for all public administrations (i.e. local governments and other central and local public administrations with budget autonomy) to publish detailed data and a simplified and understandable version of the enacted budget and final account statement on their websites. These provisions are laid the general public administration transparency and anti-corruption laws, in which they are mostly aimed at favouring participation and diffused control of public affairs by civil society (in particular, Legislative Decree 33/2013 and its subsequent modifications). This strand of legislation requires, for example.
- Obligation for all public administrations to publish on their website detailed data and a simplified and understandable version of Enacted Budget and End-of-Year budget for Citizens for the within 30 days from presentation (and fixed schemes are provided for in subsidiary legislation (article 29 Legislative Decree 33/2013))
  - Criteria on timeliness and open data formats (article 7 and 29 Legislative Decree 33/2013 and article 2 of the Digital administration Code)
  - Indication on where in the institutional website such information can be accessed (article 29 Legislative Decree 33/2013 and its annexed Table1)

726. Furthermore, specific requirements for «opening» administrative databases concerning public expenditure at a more detailed level are provided for daily transactions within the General Government Payments Information System (OpenSIOPE, <<https://www.siope.it/Siope2Web/>>, as required by article 14, par.6-bis, Law 196/2009) and detailed statistics on public employees, data on all public buildings (ownership and lease rentals); complete audit reports of the internal audit office and Court of auditors. As concerns State guarantees, the principal and subsidiary guarantees provided by the State in favour of agencies and other entities are listed with the national budget, in attachment to the expenditure budget for the Ministry for the Economy and Finance in the Draft Budget Law (article 31). Information about funds that do not form part of regular budgets (“off-budget funds”) are available in an attachment for expenditure budget for each Ministry in the Draft Budget Law (article 32).
727. Opportunity for public input and debate concerning the proposed national budget before its adoption stem from the media and Parliamentary auditions. There are no public documents on the results of Government consultations that take place before the budget is tabled in Parliament, but several hearings are held during preliminary examination of the Draft Budget Law, involving various types of interest groups.
728. In response to the desk review, Italy provided the following additional information on how the budget process works in practice, including how the initial budget spending parameters are established and how Parliamentary deliberations influence the budget development process:
729. In 2012 a constitutional reform introduced a balanced-budget provision, according to which all public administrations must contribute to ensure budget balance and sustainability of debt (Constitution, articles 81 and 97). Law 243/2012 enforces these provisions and details their functioning by introducing fiscal rules. Several of these rules are transposition of rules and objectives already required or in line with the EU fiscal compact. Focusing on how the fiscal objectives are set, it is worthy to know that the balancing of budgets corresponds to the medium-term objective (structural balance in terms of general government net borrowing, as defined for the purposes of the excessive deficit procedure in the EU Treaty).
730. The overall fiscal targets (in terms of general governed net borrowing and debt for the following three years) are set forth in the financial and budgetary planning documents that the Government submits to the Parliament for deliberation, starting with the Economic and Financial Document (EFD) in April and then in the Update to the EFD in September. The macroeconomic forecasts underlying the fiscal targets are scrutinized by the Parliamentary Budget Office (PBO), established in 2013 (<http://en.upbilancio.it/>). If the PBO’s assessments significantly diverge from those of the Government, then at the request of at least one third of the members of a parliamentary committee with public finance responsibilities, the Government must illustrate why it believes its assessments should be confirmed, or else align them with those of the PBO.
731. PBO is an independent body for the analysis and monitoring of public finance developments and evaluation of compliance with the budget rules. It enjoys full autonomy and independence in its judgements. Its Board has three members, appointed by a decree jointly adopted by the Presidents of the Senate and of the Chamber of Deputies, who choose from a shortlist of ten nominees whose names the parliamentary committees with responsibilities the area of public finance select on the basis of a two-thirds majority of committee members. The Board members are nominated from among persons of recognized independence and proven expertise in the field of economics and public finances at a national and an international level.

732. Government can set temporary deviations from the structural budget balance target only in case of exceptional events (periods of severe economic recession in the euro area or in the entire European Union; extraordinary events beyond the control of the State, including serious financial crises and natural catastrophes that have a major impact on the general financial position of the country). In this case, the Government must submit a report to the Houses of Parliament, containing an updated set of public finance targets, as well as a specific authorization request specifying the expected magnitude and duration of the deviation from the original target, indicating the purposes for which the resources available as a consequence of the deviation will be allocated and setting out its plan for realigning the public accounts with the budget targets. The deviation from the budget target must be authorized by Parliament with an absolute majority vote.
733. Once the fiscal targets are set (at the beginning of the programming cycle, with the EFD in April), they are broken down into subsectors. This is the starting point for the initial budget spending parameters at the central government level: the State budget is deemed to be balanced when net lending or borrowing is consistent with the fiscal targets. The Budget circular which is generally issued in May provides Ministries with criteria to determine the revenue and expenditure baselines reflecting the legislation currently in force and taking into account the economic parameters and the policy objectives indicated in the financial and budgetary planning documents. For any item that does not require new legislation, the baseline proposals may include reprogramming of resources necessary to achieve the Ministry's policy objectives. In other words, variations proposed must find compensation within their current budget envelope. There is a top down mechanism by which the Government assigns a spending or reduction target to line Ministries, which in turn identify compatibilities with their expenditure program proposals. This mechanism envisages the possibility of passing new legislation to change revenue/expenditure baselines and in such case the new legislation will be part of the Budget bill, in the first section.
734. The first section of the Budget bill can present new provisions as concerns revenues and expenditures, which have financial effects starting in the three-year period covered by the budget. It also sets the net borrowing requirement, which must be compatible with the overall fiscal targets, as well as the maximum amount of funds that may be raised on the financial market. The Budget bill should not include delegated legislation, regulatory or organizational measures or any provisions that relate to local governance or specific micro-sectors.
735. During the budget session Parliament can amend the Executive's Budget Bill under the condition that any new or increased expenditure must be compatible with the goal of balancing the revenues and expenditure of the budget itself (therefore must be compensated by equivalent reductions or revenue increases). The financial effects of the changes made by each House of Parliament is incorporated in quantifications, for each parliamentary voting unit, as resulting from the approved amendments, through a special note of variation, presented by the Government and voted by that House before the final vote, highlighting the changes with respect to the bill presented by the Government or with respect to the text approved in the previous parliamentary reading.
736. Any legislative provision that entails financial consequences must be accompanied by a technical report drawn up by the competent general government body and verified by the Ministry for the Economy and Finance quantifying the revenue and expenditure entailed by each measure, as well as the associated funding, specifying, as regards current expenditure and revenue decreases, the annual cost until the complete implementation of the measures and, for capital expenditure, of the variation of that expenditure over the years included in the multiannual budget and the overall cost in relation to the planned outputs. The technical report is accompanied by a table summarizing the financial

effects of each measure for the purposes of the net balance to finance in the State budget, the cash balance of general government and net borrowing in the consolidated accounts of general government. The report indicates the data and methods used for the quantification, their sources and all other information of use for the technical assessment on the part of Parliament, as well as the reconciliation with the trend forecasts of the State budget, the consolidated cash accounts and the revenue and expenditure account of general government contained in the EFD and any subsequent updates. For measures containing financial neutrality clauses, the technical report must contain an assessment of the effects of the provisions, data and other information sufficient to support the assertion of the neutrality of the impact of the provisions on the public finances, indicating the amount of resources already appropriated in the budget.

***(b) Timely reporting on revenue and expenditure***

737. Revenue and expenditure reports are produced on a regular basis by the Ministry of economy and finance and, as concerns aggregate general government data according to ESA standards, by the National Statistical Institute (ISTAT). The President of ISTAT is appointed by Government but subject to the prior opinion of the competent parliamentary committees, which may hear the person designated. The appointment is subordinate to the favourable opinion of the aforesaid committees, approved by a two-thirds majority of their members (article 5, Law 196/2009 and subsequent modifications).

738. All data/reports are available to the general public among which (article 14, Law 196/2009 and subsequent modifications):

- on a monthly basis, a report on the consolidated cash account of central government
- on a monthly basis, a report on developments in tax revenue and contribution revenue
- by 31 May, 30 September and 30 November each year, a report on the consolidated cash account of central government, referring respectively to the first quarter, first half, and first nine months of the year. The report published by 30 September shall provide the updated estimate of the consolidated cash account of general government for the year
- on a monthly basis, the Treasury summary account representing the monthly report of collections and payments of the State treasury service, regarding both the management of the State budget and of the State Treasury. The latter comprises the financial movements associated with floating debt and liquidity management, accounts open with the State Treasury, suspense items to settle and cash deposits (article 44-bis)

739. Moreover, a report on the results achieved with measures to counter tax and contribution evasion is presented in conjunction with the update of the Economic and Financial document in September (article 10-bis 1), distinguishing between taxes assessed and recovered, as well as between the different types of assessment procedures initiated, specifically highlighting the results of the recovery of amounts reported but not paid and the correction of errors in settlement on the basis of returns, specifying, where possible, the recovery of tax and contribution revenue attributable to greater voluntary taxpayer compliance.

740. In response to the desk review, Italy provided the following additional information on independent oversight of ISTAT such as through a Supreme Audit Institution:

741. The Constitution establishes the Court of Auditors (Corte dei conti) among the bodies that

guarantee the legality and good running of administrative action and that safeguard the equilibrium of public finances (article 100, second paragraph) and among the jurisdictional bodies (article 103, second paragraph). In exercising its audit functions, it is a neutral, autonomous and independent body. It is defined as an “auxiliary body”, in the sense that it cooperates but does not take the place of the bodies invested with political functions in defining the objectives of the administrative action.

742. In particular, article 100 of the Constitution states that the Corte dei Conti exercises prior control of legitimacy over the acts of the Government, and also ex-post on the management of the State budget. It participates, in the cases and in the forms established by law, to control the financial management of the entities to which the State contributes in an ordinary way. It reports directly to the Parliament.
743. The external audit system of government departments was introduced by Law 20/1994, complemented subsequently by Legislative decree 286/1999. The prior control of legitimacy is restricted to a small group of government acts. The a posteriori audit function covers the performance of every government department and agency, including the regional and local authorities.
744. As mentioned above the PBO also play a role in verifying and assessing:
- macroeconomic and fiscal forecasts and macroeconomic impact of the most important legislative measures; specifically, it validates the government’s macroeconomic forecasts set out in the planning documents (validation letters);
  - developments in the public finances, including by sub-sector, and compliance with fiscal rules;
  - the activation and use of a number of mechanisms envisaged in the new European framework of fiscal rules (specifically, the correction mechanism and authorization in the case of exceptional circumstances);
  - the long-term sustainability of the public finances;
  - additional economic and financial issues associated and reports, some of which at the request of the parliamentary committees responsible for public finance matters
745. The National Statistical Institute (Istat) releases the estimates of Gross Domestic Product (GDP), and General Government statistics broken down by subsectors and General Government net borrowing according to the definitions of Council Regulation (EC) No. 549/2013 on the European System of Accounts (ESA 2010). Istat publishes the estimates twice a year: in March the preliminary estimates and in September the final estimates. In the publications (GDP and General Government net borrowing – March – and National economic accounts – September) there are spreadsheets explaining economic relationships between the different economic units in a given period. The tables give data on country’s economic situation, the resources available and their use, income that has been formed and its components, the process of accumulation and its financing, relationships with the rest of the world and others.
746. The Government appoints the President of Istat but this appointment is subject to the prior opinion of the competent parliamentary committees, which may hear the person designated. The appointment is subordinate to the favourable opinion of the aforesaid committees, approved by a two-thirds majority of their members.

*(c) A system of accounting and auditing standards and related oversight;*

747. Recent developments have improved the institutional setting for delivering the implementation of accrual
748. IPSAS/EPAS based accounting reform. In fact, a constitutional reform in 2012, following the adoption of the Budgetary Framework Directive (Directive 2011/85/EU), brought back the competence on harmonization of public accounting under the remit of the State, together with the transposition of the balanced budget rule and the debt rule. This constitutional law and the following national legislation represented another impulse to the accrual accounting reform.
749. Despite progress made, the current situation still remains heterogeneous. The Italian Ministry of Finance intends to complete the design to move towards a harmonized accrual accounting system among levels of governments.
750. In order to develop a reform accrual compliant, Italy plays an active role in the working groups at international level (IPSAS Board) and European level (EPAS Working Group).
751. Although the Ministry of Finance has already established a Working Group to take stock of the current situation, it would be beneficial to and in the interest of the reform to take advantage of international best practices concerning the design and the road map for implementing a harmonized accruals accounting systems. The technical support is therefore useful to facilitate the latter rather than to provide direct expertise to implementing the reform.
752. The Ministry of Finance therefore set up, in co-operation with the Structural Reform Support Service of the European Commission, a project in order to enhance the existing capacity of the government to design the accrual accounting system across general government sector through the contribution of international experts (which have proven to have implemented similar reform successfully in other EU countries setting international best practice). Furthermore, an action plan which sets out the timeline and the actions for a future implementation of the reform will be developed during the project.
753. The transition to the accrual accounting system needs a long period of time to be fully implemented. There is an urgency to start as soon as possible to complete the design of a fully harmonized accrual/IPSAS/EPAS based accounting and preparing an action plan for its implementation. Italy, and in general each Member State, has a timetable planned by Eurostat to define the first accrual Opening Balance Sheet (2020) and the first EPAS Opening Balance Sheet (2025). It will be a strong impulse towards the development of new accounting systems.

### **The audit functions of the Court of Auditors (Corte dei conti)**

The Corte dei conti pursues the sound and effective use of public funds, guarantees the legality of the administrative action as well as the equilibrium of public finances; it carries out a jurisdictional function in matters of public accounting.

According to the article 100 of the Constitution... *The Corte dei conti carries out “ex ante” legality audit on Government acts and “ex post” audit on the State budget. It takes part, according to the law, in the audit of financial management of public funded bodies. The Corte dei conti refers to Parliament on the audit results.*

The law guarantees the independence of the Corte dei conti and its members.

According to the article 103 of the Constitution, *“The Corte dei conti has exclusively jurisdiction in matters of public accounting and in specific matters provided by law.*

The “*ex ante*” audit is one of the most traditional functions of the Corte dei conti. It is an “*ex ante*” compliance evaluation of the acts of the Government with laws in force, in particular with the budget laws. The list of the acts submitted to the audit of the Corte is peremptory (art. 17 T.U. 1214/34, art.3 law 20/94)

For example, the “*ex ante*” compliance audit is carried out on contracts of substantial financial amounts as well as on, provisions adopted following a deliberation of the Council of Ministers, regulations, acts of programming, general acts involving public finances.

The performance audit carried out by the Corte dei conti involves the entire activity of public administrations including acts, operations, behaviour to verify the compliance of the results with the objectives established by the law. The audit takes into consideration and evaluates costs, methods and times of the implementation of the administrative action. The audit concerns both legitimacy aspects and the efficiency, effectiveness and economic parameters of the administrative action.

Since 2003, the audit of the Corte dei conti on local entities has been enforced, by law, and more and more strengthened.

The first step in the field of the audit on municipalities, it is represented by the law n. 131 of June 2003 (implementation law of the Constitutional law n. 3/2001).

In this institutional framework and in compliance with the above-mentioned law, since 2006 (law n. 266 of December 2005), the Corte dei conti has further developed its tasks to satisfy the exigence of the economic safeguard of the Italian Republic and for the coordination of public finance.

During this time, it has been implemented an effective audit framework on municipalities and the decree law n. 174 of October 2012 has completed the reform.

This decree law passed with amendments by Law 7 December 2012, n. 213, can be considered the source of the reform concerning the instruments for supervising public finances that, in regulatory design, form a coordinated system.

The reform provides for the strengthening of internal and external auditing and for greater effectiveness of supervision measures.

In the new context, the Regional Audit Chambers are not confined to carry out observations and oversee their implementation but are entitled to ensure the fulfilment of the corrective measures within a period determined by the Chambers themselves, punishing the inertia and/or the inadequacy of the action with the further course of the procedure (e.g. art. 148-bis, Legislative Decree. n. 267/2000).

The audits carried out by the Regional Audit Chambers in proceedings under law n. 266/2005 or in the multiannual financial rebalancing procedures (in case of structural imbalances in the budget capable of causing financial default, ex art. 243-bis of legislative decree n. 267/2000) are addressed to the representative bodies of the entity, which are called upon to undertake, through its operational structures, the appropriate corrective measures.

Similarly, it is realized the monitoring on multiannual financial rebalancing plans. The provisions of the consolidation act (art. 243-bis et seq., legislative decree n. 267/2000) provide for a continuous monitoring, first of the reliability of the plan, and subsequently to its approval, of the suitability of the measures therein foreseen to avert the financial default of the entity.

It is of particular importance, for the Regions, the introduction of the rule, in the aforementioned decree law n. 174/2012, which provides for the judgement of purification on the financial statement of the Regions, as it fits into a much more complex process aimed at achieving, on the regulatory and constitutional plane, the strengthening of the public finance coordination, in

particular between the State and Regional level of government, in which plays a fundamental role the strengthening of the participation of the Corte dei conti in the audit of the financial management of the Regions, targeted at the respect of budgetary obligations in European perspective and, therefore, at the pursuit of balanced budget declined in terms of equilibrium, as principle incorporated in the Constitution by the constitutional law n. 1 / 2012 that has amended articles 81, 97, 117 and 119 of the Constitution.

### ***Internal audit system***

754. In the Italian public administration there's not an internal audit system in the strict sense of term. Nevertheless, the reform introduced by Legislative Decree No. 150/2009 outlines a new framework to measure and evaluate the organisational and individual performances of public administrations. It represents an important step towards implementation of a performance audit system. In particular, Decree's purpose is to implement an appraisal system, based on performance evaluation, in order to award the productivity of public-sector employees. This function is performed in each administration by an independent evaluation body (OIV) that accomplishes many tasks, such as: ensuring that the measuring and evaluation processes are correct in order to uphold the principle of rewarding merit and professionalism; promoting and certifying transparency and integrity; monitoring the overall operation of the system of evaluation, transparency and integrity of the internal controls and drawing up an annual report on its state.
755. Therefore, it is clear that there are some points in common between the function of evaluation of public employees and internal audit. In particular, the similarity relates to the independent nature of the body responsible, the scheduling of the activity that is the object of the control and the planning of the control.
756. At a more general level, an important legislative intervention is represented by the Law No. 190/2012 that designed an anti-corruption system based on prevention and introduced in Italy the National Anti-Corruption Authority. The new anti-corruption law aims to ensure a more balanced approach towards anti-corruption policies and providing for a strengthened preventive line and enhanced accountability within public administration. The Anti-Corruption Law has delegated the implementation of important principles and guidelines to the Legislative Decrees No. 33 and No. 39 of 2013 with reference, respectively, to the transparency and to the system of ineligibility and incompatibility of positions in public administration.
757. The system has been completed in 2014 with the integration of the supervision on public contracts in the system of corruption prevention, according to the Law Decree No. 90/2014.
758. The purpose of making public administrations more responsible is based on the implementation of a triennial plan to prevent corruption within each public organization.
759. According to the regulatory framework, the anti-corruption plan should include a processes mapping and, in particular, a detailed description of the following elements: an analysis of the internal and external context, a description of the activities performed, a breakdown of the activities into phases, a further breakdown of the phases into actions, the corruption risk level corresponding to each action, the preventive measures.
760. The need to adopt internal control and audit systems is spreading in the Italian public administration. For example, a very recent measure adopted by the Ministry of Economy and Finance, the Decree of 8 June 2017, aimed at the reorganising the offices of the Ministry, provides,

inter alia, the implementation of a new Office with the task of analysing the internal processes within the General Accounting Office.

761. In response to the desk review, Italy provided the following additional information on the nature and extent of the progress made in implementing a harmonized accounting system within each level of government, including effective internal and performance auditing:
762. At all levels of government (central, regional and local) two kinds of audit are implemented: external audit and internal audit.
763. At central government level, the internal audit is provided by the State General Accounting Department (Ragioneria Generale dello Stato - RGS) that, among others, supports the Parliament and the Government in the budget and public finance monitoring policies. Its main institutional responsibility is to ensure the sound management and rigorous planning of public resources, and to audit state accounts by monitoring and analysing public spending trends. Moreover, RGS performs the task of monitoring public finance through inspections and controls on the administrative and accounting management of the public administrations, including local governments, and all the other public entities. Within each Ministry, the State General Accounting Department via a Central Budget Office, contributes to the budget drafting process of each Ministry, and ensure monitoring and effective control of administrative and accounting procedures and administrative reports, including sample checks.
764. At the level of regional government, the internal audit activity – aimed at verifying if the resources are used in accordance with the budget and therefore with the plans formulated by the regional councils - is performed by the accounting department, which is also responsible for the preparation of the budget and reporting.
765. At local government level, the internal audit is provided by independent and professional auditors, enrolled in a national registry as auditors for public entities. They have to control budget compliance with accounting principles and prepare, for each year, an audit report, in which they express remarks and proposals aimed at increasing efficiency, effectiveness and performance.
766. More generally, in the Italian institutional landscape, many public entities have achieved considerable and satisfactory results with respect to the implementation of internal audit system.
767. Examples of this are the social security institute, the work casualties institute, the tax agencies and many research centers. In the last years, a few of these bodies have set up internal audit system in compliance with the standards of the Italian Internal Audit Association's, where the public sector is represented. there is no difference in the reliability and effectiveness of the internal sediton systems of such bodies and those of the biggest private companies. (Such results are illustrated in the Italian Internal Audit Association's annual report) and are however supported by legislation to fight corruption and fraud within the public sector.
768. The external audit is carried out by the National Audit Court which, in performing this function, represents a neutral, autonomous and independent body, both with respect to the Government and to the Parliament. The National Audit Court is responsible for two main types of audit: the preventive supervision of the legality of government acts and the successive supervision of the state budget's management.

***(d) Effective and efficient systems of risk management and internal control;***

769. The Italian public administration is trying to introduce risk management and internal control systems and to adopt rules designed to ensure compliance with the principles aimed at promoting transparency and accountability within the organizations.
770. The most recent Economic and Finance Document (concerning 2018-2020) is available at the following link:
771. The Update to the Economic and Finance Document for financial year 2017 was deliberated on 27 September 2016. Full documentation is available at the following links:

[http://www.dt.tesoro.it/modules/documenti\\_it/analisi\\_programmazione/documenti\\_programmatici/W\\_-\\_DEF-2016-Sez\\_III-PNR\\_2016.pdf](http://www.dt.tesoro.it/modules/documenti_it/analisi_programmazione/documenti_programmatici/W_-_DEF-2016-Sez_III-PNR_2016.pdf)

[http://www.dt.tesoro.it/modules/documenti\\_it/analisi\\_programmazione/documenti\\_programmatici/Relazione\\_al\\_Parlamento\\_NdA\\_del\\_DEF\\_2016\\_FINALE.pdf](http://www.dt.tesoro.it/modules/documenti_it/analisi_programmazione/documenti_programmatici/Relazione_al_Parlamento_NdA_del_DEF_2016_FINALE.pdf)

[http://www.rgs.mef.gov.it/\\_Documenti/VERSIONE-I/Attivit--i/Contabilit\\_e\\_finanza\\_pubblica/DEF/Leggi\\_pluriennali\\_di\\_spesa/2016/Leggi\\_Pluriennali\\_NA\\_GG\\_DEF\\_2016\\_-\\_VOL\\_I.pdf](http://www.rgs.mef.gov.it/_Documenti/VERSIONE-I/Attivit--i/Contabilit_e_finanza_pubblica/DEF/Leggi_pluriennali_di_spesa/2016/Leggi_Pluriennali_NA_GG_DEF_2016_-_VOL_I.pdf)

[http://www.mef.gov.it/inevidenza/documenti/Relazione\\_evasione\\_fiscale\\_e\\_contributiva\\_\\_0926\\_ore1300\\_xversione\\_definitivax-29\\_settembre\\_2016.pdf](http://www.mef.gov.it/inevidenza/documenti/Relazione_evasione_fiscale_e_contributiva__0926_ore1300_xversione_definitivax-29_settembre_2016.pdf)

[http://www.mef.gov.it/inevidenza/documenti/Relazione\\_evasione\\_fiscale\\_e\\_contributiva\\_\\_0926\\_ore1300\\_xversione\\_definitivax-29\\_settembre\\_2016.pdf](http://www.mef.gov.it/inevidenza/documenti/Relazione_evasione_fiscale_e_contributiva__0926_ore1300_xversione_definitivax-29_settembre_2016.pdf)

772. The Draft Budget Law and approved Budget Law for financial year 2017 is available at the following links:

[http://www.rgs.mef.gov.it/VERSIONE-I/attivita\\_istituzionali/formazione\\_e\\_gestione\\_del\\_bilancio/bilancio\\_di\\_previsione/bilancio\\_finanziario/BF-2017\\_2019/](http://www.rgs.mef.gov.it/VERSIONE-I/attivita_istituzionali/formazione_e_gestione_del_bilancio/bilancio_di_previsione/bilancio_finanziario/BF-2017_2019/)

[http://www.rgs.mef.gov.it/\\_Documenti/VERSIONE-I/Attivit--i/Bilancio\\_di\\_previsione/Bilancio\\_finanziario/2017/Sezione\\_I\\_-\\_Relazione\\_e\\_Articolato.pdf](http://www.rgs.mef.gov.it/_Documenti/VERSIONE-I/Attivit--i/Bilancio_di_previsione/Bilancio_finanziario/2017/Sezione_I_-_Relazione_e_Articolato.pdf)

[http://www.rgs.mef.gov.it/\\_Documenti/VERSIONE-I/Attivit--i/Bilancio\\_di\\_previsione/Bilancio\\_finanziario/2017/Sezione\\_II\\_-\\_Deliberativo\\_-\\_quadri\\_generali\\_risuntivi.pdf](http://www.rgs.mef.gov.it/_Documenti/VERSIONE-I/Attivit--i/Bilancio_di_previsione/Bilancio_finanziario/2017/Sezione_II_-_Deliberativo_-_quadri_generali_risuntivi.pdf)

[http://www.rgs.mef.gov.it/\\_Documenti/VERSIONE-I/Attivit--i/Bilancio\\_di\\_previsione/Bilancio\\_finanziario/2017/Sezione\\_II\\_-\\_Deliberativo\\_per\\_stati\\_di\\_previsione.pdf](http://www.rgs.mef.gov.it/_Documenti/VERSIONE-I/Attivit--i/Bilancio_di_previsione/Bilancio_finanziario/2017/Sezione_II_-_Deliberativo_per_stati_di_previsione.pdf)

[http://www.rgs.mef.gov.it/\\_Documenti/VERSIONE-I/Attivit--i/Bilancio\\_di\\_previsione/Bilancio\\_finanziario/2017/Allegato-t-17-19/2017-DLB-04-AT-000-Entrata.pdf](http://www.rgs.mef.gov.it/_Documenti/VERSIONE-I/Attivit--i/Bilancio_di_previsione/Bilancio_finanziario/2017/Allegato-t-17-19/2017-DLB-04-AT-000-Entrata.pdf)

773. Downloadable detailed data - in a machine readable format - are provided at the following links:

<http://bilancioaperto.mef.gov.it/landing.html>

774. Examples of quarterly consolidated cash accounts for central government:

[http://www.rgs.mef.gov.it/\\_Documenti/VERSIONE-I/Attivit--i/Contabilit\\_e\\_finanza\\_pubblica/Trimestral/2016/TrimestraleDiCassa-settembre-2016.pdf](http://www.rgs.mef.gov.it/_Documenti/VERSIONE-I/Attivit--i/Contabilit_e_finanza_pubblica/Trimestral/2016/TrimestraleDiCassa-settembre-2016.pdf)

[http://www.rgs.mef.gov.it/VERSIONE-I/attivita\\_istituzionali/previsione/contabilita\\_e\\_finanza\\_pubblica/trimestrale\\_di\\_cassa/2016/index.html](http://www.rgs.mef.gov.it/VERSIONE-I/attivita_istituzionali/previsione/contabilita_e_finanza_pubblica/trimestrale_di_cassa/2016/index.html)

775. Example of a monthly report on the consolidated cash account of central government:

[http://www.rgs.mef.gov.it/VERSIONE-I/attivita\\_istituzionali/previsione/contabilita\\_e\\_finanza\\_pubblica/rapporto\\_mensile\\_sul\\_conto\\_consolidato\\_di\\_cassa\\_del\\_settore\\_statale\\_e\\_delle\\_amministrazioni\\_centrali/2017/06\\_2017/?\\_selmenu=5\\_5](http://www.rgs.mef.gov.it/VERSIONE-I/attivita_istituzionali/previsione/contabilita_e_finanza_pubblica/rapporto_mensile_sul_conto_consolidato_di_cassa_del_settore_statale_e_delle_amministrazioni_centrali/2017/06_2017/?_selmenu=5_5)

*(b) Observations on the implementation of the article*

776. Italy has established procedures for adopting a budget and revenue and expenditure reports are produced regularly. Regarding accounting and auditing systems, as well as systems of risk management and internal control, Italy is still moving towards a harmonized accrual accounting system.

777. There are also no internal control and audit systems within public administration, but Italy reports it is taking steps to implement a performance audit system. At the central level, the State General Accounting Department can perform some internal audit functions; at the regional level, this function can be carried out by the accounting departments; and at the local level, independent and professional auditors can be used. The Court of Auditors can and does perform ex ante audits on legality and ex post audits on the State budget.

778. Despite some recent progresses, Italy acknowledges the need to implement a harmonized accrual accounting system across all levels of the government, in accordance with international best practices, and to strengthen the internal audit and performance auditing functions of public institutions to enhance accountability. Information regarding performance audit seemed to address individual accountability rather than institutional accountability.

779. It was **recommended** that Italy continue addressing the already identified weaknesses in its public accounting, auditing and internal control systems as well as enact effective and enforceable protections that address the preservation of the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue.

### *Paragraph 3 of article 9*

3. Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents.

#### *(a) Summary of information relevant to reviewing the implementation of the article*

780. SICOGE (Sistema per la gestione integrata della Contabilità economica e finanziaria per le Amministrazioni Centrali dello Stato), the software for the integrated management of economic and financial accounting for central State administrations, passed tests on efficiency and effectiveness in terms of controls, is in the forefront of technology and has won international awards. It is therefore extremely reliable and no situations have ever occurred in which accounting books have been falsified.
781. As regards local authorities sector, the regulatory framework for keeping records is effective and efficient. The integrity of the accounting records of local authorities and the prevention activities against their possible falsification are managed directly by the local authorities themselves and monitored by external control bodies on a quarterly basis. No falsifications of accounting books occurred and therefore the integrity of the related accounting records is ascertained.
782. With regard to other public bodies, the regulatory framework ensures the correctness of bookkeeping and the integrity and truthfulness of books. Even in the case of the accounting entries of these entities, the external control bodies (appointed by the Ministry of Economy and Finance) monitor everything on a monthly or quarterly basis, depending on the importance of the institution subject to supervision.

#### *(b) Observations on the implementation of the article*

783. Observation made in the previous paragraph is referred to.
784. Concerning measures to preserve integrity of accounting books, records, financial statements or other documents related to public expenditure and revenues or to prevent falsification of such documents, Italy reported the use of a software for the integrated management of economic and financial accounting for central State administrations and stated that no situation had ever occurred in which accounting books were falsified.
785. It was **recommended** that Italy continue addressing the already identified weaknesses in its public accounting, auditing and internal control systems as well as enact effective and enforceable protections that address the preservation of the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue.

## **Article 10. Public reporting**

### *Subparagraph (a) of article 10*

*Taking into account the need to combat corruption, each State Party shall, in accordance with the*

*fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:*

*(a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;*

*(a) Summary of information relevant to reviewing the implementation of the article*

786. Since 2009 public entities and companies in which part of the share capital is in public ownership, have been obliged to publish data and information on their activities, organization and use of public resources on their web sites.
787. Next, the provisions of Legislative Decree n. 33 of 2013 grant a general right of access to information for any citizen and regard a considerable amount of information and data.
788. ANAC is endowed with powers for vigilance over compliance with disclosure obligations. It is also endowed with regulatory powers for the purposes of simplifying and working toward application of the law. ANAC may also inflict pecuniary administrative sanctions for, for example, failure – on the part of persons holding political offices (and, as from June 2016, of functionaries) – to provide, or fully provide, information concerning their incomes or estates.
789. In order to ensure compliance with transparency obligations and foster democratic participation, lawmakers have acknowledged that each citizen has the right to demand disclosure of data if the administration does not publish them in accordance with the law (known as citizens' access - *accesso civico*).
790. Since June 2016, the “obligatory transparency” regimen has been accompanied by “general citizens' access”, i.e. a Freedom of Information Act (FOIA), introduced by legislative decree 97 of June 2016. The law conferred upon ANAC the power to adopt guidelines for entities concerning application of FOIA.
791. All public entities are obliged to release documents, data and information in their possession to all parties requesting such material, with no need for the said parties to provide reasons for their requests. The material must be released within 30 days of the request.
792. From the Italian lawmakers' point of view, FOIA enables “a move toward diffused forms of control of the pursuit of institutional functions and of use of public resources, and the fostering of participation in the public debate”. The inspiring principle is that of ensuring that access be as broad as possible. Access may be limited only in certain given circumstances.
793. Indeed, public entities can deny access, while providing adequate reasons for doing so, only in order to avoid probable and concrete prejudice to efforts to safeguard public interests in regard to:
- public security and law and order
  - national security
  - defence and military issues

international relations

- politics and the financial and economic stability of the State

investigations into crimes and prosecution of criminals normal conduct of inspections.

794. Refusals to grant requests for access may also be justified by the need to prevent harm occurring to following interests of a private nature:

- protection of personal data
- freedom and secrecy of correspondence
- commercial and economic interests of individuals or legal entities, including their intellectual property, copyright and trade secrets

795. In regard to all the above hypothetical situations, public entities must ascertain whether access to the data and information in their possession might concretely harm one of the indicated interests. Only after ascertainment shall they grant or deny access to the requesting party.

796. The above provisions apply without prejudice to the possibility that public entities grant only partial access to the data and documents requested or that they postpone access, in order to favour the right to general access while at the same time providing adequate protection for the public and private interests listed by the law.

797. In the event that a request for access may be prejudicial to a private interest, the public administration in question must inform the other party before releasing the deed or document, and the latter party may intervene with respect to the procedure.

798. The situation differs in the case of requested documents or information that are State secret, or in the presence of a prohibition against divulgation. These hypothetical circumstances constitute absolute limitations.

799. If access is not granted, the requesting party may submit a review request to the administration itself (to the RPCT, Responsabile Corruzione e Trasparenza, or anti-corruption and transparency official) or to the ombudsman in the case of municipalities, provinces and regions. If the request regards personal data, before reaching a decision, the administration or ombudsman may request the advice of the Garante per la protezione dei dati personali (the Italian Data Protection Authority).

800. The above provisions apply without prejudice to the possibility of petitioning the administrative law court in accordance with art. 116 c.p.a. (code of administrative procedure).

801. The new FOIA law represents a sweeping innovation for the Italian legal system.

802. As noted above, this law converges with the progress made in Italy in the direction of transparency, with the introduction of obligations to publish on-line and, before these obligations became effective, with the introduction of the right to access to deeds and documents by parties interested, for the purposes of safeguarding their own rights and interests (l. (law) 241/1990).

803. FOIA was introduced very recently, in 2016, and is at the initial stage of implementation. The entities have had a period of six months in which to adjust to the law (June-December 2016).

804. Lawmakers have issued the provision that ANAC, in collaboration with the Italian Data Protection Authority, adopt Guidelines with practical indications for the purpose of identifying cases in which general access is ruled out, linked to the question of safeguarding the public and private

interests indicated generically by lawmakers and as set forth above. The aim is to provide assistance to entities through examples.

805. ANAC has already drawn up the initial Guidelines (del. (decision) n. 1309 of 28 December 2016). It is currently monitoring application of the law, in order to optimize practical indications in greater depth, by the end of 2017, on the strength of the experiences of public entities during 2017.

806. The early data indicate that, as yet, not many general access requests have been received.

- This institute is an absolute novelty for Italy, and very little time was foreseen for adjustment (six months). The entities are organizing their offices and are providing training so that answers may be provided at the earliest opportunity, and shall be consistent (in the case of very large entities with many offices).

- Citizens, too, must familiarise themselves with this institute and with how it is to be used, to avoid inadmissible requests (some requests are generic) or requests that overburden public entities in their efforts to make data available

- The “question of overlaps” (freedom of information and procedural transparency): Italian public entities and citizens have faced difficulties in distinguishing administrative transparency as a right of an interested party to access, in the framework of an administrative procedure, documents held by the public entities, which may affect an incoming administrative decision, from transparency as the public’s right of access to official documents as part of citizens’ freedom of information.

807. At the initial implementation phase, the need emerged to provide public entities with some operational clarifications regarding internal procedures and organization as well as the relation with citizens. To this end, the Department for public administration in conjunction with the National Anti-corruption Authority (ANAC), and as part of its general task of “coordinating initiatives to rearrange public administration and organize the related services” (art. 27, n. 3, Law 93 of 1983), produced an explanatory document containing operational recommendations on the following issues:

- How to submit a request (§ 3);
- Relevant offices (§ 4);
- Processing time (§5);
- Other parties to the proceeding (§6);
- Unallowable refusals (§ 7);
- Dialogue with applicants (§ 8);
- The Register of accesses (§ 9).

808. The document is based on the outcome of two meetings held with public entities and the remarks from civil society organizations on the first quarter of implementation of the FOIA.

809. The draft explanatory document was put up for consultation from 11 to 19 May 2017 as proposed by civil society during a meeting of the Open Government Forum.

*(b) Observations on the implementation of the article*

810. Italy has created a strong legal framework for ensuring access to information through its

Freedom of Information Act (Legislative Decree No. 33/2013, as amended by Legislative Decree No. 97/2016). The provisions address both proactive disclosure and disclosure upon request, and for partial disclosure when full disclosure is not possible. Requests for information do not have to be justified. With one possible exception for information related to public policy concerning the financial and economic stability of the State, exemptions from disclosure protect commonly recognized interests, including personal privacy and law enforcement concerns. Specifically, regarding reports on corruption risks in public administration, ANAC publishes on its website the national anti-corruption plan which, in part, identifies the main corruption risks.

811. With regard to the exemption for public policy, it was explained that the guidelines drawn up by ANAC (n. 1309/2016) explain the meaning and the scope of the exemption. They will be updated in 2018 on the basis of the experiences and data provided by the public administrations.

812. It was concluded that Italy has implemented this provision of the Convention.

### *(c) Successes and good practices*

813. Italy has a strong framework for access to information and engaged in an internal assessment of early implementation of its Freedom of Information Act.

### *Subparagraph (b) of article 10*

*Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:*

...

*(b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and*

### *(a) Summary of information relevant to reviewing the implementation of the article*

814. Italy referred to its answer under subparagraph (a). Moreover, Italy provided the following information:

815. In Italy, administrative transparency is aimed, inter alia, to ensure citizens' access to documents and data concerning the organization and activities of the public administrations.

816. The Italian system distinguishes a "compulsory transparency" from a "free access to documents and data" under the Freedom of information act introduced in June 2016 (Legislative Decree no. 97).

817. The first form of transparency obliges public administrations to publish documents, information and data set by the legislation currently in force and especially by the Legislative Decree no. 33/2013. The ANAC controls the correct compliance with the obligation of publication. Moreover, in order to ensure compliance with transparency obligations and foster democratic participation, each citizen

has the right to demand disclosure of data in case the administration has omitted the publication of compulsory data (so called “civic access”).

818. The second form of transparency ensures to everyone the right to request data and documents held by the public administrations other than the ones subject to compulsory publication, without prejudice to the restrictions imposed in relation to the need to protect legally relevant interests as provided for in the Legislative Decree no. 33/2013. From the Italian lawmaker’s point of view FOIA enables “a move toward diffused forms of control of the pursuit of institutional functions and of use of public resources, and the fostering of participation in the public debate”. The ANAC does not have the power to control the implementation of the FOIA. The law conferred upon ANAC the power to adopt guidelines for the purposes of defining the exclusions and restrictions imposed on the public access under the article 5-bis of Legislative Decree no. 33/2013. None independent authority in Italy deals with the implementation of FOIA.
819. The decree no. 33/2013 provides that the exercise of the right referred to FOIA is not subject to any restriction as far as the applicants’ credentials are concerned. Everyone can ask for data and documents without special formality and without giving reason. The Public Function Service Department, in collaboration with ANAC, adopted guidelines for public administrations in order to facilitate the access of the citizens to the data and documents (Circolare n. 2/2017). [http://www.funzionepubblica.gov.it/sites/funzionepubblica.gov.it/files/CIR\\_FOIA\\_REVe.pdf](http://www.funzionepubblica.gov.it/sites/funzionepubblica.gov.it/files/CIR_FOIA_REVe.pdf)
820. Public administration shall publish an application form to help citizens to request what they need.
821. In March 2017, the Authority launched an initiative to monitor data on FOIA accesses on a sample of public administrations in order to acquire useful elements - through specific cases - for the preparation of guidelines for updating Determination no. 1309 of 28/12/2016 concerning the "Guidelines containing operational indications for the definition of exclusions and limits to civic access as per art. 5 co. 2 of the legislative decree 33/2013".
822. The initiative is also part of the activities set out in the Action n. 7 (FOIA: implementation and monitoring) of the Third OGP Action Plan, 2016-2018 biennium implemented in collaboration with the Department of Public Administration - Presidency of the Council of Ministers.
823. The collection and processing of data, which are subject to detection and included in the "so-called". register of accesses ", were shared with the Department of Public Administration and on which the observations of the Privacy Guarantor were acquired and implemented.
824. The monitoring data are received with a data entry that will allow data to be received on an IT platform by a sample of administrations as follows:

Selected administrations divided into the following sub-funds:

Sectors	n.
Ministries	13
Regions	40 (20 Giunta regionale e 20 Consiglio regionale)
Metropolis	14
Provinces	26
Municipalities	147
Grand total	240

*(b) Observations on the implementation of the article*

825. Simplified procedures have been instituted obliging public entities to release documents, data and information in their possession to all parties requesting such material, with no need for these parties to provide reasons for their requests. There are also mechanisms to ensure compliance.
826. It was concluded that Italy has implemented this provision of the Convention.

*Subparagraph (c) of article 10*

*Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:*

...

*(c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.*

*(a) Summary of information relevant to reviewing the implementation of the article*

827. Italy referred to its answer under subparagraph (a). Moreover, Italy provided the following information:
828. ANAC adopts and publishes on its website the PNA (see § 43) that identifies the main risks of corruption and remedies also in relation to the size and various sectors of activities of the public bodies, and contains indications of the objectives, timing and procedures for the adoption of the anticorruption measures. In the last three PNAs (2015, 2016 and 2017), ANAC selected some sectors with high corruption risks (as healthcare system) or that need more indications for compliance. ANAC will extend the areas and public bodies in the next years also considering the results of supervisory activities on corruption.
829. The sectors and the public administrations already considered are listed below: public procurement, cultural heritage sector, professional associations, institutions of the education system, territorial Governance, small local authorities (with less than 5.000 inhabitants), metropolitan areas, health authorities, port authorities, special Commissioners, universities.
830. Each public administration adopts and publishes on the website the three-year Plan for the Prevention of Corruption. The PTCP analyses and estimates any specific administration's risk of corruption entities and indicates appropriate preventive measures (see § 44)
831. Every Manager for corruption prevention and transparency prepares a report on the results of activity carried out and on the causes of corruptions eventually detected on the basis of a digital scheme that ANAC decided to release in order to have comparable data. The report is published on the administration website.
832. The scheme used for the report 2017:

*(b) Observations on the implementation of the article*

833. It was concluded that Italy has implemented this provision of the Convention.

**Article 11. Measures relating to the judiciary and prosecution services**

*Paragraph 1 of article 11*

*1. Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.*

*(a) Summary of information relevant to reviewing the implementation of the article*

***Constitutional and legal framework - The principle of independence***

834. The structure of the Italian judiciary is laid out in the Constitution (Articles 101-113, Title IV, Constitution), which enshrines its independence and autonomy (Article 104, Constitution). The principle of impartiality of judges is ensured by the provisions of the Constitution concerning (i) prohibition to institute ex officio proceedings (Article 24(1), Constitution); (ii) establishment of judges by law (Article 25(1), Constitution); (iii) prohibition to set up extraordinary (or special) courts (Article 102, Constitution); and (iv) the requirement that judges be subject to law (Article 101(2), Constitution).

835. In particular, as a cornerstone principle, the Italian Constitution guarantees independence of the judiciary as a whole and of judges individually. Pursuant to Article 104 of the Constitution, the judiciary is an independent and autonomous body vis-à-vis other powers. When performing judicial functions, judges are independent and responsible only to the Constitution and to the law and any influence on judges while performing their judicial function is prohibited. The principle of independence is further assured by security of tenure, as enshrined in Article 107 of the Constitution

836. The principles, structure and organisation of the Italian judicial system are further regulated in Royal Decree No. 12/1941 (Fundamental Law on the Judiciary) and following amendments. A series of legislative decrees have introduced important reforms over the years regarding, inter alia, recruitment mechanisms; assessment of magistrates' professional skills; initial and in-office training; organisation of prosecuting offices; transition from the position of public prosecutor to that of judge and vice versa; disciplinary measures. Moreover, secondary legislation applying to the judicial system includes regulations, resolutions and circulars issued by the High Council of the Judiciary (Consiglio Superiore della Magistratura, hereinafter CSM). An overall reform of the judiciary is

currently underway. A commission of experts, set up at the Ministry of Justice, has submitted draft proposals focusing, in particular, on: abolishment of some judicial offices; magistrates' recruitment and career; disciplinary liability; incompatibilities; organisation of prosecutorial offices.

837. In Italy, the principle of unity of the judiciary applies, which means that judges and public prosecutors belong to the same professional corpus of officials, i.e. magistrates with a common career structure and governed by the CSM. Pursuant to Article 107(3) of the Constitution, magistrates differ from one another only with regard to the functions they perform.

### *Courts*

838. The structure of courts in Italy comprises the Constitutional Court, courts of ordinary jurisdiction (in civil and criminal matters) and courts of special jurisdiction, namely administrative, accounting, military and tax jurisdiction.

839. Jurisdiction on constitutional issues is conferred to the Constitutional Court, which consists of 15 judges; one-third of them are appointed by the President of the Republic, one-third by the two Houses of Parliament sitting in a joint session, and one third by the highest-instance courts in the administrative and non-administrative sectors. Candidates are to be either lawyers with at least twenty years' experience, full professors of law, or former judges of the highest administrative or ordinary courts. According to Articles 134 and 90 of the Constitution, the Constitutional Court is competent to decide on: (i) disputes relating to constitutionality of laws and instruments equated to laws whether enacted by the State or Regions; (ii) conflicts of jurisdiction between State powers and/or between the State and Regions or between Regions; (iii) indictments against the President of the Republic as per the Constitution. Review of the constitutionality of laws may be initiated either by the entities that are specifically entitled to do so (State, Regions, autonomous provinces) or in the form of an incidental question raised by a judge in the course of a proceeding, if the judge wishes to establish whether the law applicable to the specific case is constitutional.

840. The ordinary courts have jurisdiction in criminal and civil matters. Civil and criminal cases are tried within a three level court procedure (first instance, appellate review and cassation). Civil and criminal matters are handled by justices of the peace, courts, appellate courts, the Supreme Court of Cassation, juvenile courts, magistrates in charge of supervising enforcement of sentences, and courts in charge of supervising enforcement of sentences. The distribution of judicial offices of ordinary jurisdiction in the national territory is as follows: there are 508 first-instance offices (139 Tribunals and 369 offices of justices of the peace), 26 appellate courts and, finally, the Supreme Court of Cassation based in Rome. The establishment plan provides for 7,430 posts as judge. In September 2017 6,280 posts are filled, while 15.48% of the posts are vacant. In order to enhance efficiency, the judiciary has undergone a massive structural organisation to centralise judicial functions and to reduce the number of judicial offices; as a result, 31 tribunals and 667 offices of justices of the peace were abolished. Furthermore, the number and structure of judicial offices is currently under review by the Ministry of Justice; a work group was set up for this purpose. In parallel, the abolishment of juvenile courts is also under discussion.

