

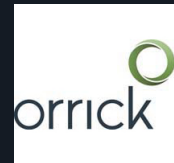
Legal 500

Country Comparative Guides 2024

Italy

Bribery & Corruption

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This country-specific Q&A provides an overview of bribery & corruption laws and regulations applicable in Italy.

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Italy: Bribery & Corruption

1. What is the legal framework (legislation/regulations) governing bribery and corruption in your jurisdiction?

The main Italian bribery and corruption provisions are laid down by the Criminal Code, the Civil Code and Law no. 231/2001 on corporate criminal liability ("Law 231"). Furthermore, the guidelines issued by the ANAC (National Anti-corruption Authority)¹ on bribery and corruption, although not legally binding, provide for the best practices that private and public companies should follow to ensure that they comply with Italian and EU regulations.

Footnote(s):

¹ Please note that the ANAC is an independent administrative authority whose aim is to prevent corruption in all areas of administrative activity.

2. Which authorities have jurisdiction to investigate and prosecute bribery and corruption in your jurisdiction?

The Public Prosecutor's Office is the authority which has the jurisdiction to investigate and prosecute bribery and corruption. In fact, the Public Prosecutor's Office has very broad investigation and enforcement powers, such as: powers of interview; power to order wiretapping; powers to search/compel disclosure; power of arrest; powers to enforce court orders. Furthermore, the Public Prosecutor's Office is the only authority who has the power to charge in criminal proceedings.

Moreover, the ANAC – in addition to supervising and controlling the application and effectiveness of the measures for the prevention of corruption adopted by public bodies – performs two main functions:

- Reporting function: the ANAC is tasked with reporting serious violations of the rules concerning public contracts to the Government and Italian Parliament;
- Inspection function: the ANAC is authorized to order inspections of companies, in co-operation with the tax police, and may also forward the results of the inspections to the Public Prosecutor's Office if its findings relate

to criminal activities, or to the Court of Auditors if it discovers anything detrimental to the Treasury.

The ANAC has the power to charge only in administrative proceedings. In fact, with regards to public contracts, it has sanctioning functions, and can therefore apply pecuniary administrative sanctions on companies that refuse or omit, without justified reason, to provide information or produce documents to the ANAC or to the contracting station. Furthermore, within the realm of public contracts, the ANAC can impose sanctions for violations of reporting duties and misrepresentations or exhibitions of false documents.

At a supranational level, there are specific mechanisms which allow for judicial cooperation between Prosecutors and regulatory authorities, namely formal requests to collect evidence or carry out investigations in another State. Moreover, judicial cooperation is enhanced within the European Union: in 2017, the European Investigation Order became effective, whereas in 2021 the European Public Prosecutor's Office ("EPPO") started its operations. The EPPO has the power to conduct criminal investigations and prosecutions in Member States, with European Delegated Prosecutors bringing cases before National Courts, if related to crimes perpetrated against the EU budget.

3. How is 'bribery' or 'corruption' (or any equivalent) defined?

While there is not a unique legislative definition of bribery and corruption, it is possible to infer them from the relevant related provisions set by the Italian Criminal Code.

On the one hand, it can be deemed to be bribery every act of giving, offering, promising, as well as every act of soliciting, receiving or accepting undue money or any other benefit in exchange for performing or omitting an act in violation of duties/obligations inherent in the office.

On the other hand, corruption is a broader term that includes a wide range of unethical or illegal practices and behaviours: corruption-related crimes can include not only bribery but also embezzlement committed by a public official/person in charge of a public service (art. 314, Italian Criminal Code), corporate fraud against the

State or other Public Administration (art. 640, par. 2 Italian Criminal Code), trading in influence (art. 346 *bis*, Italian Criminal Code) or abuse of office (art. 323, Italian Criminal Code).

4. Does the law distinguish between bribery of a public official and bribery of private persons? If so, how is 'public official' defined? Is a distinction made between a public official and a foreign public official? Are there different definitions for bribery of a public official and bribery of a private person?

Italian law distinguishes between bribery of a public official and bribery of private individuals.

Public bribery involves, as corrupt party, a "public official" or a "persons in charge of a public service"², who are expressly defined by Italian criminal law:

- a public official (article 357, Italian Criminal Code) is an agent who either (i.) performs a public legislative, judicial or administrative function, or (ii.) exercises deliberative, authoritative or certifying powers ("Public Official"); whereas
- a person in charge of a public service (article 358, Italian Criminal Code) is whoever performs a public service, which is characterized by the absence of the exercise of deliberative, authoritative or certifying powers ("Person in charge of Public Service").

