



ITALY: FOLLOW-UP TO THE PHASE 3 REPORT & RECOMMENDATIONS

May 2014

This report, submitted by Italy, provides information on the progress made by Italy in implementing the recommendations of its Phase 3 report. The OECD Working Group on Bribery's summary of and conclusions to the report were adopted on 20 May 2014.

The Phase 3 report evaluated Italy's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions.

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SUMMARY AND CONCLUSIONS BY THE WORKING GROUP ON BRIBERY

1. In March 2014, Italy presented its Written Follow-Up Report to the Working Group on Bribery, outlining its responses to the recommendations and follow-up issues identified at the time of Italy's Phase 3 examination in December 2011. Since the entry into force of the Convention, Italy has prosecuted 133 persons (104 natural persons and 29 legal persons) in foreign bribery cases. Of those, 12 persons (9 individuals and 3 legal persons) have been sanctioned through *patteggiamento* and 72 defendants had their case dismissed as time barred (50 natural persons and 22 legal persons). The other defendants were acquitted (9 persons) or had their case dismissed for lack of grounds (39 persons). Since Phase 3, no additional foreign bribery case has been finalised. One additional legal person was convicted of foreign bribery in 2013, but an appeal is currently pending.

2. The Working Group welcomed Italy's efforts to review its legislation in a number of areas, hence implementing or partially implementing a number of Phase 3 recommendations, in particular on *concussione*, on the protection of whistleblower's in the public sector and on the length of the limitation period for foreign bribery offences although more remains to be done regarding the latter, as acknowledged by Italy. However, the Working Group noted that the vast majority of the recommendations remain partially or not implemented and that limited substantive action has been taken in a number of areas, including on sanctions applying to both natural and legal persons. The Working Group considers that Italy has satisfactorily implemented 5 out of the 21 Phase 3 recommendations, while 10 recommendations have been partially implemented, and 6 recommendations have not been implemented.

3. With respect to *concussione (recommendations 1a and 1b)*, the Working Group recognized the efforts taken by Italy to amend its Penal Code with Law n° 190 of 6 November 2012, which narrows the scope of the offence of *concussione* and establishes a new offence of undue inducement. The offence of *concussione* now restricts the defence to situations where the will of the person who pays the bribe has been "radically limited". The separate offence of 'undue inducement' cannot be used as a defence but provides for lower sanctions for the briber and hence a shorter period of limitation. The Group decided to follow-up the implementation of the redefined offence of '*concussione*' and the scope and impact of the new offence of undue inducement as case law develops.

4. No action has been taken to increase the effectiveness of the liability of legal persons in foreign bribery cases with a view to avoiding the dismissal of these cases based on the statute of limitations (*recommendation 2*). The Group considered that this remains a concern in a context where a large proportion of legal persons had their case dismissed as statute barred (22 out of 29 legal persons prosecuted for foreign bribery since 2000). The Working Group was also concerned by the lack of action to date with regard to considering aligning the period of limitation applicable to legal persons (currently 5 years) to the one applicable to natural persons (*recommendation 4f (ii)*).

5. In relation to sanctions, the Working Group noted that while Italy has considered making available to judges both the imposition of imprisonment and fines for foreign bribery offences, no step has been taken in this regard (*recommendation 3a*). No action has either been taken to increase the maximum level of administrative fines available for legal persons (*recommendation 3b*). Similarly, no steps have been taken to introduce effective, proportionate and dissuasive sanctions for cases of false accounting (*recommendations 9a*). In relation to statistics on foreign bribery, no action has been taken to establish a national database for all on-going cases of foreign bribery (*recommendation 4d*). Regarding sanctions imposed for offences of foreign bribery (*recommendation 3c*) and money laundering (*recommendation 8*), the Working Group welcomed the introduction of a new registry SICP (*Sistema Informativo della Cognizione Penale*) but noted that it will only become operational by the end of 2014.