841. Justices of the peace are lay judges who administer jurisdiction, in both civil and criminal matters, for lower value claims and less serious offences. Civil and criminal courts of first instance (tribunals) have a general and residual jurisdiction covering issues not specifically assigned to other courts. Specific matters such as labour, bankruptcy and family, are dealt with by special divisions within the

same court. Cases are adjudicated by a single judge or a panel of three judges, depending on their importance. In criminal proceedings, the most serious offences are tried before the Court of Assizes which consists of a panel of eight judges, two professional judges and six jurors. The establishment plan provides for 3,533 posts as justice of the peace. In September 2017 1,318 posts are filled.

842. Appellate Courts are second instance courts which consist of three or more divisions: criminal, civil and labour. Juvenile courts have jurisdiction in criminal and civil proceedings involving minors; their decisions are reviewed by juvenile divisions at appellate courts.
843. The Court of Cassation is the highest Italian court. It assures the correct observance and uniform interpretation of the law, compliance with the limits of the various jurisdictions, decides jurisdictional issues, and fulfils other duties conferred on it by law. The Court of Cassation hears appeals both in civil and criminal matters against decisions by lower courts, but it only rules on points of law without examining the merits of cases. To be appointed magistrate at the Court of Cassation, a judge, as a general rule, is to have at least 4th degree seniority (i.e. 16 years of service). The analytical and scientific capacity required by the law is assessed by a special committee, nominated by the CSM, on the basis of the applicant's merit and scientific qualifications, which include written publications; final decisions on appointment are taken by the CSM.
844. The main functions of special courts are enshrined in Article 103 of the Constitution. The administrative courts review administrative decisions taken by public authorities and comprise the regional administrative courts (Tribunali Amministrativi Regionali) as first instance courts, and the Council of State. Jurisdiction over accounting matters is exercised by the Court of Audit (Corte dei Conti) and, in particular, by Regional Chambers, as first level courts and the Central Chamber. The military jurisdiction is exercised by Military Courts (Tribunali Militari), Military Appeals Courts (Corti Militari di Appello) and Military Surveillance Courts (Tribunali Militari di Sorveglianza) in cases concerning military offences committed by members of the Armed Forces. Administrative, accounting and military jurisdictions are exerted by professional magistrates, recruited through a public competition among candidates with specific requirements. The special jurisdiction courts have their self-government bodies, namely the Presidency Council of administrative magistrates; the Presidency Council of the Court of Audit, and the High Council of Military Judiciary, which are responsible for career, promotions, transfers, disciplinary proceedings etc. The current number of magistrates of special jurisdiction is: 420 administrative magistrates; 527 accounting magistrates; 58 military magistrates
845. Jurisdiction in fiscal matters is exercised by fiscal courts at provincial (Commissioni Tributarie Provinciali) and regional level (Commissioni Tributarie Regionali), respectively. The Court of Cassation is competent to hear appeals against decisions of fiscal courts. The members of tax courts are appointed by the President of the Republic, upon proposal of the Minister of Economic and Financial Affairs, following the decision of the Presidency Council of Fiscal Courts, the self-governing body of the fiscal jurisdiction. Tax courts of first and second instance have a mixed composition of (i) professional magistrates (both sitting and retired) belonging to ordinary, administrative and military jurisdictions; and (ii) other professional categories, including, university professors, university researchers or secondary school teachers in legal and economic matters; civil servants, sitting or retired, with a seniority of at least ten years and a law or economic degree; retired officers of the Guardia di Finanza; accountants and professionals listed in the registers of engineers, architects, building surveyors etc. They are in any case chaired by professional magistrates. Disciplinary sanctions consist of reprimand, censure, dismissal from office and are adopted by the Presidency Council of fiscal courts. According to the statistics provided, 14 disciplinary sanctions

were imposed in 2014 and three in 2015, respectively. The current number of members of fiscal courts is 3 354 at provincial level, and 1 314 at regional level, respectively. A recent law reform on tax litigation has provided the recruitment of new tax judges exclusively among applicants who are already judges or are practicing as lawyers or certified accountants. Considering that 47% of all the civil cases pending before the Court of Cassation (more than 50,000) fall within the competence of the tax division and that it is “an unrelenting rising trend”, with a simulated projection by 2020 and 2025 according to which tax disputes will reach 56% and 64%, respectively, by resolution of 15 March 2017, the High Council proposed to the Ministry of Justice the creation of a task force at the Court of Cassation, with the task of clearing the existing backlog in proceedings in fiscal matters.

### *Lay judges*

846. In accordance with Article 106 of the Constitution, the law regulates cases where justice is administered by lay judges. The Italian legal framework comprises different categories of lay judges: justices of the peace, tribunal lay judges (giudici onorari di tribunale), experts in juvenile courts and juvenile divisions at appellate courts, experts in courts competent for supervision over enforcement of judicial decisions (tribunali di sorveglianza). Moreover, lay judges can replace a professional magistrate on a panel of three judges. Lay magistrates belong to the judiciary and when performing their duties are to comply with the same principles and rules as professional magistrates. Supervision over lay judges is exerted by the CSM; measures have been recently taken to strengthen professional checks over lay judges, notably, through triennial appraisals. The establishment plan provides for 2712 posts as honorary judges. In September 2017, 2441 posts are filled.
847. According to Law No. 57/2016 (“Delegation to Government to undertake a comprehensive reform of lay magistrates and justices of the peace”), on 13th July 2017 the Government adopted Legislative Decree nr. 116, which provides for a global reform of honorary magistrates, establishing a single status of lay magistrates and, inter alia, enhancing their professional training, supervision and assessment.
848. The main contents of the reform are listed below:
- a. To be nominated as an honorary magistrate, Legislative Decree n. 116/2017 requires: Italian citizenship, full exercise of civil and political rights, good reputation, age over 27 years and below 60 years, a law degree following a minimum 4 years university course, not having been convicted for intentional crimes, not having been submitted to security or preventative measures, not having been disciplinary sanctioned;
  - b. Lay magistrates are appointed by decree of the Minister of Justice in accordance with the decision of the CSM, on proposal of the competent Judicial Council;
  - c. Before the final appointment, lay magistrates are required to attend a six months’ internship under the supervision of a professional magistrate, during which they are evaluated in order to be confirmed;
  - d. CSM and the High School of the Judiciary are responsible for ensuring the professional training of lay magistrates;
  - e. The duty of lay magistrates is indefensibly temporary (max 8 years: 4+4) and is carried out in such a way as to be compatible with other working or professional activities; in any case, it does not give rise to a public employment relationship;

- f. In order to secure such compatibility, each lay magistrate cannot be required a total commitment of more than two days a week;
- g. Assignment of cases, tasks and duties has to be done in such measure as to respect the aforementioned compatibility;
- h. The Decree includes provisions about incompatibility and conflict of interests (recusal and withdrawal);
- i. Justices of the peace may be assigned either to the “Justices of the peace’s Office” or to the “Office for the proceedings”, the latter being set up in each District Court.
- j. Justices of the peace, who are assigned to the “Justices of the peace’s Office”, exercise jurisdiction in civil and criminal matters and perform judicial conciliation in civil matters, according to the Codes of Civil and Criminal procedure and to special laws.
- k. Justices of the peace, who are assigned to the “Office for the proceedings”, cannot exercise neither the civil nor the criminal jurisdiction. Only when there are specific circumstances of overloading of the Court, which are listed in Legislative Decree nr. 116/2017, and no other appropriate measure can be taken, justices of the peace may be required to deal with civil or criminal proceedings, in a limited range of matters among those falling within the competence of the Court; in the same cases, they may be appointed as members of a panel of three judges (max 1 lay judge per panel);
- l. During the first two years after the appointment, Justices of the peace shall be assigned to the “Office for the proceedings” only, and may perform functions and tasks which only relate to such Office;
- m. In order to make justice more efficient and reduce the length of proceedings, in 2021 the competence of lay magistrates will be extended and the global number of lay magistrates will be increased up to 8000 (they are currently about 4000)

849. More specifically, Article 1 of Legislative Decree nr.116/2017 identifies two types of honorary magistrates: one is the honorary justice of the peace, acting as judge, and the other is the honorary deputy prosecutor, acting as prosecutor. This overcomes the diversified and patchy rules in this field, and above all the previous divide regarding competence, professional status and remuneration among the three different types of honorary magistrates which existed until then: on the one hand, the category of judges including justices of the peace and court honorary judges; on the other hand, the prosecuting authorities comprising honorary deputy prosecutors. The former was governed by Law No. 374/1991 and the latter two by Articles 42ter et seq. of Royal Decree No. 12/1941 and subsequent amendments.

850. The main characteristics of the new professional figure of honorary magistrate are the temporary and non-exclusive nature of the assignment. This fundamental choice appears to be consistent with constitutional rules, considering that Article 106 of the Italian Constitution states that: “Judges are appointed through competitive examinations” and makes a clear distinction between professional judges and honorary magistrates.

851. In compliance with these principles, the same paragraph 3 of Article 1 of the above-mentioned Legislative Decree specifies that “in order to ensure this compatibility, each honorary magistrate cannot be required a commitment of more than two days a week”. This provision, which plays a

central role in the overall structure of the reform, is in line with its guiding principles and with the limits laid down by the delegated law, considering that the basic framework of the reform clearly defines a type of honorary magistrate who works part time and can perform at the same time other working or professional activities (see Article 2, paragraph 13 (b) and paragraph 4 (b)).

852. A tendency towards unification of remuneration for all honorary magistrates is also clearly identifiable.
853. Until Legislative Decree 116/2017 court honorary judges and honorary deputy prosecutors were paid for each hearing they handled, without any additional financial incentives for any decisions made; justices of the peace, instead, were basically paid per piece of work done, with a small fixed amount; as a consequence, the average total remuneration of justices of the peace exceeded by far that of the two other categories of honorary magistrates.
854. On the contrary, the Legislative Decree referred to above, in compliance with the guiding criteria set out in Article 2, paragraph 13, of the delegated law, provides for payment, on a quarterly basis, of “a fixed gross annual salary of € 16,140, including social security contributions” (Article 23, paragraph 2). In addition to this fixed salary there is a variable rate of compensation, which “can be paid in an amount of not less than 15% and not more than 30% of the fixed salary”.
855. The system is designed in such a way that an honorary magistrate may perform judicial functions only after attending an appropriate training period in the judicial office where he can work subsequently under the supervision of “a coordinating magistrate assisted by professional magistrates designated by him/her, to whom the trainees are assigned for court practice in civil and criminal matters” (Article 7, paragraph 5); in addition to the training in judicial offices, the traineeship “also consists of the compulsory and successful attendance of theoretical and practical courses of a duration of no less than 30 hours, organised by the High Judicial School (Scuola Superiore della Magistratura)” (Article 7, paragraph 6).
856. Admission to a traineeship is determined on the basis of a notice of open competition, which should highlight the selection criteria established in general terms by law (Article 4). Admission to a traineeship is awarded to a number of applicants which is equal, where possible, to the number of posts available increased by half. Therefore, not all those who are admitted to the traineeship are sure that, in case of a successful outcome of the traineeship itself, they will obtain a job in the office. Trainees who have been found suitable “may be assigned, upon request, to other offices which have been identified...and appear to be vacant”.
857. After receiving their appointment, honorary justices of the peace must be assigned, at least for two years, to the “Office for the proceedings” (ufficio per il processo) and they may perform “only the duties and functions related thereto” (Article 9, paragraph 4).
858. Within the Office for the proceedings “justices of the peace shall assist professional judges in support of whom the office has been set up and, under the supervision and coordination of professional judges, shall perform, including in proceedings in which the court tries the case as a panel of judges, all the preparatory acts useful for the exercise of jurisdiction by the court, being entrusted, in particular, with the examination of the case files, an in-depth study of the case-law and law theory, and the preparation of draft decisions. Honorary judges may be present at hearings in private (Article 10, paragraph 10). Only in civil proceedings professional judges may delegate to honorary judges some duties relating to the pre-trial stage (hearing of witnesses, attempts of conciliation) and specific conclusive decisions. Honorary justices of the peace “shall perform the

activities delegated to them, in compliance with the directions agreed with professional judges in charge of the case”, having, however, the possibility, where they do not agree upon these directions, of returning their delegated powers to the professional judge. Likewise, professional judges, who are responsible for “supervising the activity carried out by honorary judges” can order “withdrawal of the delegation” previously conferred “subject to the existence of justified reasons” (Article 10, paragraph 15).

859. During the first two years of activity, honorary justices of the peace, only “in case of absence or temporary impediment of professional judges”, may “replace professional judges in some duties, including as members of panels of judges” (Article 13). However, it is ruled out that reasons for replacement may include a high workload or a considerable number of vacancies in respect of the available posts for professional judges.
860. After two years of assignment to the office for the proceedings, honorary justices of the peace may be employed, basically, in two ways: they can remain at the office for the proceedings, where they may also be entrusted with civil and criminal proceedings and be members of civil or criminal panel of judges, or, alternatively, they can exercise civil and criminal jurisdiction at the office of justices of the peace.
861. However, in accordance with the provisions of the delegated law, the assignment of honorary judges to panels of judges is subject to very stringent requirements defined by the same delegated law as “imperative, exceptional and contingent (Article 2, paragraph 5 (b)). Always in accordance with a specific guiding criterion established by the delegated law, even if less stringent in this regard, the allocation of civil and criminal proceedings to honorary judges working for the office for the proceedings is subject to strict limits; even if the conditions prescribed by law are fulfilled, there is a number of matters which cannot be assigned to honorary judges.
862. From the organisational viewpoint, the Minister of Justice, after hearing the opinion of the High Council of the Judiciary, determines for each district the number of honorary justices of the peace assigned to the office for the proceedings and the number of those tasked with exercising jurisdiction directly. In the framework of this distribution of personnel, it is the President of the Court who, on the basis of specific criteria laid down in Article 10, allocates honorary judges to the office for the proceedings or entrusts them with the exercise of jurisdiction.
863. As regards justices of the peace tasked with exercising jurisdiction, the powers of the office of the justices of the peace (*ufficio del giudice di pace*) will increase considerably in civil matters in respect of proceedings instituted, in some cases, as from 31 October 2021, and in others as from October 2025 (Article 32).
864. An ongoing professional updating is provided both to honorary judges and honorary deputy prosecutors, consisting in the compulsory participation both in regular meetings held by the office they are assigned to, with the presence of professional judges, and in the attendance of training courses organised, including at decentralized level, by the High Judicial School “at least every six months”.
865. Finally, the Legislative Decree contains detailed transitional rules. In this regard, Chapter XII of this set of rules stipulates that : a) magistrates who are in service at the date of entry into force of the Decree may be confirmed for three subsequent four-year periods, after the expiry of the first four-year period (totalling sixteen years); b) their term of office terminates when they reach the age of 68, while for honorary magistrates appointed after the entry into force of the Decree, termination of

office is at the age of 65; c) for the first four-year period following the entry into force of the law, honorary justices of the peace in service may be assigned to the Office for the proceedings only on request and “civil and criminal proceedings which have been newly instituted and which fall within the jurisdiction of the office of the justice of the peace ” may be allocated only to them; d) for the first four-year period court honorary judges who are in service may be assigned to the Office for the proceedings and, in any event, they may be members of panels of judges and be allocated independent proceedings, even in the absence of the stringent conditions laid down for the future by Articles 12 and 11 of Legislative Decree; e) unless the High Council of Judiciary recognises the existence of specific conditions of the office they belong to, during the last four-year period of their office neither honorary justices of the peace nor honorary deputy prosecutors may exercise direct jurisdiction, and they can only perform activities to support professional magistrates; f) for the first four-year period following the entry into force of the delegation, honorary magistrates in service will be remunerated in accordance with the previous legislation and, in the same period, the limit of two days a week placed on their commitment will not apply.

### ***Auxiliary judges at court of appeals***

866. The underlying reason for introducing this professional figure by Decree-Law No. 69 of 21 June 2015 2013, converted with amendments into Law No. 98 of 9 August 2013, is the usefulness of enhancing the contribution given by lawyers, university teachers and retired State lawyers as honorary magistrates in support of professional judges in service in order to bring to conclusion the cases which have already reached the stage of decision, providing for a compensation for each case which is concluded. Therefore, the persons referred to above may be appointed auxiliary judges at the courts of appeals, up to a maximum of 600, in order to bring to conclusion civil proceedings declared as having priority by the programs for the management of pending disputes.
867. Since auxiliary judges are considered to be magistrates included in the judiciary, they are appointed by Decree of the Ministry of Justice, after prior decision of the C.S.M, on proposal made by the judicial council having territorial jurisdiction.
868. The term of the appointment as auxiliary judge is five years and may not be extended.
869. Auxiliary judges, whom the legal status as honorary magistrates is granted, are subject to the same rules as ordinary magistrates in respect of incompatibilities and ineligibility; their term of office terminates when they reach the age of 77; their office ceases due to voluntary resignation or where a ground for incompatibility arises. At any time, the head of a judicial office may propose to the Judicial council the revocation of an auxiliary judge who is unable to perform his duties in a diligent and efficient manner, or who behaves in a faulty or negligent way.
870. Auxiliary judges receive for their activity a remuneration consisting of an allowance of two hundred euros for each judgment closing a case, or for each record of conciliation. In any case, allowances may not exceed the gross amount of € 20,000 per year.
871. The establishment plan provides for 400 posts as auxiliary judges. In September 2017 381 posts are filled.

### ***Honorary members of specialized sections***

872. As already reported above, Article 102 of the Italian Constitution states that qualified citizens

who are not members of the judiciary may be appointed as members of specialized sections for specific matters established within ordinary judicial bodies. As seen above, the contribution of non-professional magistrates ensures that the decision is (also) made on the basis of knowledge which goes beyond that of which judges are usually in possession.

873. Experts in juvenile courts or in juvenile divisions at courts of appeals, qualified as experts by Article 50 of the Italian Judicial System, are to be placed in this context. They support professional judges as members of panels and provide extra-legal knowledge and expertise in this particular area, characterized by the peculiar human and social sensitivity of the matters which are dealt with.
874. A similar rationale explains the presence of experts in courts supervising the enforcement of sentences (tribunali di sorveglianza), as established by Law No. 354 of 26 July 1975.
875. Both experts in juvenile courts and experts in courts supervising the enforcement of sentences are appointed by the High Council of the Judiciary, which is also competent for all the measures concerning their status, precisely on the grounds that they participate in the administration of justice.
876. Further honorary members in the administration of justice are experts in special agrarian courts (sezione specializzata agraria), and experts of the Regional Court of Public Waters and the High Court of Public Waters.

### ***Jurors***

877. Article 102, paragraph 3, of the Italian Constitution stipulates that the ordinary law regulates the cases and forms of the direct participation of the people in the administration of justice.
878. The implementation of this provision is represented by the composition of Courts of Assizes and of Courts of Assizes of Appeal, in which the judicial authority hearing the case - in particular proceedings - includes jurors. Six jurors, whose service is governed by Law No. 287 of 10 April 1951, complete the composition of Courts of Assizes (the jurisdiction of which is established by Article 5 of the Code of Criminal Procedure) in first instance proceedings, and of Courts of Assizes of Appeal in second instance proceedings; hence, they form the court hearing the case together with two professional judges (one of them acting as Presiding judge).
879. It is a mandatory office for ordinary citizens, not necessarily having a particular legal or specific knowledge, who exercise their functions for the period of time strictly necessary to conduct the trial. Jurors are drawn by lot from an appropriate register held by the Municipality and sent by the Mayor to the Presiding Judge of the Court.

### ***Ministry of Justice***

880. Under the Italian Constitution (Article 110), the Minister of Justice is responsible for the organisation and running of the service necessary for the exercise of judicial functions (staff recruitment, administration, provision of buildings and operational structures etc.). The Minister of Justice is also responsible for disciplinary actions against magistrates (Article 107, Constitution) and oversees the correct functioning of the justice system. To fulfil these duties, the Minister of Justice is entitled to exercise functions of inspection and to conduct administrative enquiries.

### ***Self-governing bodies: the High Council of the Judiciary***

881. The Italian judiciary has a strong component of self-administration. Under Article 104 of the Constitution, the High Council of the Judiciary (Consiglio Superiore della Magistratura, CSM) is established as an independent and autonomous body to provide for and guarantee the independence and autonomy of the judiciary. It is responsible for recruitments, transfers, promotions, professional assessments and disciplinary measures (Article 105, Constitution). Moreover, it drafts proposals and opinions concerning the organisation of the judicial system. The Council is also vested with the authority to protect the image of the judiciary and to respond to any behaviour which may jeopardise the credibility and the independence of the judiciary. The CSM was set up for the first time in 1958. A reform of the CSM is currently subject to discussion; a Commission of Experts (so-called Commissione Vietti), set up at the Ministry of Justice, has recently presented draft proposals in this respect (e.g. regarding the day to day functioning of the CSM, the distribution of work for disciplinary proceedings, transparency of the voting system in plenary sessions of the CSM, etc.). The authorities underscored that the current CSM has given priority to internal reform of its functioning in order to enhance its transparency and accountability, and steps are being taken accordingly (e.g. new rules on the selection of high posts in the judiciary dating from 30 July 2015, reform of internal rules of 26 September 2016, etc.).
882. As to its composition, the CSM includes three members in their own right: the President of the Republic (who also chairs the CSM; in that role, s/he represents national unity and guarantees abidance by the Constitution), the President of the Court of Cassation, and the Prosecutor General at the Court of Cassation (Article 104, Constitution). As far as the 24 elected members are concerned, 16 are judicial members elected by all the magistrates from among those belonging to the various categories: two magistrates from the Court of Cassation (judges and/or public prosecutors), four public prosecutors and 10 judges from courts deciding on the merits (i.e. first or second instance courts). Members from the judiciary are elected according to a majority system in a single nationwide constituency for each of the three categories. The remaining eight non-judicial/lay members are elected at a joint session of Parliament (a majority of three-fifths of the members of the two Houses is required at the first two ballots, whilst a majority of three-fifths of the voting members is enough as from the third ballot onwards), which selects them from among university professors in legal matters and advocates having experience in the legal profession for at least 15 years. Elected members hold office for four years and may not be re-elected for the next term. Members of the CSM elect a Vice President among lay members. The Vice President chairs the plenary meetings in case of absence of the President of the Republic and exercises the functions delegated to him by the President. Moreover, s/he chairs the Presidency Committee, entrusted with the task of promoting the activity of the council, implementing the resolutions issued and managing the budgetary funds. The CSM has financial and accounting autonomy. In Italy, the President of the Republic is the Head of State, appointed for a period of seven years by a two-thirds vote of Parliament, among any Italian citizen who is 50 years or older and enjoys civil and political rights. His/her term and conditions of tenure are independent from political parties; the President's term may only end by voluntary resignation, death, permanent disability (due to serious illness), and dismissal for crimes of high treason or an attack on the Constitution. The office of President of the Republic is incompatible with any other office. The President of the Republic only has formal or ceremonial powers: presidential acts must be countersigned by a member of the Government (with the exception of the autonomous presidential powers of pardons and commutations) and political responsibility lies with the government (Articles 83 to 91, Constitution).
883. The organisation, duties and competence of the CSM are further regulated in Law No. 195/1958

on Composition and Functioning of the CSM, as amended by Law No. 695/1975, and in the internal rules of procedure adopted by the Council. For the CSM's resolutions to be valid, at least 10 judges and five members elected by Parliament must be present. Decisions are adopted on the basis of a majority of votes; in the event of a tied vote, the vote of the President shall prevail. The Council carries out its duties in plenary settings, upon proposal of the competent commission. Each commission consists of six regular members (four magistrates and two lay members) and is competent for specific matters.

884. The CSM is the head of the bureaucratic organisation in charge of managing judicial-governing functions. To fulfil its tasks, it is supported - on different grounds - by Judicial Councils and the heads of courts and public prosecutor's offices. Judicial Councils are local self-governing bodies established in each judicial district; they draft opinions and proposals concerning the organisation of courts and the career of magistrates, such as professional appraisals, opinions for promotions, change of functions etc. Judicial Councils also carry out the preparatory activities related to proceedings concerning lay magistrates and exert supervisory functions over the activity of judicial offices within the districts. The Judicial Councils' opinions and proposals are submitted to the CSM which is ultimately responsible for the final decision.

### ***Recruitment, career and conditions of service***

885. To become ordinary magistrates, candidates have to pass a competitive public examination (Article 106, Constitution) consisting of three written exams and an oral interview. The basic requirements for admission to the competition are: to hold Italian citizenship, not to be banned from civil rights, irreproachable conduct. Background checks are stringent and specific requirements include: absence of criminal convictions; not to be subject to preliminary investigations; not to have been displaced or dismissed from office in the public administration for poor performance, etc.

886. Only candidates who have a law degree and the diploma issued by the post-graduate Schools for Legal Professions are admitted to the examination. Furthermore, candidates belonging to the following categories may participate in the exam without the Schools for Legal Profession diploma:

administrative and accounting magistrates; civil servants having a law degree and at least five years' seniority in upper-level positions; university professors in legal matters, lawyers who have not been subject to disciplinary sanctions; honorary magistrates having at least six years of professional experience; law graduates with a PhD in legal matters. Successful candidates are appointed (as) magistrates by decree of the Minister of Justice upon decision of the CSM, which is to approve the ranking list established by the Commission.

887. Newly appointed magistrates do not exercise judicial functions, but have to undergo a training period of eighteen months (one year of general training and six months of specialised training, corresponding to the functions that the magistrate shall discharge, i.e. as judge or prosecutor). The training consists of theoretical and practical courses and it is partly conducted at the Higher Judicial School (six months), part-time (twelve months) within the different judicial offices.

888. At the end of the general training, the CSM is to assess whether magistrates can be conferred with judicial functions on the basis of the comments expressed by the competent Judicial Council and the trainee's coordinating magistrate (on the basis of the different assessments made during the training period by the responsible senior supervising magistrates of the trainees. Coordinating

magistrates are contact points for several (normally, five) new recruits). Opinions are also expressed by the High Judicial School (Scuola Superiore della Magistratura). Criteria to be taken into account include: professional expertise, legal analysis skills, ability to perform the functions responsibly; productivity and dedication to work; diligence; independence and impartiality. In case of a negative appraisal, a magistrate is admitted to a new training period of one year; a second adverse appraisal implies being dismissed from employment. At the end of the training, magistrates are appointed by decree of the Minister of Justice on proposal of the CSM. Magistrates cannot carry out functions as pre-trial investigation judge, criminal single judge (for the most serious offences: newly appointed magistrates can administer justice as single judges in proceedings concerning the offences listed in Article 550 of the Code of Criminal Procedure) and preliminary hearing judge before they undergo their first professional appraisal, four years after their appointment.

889. As an exception to recruitment by competitive examination, regular university law professors and lawyers of at least fifteen years' standing and registered in the special rosters entitling them to practise in the higher jurisdiction courts may be appointed Counsellors of the Supreme Court of Cassation on exceptional merit (Article 106, Constitution).
890. Security of tenure is enshrined in Article 107 of the Constitution and magistrates may only be suspended, exempted from service or transferred upon a resolution by the CSM and in cases set up in the law (principle of irremovability). Accordingly, a magistrate as a rule may be transferred to another district and/or entrusted with different functions exclusively with his/her consent upon a resolution by the CSM.
891. Notwithstanding the security of judges' tenure, pursuant to Article 19 of Legislative Decree No. 160/2006, judges at first instance courts and appellate courts cannot exert the same functions within the same office for more than a certain period, which the CSM has established to be 10 years. This measure is designed to prevent the excessive concentration of powers and to guarantee a fair rotation among magistrates.
892. Transfers follow a competitive procedure which starts upon publication of the list of available positions; the allocation of candidates is based on objective criteria such as seniority and qualifications. Health and/or family reasons can be taken into consideration in particular cases. The exceptions to this rule, i.e. the cases in which magistrates may be transferred ex officio, are set forth exclusively by law: transfers to cover specific service needs; transfers due to abolition of the office or workforce reduction; transfers due to incompatibility reasons. Ex officio transfers can be challenged before the administrative court.
893. Moreover, magistrates can be transferred ex officio whenever they are unable to discharge their functions in an independent and impartial manner due to reasons for which they may not be considered responsible. Such a measure, which is administrative in nature, is adopted by the CSM in cases where judicial functions cannot be properly exerted for reasons which do not necessarily require disciplinary measures (for instance, this was adopted in respect of a chief prosecutor as a consequence of serious conflicts and a breakdown of trust between him and the other magistrates in the office). This transfer is different from the disciplinary one, which can be imposed as a precautionary measure or an accessory sanction as a consequence of a disciplinary offence. According to the information provided, since 2011 the CSM adopted only two transfers for "incompatibility reasons" (most cases were closed as the magistrates concerned applied for a different post before the decision was adopted).
894. Career advancement is the same for judges and prosecutors. The work of all magistrates is subject

to regular evaluation on the basis of objective and uniform criteria and standards stipulated by the law and detailed in the CSM's circulars. Judges and prosecutors undergo appraisal every four years, until they pass their seventh professional appraisal, after 28 years of employment. The criteria governing the appraisal proceedings include: 1) legal expertise and professional skills; 2) productivity and efficiency; 3) diligence; and 4) commitment. Indicators to be taken into account include for evaluating the aforementioned criteria refer, inter alia, to quality of judicial decisions; outcome of judicial decisions (i.e. whether the number of decisions overturned reveals some anomalies); number of judicial decisions issued and number of proceedings closed; compliance with timelines; degree of participation and contribution to the proper function of the office (i.e. availability in replacing colleagues, frequency of attendance of training courses, contribution to solving organisational issues, etc.). Independence, impartiality and balance are prerequisites which are considered indispensable for the discharge of judicial functions and are expressly taken into account by the CSM, Judicial Councils and heads of judicial offices when appraising magistrates; failure to meet these fundamental requisites lead to a negative appraisal. The law provides for specific consequences, both professional and economic, as a result of a "non-favourable" or "negative" appraisal; a magistrate is to be released from service in case of a double negative appraisal. In the last five years the CSM issued 44 negative appraisals, 117 "non-favourable" appraisals and 9428 favourable appraisals.

895. Regarding termination of judicial office, a magistrate is dismissed in the following cases: in case of a double negative appraisal; when the disciplinary sanction of dismissal is imposed; when they are not able to properly perform judicial duties due to health reasons. Magistrates retire at the age of 70 years.
896. As to the remuneration of magistrates, the salaries of judges and prosecutors follow the same grading system. Magistrates, at the start of their career, receive annually a gross salary of 46 703.95€ (29 446.90€ net). Trainee judges and prosecutors are entitled to the following allowances when they are appointed to the first duty station which is different from the place of residence: 1) assignment allowance for one year (about 400€ net for six months and 200€ for a further six months); 2) one-time installation allowance (about 1750€ net for magistrates who move with their family); 3) reimbursement of travel costs and removal expenses to reach the new duty station. The salary increases at the third, fifth and seventh professional evaluation, respectively after 12, 20 and 28 years from the appointment. The gross salary of magistrates who undergo the seventh and last professional assessment is 170 078.97€ (92 965.81€ net). The first president of the Court of Cassation receives a gross annual salary of 240 000€ (127 398.02€ net), so-called remuneration cap. Magistrates are not entitled to additional benefits, such as family and library allowance, special taxation regime, or housing benefits.
897. Changing from the position of judge to prosecutor (and vice versa) is possible, but specifically forbidden by law in the following cases (i) within the same judicial district; (ii) within other districts of the same region; (iii) within the district of the court of appeal established by law as holding jurisdiction in the matter of criminal liability of magistrates of the district where the magistrate holds office when changing functions. A magistrate can change from one function to another four times at the most during his/her whole career, and has to exercise a given function for at least five years before changing again. Before changing functions, magistrates are required to attend a specific training course. Moreover, they need the favourable appraisal of the CSM, issued on the basis of the opinion by the responsible Judicial Council indicating that the relevant magistrate is suitable to exercise the different function. In the last five years, 96 judges moved to the position of prosecutor, and 128

prosecutors switched vice versa.

898. Finally, all decisions of the CSM concerning promotions, evaluations, transfers and, in general, magistrates' careers are subject to appeal before the administrative court.

### *Case management and procedure*

899. The Italian Constitution provides for the principle of pre-determination of natural judge under the law, i.e. a judge selected on the basis of objective and predetermined criteria set forth in advance by law. This fundamental principle is intended to ensure impartiality of judicial functions as well as independence of judges.

900. The assignment of cases within the competent court is first done according to the divisions dealing with specific matters (i.e. criminal, civil, labour, family law, bankruptcy, company law). Cases are distributed automatically on the basis of objective and pre-established criteria laid down in court schedules (tabelle di organizzazione). Heads of courts are to set the organisational programmes of the office under their responsibility, every three years, following the rules provided by the CSM in a circular establishing the objective criteria for the allocation of cases, both civil and criminal, to chambers, panels and single judges. The court schedules take into account the structure and the organisation of the judicial office, the workload, the number of judges (both professional and lay magistrates), etc. They are submitted for approval to the competent Judicial Council, which drafts an opinion, and subsequently subject to approval by the CSM. Derogation from the predetermined criteria is admissible only in cases of proven service needs and must be specifically motivated. A judge can be removed from hearing a case if there are grounds for disqualification.

901. Court proceedings are, as a main rule, public and oral but the public may be excluded by decision of the court (for instance to protect a State secret, to preserve public order and morality, to protect the privacy of private parties or witnesses, or in proceedings concerning sexual offences. See Article 128 Civil Procedure Code and Article 472 of the Code of Criminal Procedure). As for civil proceedings, parties, lawyers, judges and judicial staff have direct access to the whole judicial file (on-line civil trial, so-called *processo civile telematico*), while public can access an area containing information on the stage of the procedures and other non-confidential information. Moreover, almost all judicial offices have a website.

902. The principle of reasonable length of proceedings is enshrined in the Italian Constitution (Article 111) and it is also recognised in Law No. 89/2001, which entitles parties to claim fair pecuniary compensation from the State in case this right is violated. In order to prevent the excessive length of proceedings, heads of courts check that judges conclude proceedings without unnecessary delay and adopt the organisational measures to ensure efficiency and compliance with the deadline established by the law. Pursuant to Article 37 of Law No. 111/2011, heads of judicial offices adopt an annual work programme, which is aimed at managing the pending cases and reducing the length of proceedings. Moreover, reiterated, serious and unjustified delay in performing judicial activity is considered a disciplinary offence.

903. In recent years, the Italian authorities have taken a number of legislative measures to increase efficiency in the justice system, including through the reorganisation and rationalisation of courts, introduction of mandatory mediation in civil matters, settlement of disputes outside court, development of on-line civil trials, "filter" system for appeals in civil proceedings, etc. The so-called "filter" phase is aimed at selecting only the deeds of appeal deemed by the court to be likely to

succeed. Where the court decides, on the basis of a preliminary examination of the case, that there is no “reasonable probability” of a positive outcome, the deed of appeal will be declared inadmissible. The decision must be taken at the first hearing, after having heard the parties, and through a motivated decision. When the appeal is declared inadmissible, the appealing party may challenge the first instance decision only before the Court of Cassation. The “filter” phase is not applicable to proceedings where the involvement of the Public Prosecutor is required (e.g. bankruptcy declaration proceedings), or to summary proceedings.

904. Positive results have already been seen and Italy is registering a slight decrease in incoming cases.
905. By resolution of 5 July 2017 the CSM. has set out the guidelines on the preliminary examination of appeals and the techniques for drawing up judicial orders/decisions relating thereto in order to obtain an effective answer from judicial authorities and a reasonable duration of proceedings and to achieve legal certainty. The aim stated by the High Council of Judiciary is the identification of good practices and efficient organizational models for offices and for drawing up orders/decisions allowing to examine appeals, to assess the complexity of the legal issues to be dealt with and to plan work.
906. As for human resources, the Italian authorities are working hard in order to increase the number of judges and of court officers.

### ***Ethical principles and rules of conduct***

907. The fundamental values concerning the judiciary and conduct expected from judges are enshrined in Title IV of the Constitution (Articles 101-113). Moreover, pursuant to Article 54 of the Constitution, those citizens entrusted with public functions have the duty to fulfil such functions with discipline and honour, taking an oath in those cases established by law. Additionally, Article 1 of Legislative Decree No. 109 of 23 February 2006 on Duties of Members of the Judiciary provides that (i) judges and public prosecutors perform their duties impartially, correctly, diligently, industriously, discretely and with equanimity, and shall respect personal dignity while exercising their duties, and that (ii) even when not performing their duties, judges and public prosecutors do not engage in conduct which, even though legal, may compromise their credibility, prestige and decency or the reputation of the judiciary as a whole.
908. The Code of Ethics adopted by the National Association of Magistrates (ANM) in 1994 is the oldest in Europe. The Code, which was reviewed in 2010, consists of 14 provisions covering the conduct of the judiciary, as understood in its broadest scope, thereby including judges, public prosecutors and heads of judicial offices. It contains a compilation of ethical principles and rules with which judges and prosecutors must comply when performing their judicial functions, as well as in their public life (e.g. dignity, impartiality, diligence and professionalism, respect and consideration of others, discretion, cooperation, etc.). Pursuant to the Statute of the ANM, a special body, Collegio dei Probiviri (Probiviri Committee) is responsible for exerting disciplinary powers over associated magistrates when their acts contravene the general purposes of the Association and might discredit the judiciary (Article 9, Statute of the ANM). Disciplinary sanctions entail censure, suspension of social rights for up to one year, and expulsion from the association. The sanctions are decided by the Central Directive Committee of the ANM upon proposal of the Probiviri Committee.
909. 13 procedures had been opened since the code was in place and that no sanctions have ever been imposed, as in most cases the concerned magistrates spontaneously resigned from the association. The main monitoring functions on magistrates’ ethics are exerted by the organs responsible for

disciplinary proceedings. Indeed, disregard for most principles and rules enshrined in the Code's provisions may also constitute a breach of duty or irregular performance of judicial service under the Law on Disciplinary Offences and give rise to disciplinary sanctions. Since spring 2017 the C.S.M. has a new website. The substantial restructuring of the website of the C.S.M. highlights the space dedicated by the Council to the ethical profile, including the Code of Ethics adopted by National Association of Magistrates. Access to this document is allowed to all those who are interested therein and not only to magistrates.

### ***Conflicts of interest***

#### ***Recusal and routine withdrawal***

910. Procedural safeguards are in place to prevent and resolve conflicts of interest arising from private activities and interests, or connected with persons close to a judge or prosecutor (for family reasons or business relationships). The aforementioned safeguards are established, pursuant to Articles 34, 35 and 36 CPC, as follows:

1) specific cases: a) a judge must withdraw if he/she has interest in the proceeding or if one of the private parties is a debtor or creditor towards him/her, his/her spouse or his/her children; b) the judge is tutor or employer of one of the parties in the proceeding, or his/her spouse or close relative is a party's defendant or tutor or employer; c) the judge has expressed an opinion or provided advice with respect to the object of the case outside the scope of his/her function; d) serious enmity occurs between the judge or his/her close relatives and one of the private parties in the proceeding; e) a judge's spouse or close relative is a victim or is damaged by the criminal offence or is a private party; f) a judge's close relative, or a close relative of his/her spouse, performs or has performed as prosecutor in the proceeding;

2) more generally, when any serious reason that cast doubts on his/her impartiality arises. Similar rules apply to civil proceedings.

911. Judges must, immediately upon becoming aware of the existence of any reason for withdrawal, submit the declaration of abstention to the court president. The declaration is examined by the President of the Court of Appeal when the impediment regards the president of a court of first instance. Similarly, the President of the Court of Cassation shall decide on the statement of abstention of the President of the Court of Appeal. The competent president shall appoint a substitute where grounds for disqualification are found. Under similar grounds, parties and the defence counsel may submit to the court president a motion for recusal of the judge. In criminal proceedings, a ruling denying a recusal motion may be challenged before the court of appeal. Concerning the withdrawal of the President of the Court of Cassation, s/he is replaced by another judge of the Court of Cassation, whose appointment is based on objective predetermined criteria.

912. Other reasons for incompatibility are established in Articles 16, 18 and 19 of Royal Decree No. 12/1941 concerning relations between magistrates and their spouses or relatives. As a general rule, a judge/prosecutor cannot exert functions in judicial offices where his/her spouse or cohabitee, relatives up to second degree or an in-law within the first degree practise the legal profession as a lawyer. Moreover, family or affinity relationship between judges and prosecutors are considered as reasons for incompatibility within the same judicial office. Magistrates in situations of

incompatibility can be transferred ex-officio.

913. Grounds for incompatibilities are assessed by the CSM following an opinion by the competent Judicial Council on the basis of elements such as: the size of the judicial office, its organisational structure, the specialisation functions exerted by the magistrate, the significance of the legal profession practiced by the magistrate's spouse, cohabitee or relative. The matter is exhaustively regulated in several circulars issued by the CSM.

### ***Prohibition or restriction of certain activities, post-employment***

914. As a general rule, judges and prosecutors cannot hold another public office or perform other jobs or activities. Pursuant to Article 16(1) of Royal Decree No. 12/1941, magistrates cannot hold private or public posts or offices, except for those as senator, national counsellor or unpaid administrator of charitable public institutions. They cannot even engage in businesses or trades or any liberal profession; likewise, they cannot accept jobs or take the role of arbitrator without the authorisation of the CSM.

915. The CSM regulates in detail the matter making a distinction between activities which can be carried out without restrictions (activities in scientific and educational sectors, if not remunerated, as well as work protected by copyright) and activities submitted to previous consent of the CSM, such as teaching and training activities, whether remunerated or not. (CSM Circular No. 22581/2015 on incompatibilities is the latest guidance issued on the matter, as of March 2016). The relevant authorisation is to be granted on condition that the individual task is compatible with official duties and does not jeopardise the magistrate's independence and impartiality.

916. As for prohibited activities, magistrates are explicitly banned from engaging in private consultancy activities, taking assignments in sports justice, managing private schools for legal professions, exerting arbitration functions.

917. The performance of activities which are deemed to be incompatible with the judicial function constitutes a disciplinary offence. Taking extrajudicial posts or activities without the prescribed authorisation by the CSM is a disciplinary offence too.

918. There are no restrictions for magistrates as regards financial interests, including holding shares in companies, but this must be in accordance with the prohibition on engaging in businesses or trades established under Article 16 of Royal Decree No. 12/1941. Magistrates are banned from carrying out any form of administration activity in companies. Moreover, the magistrates' involvement in financial and economic activities of other persons is considered a disciplinary offence when it may affect the exercise of judicial functions and the image of the concerned magistrate (Art. 3, letter h Legislative Decree No. 109/2006).

919. There are no provisions limiting the right for magistrates to be employed in certain posts/positions or engage in other remunerated or unremunerated activities after performing judicial functions. When practicing the legal profession, the use of any information acquired while performing previous judicial functions is prohibited.

920. Magistrates may perform different functions than those within the judiciary and be temporarily out of the judiciary role. For example, they may be appointed to the Ministry of Justice, the CSM (as secretariat or researchers), the Constitutional Court, the Presidency of Republic or seconded to international bodies and institutions. In some cases the functions performed are characterised by

direct cooperation with political authorities, such as Ministers and the Presidency of the Council of Ministers. Pursuant to Article 66 of Law No. 190/2012 on Provisions for Preventing and Fighting Corruption and Illegality within Public Administration, magistrates holding high positions within national and international institutions, public bodies and entities, move out of the judicial function during the period of appointment in those other positions.

921. The principles regulating the matter are further elaborated in CSM Circular No. 13778/2014, as follows: 1) the need for prior authorisation from the CSM, which is to assess whether the different functions meet the interest of justice and do not threaten the impartiality and independence of the magistrate concerned and of the judiciary as a whole; 2) the temporary nature of the different functions. As a general rule, the maximum period in functions other than those within the judiciary is ten years. Pursuant to Law No. 18/2000, the maximum number of magistrates temporarily out of the judiciary role is 200.
922. As regards magistrates' participation in political life, they are banned from membership in political parties. Pursuant to Article 3, letter h, of Legislative Decree No. 109/2006, membership in political parties, as well as the continuous and systematic participation in political parties' activities is a disciplinary offence. On the other hand, magistrates, like any other citizen, may participate in national parliamentary elections, and in regional, provincial and municipal elections. Moreover, they can be appointed as members of the national government and of the executive bodies in all levels of local government <[https://en.wikipedia.org/wiki/Local\\_government](https://en.wikipedia.org/wiki/Local_government)>.
923. The law regulates some cases of ineligibility concerning magistrates. For national parliamentary elections, under Article 8, Law No. 361/1957, magistrates are not eligible in the constituencies where they exert judicial functions, or where they have exerted functions in the six months prior to accepting a candidature. The same provision obliges magistrates to take special leave if they compete for elections. Similarly, magistrates cannot be elected as mayors, presidents of provinces, or members of municipal or provincial councils in the territory where they exert judicial functions; this ineligibility ceases when they take special leave before they compete for elections (Article 60, paragraph 6, Legislative Decree No. 267/2000). Similar rules apply for regional councils (Article 5, Law No. 108/1968). The matter is also regulated in circulars issued by the CSM (in particular Circular No. 13778/2014) laying down territorial, functional and temporal restrictions for magistrates to return to judicial functions after political elections.

### ***Gifts***

924. Legislative Decree No. 109/2006 bans the acceptance of gifts by magistrates. The use of the position as a judge or prosecutor in view of obtaining undue advantages for him/herself or others is a disciplinary offence.
925. In addition, the provisions on passive bribery apply when a gift, independent of its value, is received for a magistrate to act in breach of his/her official duties. Article 319ter CP provides for a specific offence of passive bribery in judicial proceedings. Law No. 69/2015 has significantly increased the available range of sanctions for this offence, which now range from imprisonment of between six and 12 years where the offence is committed in favour of or against a party to a civil, criminal or administrative proceeding; imprisonment of between six and 14 years where the offence results in another being wrongfully sentenced to a term of imprisonment of up to five years; and imprisonment of between eight and 20 years where the offence results in another being wrongfully

sentenced to a term of imprisonment of more than five years.

### ***Misuse of confidential information and third party contacts***

926. Disclosure of confidential information from a case is a criminal offence under Article 326 CP. Moreover, the breach of confidentiality is a disciplinary offence pursuant to Article 3, letter u, Legislative Decree No. 109/2006. The Code of Ethics also prohibits disclosure or use of confidential information.

### ***Declaration of assets, income, liabilities and interests***

927. Law No. 441 of 5 July 1982 on Provisions on making public the financial situation of elected officials and public officials in management positions applies to ordinary magistrates by virtue of Article 17, paragraph 22 of Law No. 127/1997. Consequently, magistrates are required to submit to the CSM, within three months from their appointment: (i) a statement on his/her real rights on immovable properties and movable properties recorded in a public register, shares in companies, stakes in companies, performance of company manager or auditor functions, as well as (ii) a copy of the latest personal income tax return, and (iii) financial situation and income tax return of his/her spouse, unless separated, and his/her cohabiting children, if they give their consent. In addition, a report must be filed no later than one month from the expiry date for submitting the personal income tax return, if any changes occur since the previous declaration. Magistrates are also required to file a report within three months from the day of termination of office. In case of violation of the rules, the name of the magistrate shall be published on the Official Gazette of the Republic. Interested persons are allowed to submit a grounded request to have access to the statements made by magistrates. The High Council of the Judiciary considers the interests underpinning this request, and justifies, if necessary, the reasons for refusing, postponing or limiting examination of documents, with a decision which can be challenged before the administrative judge.

### ***Supervision and enforcement***

#### ***General supervision***

928. The justice system in Italy is largely self-managed with the existence of the CSM and the local Judicial Councils responsible, at different stages, for the careers and promotions of magistrates. Moreover, the chairpersons of judicial offices exert general supervision and appraisal responsibility as regards the conduct and the work of individual magistrates and have the duty to report to the Minister of Justice and the General Prosecutor at the Court of Cassation any disciplinary offence.

### ***Criminal and civil liability***

929. Magistrates can be held criminally liable for offences committed outside and in the exercise of their functions. They do not enjoy any kind of immunity. As regards the statistics concerning the number of disciplinary proceedings against magistrates running in parallel to criminal proceedings, for the period 2011-2016 most of them are defamation cases. Regarding corruption-related cases, there was one case in 2011, one case in 2012, two cases in 2013, five cases in 2014, three cases in 2015, and two cases in 2016, respectively.