For what concerns the criminal conduct, the crime of public bribery punishes public officials/people in charge of a public service that unduly receive money or other benefits or accept the promise of such money/benefits, in exchange for:

- performing their own duties or exercising their own powers (article 318, Italian Criminal Code); or
- performing an act that is contrary to their official duties (article 319, Italian criminal code).

Furthermore, art. 322-*bis* of the Italian Criminal Code extends the criminal liability to parties operating at European and international level and private entities committing an offence of bribery against public officials of other States and public international organisations, in order to either obtain an undue advantage for themselves or others in international economic transactions or obtain

or maintain an economic or financial activity.

Lastly, articles 2635 and 2635 *bis* of the Italian Civil Code regulate private commercial bribery. It occurs when directors, general managers, managers in charge of drawing-up corporate accounting documents, statutory auditors and/or liquidators, solicit or receive, promise to solicit or receive, any undue money or any other benefits in exchange for performing or omitting an act in violation of the obligations inherent in their office or of their obligations of loyalty. The provision also applies to the person who, within the company or private entity, exercises management functions that differ from those of the persons referred to above or also to simple employees, while in the last case the penalties are less severe.

Footnote(s):

² The qualification of public official/person in charge of a public service is based on an objective-functional criterion which means that it:

- depends on the nature of activity he/she performs even though he/she is formally a private employee;
- does not depend on (i.) the legal nature of the entity he/she belongs to, (ii.) the type of employment relationship, (iii.) the existence of a formal relationship of dependence with the State or the public entity.

In this respect, the criminal qualification of public official/persons in charge of a public service has to be kept separate from the definition of "public employees" who is an individual who has been hired by a Public Administration.

5. Who may be held liable for bribery? Only individuals, or also corporate entities?

Not only individuals may be held liable for bribery. Public bribery is one of the offences listed by Law 231 that can trigger corporate liability ("Relevant Offences") if the following conditions are met: (i.) the offence is committed by a company director or employee; (ii.) the offence is committed in the interest or for the benefit of the company; (iii.) the offence occurred due to gaps in the internal control system. As far as private commercial bribery is concerned, according to Law 231, only the company to which the corruptor belongs can be held liable.

6. What are the civil consequences of bribery and corruption offences in your jurisdiction?

Any crime that has caused damage, whether pecuniary or non-pecuniary, may require the offender to pay compensation and obliges to restitution (article 185, Italian Criminal Code).

"Restitution" means the restoration of the situation that existed prior to the commission of the crime. If restitution is not possible or it is not sufficient to repair the damage committed, compensation will be paid.

In order to obtain such compensation and restitution, persons affected by the criminal offence (the damaged party) can join the criminal proceedings as plaintiffs, claiming damages directly related to either the action or the omission of the offender (article 74, Italian Criminal Procedure Code).

Therefore, in the case of corruption or bribery, the person who received the bribe and the person who provided it can be considered civilly liable for any damage caused by their misconduct to third parties, including the public or private entities the corrupted person belongs to.

7. What are the criminal consequences of bribery and corruption offences in your jurisdiction?

The Italian Criminal Code, the Civil Code and Law 231 provide for several consequences of bribery and corruption that can apply both to individuals and companies.

As far as individuals are concerned, the criminal sanction is imprisonment.

Moreover, for what concerns the public bribery, conviction shall entail perpetual disqualification from holding public office and perpetual inability to contract with the public administration, except to obtain the performance of a public service. Furthermore, conviction (or plea bargain) shall entail:

- the confiscation of goods which constitute the profit or price of the offence, unless they belong to a person extraneous to the crime that acted in good faith;
- or, when this is not possible, the confiscation of goods of which the offender has the availability, for a value corresponding to this price or profit.

Conviction shall also entail the payment of an amount of money equivalent to the price or profit of the offence by

way of pecuniary compensation in favor of the administration injured by the conduct of the public official, without prejudice to the right to compensation for damages.

For what concerns private commercial bribery, conviction shall entail temporary disqualification from holding managerial positions in legal entities and companies.

As far as companies are concerned, for both private and public bribery, Law 231 provides for the application of a pecuniary sanction. Its amount is established by taking into account the seriousness of the offence, the degree of responsibility of the company and the activity carried out to prevent, or where that is not possible, eliminate or mitigate the consequences of the offense, and the economic conditions of the company.