6. Of particular concern is the continuing inadequate period of limitations. The Working Group welcomed the extension of the ultimate limitation periods applicable to first time offenders (natural persons only) in the foreign bribery offence (introduced with Law n. 190, 6 November 2012) from 6 to 8 years and, in cases of interruptions, from 7.5 to 10 years (*recommendation 4f (i)*). However, the Group noted that this extension will only partially address this long identified impediment in Italy's implementation of the Convention. It has so far taken between 6 to 11 years for each case to reach the first level of Court. It is thus very unlikely that 10 years would be sufficient to allow a case to complete all appeals and a significant number of cases could continue to be dismissed as time barred. Against this background, the Group was encouraged by the recent announcement of the Minister of Justice to proceed with a more in-depth reform of Italy's statute of limitations for corruption offences and invited Italy to urgently proceed with this reform.

7. Italy did not take any measure since its Phase 3 evaluation to make public certain elements of the arrangements reached through *patteggiamento* (*recommendation 4.e*). The Working Group reiterated its concern on this issue in a context where all sanctions imposed in foreign bribery cases to date were reached through *patteggiamento*.

8. In relation to investigations and prosecution, the Working Group commended Italy for the steps taken to increase sources of allegations at the pre-investigative stage, and the more active role played by Italian embassies in this respect (*recommendation 4.b*). Positive steps were also taken by Italy through the creation of an "Office of European and International Affairs" in the public Prosecutor Office of Milan. However, while a MoU was signed to better coordinate the Anti-Corruption National Committee (ANAC) with the *Guardia di Finanza*, no specialised division was established within the police forces (*recommendation 4.c*).

9. The Italian authorities have delivered training to law enforcement authorities (*recommendation 4.a*), and have undertaken several measures to raise awareness of the foreign bribery offence in the public sector (*recommendation 5*). Similar initiatives have been taken by Italy and the national industrial confederation (Confindustria) to raise awareness in the private sector of the foreign bribery offence and the development of internal controls, ethics and compliance systems (*recommendation 10*). While steps have been taken to remind public officials of their obligation to report suspicions of foreign bribery, no such measures have been taken with regard to private individuals (*recommendation 6*). Italy has not engaged in awareness-raising initiatives with auditors (*recommendation 9.b*).

10. With regard to whistleblower's protection (*recommendation 7*), Italy introduced measures to protect public sector employees from discriminatory or disciplinary action (Law 190/2012). Italy reported that a bill on the protection of private sector employees has been prepared but it was still at an early stage of the legislative process.

11. In relation to public advantages (*recommendation 11*) and export credit (*recommendation 12*) the Working Group noted the steps taken by Italy. More remains to be done to establish mechanisms to verify the information submitted by prospective public contractors and to formalise reporting procedures for SACE and CONSIP employees to law enforcement authorities.

Conclusions of the Working Group

12. Based on the findings of the Working Group on Bribery with respect to Italy's implementation of its Phase 3 recommendations, the Working Group concluded that Italy has satisfactorily implemented recommendations 1a, 4a, 4b, 5 and 10; that Italy has partially implemented recommendations 1b, 3a, 3c, 4c, 4f, 6, 7, 8, 11 and 12; and that Italy has not implemented recommendations 2, 3b, 4d, 4e, 9a and 9b.

13. The Working Group further invited Italy to provide a written follow-up report in one year (i.e. by March 2015) on progress made on recommendation 4f and on related enforcement developments and decided to send a letter to Italy's Minister of Justice to encourage Italy to proceed with a more in depth reform of its statute of limitations for corruption offences, as recently announced by its Minister of Justice, and to express its concern that, pending such a reform, Italy's implementation of the Convention will remain hampered by an inadequate period of limitations.