930. As concerns civil liability, Law No. 117/1988, as amended by Law No. 18/2015, established the right to compensation for any unfair damage resulting from the conduct, decision or judicial order issued by a magistrate either with "intention" or "serious negligence" while exercising his/her functions, or resulting from a "denial of justice".

### *Disciplinary liability*

931. Legislative Decree No. 109/2006 regulates disciplinary offences and their corresponding sanctioning regime. Breaches of disciplinary rules can be divided into two categories: (i) violations committed in the exercise of the judicial functions, listed in Article 2 (e.g. any conduct that, contravening the duties of a magistrate, causes unfair damage or unfair advantage to one of the parties; the intentional non-compliance with the obligation to abstain; serious violations of the law caused by inexcusable ignorance or negligence and the misinterpretation of facts caused by inexcusable negligence; the serious, repeated and unjustified delay in the discharge of judicial functions etc.); and (ii) offences committed when not performing judicial functions, listed in Article 3 (e.g. using the title of magistrate to obtain an unfair advantage for oneself or others; discharging extra-judicial activities without the required authorisation; granting, directly or indirectly, loans or other benefits by persons who are parties in civil or criminal proceedings pending before the office where the magistrate performs judicial functions or before other offices within the same district, etc.). Moreover, criminal liability does not exclude disciplinary liability (Article 4).

932. Disciplinary sanctions range from: (i) reprimand, (ii) censure, (iii) loss of seniority, up to two years, (iv) temporary incapacity to hold managerial or semi-managerial positions in judicial offices, from six months up to two years, (v) suspension from judicial functions and salary, (vi) dismissal from office. The accessory sanction of transfer may be applied if a more severe sanction than a warning is imposed, as provided by law. A transfer ex officio can also be ordered as a precautionary and temporary measure when reasons of urgency occur. Appeals are possible before the Court of Cassation. The statute of limitations for disciplinary offences is ten years.

933. Disciplinary proceedings are judicial in nature and are regulated by the principles of the CPC. The competent authority is the Disciplinary Division of the CSM, which consists of six members: the Vice-President of the CSM, who is an ex officio member and chairs the Commission; and five members elected by the CSM from among its members, one of whom is a "laymen", one is a judge/prosecutor with the rank and functions of a Court of Cassation judge/prosecutor, two are judges and one prosecutor. Disciplinary proceedings are initiated by the Minister of Justice and the Prosecutor General attached to the Court of Cassation. Prosecution for disciplinary offences is mandatory for the Prosecutor General, while it is discretionary for the Minister of Justice, who exerts this faculty by requesting the Prosecutor General to carry out investigations. The Minister usually decides to initiate disciplinary proceedings as a result of inspections carried out by the General Inspectorate.

934. The Minister of Justice can exercise his/her authority to autonomously initiate a disciplinary proceeding and request the Prosecutor General to conduct investigations. The Minister of Justice can also intervene in disciplinary proceedings promoted by the Prosecutor General by requesting the extension or change of disciplinary charge.

935. The General Inspectorate is an office of direct cooperation with the Minister, entrusted with supervisory powers (See Law No. 1311 of 12 August 1962). The General Inspectorate carries out its

duties essentially through three kinds of inspections of judicial offices: 1) ordinary inspections, which usually take place every three years and are ordered by the Chief of the Inspectorate in order to verify whether the different services within the official offices are performed in compliance with the laws, regulations and directives in force; 2) special inspections, where shortcomings or irregularities have been reported or found; 3) target inspections, which can be ordered by the Minister of Justice whenever he/she deems necessary to verify the productivity, output and the timely performance of professional duties by individual magistrates. As a result of the inspection, the report can be used by the Minister to initiate a disciplinary proceeding.

936. In the last five years (September 2012 - September 2017) 263 disciplinary sanctions have been imposed. Most of them concern delays in performing judicial activities (106).

### *Advice, training and awareness*

937. Legislative Decree No. 26/2006 established the High Judicial School (Scuola Superiore della Magistratura), an institution which is structurally and functionally distinct from the CSM. The School is an independent entity with legal personality under public and private law. The courses organised by the School are aimed at professional in-service training; training for newly appointed magistrates; special training for magistrates who move from adjudication to prosecution functions and vice versa or for magistrates who apply for managerial functions. The School also provides initial and in-service training to lay judges and prosecutors. The training activities of the School are organised both on a central and local basis, in order to ensure a broader participation of magistrates, representatives from the academia and legal practitioners.

938. Initial training is addressed at apprentice magistrates who, once appointed, are obliged to attend professional training at least annually in the first four years of function. Serving magistrates have the right and the duty to participate in such training and must attend at least one course organised by the School every four years. The contents of the training modules are both theoretical and practical. In order to facilitate access to training throughout the judicial offices, a dynamic approach is taken by developing a network of decentralised trainers and e-learning modules/remote training programmes. The School also conducts training programmes in collaboration with similar structures of foreign States or professional associations.

939. As regards training on ethics, in the context of the initial training of judges and prosecutors, a specific half-day session, which is compulsory and held at the High School of the Judiciary, focuses on the “Ethics and Deontology of Judges and Prosecutors and the relevant Disciplinary System”. As regards in-service training, the 2016 annual programme provided for a three-day course - reserved for 90 judges and prosecutors - on the theme: “The Fight against Corruption in the Public Administration and in Courts”, which included a half-day session on the topic: “Corruption in the Justice System”. According to the guidelines issued by the CSM, the 2017 training curricula includes a specific focus on ethics, particularly targeted at new recruits. As is being done in 2017, the High Council of Judiciary and the High Judicial School confirm for 2018 their joint commitment to implement the training on appropriate conduct and professional ethics of both professional and honorary magistrates.

***In response to the desk review and during the country visit, the following additional information was provided:***

*Information about whether the judges of the various specialized courts are adequately covered by laws concerning disqualification and conflicts of interest. Each special court seems to have a separate administrative structure, and it is not clear whether the CSM has any role in oversight of these Courts. Are these courts and judges covered by the same or similar ethics rules that cover the courts and judges who are within the oversight of the CSM?*

940. Non-professional judges working in specialized divisions (e.g. juvenile courts, courts supervising the enforcement of sentences, special agrarian courts) are subject to stringent rules concerning conflicts of interest and are subject to the power exercised by the CSM administratively.
941. However, the CSM is only responsible for ordinary courts (both professional judges and honorary judges in ordinary courts). Administrative courts, tax courts and the Court of auditors are outside the jurisdiction of the CSM. While they have similar bodies guaranteeing their independence, the protection of their independence may be weaker.

*Information about the continued reliance (or increased reliance) on “lay” judges of various types and the impact of that reliance on judicial independence and integrity. Is there a difference in honorary judges and lay judges?*

942. There is no difference between honorary judges and lay judges. The rules governing honorary judges are currently laid down in Law 57/2016 and in the subsequent delegated decrees. These rules do not deal with honorary members of specialized divisions. It is only in this sense that there is a difference among honorary judges, but all of them are appointed and administered by the CSM, which exercises disciplinary authority on them. The CSM takes care to avoid any kind of conflict of interest between the judicial activity and any other activities carried out by honorary judges: for example, the participation of an honorary judge in a court auction for the sale of an immovable property is excluded within the district in which he/she performs his/her functions (Reply to the question of 18 October 2017); the functions performed as honorary magistrate are incompatible with taking on an assignment in the territorial disciplinary Council of the Council of the Association of Certified Accountants and Bookkeepers (Reply to the question of 11 October 2017).

*Information about the implementation of ongoing “reforms” concerning fiscal courts and how those reforms may be addressing questions related to independence, conflicts of interest, professionalism, and promoting public confidence in the fiscal court system.*

943. At present the Italian Parliament is dissolved. Therefore, no draft law for the reform of the fiscal court system is in the process of approval. Following Law 183/2011, ordinary courts provide a massive contribution in terms of professionalism and independence of judgement to the exercise of jurisdiction in tax matters.
944. In any case it should be noted that the list of politically exposed persons includes magistrates of the Supreme Court of Cassation. This means that they are particularly exposed at the risk of money laundering: for example, when they purchase a house, the notary must ask particularly in-depth questions about the origin of funds, and, when they open a bank account, the bank employee must be authorised by “persons vested with powers of administration and management “(Art. 1, paragraph 2 dd) of Legislative Decree No. 231 of 21 November 2007, as replaced by Article 1 of Legislative Decree No. 90 of 25 May 2017, : “dd) politically exposed persons : natural persons who are currently entrusted or have ceased to be entrusted with prominent public functions since less than one year, as

well as their family members or persons known to be close associates of such persons, as detailed below:

natural persons who are currently entrusted or have been entrusted with prominent public functions include those who currently hold or have held the position of: (...)

1.4 Constitutional Court judge, magistrate of the Supreme Court of Cassation or of the Court of Audit, Counsellor of State and other members of the Council of Administrative Justice for the Region of Sicily, and other similar posts in foreign States”;

945. Art. 24, paragraph 5 C) of Legislative Decree No. 231 of 21 November 2007, as replaced by Art. 2 of Legislative Decree No. 90 of 25 May 2017:

“5. Obligated entities shall always apply enhanced customer due diligence measures in case of: (...)

c) continuous relationships, professional services or transactions with customers and related beneficial owners being politically exposed persons”;

946. Art. 25, paragraphs 1 and 4 of Legislative Decree No. 231 of 21 November 2007, as replaced by Art. 2 of Legislative Decree No. 90 of 25 May 2017:

1. Obligated entities, when confronted by a high risk of money laundering and terrorist financing, shall apply enhanced customer due diligence measures, by obtaining additional information on the customer and on the beneficial owner, by carrying out an in-depth analysis of the elements upon which the evaluations relating to the purpose and nature of the relationship are based, and by increasing the frequency of the application of the procedures aimed at ensuring an on-going monitoring during the continuing relationship or the professional services.

4. Obligated entities shall lay down the appropriate risk-based procedures to establish whether a customer is a politically exposed person and, in the case of continuous relationships, professional services or transactions with politically exposed persons, in addition to the ordinary enhanced customer due diligence measures, they shall adopt the following additional measures:

obtain the authorisation by persons vested with powers of administration or management, or by persons delegated by them or, in any case, by persons performing equivalent functions, before starting or continuing or maintaining a continuous relationship or professional services, or before carrying out an occasional transaction with these customers;

take suitable measures to establish the origin of assets and of funds used in the continuous relationship or in the transaction;

ensure an on-going and enhanced monitoring of the continuous relationship or of professional services.

*Information about the Code of Ethics and in particular whether there is a plan to add commentary or examples as suggested in the 4<sup>th</sup> Round GRECO evaluation report, and information about ethical standards that apply to judges not covered by that Code, including lay judges and judges of special courts.*

947. The Code of Ethics falls under the competence of the Associazione Nazionale Magistrati [National Association of Magistrates], to which honorary judges do not belong. However, it is implemented in the activities of the Council (see reply to point 6). The underlying principles of the

Code of Ethics guide disciplinary actions against honorary magistrates. It is recalled that, in accordance with Art. 1, paragraph 1 e) and f) of Legislative Decree No. 109/2016, the unjustified interference with the judicial activity performed by another magistrate and f) the failure by the magistrate who has been subject to interferences to inform the head of the office thereof, amount to a disciplinary offence.

*Information about efforts to ensure that judges who accept governmental appointments and/or elected positions are addressing issues of judicial independence, conflicts of interest, and promoting public confidence in the judicial system overall.*

948. The issue has been addressed by the CSM by resolution of 21 October 2015 concerning the relationship between politics and the exercise of jurisdiction, in particular the issue of the return to the exercise of judicial functions of those who have held Government positions and have carried out a political and parliamentary activity. Possibility of standing for election and, subsequently, impossibility of returning to the exercise of judicial functions for magistrates who stand as candidates in political and administrative elections, or have taken on positions in the national Government, or in regional or local authorities. By this unanimously approved resolution the CSM asks the legislator to clarify this issue. In particular, it is stipulated that a magistrate may not stand up for election in the territory in which he/she has performed his functions for the purpose of avoiding “an objective confusion of roles”, as noted by the President of the Italian Republic. In any case, Art. 13, paragraph 2, of the Consolidated Law on Management Positions within the Judiciary, approved by resolution of 30 July 2015, states that “other experience gained in connection with elected political appointments at national or local level, as well as the activities carried out within the Government and, for any reason, in territorial authorities (Regions, Provinces, Metropolitan Areas and Municipalities) and in supranational elective bodies, shall not be taken into account for the purposes of assessing organizational skills, nor may be considered as experience acquired on the judicial system.

*Information about any systems in place to provide ethics guidance and counsel to judges, apart from ongoing ethics education programs, and information about any published sources of ethics guidance for judges (for example, CSM circulars or similar published guidance—a sample copy providing advice and counsel would be appreciated.).*

949. By resolution of 12 July 1994, entitled *About the “Code of Ethics” of magistrates drawn up by the Associazione Nazionale Magistrati*, the CSM has, in a way, adopted the code of ethics drawn up by the ANM, which, in any event, guides all of its activities.

*Information on the status of the work of the Commissione Vietti*

950. At present the Italian Parliament is dissolved; therefore, all draft reforms are currently stalled

*A short descriptive summary of an “on-line” civil trial*

951. The “on-line” civil trial is an outstanding way to enhance the efficiency of civil trial. Notifications during and at the end of trial are effected by electronic means. Similarly, pleadings during the trial and measures taken by the court outside the hearing are transmitted electronically. The judge can

handle the cases allocated to him/her remotely, organising his/her work hearing after hearing. Lawyers can file legal acts with offices of the clerk of the court without leaving their firm.

*(b) Observations on the implementation of the article*

952. The Constitution enshrines the independence (arts. 101-104) and self-government of the judiciary through the High Council of the Judiciary (Consiglio Superiore della Magistratura, CSM).
953. The National Association of Magistrates can impose sanctions on its members (approximately 95 per cent of all the magistrates) for violation of its Code of Ethics (although that Code does not carry the weight of law). The Prosecutor General of the Court of Cassation can start disciplinary action against members of the judiciary. The Minister of Justice can also start disciplinary action by referring a case to the Prosecutor General or subsidiarily starting the action if the Prosecutor General decides not to act. However, as the Code of Ethics does not carry the weight of law, disciplinary action within the judiciary is based on Legislative Decree No. 109/2006 on Duties of Members of the Judiciary and is heard by the High Council of the Judiciary.
954. Professional and lay magistrates are subject to the legislation on the judicial system, disciplinary liability and directives issued by CSM, the self-governing body of the judiciary. The School of the Judiciary organizes specific ethics courses.
955. During the country visit, the CSM explained that serious conduct is addressed by the disciplinary code. The CSM has not deemed it necessary to adopt a code in addition to that.
956. Magistrates may hold elective public office and serve temporarily in executive positions while retaining the right to return to the magistrate position. This right is granted within the limits established by rules approved by CSM to prevent any risk of external influence over the independence of magistrates and to uphold the separation of powers.
957. However, concerns have been expressed about the effect of these possibilities on the independence of the magistrates and the appropriate separation of the judicial function from the executive and legislative functions.
958. It was **recommended** that Italy consider further addressing the issue of magistrates holding elective public office and serving temporarily in positions in the executive, taking into account the fundamental principles of independence and impartiality of the judiciary.

*Paragraph 2 of article 11*

*2. Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Overview of the prosecution service**

959. As indicated earlier, prosecutors and judges belong to the same professional order of

“magistrates”. Therefore, the prosecutorial service is largely governed by the same rules in respect of judges, as per the provisions included in the Constitution, primary legislation and secondary regulation issued by the CSM. Thus, decisions regarding the professional status of prosecutors (e.g. appointment, appraisal, promotion, transfers, disciplinary liability) are taken in accordance with the rules mentioned relating to judges.

960. Prosecutors, as members of the judiciary, are independent vis-à-vis the other State powers (Article 104, Constitution); they are to perform their duties without being subject to any external influence. They enjoy the guarantees established in the provisions concerning the organisation of the judiciary (Article 107, Constitution), including security of tenure. Public prosecutors are to assure observance of the law and the prompt and regular administration of justice, protect the rights of the State, and repress the commission of criminal offences.
961. Italy abides by the principle of mandatory prosecution (Article 112, Constitution). Prosecutors are responsible for directing the police in the conduct of investigations (Article 109, Constitution; Articles 56 and 327, Code of Criminal Procedure). In the discharge of their duties, public prosecutors are to act with impartiality and objectivity and are to acquire any facts or circumstances, even in favour of the person under investigation. Once the investigation is concluded, the prosecutor may either file a formal indictment, when sufficient evidence is collected, or request the judge for preliminary investigations to dismiss the case. At the trial stage, the public prosecutor represents the prosecution before criminal courts. Public prosecutors are also responsible for the procedures for the execution of judgments. In addition to criminal functions, public prosecutors have competencies in civil proceedings in cases provided by the law and supervisory functions over civil status.
962. The structure of the prosecution service mirrors that of the courts. According to Article 2 of Royal Decree No. 12/1941, prosecutors’ offices are attached to courts of first instance and juvenile courts, appellate courts and the Court of Cassation. Therefore the current structure of the prosecution service consists of: 136 offices of first instance, established in each province or municipality where a court is in place; 26 offices at appellate courts; and one office at the Court of Cassation. The establishment plan provides for 2,491 posts as prosecutors. In September 2017 374 posts are vacant (15.01%). The posts as honorary deputy prosecutor are 2,079. In September 2017 1,925 posts as honorary deputy prosecutor are filled.
963. With respect to organised crime and other serious criminal offences (the list is provided by Article 51 of the Code of Criminal Procedure, which includes - inter alia - drug trafficking, enslavement, kidnapping, child prostitution and pornography), prosecutorial functions are carried out by the District Anti-Mafia Divisions, which are set up within the prosecutor’s office located in the district capitals. The National Anti-Mafia Division (Direzione Nazionale Antimafia), operating within the General Prosecutor’s Office at the Court of Cassation, coordinates and supervises the investigations carried out by the District Divisions. Law Decree No. 7 of 18 February 2015, converted into Law on 17 April 2015, enhanced the coordinating and supervisory role of the National Anti-mafia Prosecutor (now National Anti-mafia and Counterterrorism Prosecutor) in the field of the fight against terrorism.
964. According to Legislative Decree 116/2017, honorary deputy prosecutors may only be assigned to the “Office of the Public Prosecutor” (prosecution office), where they are placed after a traineeship (which takes place with the same procedure as that described above for honorary justices of the peace). They may be employed for two not-alternative tasks: they may either assist the professional magistrate within the “office of honorary deputy prosecutors”, which has been set up recently “being entrusted with the examination of the case files, an in-depth study of the case-law and law theory,

and the preparation of draft decisions”, or carry out delegated activities relating to the direct exercise of jurisdiction. During the first year of activity, they cannot perform delegated activities; subsequently the latter can consist not only in the participation in trial hearings (in the proceedings for which justices of the peace and professional single judges have jurisdiction), but also, for the same proceedings, in the requests for penalty orders and for dismissal of the case, and in the consent to the application of a sentence at the request of the parties (plea bargaining). Honorary deputy prosecutors must follow the directions given by the prosecutor, who, possibly with the assistance of one or more professional magistrates, supervises honorary deputy prosecutors and may withdraw the delegation conferred on them “subject to the existence of justified reasons”.

965. General rules provided for lay magistrates apply to lay prosecutors (See above).
966. The Italian prosecutorial service currently consists of 2 192 professional public prosecutors (1 265 are men and 927 women - Data from the official home page of the CSM, as of March 2016). As of March 2016, the number of honorary prosecutors in service was 1 740 (out of 2 067 posts - Data from the Ministry of Justice).

### ***Internal organisation***

967. As for the structure and functioning of the public prosecution service, important changes were introduced by Legislative Decree No. 106/2006, as amended by Law No. 269/2006.
968. Each prosecutor’s office consists of a chief public prosecutor and an appropriate number of public prosecutors. A deputy chief prosecutor is appointed in offices where there are more than nine public prosecutors. To fulfil the tasks falling under the scope of the work of the office, the chief prosecutor may appoint a deputy prosecutor as his/her substitute, in case of absence or impediment. Moreover, the chief prosecutor may delegate specific areas of activities to one or more deputy prosecutors or to one or more public prosecutors within the office. The Prosecutor General at the Court of Cassation is appointed by the CSM; there is no hierarchical link between the various prosecution offices of the country and the General Prosecution Office at the Court of Cassation (See Resolution CSM of 20 April 2016).
969. Following the 2006 reform, the hierarchical structure within the prosecution office was strengthened. The chief public prosecutor represents the public prosecution and is responsible for criminal action in accordance with the law. The chief prosecutor can exert criminal action personally or by assigning proceedings (or specific acts) to public prosecutors within the office. In the latter case, the chief prosecutor may establish criteria with which prosecutors shall comply. Furthermore, chief public prosecutors have the duty to guarantee appropriate, timely and uniform prosecution and to ensure that safeguards for a fair trial are fully respected. Pursuant to Article 3 of Legislative Decree No. 106/2006, the prior written approval of the chief prosecutor is necessary for some acts issued by the public prosecutors and, in particular, for preventive measure requests (e.g. restraining orders, house arrest, provisional detention, interdictory measures, seizure, etc.). The chief prosecutor is responsible, among other duties, for ensuring that the office under his/her responsibility works in an efficient, coherent and coordinated manner, including by assigning responsibilities and work division within the office.
970. In accordance with Article 1, paragraph 6 of Legislative Decree No. 106/2006, chief prosecutors are to lay down criteria for: (1) the general organisation of the office; (2) the assignment of proceedings to the public prosecutors within the office; (3) the typology of criminal offences for

which automated case allocation applies. Organisational programmes issued by chief public prosecutors are to be submitted to the CSM, but neither the law nor the secondary regulation of the CSM requires a formal approval of such programmes.

### ***Self-governing bodies***

971. As for judges, the CSM is the key self-governing body, with major responsibilities to appoint, transfer, promote, evaluate public prosecutors and to issue decisions on disciplinary offences (Article 105, Constitution). See above for details.

### ***Recruitment, career and conditions of service***

972. Prosecutors and judges are basically subject to the same rules and they undergo the same recruitment paths and the same professional evaluations. See above for details.

### ***Case management and procedure***

973. According to Legislative Decree No. 106/2006, the chief prosecutor, being responsible for criminal prosecution, can decide to personally exert criminal action or assign cases to prosecutors within the office. Cases are generally allocated on a random basis, according to the general criteria laid out in the relevant organisation programme of the office and taking into consideration the specialised groups of magistrates within the office. The chief prosecutor can withdraw a case assignment, as follows: (i) when the public prosecutor does not comply with the criteria laid down in the general organisational programme or specifically issued for the individual case; (ii) in case of a divergence between the chief public prosecutor and the public prosecutor concerning the criminal investigation (such as in case of disagreement concerning the determination of a criminal offence, or concerning the decision of whether to prosecute or not, etc.). The law requires that the decision to withdraw the case is motivated. The public prosecutor within ten days after receiving the decision can submit written comments to the chief prosecutor, who is to send them to the CSM.

974. Criteria laid down in the internal organisational programme issued by the chief prosecutor play a major role in the assignment of cases. The CSM provided guidelines to structure the chief prosecutors' management powers and to guarantee a balance between the hierarchical structure of the prosecutorial office and the internal autonomy and independence of the individual public prosecutors (See, in particular, Resolution of 12 July 2007 and Resolution of 21 July 2009). In line with the CSM resolutions, when drafting the organisational programme, chief prosecutors are to pursue the objectives laid down in the law and are to guarantee, in particular: (i) the reasonable duration of trials and the rapid and effective completion of criminal investigations, taking into consideration the workload of the office and determining priority criteria; (ii) the appropriate, timely and uniform prosecution of criminal offences. To fulfil this objective, chief prosecutors establish specialised working groups within the office and develop uniform criteria, guidelines and an adequate exchange on information and professional experience between public prosecutors; (iii) the efficient direction of investigative police and the efficient use of economic and technological resources.

975. As stressed above, the 2006 reform enhanced the hierarchical structure of prosecutorial offices and the chief prosecutors' role, both in terms of organisational functions, assignment of cases and relations with the magistrates within the office. The CSM might intervene when a conflict between

chief prosecutors and public prosecutors arises or when assessing the managerial expertise of the head of the office, after the first four-year mandate.

976. A Commission of Experts (Commissione Scotti), set up at the Ministry of Justice, has presented draft proposals in this respect: organisational programmes of prosecutorial offices would be sent to the CSM at the time of their adoption, or whenever changes are made. The CSM expressed its remarks in a Resolution of 13 September 2016, which goes in the same direction as the Commission draft proposals, supporting the adoption of organisational programmes, which are stricter than the current ones.

### ***Ethical principles and rules of conduct***

977. Prosecutors are subject to the same ethical rules already mentioned in respect of judges. Article 13 of the Code of Judicial Ethics is specifically addressed to prosecutors. In particular, prosecutors act with impartiality in the performance of their duties. They direct the investigation towards the pursuit of truth, by also gathering evidence that could be in favour of the suspect. They do not hide from the judge the existence of facts that could be in favour of the suspect or the defendant. They refrain from issuing statements personally concerning parties to the proceedings, witnesses or third parties, which are not relevant to the decision on the case; they abstain from expressing any criticism or appreciation of the professionalism of judges or defence lawyers. They participate actively in coordination initiatives and ensure a proper promotion thereof. They do not ask judges to disclose in advance their decisions, nor do they disclose to judges, in an informal way, any information on facts concerning on-going proceedings.

### ***Conflicts of interest***

#### ***Recusal and routine withdrawal***

978. Prosecutors cannot be recused. Pursuant to Article 52 of the Code of Criminal Procedure, public prosecutors have the faculty to withdraw from the case when serious reasons of opportunity arise. The declaration of abstention is submitted to the chief prosecutor who appoints a substitute when the abstention is accepted. Substitution is mandatory if the prosecutor has interest in the proceeding or if one of the private parties is a debtor or creditor towards him/her, his/her spouse or his/her children; if s/he is tutor or employer of one of the parties in the proceeding or his/her spouse or close relative is a party's defendant or tutor or employer; serious enmity occurs between the prosecutor or his/her close relatives and one of the private parties in the proceedings; and the prosecutor's spouse or close relative is a victim or is damaged by the criminal offence or is a private party (Article 36, letters a), b), d) and e), CPC). The Italian legal framework does not provide recusal in respect of prosecutors as it could be misused as a means for hindering and slowing the investigations. In effect, prosecutors are obliged to disclose every potential conflict of interest, as they are to perform their functions according to the principles of independence and impartiality. Failure to declare an interest in a case and, consequently, to withdraw, is a disciplinary offence.

### ***Prohibition or restriction of certain activities, post-employment***

979. As a general rule, judges and prosecutors cannot hold another public office or perform other jobs or activities. For specific details, see above.

## *Gifts*

980. See above.

## *Misuse of confidential information and third party contacts*

981. The disclosure of confidential information may give rise to criminal or/and disciplinary action, for details see above.

## *Declaration of assets, income, liabilities and interests*

982. As for judges, prosecutors are to file financial reports. See above for details.

## *Supervision and enforcement*

983. According to Article 6 of Legislative Decree No. 106/2006, General Prosecutors at the Courts of Appeal exercise supervisory powers over the activity of district prosecution offices. To fulfil this task they collect data and information aimed at verifying: a) the uniformity, effectiveness and swiftness of the prosecutorial action; b) the respect for the principles of a fair trial; c) the correct exercise by chief public prosecutors of organisational, supervisory and control powers over the office. At least once a year, prosecutors at the Courts of Appeal send a report to the General Prosecutor at the Court of Cassation. Furthermore, the General Prosecutor at the Court of Cassation can exercise control over the activity of chief prosecutors, avoid and prevent conflicts between prosecution offices and guarantee respect for the principles of a fair and equitable trial.

## *Advice, training and awareness*

984. Prosecutors follow the training sessions organised by the High Judicial School, as already explained in respect of judges.

## ***In response to the desk review and during the country visit, the following additional information was provided:***

### *Information about the ethics standards that apply to prosecutors.*

985. The Code of Ethics does apply to prosecutors, who, while enjoying an equivalent status of independence, are also subject to the same disciplinary code as the judges.

### *Information about the continued reliance (or increased reliance) on “lay” prosecutors and the impact of that reliance on prosecutorial independence and integrity.*

### *Information about efforts to ensure that prosecutors who accept governmental appointments and/or elected positions are addressing issues of judicial independence, conflicts of interest, and promoting public confidence in the judicial system overall.*

986. Pursuant to Law 57/2016 the CSM also ensures that there are no conflicts of interest with regard

to honorary prosecutors, by avoiding any intermingling between political activity and judicial functions. By way of example, by replying to a question raised on 5 October 2017, the Council has established that the functions performed as honorary deputy prosecutor are incompatible with the appointment as municipal councillor, regardless of the district in which the duties performed as municipal councillor are performed, and that an honorary deputy prosecutor cannot stand for local elections in a municipality within the district in which he/she exercises his/her functions as honorary deputy prosecutor, except in cases where he/she has ceased performing those functions by no later than the closing day for the submission of applications.

*Information about any systems in place to provide ethics guidance and counsel to prosecutors, apart from ongoing ethics education programs, and information about any published sources of ethics guidance for prosecutors (for example, CSM circulars or similar published guidance).*

987. By resolution of 12 July 1994, entitled About the “Code of Ethics” of magistrates drawn up by the Associazione Nazionale Magistrati, the CSM has, in a way, adopted the code of ethics drawn up by the ANM, which, in any event, guides all of its activities.

*Whether magistrates are permitted to continue to work on new copyrightable works and whether structures are in place to disincentive the dissemination of non-public information in such copyrightable works (such as prior review)*

*Whether the restrictions on having a financial interest in a case are interpreted to prevent a prosecutor from owning rights to produce copyrightable materials on an ongoing case.*

988. In accordance with Art. 1, paragraph 1, of Legislative Decree 109/2016, the types of conduct detailed below constitute disciplinary offences:

v) making public statements or having interviews which, in any respect whatsoever, concern people involved for any reason in cases that are being dealt with, or have been dealt with and concluded by a decision not subject to ordinary appeal;

z) maintaining relations with the media concerning the functions of his/her office in a manner different from the modalities provided for by the Legislative Decree issued by way of implementation of the delegated power referred to in Arts. 1, paragraph 1, letter d) and 2, paragraph 4, of Law No. 150 of 25 July 2005;

aa) prompting the dissemination of information relating to the duties of his/her office, or creating and using confidential or privileged personal information channels;

bb) making statements or having interviews in breach of the criteria of balance and measure.

989. From this follows that prosecutors and judges are prohibited from writing books or making statements concerning non-public facts. This conduct may also amount to the offence of disclosure of official secrets (Art. 326 of the Criminal Code).

*If cases can be withdrawn from a prosecutor but a prosecutor may not be recused from a case —*

*- whether the chief prosecutor or another has the ability to direct a prosecutor to withdraw, or only has the ability to penalize a prosecutor for failing to withdraw*

- whether a prosecutor would need to remove him or herself if his spouse or family member is not a party to the litigation, but otherwise has a financial stake in the litigation (e.g., through investment in one of the parties or in the subject of the litigation)

990. In accordance with Art. 1, paragraph 1, of Legislative Decree 109/2016, the conscious failure to comply with the obligation to withdraw in the cases provided for by law (including the cases specified in the second part of the question) constitutes a disciplinary offence. A prosecutor who fails to withdraw, even if the legal requirements to do so are met, is liable to a disciplinary sanction. In any event, the chief prosecutor, on the grounds of the hierarchical organisation of the office, has the ability to give directions on whether to conduct a criminal prosecution or not and on how to conduct investigations. The prosecutor may not follow these directions; in this case, however, the conditions for withdrawing a case previously allocated are satisfied.

*(b) Observations on the implementation of the article*

991. In Italy, prosecutors and judges belong to the same professional category of “magistrates”. Therefore, the prosecutorial service is largely governed by the same rules in respect of judges, as per the provisions included in the Constitution, primary legislation and secondary regulation issued by the CSM. Thus, decisions regarding the professional status of prosecutors (e.g. appointment, appraisal, promotion, transfers, disciplinary liability) are taken in accordance with the rules mentioned relating to judges. Observation made in the previous paragraph is referred to.

992. It was **recommended** that Italy consider further addressing the issue of magistrates holding elective public office and serving temporarily in positions in the executive, taking into account the fundamental principles of independence and impartiality of the judiciary.

## Article 12. Private sector

### *Paragraphs 1 and 2 of article 12*

*1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.*

*2. Measures to achieve these ends may include, inter alia:*

*(a) Promoting cooperation between law enforcement agencies and relevant private entities;*

*(b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;*

*(c) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;*

*(d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities;*

*(e) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;*

*(f) Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.*

*(a) Summary of information relevant to reviewing the implementation of the article*

993. Law no. 190/2012 has strengthened the act of combating corruption in the private sector, both through some changes to the crime provided by the Civil Code (Article 2635), and by introducing this crime among those that may lead to the administrative liability of legal persons (ex. Legislative Decree no. 231/2001).

994. Recently, also Legislative Decree no. 38/2017 - Implementation of Framework Decision 2003/568/JHA adopted by the Council of the European Union on this matter - operated in the same direction. In particular, it has further expanded the range of punishable persons and conducts, it introduced ancillary penalties in the presence of certain conditions, and raised monetary sanctions and introduced interdiction sanctions with reference to the liability of legal persons.

995. “2. Measures to achieve these ends may include, inter alia:

***(a) Promoting cooperation between law enforcement agencies and relevant private entities.”***

996. There are instruments, equivalent to the Anglo-Saxon soft law, aimed at the spread of ethical and preventive behaviour, such as Protocols of Legality. These Protocols are useful tools to counteract the phenomenon of mafia infiltration. It is therefore a matter of voluntary agreements between the Prefecture, or other Public Security Authorities, and economic entities (including private ones) involved in the management of public works.

997. For example, on the 10th of May 2010, Confindustria and the Ministry of the Interior signed the Legality Protocol to promote the spread of the culture of respecting rules in economic activities. Businesses who decide to join the Protocol undergo anti-mafia checks and are committed to make a responsible selection of their suppliers. In recent months, both parties are confronting each other to introduce some changes and make the implementation of the Protocol easier and more effective.

(This last point must also be taken into account in relation to the measures required by Article 12, under (c)).

***(b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper***

*performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State*

998. In this regard, and more generally in regard of all the measures required by art. 12, should be highlighted the Legislative Decree No. 231/2001 that introduced into the Italian legislation the concept of administrative liability of legal entities, companies and associations, including those without legal personality. Such liability - similar to criminal liability - involves serious sanctions against the company and arises from the perpetration of one of the Crimes/Administrative Offences specifically set forth in the Decree by a person who has a working relationship with the company. Specifically, according to the Decree, a company is responsible for Crimes/Administrative Offences (private corruption as well) committed in its interest or to its advantage by the company's executives or subordinates. The only defence for the body is to adopt an organizational Model which includes identification of the activities in the context of which crimes like corruption may be committed and the evaluation of existing control instruments and procedures aimed at programming the development and implementation of the decisions of the Company in relation to the Crimes/Administrative Offences to be prevented.
999. In February 2016, the Ministry of Justice set up an inter-ministerial study Commission to propose amendments to Legislative Decree no. 231/2001. Confindustria is a member of the Commission and has highlighted the need to introduce some changes with the following main objectives: to reduce the repressive approach of the discipline and enhance its collaborative logic; to provide more accurate indications on the essential contents of the organizational models; to strengthen the position of companies at a procedural level. It is important to complete the work of the Commission and to initiate the legislative reform process for this discipline.
- (This last point must also be taken into account in relation to all the measures required by Article 12).
1000. It is necessary to highlight the contribution of the guidelines issued by the Associations of the main category pursuant to art. 6, paragraph 3, Legislative Decree 231/2001. In 2001, Confindustria published the Guidelines to support companies that intend to build the organizational model 231. Subsequently, this text was updated to new legislation, jurisprudential practices and new best practices (such as the management systems of the so-called whistleblowing). The latest revision was carried out in 2014 and work is underway for a further update which will also take into account the regulatory innovations regarding corruption offenses.
1001. Based on the results of the "Investigation Model 231 and Anti-Corruption Survey" (see paragraph 3 below), Confindustria will set up a vademecum for less structured businesses containing some practical and simplified guidance to introduce effective measures to prevent offences. This initiative follows the activities of the B20 Anti-corruption Task Force Working Group which presented the international version of the so-called Anti-corruption Toolkit addressed to SMEs in 2015.
1002. With the aim of promoting the proper functioning of the market, Confindustria has adopted the Code of Ethics and Associative Values which also commits the associated companies to assume behaviours which are respectful of fundamental principles such as legality, accountability and transparency both in association relations and business conduct.
1003. In this context, other initiatives promoted by Confindustria are included, such as the Antitrust Compliance Guidelines for businesses and business Associations and the Responsible Payment

Code.

1004. With the former, Confindustria intended to contribute to the development of a competitive culture, where anti-competitive behaviours are considered socially repressive. With the latter, Confindustria recalls companies to the fundamental commitment to spreading efficient payment practices. In fact, punctual contractual times and punctual payments, generate benefits for suppliers on one hand and strengthen reputation and, consequently, competitiveness on national and international markets on the other.

(This last point must also be taken into account in relation to the measures required by Article 12 under d), e) ed f)).

1005. In order to encourage companies to adopt responsible behaviour, Confindustria also carries out intense awareness-raising activities and advises companies that adopting organizational models and standards of high legality is important both to prevent offenses and to improve the efficiency of corporate governance. In addition, Confindustria promotes initiatives aimed at enhancing the commitment of companies that voluntarily adopt these reinforced security measures (i.e. Legality Protocol; legality rating).

1006. In December 2016 Legislative Decree no. 254/2016 - that adopts Directive 2014/95/EU and contributes to improving the transparency of information on business activities - was approved. In particular, the Decree obliges some large public interest entities to also report on some non-financial information, including anti-corruption measures.

(This last point must also be taken into account in relation to the measures required by Article 12 under c)).

***(c) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;***

1007. The anti-money laundering legislation, recently revised by Legislative Decree no. 90 of 25 May 2017 on the implementation of Directive (EU) 2015/849, has led to the introduction, in the Registry of Companies, of the Register of Beneficial Owners of Legal Persons and Trust, with a view to greater transparency within the Entities.

1008. The Italian business register was established in 1993. It is run by the Chambers of Commerce, with support from Unioncamere, under the supervision of a judge and the Ministry of Economic Development. The ICT infrastructure is run and maintained by Infocamere, a consortium of the Chambers of Commerce in public limited company form. In 2017, in accordance with the Fourth EU AML Directive, Italy amended the Legislative Decree 231/2007, introducing in the Registry of Companies a Register of Beneficial Owners of Legal Persons and Trusts. As per articles 21 and 22 of the new AML Law, the new requirements are clearly formulated and both legal person and trust's comprehensive information is already included in the Register not only related to the owner of such arrangements but also to their managers.

1009. Italy has a number of anti-mafia laws aimed at repressing the phenomenon of criminal infiltrations in economic activity. The following are noteworthy:

1010. DECREE OF THE MINISTRY OF INTERIOR 21 March 2017 - Identification of the procedures for the monitoring of infrastructure and priority settlements for the prevention and repression of

attempts for mafia infiltration and the establishment, at the Ministry of the Interior, of a dedicated Coordination Committee.

1011. LAW 6 August 2015, n. 121 - Modification of the Code of Anti-Mafia Law and Prevention Measures, provides by Legislative Decree 6 September 2011, no. 159, concerning subjects subjected to anti-mafia verification.
1012. LEGISLATIVE DECREE 13 OCTOBER 2014, n. 153 - Additional Supplementary and Corrective Provisions to Legislative Decree 6 September 2011, no. 159, containing code of anti-mafia laws and prevention measures, as well as new provisions on anti-mafia documentation, pursuant to articles 1 and 2 of Law no. 136.
1013. DECREE OF THE PRESIDENT OF THE MINISTERS COUNCIL 18 April 2013 - Establishment and updating of the list of suppliers, service providers and executives of non-mafia-based attempts to infiltrate the most exposed sectors.
1014. LEGISLATIVE DECREE 6 September 2011, no. 159 - Code of Anti-Mafia Law and Prevention Measures, as well as new anti-mafia documentation provisions, pursuant to Articles 1 and 2 of Law no. 136.
1015. Is also relevant the legality rating instrument, introduced by Legislative Decree no. 1/2012 (Article 5-ter) and subsequently refined by Decree MEF-MISE on 20 February 2014 n. 57. Managed by AGCM, it facilitates access to the credit from banks and public funding to virtuous companies. By way of example, in order to obtain the minimum score, the company must declare (as far as this section is concerned) that the contractor and other relevant parties (technical director, general manager, legal representative, directors, associates) are not recipients of precautionary measures/convictions/criminal convictions, convictions for a series of offenses, and that the enterprise is not recipient of any interdiction anti-mafia information or information being valid. In addition, it necessary to declare that the company is not been under “commissariat” (by D.L. n.90 / 2014 subsequently converted into law). The company itself must not be the subject of convictions or precautionary measures for administrative offenses, depending on the offenses referred to in Legislative Decree no. 231/2001. The enterprise must also declare that makes payments and financial transactions, of the amount to more than one thousand Euros, solely with traceable instruments. The regulation provides for additional requirements that, if respected, give to the businesses a maximum score of 3 stars. These include the following:
- respect of the Protocol of Legality signed by the Ministry of the Interior and Confindustria;
  - adopt an organizational structure that supervises the compliance of company activities with applicable regulatory requirements for the enterprise or an organizational model under Legislative Decree no. 231/2001;
  - adopt processes to ensure forms of Corporate Social Responsibility;
  - have adhered to ethical codes of self-regulation adopted by the trade associations; that it has adopted organizational models of prevention and the fight against corruption.

The strengthening of the powers attributed to the FIU

1016. The strengthening of the powers attributed to the UIF” is one of the main measures introduced by the Legislative Decree n. 90/2017, together with “the introduction, in the Registry of Companies, of the Register of Actual Owners of Legal Persons and Trust, with a view to greater transparency within the Entities.

*(d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities;*

*(e) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;*

1017. Under both of these profiles it is appropriate to refer to the provisions of Law 190/2012 and also to the new Public Procurement Code of Legislative Decree no. 50/2016.

1018. Under both of these profiles is to be highlighted the action of the Italian Anti-Corruption Authority (ANAC). In addition to the specific competences in public contracts, the Authority intervenes in a broad spectrum of anti-corruption issues, providing regulatory acts and law interpretations also for the private sector.

1019. Among the various initiatives for the corruption prevention also in the private sector, it is noteworthy the memorandum signed since 2009 by ANAC with several Italian Prosecutor’s office, aimed at greater efficiency in the investigation and repression of the illegal or illicit use of public funds. The ANAC also deals with issues of conflict of interest.

(This last point must also be taken into account in relation to the measures required by Article 12 under a)).

#### On post government employment restrictions.

1020. Italian legislation provides restrictions for those public officials who moves to the private sector (so-called pantouflage), in order to avoid situations in which the outcomes of an activity of public interest may be influenced by individual private ones.

1021. The aim, therefore, is the one of containing the risk of corruption situations which may arise in the case of which, during the period of public service, the employee could artfully pre-establish favourable positions (Included acts of authorization, grants, subsidies, economic advantages of any kind (Resolution No. 88 of 8 February 2017). to be exploited professionally after the cessation of public employment, for himself or the private entity he comes into contact with.

1022. Post-employment restrictions are imposed for a limited period of time (This provision is based on two sets of reasons: on the one hand, provides for a temporal threshold that allows the need for impartiality of service to be reconciled with the interest of individuals to maintain employment and professional relationships, bearing in mind that the prohibition, however, works once the service relationship has failed; on the other hand, provides for a time threshold that is adequate to consider that any position of interest created during the period of public functions that could prejudice the

impartiality of the Public Administration is no longer appropriate.) (3 years) and they are confined to the issues related to the sector in which the former public officer used to operate.

1023. Violations of the dispositions can be punished with specific sanctions, the nullity of the contract and the prohibition for private parties to contract with the public administrations for the following three years, with a simultaneous obligation to return any compensation received and ascertained relating to them.
1024. In particular, art. 53, comma 16 ter, of Legislative Decree n. 165/2001 provides that “Employees who, during the last three years of service, have exercised authoritative or negotiating powers on behalf of the public administrations (On the basis of this notice, it can be stated that fall under the heading "authorizing or negotiating powers on behalf of public administrations", both the provisions specifically relating to the conclusion of contracts for the acquisition of goods and services for the Public Administration, and the measures adopted unilaterally by the same, as an expression of the authoritative power, which affect modifying them on the subjective legal situations of the recipients. It is therefore considered that with this expression the legislator wished to include all the situations in which the employee has had the power to affect in a decisive manner the decision subject of the act, exercising the authorizing / negotiating power with regard to the specific procedure or procedure.) (...), cannot perform, within three years after the termination of the employment relationship, activities working or professional at the private parties recipients of the activity of the public administration carried out through the same powers. The contracts concluded and the assignments conferred in violation of the provisions of the present paragraph are void and it is forbidden to private parties who have concluded or conferred them to contract with the public administrations for the following three years with obligation to return any compensation received and ascertained to them.”
1025. The provision is strengthened by specific requirements contained in the single Codes of conduct of civil servants adopted by public administrations, who, at the moment of termination of the working relation, are subject to a duty of declaration of non-violating the dispositions related to pantouflage.
1026. It is noteworthy to specify that the definition of “public employee” has to be intended in a wide sense.
1027. The legislator widened previous dispositions with Legislative Decree n. 39/2013, extending the effects to “external persons with whom the administration, public body or entity governed by private law under public control establishes a working relationship, whether by employment or self-employment, are also considered employees of the public administrations. Such prohibitions shall apply from the date of the termination of the appointment”, equating outside collaborators, with whom the public administration stipulates private law employment contracts, to public officers.
1028. The Authority further clarified that:
- With reference to employees with authoritative and negotiating powers, to which the standard refers, it was stated that this definition refers both to those who hold power and not, for instance those who collaborate by conducting investigations (opinions, certifications, appraisals) that affect in a decisive manner the content of the final measure, even if drafted and signed by the competent official.
  - The definition of private subjects recipients of the public administration activities has to be intended in a broad sense, including those entities who are formally private but that are participated or controlled by public administrations.

1029. The contracting authorities must provide, among the conditions impeding participation contained within the contract notice, object of specific declaration by the competitors, the prohibition in art. 53, paragraph 16-ter, of Legislative Decree 165/2001 (With regard to the discipline provided by art. 53, paragraph 16-ter of Legislative Decree 165/2001, ANAC provided many indications to operators in the sector with different rulings (resolution No. 292 of 09 March 2016, AG2 of 4 February 2015, AG8 of 18 February 2015, AG74 of 21 October 2015, as well as the guidelines from 1) to n. 4) and 24) of 2015), with regard to the scope of application. Lastly, resolution no. 88 of 8 February 2017, published on the institutional website).

***(f) Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.***

1030. In this regard, it is to be highlighted the accounting control and statutory audit framework. The last update on this topic is represented by Legislative Decree no. 135 of July 17, 2016 in "Implementation of the amending Directive 2014/56 / EU amending Directive 2006/43 / EC on the statutory audit of annual accounts and consolidated accounts", published on 21 July 2016 on Official Gazette no. 169. The Law entered into force on 5 August 2016, except as detailed in the transitional rules.

1031. The internal control systems in limited companies represent one of the fundamental pillars of the corporate governance structure in the jurisdictions of advanced industrial countries, including Italy, where the matter has been the subject of multiple regulatory measures.

1032. On a general level, the discipline concerning the controls is contained in the Civil Code, which entrusts: i) to the Board of Directors the assessment of the adequacy of the organizational, administrative and accounting structure of the company (Article 2381); ii) to the Board of Statutory Auditors the supervision of compliance with the law and the statute of the Association, as well as compliance with the principles of correct administration and, in particular, the adequacy of the organizational, administrative and accounting structure and its actual functioning (Article 2403); iii) to the independent auditor the accounting control (article 2409-bis).

1033. In small companies or companies with a narrow participatory base, the need to ensure the necessary controls on management and on the accounts of the company must be balanced to avoid procedural costs and unjustified costs. Therefore, companies not required to prepare consolidated financial statements may entrust the legal audit of the accounts to the board of statutory auditors (article 2409-bis); limited liability companies are not obliged to appoint the control body, even single, if they do not exceed certain quantitative thresholds (article 2477 of the civil code).