Furthermore, in case of conviction, the business unit within which the unlawful conduct has been committed can be also sentenced to one of the following bans³: (i.) ban for carrying out the relevant business activity; (ii.) suspension or revocation of any authorizations, licenses or permits owned by the company related to the committed offence; (iii.) ban from obtaining government contracts, except for contracts relating to public services; (iv.) exclusion from or termination of funding, special terms, or welfare payments; and (v.) ban from advertising products.

The confiscation of profits obtained from bribery and corruption is always ordered. Please note that, both preventive and precautionary seizure can be applied also during the investigation phase.

Moreover, in case of conviction, the Judge can order the publication of the judgment which affects the company's reputation.

Lastly, a company under investigation or indicted/convicted under Law 231 could be excluded from both private and public tenders. In particular, the Italian Public Procurement Code, as amended in 2023, expressly provides that a company may be excluded from a public tender in case of indictment under Law 231, unless it proves that it "self-cleaned", for example by introducing adequate system and controls and replacing previous owners / managers involved in the crime.

Footnote(s):

³ While, in case of conviction, the fines (i.e. the pecuniary sanctions) are always applied, industry bans are applied only when one of the below circumstances is met:

- the company gained a significant profit from the negligent conduct and the offence was committed by either directors/officers or employees. In case the crime was committed by an employee, to apply the industry bans, the law additionally requires that the commission of the crime was determined or facilitated by serious organizational gap of the internal control system;
- the company committed the violation within five years since a previous conviction occurred for a violation of Law 231.

8. Are mechanisms such as Deferred Prosecution Agreements (DPAs) available for bribery and corruption offences in your jurisdiction?

Non-prosecution agreements and deferred prosecution agreements do not exist in Italy.

While it is true that Italian law does not have to set forth regulations providing for tools similar to the non-prosecution agreements or deferred prosecution agreements, new case law shows a new form of plea bargaining involving the company only – prosecuted as entity criminally liable under Law 231 – without the identification of the employees who committed the Relevant Offense.

In this case, the Prosecution requires that the company has “tested” its internal control system, by putting in place a remediation plan, including concrete actions such as compensation for damages, voluntary delivery to the authority of the profit of the crime to be confiscated and implementation/strengthening of the internal control system adequate to prevent the Relevant Offense.

In one case, a plea bargain was reached between a company and the Prosecutor without even including the natural persons who allegedly committed the Relevant Offense in the register of persons under investigation. This result was obtained through an innovative interpretation of Law 231 which provides for the application of corporate liability in cases where it is impossible to identify the perpetrator of the crime. In this specific case, Law 231 was used not because it was impossible to identify the relevant Director/Employee/Agent who committed the crime, but rather to support this form of overall settlement that would have been slowed down by the presence of multiple parties (e.g., natural persons would be less inclined to reach a plea bargain which may affect their fitness and propriety).

One of the most peculiar features of the Italian legal system is represented by preventive measures laid down in Law no. 159/2011 (“Anti-Mafia Code”). The distinctive trait is that they are not punitive in nature: these tools are aimed at “rehabilitating” the company from an earlier stage by means of a period of cooperation with the authorities that will lead the company along a virtuous path of “restorative compliance”. Recent case law shows that it is possible to identify some specific areas where the risk of criminal infiltration is pretty high (e.g., procurement; third-party/supply chain; purchasing; human resources; outsourcing). Therefore, Italian companies (and companies who carry out business in Italy) are required to identify the areas that are most sensitive, considering the nature and the peculiarities of their business and adopt and implement specific control measures to reduce operational risks (e.g., third-party due diligence; scheduling specific audits; drafting standard contractual clauses that formalize the obligation to comply with the 231 Model and the legal consequences if a breach occurs).

9. Does the law place any restrictions on hospitality, travel and entertainment expenses? Are there specific regulations restricting such expenses for foreign public officials? Are there specific monetary limits?

Under Italian law, the offer (and the acceptance) of gift and entertainment is legal unless it is aimed at (i.) influencing any act or decision of the recipient, (ii.) inducing the recipient to use his/her influence to affect any act or decision, (iii.) seeking any improper advantage (iv.) violating any applicable laws.