PHASE 3 WRITTEN FOLLOW-UP REPORT – ITALY

Name of country: ITALY

Date of approval of Phase 3 evaluation report: 16 December 2011

Date of information: 11 February 2014

Instructions

This document seeks to obtain information on the progress each participating country has made in implementing the recommendations of its Phase 3 evaluation report. Countries are asked to answer all recommendations as completely as possible. Further details concerning the written follow-up process is in the Phase 3 Evaluation Procedure [DAF/INV/BR(2008)25/FINAL, paragraphs 55-67].

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

*Please submit completed answers to the Secretariat on or **before 10 February 2014**.*

PART I: RECOMMENDATIONS FOR ACTION

Recommendations for ensuring effective investigation, prosecution and sanctioning of foreign bribery

Text of recommendation:

1. Regarding the foreign bribery offence, the Working Group recommends that Italy:
 - (a) Amend its legislation without delay to exclude the application of concussione as a possible defence to foreign bribery; and

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

Law n. 190 of 6th November 2012 (O.J. 13 November 2012, n. 265), has brought a comprehensive set of measures aimed to prevent and repress corruption and illegality in the Public Administration.

In order to implement recommendation n.1, the law has brought a new definition of the offence of “concussione” (sect. 317 c.c.) which now criminalises exclusively the conduct of the public official who forces a person to pay a sum of money or other benefit which are not due. The minimum term of imprisonment for such conduct has been increased to 6 years, the maximum term of imprisonment remains unchanged at 12 years.

The conduct of “undue inducement” to pay are now described in a new offence called “Undue inducement to give or promise money or other benefit” (sect. 319 quater c.c.). The public official or the person in charge of a public service are punished by imprisonment from 3 to 8 years.

More important, the private person who has been induced to pay the public official (or to pay the person in charge of a public service) is now also punished by up to 3 years of imprisonment, so providing also for this conduct an effective and dissuasive sanction and excluding it from any possible use of the provision as a “defence”.

The Italian Supreme Court (*Corte di Cassazione*), with a recent judgment of last October 24th (Cass., Sez. un., 24 ottobre 2013, Pres. Santacroce, Rel. Milo, ric. Maldera e altri, not yet published), has already strictly delimited the remaining margins of application for the incrimination of *Concussione*, stressing that the will of the person who pays the bribe must have been “radically limited” in order to exclude his criminal liability (http://www.penalecontemporaneo.it/area/3-/15-/-/2589-le_sezioni_unite_sui_rapporti_tra_concussione_e_indebita_induzione_a_dare_o_promettere_utilit___artt___317_e_319_quater_c_p_/).

If no action has been taken to implement recommendation 1(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

N.A.

Text of recommendation :

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

(b) Assess any amendment changing the application of *concussione* as a possible defence to foreign bribery independently of similar amendments dealing with the offence in relation to domestic bribery [Convention, Article 1; 2009 Recommendation III(ii) and V, Phase 2 evaluation, recommendation 7(a)].

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

See previous answer about “concussione”.

If no action has been taken to implement recommendation 1(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

N.A.

Text of recommendation :

2. Regarding the responsibility of legal persons, the Working Group recommends that Italy take steps to increase the effectiveness of the liability of legal persons in foreign bribery cases, including through raising awareness among the prosecuting authorities throughout the country, to ensure that the large range of possibilities available in the law to trigger the liability of legal persons for foreign bribery offences is understood and applied consistently and diligently, with a view to avoiding the dismissal of these cases based on statute of limitations grounds [Convention, Article 2, Phase 2 Evaluation, recommendation 7(b)].

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

The awareness of the Italian Judicial authorities about liability of legal persons in foreign bribery cases (so implementing art. 25 of Legislative decree n. 231/2001 on liability of legal persons) is already very high and constantly improving at a national scale and not limited to single local Prosecutor Office.

This seems to be confirmed by the many cases of legal persons constantly involved in foreign bribery investigations. Most recently the case of the “Indian Helicopters” (originated by pro-active financial investigations in Naples and then transferred for territorial competence to the Court of Busto Arsizio), has involved as defendant one of the most important Italian Companies also active in the arms sector.