1034. In listed companies, the bodies involved in the control system are not only those just mentioned; indeed, the implementation of the internal control structure involves the identification, assessment and monitoring of corporate risk by several bodies, including the control and risk committee and the head of the Internal Audit function.

1035. Internal Audit function represents a third level control and is only mandatory for some regulatory sectors (see below). In any case, many large companies have introduced this function also by self-regulation.

1036. The Internal Audit function is subject to primary and secondary legislation. For example, it is taken into consideration by Legislative Decree no. 58/1998 - please refer to the paragraph 799 - and

by Legislative Decree no. lgs. n. 39/2010 (on the subject of statutory auditing, Article 19), but its role and tasks are clarified above all by secondary legislation and self-regulation codes.

1037. By way of example, for banks, the mandatory establishment of this function is provided for by the Bank of Italy's newsletters (see No. 285 of December 17, 2013, as subsequently updated); to listed companies, the Corporate Governance Code provided by the Italian exchange, Borsa Italiana, recommends also introducing the Internal Audit function as part of an effective system of internal controls.
1038. Furthermore, some industry associations have developed some standards that provide a useful reference for clarification of the tasks and requirements for this function; in particular, the Italian Internal Auditors Association is born from the Institute of Internal Auditors.
1039. Eni's experience is indicated below.
1040. To comply with supra-national requirements, the Italian legislator has extended the involvement of many professional categories in the activities aimed at combating corruption, money laundering and terrorist financing.
1041. With reference to money laundering and terrorist financing, the legislative decree (d.lgs.) 21 November 2007, n. 231, recently modified by d.lgs. 25 May 2017, n. 90 (implementing Directive 2015/849/EU) imposes on the addressees - including professionals – onerous duties implying the adoption of concrete procedures for due diligence, risks assessment (risk based approach – RBA), data maintenance, suspicious transactions reporting as well as staff and collaborators training. The relation of confidence between professional and client is put under strain by the obligation to report suspicious transactions, which requires the professionals to report to competent authorities any suspicious transaction carried out by their clients, as well as any violation to the use of cash committed by these latter. Any omission entails severe sanctions against the professional.
1042. As regards the standards of ethics in the performance of relevant professions, it is worth mentioning that the National Bar Council (Consiglio Nazionale Forense), as the highest institution of the Italian legal profession, adopted several initiatives aimed at promoting the culture of legality among its members and citizens in general.
1043. In particular, the Council constantly takes actions in order to ensure that lawyers' behaviour, both in professional and private life, maintains the maximum honesty, integrity, probity, dignity and decorum.
1044. In this regard, both the Code of Conduct for Italian Lawyers and the Protocol of 3.10.2016 on education for legality signed by the National Bar Council and the Ministry of Education, University and Research play an important role.

#### 1) Code of Conduct for Italian Lawyers

1045. The current Code of Conduct for Italian Lawyers was approved by the National Bar Council in the administrative session of 31 January 2014 and published in the Italian Official Journal no. 241 of 16 October 2014.
1046. Under Art. 9, par. 2, of the Code “A lawyer, even outside his professional role, shall respect the duties of probity, dignity and decorum, for the protection of his personal reputation and for the image of the legal profession”.

1047. As interpreted by the case law of the National Bar Council (which acts as second-instance judge in disciplinary matters), the Code provides for sanctions up to the radiation, for lawyers recognized guilty of corruption.

1048. Please find below the link to the Code of Conduct for Italian Lawyers (English version):

<http://www.consiglionazionaleforense.it/documents/20182/40227/Code+of+Conduct+for+Lawyers+traduzione+ufficiale+inglese+del++Nuovo+Codice+Deontologico+Forense/ea8f06e6-ba33-4eb0-a568-ba56b4198a3a>

1049. All the disciplinary decisions adopted by the Italian National Bar Council, including the ones issued against lawyers recognized guilty of corruption, are available on the Council's web site at the following link: <https://www.codicedeontologico-cnf.it/>

## 2) Protocol between the National Bar Council and the Ministry of Education, University and Research of 3 October 2016 on education for legality

1050. With such a Protocol, the Council - being aware of its function in protecting and guaranteeing fundamental rights - intends to play an active role in the integration of the educational curricula with interventions concerning education for legality and active citizenship. The National Bar Council intends to promote the culture of legality in schools of all levels, through the deepening of skills in active and democratic citizenship, and the development of responsible behaviour inspired by knowledge and respect for legality.

1051. Please find below the link to the text of the protocol (Italian):

<http://www.consiglionazionaleforense.it/documents/20182/219809/Protocollo+d%27intesa+CNF+-+MIUR/2da51398-8311-4b8d-a160-e462e2316df8>

### *Examples of the implementation of those measures, including related court or other cases, available statistics etc.*

1052. At the beginning of 2017, **Confindustria** conducted a quantitative survey with a small group of associated companies to verify the effective spread of organizational models 231 and anti-corruption measures.

1053. Among the interesting aspects, it appears that 36% of the 45 companies interviewed adopted the model and that the other companies were primarily discouraged by the complexity of legislation, excessive organizational burdens and uncertainty with regards to the judges' evaluation of suitability of the model. However, ¾ of the companies without the model are willing to adopt it.

1054. Within the companies that have the organizational model, 87% adopt a whistleblowing regulation system.

1055. With particular reference to the spread of corruption in Italy, it emerges that 67% of the companies interviewed perceive a high level of risk. However, only 35% adopt appropriate behavioural rules for public relations or procedures to handle activities that have a greater risk of corruption. In any case, all major companies adopt specific anti-corruption policies.

### *Eni Anti-Corruption Compliance Program*

1056. In line with the principle of “zero tolerance” expressed in the Code of Ethics, Eni since 2009 has implemented a comprehensive system of rules and controls to prevent corruption-related crimes (the Anti-Corruption Compliance Program).
1057. The Anti-Corruption Compliance Program is characterized by its dynamism and constant attention to evolving national and international legislation and best practice. It was developed in accordance with the applicable anti-corruption legislation and with international conventions, including the United Nations Convention Against Corruption, the US Foreign Corrupt Practices Act and the UK Bribery Act.
1058. The Anti-Corruption Compliance Program was first introduced in 2009 following the approval by the Board of Directors of the Eni of the Anti-Corruption Guidelines and issue of the relative subsidiary procedures.
1059. To ensure that its Anti-Corruption Compliance Program is effective, in 2010 Eni created a dedicated organizational unit that is charged with providing specialist anti-corruption assistance to Eni and its unlisted subsidiaries in Italy and abroad.
1060. On December 15, 2011, Eni updated its compliance program (already “US Foreign Corrupt Practices Act compliant”), approving, by resolution of the Board of Directors, the first version of the Anti-Corruption MSG, with the objective of prohibiting any form of active or passive corruption, not only involving public officials, but also private parties. The MSG - which is binding for Eni SpA and all of its unlisted subsidiaries - provides a systematic framework of the anti-corruption legal instruments adopted by Eni to regulate the areas at risk for corruption.
1061. In order to continuously improve the compliance program, a number of changes to the Anti-Corruption MSG were approved by the Board of Directors, on October 29, 2014.
1062. Eni also does all it can to ensure that the company and the entities in which Eni has a non controlling interest comply with the standards set out in its internal anti-corruption rules, adopting and maintaining an adequate internal control system that complies with the requirements of anti-corruption legislation.
1063. Following the Board decision of July 28, 2016, a new Integrated Compliance Department was formed that reports directly to the CEO of Eni SpA, effective since September 12, 2016. It is tasked with ensuring the separation of legal compliance activities from those relating to legally defending the company. The Department also contains the Anti-Corruption Compliance unit (“ACC”).
1064. The ACC provide specialist anti-corruption assistance in relation to the activities of Eni SpA and its unlisted subsidiaries, including, among other things:
- (i) constant monitoring of regulations and case law; (ii) the updating of anti-corruption instruments; (iii) activity relating to anti-corruption communication and training program for Eni personnel; (iv) support during reliability checks on partners, support in the management of any problems/red flags discovered and the processing of the relevant contractual requirements in areas at risk of corruption; (v) maintaining an adequate flow of information to the Eni control bodies by drafting a semi-annual report on activities that is submitted to the Watch Structure, the Board of Statutory Auditors, the Control and Risk Committee and the Chief Financial Officer of Eni SpA. In carrying out these activities the ACC uses a software application to electronically manage certain anti-corruption processes and draws on special databanks to accurately verify the anticorruption due diligence performed with potential Eni counterparties.

1065. The Anti-Corruption MSG provides that the manager responsible for performing due diligence must report the results of the anti-corruption due diligence, including any comments by the ACC, to the person or body that authorizes the associated transaction, including the Board of Directors.
1066. The anti-corruption training program for Eni was provided through both e-learning tools and classroom training events (workshops). These workshops are conducted by the ACC in areas judged to be at high risk for corruption based on Transparency International's Corruption Perception Index and on Eni's presence in each given area. The workshops involve discussion of practical examples and analysis of recent case law to offer a general overview of the anti-corruption laws applicable to Eni, the risks posed to persons and entities if they are violated, and the Anti-Corruption Compliance Program that Eni has adopted and implemented to counter these risks.
1067. Eni's experience in anti-corruption issues evolves also through ongoing participation in international conferences and national and international working groups that represent, for Eni, an instrument for growth and for promoting and disseminating its values.
1068. To name only a few examples, Eni has undertaken the following relevant working groups: PACI, B20, the UN Global Compact, the Global Compact Network Italia Foundation, the ABC Benchmarking Group (Steptoe & Johnson LLP) and the OECD.
1069. Finally, on January 10, 2017, Eni SpA successfully completed the verification process carried out by a leading certification company in Italy of its Anti-Corruption Compliance Program to evaluate whether the program meets the requirements of ISO 37001:2016 "Antibribery Management Systems", the first international standard for anti-corruption management systems. The certifier conducted a two-stage audit to verify the appropriateness of the design of Eni's Anti-Corruption Compliance Program through examination of documentation and on-site checks and interviews to assess how it has been implemented. Eni SpA is the first Italian company to have received this certification.
1070. For other information you can consult the site:  
[https://www.eni.com/en\\_IT/company/governance/the-internal-control-and-risk-management-system.page](https://www.eni.com/en_IT/company/governance/the-internal-control-and-risk-management-system.page)
1071. Transparency International Business Integrity Forum and PMI Integrity Kit The Business Integrity Forum (BIF), is a group of Italian corporate supporters  
<http://www.transparency.org.uk/get-involved/business-integrity-forum/list-of-members/> committed to the fight against corruption.
1072. Joining the BIF allows companies to:
- Demonstrate commitment and leadership within their industry;
  - Reinforce anti-corruption messaging to staff;
  - Learn from TI experts and colleagues in other companies on trends in corruption and ABC best practice;
  - Gain insight into TI's policy positions and submissions to government.
1073. In this context, TI-IT hold bi-annual anti-corruption conferences, with experts from in-house compliance, legal, risk and external/public relations professionals in attendance. In addition to these meetings, TI-IT organises regular roundtables on current anti-corruption developments to keep members up-to-date on the latest thinking.

1074. TI-IT regularly invites BIF members to help inform our view of anti-corruption best practice and our advocacy on related policy areas by joining working groups and advisory committees.
1075. To achieve a better level of enforcement of anti-corruption legislation even in relation to small and medium enterprises, TI-IT have developed the PMI integrity kit, which brings together the tools to increase the integrity level of SME and that it is recently been updated with a new tool that will complement the whistleblowing guidelines.
1076. For other information you can consult the site: link: <<http://businessintegrity.transparency.it/>>

*(b) Observations on the implementation of the article*

1077. Italy has taken steps to help prevent corruption involving the private sector, including through collaborative programmes with a large private sector organization of businesses (Confindustria). Confindustria has adopted a Code of Ethics and Associative Values for its associated companies and worked on practical guidance for smaller businesses. It engages awareness-raising activities and provides advice on governance models that promote high standards of compliance (i.e. so-called “Legality Protocols”; Guidelines on the organizational models following Legislative Decree n. 231/01). In this direction, Confindustria is also working on an anti-corruption *vademecum*: a practical guidance to help smaller businesses take measures to prevent offences.
1078. Notaries, who are public officers, have a gate-keeper function as their involvement is mandatory during the entire life cycle of companies. Notaries have developed due diligence guidelines and are obliged to ask for information on the beneficial owner. Suspicious transaction reports by notaries represent a large percentage of all STRs.
1079. Real estate registers and company registers are public. The latter now include beneficial ownership information.
1080. Italy requires listed companies and companies whose financial instruments are widely distributed to follow International Financial Reporting Standards (IFRS), as adopted by the EU, in both consolidated and individual (separate) financial statements. Non-listed subsidiaries of both listed and non-listed companies are permitted, but not required, to follow IFRS. Italy’s false accounting offenses require the publication of accurate and complete accounting records. In Italy, listed companies, accounts of joint stock companies, and a number of non-listed companies are subject to external audit and requirements for internal auditing controls.
1081. Legislative Decree no. 39/2010, implementing Directive 2006/43/EC on statutory auditing of annual accounts and consolidated accounts, provides effective, proportionate and dissuasive criminal penalties for natural persons for failure to comply with accounting requirements. There appear to be pecuniary sanctions against legal persons for false accounting violations.
1082. Italy has taken measures to promote development and implementation of effective compliance programmes within companies. For example, Law 231/2001 exempts legal persons from liability where they can demonstrate that they have implemented compliance programmes aimed at preventing the offenses from being committed; have an internal supervisory committee responsible for implementation and supervision of the compliance programme; have undertaken a risk assessment of its business activities and business lines; have implemented procedures and policies to prevent offenses from being committed; have sanctions for non-compliance; and have implemented an adequate training programme for employees and managers. As mentioned above, Italy also takes

steps to ensure that financial statements of private enterprises are subject to appropriate auditing procedures.

1083. It has established post-government employment restrictions on former public officials who have exercised authoritative or negotiating powers on behalf of the public administration; there is no post-employment restrictions on members of Parliament or magistrates. A private sector employer of a former official who benefits from the former official's actions is also subject to sanctions including voiding of contracts, return of compensation and a time-limited restriction on future contracts with public administration.
1084. In 2017, Italy amended Legislative Decree No. 231/2007, introducing in the Registry of Companies a Register of Beneficial Owners of Legal Persons and Trusts. As per articles 21 and 22 of the new AML Law, comprehensive information is included in the Register not only related to the owner of legal persons and trusts but also to their managers.
1085. Italy also has instruments designed to spread ethical awareness, such as the Protocols of Legality, which can be useful tools to counteract illegal acts.
1086. It was **recommended** that Italy:
- Continue ensuring that the legislation provides effective, proportionate and dissuasive sanctions for all cases of false accounting, regardless of intent, and that limitation periods are sufficiently long;
  - Take steps to promote cooperation between its law enforcement agencies and relevant private parties;
  - Expand post-government employment restrictions to include all Members of Parliament, all Members of Government and appropriate magistrates.

*Paragraph 3 of article 12*

*3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:*

- (a) The establishment of off-the-books accounts;*
- (b) The making of off-the-books or inadequately identified transactions;*
- (c) The recording of non-existent expenditure;*
- (d) The entry of liabilities with incorrect identification of their objects;*
- (e) The use of false documents;*
- (f) The intentional destruction of bookkeeping documents earlier than foreseen by the law.*

*(a) Summary of information relevant to reviewing the implementation of the article*

1087. In Italy, the conducts listed in art. 12, para 3 of the Convention are considered to be criminal

conduct and are punished according to the following provisions.

***Selected provisions from the Civil Code (Royal Decree no. 262, 16 March 1942):***

***TITLE XI: Criminal Law Provisions into the matter of companies, cooperatives and other private entities Chapter I***

***Article 2621 of the Civil Code***

***False corporate reporting***

Without prejudice to article 2622, directors, managing directors, managers in charge of drafting corporate accounting records, auditors and liquidators who, with a view to gaining undue profit for themselves or others, knowingly represent material facts not corresponding to the truth in balance sheets, reports or other corporate reports provided for by law and intended for shareholders or the public, or omit information therein whose dissemination is prescribed by law in respect of the economic, property or financial situation of the company or the group the said company belongs to, in such a way as to actually lead the receivers into error in relation to the said situation, shall be punished by a term of imprisonment from one to five years.

The punishment shall also apply in case of information regarding assets held or administered by the company on third parties' behalf.

***Article 2621-bis***

***(minor offences)***

If the facts specified in article 2621 amount to a minor offence, taking into account the nature and the size of the company and the form of the conduct or the effects thereof, the punishment from six months to three years' imprisonment shall apply, unless they constitute a more serious offence.

Unless the facts constitute a more serious offence, the same punishment as the one provided for in the previous paragraph shall apply if the facts specified in article 2621 concern companies not exceeding the limits specified by the second paragraph of article 1 of Royal Decree no. 267 of 16 March 1942. In this case, the offence is prosecutable upon the complaint filed by the company, the shareholders or the other receivers of the corporate reporting.

***Article 2621-ter***

***(non punishability for particularly irrelevant facts)***

For the purposes of non-punishability for particularly irrelevant facts pursuant to article 131-bis of the criminal code, the judge shall mainly assess the extent of the damage, if any, caused to the company, the shareholders or the creditors as a consequence of the facts indicated in articles 2621 and 2621-bis.

## ***Article 2622 of the Civil Code***

### ***False corporate recording of listed companies***

Directors, managing directors, managers in charge of drafting corporate accounting records, auditors and liquidators of companies issuing financial instruments admitted to trading on the Italian or on any other EU country regulated market who, with a view to gaining undue profit for themselves or others, knowingly represent material facts not corresponding to the truth in the balance sheets, reports or other corporate reports provided for by law and intended for shareholders or the public, or else omit information therein prescribed by the law in respect of the economic, property or financial situation related to the company or the group the said company belongs to, in such a way as to actually lead the receivers into error in respect of said situation, and thereby produce detrimental effects to shareholders' or creditors' assets and liabilities, shall be punished by imprisonment from three to eight years.

1088. The following companies shall be equated to the companies described in the previous paragraph:

- 1) the companies issuing financial instruments for which an application for the admission to trading on the Italian or any other EU country regulated market has been submitted;
- 2) the companies issuing financial instruments admitted to trading on an Italian multilateral trading facility;
- 3) the companies controlling companies issuing financial instruments admitted to trading on the Italian or any other EU country regulated market;
- 4) the companies which call upon publicly raised capital or that anyhow manage it.

1089. The law provisions specified in the previous paragraph shall apply even if the falsities or omissions concern assets in the possession of or administered by the company on behalf of third parties.

## ***Legislative Decree 10 March 2000, n. 74***

### ***New regulation of the offences on income and added value taxes, under Article 9 of Law 25 June 1999, n. 205.***

## ***Article 2***

### ***Fraudulent statement with the use of invoices or other documents for inexistent operations***

1. Anyone who, in view of evading income and added values taxes, having recourse to invoices or other documents for inexistent operations, indicates in one of the statements ((...)) related to these taxes fictitious liabilities, shall be punished with a term of imprisonment from one year and six months to six years.
2. The fact shall be considered as committed for invoices or other documents for inexistent operations when these invoices or documents are entered in the obligatory accounting records or are kept to be used as evidence vis-à-vis financial administration.

3. Paragraph repealed by Legislative Decree 2011, n. 138, turned into Law with amendments by Law 14 September 2011, n. 148. (4)

## **Article 6**

### ***Attempt***

1. The offences provided for by Articles 2, 3 and 4 shall not be punishable as an attempt.

## **Article 8**

### ***Issue of invoices or other documents for inexistent operations***

1. Anyone who in view of allowing third persons to evade income or added value taxes, issues or delivers invoices or other documents for inexistent operations shall be punished with a term of imprisonment from one year and six months to six years.
2. For the purposes of the application of the provision under paragraph 1, the issue or delivery of several invoices or documents for inexistent operations during the same tax year shall be considered as one single offence.
4. ((Paragraph repealed by Legislative Decree 2011, n. 138, turned into Law by Law 14 September 2011, n. 148.))

## **Article 10**

### ***Dissimulation or destruction of accounting records***

1. Unless the fact constitutes a more serious offence, anyone who in order to evade income or added value taxes, or to allow third persons to evade taxes, dissimulates or destroys in full or in part the accounting records or the documents whose keeping is compulsory so as to not allowing the reconstruction of the incomes or the turnover shall be punished with a term of imprisonment ((from one year and six months to six years)).

## **Article 12**

### ***Collateral penalties***

1. The conviction for one of the offences provided for the present decree shall involve:
  - a) Disqualification from holding executive offices in legal persons or companies for a period of not less than six months and not more than three years;
  - b) Incapacity to negotiate with public administration for a period of not less than one year and not more than three years;
  - c) Disqualification from holding representation and assistance offices in tax matters for a period of not less than one year and not more than five years;
  - d) Permanent disqualification from holding the office of member of a Commissione

Tributaria [In the Italian Legal system it is a court having jurisdiction in the field of taxes].

- e) Publication of the judgment under Article 36 of the Criminal Code.
- 2. The conviction for one of the offences provided for by Articles 2, 3 and 8 shall also involve disqualification from holding public offices for a period of not less than one year and not more than three years, except in the presence of the circumstances provided for by Article 2, paragraph 3 and 8, paragraph 3.

(2-bis. For the offences provided for by Articles from 2 to 10 of the present decree the institution of probation under Article 163 of the criminal code shall not apply to the cases where the following conditions are jointly met: a) the amount of the evaded tax is higher than 30 percent of the turnover; b) the amount of the evaded tax is higher than three million euros).

### False accounting and tax offences

1090. In the Italian jurisdiction, several requirements have been introduced aiming specifically at reducing the VAT tax gap and countering tax frauds, as these allow to create funds that are used for corruption purposes. The law requires to provide an electronic communication of invoices issued and received (art. 21 of D.L. -Law decree - 31 May 2010, n. 78, converted with amendments by L.-Law-30 July 2010, n. 122). Since 2017, the requirement must be complied with not annually but quarterly - while a semestral communication is allowed - and provides for the communication of data of the issued and received invoices without the option to exclude the transactions amounting to less than 3,000 Euro and to aggregate data based on single clients or suppliers. Since 6 June 2014 Italy requires mandatory electronic invoicing for supplies rendered to Public Administrations (see art. 1, para. 209 - 214 of Law L. 24 December 2007, n. 244 and Ministerial Decree D.M. 3 April 2013, n. 55). From 2019, this requirement will be extended to all invoices issued to subjects who are resident, established or identified in Italy (other than natural persons with a flat-rate regime and a subsidized regime) (see art. 1, para. 909 and 916, of Law 27 December 2017, n. 205 that amended art. 1, para. 3, of Legislative Decree 5 August 2015, n. 127). The mandatory requirement will apply earlier, i.e. from July 2018, for companies engaged in petrol sales and for sub-contractors to suppliers in public procurement (para. 917 and 920, art. 1 of Law n. 205/2017).
1091. From the criminal/tax law point of view, legislative decree (d.lgs) n. 74 of 10 March 2000 regulates the crime of fraudulent statement committed by using invoices or other documents for non-existing transactions (ref. art. 2). Whoever reports false expenses to evade income tax or VAT, using invoices or similar documents to certify non-existing transactions in one of the returns or statements relevant to those taxes, will be punished with imprisonment from a minimum of 18 months to a maximum of 6 years. The same law also regulates the crime of false statement using other means (art. 3), of issuance of invoices or similar documents for non-existing transactions (art. 8) and of concealment or destruction of accounting records (art. 10).
1092. With reference to the first recommendation, it should be noted that Italy does not provide for monetary thresholds for the punishment of the offences. In fact, law n. 69 of 27 May 2015 strengthened the opposition to false accounting and, in particular, eliminated the punishment thresholds; made the penalties more severe and established that a crime is carried out even if the false accounting has not caused any damage.

1093. As specified in the previous answer to the paragraph 790, art. 25-ter of the legislative decree n. 231/2001 provides for sanctions applicable to legal persons for corporate offenses, including the offenses established in articles 2621 and 2622 of the civil code. In particular, these articles punish false accounting: article 2621 c.c. refers to unlisted companies, while article 2622 to listed companies and similar companies. Therefore Italy is already in line with the second recommendation indicated in paragraph 806.

1094. Please find below the available data on false account and tax offences enforcement

## Convictions for false account and tax offences - 2013-2016

Offence	Sezione Gip Gup *		Sezione Dibattimento**			
	2013	2014	2013	2014	2015	2016
art. 2621 cc	28	25	30	20	22	19
art. 2621 bis cc	0	0	0	0	0	0
art. 2622 cc	8	4	7	13	12	6
art. 25 ter DL 231/2001	0	1 conviction referred to para 1 lett. s	2 convictions (1 for art. 25ter para. 1 lett. A e 1 lett. B e 1 in connection with art. 5 and 24 of the same law)	1 conviction referred to para 1 1 lett. C	1 conviction related to art. 2621 cc	1 conviction referred to para 1 lett. S
art. 2 D.lgs 74/2000	473	255	344	177	865	483
art. 6 D.lgs 74/2000	0	0	1	0	1	0
art. 8 D.lgs 74/2000	204	117	217	129	267	205
art. 10 D.lgs 74/2000	307	147	345	171	495	364

\* Judge for Preliminary investigations: the figures cover 67% judicial offices for 2013 and 41% for 2014

\*\* Trial Courts: the figures refer to 72% judicial offices for 2013, 37% for 2014, 84% for 2015 and 77% for 2016.

**Source: Ministero della Giustizia - Direzione Generale di Statistica e Analisi Organizzativa**

### *(b) Observations on the implementation of the article*

1095. Italy clarified that Article 25-ter in Legislative Decree 231/2001 provides for pecuniary sanctions also against legal persons that violate Articles 2621 and 2622 of the civil code. Furthermore, Article 25-ter of Legislative Decree 231/2001 includes in its catalogue a more numerous list of “reati-presupposto” to provide the liability of the legal person than the only reference to false accounting. These sanctions appear to be effective, proportionate, and dissuasive.

1096. Italy underlined that, besides criminal sanctions, according to article 193 of Legislative Decree no. 58/98 (transposing EU Transparency Directive n. 2013/50) failure by listed companies and companies whose financial instruments are widely distributed to comply with financial reporting disclosure requirements is subject to administrative sanctions, including pecuniary penalties (unofficial translation of such law is available at Consob web-site: [http://www.consob.it/web/consob-and-its-activities/laws-and-regulations/documenti/english/laws/fr\\_decree58\\_1998.htm?hkeywords=&docid=0&page=0&hits=19&nav=false](http://www.consob.it/web/consob-and-its-activities/laws-and-regulations/documenti/english/laws/fr_decree58_1998.htm?hkeywords=&docid=0&page=0&hits=19&nav=false)). Moreover, the failure by auditors and auditing companies to comply with their duties is also subject to administrative and criminal sanctions (including in case of corruption), pursuant to art. 26 and the Legislative Decree no. 39/2010 (unofficial translation of such law is available at Consob web-site: [http://www.consob.it/web/consob-and-its-activities/laws-and-regulations/documenti/english/laws/fr\\_decree39\\_2010.htm?hkeywords=&docid=1&page=0&hits=19&nav=false](http://www.consob.it/web/consob-and-its-activities/laws-and-regulations/documenti/english/laws/fr_decree39_2010.htm?hkeywords=&docid=1&page=0&hits=19&nav=false)).
1097. Italy prohibits false corporate reporting by individuals and legal persons; the relevant offences require the intent of obtaining undue profit and require that the false or omitted facts in the corporate communications be material.
1098. Italy clarified that the offence of **false corporate reporting of unlisted companies** (Article 2621 of the civil code, as amended by Law no. 69 of 2015) **does not provide any more for thresholds**. Any reporting, whether false or omitted, of balance sheets, reports or other corporate reports intended for shareholders or the public, even when the false or omitted reports concern assets held or administered by the company on behalf of third parties, is punished by imprisonment from one to five years.
1099. The **intent requirement** of the abovementioned criminal conduct, in addition to comprising the knowledge and intention to commit the crime, should also have the purpose of obtaining undue profit for oneself or for others. The said purpose certainly includes the end of fostering and concealing (for example through the establishment of off-the-books funds) bribery or any other offence referred to in the Convention, or even not referred to therein.
1100. The offence of **false corporate reporting of listed companies** (Article 2622 of the civil code), provides even for a longer base sentence (from three to eight years) because of the greater danger of the facts and the wider range of potential injured persons. Italy clarified that the article does not provide for thresholds for false corporate reporting, either.
1101. The **time limitation for the offence of false corporate reporting of unlisted companies** (Article 2621 of the civil code, as amended by Law no. 69 of 2015) is six years. The said term can be extended to seven years and a half in the cases of interruption of the time limitation period referred to in Article 160 of the criminal code (request for committal for trial, interrogation of the suspect or defendant, seizure, pre-trial preventive measures, upholding of the arrest for minor or major offences, etc.). The term in question is also suspended (Article 159 of the criminal code) in several other cases, which cover all the possible reasons for slowing down proceedings, including: the authorization to carry out a measure required in certain cases; the need to wait for a civil court preliminary ruling; the need to wait for the outcome of an international mutual legal assistance request; the term needed to file the reasons for a decision, which, in some cases, may be of up to 90 days and, by the relevant procedure, may be extended to up to 180 days.
1102. The reform introduced by Law n. 103 of 2017 has prescribed other cases of suspension:

- 18 months from the first instance conviction to the second instance judgment
  - 18 months from the appeal conviction to the judgment of the Supreme Court of Cassation.
1103. The above different instances of suspension can be cumulated and consequently the time required for the time limitation period to run out in respect to the above offences may exceed ten and a half years.
1104. Since the offence of false corporate reporting of **listed companies** (Article 2622 of the civil code) is punishable with a longer base sentence (3 to 8 years), the limitation period is even longer (8 years + 2 years for any interruptions + different instances of suspension envisaged by Article 159 of the criminal code, as abovementioned).
1105. The Italian criminal law also provides for tax fraud offences (issue of invoices for inexistent operations, use of invoices for inexistent operations, untruthful statements and more conducts referred to in legislative decree no. 74/2000), which are distinct from the above mentioned false corporate reporting offences.
1106. The intent requirement of the said offences normally includes “the end of evading income and added value taxes”, an end that however normally coexists with the end of accomplishing and/or concealing corruption conducts. An example is the issue of invoices to simulate consultancy services by an individual who instead had been paid a bribe.
1107. The case-law has determined that in such cases the offender also commits a tax offence in addition to the offence of corruption: “the offence of issuing inexistent invoices to evade income and value added taxes, prescribed by Article 8, Legislative Decree no. 74 of 10 March 2000, is committed when invoices for consultancy services are issued to cover the payment of money for a corruption agreement, since the said operations fall within the category of “operations not actually made in whole or in part” envisaged by Article 1, paragraph 1 (a) of Legislative decree no. 74 of 2000 [Court of cassation, 6th Division Judgment n. 52321 of 13.10.2016, (dep 9.12.2016) Rv 268521].
1108. It was **recommended** that Italy monitor the practical application of the legislation concerning the destruction of documents, to ensure that it covers situations where documents are destroyed not to evade income or added value taxes, but to conceal offenses established under the Convention.

*Paragraph 4 of article 12*

*4. Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct.*

*(a) Summary of information relevant to reviewing the implementation of the article*

1109. Italy referred to Art. 8 of decree law 16/2012.
1110. Since 1994, the Italian law has provided for the non-deductibility of the costs connected to facts, acts or activities qualifying as crimes (see art. 14, para. 4-bis, Law 24 December 1993, n. 537). These provisions have been replaced by art. 8, para. 1-3, of Law Decree, D.L. 2 March 2012, n. 16 (converted with modifications by Law 26 April 2012, n. 44). The new wording of the above-

mentioned para. 4-bis of art. 14 of law L. n. 537/1993 (introduced by para. 1 of the above-mentioned art. 8) establishes the non-deductibility only for the expenses related to goods and services directly used to carry out actions or activities that constitute non-negligent criminal conducts. The para. 2 provides for the non-taxability, for income tax assessment purposes, of the revenues directly related to the costs for non-existing transactions, to the extent of the amount of non-deductible costs, and the enforcement, in this case, of an administrative sanction of 25 to 50 per cent of the amount of the expenses related to goods and services reported in the income tax return that were not actually exchanged or provided.

*(b) Observations on the implementation of the article*

1111. Tax deductibility of bribes is expressly excluded by law since 2002 (article 2(8), Law 289/2002). Even prior to this amendment, courts had already held that bribe payments were illegitimate deductions.

1112. It was concluded that Italy has implemented this provision of the Convention.

## Article 13. Participation of society

*Paragraph 1 of article 13*

*1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:*

*(a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;*

*(b) Ensuring that the public has effective access to information*

*(c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;*

*(d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:*

*(i) For respect of the rights or reputations of others;*

*(ii) For the protection of national security or ordre public or of public health or morals.*

*(a) Summary of information relevant to reviewing the implementation of the article*

1113. With regard to paras. 1 (a), (b) and (d), Italy also referred to the answers under Art. 10 above. Moreover, Italy added the following information:

1114. In June 2016, the Government introduced a major innovation in the field of transparency by approving legislation based on the **Freedom of Information Act (FOIA)**. For the first time in Italy, citizens are granted the right to access public data and documents without having to prove a subjective interest. This is a major innovation strongly encouraged by the Government with the active involvement of all civil society associations and representatives dealing with this topic.
1115. On the wake of these innovations, we decided to strongly relaunch Italy's commitment within the **Open Government Partnership** and stand among the leading countries in the field of transparency, digital citizenship and participation. To draft the third Italian action plan we set up the first National Open Government Forum which liaised with the panel of central and local entities. The Forum has seen the participation of over 50 organizations from the world of associations, universities, research centers, consumers' and professional associations that worked actively with public administration in proposing and drafting the actions included in the Plan. The cooperation with civil society provided suggestions and tangible proposals on many issues, namely: the implementation of FOIA, the involvement of civil society in the SPID project, an increased publication and use of public data, cooperation between start-ups and public entities, the role of young people at the forefront of innovation processes.
1116. The Open Government Partnership (**OGP**) is a multilateral initiative promoted by Governments and civil society for the adoption of public policies relying on the principles of transparency, participation, anti-corruption, accountability and innovation in the public sector. The third action plan is for our country a step forward in our commitment towards achieving these objectives in the period 2016-2018.
1117. The document was drafted with the involvement of representatives of civil society, gathered in the newly established Open Government Forum, open to all organizations engaged in open government issues. The plan was drawn up by the Department for Public Administration on the basis of proposals made by the relevant public institutions that, when designing actions, took into account, where possible, the priorities suggested by the civil society organizations consulted.
1118. As a result of the adoption of the Freedom of Information Act (FOIA), under the reform of public administration, we will work to enact the right to civic access and monitor its implementation, since we want to understand how to further strengthen it in the future.
1119. In the past few years, Italy implemented major transparency projects such as Soldipubblici, OpenCoesione, ItaliaSicura and Opencantieri: with our third action plan we will ensure the continuity of these projects, we will strength them, develop additional initiatives on transparency of public investment, on the ultra broad band, on spending for international cooperation, education, the penitentiary system and the very important transport sector.
1120. These commitments are aimed at promoting transparency as a tool of civic participation and monitoring but also at improving the quality of services delivered to citizens. This is a major innovation: for the first time, the action plan contains the commitments of entities other than central ones. This makes the plan a country-wide initiative, ensuring that open government is recognized and perceived by citizens at local level too. Regional and municipal entities will be involved in major corruption prevention projects and digital rights protection actions, in addition to participation initiatives. Digitalizing public administration means ensuring a more effective use of services through the enhancement of SPID, the public system of digital identity which allows citizens to use the same credentials to access services provided by all public entities and, for the future, also those delivered by private companies.

1121. Moreover, in parallel with the actions aimed at promoting the culture of open administration among public employees and citizens, a single access point to services delivered by public administration -“Italia.it” - will be implemented.
1122. The actions of the plan are described in detail, in line with OGP standards and are grouped in three areas: 1. Transparency and open data 2- Participation and accountability 3. Digital citizenship and innovation.
1123. Each action contains information on the lead implementing administration and the other PAs involved, the goals, the specific commitments, the implementation timeframe and the OGP values promoted.
1124. As a recognition of the validity of these commitments at national and international level, on March 2017 Italy was elected as a member of the OGP Steering Committee together with Canada, South Africa and South Korea. The newly elected members will join the other members of the executive body, chaired by France, over the next three years.

Concerning ANAC and the PNA:

1125. All ANAC’s documents are published on the ANAC website.
1126. ANAC fosters citizens participation with public consultations on regulatory acts, like guidelines and PNA. For this purpose in 2015 the ANAC updated its regulation concerning the involvement of the public and private entities and the citizens in the elaboration of the regulatory acts of the Authority. The draft of the act to be adopted is approved by the Council of the Authority and published on the web side of ANAC, for a at least a month. Every public administration, private entity, association and individual subject can send observations and proposals on the document. Furthermore ANAC can arrange public hearing of stakeholders related to the matter of the document. The Council may also set up working tables to discuss the specific issue of the regulatory act. The Authority evaluates the proposals and the observations and adopts the final act. A report of the evaluations and decisions of the Authority is published on the web side of ANAC, according to the domestic law on the adoption of the regulatory acts.
1127. The PNA is always submitted to public consultation. Any citizens or private and public association can make proposals on risk events and pertinent remedies. Even the PNA is elaborated involving the principal stakeholders invited to take part in “technical roundtable”. For PNA 2016 and 2017 the following roundtables have been set up:

PNA 2016

- Job rotation (ANAC, Department of Public Service)
- Professional associations (notaries, engineers, architects, accountants agronomists, lawyers, labour consultants, unified committee for professions)
- Cultural heritage sector (ANAC, Ministry of Cultural Heritage)
- Territorial Governance (ANAC, National Association of Municipalities, Union of Provinces, Conference of Regions, Conference of Presidents of Legislative Assemblies)
- Small local authorities (ANAC, National Association of Municipalities, Ministry of the Interior)
- Metropolitan areas (ANAC, National Association of Municipalities, Union of Provinces, Ministry of the Interior)

- Health authorities (ANAC, Ministry of Health, National Agency for regional health services)

#### PNA 2017

- Port authorities (Ministry of Infrastructure and Transport, Transport Regulation Authority, three Italian port authorities)
- Special Commissioners (Presidency of the Council of Ministers, Ministry of Infrastructure and Transport, Ministry of Environment)
- Universities (Ministry of Education University and Research, Italian National University Council (CUN), Conference of Italian University Rectors (CRUI), Conference of Directors General of Universities (CODAU), National University Students' Council (CNSU), National Committee of Guarantors for Research (CNGR), National Agency for the Evaluation of Universities and Research Institutes (ANVUR))

1128. On the other hand, the Anti-Corruption Law no. 190/2012 provides that each public administration establishes its own Code of conduct “with an open procedure for participation” (art. 1 c. 44).

1129. ANAC suggested with the PNA to involve outside and external Stakeholders in the procedure for drawing up the PTPC. In a recent study made by an Italian University for ANAC on a sampled administrations it was found that is increasing the number of public entities that is used to do this, even if the number is not so significant.

1130. On the front of transparency, the general principles of legislative decree n. 33/2013 describe transparency as “full accessibility to the data and documents held by the public administrations, for the purpose of protecting the fundamental rights of citizens, promoting the participation of any interested party in administrative activities, and fostering widespread forms of control on the pursuance of the institutional functions and the use of public funds”

1131. The provisions of legislative decree n. 33/2013 in order to ensure compliance with transparency obligations and foster democratic participation, have acknowledged that each citizen has the right to demand disclosure of data if the administration does not publish them in accordance with the law (known as citizens' access - accesso civico). The administrations must answer in 30 days and, within the same time, publish the missing data.

1132. Since June 2016, the “obligatory transparency” regimen, as seen in paragraph 513, has been accompanied by a general citizens' access i.e. FOIA.

1133. In addition to the previous contributions from the public sector, you may wish to consider the following contribution autonomously provided by Transparency International.

1134. Transparency International Italia stressed some of the most valuable activities and initiatives carried out in collaboration with Italian Institutions.

1. Participation to the Open Government Forum, in the framework of the OGP activities coordinated by the Ministry for the Public Administration. The outcome of the OGP Forum was the 3rd OGP Action Plan delivered by the Italian Government and officially presented on 20/09/2016.

2. Memorandum of Understanding with the National Anticorruption Authority, signed on 26th January 2016, regarding general collaboration in the anticorruption field.

3. Agreement for the management of reports by whistle-blowers from the public sector, signed with the National Anticorruption Authority on 27th January 2017.

4. Collaboration with the Ministry of Foreign Affairs for the organisation of International Business Integrity days, aiming at diffusing anticorruption best practices in the private sector. The first three conferences were organised in Oslo, Paris and Washington in December 2017.

5. Monitoring of Public Procurements in Regione Sardegna, for the building of a new train railway and in Regione Lombardia for a call for consultancy. In partnership with other two CSOs (Action Aid and Amapola) TI-Italy is collaborating with the two Regions for testing a new model of Integrity Pact.

6. Public / Private Working Table for improving transparency and integrity in the Healthcare. The works of the table started in 2016, gathering several private and public actors (including the Ministry of Healthcare and four important Local Health Authorities) and on 12 December TI-It presented the Policy Paper and the Policy Statement drafted with all these institutional partners.

7. Collaboration with the Italian Government Office for Sport for fighting match-fixing. In 2017 TI-Italy and the Italian Government presented a specific platform for whistleblowing in sport.

*(b) Observations on the implementation of the article*

1135. ANAC encourages involvement of all entities of public administration and the public to elaborate its regulatory acts, including the national anti-corruption plan. ANAC suggested to agency/administrations that they include the public in developing their three-year plan for the prevention of corruption. It also encourages public education programmes and works with civil society in promoting programmes in the schools.

1136. During the country visit, it was added that Civil Society was consulted for the self-assessment checklist and for the responses to the desk review.

1137. It was concluded that Italy has implemented this provision of the Convention.

*Paragraph 2 of article 13*

*2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.*

*(a) Summary of information relevant to reviewing the implementation of the article*

1138. Concerning the reporting system for whistleblowers, Italy referred to the answer above concerning par.4 of article 8. Moreover, it added the following information:

1139. In November 2017 the Italian Parliament passed a **law on whistleblowing (Law n. 179 of 2017, entered into force on December 29, 2017, “on the protection of reporters of crimes and irregularities”)**. The law has a twofold effect, on both the public and private sector:

- on the public sector: it eliminates and replaces art. 54 of the single act on public employment (aka TUPI, in Italian)

- on the private sector: it changes article 6 of the law 231 of 2001.

1140. There are now 3 main alternative recipients of reports, namely:

- 1) the National Anti-Corruption Authority (ANAC) (introduced by Decree Law n. 90 of 2014)
- 2) the ordinary judicial or accounting authority (introduced by Law n. 190 of 2012)
- 3) the “person responsible for the prevention of corruption and transparency”; (NEW element of the Law, though already mentioned in ANAC’s guidelines of 28/April/2015)

1141. The act introduces a double extension of protection, namely:

- 1) For employees of the **public** sector: Article 54-bis of the single act on public employment is now extended in a sense to reach the widest interpretation possible of employees of the public administration (including workers and employees of enterprises providing goods or services and performing works in favour of public administration);
- 2) Article 2 of the bill extends to the **private** sector (through amendments to Legislative Decree n. 231 of 2001), the protection of workers who report illegalities (or violations of the organizational and managerial model of the company) which become known while performing official functions (a major novelty).

1142. It is specified that the law has a large scope and aims at ensuring that reports or complaints be in the interests of the integrity of both the public administration and (NEW) the private entity. In addition, the psychological opinion of the whistleblower has to be characterized by a reasonable belief, based on factual elements, that unlawful conduct has taken place indeed. Additionally:

1143. It is prohibited to disclose the identity of the whistleblower, in either the disciplinary, criminal and administrative procedures.

1144. After having heard the Guarantor for the protection of personal data, ANAC is tasked with the preparation of guidelines for some of the aspects of the whistleblowing system in the public sector. Indeed, the Authority shall give recommendations on the methodology as to file and manage reports/complaints, with the goal to guarantee the confidentiality of the reporting employee. There should be one or more channels which, in order to protect the integrity of the organization, allow safe reporting to those who have become aware of irregularities in the course of the functions performed. More specifically, among the possible systems used to transmit alerts while protecting the confidentiality of the whistleblower, at least one solution should be a computer-based model.

#### Sanctions:

1145. Now ANAC has the power to issue sanctions (only for the public sector) in the following cases:

- In case of discriminatory or retaliatory measures against the employee, ANAC can issue administrative fines from 5,000 to 30,000 euros, without prejudice to other responsibilities.
- For the adoption of procedures non-compliant with the guidelines or the lack thereof, ANAC can issue a fine from 10,000 to 50,000 euros;
- In case of failure to carry out verification activities and analysis of the reports/complaints, ANAC can issue a fine against the responsible person, from 10,000 to 50,000 euros.

1146. ANAC decides the measure of the penalty, taking into account the size of the organization the report refers to. In both the public and private sector, in the event of disputes related to the imposition of disciplinary sanctions or the adoption of measures with adverse effects on working conditions

(whether they are demotion, dismissal, transfer, or other organizational measures), the employer holds the burden to prove that the adoption of such measures was not retaliatory (i.e. motivated by the employee's complaint/report).

1147. There is an exclusion clause, meaning that protection is not guaranteed if:

- the whistleblower has been found guilty, through a criminal procedure (even at first-degree/non-final ruling), of slander or defamation, or
- the whistleblower has acted with fault or gross negligence.

Disclosure of secret information:

1148. The new provision introduces as a “just motive” (*giusta causa*) to waive professional secrecy (Article 622 of the Italian Civil Code), scientific and industrial secrecy (Article 623 of the Italian Civil Code) and breach of the obligation of loyalty to the entrepreneur by the lender (Article 2105 of the Italian Civil Code) the case in which the whistleblower, through his/her revelation, aims at pursuing/protecting the (considered higher) interest of the integrity of both public and private organizations and the prevention and repression of maladministration.

1149. Subsequent to the adoption of the law, ANAC acquires the following additional tasks:

1. the Authority is the recipient of reports concerning “measures considered retaliatory [adopted] ... by the signatories” (Article 1, paragraph 1, before last phrase);
2. the Authority shall “(...) inform the Department of the Public Function of the Presidency of the Council of Ministers as well as other guarantee or disciplinary bodies for the activities and possible actions of competence” (Article 1, paragraph 1, last paragraph);
3. During its own inspection, ANAC has now the competence to assess “the adoption of discriminatory measures” (Article 1 (6), first subparagraph);
4. ANAC obtains sanctioning powers to be applied against:
  - a) the responsible person for the adoption of discriminatory measures (Article 1, paragraph 6, first paragraph);
  - b) the responsible person to receive reports and establish reporting procedures (art. 1, section 6),
  - c) the manager, for the failure to carry out the verification and analysis procedures of the single report received (Article 1, section 6). The recently adopted Law no. 179/2017 confers to the Authority the task of the drawing-up of the guidelines relative to alerts' submission and management procedures.

1150. Beside the guidelines, ANAC has developed a specific IT platform to ensure greater protection and the maximum confidentiality to public employees reporting wrongdoings. The IT platform developed by ANAC will be made available to all public administration who want to use this secure system to handle the alerts they receive from their employees.

1151. The council members of ANAC have undertaken many training activities relating to the law about whistleblowing, addressed to managers of public administrations and to lawyers and operators of the Courts. A couple of examples of these activities, among many others:

- (January 2018): The new whistleblowing discipline in the private sector. Legal, organizational and social impacts. A workshop dedicated to the new provision concerning the extension of whistleblowing to the private sector. The legal implications involve numerous business areas including: human resources, organization, legal, compliance. (see at

<http://www.nctm.it/eventi/convegni-e-seminari/la-nuova-disciplina-del-whistleblowing-nel-settore-privato-impatti-giuridici-organizzativi-sociali>)

- (November 2017, 2 days) Course: The protection of the employee reporting illegal (so-called whistleblowing). Whistleblowing in the private sector. Organized by the law bar association of Rome. (see at <https://www.ordineavvocatiroma.it/evento/13-00-16-00-corso-la-tutela-del-dipendente-segnalante-illeciti-cd-whistleblowing/>)

*(b) Observations on the implementation of the article*

1152. Italy has adopted a new law on the protection of whistleblowers (Law no. 179/2017), and ANAC can impose sanctions from 5,000-30,000 euros for discriminatory or retaliation measures against whistleblowers.
1153. It was added by Italy that in order to facilitate whistleblowing, ANAC has set up an online platform and a specific office for reporting illegal acts that allow anonymous contact with ANAC.
1154. It was concluded that Italy has implemented this provision of the Convention.