However, to minimize the risk of illicit conducts, Italian law provides for express hard limits related to the acceptance of gifts and entertainment that apply to Public Official/persons in charge of a public service. According to article 4 of the Code of Conduct for Public Administrations' Employees (Presidential Decree No. 62/2013), entitled “*gifts, compensation and other benefit*”, they:

- can accept gifts or other benefits of modest value given occasionally as part of ordinary courtesy relations and in accordance with international practices;
- shall not ask for gifts or other benefits, not even of modest value, for themselves or for others, as payment for performing or having performed an act of their office from persons who may benefit from the decisions or the

activities inherent to the office, nor from persons with respect to whom they are or are about to be called upon to perform or exercise activities or powers pertaining to the office held;

- they shall not offer, directly or indirectly, gifts or other benefits to a subordinate, except those of modest value.

In this respect, gifts or other benefits of modest value shall mean those of a value not exceeding 150 euro. However, the codes of conduct adopted by single administrations may provide for lower limits, even up to the exclusion of the possibility of receiving them, in relation to the characteristics of the entity and the type of duties performed.

10. Are political contributions regulated? If so, please provide details.

Political contributions are regulated by Law no. 149/2013 which introduced significant reforms to the system of political financing in Italy, with a focus on enhancing transparency and preventing corruption. This piece of legislation abolished direct public financing of political parties and provided for a voluntary contribution system which allows citizens to support political parties through their tax return forms.

Moreover, as far as private donations are concerned, neither natural persons nor legal entities (including their subsidiaries entities) are allowed to confer money or other benefits in an aggregate value exceeding 100.000 euros per year.

11. Are facilitation payments regulated? If not, what is the general approach to such payments?

Facilitation payments in favour of a Public Official (or of a Person in charge of Public Service) are prohibited and they might fall under the scope of 'bribery in relation to the exercise of duties' (article 318, Italian Criminal Code.) Indeed, the offence can be committed whereby a Public Official unduly receives, for his/her own benefit or for the benefit of others, money or other benefits, or accepts the promise thereof, for performing his/her own duties or exercising his/her own powers, regardless the value of the benefit or the amount of the money.

The Italian general approach is one of zero tolerance towards corruption, and this includes facilitation payments. Companies operating in Italy, as well as Italian companies operating abroad, are encouraged to develop

and implement an effective internal control system to prevent corrupt practices, including facilitation payments.

12. Are there any defences available to the bribery and corruption offences in your jurisdiction?

Corruption and bribery offences imply a relationship of equality between the Public Official and the private entity. The private person who is accused of having bribed might try to affirm that there has been an abuse of power by the Public Official, so that the applicable offence would be either an exaction (article 317, Italian Criminal Code) or undue inducement to give or promise benefits (article 319-quater, Italian Criminal Code). Of course, these offences cannot result in the punishment of the private person who has been forced to provide the undue money or benefit, who, in that case, is the "victim" of an extortion.

Criminal liability may also be avoided if the defendant can prove that there was no unlawful agreement, no coercion nor any giving of unlawful gratuities. However, the Public Prosecutor Officer could challenge the fictitious nature of a payment or the relationship between a Public Official and private individual or entity, so when making such a defence, it is essential to fully explain the reasons for the payment, the reality of the service provided and the appropriateness of the payment in relation to the service that was provided.

13. Are compliance programs a mitigating factor to reduce/eliminate liability for bribery offences in your jurisdiction?

Yes, compliance programs constitute a mitigating factor to reduce or eliminate corporate liability in case of commission of bribery and corruption, which are enlisted in Law 231 as Relevant Offenses.

The adoption and "effective" implementation, prior to the commission of a Relevant Offense, of "management and organizational models that were adequate for the prevention of the offense that was committed" ("231 Model") can exclude corporate liability. In addition to that, the company must have appointed an internal body, called "Organismo di Vigilanza" ("Supervisory Body") – to which independent powers of initiative and control have been entrusted) – in charge of ensuring the respect and the effective implementation of the 231 Model, and which adequately fulfilled its duties.

Thus, the 231 Model shall:

- Be based on a risk-assessment aimed at identifying those areas of activity exposed to the risk of the commission of Relevant Offences;
- Define both general principles and specific protocols aimed at preventing and mitigating the risk of the commission of Relevant Offences (such as segregation of duties, ways of managing financial resources, corporate proxies etc.);
- Introduce an adequate system of sanctions in relation to the failure to observe the principles, policies, procedures, guidelines and protocols adopted;
- Ensure adequate information flows to the Supervisory Body;
- Establish training and implementation protocols.

If the 231 Model has not been implemented prior to the commission of the Relevant Offense but is implemented prior to the opening of the first-instance trial, the company can benefit from a reduction of the sanctions⁴. In fact, the implementation of a remediation plan prior to the opening of the first instance trial could be positively evaluated as demonstrating the discontinuity of the company's management with respect to the previous situation where the Relevant Offense was committed.