## Article 14. Measures to prevent money-laundering<sup>1</sup>

### *Subparagraph 1 (a) of article 14*

#### *1. Each State Party shall:*

*(a) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for*

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<sup>1</sup> The latest evaluation report issued by FATF on 27 March 2019, entitled “ITALY: FOLLOW-UP REPORT & TECHNICAL COMPLIANCE RE-RATING”, analyses the actions that Italy has taken to strengthen its legal, regulatory and operational framework to combat money laundering and the financing of terrorism and proliferation, since the assessment of the country’s framework in 2015. Italy has been in a regular follow-up process since the adoption of its 2015 Mutual Evaluation, published in February 2016. In line with the FATF Procedures for mutual evaluations, the country has reported back to the FATF on the actions it has taken since then. Italy has made progress addressing the deficiencies in the Mutual Evaluation Report. As a result of this progress, the FATF has re-rated Italy on 8 of the 40 Recommendations. Italy has made good progress in establishing the legal, regulatory and operational framework required by the FATF.

- 1 – Assessing risks & applying a risk-based approach
- 16 – Wire transfers
- 20 – Reporting of suspicious transactions
- 26 – Regulation and supervision of financial institutions
- 27 – Powers of supervision
- 29 – Financial intelligence units
- 35 – Sanctions
- 40 – Other forms of international co-operation

The report also looks at whether Italy’s measures meet the requirements of FATF Recommendations that have changed since their Mutual Evaluation, taking into account any new measures since the mutual evaluation. The FATF agreed to maintain the Compliant rating for Recommendation 5 (Terrorist financing offence); maintain the Largely Compliant rating for Recommendations 2 (National co-operation and co-ordination), 8 (Non-profit organisations), 18 (Internal controls and foreign branches and subsidiaries) and 21 (Tipping-off and confidentiality); and maintain Partially compliant rating for Recommendation 7 (Targeted financial sanctions related to proliferation).

(<http://www.fatf-gafi.org/publications/mutualevaluations/documents/fur-italy-2019.html>)

*the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transactions;*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Overview**

1155. As lately confirmed by the FATF in its 2016 Mutual Evaluation, Italy has a mature and sophisticated AML regime, and a well-developed legal and institutional framework, set forth in the Legislative Decree 231/2007, better known as the “Italian AML Law”.
1156. Directive (EU) 2015/849 of 20 May 2015, on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, has been enacted by means of national Legislative Decree (primary law) n. 90/2017 of 25 May 2017, which entered into force as from 4 of July 2017. In parallel, L.D. n. 90/2017 amended our national AML Law (L.D. 231/2007), in accordance with the leading criteria set forth by a preliminary Act (primary law/enabling Act) approved by the Parliament in September 2016 (Law n. 170/2016). Italy recently criminalized self-laundering as well (article 648 ter 1 of CC - law of December 15, 2014, entered into force on January 1, 2015).
1157. Italy is developing concretely an AML/CFT national policy informed by its 2014 national risk assessment (“NRA”). A great variety of information come from solid grounds such as: the activities of reporting entities, the indicators and typologies developed by the financial intelligence unit (UIF), the trends and information provided by the judiciary and law enforcement authorities (LEAs), and reports issued by academics and regional and international organizations. The NRA analyses ML/TF threats and vulnerabilities at the national level on the basis of an agreed upon methodology, that covers mostly the range of issues addressed in the FATF guidance on conducting national ML/TF risk assessments.
1158. The AML Law gives all supervisory authorities the power to undertake off-site and on-site inspections of supervised persons. The law also sets out a range of sanctions that can be imposed by supervisors on covered persons for breaches of its requirements.

**Relevant authorities for AML/CFT**

1159. **Ministry of Finance and Economy (MEF):** MEF is responsible for policies to prevent the use of the financial system and of the economy for the purpose of ML/TF. It houses and chairs the Financial Security Committee (FSC), which comprises key competent authorities and is tasked with coordinating action for the prevention of the use of the financial system and of the economy for ML/TF purposes, and the financing of proliferation of weapons of mass destruction (PF). The MEF also has the power to levy AML/CFT administrative sanctions.
1160. **Interior Ministry:** Interior Ministry is responsible for the public order and general security policies. It coordinates the five national police forces to this effect. Preventive activities against ML and TF by the Polizia di Stato are conducted under the authority of the ministry.
1161. **Ministry of Justice:** Ministry of Justice deals with the organisation of justice/courts and some

administrative tasks such as the management of notarial archives and of the judicial records register, monitoring of chartered professions. It also plays a role in international cooperation. The Legislative Office carries out studies and develops proposals for legislative action.

1162. **Bank of Italy (BoI):** BoI is responsible for the supervision of banks, e-money institutions, payment institutions, Bancoposta, financial intermediaries, and Cassa Depositi e Prestiti SPA. The BoI also undertakes the supervision of investment firms, asset management companies and Società di Investimento a Capitale Variabile (SICAV) jointly with the National Commission for Companies and the Stock Exchange (CONSOB). Under the Single Supervisory Mechanism (SSM), the ECB is responsible for the supervision of significant banks, i.e. the 13 largest banking groups in Italy. The BoI is responsible for the prudential supervision of the remaining banks and the AML/CFT supervision of all banks. The BoI can also delegate GdF (Guardia di Finanza) to carry out inspections at payment institutions (PIs, including Italian branches of EU PIs), and non-bank financial intermediaries.
1163. **National Commission for Companies and the Stock Exchange (CONSOB):** CONSOB is the public authority responsible for regulating the Italian financial markets. Its activity is aimed at the protection of the investing public. The CONSOB is the competent authority for ensuring (i) transparency and correct behaviour by financial market participants; (ii) disclosure of complete and accurate information to the investing public by listed companies; (iii) accuracy of the facts represented in prospectuses related to offerings of transferable securities to the investing public; and (iv) compliance with regulations by auditors entered in the Special Register. It also investigates potential infringements of insider dealing and market manipulation law.
1164. **Institute for Insurance Supervision (IVASS):** IVASS is the supervisor of insurance and reinsurance undertakings as well as all the other bodies subject to the regulations on private insurance, insurance agents and brokers included. It is responsible for ensuring the stability of the insurance market and undertakings, as well as the solvency and efficiency of market participants in the interests of policyholders and consumers.
1165. **Unità di Informazione Finanziaria - financial intelligence unit (UIF-FIU):** UIF is an administrative financial intelligence unit established within BoI. It has been operational since 2008 (in continuity with the functions performed from 1997 by the former FIU, the Ufficio Italiano dei Cambi) and acts as the national structure in charge of receiving information on suspected money laundering, terrorist financing or associated predicate offences, analysing it and disseminating the results of that analysis to the competent authorities. The UIF performs its functions in complete operational autonomy and independence. Off site and on sites controls are performed in this respect, and the UIF is also empowered to acquire additional data and information from all reporting entities. For a detailed description of institutional features and functions of the UIF, please also refer to answers to questions under art. 58.
1166. **Guardia di Finanza (GdF, the financial guard):** GdF is a body with military status placed under the direct authority of the MEF. It is responsible for dealing with financial crime, corruption, tax evasion and avoidance, as well as smuggling. It also has AML/CFT supervisory responsibilities regarding bureaux de change, payment institutions' agents and Designated Non-Financial Businesses and Professions (DNFBPs), including: (i) lawyers; (ii) accountants; (iii) notaries; (iv) casinos; (v) specified categories of persons engaged in manufacture, intermediation, and commerce including exporting and importing precious objects; (vi) trust and company service providers; and (vii) real estate agents. It shares responsibility for the supervision of chartered accountants, notaries, and

lawyers with their respective professional associations. It is also the supervisor of a number of DNFBP sectors that fall outside of the scope of the standard.

1167. **Carabinieri (the military police):** Carabinieri is a military corps with police duties which also serves as the Italian military police. Its Specialised Operational Group (R.O.S.) was created to coordinate investigations into organised crime, and it is the main investigative arm of the Carabinieri which deals with organised crime and terrorism, both at national and international levels.
1168. **Anti-Mafia Investigation Department (DIA):** DIA is entrusted in particular with fighting specific Mafia-type organisations. It is a special inter-force investigative body staffed with personnel from the State Police, Carabinieri and GdF with experience in financial investigations and organised crime investigations. The DIA is vested with special investigative powers to fight organised crime.
1169. **The National Anti-Mafia and Counter-Terrorism Directorate (DNA):** DNA is the judicial coordinating body which enforces legislations on anti-mafia and countering of terrorism. It comprises the National Anti-Mafia and Counterterrorism Prosecutor (Procuratore Nazionale Antimafia e Antiterrorismo), 2 deputy prosecutors and 20 prosecutors assistants. The DNA has at its disposal the DIA and the special police offices and gives directives to regulate their use for investigative purposes.
1170. **Organismo degli Agenti e dei Mediatori (OAM)** is responsible for the supervision of loan brokers and finance agents, and AML/CFT concrete monitoring of these entities rests with the GdF.
1171. **ECB** is responsible for the supervision of significant banks, which in effect are the 13 largest banking groups in Italy.
1172. Other agencies that play a role in AML/CFT include; the National Anti-Corruption Agency (ANAC), Ministry of Foreign Affairs and International Cooperation, Inland Revenue Agency (Agenzia delle Entrate), Customs Agency, Ministry of Economic Development (MISE), and the Ministry of Labour. Comitato di Sicurezza Finanziaria (Financial Security Committee (CSF- FSC)), under the auspices of the MEF, is the key vehicle for the coordination of national AML/CFT.
1173. **The National Council of Notaries (CNN, Consiglio Nazionale del Notariato)** is a public body representing the Civil Law Notaries. Italian notaries are high-level public officer delegated by the State to check the conformity to the law of contracts and legal documents mainly in the fields of real-estate transfer, company law, and family law (succession, matrimonial property regimes, etc). The notaries dispose of their own IT infrastructure allowing the instantaneous transmission of acts to the Public Registers (Real Estate Register, Cadaster, Business register). Notaries have to perform accurate AML controls on their clients. Among the professionals, notaries are the ones who send the majority of suspicious transaction reports (about 95% in 2014 according to UIF's data). Suspicious transaction reports are easily provided to UIF with an online interface managed by the notarial IT system.

### ***National risk Assessment***

1174. The NRA carried out in 2014 classified as 'very significant' the threat that money laundering poses to the Italian economy, especially due to widespread illegal practices, such as organized crime, tax evasion, corruption, drug trafficking, usury and various types of corporate crimes and bankruptcy fraud. The significance of the threat is amplified by the excessive use of cash and by the size of the underground economy, which facilitate the re-channelling of illicit proceeds into the legitimate economy.

1175. Due to the variety and scale of its financial manifestations, organized crime is often behind tax violations and other crimes mapped by the national risk analysis. Identifying the financial flows associated with criminal enterprises is a priority for the system of preventing and combating money laundering.
1176. Corruption is among the most alarming and dangerous criminal phenomena to which Italy is exposed. The international community pays close attention to this issue and to the significant consequences it has for the competitiveness of our country, including in terms of our ability to attract foreign investment.
1177. As regards the initiatives undertaken by the UIF in relation with these results, it is worth noting that it continues to pay close attention to the threats identified in the NRA in relation to organized crime, corruption, tax evasion and other financial crimes. Combating these phenomena, including with the use of financial resources, is an ongoing priority. In particular, the action of the UIF, rooted in a risk-based approach, has evolved consistently with the results of the NRA, through targeted initiatives on matters within its institutional remit.
1178. In November 2015, the UIF set up an internal focus group on organized crime (Osservatorio sulla Criminalità Organizzata) to monitor, gather and provide internal operational structures with information and methodologies for analysing situations of possible significance. The UIF, with the DIA, has also developed data mining systems to swiftly identify reports with potential links to organized crime.
1179. As regards the initiatives for preventing corruption, the UIF's activities have not been confined to highlighting symptoms of corruption and embezzlement of public funds in reported transactions but have also endeavoured to identify patterns of behaviour pointing to unreported violations. Among the cases examined in recent years, episodes of misappropriation of funds in connection with public insolvency proceedings stand out, owing to the forms they took and to the individuals and financial resources involved. In addition, to prevent the crime of corruption, as early as 2014 memoranda of understanding were signed with the ANAC and with the Municipality of Milan, and in 2015, anomaly indicators for general government entities, proposed by the UIF and adopted by decree of the Minister of the Interior, were published. The UIF and the ANAC are working together in order to renew and update the MoU.
1180. Furthermore, researches and studies conducted by the UIF focused on the issues identified in the NRA as critical problems for the system, such as the use of cash and the withdrawal of funds in Italy using foreign credit cards. In addition, in-depth study was made on innovative payment instruments, such as virtual currency, that still lack a regulatory framework and that therefore contribute to the risk of money laundering and terrorist financing.
1181. Please, find below a link to an official Synthesis of our NRA released in 2014. <[http://www.dt.mef.gov.it/export/sites/sitodt/modules/documenti\\_en/prevenzione\\_reati\\_finanziari/prevenzione\\_reati\\_finanziari/NRA\\_Synthesis\\_11\\_01\\_2017.pdf](http://www.dt.mef.gov.it/export/sites/sitodt/modules/documenti_en/prevenzione_reati_finanziari/prevenzione_reati_finanziari/NRA_Synthesis_11_01_2017.pdf)>

### ***Review by international organizations***

1182. **IMF** conducted the on-site visit in Italy in 14th-30th January 2015 in order to analyse the level of compliance with FATF 40 Recommendations and the level of effectiveness of Italy's AML/CFT system and to provide recommendations on how the system could be strengthened.
1183. In February 2016, **FATF Mutual Evaluation Report (MER)** about Italy's AML/CFT was published. The previous MER was conducted in 2005. MER February 2016: <<http://www.fatf->

[gafi.org/media/fatf/documents/reports/mer4/MER-Italy-2016.pdf](http://gafi.org/media/fatf/documents/reports/mer4/MER-Italy-2016.pdf)>

1184. In this document, you can find in Annexes III, IV, V some charts that show the seizure and confiscation related to anti-mafia measures and GdF investigations. At page 39, you can find some charts including the number of STRs between 2009-2014 and at page 42 other statistical information.
1185. From pages 20-24 and page 33 of the “Annual Report to Parliament about 2015 Italy AML/CFT” you can find the number of STRs between 2011-2015 (UIF source) <[http://www.dt.tesoro.it/export/sites/sitodt/modules/documenti\\_it/news/news/RELAZIONE\\_2015.pdf](http://www.dt.tesoro.it/export/sites/sitodt/modules/documenti_it/news/news/RELAZIONE_2015.pdf)>
1186. From pages 50 to 61 of MER, you can find many charts with information about investigations, prosecutions, convictions and pages of 45; pages 56-57; pages 71; 73 “Annual Report to Parliament about 2015 Italy AML/CFT”.
1187. The main proceeds-generating crimes are (i) tax and excise evasion (around 75% of total proceeds); (ii) drug trafficking and loan sharking (around 15% of the total); and (iii) corruption, fraud, counterfeiting, environmental crime, robbery, smuggling extortion, and illegal gambling (around 10% of the total). Categories of crime (ii) and (iii) are most closely associated with the activities of organised crime, a historically pervasive problem in Italy.
1188. Based on the FATF evaluation’s recommendations for improvement, **the new AML Law** has recently been approved (set out by Legislative Decree n. 90/2017, amending L.D. 231/2007). The novelties aim to a general improvement of our AML legal framework in furtherance of our commitments in the context of both the EU (in particular, by L.D. n. 90/2017 we have implemented the new EU AML directive 849/2015) and the FATF. As of August 2018, the changes to the Law were being reviewed by FATF under the follow-up procedures.
1189. The Italian Legislator aimed to improve transparency and accessibility to beneficial ownership (BO) information. To this end, soon after publication of the new L.D., it has started the legislative process for the creation of a special section in the central business registry dedicated collection of BO data. To date, Italy legal framework is able to ensure that competent authorities have availability and timely access to BO information. Secondary legislation concerning implementation of such register will ensure that collection of BO and legal ownership information will be adequate, accurate and maintained up-to-date.
1190. Moreover, in 2016, the Bank of Italy, in collaboration with the UIF, completed the development of its **new risk-based AML/CTF supervisory model**, also in the light of the “recommended actions” of the FATF evaluation. The model: (i) is based on existing databases of AML compliance of the supervised entities; (ii) uses a set of indicators related to dimension, core business and degree of compliance of the intermediaries; (iii) evaluates the adequacy of intermediaries’ AML/CTF safeguards; (iv) provides a final score using a combined quantitative-qualitative approach; and (v) the final score leads to a proportionate supervisory action.

***Requirements for customer and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transactions***

***Customer due diligence***

1191. AML obligated entities and professionals are required to perform customer due diligence (CDD) and therefore identify their customers and clients when, among others, (i) establishing a business relationship, (ii) carrying out occasional transactions amounting to EUR 15,000 or more, (iii) there

is reason to suspect that a transaction may have served or would serve money laundering or terrorist financing, or (iv) there are doubts about the veracity or adequacy of data identifying the contracting party or beneficial owner (s.17 Legislative Decree 90/2017; previously contained in L.D. 231/2007 and Bank of Italy Regulation issued on 3.4.2013). CDD measures require that entities and professionals covered by the AML/CFT obligations must identify and verify the identity of their customers. This includes that, in respect of legal persons, the AML obligated services provider has to identify the customer's beneficial owner(s) and take reasonable measures to verify the accuracy of the obtained information (s.17-20 Legislative Decree 90/2017, previously contained in L.D. 231/2007 and Bank of Italy Regulation issued on 3.4.2013).

### ***Record keeping***

1192. The main record keeping requirements are contained in the AML Law. Banks are prohibited from opening and keeping anonymous accounts or accounts opened under fictitious names (s.42 Legislative Decree 90/2017 that substituted L.D. 231/2007 and L.D. n.169 of 19 September 2012). Banks are further required to keep transactional and identity information in respect of their accounts. These records include deposit slips, account statements, cheques, transfer orders, bank account contracts, signature cards or CDD documentations. The required information have to be kept for at least ten years after the customer relationship has ceased or following the carrying-out of the transaction (s.31 Legislative Decree 90/2017, previously in L.D. 231/2007). In case of breach of these obligations, administrative and criminal sanctions can be applied.

### ***Suspicious transactions reporting (STR)***

1193. As regards mechanisms for reporting suspicious transactions, please also refer to responses to article 58. In any case, please note that Legislative Decree 231/2007 requires a broad range of persons, namely financial operators, professionals, auditors, and a series of persons engaged in non-financial activities to send the UIF a suspicious transaction report (STR) “whenever they know, suspect or have reason to suspect that money-laundering or terrorist financing is being or has been carried out or attempted”. The scope is to include all relevant categories of financial institutions and DNFBPs, in accordance with international and EU provisions (for details, see also FATF MER on Italy). The suspicion may arise from the characteristics, size, or nature of the transaction or from any other circumstances that come to the reporting institution’s attention by reason of its functions and taking account of the economic capacity or business activity of the persons carrying out the transaction. The suspicion must be grounded in a comprehensive assessment of all elements, objective and subjective, of the transactions that are known to the reporting institution, acquired in the course of the customer’s activity or as the result of conferral of an assignment. To facilitate the detection of suspicious transactions, the Decree provides for operational tools such as anomaly indicators and models and patterns representing anomalous conduct, devised and issued by the UIF.

1194. The way to compile STRs and their content are specified in specific instructions issued by the UIF (see Document of 4 May 2011 regarding “Instructions on the data and information to include in suspicious transaction reports”). STRs are transmitted only electronically, via the Bank of Italy’s dedicated INFOSTAT-UIF portal. In terms of content, the report has four main sections: data on the report itself, i.e. the information that identifies and qualifies the report and the reporting institution; structured information on the transactions, persons and accounts involved and their interrelations; free-form description of the transactions reported and the grounds for suspicion; and any documents attached.

1195. In 2016, the UIF received 101,065 reports, increasing by about 22.6 percent from 2015 (see

Table).

#### Reports received

	2011	2012	2013	2014	2015	2016
Number of reports	49,075	67,047	64,601	71,758	82,428	101,065
<i>Percentage change year on year</i>	<i>31.5</i>	<i>36.6</i>	<i>-3.6</i>	<i>11.1</i>	<i>14.9</i>	<i>22,6</i>

1196. This result confirms the increase in the number of reports received, highlighting a growing awareness of the role of active cooperation within the system for preventing money laundering and financing of terrorism, including in sectors that had less awareness in the past such as professionals and non-financial operators.

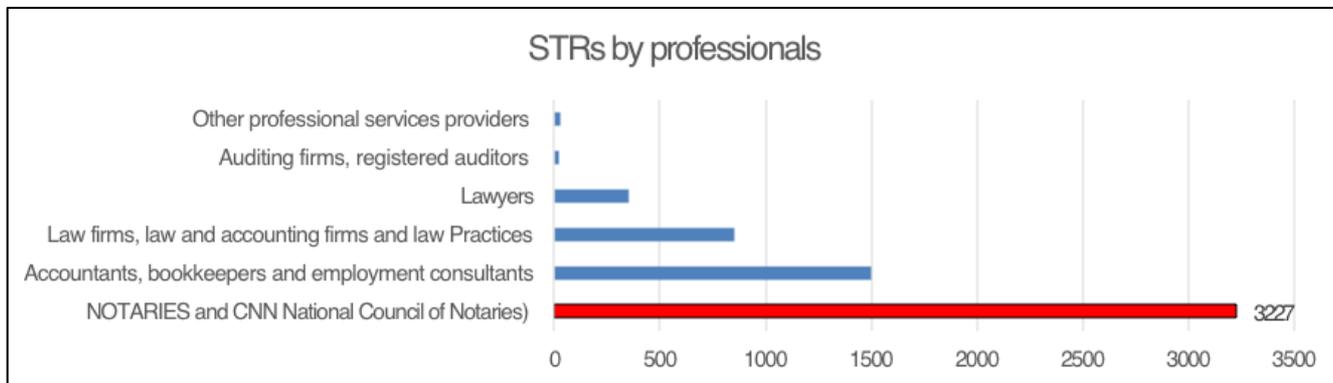
1197. Effective and active cooperation benefits not only from timely communication but also from quality and completeness of information. In order to improve the system, the UIF has been working on several fronts. Since 2012, it has held meetings with main reporting entities to discuss common irregularities and inefficiencies in reporting and offers constant support in using the Infostat-UIF portal and filing reports. The main reporting entities from the ‘Bank and Poste Italiane SpA’ category have been monitored since 2014 in order to promote self-assessments (through comparisons with others in their reporting category) and to set up initiatives to improve organizational safeguards and business processes. From 2015, bilateral contacts have been established with new reporting entities to refine techniques for assessing suspicious activity, thereby achieving more complete and effective reporting.

1198. In 2016, the UIF analysed and transmitted 103,995 STRs to investigative bodies, an increase of about 22.9 percent from 2015.

#### Reports analysed by the UIF

	2011	2012	2013	2014	2015	2016
Number	30,596	60,078	92,415	75,857	84,627	103,995
<i>Percentage change on previous year</i>	<i>13.5%</i>	<i>96.4%</i>	<i>53.8%</i>	<i>-17.9%</i>	<i>11.6%</i>	<i>22.9%</i>

1199. As underlined by the UIF report (May 2016), in the ‘Professionals’ category there was “a significant increase in STRs of about 44% compared with 2014. The contribution of notaries continues to be predominant, in line with the previous years (in 2015, the STRs by notaries are about 3,227, see figure below)



1200. The procedure concerning STRs guarantees reporting anonymity (Article 43(3), Legislative Decree 231/2007), and it has laid the foundations for an increase in reports from notaries. The CNN (National Council of Notaries) has played a consistently important role over the last four years, forwarding virtually all of the STRs received (in 2015, 3,146 against 81 sent directly) and making it easier for notaries to fulfil their reporting obligations (the reports are easily managed and sent to UIF through the CNN web interface).

1201. For more detailed information about the STRs process and the methodology used for the financial analysis, see responses to questions under art. 58.

### ***Publication of Guidance***

1202. In 2017, the Bank of Italy conducted a cycle of thematic reviews on both “significant” and “less significant” banks, with a specific focus on politically exposed persons (PEPs). Based on the results, the Bank of Italy provided to the whole banking sector feedback and best practices regarding enhanced due diligence measures on PEPs.

1203. The UIF regularly elaborates, issues and updates indicators of anomaly and patterns and schemes of anomalous behaviour, that are supplied to obliged entities in order to help them discharge their obligation to report suspicious transactions and to share knowledge as broadly as possible for ensuring uniform conduct among reporting institutions. The further objective of these is to promote active cooperation on the part of groups of addressees that are still relatively unaware of the issue and call attention to innovative types of transactions.

1204. It is worth noting that before the implementation of the fourth AML/CFT Directive in Italy, the anomaly indicators were issued and periodically updated, at the UIF’s proposal, by the various competent authorities according to the types of reporting institutions (Bank of Italy for financial intermediaries, Ministry of Justice for professionals, and Ministry of the Internal Affairs for non-financial operators); the patterns and schemes of anomalous behaviour were instead elaborated and issued directly by the UIF. Under the Legislative Decree n. 90/2017, amending the L.D. 231/2007 in accordance with the fourth AML/CFT Directive, the task is directly assigned to the UIF. The new article 6, para. 4 (a) of the Legislative Decree 231/2007, as amended by the L.D. 90/2017, states that the UIF “in order to enable for detection of suspicious transactions, shall, upon submission to the Financial Security Committee, issue and update anomaly indicators periodically, to be published in the Official Journal of the Italian Republic and in the ad-hoc section of UIF’s institutional website”. Furthermore, the same article, para. 7 (b) assigns the UIF with the task to developing and disseminating “models and patterns that are representative of economic and financial anomalous behaviours related to possible money laundering and terrorist financing”.

1205. Development and update of the indicators and patterns use UIF's classifications and types of STRs. Specification of profile characteristics and types provides information on the behaviours at risk and enables anticipation and identification of their evolutions. Results of the report analysis are supplemented by the entire set of information possessed by the UIF, which are derived from inspections and cooperation with judicial authorities, investigative bodies, sectoral supervisory authorities, FIUs in other countries, as well as from dialogues with financial institutions and their trade associations.

### ***Enforcement actions for non-compliance with AML requirements***

1206. As regards the UIF, please note that it is empowered only to start sanction procedures, which are subsequently to be transmitted to the Ministry of the Economy and Finance for decision. Sanctions proposed by the UIF refer, in particular, to cases of failure to comply with the reporting obligations, which are punished, unless they constitute a more serious crime, with pecuniary administrative sanctions.

1207. Between 2015 and 2016, a total of 47 on-site inspections were carried out (24 in 2015, and 23 in 2016). A total of 49 irregularities for failure to report suspicious transactions were detected, and the related sanctions were proposed to the Ministry of Economy (according to the procedure briefly stated above). Following the on-site inspections, a total of 33 cases (17 in 2015, and 16 in 2016) were detected as of interest of the Judicial Authority and transmitted to the competent Public Prosecutors. A total of 390 (233 in 2015, and 157 in 2016) potential penal offences were formally denounced to the Judicial Authority, following the financial analysis of STRs.

### ***(b) Observations on the implementation of the article***

1208. Italy has a domestic regulatory and supervisory regime for banks and non-bank financial institutions, which has been enhanced through its enactment of the AML Law (Legislative Decree 231/2007, as amended by L.D. 90/2017). The AML Law is the cornerstone of the anti-money-laundering system of Italy, providing relevant measures to prevent the use of the financial system for money-laundering or terrorist financing. The new provisions implement the fourth AML Directive (2015/849) of the European Union and take into account the FATF recommendations issued at the end of the Mutual Evaluation of Italy, completed in 2016. As of August 2018, the changes to the Law were being reviewed by FATF under the follow-up procedures.

1209. The primary agencies responsible for AML supervision in Italy include the Ministry of Finance and Economy (MEF), the Bank of Italy (BoI), and the Ministry of Justice. A risk-based approach is the core of Italian AML measures, which typically defines the frequency and types of due diligence obligations. The required due diligence varies (simplified, normal, enhanced) dependent on the risk.

1210. The AML Law of Italy further includes requirements for customer due diligence (CDD) and beneficial owner identification/verification (art. 17 et seq.), record-keeping (art. 31 et seq.), and suspicious transaction reporting (art. 35 et seq.).

1211. The number of suspicious transaction reporting is growing, as the notary, accounting, gambling and legal industries are contributing to the rise of the number.

1212. MEF plays a coordinating role in establishing Italian AML policy, and the new national risk assessment of 2018 will be conducted.

1213. It was **recommended** that Italy continue the development of its AML/CFT national policy to ensure cohesive implementation of its anti-corruption strategy across the various agencies involved in the execution of its AML/CFT measures.

*Subparagraph 1 (b) of article 14*

*1. Each State Party shall: ...*

*(b) Without prejudice to article 46 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Annual Report to Parliament on AML/CFT national activities.**

1214. Italy has designated the Financial Security Committee (FSC), under the auspices of the MEF, as the key mechanism responsible for national AML/CFT policies. The FSC is chaired by the Director General of the Treasury Department and includes representatives of competent authorities.

1215. UIF, financial sector supervisory authorities, competent authorities, GdF, DIA, and Customs Agency are required to provide, by March 30 of each year, statistics and information on their respective activities over the previous calendar year as part of their supervisory and control functions. The comprehensive Report is sent from the Ministry to the Parliament each year and it is published.

**UIF and information exchange (domestic)**

1216. Detailed rules for the exchange of information and collaboration among the concerned agencies are established under article 12 of the new AML Law. These agencies are required to cooperate and coordinate, and Memoranda of Understanding (MOUs) are usually signed between them. The UIF signed MOUs with all the supervisory authorities. As regards the international cooperation (art. 13), the UIF is empowered to exchange information and cooperate with analogous authorities of other states in relation to money laundering, associated predicate offences and terrorist financing. STR information is of course included in this scope, and the range of information that UIF is able to provide to its foreign counterparts is as broad as that available for its domestic analytical purposes (see also responses provided under art. 58).

1217. It is worth noting that the new legislative framework has also reinforced cooperation between all the national administrative, judiciary and investigative authorities involved in preventing and combating money laundering and the financing of terrorism. This also includes the exchange of information between the UIF and the judiciary to assist in ongoing investigations on money laundering, self-laundering, predicate offences, and terrorism. Cooperation with the DNA has also taken on new forms. The data relating to STRs are to be transmitted to the DNA for it to check

whether they are relevant for pending court cases; if so, the DNA will then be able to request additional and more detailed information. Ad-hoc technical agreements between the DNA and the UIF, and the Finance Police and the DIA ensure that the identifying particulars of the reporting and reported entities and persons are processed in ways that preserve confidentiality. Also the cooperation with Public Prosecutors in support of ongoing investigations has been greatly reinforced.

1218. As regards the gap flagged in the Italy's latest MER by FATF, it is worth noting that also before the FATF Evaluation, the UIF had been pursuing initiatives designed to overcome the deficiencies in regulations related to the lack of access to law enforcement information for its financial analysis. Specifically, to lessen the impact of such a critical item, in 2014 the UIF developed, in partnership with the Finance Police, an indicator that, through the prior exchange of the personal data contained in the STRs received, provides the UIF with a classification of such reports based on their investigative interest. A specific agreement was concluded with the Finance Police under which the UIF provided in advance to the Special Foreign Exchange Unit the identifying particulars of STRs and received a monthly report from the NSPV indicating, in summary and non-individual form, the investigative interest levels of the reports in light of the prior criminal and police records of the persons involved.
1219. With the implementation in Italy of the fourth AML/CFT EU Directive, by the Legislative Decree 90/2017 amending the Legislative Decree 231/2007, the UIF, on an operational level, has the right to acquire investigative data if certain conditions arise: for data covered by official secrecy, this includes authorization by the relevant judiciary authority. The new law has reinforced these mechanisms and expanded UIF's access to law enforcement information. This greatly helps prioritizing and focusing the analysis at domestic level, in addition to the access to LEA information for international cooperation purposes. Making investigative data covered by official secrecy directly available to the UIF specifically addresses the remark made by the FATF, which was part of a broader call to enable the UIF to enhance its database and draw from it while carrying out the analyses falling within its purview.
1220. In the Italian legal system, the UIF is in charge of receiving information on suspected money laundering, terrorist financing or associated predicate offenses by all obliged entities (financial intermediaries, non-financial operators and professionals), analysing it and disseminating the results of that analysis to the competent authority (DNA, DIA, and NSPV of GdF).
1221. DNA is the judicial coordinating body which enforces the anti-mafia legislation and now also counters terrorism. The office exercises functions of coordinating investigations and providing an investigative impulse conferred on it by current legislation.
1222. The recent transposition of the European AML/CFT legal framework (with the Legislative Decree 90/2017) provides DNA with a role in having all relevant data to combating money laundering and terrorist financing.
1223. Already under article 371 bis, lett. C) of the Code of Criminal Procedure, for the performance of the tasks assigned by law, the National Anti-mafia and Counter-Terrorism Prosecutor, in particular: "to coordinate investigations and to fight crimes, he takes and processes the news, information and data concerning organized crime and terrorist offences, including international crimes". DNA serves as a national centre for the collection of all investigative, judicial and administrative information regarding potential organized crime and terrorist financing, also through access to public and private, national and international databases.

1224. Pursuant to the new legal framework (Legislative Decree 90/2017), DNA promptly receives from UIF, through the Special Monetary Police Unit of GdF, or through DIA on organised crime, the identification data of subjects reported or connected to suspicious transaction reporting. DNA may request any other information and analysis that it considers of interest.
1225. DNA may request UIF to analyse financial flows or individual anomalies, relating to suspicious use of the financial system for money laundering or terrorist financing.

### ***FIU and information exchange (international)***

1226. UIF exchanges information rapidly through the dedicated channels used by FIUs globally for their cooperation (Egmont Secure Web, and regional FIU.NET network). UIF's capacity to cooperate includes both spontaneous and upon request exchanges and is only subject to reciprocity and appropriate confidentiality safeguards by the counterparts (article 13, paragraph 1, AML Law).
1227. UIF can cooperate freely with foreign counterparts, without any need for bilateral or multilateral agreements. At the same time, UIF can negotiate and sign directly (with no need for third parties' authorisations) memoranda of understanding with any foreign counterparts that need them to cooperate. UIF has so far entered into 24 MoUs with a broad range of foreign counterparts. It is UIF's policy to maintain and foster agreements with the widest range of foreign FIUs, regardless of their nature. For a more detailed description, see responses provided under art. 58.
1228. FSC is responsible for countering the activities performed by countries threatening international peace and security, as well as fund-freezing measures established by the United Nations and the European Union (article 3.1 of the Legislative Decree 109/2007, as amended by L.D. 90/2017), which allow it to ensure coordination in proliferation financing (PF) matters (namely related to Iran and North Korea). In this regard, representatives from MISE and the Customs Agency join the FSC meeting (article 3.3 of the Legislative Decree 109/2007, as amended by L.D. 90/2017). Members from other agencies, including intelligence services, can also be invited by the FSC Chair.
1229. Italy demonstrates many characteristics of an effective system. Italy has a strong framework for cooperation and provides constructive and timely assistance when requested by other countries. Competent authorities notably provide information, including evidence, financial intelligence, supervisory information related to ML, TF, or associated predicate offenses, and assist with requests to locate and extradite criminals as well as to identify, freeze, seize and confiscate assets. Italy seeks on a regular basis and generally in a successful way, international cooperation from other countries to pursue criminals and their assets.
1230. As regards the ability of UIF to exchange information at the international level, the outcomes of the recent FATF Mutual Evaluation of the Italian AML/CFT system show that UIF is effective in seeking and providing information in a timely and effective manner from/to other FIUs spontaneously and upon request. It can access and provide administrative, law enforcement and financial information based on requests from foreign FIUs or non-counterparts. The UIF's ability to cooperate is not conditioned by the indication of the predicate crime by the foreign counterpart. The responses are always provided on a timely basis, using secured channels, and in line with the Egmont principles.
1231. Since 2013, UIF is using several techniques to enhance the exchange of information with some European counterparts through the FIU.NET. In addition to the mechanism of "known/unknown" automatic exchange of information, UIF is making the use of bilateral and multilateral data-matching

tools to search for positive hits between massive datasets. It also exchanges information with non-counterparts.

1232. As regards the international cooperation, UIF sends requests for information to FIUs in other countries for the purpose of analysing suspicious transactions, where subjective or objective connections with other countries come to light. Requests usually aim at tracing the origin or use of funds transferred from or to other jurisdictions, identifying movable or immovable assets abroad and clarifying the beneficial ownership of companies or entities established in other countries.

1233. The number of requests sent by UIF has increased considerably in the last five years (see table).

<b>Requests sent to foreign FIUs</b>					
	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Requests to obtain info on behalf of the Judicial Authority	137	124	146	217	<b>204</b>
For the UIF <sup>3</sup> financial analysis	80	56	242	323	<b>340</b>
<b>Total</b>	217	180	388	540	<b>544</b>

1234. UIF has taken steps to make processes more efficient and collaboration more effective. It has simplified the work process and the procedures for formulating information requests by creating a structured digital form that analysts can use for the direct transmission of requests via international electronic channels. Improvements in the structure make it easier to share cases with foreign counterparts, shorten response times and make the responses more focused. In some cases, swift data exchange actually provided the UIF with information that served to suspend suspicious transactions. The information acquired from foreign FIUs, which is used with their consent and to the extent they permit, often serves to cooperate more effectively with judicial authorities. It helps in finding evidence to orient investigation, activating precautionary measures and drawing up specific rogatory requests for information from foreign authorities. During the year of 2016, 204 requests were sent to foreign FIUs to obtain information on behalf of Italian judicial authorities.

1235. In 2016 there was a considerable rise both in the requests for cooperation and in spontaneous communications from foreign FIUs, consolidating the growth trend recorded in the last few years.

<b>Requests/spontaneous information received from foreign FIUs</b>					
	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
<b>Egmont Secure Web</b>					
Requests/spontaneous information	429	519	486	695	<b>723</b>
Exchanges concerning ISIL				383	<b>536</b>

<b>FIU.NET</b>					
Requests/spontaneous information	294	274	453	518	<b>580</b>
<i>Cross-border report</i>				557	<b>1.475</b>
<b>Total</b>	723	793	939	2.153	<b>3.314</b>

1236. The requests received by UIF are subject to preliminary analysis to assess the characteristics of the case and determine whether it is of direct interest to the Unit. When requests refer to information as yet unavailable (e.g. data on accounts or financial relationships or the origin or use of funds), UIF takes steps to obtain such information from obliged entities, from external sources (e.g. the Revenue Agency's registry of accounts and deposits), or from investigative authorities such as the Special Foreign Exchange Unit and the Bureau of Anti-mafia Investigations.
1237. As with requests for information, responses are also drawn up using structured electronic forms, which are modified from time to time according to the information needs of others and the characteristics of the case.
1238. Flexibility in cooperation, ability to prioritize and conformity of responses to the needs of other FIUs have all improved, also enhancing the range of databases that UIF can use to fine-tune its responses to requests.
1239. The steps taken by the UIF to make processes more efficient and collaboration more effective have led to an improvement in quality of the information exchanges. The exchanges are more tailored to analytical needs, particularly by focusing on information or intelligence that is specifically requested. Moreover, forms and modalities of sharing information, seeking or providing FIU-to-FIU cooperation, have developed and become more varied and flexible.
1240. The use of the structured EU network (FIU.NET) has been increasing constantly; this allows for speed and efficiency.
1241. STRs that have a cross border dimension are frequently forwarded by FIUs on a spontaneous basis; this has now become a mandatory requirement under the fourth EU AML/CFT Directive.
1242. Bulk data matching has also become a common practice, thanks to the advanced functionalities offered by the FIU.NET.
1243. Besides traditional bilateral exchanges, multilateral information sharing has been increasingly used, which allows to develop a broader information basis, conducive to more preventive intelligence.
1244. See chart about information exchange (Egmont / FIU.NET), at pages 17-18 of "Annual Report to Parliament about 2015 Italy AML/CFT".
1245. UIF is a member of the Egmont Group (see response under art. 58) and, at the European level, it is a member of the EU's FIUs Platform. In such a role, it is also a member of the Advisory Group delegated by the EU's FIUs Platform to provide guidance, advice and opinion to the Europol that is the European institution in charge of the management of the FIU.NET infrastructure.
1246. For a detailed description of institutional features, functions and cooperation of UIF at the

national and international levels, please also refer to the answers provided to questions under art. 58.

*(b) Observations on the implementation of the article*

1247. The financial intelligence unit of Italy (UIF) is responsible for receipt, analysis and dissemination of suspicious transaction reporting related to money-laundering, associated predicate offences and terrorist financing. UIF establishes and updates anomalous indicators that were previously conducted by competent supervisory authorities on the proposal of the unit. UIF regularly elaborates, issues and updates patterns and schemes representative of anomalous behaviors.
1248. UIF has the capacity to exchange information with foreign financial intelligence units through Egmont and regional networks. Domestically, UIF disseminates suspicious transaction reporting and the outcomes of related analysis to competent law enforcement agencies specifically indicated by the law: NSPV of GdF and DIA.
1249. Based on the findings of the FATF Mutual Evaluation, the new AML Law improved domestic collaboration on information exchange among competent authorities. In particular, in addition to NSPV and DIA, information can be forwarded by UIF, in cases of specific interest, to the Intelligence Services. Furthermore, DNA receives from UIF, through NSPV and DIA, identification data of subjects reported or connected to suspicious transaction reporting. NSPV and DIA transmit to the anti-Mafia and counter-terrorism prosecutor the reports, relevant to organized crime or terrorism. Dissemination is authorized to NSPV and DIA regardless of the crime involved.
1250. The new AML Law, while granting UIF the access to law enforcement information, has subjected this access to limitations deriving from investigation secrecy.
1251. It was **recommended** that Italy further enhance its capacity for information exchange between the financial intelligence unit and competent authorities. As far as DNA is concerned, Italy is encouraged to consider strengthening cooperation, through information exchange, in criminal investigative matters beyond the organized crime context.

*Paragraph 2 of article 14*

*2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.*

*(a) Summary of information relevant to reviewing the implementation of the article*

1252. Italy has established a declaration system for incoming/outcoming cross-border transportation of currency or bearer negotiable instruments (BNI) that applies to both inter- and intra-European transfers equal to or above EUR 10,000. This system is provided for by the Legislative Decree 195/2008. Italy is one of the few EU Member States (together with France, Spain and Germany) which has implemented a declaration obligation for intra-European movements of currency/BNI.
1253. Natural persons entering and leaving Italy are obligated to declare to Italian customs whether

they are carrying cash/bearer negotiable instruments. There are also declaration requirements for mail and cargo. Provisions allow for different modalities of declaring cross-border currency, in writing or electronically.

1254. UIF can obtain information from the customs database which contains the cross border currency and bearer negotiable instruments declarations collected from travellers and transactions.
1255. Italy has established procedures for seizure of cash or bearer-negotiable instruments where there is a suspicion of ML/TF or predicate offense; or where there is a false declaration. In the case of false declarations, both Customs and GdF can seize cash/BNI on the basis of article 6 of the Legislative Decree 195/2008. When the cash/BNI is suspected to be linked to ML/TF or any predicate offence, authorities can seize the total amount pursuant to article 321 of the Criminal Procedure Code (CPC).
1256. In instances where currency/BNI is not properly declared, the authorities seize amounts equal to 30 or 50% of the amounts transferred over EUR 10,000, depending on the value of the undeclared amounts.
1257. The percentage applied is (i) 30% of the amount transferred or attempted to be transferred exceeding the EUR 10,000 threshold, whereby such surplus does not exceed EUR 10,000; and (ii) 50% of the amount transferred or attempted to be transferred exceeding the EUR 10,000 threshold, whereby such surplus exceeds EUR 10,000. Persons who fail to comply with the declaration obligations are either subject to an immediate plea, or to an investigation that results in a seizure, as indicated in the table at page of 65, Italy's MER 2016.
1258. For figures, see charts 74-83 of "Annual Report 2016 to Parliament".
1259. Art. 6 of the Legislative Decree 195/2008 provides for confiscation of the seized amounts as well.

*(b) Observations on the implementation of the article*

1260. Italy has established a declaration system to monitor cross border movement of cash and bearer negotiable instruments, requiring natural persons entering or leaving Italy with 10,000 euros or higher to declare to the customs authority of Italy (art. 3, Legislative Decree No. 195/2008). For false declarations, customs and GdF can seize amounts equal to 30 or 50 per cent of the amounts transferred over 10,000 euros, depending on the value of the undeclared amount (arts. 6 and 9, Legislative Decree No. 195/2008).
1261. Besides the administrative seizure, it was confirmed that GdF can inform prosecuting authority for investigation and prosecution when a criminal offence is related.
1262. It was concluded that Italy has implemented this provision of the Convention.

*Paragraph 3 of article 14*

*3. States Parties shall consider implementing appropriate and feasible measures to require financial institutions, including money remitters:*

*(a) To include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;*

*(b) To maintain such information throughout the payment chain; and*

*(c) To apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.*

*(a) Summary of information relevant to reviewing the implementation of the article*

1263. The EU Regulation (2015/847) contains detailed provisions requiring that, in the case of cross-border transfers, the ordering financial institution should obtain information not only on the originator, but also on the beneficiary, and specifically, the name and account number used to process the transfer (or a unique reference number where no account exists). Transfers between EU Member States are not considered to be cross-border under the Regulation, but equivalent to the domestic ones.

1264. With the transposition of the Fourth Directive, article 62 of the Legislative Decree 90/2017 gives the Bank of Italy the power to impose sanctions in the event of failure to comply with the EU Regulation (2015/847). Financial intermediaries' compliance with this requirement is verified during AML on-site inspections

1265. According to EU Regulation (2015/847), payment service providers of the payer and of the payee shall retain records of the information (referred to in articles 4 to 7 of the Regulation) for a period of five years (see article 16). The EU Regulation also provides specific obligations for the payment service providers of the payee and for the intermediary payment service providers (see articles 7 to 13) aimed at detecting missing information and managing transfers of funds with missing or incomplete information.

*(b) Observations on the implementation of the article*

1266. Payment service providers in Italy are required to comply with the EU Regulation 2015/847, under which they need to obtain and retain originator/beneficiary information and to detect missing information. It was confirmed that transactions will be rejected or suspended when required information is missing.

1267. It was concluded that Italy has implemented this provision of the Convention.

*Paragraph 4 of article 14*

*4. In establishing a domestic regulatory regime and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.*

*(a) Summary of information relevant to reviewing the implementation of the article*

1268. The AML/CFT standards which Italy applies are the FATF 2012 standards. The overall compliance was evaluated as effective in 2015. The details are in FATF report, as stated in the previous answers. Furthermore, the international legal framework which is more stringent for Italy is represented by the fourth EU AML Directive, which, as stated above, has been recently transposed by the Legislative Decree 90/2017.

1269. Customer due diligence (CDD) guidelines have been developed for notaries by their national association in conjunction with the authorities, and work has begun on developing similar ones for accountants. A handbook for notaries has been developed, which provides guidance with respect to the process of analysing suspicious transactions and filing reports with UIF.
1270. Association of Public Interest Enterprise (PIE) Auditors developed a paper for its members, summarizing AML/CFT duties applicable to firms.
1271. Associazione Studi Legali Associati (ASLA)'s working group has drafted guidelines for its members. The guidelines have been shared with the "Consiglio Nazionale Forense" (National Bar Association).
1272. Real Estate Association arranges AML/CFT training in conjunction with GdF and DIA.
1273. Association of Accountants developed AML/CFT Guidelines in 2008 and updated them in 2011.
1274. Association of Fiduciaries issued AML/CFT guidelines, which provide members with updates on sanctions. The organization conducts on-going training including AML/CFT component and training events in conjunction with Bank of Italy and GdF.
1275. The Bank of Italy has also issued operating guidelines regarding NPOs in July 2003, which require all financial intermediaries to pay special attention to the nature of associates, the beneficiaries and destination country of donations, as well as to possible inconsistencies between transactions and the subjective profile of the client. The guidelines also recall the obligation to immediately declare all suspicious transactions to UIF.
1276. The Bank of Italy communicates periodically to the supervised intermediaries on the main outcomes of FATF Plenary meetings, through a letter which reports practical indications based on the FATF communications.
1277. For instance, following the publication of 2016 FATF guidelines on correspondent banking, the Bank of Italy, on one side, met major Italian banks and the Italian Banking Association in order to underline the importance of an adequate risk assessment of counterparties, especially the money or value transfer services (MVTs) providers which are more exposed to AML risks (e.g. money remitters). On the other side, the Bank of Italy met major money remitters operating in Italy and the Money Transfer Working Group (an advocacy group for the sector) in order to enhance the best practices adopted by money remitters in light of the FATF guidelines and to underline the importance of strengthening AML measures to mitigate major AML/CFT risks. The Bank of Italy has communicated the substance of the guidelines also during ordinary supervisory activities, discussing specific cases where de-risking was at stake.
1278. Furthermore, it is worth to note that FATF guidelines and international standards are recalled in the primary law itself. For instance, please see art. 5 of the AML Law.

Article 5 – The Ministry of Economy and Finance and the Financial Security Committee

1. In order to implement policies aimed at preventing the use of the financial and economic system for the purpose of money laundering and the financing of terrorism, Italy's Ministry of Economy and Finance (Ministero dell'Economia e delle Finanze – MEF) shall promote collaboration and coordination between the authorities referred to in Article 21(2)(a), and between relevant administrations and bodies, as well as between public and private sectors, **taking account also of related international standards**, the national analysis on the risks of

money laundering and terrorist financing issued by the Financial Security Committee (Comitato di Sicurezza Finanziaria), and of the assessment issued by the European Commission pursuant to Article 6 of the Directive.

**2. The Ministry of Economy and Finance shall liaise with the European institutions and international bodies in charge of drawing up policies and standards for preventing the use of the financial and economic system for the purpose of money laundering and terrorist financing by ensuring fulfilment of the obligations arising from Italy's participation in the above-mentioned institutions and bodies. The Ministry of Economy and Finance shall also be in charge of publishing the consolidated review of the statistical data provided pursuant to Article 14(2) and ensure it is transmitted to the European Commission in accordance with Article 44 of the Directive.**

*(b) Observations on the implementation of the article*

1279. Italy uses guidelines of relevant multilateral organizations such as FATF and EU to establish its domestic AML/CFT regime.

1280. It was concluded that Italy has implemented this provision of the Convention.

*Paragraph 5 of article 14*

*5. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.*

*(a) Summary of information relevant to reviewing the implementation of the article*

1281. See answer to Article 14, subparagraph 1 (b).

1282. In order to promote cooperation in fighting organized crime and money laundering, in full compliance with the national legal framework, international obligations and national regulations, the National Anti-Mafia and Counter-Terrorism Directorate (DNA) has signed, among others:

- a memorandum of understanding with the Public Prosecutor's Offices in Serbia, Montenegro, Slovenia, Croatia, Bosnia and Herzegovina, Srpska, Macedonia, Albania, Bulgaria and Hungary, and with the National Anti-corruption Directorate of Romania, all providing forms of mutual assistance and exchange of information (26.05.2016);
- a memorandum of cooperation with the Albanian National Public Prosecutor's Office concerning cooperation in fighting organized crime, related crimes and money laundering, providing the exchange of information and documents (05.11.2014);
- a memorandum concerning cooperation and mutual legal assistance with the Public Prosecutor's Office of the Arab Republic of Egypt in the fight against organized crime in all its forms, including money laundering, providing the exchange of information related to investigations, assistance in international rogatory letters and other forms of assistance and

information (15.04.2015).

1283. Italy has a sound legal framework for international cooperation as well as a network of bilateral and multilateral agreements to accelerate cooperation. The authorities undertake a range of activities on behalf of other countries for AML/CFT purposes.
1284. Supervisory authorities (BoI, IVASS, and CONSOB) as well as UIF cooperate frequently and effectively with their respective counterparts.
1285. Several case examples provided demonstrate criminal connections between several countries and highlight that UIF, LEAs and prosecutors are proactive in seeking the cooperation of their foreign counterparts for the purposes of their analysis, investigations and prosecutions. In a number of instances, the cooperation sought resulted in the exchange of information on the identity and whereabouts of the beneficial owners of legal persons incorporated abroad and/or in Italy as well as of foreign legal arrangements. This has also resulted in assets being identified abroad and repatriated to Italy.
1286. Basic information on legal persons incorporated in Italy can be accessed online, and for these instances, foreign authorities can obtain information without having recourse to the Italian authorities. Additional information including that of beneficial ownership may be requested, either between competent authorities such as UIF and the law enforcement agencies, or through the international cooperation channels.
1287. The timeliness of the authorities' access to beneficial ownership information varied from a few minutes to a few days depending on the complexity of the case and of the corporate vehicle involved and is generally deemed adequate.
1288. The feedback provided by countries with respect to their experience in international cooperation with Italy highlights no particular challenges or concerns with respect to the exchange of information concerning Italian legal persons. It is nevertheless likely that the timeliness challenge that the authorities face in domestic proceedings also arises in the response to foreign requests.
1289. The authorities established that they make effective use of international cooperation in the context of the fight against organised crime. From 2014 to 2016, DNA processed more than 50 mutual legal assistance requests related to ML offense.
1290. Regarding GdF, from 2013 to 2015, 957 requests (including Europol, Interpol, and mutual legal assistance requests) have been processed (361 active and 596 passive).
1291. LEAs regularly exchange information with their foreign counterparts. Cooperation is developed through police channels (Europol, Interpol, and also through bilateral agreements). Italian police forces exchange information and carry out investigations on behalf of foreign requesting counterparts on the basis of a request of judicial assistance, in the same manner as they would carry out investigations at the domestic level. The International Police Cooperation Service within the Criminal Police Central Directorate in the Ministry of Interior (MoI) ensures information exchanges through Interpol, Europol and SIRENE channels and acts also as the Assets Recovery Office (ARO) in Italy. At the police level, the activities do not require formal judicial authorisation and are conducted on the basis of bilateral agreements.
1292. FIU cooperation: UIF is effective in seeking and providing information in a timely and effective manner from/to other FIUs spontaneously and upon request. It can access and provide administrative, law enforcement and financial information based on requests from foreign FIUs or

non-counterparts. UIF's ability to cooperate is not conditioned by the indication of the predicate crime by the foreign counterpart. The responses are always provided on a timely basis, using secured channels, and in line with the Egmont principles. See also responses provided to questions under article 14, subparagraph 1 (b) and article 58.

1293. Both IVASS and BoI have established mechanisms for international cooperation with respect to financial institutions (FIs); with respect to designated non-financial businesses and professionals (DNFBPs), only CONSOB has similar mechanism. Cooperation with EU supervisors of FIs does not require the use of an MoU, while cooperation with non- EU supervisors takes place on the basis of bilateral MoUs. Cooperation with non-EU supervisors requires that (i) there be no impediment to the sharing of information between supervisors and between the parent institution and its foreign subsidiaries, (ii) there should be equivalent confidentiality requirements, (iii) the Italian supervisor should be able to undertake inspections of Italian branches and subsidiaries in the host country, and (iv) the non-EU country should have an adequate AML/CFT framework.
1294. Both supervisors often cooperate with foreign counterparts in the process of conducting fit and proper assessments.
1295. BoI and IVASS provide information on an on-going basis in response to requests received from other supervisory authorities. IVASS has provided information requested by the Hungarian authorities to assist them in the conducting fit and proper assessment. BoI has also cooperated with U.S. regulators to assist them in taking supervisory action against a subsidiary of an Italian institution operating in the United States. In 2014, BoI alerted the authorities in the United Kingdom about the activities of agents of a U.K.-based entity that were of a concern with respect to ML/TF risks. BoI usually responds to requests for assistance within one to three weeks. IVASS usually responds within one month.
1296. With respect to the supervision of DNFBPs, CONSOB has established mechanisms for international cooperation, but GdF has not.

*(b) Observations on the implementation of the article*

1297. Italy develops and promotes global, regional, and bilateral cooperation to combat money-laundering.
1298. It was concluded that Italy has implemented this provision of the Convention.

## Chapter V. Asset recovery

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### Article 51. General provision

*The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.*

#### *(a) Summary of information relevant to reviewing the implementation of the article*

1299. Article 5 of the Law of 3 August 2009, n. 116, ratifying and implementing the Convention, has provided the legal basis for the full implementation of Chapter V of the Convention, in particular through the insertion of new article 740-bis and 740-ter of the Criminal Procedure Code.

#### ***Article 740-bis of the code of criminal procedure. (Transfer to a foreign State of confiscated properties)***

1. In the cases provided for by international agreements in force in the State, properties confiscated with a final judgment or another irrevocable order shall be transferred to the foreign State where the confiscation order was issued or adopted.
2. The transfer under paragraph 1 shall be ordered when the following requirements are met:
  - a) The foreign State made an explicit request;
  - b) The judgment or the order under paragraph 1, were recognized in the State under Articles 731, 733 and 743.

#### ***Article 740-ter of the Code of Criminal Procedure (Transfer order)***

1. The Court of Appeal, when recognizing a foreign judgment or a confiscation order, shall order that confiscated properties under Article 740-bis be transferred.
2. A copy of this order shall be immediately sent to the Minister of Justice, who shall agree on the transfer procedure with the requesting State.

### Cases

1300. There was one proceeding in 2011 based on a request for legal assistance from the Federative Republic of Brazil, which is on investigations of two Brazilian nationals for offences of tax evasion, criminal association, corruption and money laundering (proc. 33.4.9517 VD). When executing this request, our Judicial Authorities froze two banking relationships registered in the name of the investigated person at two Italian credit institutions.

1301. After declaring that the letter of request is enforceable, when recognizing the foreign seizure and confiscation order, the Court of Appeal also ordered, under Articles 740-bis and ter of the Code of Criminal Procedure, that all the confiscated values be transferred to the Requesting State and instructed the Ministry of Justice to arrange the relevant procedures with the Brazilian authorities.

1302. The legal basis was the treaty of legal assistance between the Italian Republic and the Federative Republic of Brazil in criminal matter, signed in Rome on 17 October 1989 and became enforceable in Italy with Law of 7 January 1992, n. 41 (entered into force on 1 August 1993), Article 2 of which allows assistance in view of search and seizure in compliance of the principle of dual criminality.
1303. In this regard, the case law of Italy has always construed the term “assistance” and “cooperation” in a broad sense. Except as otherwise expressed, it must be intended “not [...] limited to specific acts” but rather “indeterminate”.
1304. For example, it has been considered several times that the notion of “the widest measure of mutual assistance” under Article 1 of the European Convention on Mutual Assistance shall also include the execution of a “conservative seizure” in Italy (*Sez. I*, 09/03 - 10/05/2006, n. 15996, Ced RV 234255, Biego and before, *Sez. VI*, 19/03 - 02/05/1997, n. 1172, Ced RV 207472, Huber R.).
1305. Three other cases are cited below, although they are not cases related to the Convention (UNCAC), to illustrate how the Italian legal system works and its full capability to comply with requirements of cooperation in the criminal matters from foreign States.
1306. In this regard, it is worth noting that Italy provided to execute provisions of UNCAC by simply including two provisions in the Code of Criminal Procedure, namely the articles 740-bis and 740-ter.
1307. In fact, ever since the new Code of Criminal Procedure came into force on 1989, Italian legal system allowed to recognize confiscation orders included in the foreign judgements.
1308. In addition, some adjustments were made, always intervening on the general legal framework provided for by the Code of Criminal Procedure, in 1993, in the course of execution of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, made in Strasbourg on November 8<sup>th</sup>, 1990 (Act n. 328 of August 9<sup>th</sup>, 1993).
1309. Therefore, at the time of implementing UNCAC, a "general" legal framework already existed *de facto*, aimed at executing foreign confiscation orders, which was simply completed through inclusion of the two new statutory articles mentioned above.
1310. It derives from "general" nature of the legal framework (more recently developed and perfected by a “special” legal framework, operating only in the relations with other EU members States and based on a principle of mutual recognition: see *infra* Article 54, par. 1 (a)). Cooperation can be offered by Italy regardless of the specific international legal basis in executing proceedings.
1311. In fact, the rules of enforceable domestic law are always the same, namely – as remarked above – the “general” provisions of law provided for by the Code of Criminal Procedure (or those, more advanced and even more effective, provided for by special legislations related to relations within the scope of EU).

### **Transfers to non-state actors**

1312. National legislation of Italy allows to transfer assets to the victims, according to a procedure which is usually defined as “restitution” (in case of one or more certain assets), and not as “confiscation”, since this term indicates a measure by which an entity, within a criminal case, is definitively deprived of an asset in favour of the State.
1313. The procedures to return assets to the victims depend on the characteristics of each particular case

and, especially, on the type of criminal proceedings at the national level.

1314. For the sake of clarity, a distinction can be made between the two groups of cases, according to whether:

- the victim makes use of the remedies under Article 53 of the Convention which provides for the “measures for direct recovery of property” (see the quoted provisions of Codes of Criminal and Civil Procedure under Article 53); or
- the State Party submits to Italy an application for enforcing a confiscation order with assignment of the confiscated assets to the victim.

### **Direct transfer of the victim’s assets**

1315. The victim of an offence can obtain transfer of assets through:

- taking a legal action before civil court to have his/her own asset transferred;
- taking such a legal action within a criminal case against the offender;
- applying, within the proceedings of recognition of a foreign conviction judgment, for civil orders of the conviction judgment to return assets or compensate damage to be found effective in Italy (Article 741, par. 1 of the Code of Criminal Procedure);
- filing an autonomous application for recognition of civil orders for returning assets or compensating for damage provided for by a foreign conviction judgment (Article 741, par. 2 of the Code of Criminal Procedure);
- filing an autonomous application for recognition of a foreign conviction judgment, not including decisions in the matter of return/compensation, to be used subsequently in civil court in Italy (Article 732 of the Code of Criminal Procedure).

1316. The criminal system of Italy protects victim’s right for the return of assets (as well as, if any, for compensation of damages) even before a conviction judgment is rendered, when there exists a danger that “the guarantees of civil obligations deriving from an offence are missing or can be lost”. Under these conditions, in fact, it is possible to order seizure of the defendant's movable or immovable properties and of the sums due to the defendant. When the conviction is final, the victim can directly initiate execution before the civil judge, requesting the assets under seizure to be sold (“conservative seizure”, provided for by Arts. 316 to 320 of the Code of Criminal Procedure).

### **Transfer of assets to victims through international cooperation**

1317. As a general rule, when a procedure of international cooperation is initiated, although it is for the right or interest of a private individual (for example, a victim of an offence), it can be started and carried out only by the State’s competent bodies.

1318. From this point of view, it is very important to indicate that, although it is not expressly stated in the provisions of the Articles 740, 740-bis and 740-ter of the Code of Criminal Procedure, the purpose of returning assets to the victim is not incompatible with the transfer of the assets and valuables confiscated in Italy to the requesting State.

1319. On the three occasions (not related to the Convention), Italy transferred to other States the full amount of confiscated sums in view of compensation for damage of the victims.

- (I) Following the recognition of a conviction judgment rendered on June 6<sup>th</sup> 2014 by the Criminal Court of Assizes of Lugano against an Italian citizen, the Italian judicial authority ordered, as partial compensation for damage of the injured parties, the transfer to the Swiss Confederation of the funds and sums previously seized by the Italian authorities in view of the execution of a letter of requests submitted beforehand. In this case, Article VIII of the bilateral agreement between Switzerland and Italy of September 10<sup>th</sup> 1998 was applied in addition to the European Convention of Mutual Assistance, par. 1 of which expressly provides for the possibility to transfer to the requesting State “the assets deriving from an offence and the product of their transfer which could be object of a seizure according to the law of the requested State” and “especially with the purpose of their return to the injured party or their confiscation”.
- (II) In another case, the Court of Appeal of Trieste transferred to the United States the whole amount of sums confiscated in Italy with a commitment to transferring them to the injured party, on the basis of the Treaty of Mutual Assistance in the Criminal Matters between Italy and the United States undersigned on September 11<sup>th</sup> 1982, as supplemented by the provisions of the agreement between the United States and the European Union, included in the legal instrument undersigned on 3<sup>rd</sup> May 2006. In particular, Article 18, par. 2 of the Treaty provides “Proceeds or property forfeited to a Contracting Party pursuant to this Article shall be disposed of by that Party according to its domestic law and administrative procedures. Either State may transfer all or part of such proceeds or property, or the proceeds of its sale, to the other State, to the extent permitted by their respective laws, upon such terms as they may agree”.
- (III) With a judgement of February 28<sup>th</sup> 2013, the Court of Appeal of Genoa ordered that the final judgement rendered on February 12<sup>th</sup> 2008 by the Criminal Court of Assizes of Lugano (CH) against an Italian citizen be recognized. The latter was sentenced to 3 years 6 months' imprisonment, "with confiscation and transfer to the injured party" of a real estate located in Italy. The Court in addition to recognition, ordered Land Registry to register the transfer of ownership of the real estate units in favour of the victim. It is to be remarked that the proceedings were initiated following two applications for mutual assistance in criminal matters filed by the Public Prosecutor of Lugano: the former, dated January 2007, concerned a request for “conservative seizure” of the real estate; and the latter, dated 2001, concerned a request for the transfer of that real estate to the civil party, as ordered by the final conviction judgment rendered against the defendant.

### **Transfers to multilateral organizations**

1320. This possibility is not expressly provided, and there are no similar cases. Nonetheless, it cannot be excluded that, under certain conditions (for example, when a State requests Italy a recognition of a confiscation order, with subsequent assignment of the assets in favour of the World Bank), a similar result might be achieved.

1321. In this regard, the Italy cooperates with the International Criminal Court in compliance with the provisions of the Statute of the Court and, in this context, has established *ad hoc* provisions to enforce the pecuniary penalties and compensation orders issued by the Court.

1322. The text of Article 21 of Law n. 237 of December 20<sup>th</sup> 2012 (Rules for complying with the

provisions of Statute establishing the International Criminal Court) is as follows.

#### Article 21

##### Execution of pecuniary penalties and compensation orders

1. The final conviction judgments, imposing one of the penalties provided for by Article 77, par. 2, of the Statute are enforceable on the territory of the Italian State in compliance with what it is established them.
2. The Court of Appeal of Rome, at the request of the General Public Prosecutor attached to this same court, is in charge of the execution of the confiscation of profits, properties or assets ordered by the International Criminal Court.
3. When it is not possible to enforce a measure provided for by par. 2, the Court of Appeal of Rome shall order confiscation of an equivalent value of money and properties the defendant has available, even through an intermediary, both a natural or legal person.
4. This is without prejudice to the rights of bona fide third parties faith. The provisions of Article 676 of the Italian Code of Criminal Procedure are enforceable.
5. The sums of money and properties confiscated are made available to the International Criminal Court by the Ministry of Justice, in compliance with the procedures established a decree of the Ministry of Justice itself, in agreement with the Ministry of Economic and Financial Affairs, to be adopted pursuant to Article 17, par. 3, of Law n. 400 of August 23<sup>rd</sup> 1988.
6. The orders of compensation for damage in favour to the victims or in favour to arrested or sentenced persons, pursuant to Articles 75 and 85 of the statute, are executed in accordance with the form and content established by the International Criminal Court.

#### *(b) Observations on the implementation of the article*

1323. Italy has a well-established regime for asset recovery based on the Criminal Procedure Code (e.g., arts. 740-bis, 740-ter) and cooperation mechanisms with other jurisdictions, particularly through MoUs governing asset disposition. In addition, Italy has a legal framework that applies to the relations with other EU members States.
1324. Although the possibility of transfer to multilateral organizations is not specifically provided, a similar result can be achieved.
1325. It was **recommended** that Italy further consider procedures for asset disposal, designed to foster transparency and accountability in asset disposition and to prevent the re-corruping of assets transferred.

## Article 52. Prevention and detection of transfers of proceeds of crime

### *Paragraph 1 of article 52*

*1. Without prejudice to article 14 of this Convention, each State Party shall take such measures as may be necessary, in accordance with its domestic law, to require financial institutions within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of*

accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.

*(a) Summary of information relevant to reviewing the implementation of the article*

1326. Financial intermediaries and the other entities engaged in financial activities (obliged entities are listed under article 3, AML Law) shall generally comply with the customer due diligence (CDD) requirements (including the identification and verification of the beneficial owners (BOs)) in connection with relationships and transactions related to the performance of their institutional or professional activity.

**Article 3 - Obligated entities**

1. The provisions laid down in this Decree shall apply to the categories of persons listed in this Article, whether natural persons or legal persons.
2. “Banking and financial intermediaries” shall mean:
  - a. Banks;
  - b. *Poste Italiane S.p.A.*;
  - c. Electronic Money Institutions (EMIs) as per Article 1(2)(h-bis) of Italy’s Consolidated Law on Banking (*Testo Unico Bancario – TUB*);
  - d. Payment Institutions (PIs) as per Article 1(2)(h-sexies) of Italy’s Consolidated Law on Banking (*Testo Unico Bancario – TUB*);
  - e. Italian investment firms (so-called *SIM – Società di Intermediazione Mobiliare*) as per Article 1(1)(e) of Italy’s Consolidated Law on Finance (*Testo Unico Finanza – TUF*);
  - f. Asset management companies (so-called *SGR*) as per Article 1(1)(o) of Italy’s Consolidated Law on Finance (*Testo Unico Finanza – TUF*);
  - g. Open-Ended Investment Companies (OEICs) – (so-called *SICAV – Società di Investimento a Capitale Variabile*) as per Article 1(1)(i) of Italy’s Consolidated Law on Finance (*Testo Unico Finanza – TUF*);
  - h. Investment companies with fixed capital (so-called *SICAF – Società di Investimento a Capitale Fisso* – i.e., regulated closed-end funds with corporate forms), both movable and immovable, as per Article 1(1)(i-bis) of Italy’s Consolidated Law on Finance (*Testo Unico Finanza – TUF*);
  - i. Italy’s *agenti di cambio* as per Article 201 of Italy’s Consolidated Law on Finance (*Testo Unico Finanza – TUF*);
  - l. Financial Intermediaries entered in the national register referred to in Article 106 of Italy’s Consolidated Law on Banking (*Testo Unico Bancario – TUB*);
  - m. *Cassa Depositi e Prestiti S.p.A.*;
  - n. Insurance undertakings operating in the fields referred to in Article 2(1) of Italy’s Private Insurance Code (*Codice delle Assicurazioni Private – CAP*);
  - o. Insurance intermediaries as per Article 109(2)(a), b) and d) of Italy’s Private Insurance Code (*Codice delle Assicurazioni Private – CAP*) operating in the fields referred to in Article 2(1) thereof;

- p. Microcredit providers as per Article 111 of Italy's Consolidated Law on Banking (*Testo Unico Bancario – TUB*);
- q. *Confidi* (trust consortia) and other subjects as per Article 112 of Italy's Consolidated Law on Banking (*Testo Unico Bancario – TUB*);
- r. Subjects referred to in Article 2(6) of Law No. 130 of 30 April 1999, with regard to credit securitisation operations regulated by the same Law;
- s. Trust companies enrolled in the national register referred to in Article 106 of Italy's Consolidated Law on Banking (*Testo Unico Bancario – TUB*);
- t. Italian branches of banking and financial intermediaries and insurance companies having their legal offices and central administrations in another Member State or in a Third country;
- u. Banking and financial intermediaries and insurance undertakings having their legal offices and central administrations, without branch, in the territory of the Italian Republic;
- v. Financial advisors as per Article 18-*bis* of Italy's Consolidated Law on Finance (*Testo Unico Finanza – TUF*) and financial advice companies as per Article 18-*ter* thereof;

3. “Financial intermediaries” shall also mean:

- (a) Trust companies other than the ones entered in the national register referred to in Article 106 of Italy's Consolidated Law on Banking (*Testo Unico Bancario – TUB*), as per Law No. 1966 of 23 November 1939;
- (b) Credit mediators entered in the national register referred to in Article 128-*sexies* of Italy's Consolidated Law on Banking (*Testo Unico Bancario – TUB*);
- (c) Financial agents enrolled in the national register referred to in Article 128-*quater*(2) and (6) of Italy's Consolidated Law on Banking (*Testo Unico Bancario – TUB*);
- (d) Subjects operating as professional bureau de change, intended for negotiating of currency payment means, enrolled in the *ad-hoc* register as per Article 128-*undecies* of Italy's Consolidated Law on Banking (*Testo Unico Bancario – TUB*);

4. “Professionals”, whether operating individually or within associations or partnerships, shall mean:

- (a) Persons enrolled in the national register of chartered accountants and accounting experts and in the national register of labour consultants;
- (b) Any other subject that renders the services provided by experts, consultants and other parties that, upon a professional basis, even for their own associates or members, provide accounting and tax services, including business and commercial associations, entities for tax assistance and information known as *Centri Assistenza Fiscale (CAF)* and *patronati*;
- (c) Notaries and lawyers when, in the name and on behalf of their clients, carrying out any transaction of a financial or real-estate nature and assisting their clients in arranging or carrying out transactions involving:
  - i. Transfer, for any reason, of real rights on immovable property or economic assets;
  - ii. Management of money, financial instruments or other assets;
  - iii. Opening or management of bank accounts, deposit books and securities accounts;
  - iv. Organisation of the contributions needed for creation, operation or management of companies;
  - v. Creation, operation or management of trusts, entities, companies, and comparable legal persons;

- (d) Legal auditors and legal audit companies entrusted with auditing tasks over public interest entities or entities subject to *tertium genus* nullity (i.e. third-category nullity – in the Italian legislation “*regime intermedio*”);
  - (e) Legal auditors and legal audit companies without auditing tasks over public interest entities or entities subject to *tertium genus* nullity (i.e. third-category nullity – in the Italian legislation “*regime intermedio*”);
5. “Other non-financial operators” shall mean:
- (a) Providers of services to companies and trusts, whereby not obliged as per paragraphs 2 and 4(a), (b) and (c) of this Article;
  - (b) Subjects carrying out commerce in antiques requiring the advance declaration referred to in Article 126 of Italy’s Consolidated Law on Public Security (*Testo Unico Leggi Pubblica Sicurezza – TULPS*);
  - (c) Subjects operating auction houses and art galleries pursuant to Article 115 of Italy’s Consolidated Law on Public Security (*Testo Unico Leggi Pubblica Sicurezza – TULPS*);
  - (d) Professional gold dealers as per Italy’s Law No. 7 dated 17 January 2000;
  - (e) Business agents providing real estate mediation services, whereby enrolled in Italy’s Business (*Registro delle Imprese*) as per Law No. 39 of 3 February 1989;
  - (f) Subjects performing custody and transport of cash and securities or valuables by means of sworn security guards, subject to their possession of the license referred to in Article 134 of Italy’s Consolidated Law on Public Security (*Testo Unico Leggi Pubblica Sicurezza – TULPS*);
  - (g) Civil mediators, pursuant to Article 60 of Law No. 69 of 18 June 2009;
  - (h) Subjects performing extra-judicial credit collection on behalf of third parties, subject to possession of the license referred to in Article 115 of Italy’s Consolidated Law on Public Security (*Testo Unico Leggi Pubblica Sicurezza – TULPS*), outside the hypothesis under Article 128-*quaterdecies* of Italy’s Consolidated Law on Banking (*Testo Unico Bancario – TUB*);
  - (i) Providers of services for virtual currency use, limited to conversion from/into fiat currencies.
6. “Gambling services providers” shall mean:
- (a) Online gambling operators offering, via the Internet and other networks, games, betting and contests with cash prizes, subject to possession of the authorization/licenses issued by Italy’s Customs and Monopolies Agency (*Agenzia delle Dogane e dei Monopoli*);
  - (b) Premises-based gambling operators offering games with cash prizes, also via distributors and dealers, however contractualised, subject to possession of the authorizations/licenses issued by Italy’s Customs and Monopolies Agency (*Agenzia delle Dogane e dei Monopoli*);
  - (c) Persons operating gambling houses, subject to possession of the authorizations/licenses required by law and the obligation as per Article 5(3) of Decree-Law No. 457 of 30 December 1997, converted, with amendments, by Law No. 30 of 27 February 1998.

1327. As to article 17 of the new AML, CDD obligations apply in the following cases:

- (a) When establishing a business relationship or when engaged by customers to perform a professional service;

- (b) When carrying out occasional transactions engaged by the customer, involving the transmission or transfer of means of payment amounting to EUR 15,000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be related or split, and/or when carrying out transfer of funds, as defined in Article 3(1)(9) of Regulation (EU) No. 2015/847 of the European Parliament and of the Council, amounting to more than EUR 1,000;
- (c) In connection to gaming operators referred to in Article 3(6), when performing gaming operations, also in accordance with the provisions laid down under Title IV of this Decree.

Obligated entities shall, in any case, comply with CDD and BO identification and verification requirements:

- (a) Where there is a suspicion of money laundering or terrorist financing, regardless of any applicable derogation, exemption or threshold;
- (b) Where there are doubts about the truthfulness or adequacy of the previously obtained customer identification data.

1328. In general, CDD requirements apply to a very broad range of obliged entities: financial intermediaries, professionals, external auditors and other persons subject to authorization regime.

1329. Pursuant to article 18 of the new AML Law, CDD measures shall consist of the following activities:

- obtaining information on the purpose and intended nature of the business relationship or professional service;
- conducting ongoing monitoring of the business relationship with the customer or professional service.
- in the presence of high risk of money laundering and terrorist financing, obliged entities shall apply the procedure for acquisition and evaluation of such information also in the event of occasional professional services or transactions (art. 18.1 c).

1330. In the context of the new AML Law (in force as of 4 July 2017), the Risk Based Approach (RBA) was borne out as a general principle which applies to both the AML/CFT national strategies and in parallel to any decision making processes adopted by each obliged entity.

1331. In article 17.3 of the new AML, RBA could be referred, particularly, to all CDD procedures which can be divided into ordinary, simplified and enhanced and are to be calibrated to the risk associated with the type of customer, business relationship, professional service, operation, product or transaction. In principle, CDD, as inspired by the RBA, is conceived as not to discourage or prohibit financial institutions from doing business with any legitimate customer.

***Article 17.3:***

“Obligated entities shall undertake Customer Due Diligence (CDD) measures commensurate with the risk of money laundering and terrorist financing and demonstrate to the authorities referred to in Article 21(2)(a) and to self-regulating bodies the measures adopted are adequate to the risk identified. In calibrating the extent of the measure(s) adopted, obliged entities shall take into account, at least, the following general criteria:

(a) With reference to the customer:

- 1) Legal form;
- 2) Main activity;
- 3) Behaviour at the time the transaction is carried out or the business relationship established or the professional service performed;
- 4) Geographical area in which the residence or registered office of the customer or counterparty is located;

b) With reference to the transaction, business relationship or professional service:

- 1) Type of transaction, business relationship or professional service;
- 2) Terms and conditions for performing the transaction, business relationship or professional service;
- 3) Amount;
- 4) Frequency and volume of the transactions and duration of the business relationship or professional service;
- 5) Reasonableness of the transaction, business relationship or professional service in relation to customer's activity and economic resources;
- 6) Geographical area of destination of the product, object of the transaction or business relationship or professional service".

1332. In the presence of low risk of money laundering or terrorist financing, obliged entities may apply Simplified Due Diligence (SDD) measures with regard to the extent and frequency of CDD requirements.

1333. Likewise, in accordance with the RBA, when there is a greater risk of money laundering or terrorist financing, Enhanced Due Diligence (EDD) measures shall apply.

1334. As to the new article 24.5 of the new AML Law, obliged entities shall always apply EDD measures in the case of:

- Customers located in high-risk third countries identified by the European Commission;
- Cross-border correspondent banking relationships with a correspondent credit or financial institution in a third country;
- Business relationships, professional services or transactions/operations with customers and their beneficial owners who are Politically Exposed Persons (PEPs).

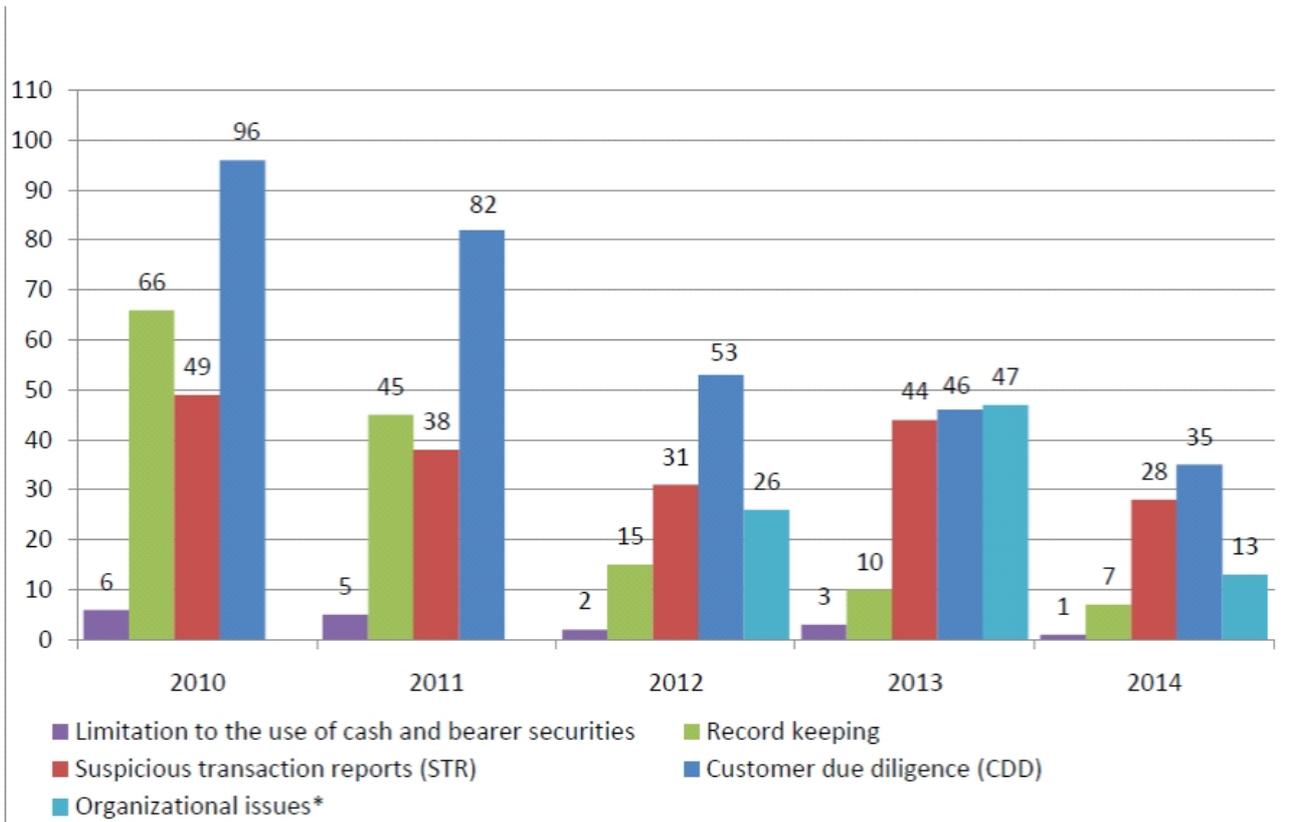
1335. As regards EDD on PEPs, in case of continuous relationships or professional services with PEPs resident in another EU country or a non-EU country, institutions must: establish adequate risk-based procedures to determine whether the customer is a PEP; obtain the authorization of the general manager before establishing a continuous relationship with such customers; take all

necessary measures to establish the source of wealth and source of funds that are involved in the continuous relationship or the transaction; and conduct enhanced ongoing monitoring of the continuous relationship or professional service (Legislative Decree 231/2007, article 24.5).

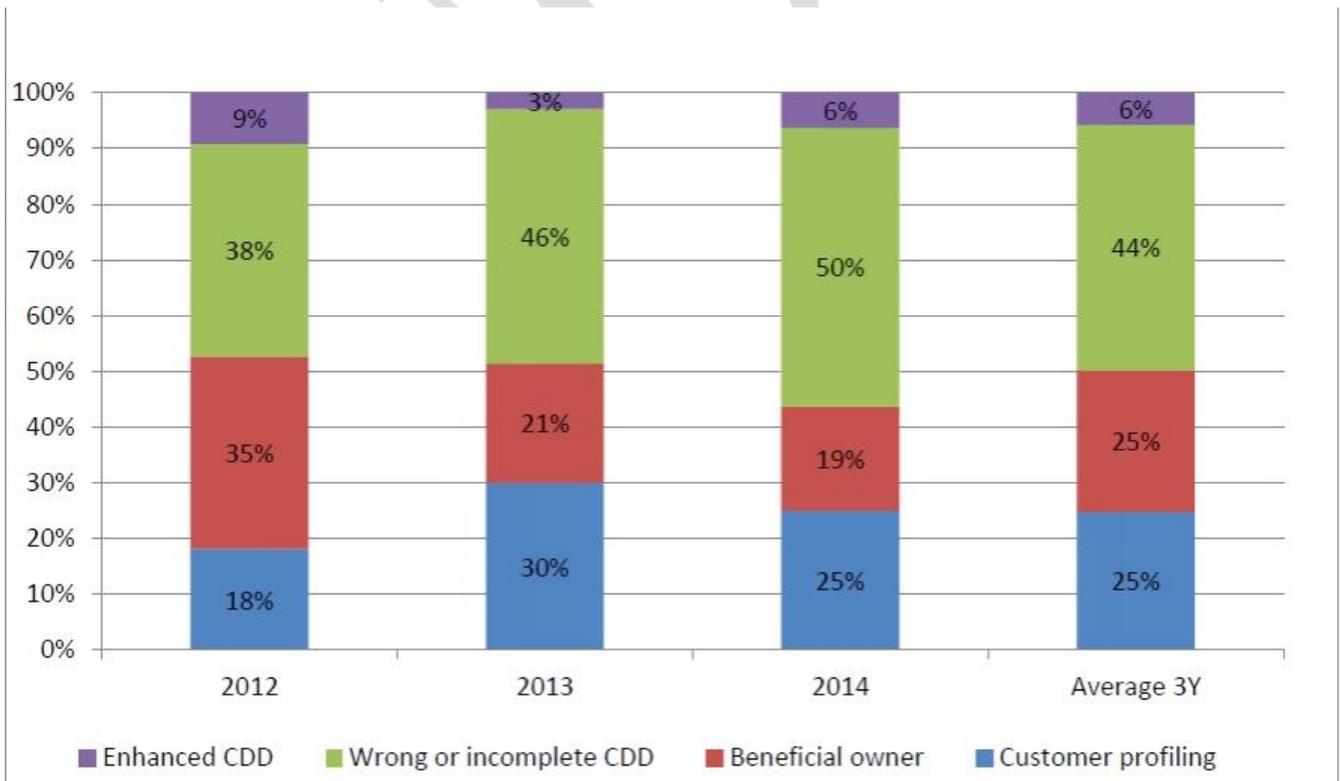
1336. In the spirit of the RBA, Italy does not deem domestic/national PEPs as a lower risk category than foreign PEPs; as a consequence, the same regime applies to both domestic and foreign PEPs. In accordance with the FATF Recommendation 12, our secondary legislation points out that the obliged entities shall establish procedures for verifying whether the customers or beneficial owners who are residents in Italy are domestic PEPs. If the business with such persons entails a high risk of money laundering or terrorist financing, obliged entities shall apply EDD, including for direct family members and persons with whom they are known to have close links.
1337. With regard to the BO identification, CDD, set forth in the Italian AML Law (Legislative Decree 231/2007), requires reporting entities to identify their customers, verify identity of all the persons involved in financial transactions, not only the customer but also the executor and the beneficial owner if any. The verification is made based on documents, data or information obtained from a reliable independent source.
1338. Article 20 indicates certain criteria for identification of BO of customers other than natural persons. In particular, BO of a customer other than a natural person shall coincide with the natural person(s) to whom the direct or indirect ownership and control of the entity is ascribable.
1339. Whereby scrutinising the ownership does not enable ultimately identifying the natural person(s) who directly or indirectly own the entity, BO shall coincide with the physical person(s) who ultimately control(s) it, in light of:
- (a) control over the majority of votes exercisable at ordinary shareholders' meeting;
  - (b) control over sufficient votes to exercise dominant influence at ordinary shareholders' meetings;
  - (c) existence of specific contractual constraints that enable exercising dominant influence.
1340. Whereby the application of the above criteria does not enable to identify BO univocally, BO shall coincide with the natural person or natural persons entitled with administration and management powers over the company.
1341. Whereby the customer is a private legal entity as per Presidential Decree No. 361, dated 10 February 2000, the following subjects are cumulatively identified as BOs:
- (a) The founders, whereby alive;
  - (b) The beneficiaries when identified or easily identifiable;
  - (c) The persons entitled with administration and management functions.
1342. Based on the monitoring and screening CDD measures, quality information on potential ML/TF cases is detected and reported through STRs to UIF (see data and considerations under art. 14 and art 58). Since many years, the “red flag” indicators issued by UIF to facilitate the detection and disclosure of money laundering and terrorist financing suspicions focus specifically on anomalies related to the misuse of beneficial ownership of companies and trusts and the lack of transparency in this context. Such misuse and the relevant indicators are particularly addressing cases of international tax fraud, invoicing fraud, fraudulent mechanisms such as “carousels” and “paper mills” and also possible corruption cases. As regards UIF’s powers to obtain information on the

BO, which is useful for performing its financial analysis, please consider that companies information can be obtained and shared by UIF through a variety of sources, which can be accessed in conjunction or as alternatives and which are all within the remit of UIF's capacity to collect and share information with foreign counterparts.

1343. More particularly the Italia Business Register, which can be publicly accessed, keeps information on companies incorporated in Italy that range from the date of incorporation to the types of businesses and activities performed; comprehensive data on shareholders is also available, be they legal entities or natural persons; in the former case, it is possible to trace back the chain of participation and look through the capital structure of each interposed entity by retrieving information on the relevant shareholders. When information from the Business Register is not available or not sufficient (for example, in cases of chains of participation involving companies or entities incorporated in a foreign jurisdiction which does not file data to the participated company or to the Business Register), UIF applies its powers to acquire basic or beneficial ownership information elsewhere, making enquiries on behalf of its requesting foreign counterparts (in line with normal practice in UIF's international cooperation).
1344. Furthermore, UIF can search information on companies and BO into other external databases like, for example, the central database of bank accounts and the tax database
1345. In parallel, all the above obligations are supplemented and strengthened by the general obligation on customers to provide all the necessary and updated information in their possession to enable FIs to comply with their CDD obligations (article 22 of the new AML Law).
1346. In order to avoid repeating the CDD procedures, institutions and persons obliged under AML Law may rely on third parties to satisfy the CDD requirements on condition that the ultimate responsibility for satisfying such requirement shall rest with the institutions and persons resorting to and relying on third parties.
1347. It is clear from the BoI data (see table on "AML Deficiencies by Type" below) that the number of occasions in which CDD deficiencies are being identified during inspections across the financial sector is declining.



1348. As the next table also indicates, the pattern of those deficiencies remains fairly consistent, with cases of incorrect or incomplete CDD averaging 44% of the total from 2012 to 2014.



1349. However, these data should be treated with some care, as the recorded deficiencies relate to both

isolated failures within an institution, and failures that have more systemic implications for an institution. Therefore, it is not possible to draw any firm conclusions about the true cause of the weaknesses, although the regulators were of the opinion that the overall quality of the banks' CDD procedures has been improving in the last two years (2012-2014). A particular challenge has been in trying to complete the CDD procedures for clients that were on the books prior to the introduction of the AML Law.

1350. Italy was rated Largely Compliant with FATF Recommendation 10 on CDD.

1351. FAFT Evaluation is the following: "CDD measures are well embedded in the financial sector, but there appears to be an over-reliance by some sectors (e.g., insurance, asset managers, and payment institutions) on the due diligence undertaken by the banks when accepting business through agency arrangements. While there is a general appreciation within the financial sector of the process for identifying beneficial ownership, there is a lack of consistency in the detailed processes, especially with respect to following the 25% threshold through a complex ownership chain. Reporting by DNFBPs is generally poor, especially among the lawyers and accountants."

1352. Please consider that some progresses occurred since the last FATF evaluation, as recognized by the very recent Global Forum Peer Review whose assessment resulted in a Compliant Rating.

1353. It is worth to note the role played by Financial Institutions (FIs) and Non-Financial Businesses and Professions (DNFBPs) in the BO identification: as reporting entities under the AML Law, they are obliged to take appropriate measures to identify the BO of a legal person and understand the ownership and control structure of their corporate customers (articles 18 and 19 para. 1 lit. b of the AML Law). This is supplemented by the general obligation on customers to provide all the necessary and updated information in their possession to enable FIs and DNFBPs to comply with their CDD obligations (article 21 of the AML Law).

1354. With respect to following the 25% threshold, Italy has achieved a more consistent approach through the new legislation.

1355. To this end, Art. 20 of the new AML Law (Legislative Decree 90/2017) sets out certain criteria to identify the BO in legal entities:

[Whereby the customer is a corporate entity:

- a) A shareholding of 25 % plus one share in the customer held by a natural person shall be an indication of direct ownership;
  - b) A shareholding of 25 % plus one share in the customer held by a corporate entity, owned by means of subsidiaries, fiduciary companies or other intermediary
3. Whereby the analysis of the ownership situation is not sufficient to uniquely identify the direct/indirect ownership of the entity, the beneficial owner shall coincide with the natural person or natural persons that ultimately hold control thereof – i.e.:
- a) Control over the majority of voting rights within ordinary shareholders' meeting(s);
  - b) Control over enough votes to exercise a dominant influence within ordinary shareholders' meeting(s);
  - c) Existence of special contractual restrictions that may exercise a dominant influence.
4. Whereby the application of the criteria laid down in the preceding paragraphs is not sufficient to uniquely identify one or more beneficial owners, the beneficial owner shall coincide with

the natural person or natural persons who hold(s) powers of administration or direction over the company.

5. In the event the customer is a corporate entity (i.e. a private legal person) as per Decree of the President of the Republic n. 361 dated 10 February 2000, the following subjects are collectively identified as beneficial owners:
  - a) The founders, if alive;
  - b) The beneficiaries, whereby identified or easily identifiable;
  - c) The subjects holding management and administrative functions.
6. The obliged entities shall retain evidence of the checks carried out for identification of the beneficial owner(s).]

1356. Regarding the FATF evaluation on the weakness of reporting by DNFBPs (especially among the lawyers and accountants), it should be remarked that recent analysis highlights the progress made by notaries both as to due diligence obligations and active collaboration, which reveals a more satisfactory awareness of risks and capacity to comply with anti-money laundering rules.

1357. At least for the category of lawyers, an improvement has been noted on the basis of the system of reporting suspicious transactions for ML and TF that shows a continuous and significant increase in reports.