In this regard, the Italian Public Procurement Code expressly provides for a self-cleaning procedure that allows companies to demonstrate, in case an exclusion ground applies, their trustworthiness, for example for having performed a remediation plan.

Footnote(s):

⁴ According to Law 231, industry bans will not be imposed if, prior to the opening of the first-instance trial, the company has: (i.) fully compensated for the damage and eliminated the harmful or dangerous consequences of the Relevant Offence; (ii.) eliminated the organisational lacks that caused the offence by adopting and implementing organisational models suitable for preventing offences of the type that have occurred; (iii.) made any profits made available for confiscation.

14. Has the government published any guidance advising how to comply with anti-corruption and bribery laws in your jurisdiction?

There are guidelines published by the ANAC and by other private organizations and trade associations. Among the guidelines published by trade associations, very

important are those issued by Confindustria (an association representing manufacturing and service companies in Italy) which were published in an updated version in June 2021.

15. Does the law in your jurisdiction provide protection to whistle-blowers? Do the authorities in your jurisdiction offer any incentives or rewards to whistle-blowers?

Italian law provides for protection for whistle-blowers both in the public and private sector. The domestic regulation has been significantly updated by Law no. 24/2023 ("Whistleblowing Decree"), implementing the Directive (EU) no. 2019/1937, which governs the protection of persons who report breaches of national or EU legislative and statutory provisions.

In the private sector, whistle-blowers are encouraged to report (i.) breaches of European and national legislation; (ii.) any unlawful conduct that is relevant pursuant to Law 231, (iii.) breaches of the 231 Model. In the public sector, whistleblowing reports can also cover breaches of national legislative and statutory provisions resulting in torts, administrative, accounting and criminal offences.

According to the Whistleblowing Decree, whistle-blowers are ensured the confidentiality of their identity and granted a shield against retaliation⁵ or discrimination. The protection system does not apply only to the whistle-blower but also to other persons who may become targets of retaliation actions, including indirectly, due to their role in the reporting process (e.g., facilitators; colleagues; collaborators; former colleagues; companies owned by the whistle-blower; companies where the whistle-blower works etc.). Whistle-blowers are entitled to notify ANAC of any retaliation they think they have suffered, and the ANAC is required to inform the National Labor Inspectorate for the measures falling under its competence.

Italian authorities are not allowed to offer any incentives or rewards to whistle-blowers. However, they provide for assistance in order to encourage and support them. For example, ANAC entered into agreements with third-sector entities which provide information, assistance, and advice on how to report, on protection against retaliation, on the rights of the persons involved, as well as on how and on what conditions legal aid can be obtained.

Footnote(s):

⁵ By way of example, pursuant to the Whistleblowing Decree the following shall constitute retaliation: a)

suspension, lay-off, dismissal or equivalent measures; b) demotion or withholding of promotion; c) transfer of duties, change of location of place of work, reduction in wages, change in working hours; d) withholding of training or any restriction of access thereto; e) a negative performance assessment or employment reference; f) imposition of any disciplinary measure or other penalty, including a financial penalty; g) coercion, intimidation, harassment or ostracism; h) discrimination or, in any case, unfavorable treatment; i) failure to convert a temporary employment contract into a permanent one, where the worker had legitimate expectation that the contract would be converted; l) failure to renew, or early termination of, a temporary employment contract; m) harm, including to the person's reputation, particularly in social media, or economic or financial loss, including loss of business and loss of income; n) blacklisting on the basis of a sector or industry-wide formal or informal agreement, which may entail that the person will not, in the future, find employment in the sector or industry; o) early termination or cancellation of a contract for the supply of goods or services; p) cancellation of a license or permit; q) request for psychiatric or medical referral.

16. How common are government authority investigations into allegations of bribery? How effective are they in leading to prosecutions of individuals and corporates?

The Public Prosecutor's Office is the sole authority allowed to investigate and prosecute bribery offences. However, ANAC provides for its support by performing both reporting and inspection functions (Please see question n. 2). Additionally, the Guardia di Finanza (the financial police), the Italian Competition Authority (AGCM), and the judiciary play significant roles in investigating corruption and enforcing anti-corruption measures.

17. What are the recent and emerging trends in investigations and enforcement in your jurisdiction?

Following the unprecedented crisis caused by the COVID-19 pandemic, Italy's National Recovery and Resilience Plan (PNRR) provides for a wide range of initiatives aimed at pursuing the economic growth, fostering the digital and green transition as well as addressing social and territorial divides.

The injection of public funds into the economy leads to a sharp increase in the risk of bribery and corruption. To

ensure the proper utilization of PNRR funds, ANAC approved the National Anti-Corruption Plan for 2023-2025, focused on enhancing public integrity, preventing corruption within public administrations, and strengthening anti-money laundering measures. Moreover, an Anticorruption Committee has been appointed with the specific purpose of monitoring the use of public funds in compliance with the law.

Based on these grounds, the investigations of national and international Authorities increasingly focus on the involvement of Public Officials and Persons in charge of a Public Service in the management of public funds.

18. Is there a process of judicial review for challenging government authority action and decisions? If so, please describe key features of this process and remedy.

Any decision of criminal conviction is subject to appeal before the Court of Appeal and, as a last resort, before the Italian Supreme Court. Appeal is not an automatic consequence of first instance decisions, but rather it is the losing party who chooses whether to appeal or not within the time limits provided for by the law.

The Court of Appeal has knowledge of the proceedings, limited to the points of the decision to which the appeal refers. The decision of the Court of Appeal (which may either confirm or reverse the first judgement) can be appealed before the Italian Supreme Court only on matters of law.

Furthermore, decisions concerning precautionary measures (such as preventive seizure decrees or pre-trial detention orders) may be appealed against separately from the main proceedings.

As for the sanctions imposed by the ANAC, they may be appealed against in administrative proceedings. The appeal process in administrative proceedings has a similar structure to that of criminal proceedings. ANAC's decisions can be appealed before Regional Administrative Courts, whose decisions in turn may be appealed before the Council of State, which is the supreme administrative court in Italy.

19. Have there been any significant developments or reforms in this area in your jurisdiction over the past 12 months?

The Italian Code of Criminal Procedure has been deeply amended by Law no. 150/2022 ("Riforma Cartabia"). The

aim of the reform was to increase the efficiency of the Italian criminal justice system, also reducing the average duration of criminal proceedings, in compliance with the National Recovery and Resilience Plan ("PNRR").

The Riforma Cartabia introduced lots of changes such as the reduction of the maximum duration of the preliminary investigation phase; the new statute of limitations for crimes (e.g., the appeal process shall last no longer than two years, whereas the process before the Italian Supreme Court shall last no longer than one year); the introduction of restorative justice. Moreover, the Riforma Cartabia did not amend only the ordinary trial but also the regulation of plea bargain, summary judgment and fast-track judgment.

In March 2024, Law n. 31/2024 was published and it represented the first amending act to the Riforma Cartabia, which aim is to further improve the efficiency of the Italian criminal justice system.

Furthermore, Law no. 36/2023 ("The New Public Contracts Code") came into force to improve the efficiency of regulation of public procurement which is one of the most exposed areas to the risk of bribery and corruption. The New Public Contracts Code also reorganized the role and the powers attributed to ANAC, strengthening its supervisory functions.

20. Are there any planned or potential developments or reforms of bribery and anti-corruption laws in your jurisdiction?

On February 12th, the Italian Senate passed a legislative proposal (DDL 808/2023) which includes the abolition of the offence of abuse of office (art. 323, Italian Criminal Code).

The offence punishes Public Officials who, in carrying out their duties, violate binding guidelines or engage activities where personal or familial interests are at stake, with the intention of either securing an undue financial benefit or causing unwarranted harm to others. The government has promoted the abolition of this offence stating that, considering its ambiguous wording, the number of convictions is extremely low, and the relevant conducts can be prosecuted under other criminal provisions.

Furthermore, the bill amends the offence of trading in influence (art. 346-bis, Italian Criminal Code) which is aimed at punishing anyone who, by exploiting or boasting of existing or alleged relations with a Public Official or a Person in charge of a Public Service, unduly causes someone to give or promise them or others money or

other benefits as the price for their illicit mediation with a Public Official or Person in charge of a Public Service or to remunerate them in relation to the exercise of their duties or powers. The offence also punishes anyone who unduly gives or promises money or other benefits. This provision applies as far as no real influence is exercised on the public authority, otherwise bribery in relation to the exercise of duties and bribery in relation to an act contrary to official duties would apply.

The aim of the reform is to clarify some elements of the offence: on the one hand, the relations with a Public Official or a Person in charge of a Public Service shall be existing and not only alleged, on the other hand, the benefit given or promised shall have an economic nature. Lastly, the reform is aimed at increasing the years of imprisonment in case of conviction.