1358. Statistical data shows a significant increase in the reporting by professionals.

Segnalazioni ricevute per tipologia di segnalante					
	2015		2016		<i>(variazione % rispetto al 2015)</i>
	<i>(valori assoluti)</i>	<i>(quote %)</i>	<i>(valori assoluti)</i>	<i>(quote %)</i>	
<b>Totale</b>	<b>82.428</b>	<b>100,0</b>	<b>101.065</b>	<b>100,0</b>	<b>22,6</b>
Banche e Poste	65.860	79,8	78.418	77,6	19,1
Intermediari finanziari diversi da Banche e Poste <sup>1</sup>	8.719	10,6	11.251	11,1	29,0
Professionisti	5.979	7,3	8.812	8,7	47,4
Operatori non finanziari	1.864	2,3	2.584	2,6	38,6
Altri soggetti non contemplati nelle precedenti categorie	6	0,0	0	0,0	-100,0

Segnalazioni ricevute per tipologia di segnalante					
	2014		2015		<i>(variazione % rispetto al 2014)</i>
	<i>(valori assoluti)</i>	<i>(quote %)</i>	<i>(valori assoluti)</i>	<i>(quote %)</i>	
<b>Totale</b>	<b>71.758</b>	<b>100,0</b>	<b>82.428</b>	<b>100,0</b>	<b>14,9</b>
Banche e Poste	59.048	82,3	65.860	79,8	11,5
Intermediari finanziari diversi da Banche e Poste <sup>1</sup>	9.172	12,8	8.719	10,6	-4,9
Professionisti	2.390	3,3	5.979	7,3	150,2
Operatori non finanziari	1.148	1,6	1.864	2,3	62,4
Altri soggetti non contemplati nelle precedenti categorie	0	0,0	6	0,0	-

*(b) Observations on the implementation of the article*

1359. The AML Law of Italy sets forth customer due diligence and beneficial owner identification/verification requirements, as well as measures for politically exposed persons (PEPs). Under the AML Law, the scope of financial intermediaries and relevant entities subject to the requirements is sufficiently broad to cover the entities envisaged by the Convention (see art. 3).
1360. The AML Law provides that a risk based approach is to be applied in every instance and calibrated (ordinary, simplified, or enhanced due-diligence) to reflect the customer, business relationship, and professional service involved.
1361. The AML Law requires the obligated entities to conduct enhanced due diligence for, among others: customers in high-risk countries; and customers and beneficial owners that are politically exposed persons (art. 24(5)).
1362. Under the Law, politically exposed persons refer to natural persons who are or have been entrusted with a prominent public function, covering their family members as well (art. 1(2)(dd)). No distinction is made between domestic and international politically exposed persons.
1363. Italy requires obliged entities to take into account the relevant lists of individuals/entities designated by international organizations (i.e., the United Nations and the European Union).
1364. The new AML Law also specifically establishes criteria to determine beneficial ownership (art. 20).
1365. It was concluded that Italy has implemented this provision of the Convention.

*Subparagraph 2 (a) of article 52*

*2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:*

*(a) Issue advisories regarding the types of natural or legal person to whose accounts financial institutions within its jurisdiction will be expected to apply enhanced scrutiny, the types of accounts and transactions to which to pay particular attention and appropriate account-opening, maintenance and record-keeping measures to take concerning such accounts; and*

*(a) Summary of information relevant to reviewing the implementation of the article*

1366. As already noted, in accordance with a RBA, when there is a greater risk of money laundering or terrorist financing, EDD measures shall apply.

1367. As to the new article 24.5 of the new AML Law, obliged entities shall always apply EDD measures in the case of:

- Customers located in high-risk third countries identified by the European Commission;
- Cross-border correspondent banking relationships with a correspondent credit or financial institution in a third country;
- Business relationships, professional services or transactions/operations with customers and their beneficial owners who are Politically Exposed Persons (PEPs).

1368. As to article 31, obliged entities are required to retain for a period of ten years the documents and record the information acquired in satisfying the CDD requirements for use in any investigation into possible money laundering or terrorist financing conducted by UIF or other competent authorities.

*(b) Observations on the implementation of the article*

1369. Based on a RBA, Italy specifies the conditions (i.e. types of natural or legal persons, accounts, transactions) that trigger EDD and particular attention. Record keeping period has also been provided by the AML Law.

1370. Italy has been inspired by and actually implemented measures issued by major international organizations, such as FATF and EU. In addition to the AML Law which transposed the fourth EU AML Directive and addressed gaps identified by the FATF MER in 2016, regulations and secondary legislations adopted by BoI, CONSOB, and IVASS have implemented core obligations of the AML Law, taking into account these international standards.

1371. It was concluded that Italy has implemented this provision of the Convention.

*Subparagraph 2 (b) of article 52*

*2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:*

...

*(b) Where appropriate, notify financial institutions within its jurisdiction, at the request of another State Party or on its own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify.*

*(a) Summary of information relevant to reviewing the implementation of the article*

1372. As to article 1 of the new AML Law, PEPs refer to the following natural persons who are or have been entrusted with a prominent public function.

- 1.1 Italy's Presidents of the Republic, Presidents of the Council of Ministers, Ministers, Deputy Ministers and Undersecretaries (i.e. heads of State, heads of government, ministers and deputy or assistant ministers), Region President, Regional Councilors (assessori regionali), Mayors of provincial capitals or metropolitan cities, Mayors of urban centres with not less than 15,000 inhabitants, and analogous positions held in foreign States;
- 1.2 Members of the Chamber of Deputies, Senators, Members of the European Parliament, Regional Councilors and analogous positions held in foreign States;
- 1.3 Members of the central governing bodies of political parties;
- 1.4 Judges of the Constitutional Court, magistrates of the Court of Cassation or of the Court of Auditors, State Councilors and other members of the Administrative Council of Sicily Region, and analogous positions held in foreign States;
- 1.5 Members of the governing bodies of central banks and independent authorities;
- 1.6 Ambassadors, chargés d'affaires and equivalent officers in foreign States, high-ranking officers in the armed forces or analogous positions held in foreign States;
- 1.7 Members of the administrative, management or supervisory bodies of enterprises, and related subsidiaries, owned also indirectly, by the Italian State or a foreign State, or owned, whether wholly or prevalently, by Regions, provincial capital cities and metropolitan cities and municipalities with not less than 15,000 inhabitants;
- 1.8 Director General of Italy's National Health System Agencies (ASL) and hospital centres, university hospital centres, and other National Health Service entities;
- 1.9 Director, deputy director and member of the management body or person performing equivalent functions within international organisations;

1373. The concept of PEPs is to be extended to the "Family members of Politically Exposed Persons" which means:

- 2.1 The spouse, or a person considered to be equivalent to a spouse, of a Politically Exposed Person;
- 2.2 The children and their spouses, or persons considered to be equivalent to a spouse, of a Politically Exposed Person;
- 2.3 The parents of a Politically Exposed Person.

1374. With regard to transactions, business relationships or professional services with PEPs residing in another EU Country or a non-EU Country, institutions and persons subject to this Decree are required to:

- a) establish adequate risk-based procedures to determine whether the customer is a politically exposed person;
- b) obtain the authorization of the general manager, his/her delegate or a person performing an equivalent function before establishing a business relationship with such customers;
- c) take all necessary measures to establish the source of wealth and source of funds that are

involved in the business relationship or the transaction;

- d) conduct enhanced ongoing monitoring of the business relationship or professional service.

*(b) Observations on the implementation of the article*

1375. As previously stated, in accordance with a RBA, when there is a greater risk of money laundering or terrorist financing, EDD measures shall apply. Article 24.5 of the AML Law provides that obliged entities shall always apply EDD measures in the case of: customers located in high-risk third countries identified by the European Commission; cross-border correspondent banking relationships with a correspondent credit or financial institution in a third country; and business relationships, professional services or transactions/operations with customers and their beneficial owners who are Politically Exposed Persons (PEPs).

1376. In this regard, the AML Law specifies the scope of PEPs, which includes their family members.

1377. About the triggering of enhanced due diligence measures at the request of a foreign state, Italy reported such measures are addressed through required consideration of relevant lists issued by designated international organizations (i.e. UN, EU). These measures may also be addressed through existing cooperation agreements between Italy and another State as well as agreements between relevant AML authorities.

1378. It was concluded that Italy has implemented this provision of the Convention.

*Paragraph 3 of article 52*

*3. In the context of paragraph 2 (a) of this article, each State Party shall implement measures to ensure that its financial institutions maintain adequate records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.*

*(a) Summary of information relevant to reviewing the implementation of the article*

1379. From AML/CFT point of view, Italy has been rated compliant in the 2016 MER conducted by the FATF against the record-keeping standard (Recommendation 11). In this respect, article 31 on retention obligations of the new AML Law states that:

Obliged entities shall retain data and information useful for preventing, detecting or ascertaining any money laundering or terrorist financing activity and enabling the performance of analyses carried out, within their respective competence, by Italy's Financial Information Unit (also known as UIF - Unità di Informazione Finanziaria) or other relevant authority (art.31.1).

1380. Obliged entities shall retain copy of the documents obtained in fulfilling Customer Due Diligence (CDD) requirements and the original or copy, having evidentiary effect as per current legislation in force, of accounts and records relating to the transactions executed. The documents retained shall enable univocally reconstructing at least the following elements (art.31.2):

- The date when the business relationship is established or the professional service mandate is conferred;
- Identification data of the customer, the beneficial owner, and the executor, and information on the purpose and nature of the business relationship or the professional service;
- The transaction date, amount and reason;
- The means of payment used.
- Obligated entities may use an autonomous service centre for retention of documents, data and information, without prejudice to obliged entities' responsibilities and provided the latter have direct and immediate access to the retention system (art. 32.3).

1381. Among the measures undertaken, our legislation and regulation are hitherto one of the few in the world to envisage the obligation on FIs to set up a “single electronic archive” to ensure clarity, completeness and accessibility of the data. The article goes on to provide some degree of flexibility as to how the archive may be structured, while the BoI Regulations on recordkeeping provide further, on extensive obligations with respect to the format and structure of the data storage systems.

1382. For the keeping and management of the single electronic archive by the addressees, it is possible to avail of an independent service centre, provided that they are guaranteed direct and immediate access to the archive and without prejudice to the responsibilities provided for by law.

1383. It is also allowed to avail of the archive managed by another obliged entity provided that the logical unity of the archive, and its separation from any other archives kept by the same person be ensured.

*(b) Observations on the implementation of the article*

1384. It was confirmed by Italy that the obligated entities are required to retain customer due diligence records for 10 years after the termination of the business relationship (art. 31(3), AML Law) in their single electronic archive. The information in the archive is used for investigation and analysis by the competent authorities such as the financial intelligence unit.

1385. It was concluded that Italy has implemented this provision of the Convention.

*Paragraph 4 of article 52*

*4. With the aim of preventing and detecting transfers of proceeds of offences established in accordance with this Convention, each State Party shall implement appropriate and effective measures to prevent, with the help of its regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. Moreover, States Parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.*

*(a) Summary of information relevant to reviewing the implementation of the article*

1386. In accordance with FATF standards, Article 25(3) of the AML Law prohibits the opening of correspondent accounts, directly or indirectly, with shell banks.
1387. The Italy Financial Sector Assessment Program (FSAP) update conducted by the IMF in January 2013 found that on the basis of arrangements in place in Italy, the BoI does not allow the establishment of shell banks in Italy and does not allow Italian banks to set up shell banks abroad.

*(b) Observations on the implementation of the article*

1388. It was confirmed that the Bank of Italy does not allow the establishment of shell banks in Italy. It also forbids banks from Italy from setting up shell banks abroad. Opening of correspondent accounts with shell banks is prohibited, even indirectly (art. 25(3), AML Law).
1389. It was concluded that Italy has implemented this provision of the Convention.

*Paragraph 5 of article 52*

*5. Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention.*

*(a) Summary of information relevant to reviewing the implementation of the article*

1390. Please refer to the answer to article 8(5).

*(b) Observations on the implementation of the article*

1391. Members of Government and senior civil servants are required by law to file declarations disclosing certain sources of income, assets, and outside positions held along with a copy of their latest tax returns. This information is to be published, also to detect actual or potential conflicts of interest. However, in March 2017 this publication requirement was challenged by high-ranking civil servants, and it has been suspended pending a decision by the Constitutional Court. In contrast, publication of the information by holders of political offices (national, regional, municipal level) is operational. The Competition Authority (AGCM) is responsible for checking for incompatibilities after appointment of a holder of political office in the executive as well as during and after leaving office. AGCM does not make the information public except when necessary to support a decision made.
1392. Members of the Chamber of Deputies and of the Senate are required to file declarations containing property rights, assets recorded in public registers, corporate shares, equity interests in companies and copies of their latest tax return regarding income subject to personal income tax. Some of this information is available on the website of Parliament and on each individual member's

website. Magistrates are required to file statements to the High Council of the Judiciary (CSM) on the same type of information as Parliamentarians, without public access except by grounded request. CSM determines whether to allow access to the statements. There is no internal review of the statements filed.

1393. It was **recommended** that Italy consider establishing effective and enforceable financial disclosure systems for senior public officials. To the extent permissible under law, Italy is encouraged to make such information publicly accessible.

*Paragraph 6 of article 52*

*6. Each State Party shall consider taking such measures as may be necessary, in accordance with its domestic law, to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts. Such measures shall also provide for appropriate sanctions for non-compliance.*

*(a) Summary of information relevant to reviewing the implementation of the article*

1394. In determining the scope of information which UIF can share with its foreign counterparts, the Legislative Decree 231/2007, as amended by the Legislative Decree 90/2017, is broadly formulated: any “information” can be exchanged including data and information concerning the subjective features of the individuals involved in suspicious transactions.

1395. Upon this legal basis, UIF is able to provide to foreign FIUs all information available at the time of the request (e.g., STR material including banking and financial information, further information collected or intelligence developed through the analysis). The range of the information UIF is able to collect also includes peculiar characteristics of the individuals involved. UIF is able to request the same range of information to its foreign counterparts. Specific characteristics (the status of public official, for example) are often provided by the foreign FIU, in the context of a spontaneous disclosure, as elements that enrich the informative flow, to be considered in the subsequent analysis carried out by UIF.

*(b) Observations on the implementation of the article*

1396. Although UIF can share/collect a wide array of information with/from foreign FIUs, it was not stated that Italy has any requirement for public officials, who have an interest in or signature or other authority over a financial account in a foreign country, to report that relationship or to maintain appropriate records. Sanctions for non-compliance was not stated either.

1397. It was **recommended** that Italy consider the implementation of requirements for public officials to identify the existence of foreign financial accounts over which they have an interest or have signatory authority.

## Article 53. Measures for direct recovery of property

### *Subparagraph (a) of article 53*

*Each State Party shall, in accordance with its domestic law:*

*(a) Take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention;*

### *(a) Summary of information relevant to reviewing the implementation of the article*

1398. In order to implement this rule, it was not necessary to modify domestic system. Another State Party may initiate civil action in Italian courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with the Convention. No procedure is provided for to legitimize a foreign State. A State recognized by Italy under international law is already legitimized, in the abstract, to appear in court.

1399. There follow the relevant provisions:

#### ***Article 75 of the Code of Civil Procedure***

The persons having free exercise of the rights plead in court shall be enabled to enter an appearance.

The persons who have not free exercise of the rights cannot appear in court if they are not represented, assisted or authorized in compliance with the rules regulating their capacity.

Legal persons appear in court through their representatives under the law or statute.

Associations and committees, that are not legal persons, appear in court through the persons indicated in Articles 36 et seq. of the Civil Code.

#### ***Article 74 of the Code of Criminal Procedure:***

Civil action for restitution and for compensation for damage mentioned in Article 185 of the Criminal Code can be carried out during the criminal trial by the persons prejudiced by the offence or by his universal successors against the defendant and those bearing civil liability.

#### ***Article 75 of the Code of Criminal Procedure:***

1. The civil action initiated before the civil judge can be transferred to the criminal trial so long as any judgment on the merits has not been rendered and so long as the judgment has not become final before the civil court. The exercise of this prerogative entails discontinuance of action; the criminal judge will also decide on the costs of civil trial.

2. Civil action shall continue before the civil judge if it is not transferred to criminal trial or if it was initiated when filing of civil action in the criminal proceeding is no longer admitted.

3. If the action is filed before a civil court against the defendant after the filing of a civil action in the criminal trial or after the first instance criminal judgment, the civil trial is suspended until an unappealable criminal judgment is rendered subject to the exceptions provided for by the law.

#### ***Article 76 of the Code of Criminal Procedure***

1. Civil action in a criminal trial is carried out also through a special counsel, by means of filing the civil action.
2. The filing of a civil action has its own effects at any stage of degree of the trial.

#### ***Article 78 of the Code of Criminal Procedure***

1. The statement bringing a civil action is lodged with the prosecuting Judge's Clerk' Office or presented at the hearing and must contain, under penalty of inadmissibility:
  - a) the identity of the natural person or the name of the association or body filing a civil action and the identity of his legal representative;
  - b) the personal details of defendant against whom civil action was initiated or other personal indications that can be used to identify him;
  - c) the name and surname of the defense counsel and the indication of the power of attorney;
  - d) the statement of the reasons put at the basis of the request;
  - e) the signature of the defense counsel.
2. If the civil action is submitted outside the hearing, the statement must be served, by the civil party, to the other parties and takes effect for each of them as of the day of execution of service.
3. If the power of attorney is not appended in the end or in the margin of the statement bringing civil action, it is conferred in the other forms provided for by Article 100, paragraphs 1 and 2 and it is filed with Clerk's office or presented at the hearing together with the statement of filing a civil action.

#### ***Article 79 of the Code of Criminal Procedure***

1. The filing of a civil action in a criminal proceeding can take place at the preliminary hearing and then until the accomplishment of the fulfilments provided for by Article 484.
2. The time limit provided for by paragraph 1 is established under penalty of expiration.
3. If the filing of a civil action takes place after the time limit provided for by Article 468 paragraph 1, the civil party cannot make use of the possibility to submitting the list of witnesses, experts or technical consultants.

1400. In any case it must be pointed out that filing a civil action in a criminal trial is aimed at restitution and compensation for damage, both material and non-material.

1401. Under Article 538 of the Code of Criminal Procedure, at the end of the trial, the Judge, with the

conviction judgment shall decide on the request for restitution and compensation for damages, submitted under Articles 74 et seq. The requirements of the decision on the issues under consideration are therefore the filing of a civil action, the establishment of the defendant's responsibility and therefore the type of conviction imposed by the criminal judgment. This last requirement is nonetheless indefectible for the first degree decisions since for subsequent judgments the rule provided for by Article 578 of the Code of Criminal Procedure shall be applied, which dictates that the Appeal or Cassation judge shall decide also for the appeals to the effects of the decisions and the counts of the judgment concerning civil interests even when the offence is declared extinguished as a result of an amnesty or statute of limitation.

#### ***Article 538 of the Code of Criminal Procedure***

1. When rendering a conviction judgment, the judge shall decide on the request for restitution and compensation for damages submitted under Articles 74 et seq.
2. If the defendant is convicted to pay damages, the judge shall also assess them except for the cases where jurisdiction of another judge is provided for.
3. If the civilly liable person was summoned or appeared at the trial the conviction to restitution and compensation for damages shall be rendered also against him/her jointly and severally if his/her responsibility is established.

#### ***Article 578 of the Code of Criminal Procedure***

When the defendant is convicted, also with a general decision, to restitution or compensation for the damages caused by the offence in favour of the civil party, the appeal judge or the Court of Cassation when declaring the offence extinguished as a result of an amnesty or statute of limitations, shall decide on the appeal only with respect to the part of the judgment concerning civil interests.

#### ***(c) Observations on the implementation of the article***

1402. The legislation of Italy permits a foreign State, without a special procedure, to initiate civil actions in its courts to establish title to or ownership of property based on the Civil Procedure Code (art. 75) and the Criminal Procedure Code (art. 74 et seq.).
1403. It was concluded that Italy has implemented this provision of the Convention.

#### ***Subparagraph (b) of article 53***

*Each State Party shall, in accordance with its domestic law: ...*

*(b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and*

#### ***(a) Summary of information relevant to reviewing the implementation of the article***

1404. See under subparagraph a).

1405. Foreign States victims of offences can initiate a civil action for compensation of damages in Italian courts (art. 75, Civil Procedure Code) or file a civil action in a criminal trial for this purpose (art. 74 et seq. Criminal Procedure Code).

*(b) Observations on the implementation of the article*

1406. The legislation of Italy permits a foreign State, without a special procedure, to initiate civil actions in its courts for payment of compensation or damages based on the Civil Procedure Code (art. 75) and the Criminal Procedure Code (art. 74 et seq.).

1407. It was concluded that Italy has implemented this provision of the Convention.

*Subparagraph (c) of article 53*

*Each State Party shall, in accordance with its domestic law: ...*

*(c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention.*

*(a) Summary of information relevant to reviewing the implementation of the article*

1408. See under subparagraph a).

1409. In addition, claims by a foreign State, which is the owner of the assets to be confiscated, can be made based on paragraphs 2 to 4 of Article 23 of the Anti-Mafia Code.

**Article 23 of the Anti-Mafia Code**

**Enforcement proceedings**

1. Unless otherwise provided, the provisions of the title I, chapter II, section I, are enforceable to a preventive measure affecting properties, in so far as they are compatible.

2. Third parties who are the owner or joint owner of the seized assets, within 30 days after the execution of seizure, are invited by the court to be a part in the proceedings by a grounded decree indicating the date of the hearing in chambers.

3. At the hearing, the parties concerned can submit their conclusions with the assistance of a defense counsel and request that any useful element in view of the decision on confiscation be admitted. If the condition provided for by Article 24 is not met, the court shall order the restitution of assets to their owners.

4. Par. 2 is enforceable also with regard to third parties who claim property or other rights on the seized goods. If the conditions provided for by Article 26 are not met, the provisions of title IV of this book shall apply to settle the related rights.

1410. After the adoption of a confiscation order, the foreign State that has not been involved in the related proceeding can submit an application for "enforcement review" before the same court which ordered confiscation so as to obtain restitution.

*(b) Observations on the implementation of the article*

1411. The legislation of Italy permits a foreign State, without a special procedure, to initiate civil actions in its courts for payment of compensation or damages based on the Civil Procedure Code (art. 75) and the Criminal Procedure Code (art. 74 et seq.). Another State party's claim as a legitimate owner of property can be made at the proceedings when deciding confiscation.

1412. The position of a foreign State, who is the owner of the asset to be confiscated, is also safeguarded by the paragraphs 2 to 4 of article 23, Anti-Mafia Code.

1413. It was concluded that Italy has implemented this provision of the Convention.

## **Article 54. Mechanisms for recovery of property through international cooperation in confiscation**

*Subparagraph 1 (a) of article 54*

*1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:*

*(a) Take such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party;*

*(a) Summary of information relevant to reviewing the implementation of the article*

1414. In order to implement this provision, it is not necessary to introduce new rules in Italy.

1415. In particular, as already stated, the possibility to give effect to a confiscation order issued by a foreign Court has been provided for by the Criminal Procedure Code, as recently amended by the Legislative Decree 3 October 2017, n. 149, as the general framework of recognition of foreign judgments and execution abroad of Italian judgments. (Book XI, Chapter IV, articles 730 to 746).

1416. Under Article 738 of the code of criminal procedure, confiscation shall be executed according to Italian law.

***Article 738 of the Code of Criminal Procedure:***

In the cases of recognition for the purposes of the execution of a foreign judgment, the penalties and confiscation resulting from recognition shall be executed according to Italian law (...)

### **Legislation/regulations**

1417. General provisions of law on recognition of foreign judgements and confiscation orders are provided for by the Italian Code of Criminal Procedure (Book XI, Title IV, Chapter I – Article 730

et seq.).

1418. Special provisions for executing confiscation orders have been adopted in order to implement the framework decision 2006/783/JHA on the enforcement of the principle of mutual recognition of confiscation orders (Legislative Decree n. 137 of August 7<sup>th</sup> 2015). Such rules, that are enforceable only for the other EU Member States, prevail over the provisions of the Code of Criminal Procedure.

1419. Regarding the international cooperation with foreign authorities, the general principle shall apply according to which the provisions of the European Union's law, conventions and general international law prevails. On the basis of this principle, provisions of the Code of Criminal Procedure are enforceable only in the absence of international sources or when it is not otherwise provided by them (Article 696 of the Code of Criminal Procedure).

1420. For the sake of completeness, with regard to the relations with other member States of the European Union, special provisions are provided for by Framework Decision 2003/577/JHA of the Council, of July 22<sup>nd</sup> 2003, related to enforcement of orders for freezing assets or evidence, implemented by Italy with the Legislative Decree n. 35 of February 15<sup>th</sup> 2016.

1421. Finally, additional *ad hoc* legislation that provided for the enforcement of pecuniary penalties and asset recovery orders issued by the International Criminal Court is referred to.

### **Practice to recognize foreign confiscation orders**

1422. The “general” provisions on recognition, provided for by the Italian Code of Criminal Procedure can be outlined as follows (see Articles 731 and 733).

(i) After receiving a request for executing a confiscation order from a foreign State, the Ministry of Justice shall establish without delay if it comes from a State with which there is a Convention that provides for this type of mutual legal cooperation and if formal modes of dispatching provided for by this treaty, if any, have been observed. With this regard UNCAC is considered as “the necessary and sufficient treaty basis” to carry out the procedure of cooperation, in compliance with the provision of the art. 55, par. 6 of the Convention.

Our well-established Court jurisprudence considers the notion of “legal assistance” to the widest extent in view of assuring the maximum international cooperation also beyond obtaining of evidence (and, especially, in view of enforcing seizures not aimed at securing evidence).

(ii) This first step is basically formal and if so, the request is forwarded to the Public Prosecutor General having territorial jurisdiction in view of initiating a recognition procedure before the Court of Appeal.

(iii) The Court of Appeal shall decide on recognition without delay, not later than ninety days from the date of receiving the request.

(iv) The Court of Appeal shall decide, with a judgment rendered at the end of a procedure, whether the right of defense is guaranteed and confiscation is to be ordered. The General Public Prosecutor, the sentenced person and the defending counsel can challenge the judgement before the Court of Cassation for infringement of the law.

(v) The Court of Cassation shall decide within sixty days from the date of receiving the appeal.

## General requirements for recognition

1423. First of all, it is necessary to establish that there is a treaty providing mutual legal assistance in the enforcement of confiscation orders and that the request submitted by the foreign State is in compliance with the treaty.

1424. After that, as provided for by Article 733 of the Code of Criminal Procedure, the Court of Appeal shall reject recognition in the following cases only:

- a) The judgement had not become final for the law of the issuing State;
- b) The judgement includes provisions which are contrary to the fundamental principles of the State's legal system, or the conditions imposed by the foreign State to enforce a judgement whose recognition has been requested are contrary to such principles;
- c) The judgement has not been rendered by an independent and impartial judge, or the defendant has not been summoned to appear before the foreign court, or the defendant has not been informed of the right to be interrogated in a comprehensible language and assisted by a defending counsel;
- d) There are grounded reasons to presume that assumptions related to race, religion, sex, nationality, language, political opinion or other personal or social conditions have influenced the trial or its outcome;
- e) The fact for which a judgement was rendered is not provided for by Italian law as an offence;
- f) A final judgement was rendered in the State for the same fact and against the same person;
- g) A criminal proceeding is pending in the State for the same fact and against the same person.

1425. In addition, regarding the enforcement of a confiscation order, the foreign judgement cannot be recognized, if it affects assets, the confiscation of which would not be possible according to the Italian law in legal action for the same fact. An exception to this rule is the case of enforcement of a foreign confiscation order consisting of ordering payment of a sum of money which corresponds to the value of price, proceeds or profit of a crime (the so-called confiscation for equivalent value: see Article 735 bis).

1426. In this regard, the extent and variety of means of confiscation provided for by our domestic provisions make non-confiscation of assets basically hypothetical. As such, a confiscation order contrary to the fundamental principles of our law system would be a more serious issue.

1427. As to "special" provisions, related to procedures of enforcement of confiscation orders within the EU, please refer to the Article 6 of the Legislative Decree n. 137 of August 7<sup>th</sup> 2015.

1428. It should be noted that, on the basis of these provisions:

- a) a confiscation order is "an order rendered by a judicial authority within a criminal case, consisting in definitively depriving a person of an asset, including confiscation orders pursuant to Article 12-sexies of Decree-law n. 306 of June 8<sup>th</sup> 1992, turned into Law n. 356 of August 7<sup>th</sup> 1992 (with amendments), and those pursuant to the Articles 24 and 34 of Anti-mafia Code and the Code of preventive measures, as to the Legislative Decree n. 159 of September 6<sup>th</sup> 2011, with subsequent amendments" (art. 1, par. 3, subparagraph. d) of the Legislative Decree n. 137/2015);

- b) confiscation orders can be enforced without assessing dual criminality, when they are related to one of the 32 types of offences specified in the provision (including corruption), and when a custodial sentence of not less than three years of imprisonment at a maximum is provided for in the issuing State (see Article 3, par. 2 of the Legislative Decree 137/2015);
- c) the amounts obtained, except for otherwise agreed with the requesting State, are entirely assigned to Italy when the concerned amounts are up to 10,000 euros or less, whereas higher amounts are divided by 50% (see Article 14 of the Legislative Decree 137/2015).

*(b) Observations on the implementation of the article*

1429. The Criminal Procedure Code of Italy provides a framework for the recognition of foreign judgements, freezing or confiscation orders (art. 730 et seq.).
1430. Special provisions for executing confiscation orders have been adopted in order to implement the framework decision 2006/783/JHA on the enforcement of the principle of mutual recognition of confiscation orders (Legislative Decree n. 137 of August 7<sup>th</sup> 2015, see letter (C) at the end). Such rules, that are enforceable only for the other EU Member States, prevail over the provisions of the Italian Code of Criminal Procedure.
1431. Regarding the international cooperation with foreign authorities, the general principle shall apply according to which the provisions of the European Union's law, conventions and general international law prevail. On the basis of this principle, provisions of the Italian Code of Criminal Procedure are enforceable only in the absence of international sources or when it is not otherwise provided by them (Article 696 of the Italian Code of Criminal Procedure).
1432. It was concluded that Italy has implemented this provision of the Convention.

*Subparagraph 1 (b) of article 54*

*1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:*

...

*(b) Take such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law; and*

*(a) Summary of information relevant to reviewing the implementation of the article*

1433. Article 322 ter of the Criminal Code provides that the judicial authority shall always order confiscation (obligatory confiscation) of assets constituting the profit or price of the offence, in case of conviction for bribery and corruption offences. When the confiscation of the price or profit is not possible, the judge may order confiscation of assets, of which the offender has the availability, for an amount corresponding to that price or profit.

*(b) Observations on the implementation of the article*

1434. The legislation of Italy provides for the confiscation of property of foreign origin where there has been a conviction for bribery and corruption offenses (see art. 322-ter, Criminal Code).

1435. It was concluded that Italy has implemented this provision of the Convention.

*Subparagraph 1 (c) of article 54*

*1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law: ...*

*(c) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.*

*(a) Summary of information relevant to reviewing the implementation of the article*

1436. Preventive confiscation is applicable to the offences provided for by the Convention., in accordance with the Legislative Decree 159/2011 [Code of Anti-Mafia Laws, Preventive Measures, and New Provisions on Anti-Mafia Documents (i.e. Anti-Mafia Code)], in compliance with articles 1 and 2 of the Law n. 136 of August 13, 2010.

***Section 18 (Application of preventive measures on properties. Death of the proposed person)***

1. Preventive measures against persons and properties may be requested and applied separately, and with regard to the measures against properties, regardless of the social danger of the person proposed for their application when preventive measure is requested.
2. Preventive measures on properties may be ordered also in case of death of the person proposed for their application. In this case the proceeding shall continue against his/her heirs or in any case against his/her successors in title.
3. The proceeding imposing preventive measures on properties can be initiated also in case of death of the person against whom confiscation could be ordered; in this case the request for applying the preventive measure can be proposed against his/her universal or special successors in title within the time limit of five years from the death.
4. The proceeding imposing preventive measures on properties can be initiated and continued also in the case of absence, residence abroad of the person against whom the preventive measure could be applied, upon a proposal by the persons under Article 17 having territorial jurisdiction on the place of latest abode of the person concerned with regard to the properties for which there are grounds to believe that they are the result of illicit activities or constitute their reuse.

1437. With reference to the offences provided for by the Convention:

1. under the conditions provided for by the law, preventive confiscation is mandatory both against persons suspected of being *habitual* corruptors/bribers and corrupted/bribed persons (“general dangerous” persons) and against those specifically suspected of participating in (or leading) a criminal association aimed at committing offences against Public Administration;
2. the case of death, absence, escape of the dangerous persons is not an impediment for an application of preventive confiscation or for executing preventive confiscation.

*(b) Observations on the implementation of the article*

1438. Italy, through its Anti-Mafia Code (sec. 18), may initiate preventive confiscation measures (i.e., non-conviction-based confiscation) involving assets where a defendant may not be prosecuted under certain circumstances including flight or death.

1439. Italy confirmed that its scope is not limited to Mafia, but also to include other dangerous persons.

1440. It was concluded that Italy has implemented this provision of the Convention.

*(c) Successes and good practices*

1441. Italy has the capacity to provide international cooperation in asset recovery measures in both conviction and non-conviction-based proceedings.

*Subparagraph 2 (a) of article 54*

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

*(a) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article;*

*(a) Summary of information relevant to reviewing the implementation of the article*

1442. Article 737 bis of the Code of Criminal Procedure provides that for cases covered by international agreements, the Minister of Justice shall decide to entertain a request of a foreign authority to carry out investigations on properties which can become object of a subsequent request for execution of a confiscation, or to seize them.

1443. To this end, the Minister of Justice shall forward the requests, and its annexed documents, to the Prosecutor General attached to the Court of Appeal having jurisdiction for recognizing the foreign judgment in view of the subsequent execution of confiscation. The Prosecutor General shall submit the request to the Court of Appeal who shall decide with an order in compliance with Article 724.

1444. The execution of the request for investigation or seizure shall be refused:

- (a) If the requested acts are contrary to principles of the State's legal system or are against the law or if these acts would not be allowed if they were prosecuted in the State;
- (b) If there are reasons to believe that the conditions are not met for the subsequent execution of the confiscation (Article 737 bis, paragraph 3).

1445. In cases of request for seizure, the provisions of Article 737, paragraphs 2 and 3 of the Code of Criminal Procedure shall apply:

Paragraph 2: if the Court does not grant the request, an appeal to the Court of Cassation can be lodged by the Prosecutor General. An appeal to the Court of Cassation shall be lodged against the seizure for violation of the law by the person concerned. The appeal has not suspensive effect.

Paragraph 3: the provisions regulating the execution of preventive seizure (Article 737, paragraphs 2 and 3 of the Code of Criminal Procedure) shall apply, in that they are enforceable.

1446. The seizure ordered under the present article shall lose its effectiveness and the Court of Appeal shall order that the seized properties be returned to those who are entitled to, if within two years from the moment when it was executed, the foreign State does not require the execution of confiscation. The time limit can be postponed several times for a maximum period of two years.

1447. The Court of Appeal which ordered seizure shall decide on the request.

1448. The Italian legal system (the criminal code and special laws) provides different types of seizure and confiscation that are different in nature: a security measure and a preventative measure.

1449. Generally, when Italy speaks of confiscation, it refers to a security measure which is post delictum, i.e. after the offence has been ascertained.

1450. Confiscation as a security measure, provided for by Article 240 of the Criminal Code and by several other provisions also enshrined in special laws, aims at preventing further crimes from being committed and concerns assets that are found to be, or assumed to be, a danger since they can be used to perpetrate further offences.

1451. Confiscation of properties the value of which corresponds to that of such proceeds is also possible, even if in this latter case the aim is not deterrence but only depriving the offender of the profit derived from the offence itself.

1452. Confiscation is ordered by a judicial authority after the conviction becomes final.

1453. Article 240 of the Criminal Code is a general rule about confiscation. It provides for the confiscation of assets used or intended for use in committing an offence, or which constitute the proceeds or the profit of a crime. These assets (proceeds or profit) may also be confiscated cumulatively. In general, confiscation has a discretionary nature and can be decided by a court upon conviction of the perpetrator.

1454. Confiscation is, however, as stated above, mandatory in a number of cases. In particular, confiscation is mandatory when the assets are the "price" and/or the profit of a public active/passive bribery or a fraud offence (Articles 322-ter and 335-bis, Criminal Code), or when the offence committed has a link with transnational organised crime (Article 11, Law 146/2006). Likewise, confiscation is mandatory when the assets are the "price" of the offence (meaning the price paid by a third party to commit the offence), or the production, use, transport, possession or transfer of which constitute an offence. In the latter case, confiscation is possible even in the absence of a

conviction.

1455. As just explained, confiscation is applicable to proceeds and instrumentalities of a criminal offence. There is no definition of the term “proceeds”, but, in practice, it is generally understood in a broad sense to cover both direct and indirect proceeds.
1456. Value confiscation of corruption proceeds is possible pursuant to and to the extent provided by Article 322-ter of the Criminal code.
1457. Confiscation cannot be ordered if the assets belong to bona fide third parties, provided that they are not involved in the commission of the offence. Under the Italian case-law, as developed by the Court of Cassation, the burden of proof of the bona fide lies on the third party who must prove, beyond any reasonable doubt, that s/he was not aware of the illicit origin of the asset owned. Moreover, as far as corruption offences are concerned, Article 322-ter of the Criminal Code establishes that confiscation of those assets to which the “offender has access” (implying the power to dispose of the assets) may be ordered. In practice, this covers corruption proceeds transferred to the offender’s closest relatives, although it would appear to possibly include other situations.
1458. As stated above, Article 322-ter of the Criminal Code provides that the judicial authority shall always order the confiscation (obligatory confiscation) of assets constituting the profit or price of the offence in case of conviction for bribery and corruption offences. When the confiscation of the price or profit is not possible, the judge may order the confiscation of assets the offender has the availability of, for an amount corresponding to that price.
1459. Over the years, the case-law specified that the confiscation of equivalent amounts has the aim of “neutralising the economic advantages obtained through the criminal activity”, and it, unless the confiscation as provided for under section 240 of the Criminal Code, does not ask for a relationship between the offence and asset. In fact the confiscation of equivalent amounts asks for: a) the perpetration of one of the offences specified under section 322-ter of the Criminal Code is verified; b) the asset does not belong to a third party; and c) the price or profit of the offence has not been found out among everything available to the author of the offence.
1460. The Italian Court of Cassation, Joint Sections, decision no. 26654 of 27 March 2008 and Court of Cassation, Criminal Division II, decision no. 20976 of 22 February 2012 ruled that, for the purpose of confiscation, the profit of the crime in the preventative seizure consists in the economic advantage deriving directly and immediately from the crime, and it is determined by the net real profit (benefit) achieved and cannot include the lawful activities carried out in the same context.
1461. The decision concerning a case of fraud in public tender explains that the profit is to be determined taking into account the economic advantage obtained by the victim as a consequence of the execution of the contract. In other words, the profit subject to confiscation should be intended as “net profit” and therefore identified as part of the price exceeding the aforementioned victim’s advantage.
1462. In this regard, the case law, in line with scholarly opinions, has made it clear that confiscation is not anymore based only on the danger arising from the availability of instrumentalities for committing the crime and with the aim of preventing further crimes from being committed. In fact, the only purpose of the value confiscation is to deprive the offender of the profit derived from the offence itself.
1463. For instance, if the bribery helped in the phase of awarding a contract, but then the contracting firm has regularly fulfilled the obligations arising from the contract (lawful), the advantage of the

bribery offence for the briber does not correspond to the full price of the contract, but only to the actual (or net) economic advantage obtained by the briber.

1464. Another kind of confiscation, “confisca allargata”, provided for by Article 12 sexies of Legislative Decree 306 of 8 June 1992 and amendments, fits into the category of confiscation as a security measure. It requires a conviction or the application of a sentence at the request of the parties. It is worth mentioning because pursuant thereto, a confiscation system has been introduced that is linked to a lesser extent to the criminal activity set forth in the indictment and more to the disproportion between the convict’s assets and his income or business origin of which he cannot justify. The person concerned has to be convicted of serious offences such as mafia-type association or criminal association for the purposes of human trafficking, extortion, kidnapping for extortion, usury, money-laundering, terrorist offences and nearly all of the offences against the public administration, including corruption offences.

#### ***Article 240 Criminal Code - Confiscation***

Upon a conviction, the judge may order the confiscation of anything which was used or intended for use in committing the offence, and anything which is the product or profit thereof. Confiscation shall always be ordered for:

- 1) anything which represents the proceeds of the offence;
- 2) things whose manufacture, use, transportation, possession, or transfer constitutes an offence, even though no conviction has been pronounced.

The provisions of the first paragraph and of the subparagraph (1) of the preceding paragraph shall not apply if the thing belongs to a person who was not concerned in the offence.

The provisions of the subparagraph (2) shall not apply if the thing belongs to a person who was not concerned in the offence and its manufacture, use, transportation, possession, or transfer is permissible when proper administrative authorization is obtained.

#### ***Article 322-ter Criminal Code - Confiscation***

In case of conviction, or of application of punishment upon request of the parties pursuant to art. 444 of the Code of Criminal Procedure, for any of the offences as per articles 314 to 320, even though they were committed by the persons referred to in article 322-bis, first paragraph, confiscation of the goods representing the price or the proceeds thereof shall always be ordered, unless the said goods belong to a person who has not committed the offence; if said confiscation is not possible, the confiscation of the goods which the offender has at his disposal shall be ordered for a value corresponding to such price.

In case of conviction or of application of punishment pursuant to article 444 of the Code of Criminal Procedure, as regards the offence provided for in article 321, even though it was committed in relation to art. 322-bis, second paragraph, confiscation of the goods representing the proceeds thereof shall always be ordered, unless the said goods belong to a person who has not committed the offence; if said confiscation is not possible, the confiscation of the goods which the offender has at his disposal shall be ordered for a value corresponding to that of the said proceeds and, at all event, for a value which is not inferior to that of money or other assets given or promised to the public official or to the person in charge of a public service or to other persons referred to in

art. 322-bis, second paragraph.

In the cases provided for in paragraphs 1 and 2 the judge shall also determine, with the conviction, the sums of money or indicate the goods which shall be confiscated since they represent the price or proceeds of the offence or since they have a value corresponding to that of such proceeds or price.

***Article 325-bis Criminal Code - Pecuniary provisions***

Without prejudice to the provisions set forth in Article 322-ter, in case of conviction for the offences as per this chapter, the confiscation shall at all events be ordered also as regards cases provided for in Article 240, first paragraph.

(Introduced by Article 6 of Law 27 March 2001, n. 97)

***Article 12sexies of Legislative Decree 306 of 8 June 1992 Special cases of confiscation***

1. In the cases of conviction or imposition of punishments upon request pursuant to Article 444 of the Code of Criminal Procedure, for any of the offences as per Articles 314, 316, 316 bis, 316 ter, 317, 318, 319, 319 ter, 320, 322, 322 bis, 325, 416 bis, 629, 630, 644, 644 bis, 648, except for the cases referred to in paragraph 2, 648 bis, 648 ter of the Criminal Code, and per Article 12 quinquies, paragraph 1, of Decree-Law no. 306 of 8 June 1992, converted, with amendments, into Law no. 356 of 7 August 1992, or for any of the offences designated in Articles 73, except for the cases as per paragraph 5 thereof, and 74 of the consolidated text of the law regulating narcotic drugs and psychotropic substances, prevention, care and rehabilitation of the corresponding drug-dependencies, approved with Presidential Decree no. 309 of 9 October 1990, confiscation shall always be ordered for the money, goods or assets whose origin cannot be accounted for by the offender and which the latter, with or without the agency of natural or legal persons, is found to own or have at his disposal for whatever purpose out of all proportion to his income, as reported in the income tax return, or to his own economic activity.

***Article 19.1 Legislative Decree 231/2001:***

“the confiscation of the price or the proceeds of the offence, apart from the portion which may be given back to the damaged person, shall always be ordered against the body.”

Furthermore, article 19.2 provides that confiscation of “sums of money” or property of equivalent value (“goods or other advantages”) is possible where the bribe or proceeds themselves may no longer be available.

1465. Seizure as an interim security measure is provided for by Articles 253-255 and 321 of the Criminal Procedure Code (CPC). In particular, the seizure of assets prior to confiscation can be ordered by the competent judge (or public prosecutor in urgent cases), at any moment during the investigation process, in two cases: (1) when it is necessary to prevent the commission of an offence, or its continuation, or when they are subject to confiscation (preventive seizure); and (2) when the assets can serve as evidence in the investigation (probatory seizure). Such seizure can be executed without prior notice to the party concerned. If urgent investigatory action is required, the competent

prosecution and police authorities may temporarily seize assets; these measures must be confirmed by the court within 48 hours (Article 321(3)-ter CPC).

1466. The authorities may initiate specific investigations aimed at identifying, tracing and freezing the proceeds of crime and are entitled to request data on the suspect from different bodies, e.g. tax authorities, banks, etc. The competent judge is entitled to order the seizure of documents, valuables, bonds, shares, securities and money deposited in bank accounts (Article 255 CPC) belonging to, not only the main suspect, but also third persons (so-called nominees) when reasonable grounds exist to believe that those assets were acquired in the framework of the commission of the offence being investigated. Further investigative measures may be employed by law enforcement authorities to prosecute criminal offences effectively, for example, Law 172/92 allows for the controlled delivery of funds suspected to be linked to a money laundering operation. Likewise, Law 146/2006 implementing the Palermo Convention, allows public prosecutors to continue to investigate, trace and identify those assets derived from transnational organised crime offences until the date of conviction before the court (Article 12, Law 146/2006).

#### ***Article 321 Code of Criminal Procedure - Preventive seizure***

When there is the danger that the free availability of a thing pertaining to the offence could aggravate or extend the consequences of the offence or facilitate the commission of other offences, the judge having jurisdiction to rule on the merits, upon request of the public prosecutor, shall order by reasoned decree that said thing be seized. Prior to the initiation of criminal proceedings, seizure shall be ordered by the judge for preliminary investigations.

The judge may also order the seizure of any property that may be confiscated.

(2-bis) During criminal proceedings relating to the offences specified in Chapter I, Heading II of the second Book of the criminal code, the judge shall order the seizure of any property that may be confiscated.

Seizure shall immediately be revoked upon request of the public prosecutor or the person concerned when the conditions of applicability provided for in paragraph 1 are not met, also as the result of subsequent events. During the preliminary investigations, the public prosecutor shall rule by reasoned decree served on all those entitled to lodge an appeal. When the person concerned requests that seizure be revoked, the public prosecutor who holds that such a request is to be even partially turned down, shall send it to the judge and shall submit his/her specific requests and the elements on which his/her reasoning is grounded. The request shall be transmitted no later than the day following the day on which it was filed with the judge's clerk.

(3-bis) During the preliminary investigations, when it not possible to wait for the judge's decision, because of the situation of urgency, seizure shall be ordered by the public prosecutor by reasoned decree. In the same cases, prior to the intervention of the public prosecutor, seizure shall be carried out by judicial police officers who, within 48 hours from seizure, shall transmit their written report to the public prosecutor of the place where the seizure was carried out. The public prosecutor who does not order that the property seized be returned, shall ask the judge to confirm the seizure and to issue the decree provided for in paragraph 1 within 48 hours from seizure, when the seizure was ordered by the public prosecutor, or from receipt of the written report, when the seizure was carried out by the judicial police on their own motion.

(3-ter) Seizure shall lapse when the time limits provided for in paragraph 3-bis are not complied

with or when the judge does not issue the confirmation order within ten days from receipt of the request. A copy of the order shall be immediately served on the person whose property has been seized.

***Article 253 of the Code of Criminal Procedure Seizure - Object and formalities***

The judicial authority shall order by reasoned decree the seizure of the corpus delicti and things pertaining to the offence which are necessary to ascertain the facts.

Corpus delicti means things on which or through which the offence was committed as well as things that constitute the product, benefits or proceeds of the offence.

The judicial authority or a judicial police officer delegated by the above-mentioned decree shall personally carry out the seizure.

Copy of the seizure decree shall be given to the person concerned, if present.

1467. Following a very recent legislative amendment, the provisions of the Legislative Decree Nr. 159/2011 ("Code of Anti-mafia Laws and preventive measures, and new provisions on anti-mafia documents, in compliance with articles 1 and 2 of the August 13, 2010 Law Nr. 136) are currently applicable also against persons under investigation for the offences of the present Convention and therefore non-conviction based measures affecting persons and properties can be adopted.

***(b) Observations on the implementation of the article***

1468. The explanations above are more relevant to the subparagraph 2(b) of article 54.

1469. Italy confirmed at the country visit that this provision (subparagraph 2(a) of article 54) is directly applicable to Italy, and the competent authorities can freeze or seize property upon a freezing or seizure order issued by foreign States.

1470. It was concluded that Italy has implemented this provision of the Convention.

***Subparagraph 2 (b) of article 54***

*2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:*

...

*(b) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a request that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article; and*

***(a) Summary of information relevant to reviewing the implementation of the article***

1471. See above, under subparagraph a)

*(b) Observations on the implementation of the article*

1472. The Criminal Procedure Code (art. 737-bis) provides the procedure to entertain a request by a foreign authority to freeze or seize property.