21. To which international anti-corruption conventions is your country party?

Italy is party to the following relevant anti-corruption conventions: the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; the 1999 Criminal Law Convention on Corruption (Treaty 173 of the Council of Europe); the 1999 Civil Law Convention on Corruption (Treaty 174 of the Council of Europe); the 2003 UN Convention Against Corruption.

22. Do you have a concept of legal privilege in your jurisdiction which applies to lawyer-led investigations? If so, please provide details on the extent of that protection. Does it cover internal investigations carried out by in-house counsel?

Under Italian law, there is a very narrow interpretation of legal privilege, and it does not cover internal investigations carried out by in-house counsel.

In order to guarantee the legal privilege, internal investigations are usually carried out by an external counsel, appointed for this specific purpose, with the formalities provided for "defensive investigation" by the Italian Criminal Procedure Code. Defence counsel, appointed through a specific power of attorney, is allowed to carry out investigations in order to look for and find pieces of evidence for the benefit of the client, in every phase of the criminal proceedings and also in the case in which criminal proceedings are to be instituted, both representing the person/the company under investigation

or the victim of the crime.

The specific guarantees provided for by defensive investigations are:

- The confidentiality of the conversations (in any form, over the phone or online) between the client and the appointed defense counsel;
- The prohibition to proceed with a seizure of the investigation reports/communications against the defense counsel, as well as against private authorized detectives and the technical experts previously appointed by the defense. For the sake of clarity, only the reports and communications among counsel and client cannot be seized, while the documents (e.g., emails) reviewed during the investigation can always be seized by the Public Prosecutor and, if a specific request for delivery is made, the company cannot refuse to comply with it;
- The minutes of the interviews conducted by defense counsel can be used in criminal proceedings and have the same value as the interviews carried out by the Public Prosecutor.

To ensure the attorney-client privilege, the counsel cannot be required to testify on what he/she has known by reason of his/her ministry, office or profession. Moreover, documents or communications (e.g., emails, phone-calls) concerning the relationship between client and defense counsel, appointed in the context of criminal proceedings or to perform defensive investigations (even in view of potential criminal proceedings), are protected.

23. How much importance does your government place on tackling bribery and corruption? How do you think your jurisdiction's approach to anti-bribery and corruption compares on an international scale?

Based on the Transparency International's Corruption Perceptions Index ("CPI"), Italy's trajectory over the past decade is encouraging, with its score climbing by 14 points. This upward trend shows the Italian commitment in preventing bribery and corruption and the effectiveness of the measures adopted and implemented.

Nonetheless, despite this ongoing progress, the Italian rank is still pretty low compared to other European Countries. The enforcement challenges that Italy faces are likely to be related to the functioning of the criminal justice system. Indeed, one of the purposes of the Riforma Cartabia was to improve the efficiency of

criminal proceedings (please see question no. 19). Additionally, the frequent changes in government and political instability hindered a long-term anti-corruption strategy.

24. Generally how serious are organisations in your country about preventing bribery and corruption?

In the last few years, we witnessed an increasing commitment of Italian companies (as well as foreign companies which carry out business in Italy) towards the prevention of bribery and corruption.

As explained, bribery and corruption are Relevant Offenses that can trigger corporate liability under Law 231. Therefore, companies are required to adopt and implement a 231 Model, to set up dedicated compliance departments, to implement whistleblower protection policies in compliance with the Whistleblowing Decree, and to conduct periodical anti-corruption training for employees.

In case a company is put under investigation, is indicted or, following a trial, is held criminally liable under Law 231, this can have an impact on contractual relations with public and private entities: besides potentially damaging the company's reputation, it is a common market practice to insert in contracts the request to disclose the criminal record in relation to relevant offenses, including any pending criminal proceedings.

25. What are the biggest challenges enforcement agencies/regulators face when investigating and prosecuting cases of bribery and corruption in your jurisdiction? How have they sought to tackle these challenges?

The biggest challenges in investigating and prosecuting cases of bribery and corruption are related to legal and procedural hurdles; difficulties in evidence gathering considering the cross-border transactions and the involvement of international actors; political interferences; cultural challenges.

In this respect, the Italian Authorities constantly pay attention to the traceability of money flows, considering not only the large number of cash payments but also the increasing use of cryptocurrencies. Therefore, the legislator (first) and the Public Prosecutor's Office (after) strengthened the cooperation with banks and other financial institutions imposing compelling AML obligations under Law. n. 231/2007.

Moreover, legal reforms played a key role to strength on the one hand, the anti-corruption legal framework and on the other hand, the protection of whistleblowers who can provide information also on bribery-crimes. Lastly, Italy is part of international and European organizations aimed at improving cross-border cooperation also in relation to corruption cases.

26. What are the biggest challenges businesses face when investigating bribery and corruption issues?

Investigating bribery and corruption in Italy poses several challenges for businesses, such as complexity of legislation; cultural barriers and local business practices; slow judicial process which can deeply affect companies' reputation; the involvement of organized crime groups which can infiltrate businesses and public institutions; political corruption.

In order to mitigate the risk of being involved in investigations or criminal proceedings related also to bribery and corruption, Italian companies (and companies which carry out business in Italy) are required non only to establish clear policies and procedures in order to minimize risk within the most relevant processes, but also to adopt and implement a solid 231 Model providing employees' training also on anti-corruption practices, and on the importance of an adequate reporting mechanism. Moreover, companies are required to perform – also with the support of new tools – an adequate due diligence on the third parties, to select only high-rated business partner reducing the risk of being involved in illicit conducts.

Companies are also encouraged to perform internal investigations in order to assess any lack of their internal control system, to promptly remedy through the implementation of an action plan. In this respect, the performance of internal investigations is likely to increase considering the novelties introduced by the Whistleblowing Decree aimed at supporting the disclosure of breaches of the 231 Model and of both national and European legislation.

27. How have authorities in your jurisdiction sought to address the challenges presented by the significant increase of electronic data in either investigations or prosecutions into bribery and corruption offences?

Italian authorities have been taking several initiatives to

address the challenges presented by the significant increase of electronic data. First of all, they have invested in digital forensics tools and training for their personnel, aimed at allowing investigators to collect, preserve, and analyze electronic data from various devices. Specialized units that focus on data analysis have been established with the aim of managing and processing large volumes of data to uncover patterns and evidence of corruption.

Moreover, Italian authorities have strengthened the cooperation with other European judicial authorities in order to acquire and process a large amount of data also through the European Investigation Order.

Furthermore, the use of artificial intelligence is likely to play a key role for the processing of huge datasets, usually acquired during the seizures. In this respect, AI is supposed to encourage the reorganization and simplification of the judicial work, as well as support the performance of legal research.

28. What do you consider will be the most significant bribery and corruption-related challenges posed to businesses in your jurisdiction over the next 18 months?

In the next months, our jurisdiction will keep on dealing with corruption-related challenges in particular those linked to PNRR funds. With the PNRR funds and the growing amount of financial resources, the risk of bribery crimes increased and also did the number of investigations carried out by the both Italian Prosecutor's Office and the European one which focuses on crimes against the financial interest of the EU.

Therefore, Italian companies (and those which carry out business in Italy) will be required to strength their internal control system in order to further mitigate the risk of being involved in bribery and corruption crimes. In this regard, particular attention should be paid in ensuring the complete traceability of money flows and operations, but also in the performance of adequate due diligence on business partners.

On another note, recent judicial investigations on bribery against exponents of an Italian region have caused concern among institutions and companies. In a nutshell, the criminal investigation is related to an alleged "bribery-scheme" which involved the President of Liguria Region, together with other Public Officials, and some entrepreneurs within a real estate operation.

29. How would you improve the legal framework and process for preventing, investigating and prosecuting cases of bribery and corruption?

Italy has developed a solid legal and regulatory framework aimed at preventing and prosecuting cases of bribery and corruption. However, its continuous improvement is a complex task which involves multiple stakeholders including governments, international organizations, and civil society.

Considering that the adoption and effective implementation of a 231 Model is not compulsory, the development of a judicial approach that emphasizes its effectiveness in the prevention of Relevant Offences, would encourage companies to invest in an adequate

compliance system. In this respect, it would be useful to strengthen the involvement of companies in the prevention of bribery and corruption encouraging the compliance with high thresholds in terms of both transparency and integrity in managing business with the Public Administration and in performing third parties' due diligence (business partners, joint venture partners, vendors, suppliers, contractors, service providers etc.).

Furthermore, the above-mentioned Whistleblowing Decree, which has significantly updated domestic regulation on the matter, will certainly impact the current legal framework concerning bribery crimes. With the extension of the subjective and objective scope of application of the provisions and the increased protection of the whistleblower, almost all companies will have to update their whistleblowing schemes.

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