1473. It was concluded that Italy has implemented this provision of the Convention.

*Subparagraph 2 (c) of article 54*

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

...

*(c) Consider taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property.*

*(a) Summary of information relevant to reviewing the implementation of the article*

1474. See above. In the cases where Italian jurisdiction is applicable and also when the offence was fully committed abroad, the Judicial Authority can adopt the above seizure and confiscation measures.

*(b) Observations on the implementation of the article*

1475. In addition to the seizure and confiscation measures stated above, Italy reported at the country visit that proactive preservation of property is also possible.

1476. It was concluded that Italy has implemented this provision of the Convention.

## **Article 55. International cooperation for purposes of confiscation**

*Paragraph 1 of article 55*

1. A State Party that has received a request from another State Party having jurisdiction over an offence established in accordance with this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

*(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or*

*(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with articles 31, paragraph 1, and 54, paragraph 1 (a), of this Convention insofar as it relates to proceeds*

*of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, situated in the territory of the requested State Party.*

*(a) Summary of information relevant to reviewing the implementation of the article*

1477. In order to implement this provision it was not necessary to introduce adapting rules in the system.
1478. As to the mechanism of recognition of foreign orders of confiscation, provided for in Italy's code of Criminal Procedure since 1989, see para. 1307 and 1415 et seq.
1479. Italy has established an effective legal regime in the fight against organized crime, including the introduction of preventive measures on assets (i.e. seizure and confiscation), the main purpose of which is to recover illicitly gained assets.
1480. The Italian LEAs have established a single point of contact (spoc) for asset tracing and identification when cross-border investigations are requested by law enforcement services.
1481. The police cooperation is ensured through Interpol. The exchange of information for asset recovery purposes is also assured through the Camden Asset Recovery Inter-Agency Network (CARIN) which is the preferred channel within the members of the group. The CARIN is becoming more and more active, providing an effective cooperation also in real operational cases.
1482. Based on an EU Council Decision, the Chief of the Italian Police designated the International Police Cooperation Service, which acts as spoc for the LEAs, as the Italian Asset Recovery Office (ARO).
1483. Within said Office, a working group was created for receiving all the requests concerning this topic worldwide, regardless the police channel used.
1484. The National Office is charged with the facilitation of the tracing and identification of proceeds from, or other property related to, crime that may become liable to seizure or confiscation by the Judicial authorities and for this purpose it cooperates with the other counterparts through the exchange of information and best practices, both on request and spontaneously.
1485. At European level, the National Office responds to the request under the time limit fixed by the Council Framework Decision 2006/960/JHA, dated 18 December 2006, on simplifying the exchange of information and intelligence between EU countries' law enforcement authorities (so called "Swedish initiative" implemented into Italian legislation by the Legislative Decree No. 54 dated 23 April 2015), using the connections to the available databases at the International Police Co-operation Service.
1486. All 28 EU Member States set up their National Office respectively, adhering to the will of the Community Legislator aimed at establishing an "international cooperation channel" for police and judicial authorities, able to expedite procedures as well as to promote and facilitate the activities of:
- Cooperation between the offices in charge of the execution of an order of freezing, seizure or confiscation of proceeds of crime and other related property issued by the judicial authorities in the course of criminal or, as far as possible under the national law of the Member State concerned, civil proceedings;
  - Exchange of information on request, for the purposes of the tracing and identification of

proceeds of crime and other crime-related assets;

- Exchange of information spontaneously for the purposes of the tracing and identification of proceeds of crime and other crime-related assets;
- Exchange of best practices both on request and spontaneously.

1487. The Italian ARO directly accesses to several databases including those concerning lands and buildings, the tax returns of natural and legal persons, pension system, register of undertaking, register of vehicles as well as the police databases.

1488. In case further and thorough investigations on the territory or at public and private bodies are required, the National Office requests closer examinations of the relevant National Police Forces which are involved based on the type of crime committed by the person under investigation or previous investigations carried out by them.

1489. With regard to seizure and confiscation, the Ministry of the Interior collects the statistical data resulting from the monitoring made by the Crime Analysis Service concerning the measures executed by the National Police, Carabinieri Force, Guardia di Finanza Service and Anti-mafia Investigations Directorate, as well as the asset-related preventive measures and the coercive measures involving the transfer of assets, according to Art.12 sexies of Law by Decree No. 306/1992, converted into Law No. 356/1992 (so called “extended confiscation”). Said data refer only to the operations which have been communicated by the major Italian Police Forces. These data are partial since they refer only to the coercive measures involving the transfer of assets, according to the Anti-Mafia Code. The data refer to all crimes for which these coercive measures were issued; no details about the measures issued further to investigations on specific offences and/or corruption can be extrapolated.

*(b) Observations on the implementation of the article*

1490. The Criminal Procedure Code of Italy provides a framework for the recognition of foreign judgements, freezing or confiscation orders (art. 730 et seq.).

1491. Special provisions for executing confiscation orders have been adopted in order to implement the framework decision 2006/783/JHA on the enforcement of the principle of mutual recognition of confiscation orders (Legislative Decree n. 137 of August 7<sup>th</sup> 2015, see letter (C) at the end). Such rules, that are enforceable only for the other EU Member States, prevail over the provisions of the Italian Code of Criminal Procedure.

1492. Regarding the international cooperation with foreign authorities, the general principle shall apply according to which the provisions of the European Union's law, conventions and general international law prevail. On the basis of this principle, provisions of the Italian Code of Criminal Procedure are enforceable only in the absence of international sources or when it is not otherwise provided by them (Article 696 of the Italian Code of Criminal Procedure).

1493. Italy considers the Convention to be the necessary and sufficient treaty basis for international cooperation under art. 55 (1) and (2).

1494. It was concluded that Italy has implemented this provision of the Convention.

### *Paragraph 2 of article 55*

2. Following a request made by another State Party having jurisdiction over an offence established in accordance with this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

#### *(a) Summary of information relevant to reviewing the implementation of the article*

1495. See Article 54. Article 737 bis of the Code of Criminal Procedure.

#### *(b) Observations on the implementation of the article*

1496. Italy can take relevant measures to identify, trace and freeze or seize provided under this paragraph, pursuant to Article 737 bis of the Code of Criminal Procedure.

1497. Italy considers the Convention to be the necessary and sufficient treaty basis for international cooperation under art. 55 (1) and (2).

1498. It was concluded that Italy has implemented this provision of the Convention.

### *Paragraph 3 of article 55*

3. The provisions of article 46 of this Convention are applicable, *mutatis mutandis*, to this article. In addition to the information specified in article 46, paragraph 15, requests made pursuant to this article shall contain:

(a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated, including, to the extent possible, the location and, where relevant, the estimated value of the property and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

(b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested, a statement specifying the measures taken by the requesting State Party to provide adequate notification to bona fide third parties and to ensure due process and a statement that the confiscation order is final;

(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested and, where available, a legally admissible copy of an order on which the request is based.

#### *(a) Summary of information relevant to reviewing the implementation of the article*

1499. The Italian Criminal Procedure Code has a wide range of provisions regarding the recognition and the execution of freezing, seizure and confiscation orders. More particularly: 1) article 737-bis regulates investigations and seizure for purposes of confiscation; 2) article 737 regulates the issuing of a Italian seizure in view of the recognition of a foreign confiscation order; 3) articles 731 paragraph 1-bis, 735 paragraph 6 and 738 regulate the recognition and the execution of a foreign confiscation order, issued together or separately from a conviction judgement.

*(b) Observations on the implementation of the article*

1500. It was confirmed at the country visit that this provision is self-executing in Italy and has been implemented. If required items are not stated, the request will be refused.

1501. It was concluded that Italy has implemented this provision of the Convention.

*Paragraph 4 of article 55*

*4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral agreement or arrangement to which it may be bound in relation to the requesting State Party.*

*(a) Summary of information relevant to reviewing the implementation of the article*

1502. Bilateral and multilateral agreements signed by and entered into force for Italy (including the Convention and the two relevant Conventions reached within the Council of Europe, namely the *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime* signed in Strasbourg on 8.11.1990 and the *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism* signed in Warsaw on 16.5.2005) are fully and directly applicable, since they prevail on the legal provisions of the Criminal Procedure Code, according to article 696 paragraph 2 and 3 of the same Code, providing for:

2. In the relations with States other than those Members of the European Union, extraditions, requests for international mutual assistance, effects of foreign criminal judgments, execution of Italian criminal judgments in foreign countries and the other relations with foreign authorities related to the administration of justice in criminal matters shall be regulated by the provisions of international conventions in force in Italy and the provisions of general international law.

3. In the absence of the provisions under paragraphs 1 and 2 or when they provide otherwise, the provisions of this Book shall apply.

*(b) Observations on the implementation of the article*

1503. It was confirmed at the country visit that provisions of bilateral or multilateral agreement (including the Convention) apply, and the Code of Criminal Procedure applies even in the absence of such an agreement.

1504. It was concluded that Italy has implemented this provision of the Convention.

*Paragraph 5 of article 55*

*5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.*

*(a) Summary of information relevant to reviewing the implementation of the article*

1505. Italy has provided excerpts of relevant legislation to the secretariat during the course of the review.

*(b) Observations on the implementation of the article*

1506. Italy has provided excerpts of relevant legislation to the secretariat during the course of the review.

1507. It was concluded that Italy has implemented this provision of the Convention.

*Paragraph 6 of article 55*

*6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.*

*(a) Summary of information relevant to reviewing the implementation of the article*

1508. See answer para. 1502.

*(b) Observations on the implementation of the article*

1509. It was confirmed at the country visit that Italy considers the Convention to be the necessary and sufficient treaty basis for international cooperation under art. 55 (1) and (2).

1510. It was concluded that Italy has implemented this provision of the Convention.

*Paragraph 7 of article 55*

*7. Cooperation under this article may also be refused or provisional measures lifted if the requested State Party does not receive sufficient and timely evidence or if the property is of a de minimis value.*

*(a) Summary of information relevant to reviewing the implementation of the article*

1511. The above quoted articles 737-bis, 737, 731, 735 and 738 of the Criminal Procedure Code (see answer para. 1499) do not set a *de minimis* threshold for the cooperation regarding asset recovery.

According to article 731 paragraphs 1 and 1-bis (*1. If the Minister of Justice deems that under an international agreement a criminal judgment delivered in a foreign country shall be enforced in Italy or this judgment shall in any case take other effects in Italy, he/she shall ask for its recognition. To that purpose the Minister shall transmit a copy of the judgment, with the relevant translation into Italian, any attached documents and related information and documents without delay to the Prosecutor General attached to either the Court of Appeal in the district where the local Criminal Records Office of the place of birth of the person against whom the foreign judicial decision has been made is based or, if unknown, the Court of Appeal of Rome. He shall also forward a request, if any, for enforcement in Italy by the foreign State or the decision by which that State gives its consent to the enforcement. Further information, if necessary, may be requested and obtained by any means suitable to ensure the authenticity and origin of the documents. 1-bis. The provisions of paragraph 1 shall also apply when confiscation is enforced and the relevant decision has been made by a foreign judicial authority by a decision other than a judgment of conviction*), cooperation related to recognition of judgments of confiscation may be refused due to a lack of evidence. The same argument could be raised for cooperation related to investigations and seizure for purposes of confiscation. This is on the basis of article 737-bis of the Criminal Procedure Code (*1. In the cases provided for by international agreements, in order to give effect to a request made by a foreign authority to conduct investigations on assets that may be subject to a subsequent request for confiscation, though not yet adopted, or to seize such assets, Articles 723, 724 and 725 shall apply. 2. To that purpose, the Minister of Justice shall transmit the request with the attached documents to the District Prosecutor holding jurisdiction under Article 724. 3. The execution of a request for investigations or seizure shall be rejected: a) if the requested measures are contrary to the principles of the Italian legal system or are forbidden by law or if such measures would have not been allowed if the same offences had been prosecuted in Italy; b) if there are reasons for believing that the conditions for the subsequent enforcement of confiscation are not satisfied. 3-bis. The judicial authority shall inform the Minister of Justice that a seizure order has been issued as requested by the foreign authority. 4 (...). 5 (...). 6. The seizure ordered pursuant to this article shall no longer take effect and the seized assets shall be returned to their legitimate owner if the foreign State does not ask for the enforcement of a confiscation order within one year after the seizure has been enforced. This time limit may be extended several times for a maximum period of 6 months. It is up to the judicial authority that has ordered the seizure to make a decision on the request*).

*(b) Observations on the implementation of the article*

1512. It was confirmed at the country visit that cooperation may be refused due to a lack of evidence, and Italy does not set a *de minimis* threshold for the cooperation.

1513. It was concluded that Italy has implemented this provision of the Convention.

*Paragraph 8 of article 55*

8. Before lifting any provisional measure taken pursuant to this article, the requested State Party shall,

wherever possible, give the requesting State Party an opportunity to present its reasons in favour of continuing the measure.

*(a) Summary of information relevant to reviewing the implementation of the article*

1514. The legal provision set out in article 696-quarter paragraph 3 of the Criminal Procedure Code (*Any supplementary document and enquiry, and any further information necessary to enforce the decisions and orders whose recognition is sought, shall be directly transmitted between the judicial authorities*) expressly regards the relationships between Italy and the other States members of the European Union. However, article 725 paragraph 3 of the Criminal Procedure Code provides, as a general principle, that the requesting foreign State (regardless of the membership of the European Union) can be authorized to attend the execution of the requested cooperation. Paragraph 4 of the same article provides for the initiation of a direct dialogue between the requested and the requesting authorities in case of any issues. Moreover, article 55 paragraph 8 is equal to article 12 paragraph 2 of the *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime* signed in Strasbourg on 8.11.1990 (*Before lifting any provisional measure taken pursuant to this article, the requested Party shall, wherever possible, give the requesting Party an opportunity to present its reasons in favour of continuing the measure*) and this Convention, as already stated in para. 1502, is fully and directly applicable in Italy accordingly to article 696 of the Criminal Procedure Code.

*(b) Observations on the implementation of the article*

1515. It was confirmed at the country visit that Italy has a process to notify the requesting State party, according to the legal provisions quoted in para. 1514.

1516. It was concluded that Italy has implemented this provision of the Convention.

*Paragraph 9 of article 55*

*9. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.*

*(a) Summary of information relevant to reviewing the implementation of the article*

1517. A wide range of legal provisions protects the rights of bona fide third parties. More particularly, as follows.

1) Art. 733 paragraph 1-bis of the Criminal Procedure Code envisages, “*a foreign judgment may not be recognized to enforce confiscation where this concerns items whose confiscation would not have been possible under Italian law if the offence had been prosecuted in Italy.*” It must be read together with art. 322-ter of the Criminal Code, which forbids the confiscation of assets belonging to persons not involved in the crime.

2) Art. 734 of the Criminal Procedure Code foresees that the judgment on the recognition of a foreign confiscation order shall be taken by the Court of Appeal pursuant to the proceedings provided for in article 127 of the same Code, according to which the participation of every interested person is

mandatory.

3) Art. 737 paragraph 2 of the Criminal Procedure Code establishes, “A *seizure order may be challenged before the Court of Cassation for breach of law by the person concerned.*”

4) Art. 737-bis paragraph 3 of the Criminal Procedure Code states, “*The execution of a request for investigations or seizure shall be rejected: a) if the requested measures are contrary to the principles of the Italian legal system or are forbidden by law or if such measures would have not been allowed if the same offences had been prosecuted in Italy; b) if there are reasons for believing that the conditions for the subsequent enforcement of confiscation are not satisfied.*” Also this article must be read in view of the prohibition set out in art. 322-ter of the Criminal Code.

Finally, article 52 of the Anti-Mafia Code protects the rights of bona-fide third parties in relation to non-conviction based confiscations.

#### *(b) Observations on the implementation of the article*

1518. The rights of bona fide third parties are protected, in accordance with the legal provisions quoted in para. 1517.

1519. It was concluded that Italy has implemented this provision of the Convention.

### **Article 56. Special cooperation**

*Without prejudice to its domestic law, each State Party shall endeavour to take measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on proceeds of offences established in accordance with this Convention to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this chapter of the Convention.*

#### *(a) Summary of information relevant to reviewing the implementation of the article*

1520. It was not necessary to introduce legislative amendments in the domestic system to implement the present provision. The possibility for the prosecuting judicial authorities to send information on the proceeds of the offences provided for by the Convention with due regard to the need to avoid prejudices to investigations stems directly from Article 56 of the Convention which has been fully implemented based on Article 2 of Law 116/2009 authorizing its ratification.

1521. Italy can and actually makes a proactive use of spontaneous transmission of information both on the passive and on the active sides. On the active side, Italy has in particular an example of spontaneous transmission of information by the Milan Public Prosecutor Office (PPO) to the Argentinian Authorities in a case of bribery possibly relevant for them. On the passive side, the very well-known case Petrobras/Techint was activated in Italy also through the information transmitted by the Brazilian Authorities (the Federal PPO of the State of Parana).

1522. It should be noted that Italy also makes a proactive use of the relevant information about possible

cases of bribery taken from the official working documents of, in particular, the WGB of the OECD. Where a suspect case of international bribery involving an Italian legal or natural person emerges from the WGB relevant documents, the Ministry of Justice promptly forwards the information to the relevant PPO or diplomatic authorities to take the most appropriate steps in order to start investigations or to acquire further information.

*(b) Observations on the implementation of the article*

1523. Italy can conduct spontaneous transmission of information as provided by the Convention, based on its direct applicability in Italy.

1524. It was concluded that Italy has implemented this provision of the Convention.

**Article 57. Return and disposal of assets**

*Paragraph 1 of article 57*

1. *Property confiscated by a State Party pursuant to article 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law.*

*(a) Summary of information relevant to reviewing the implementation of the article*

1525. Article 5 of the Law authorizing ratification of the Convention, law 116 of 3 August 2009, introduced two new articles in Book XI Title IV, Chapter I of the Code of Criminal Procedure.

1526. Three fundamental principles are at the basis of the new regulation of transfer to a foreign State. First of all, transfer cannot be carried out without prior recognition of the foreign judgment or decision ordering confiscation of the properties under Article 31 of the Convention. Second, transfer cannot be carried out without the relevant express request by the foreign State, under Article 740-bis, paragraph 2, subparagraph b) of the Code of Criminal Procedure. Last but not least, transfer shall be ordered at the same time of recognition of the foreign judgment or decision ordering confiscation (Article 740-ter, paragraph 1 of the Code of Criminal Procedure). Article 740-ter, paragraph 1, combined with 740-bis, paragraph 2, subparagraph b) of the Code of Criminal Procedure reveal that a foreign State will have to request transfer of the properties provided for by Article 31 of the Convention at the same time of the request for recognition of the confiscation judgment or decision of these same properties.

***Article 740-bis of the code of criminal procedure - Transfer to a foreign State of confiscated properties***

1. In the cases provided for by international agreements in force in the State, properties confiscated with a final judgment or another irrevocable order shall be transferred to the foreign State where the confiscation order was issued or adopted.
2. The transfer under paragraph 1 shall be ordered when the following requirements are met:
  - a) The foreign State made an explicit request;

- b) The judgment or the order under paragraph 1, were recognized in the State under Articles 731, 733 and 743.

***Article 740-ter of the Code of Criminal Procedure - Transfer order***

1. The Court of Appeal, when recognizing a foreign judgment or a confiscation order, shall order that confiscated properties under Article 740-bis be transferred.
2. A copy of this order shall be immediately sent to the Minister of Justice, who shall agree on the transfer procedure with the requesting State.

**Cases**

1527. Case concerning PIZZOLATO Henrique, born on 9.9.1952 in Brazil. He was arrested in Maranello on 12 Feb. 2015 by Officers of the local Carabinieri Station upon an international arrest warrant issued by the Federal Supreme Court of Brazil for crimes of handling of stolen goods and corruption. He was extradited on 22.10.2015 <[https://en.wikipedia.org/wiki/Henrique\\_Pizzolato](https://en.wikipedia.org/wiki/Henrique_Pizzolato)>. The Court of Appeal in Bologna ordered the return to Brazil of the total amounts seized to Pizzolato which were deposited on an Italian current account.
1528. Case concerning the return to Tunisia of the yacht of Ben Ali's family. On 23.01.2011, NCB in Tunis launched a search at the international level for the provisional arrest with a view to extradition of Ben Ali Zine El-Abidine, former President of the Tunisian Republic and his closest entourage, for power abuse, financial crimes and handling of stolen goods. Subsequently, Interpol set up a dedicated task force to draw up a list of people holding assets stolen from the Republic of Tunisia in order to freeze them in compliance with the International Rogatory Letters issued by the authorities of that country. In May 2011, further to the tracing of a vessel having a value of about one million Euros in Italy, the Tunisian Judicial Authority issued a Rogatory Letter asking the Court of Appeal in Rome to seize the assets owned by the former head of the North African State, Zine El Abdine Ben Ali' and his family. The Court of Appeal of Rome (IV Penal Section) ordered its seizure, under a Convention signed in 1967 between Italy and the Maghrebi country. Subsequently, the Tunisian Magistrates forwarded an integration to the Rogatory Letter to the Italian Ministry of Justice in order to obtain the return of the yacht, as an international courtesy, also in virtue of a ruling issued by the Court of First Instance in Monastir (Tunisia). After some repair works, the vessel was entrusted to a delegate from the Tunisian Government and in April 2013 it was returned to Tunisia. Within their own jurisdiction, the Judicial Authority, the Guardia di Finanza Service, the International Police Cooperation Service, and the Ministry of the Foreign Affairs acting as the focal point for Italy of the coordination Group established for implementing G8 commitments were involved. <<http://www.repubblica.it/ultimora/24ore/Tunisia-restituito-yachtfamiglia-ex-presidente-Ben-Ali/news-dettaglio/4329745>>

***(b) Observations on the implementation of the article***

1529. Provisions governing the transfer of assets to a foreign state are set forth within the Criminal Procedure Code of Italy (arts. 740-bis and 740-ter). The laws of Italy permit the transfer of assets to a foreign state upon the recognition of the foreign state's confiscation judgment or decision and upon the express request of the foreign state.

1530. Italy successfully used domestic asset transfer and international cooperation procedures to conclude the seizure and return of assets to Tunisia.

1531. It was concluded that Italy has implemented this provision of the Convention.

*Paragraph 2 of article 57*

2. Each State Party shall adopt such legislative and other measures, in accordance with the fundamental principles of its domestic law, as may be necessary to enable its competent authorities to return confiscated property, when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of bona fide third parties.

*(a) Summary of information relevant to reviewing the implementation of the article*

1532. Please see above, answers para. 1525-1531, with specific regard to article 5 of the law authorizing the ratification of the Convention (Law 116 of 3 August 2009), which introduced two new articles in Book XI Title IV Chapter I of the Criminal Procedure Code, namely articles 740-bis and 740-ter.

*(b) Observations on the implementation of the article*

1533. Provisions governing the transfer of assets to a foreign state are set forth within the Criminal Procedure Code of Italy (arts. 740-bis and 740-ter). The laws of Italy permit the transfer of assets to a foreign state upon the recognition of the foreign state's confiscation judgment or decision and upon the express request of the foreign state.

1534. The rights of bona fide third parties are protected at the return of confiscated property (see, for instance, sec. 52, Anti-Mafia Code), same as at the confiscation process.

1535. It was concluded that Italy has implemented this provision of the Convention.

*Subparagraph 3 (a) of article 57*

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

*(a) In the case of embezzlement of public funds or of laundering of embezzled public funds as referred to in articles 17 and 23 of this Convention, when confiscation was executed in accordance with article 55 and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party;*

*(a) Summary of information relevant to reviewing the implementation of the article*

1536. The process provided under this subparagraph is available due to the self-executing nature of the provision. Moreover, in the envisaged case of *embezzlement of public funds or of laundering of embezzled public funds*, the return of the confiscated property to the requesting State Party is allowed

by articles 740-bis and 740-ter of the Criminal Procedure Code.

*(b) Observations on the implementation of the article*

1537. It was confirmed at the country visit that the process provided under this subparagraph is available due to the self-executing nature of this provision.

1538. It was concluded that Italy has implemented this provision of the Convention.

*Subparagraph 3 (b) of article 57*

*3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:*

...

*(b) In the case of proceeds of any other offence covered by this Convention, when the confiscation was executed in accordance with article 55 of this Convention and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property to the requested State Party or when the requested State Party recognizes damage to the requesting State Party as a basis for returning the confiscated property;*

*(a) Summary of information relevant to reviewing the implementation of the article*

1539. The process provided under this subparagraph is available due to the self-executing nature of the provision. Moreover, in the envisaged case of *proceeds of any other offence covered by this Convention*, the return of the confiscated property to the requesting State Party is allowed by articles 740-bis and 740-ter of the Criminal Procedure Code.

*(b) Observations on the implementation of the article*

1540. It was confirmed at the country visit that the process provided under this subparagraph is available due to the self-executing nature of this provision.

1541. It was concluded that Italy has implemented this provision of the Convention.

*Subparagraph 3 (c) of article 57*

*3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:*

...

*(c) In all other cases, give priority consideration to returning confiscated property to the requesting*

*State Party, returning such property to its prior legitimate owners or compensating the victims of the crime.*

*(a) Summary of information relevant to reviewing the implementation of the article*

1542. As to the transfer of assets to a foreign State, see comments on arts. 740-bis and 740-ter of the Criminal Procedure Code under para. 1299, 1301, 1306, 1526. As to the transfer of assets in favour of the victim, see para. 1315-1317.

*(b) Observations on the implementation of the article*

1543. It was confirmed at the country visit that the process provided under this subparagraph is available due to the self-executing nature of this provision.

1544. Italy also reported that the laws of Italy further permit transfers to victims in a foreign state in circumstances where Italy has initiated its own confiscation proceedings. More details can be found, above, in the paragraphs stated in para. 1542.

1545. It was concluded that Italy has implemented this provision of the Convention.

*Paragraph 4 of article 57*

*4. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property pursuant to this article.*

*(a) Summary of information relevant to reviewing the implementation of the article*

1546. Except for the relations with other member States of the European Union, the Italian legislation does not provide for specific rules for agreement with a foreign State on distributing the sums and/or confiscated assets. Therefore, there are no specific rules on deduction of expenses.

1547. It is nonetheless possible to consider the deduction of expenses, and significance of the activities carried out by the Italian judicial authorities will be taken into account.

1548. In any case in the absence of specific provisions, the principle of reciprocity shall apply.

*(b) Observations on the implementation of the article*

1549. Except for asset return to European Union member States, there are no specific rules on deduction of expenses incurred. However, such a deduction may be possible with consideration of the activities conducted by the judicial authorities of Italy.

1550. It was concluded that Italy has implemented this provision of the Convention.

### *Paragraph 5 of article 57*

5. Where appropriate, States Parties may also give special consideration to concluding agreements or arrangements, on a case-by-case basis, for the final disposal of confiscated property.

#### *(a) Summary of information relevant to reviewing the implementation of the article*

1551. As there is not a general domestic legislation on asset sharing, Italy fully abides by international obligations, including the Convention. There is no obstacle to the implementation of international treaties provisions providing for the conclusion of asset sharing agreements. Indeed, such agreements are provided for and generally governed in article 14 of the Legislative Decree 7.8.2015 n. 137 implementing article 16 of the Framework Decision 2006/783/JHA of the European Union, according to the following criteria: in case the sum gained with the execution of the confiscation is up to 10.000 euros, all the money goes to the requested State; in case the sum exceeds the above mentioned amount of 10.000 euros, the 50% of the total amount is returned to the requesting State.

#### *(b) Observations on the implementation of the article*

1552. Italy has exercised on some occasions the capacity to conclude agreements with foreign jurisdictions regarding asset disposal consistent with this provision.

1553. It was also confirmed at the country visit that there is no obstacle to conclude agreements or arrangements for the final disposal of confiscated property. As there is no domestic legislation on asset sharing, Italy fully abides by international obligations including the Convention.

1554. It was concluded that Italy has implemented this provision of the Convention.

### **Article 58. Financial intelligence unit**

*States Parties shall cooperate with one another for the purpose of preventing and combating the transfer of proceeds of offences established in accordance with this Convention and of promoting ways and means of recovering such proceeds and, to that end, shall consider establishing a financial intelligence unit to be responsible for receiving, analysing and disseminating to the competent authorities reports of suspicious financial transactions.*

#### *(a) Summary of information relevant to reviewing the implementation of the article*

##### **Financial Intelligence Unit of Italy (UIF)**

1555. Established within the Bank of Italy (BoI) and operational since 1 January 2008, UIF is Italy's Financial Intelligence Unit, thus being defined as the national structure in charge of receiving information from obliged persons for suspected money-laundering or terrorist financing reporting, requesting information from these persons, analysing such information and transmitting it to the competent authorities" (See Art. 6 of Legislative Decree n. 231/2007, as

amended by the Legislative Decree n. 90/2017, implementing in Italy the Fourth AML/CFT EU Directive).

1556. UIF within the Bank of Italy is operational, in continuity with the FIU functions assigned to the former Italian FIU, the Ufficio Italiano dei Cambi, which was suppressed pursuant to the same Legislative Decree n. 231/2007. Italy's AML-CFT framework is based on a clear distinction between financial analyses and investigations: UIF is the competent authority to receive, analyse and disseminate the results of the financial analysis on suspicious transaction reports (STRs), while NSPV of GdF and DIA are the law enforcement authorities entitled to carry out investigations.

1557. Pursuant to Art. 6, para. 1 of the said Legislative Decree, UIF is autonomous and operationally independent of the Bank of Italy. UIF's autonomy from external influences can benefit from the Bank of Italy's considerable independence and autonomy, according to the rules of the ESCB and those governing national and European banking supervision.

### 1.1. Model and organizational features

1558. The administrative model was adopted for UIF to keep the task of financial analysis separate from the investigations, emphasizing the independent role of prevention and UIF's function as a 'buffer' to preserve a sound economic and financial system. The legal status of UIF stems from its institutional function as a center for collecting, coordinating and channeling data and information of significant public interest.

1559. The structure and operation of UIF are governed by a Regulation of the Governor of the Bank of Italy, first issued on 21 December 2007 and renewed after the unit was reorganized on 18 July 2014 (G.U. No. 250, 27 October 2014). The Director is appointed through a measure approved by the Directorate of the Bank of Italy, upon proposal of the Governor, among persons meeting suitable standards of integrity, experience and knowledge of the financial system. The Director has full authority and liability over the Unit, while the Bank of Italy provides financial resources, as well as premises, equipment, personnel and technical resources. A committee of Experts, composed of the Director and four members nominated by the Ministry of the Economy and Finance after consulting the Governor of the Bank of Italy, acts in an advisory capacity (Article 6, para. 3, Legislative Decree 231/2007).

### 1.2. UIF's core functions

1560. Pursuant to Art. 6, para. 4, lett. b), UIF shall exercise the key functions of receiving and analysing STRs received under art. 35 of Legislative Decree n. 231/2007, as amended by the Legislative Decree n. 90/2017, and of disseminating the results of its analyses.

- a) **Receiving:** According to the Art. 6, UIF shall receive suspicious transactions reported by all obliged entities (financial intermediaries, non-financial operators and professionals). All reporting entities are under the obligation to report STRs to UIF pursuant to Art. 35 of Legislative Decree n. 231/2007. Also in order to improve the quality of the information received from reporting entities, UIF issues instructions on the contents of STRs under Art. 6, para. 4, lett. d). The first set of instructions were issued by UIF on 4 May 2011. UIF shall examine any other fact that could be related to money-laundering or terrorist financing. To this end, UIF shall collect additional data from reporting parties, including by means of inspections, cooperation with

foreign FIUs, and within Italy, exchange of information and cooperation with financial supervisory authorities, judicial authorities, law enforcement bodies and other competent authorities.

In addition to STRs, the UIF periodically receives data and information identified on the basis of objective criteria, related to operations considered to be at risk of money laundering or terrorist financing. These data and information are used for financial analysis of suspicious transactions or for analysis of specific phenomena and typologies.

Moreover, apart from the above mentioned information, UIF shall receive:

- o aggregated data under Art. 33 of Legislative Decree n. 231/2007;
- o declarations of transactions and operations amounting to EUR 12,500 or more relating to investments in gold and transactions in gold material mainly for industrial use (See Art. 1, para. 2 of Law n. 7/2000).

All the above information is handled and integrated through computerized procedures.

- b) Analysing:** UIF is entitled to perform financial analysis and use all its powers of collection of relevant information. It should be noted that financial analysis concerns not only STRs but also unreported suspicious transactions of which UIF becomes aware on the basis of information contained in its database or sent by Law Enforcement Agencies, supervisory authorities of the financial sector or professional associations and reports from foreign FIUs (Art. 40, para.1, lett. a) of Legislative Decree n. 231/2007). In this respect, UIF performs both operational and strategic analysis, the latter aimed at identifying trends and typologies, also contributing to the national risk assessment developed within the Financial Security Committee. In order to perform its analysis functions, UIF has access to a wide set of sources pursuant to Legislative Decree n. 231/2007.

UIF, pursuant to Art. 6, para. 4, lett.c) of Legislative Decree n. 231/2007, has the power to suspend transactions suspected of involving money laundering or terrorist financing for up to five working days.

- c) Disseminating:** after the said analyses, UIF shall transmit STRs together with a technical report without delay, including on the basis of memoranda of understanding, to the DIA and the NSPV of Guardia di Finanza (GdF), which shall inform the National Anti-Mafia Prosecutor, whenever it relates to organised crime (Art. 40, para. 1, lett. d) of Legislative Decree n. 231/2007. UIF also cooperates with the Judicial Authority under Art. 13 of Legislative Decree n. 231/2007 and provides the information requested under Art. 256 of the Criminal Procedure Code, thus disseminating STRs, technical reports, as well as information from other FIUs in compliance with the international principles governing FIUs' exchange of information. The information referring to STRs shall be provided in compliance with the standard of security and confidentiality established by the same Legislative Decree n. 231/2007. The results of strategic analysis are mainly disseminated through the Annual Report, six month review, pattern of anomalies, trainings and provided for the National Risk Assessment.

1561. In addition, UIF performs the following functions:

#### **Analyses and Studies**

- § Performs analyses and studies of financial flows with a view to detecting and preventing money-laundering or terrorist financing (Art. 6, para. 4, lett. b);
- § conducts analyses and studies of individual anomalies relating to possible criminal activities of this kind, specific sectors of the economy considered to be at risk, categories of payment instruments and specific local economies (Art. 6, para. 7, lett. a), on the basis of the aggregate data transmitted on a monthly basis by banks and other intermediaries, with a view to detecting possible instances of money laundering or terrorist financing within certain geographical areas (Art. 33 of Legislative Decree n. 231/2007);

#### **Regulatory functions**

- § issues instructions on the content of STRs under Art. 6, para. 4, lett. d);
- § issues and updates anomaly indicators, to help obliged entities in detecting and reporting suspicious transactions (Art. 6, para. 4, lett. c);
- § elaborates models and patterns of anomalous conduct with reference to specific lines of business or phenomena relating to possible money-laundering or terrorist financing, and issuing instructions on data and information required in suspicious transaction reports (Art. 7, lett. b).

#### **Controls**

- § carries out controls, including inspections, and initiating sanction procedures in matters within its sphere of competence (Art. 6, para. 4, lett. f) and g) of Legislative Decree n. 231/2007).

#### **Cooperation and international activities**

- § takes an active part in the competent AML/CFT international organisations and bodies (FATF, Egmont Group, FIUnet) with its own representatives;
- § is part of the Financial Security Committee at MEF with its own member; and being involved in the National Risk Assessment.

1562. Moreover, UIF is entitled to receive notice of freezes adopted in respect of individuals and entities designated by EU Regulations or by relevant decrees issued by the Ministry of Economy and Finance (Art. 7, para. 1 of Legislative Decree n. 109/2007, as amended by the Legislative Decree n. 90/2017, implementing in Italy the Fourth AML/CFT EU Directive)

### **1.3. The suspicious transactions reports**

1563. The Legislative Decree 231/2007 requires a broad range of subjects, namely:

- financial intermediaries and other persons engaging in financial activity,
- professionals,
- auditors,
- and a series of persons engaged in other (non-financial) activities

to send UIF a suspicious transaction report “whenever they know, suspect or have reason to suspect that money-laundering or terrorist financing is being or has been carried out or attempted.” Since 2008, for financial intermediaries the reporting requirement has also extended to suspicion of financing of programs of weapons of mass destruction.

1564. The suspicion may arise from the characteristics, size, or nature of the transaction or from any other circumstances that come to the reporting institution’s attention by reason of its functions, and taking account of the economic capacity or business activity of the persons carrying out the transaction.

1565. The suspicion must be grounded in a comprehensive assessment of all elements - objective and subjective – of the transactions that are known to the reporting institution, acquired in the course of the customer’s activity or as the result of conferral of an assignment.

1566. To facilitate the detection of suspicious transactions, the Decree provides for several operational tools: anomaly indicators and models and patterns representing anomalous conduct, devised and issued by the UIF.

#### 1.4. Active cooperation

1567. The number of suspicious transaction reports has continued to increase markedly: in 2016 the UIF received a total of 101,065 reports, 22,6% more than in 2015 (see tables contained in the responses to questions under art. 14).

##### Reports received

Number of reports					<i>Percentage change year on year</i>			
<b>2011</b>			49,075				31.5	
<b>2012</b>	<b>2013</b>	<b>2014</b>	67,047	64,601	71,758		36.6	-3.6
<b>2015</b>	<b>2016</b>		82,428	101,065			14.9	22.6

1568. The increase in the number of reports submitted to the UIF shows that the prevention system is consistently enhancing its capacity to intercept suspicious transactions involving an increasingly broad array of operators from different categories. The more widespread participation in the system registered in recent years is proof of growing awareness of the risks of becoming involved in money laundering and of the need to take precautions against it.

1569. In particular, the reports filed by financial intermediaries increased from 74,579 in 2015 to 89,669 in 2016. Those sent by professionals increased from almost 6,000 in 2015 to almost 9,000 in 2016, in part owing to tax regularization schemes that have built an important bridge with categories (especially lawyers) which up to now have not been very collaborative. Reports from non-financial operators also increased (by more than 60 per cent), especially those from providers of gaming and betting services.

1570. The large number of reports must go hand in hand with the constant fine-tuning of their quality. Significant progress has also been made on this front. The UIF maintains an intensive schedule of meetings with the largest reporting entities or with those that present particular problems. In order to enhance the ability of obliged entities to identify behavioural patterns

that may indicate money laundering, in 2015 and in 2016 the Unit launched the publication of collections of cases of interest that emerged in the course of financial analyses, with a simple illustration of their structural and functional aspects.

## 1.5. Operational analysis

1571. Despite the increase in the number of reports and contacts with reporting entities, the Unit succeeded in handling the larger volume of information received. Thanks to constant attention to the improvement of processes and technology, 103,995 suspicious transaction reports were analysed in 2016 and sent to law enforcement agencies, representing an increase of 22.9 per cent compared with 2015 and a further reduction of the number of open cases, which fell to levels close to the average monthly inflow of reports.

### Reports analysed by the UIF

		Number		<i>Percentage change on previous</i>	
<b>2011</b>		30,596		13.5%	
<b>2012</b>	<b>2013</b>	60,078	92,415	96.4%	53.8%
<b>2014</b>	<b>2015</b>	75,857	84,627	-17.9%	11.6%
<b>2016</b>		103,995		22.9%	

## 2.1. IMF's assessment of Italy's anti-money-laundering and counter terrorist financing system

1572. In 2015 the IMF completed, on behalf of the Financial Action Task Force on Money Laundering (FATF), its detailed assessment report on Italy's system for combating and preventing money laundering and the financing of terrorism. The results were published in early 2016. The assessors found that Italy was aware of the gravity of the risks it faced and had proven the capability of building and running a system characterized by: a robust legal and institutional framework; a good understanding of the risks; a high degree of cooperation and coordination among authorities on policies for the prevention and repression of violations; a particularly effective system for reporting, analysing and verifying suspicious transactions; widespread and growing cooperation of a large number of operators; and incisive investigative and judicial action.

1573. The assessment also examined the profile and activities of the UIF, recognizing its independence and autonomy, ensured by legal safeguards and by its special position within the Bank of Italy (BoI), which guarantees that "all the decisional process is developed within UIF, without any interference from the BoI or any other authorities." It further acknowledged that, "The UIF is a well-functioning financial intelligence unit. It produces good operational and high-quality strategic analyses that add value to the suspicious transaction reports (STRs)". The assessors also praised the UIF's organizational arrangements, in particular the use of a "very advanced reporting system" that "allows a classification of STRs by risks", and its structural arrangements, which were recently reviewed to counter new threats more effectively.

1574. The IMF assessors' view of the entire anti-money-laundering system ranks Italy among the most virtuous of the member countries of FATF; it confirms the validity of Italy's legal and institutional framework and the effectiveness of the action taken by all members of the system; finally, it identifies some weak points and indicates the necessary countermeasures.

## 2.2. Risks and threats

1575. In the last few years the phenomena of organized crime and financial criminal activity were compounded by the new risks stemming from the rise in international terrorism. These consist in countering the emergence of more sophisticated ways of financing terrorism, including those based on self-financing by local groups and on the support of organizations that control foreign territories and can use funds stemming from illegal trading in the resources stolen from occupied countries.
1576. The strategies developed by the international bodies to combat terrorism emphasize the role of financial information and the importance of sharing it at the national and international level. These strategies entail the handling of a huge volume of data and require considerable resources but can produce important results: the information exchanged between national FIUs, following the Paris terror attacks of 13 November 2015, was useful to reconstruct the transit through Italy of one of the terrorists, thereby making a concrete contribution to the mapping of his network of relationships and to the police investigation.
1577. UIF continues to pay close attention to the threats identified in the national risk assessment carried out in 2014 in relation to organized crime, corruption, tax evasion and other financial crimes. Combating these phenomena, including with the use of financial resources, is an ongoing priority. The links between criminality and the economy have become increasingly close and systematic; it is often difficult to distinguish between illegal activities and those conducted in an apparently legitimate manner by businesses that have been infiltrated by crime.
1578. Money laundering helps to reinforce crime syndicates' territorial control and to build relationships within the economic, financial, political and administrative spheres, increasing the scope for intimidatory tactics. The recent 'Mafia Capitale' affair, about which the UIF received numerous reports and is working with the Public Prosecutor's Office of Rome, is the most recent confirmation that this type of crime also takes place in areas of the country not traditionally dominated by Mafia organizations. Suspicious transaction report can help identify the 'business' activities of criminality. Increasing this contribution is one of the primary strategic objectives in which the Unit is investing. Recognizing transactions linked to organized crime is not an easy task: financial crime can assume a variety of guises and modi operandi, which cannot always be distinguished from those characterizing other forms of illegal and even legal activity. In 2015 a focus group on organized crime (Osservatorio sulla Criminalità Organizzata) was set up within the UIF itself and charged with the task of fine-tuning the methodologies and instruments for the prompt identification and use of the reports on this phenomenon. Software for social network analysis was accordingly developed, and is proving especially useful for identifying and analysing the financial activities of criminal groups and the implicit relationships they conceal. The results to date are promising.
1579. The investigators' findings confirm the importance of reporting suspicious transactions in order to combat organized crime: adopting new working procedures, the Anti-Mafia Investigation Department (DIA) identified and transmitted to the National Prosecutor's Office more than 18,000 reports of potentially criminal activity it received in 2015. The cooperation with the DIA, which has recently been stepped up, will contribute to the development of the methodologies and utilization of the findings of the Monitoring Group.
1580. Corruption is among the most alarming and dangerous criminal phenomena to which Italy is

exposed. The international community pays close attention to this issue and to the significant consequences it has for the competitiveness of our country, including in terms of our ability to attract foreign investment. The UIF's activities have not been confined to highlighting symptoms of corruption and embezzlement of public funds in reported transactions but have also endeavoured to identify patterns of behaviour pointing to unreported violations. Among the cases examined in 2016, episodes of misappropriation of funds in connection with public insolvency proceedings stand out, owing to the forms they took and to the individuals and financial resources involved.

### 2.3. Statistics

1581. UIF publishes every six months statistical data on the reports received and concise accounts of its activities. Such information can be found in the “Quaderni dell’antiriciclaggio, Collana Dati statistici”, published on the UIF’s website (see <https://uif.bancaditalia.it/pubblicazioni/quaderni/index.html>). Please note that the “Statistical Data” series have been flanked by the “Analisi e studi” series, launched in March 2014, comprising papers on selected themes in money laundering and terrorist financing. Papers published in recent years have been dedicated, i.e., to money-laundering typologies (2015 and 2016), to the determinants and anomalies of financial flows to tax havens (2015), to an econometric assessment of the quantitative adequacy of the flow of STRs filed by banks on a provincial basis (2015), to an econometric analysis of Italian municipalities in order to identify cash payment anomalies (2016), to the use of high amount banknotes as vehicle of possible money laundering (2016).

#### *(b) Observations on the implementation of the article*

1582. Italy has established its financial intelligence unit (UIF) which plays a role in receiving and analysing suspicious transaction reports filed by obligated entities and disseminating the results of the analyses to law enforcement authorities for investigations.

1583. The structure and organization of the financial intelligence unit are governed by a Regulation of the Governor of the Bank of Italy. Although the Bank of Italy provides financial/technical resources, premises, equipment and personnel, the autonomy and operational independence of the financial intelligence unit are legally protected (art. 6(1) AML Law).

1584. It was concluded that Italy has implemented this provision of the Convention.

### Article 59. Bilateral and multilateral agreements and arrangements

*States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this chapter of the Convention.*

#### *(a) Summary of information relevant to reviewing the implementation of the article*

1585. Italy is very active in enhancing the effectiveness of international police cooperation also through seeking and implementing agreements and bilateral memorandum of understanding among Law Enforcement Agencies; this is proved by having signed bilateral agreements with 106 countries.

1586. As part of the efforts to combat corruption, in full compliance with the legal framework, with the international agreements and national regulations, the National Anti-Mafia and Counterterrorism Directorate has signed:

- an administrative cooperation agreement with the European Anti-fraud Office (OLAF) in the common attempt of protecting the financial interests of the European Union by fighting and preventing frauds, corruption and any other illegal activity to the detriment of the European Union's financial interests, strengthening a timely exchange of information and an effective cooperation in cases of alleged fraud, corruption and any other illegal activity, as well as serious facts concerning the exercise of professional activities by members and staff belonging to the institutions, bodies and agencies of the European Union. On the basis of this information the Parties might identify further collaboration opportunities, including parallel investigations, in order to create effective synergies in fighting corruption and organized crime (23.01.2017);
- Memorandum of understanding and cooperation with the Attorney-General's office of the Russian Federation to fight crime, also in its organized forms (including corruption and economic and financial crimes), and to cooperate in matters of judicial assistance in criminal proceedings, providing the exchange of information, also concerning the judicial system and the laws of both States and international judicial cooperation experience (12.01.2017);
- together with the Italian Ministry of Justice, operational guidelines concerning mutual legal and extradition assistance with the Canadian Ministry of Justice, providing forms of direct communication with the Public prosecutor and the law enforcement agencies of the requesting Nation, exchange of information on the respective legal proceedings and substantial law systems;
- on the occasion of the "Managing complex data in organized crime and corruption cases" meeting held in Belgrade on 26 and 27 May 2016, a memorandum of understanding with the national Prosecutors' Offices of Serbia, Montenegro, Slovenia, Croatia, Bosnia and Herzegovina, Srpska, Macedonia, Albania, Bulgaria, Hungary and with the national anti-corruption directorate of Romania, providing ways of mutual assistance and exchange of information concerning the fight against organized crime and corruption (26.05.2016).

1587. Italy has so far ratified or signed 276 MoUs and technical agreements on international police cooperation in the fight against crime with 106 countries.

1588. Additionally, ANAC has also signed a variety of MoUs with both bilateral and multilateral institutions.

*(b) Observations on the implementation of the article*

1589. Italy has entered into several mutual agreements/arrangements to enhance international cooperation under the Convention. Such agreements include arrangements governing information exchange and asset disposition.

1590. It was concluded that Italy has implemented this provision of the Convention.

*(c) Successes and good practices*

1591. Italy has established several MOUs which govern significant areas of international cooperation including information exchange and asset disposition.

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