If no action has been taken to implement recommendation 2, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

N.A.

Text of recommendation :

3. Regarding sanctions, the Working Group recommends that Italy:
 - (a) Consider making available to judges both the imposition of imprisonment and fines in cases of offences of foreign bribery perpetrated by natural persons as a useful additional deterrent [Convention, Articles 2 and 3; 2009 Recommendation V, Phase 2 evaluation, follow-up issue 8(e)];

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

No action taken.

If no action has been taken to implement recommendation 3(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Italy has carefully considered the possibility of introducing fines, together with the already existing heavy sanctions of imprisonment, in cases of offences of foreign bribery perpetrated by natural persons as

a useful additional deterrent.

In particular the question has been considered by the Legislative Office (organ of direct cooperation with the Ministry of Justice) in close cooperation with the Cabinet and the Office for International Criminal Affairs.

In this context it was assessed that the establishment of sanctions of sole imprisonment in the field of corruption crimes corresponds to a systemic approach related to all incriminations in the same field. Any change only relating to just one isolated incrimination would risk to be considered as an unjustified discrimination subject to a possible challenge in front of the Constitutional Court.

The issue could be reconsidered in the context of a more general reform of CC.

Text of recommendation :

3. Regarding sanctions, the Working Group recommends that Italy:

(b) Increase the maximum level of administrative fines for legal persons and ensure that the mitigating factors and the reduction of the fine imposed through *patteggiamento* procedures lead to the imposition of sanctions that are effective, proportionate and dissuasive, including for large companies [Convention, Articles 2 and 3; 2009 Recommendation V, Phase 2 evaluation, follow-up issue 8(e)];

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

No action taken.

If no action has been taken to implement recommendation 3(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Our Authorities have carefully examined this recommendation and came to the conclusion that it was not possible to increase the maximum level of administrative fines for legal persons only in the case of foreign bribery, while a more general increase in the level of sanctions at an horizontal level is to be possibly considered in a more general context of reform of the law on liability of legal persons.

Text of recommendation :

3. Regarding sanctions, the Working Group recommends that Italy:

(c) Strengthen its efforts to compile at the national level, for future assessment, information and statistics on cases concluded and sanctions imposed for the foreign bribery offence in a manner that differentiates between (i) sanctions imposed on natural and legal persons for the offence of foreign bribery and (ii) the procedures applied (court decision with a full hearing, *patteggiamento* or other procedural step), in order to allow Italy to effectively review its laws implementing the Convention and its approach to enforcement [Convention, Article 3 and 12; 2009 Recommendation III(ii) and V, Phase 2 evaluation, follow-up issue 8(e)];

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

Since 2013 a new system of registry for Prosecution Offices and Courts (SICP – Sistema Informativo della Cognizione Penale) – (see http://www.giustizia.it/giustizia/it/mg_1_11_1.wp?previousPage=mg_14_7&contentId=SPR31349) is under way of being implemented and is already functioning in some pilot Courts (Genova, Firenze, Napoli e Palermo).

The new system, which is composed of the system Re.Ge Web (Registro Generale delle notizie di reato) and BDMC (Banca Dati delle Misure Cautelari) should be fully operational by the end of 2014.

It will allow to provide all actors (prosecutors and judges) with the information needed all along the criminal proceeding, in a more complete and holistic form if compared with the present system, from the phase of the investigations to the end of the appeal phase. Once the system in place, it will be possible also to have access to the sanctions imposed on natural and legal persons and to the type of procedure applied.

If no action has been taken to implement recommendation 3(c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

N.A.

Text of recommendation :

4. Regarding the investigation and prosecution of foreign bribery cases, the Working Group recommends that Italy:

(a) Further develop and deliver a consistent foreign bribery training module to police services that may become involved in investigating foreign bribery cases, in particular to the Guardia di Finanza, and continue to deliver a foreign bribery training module to all prosecutors and judges likely to be involved in foreign bribery cases throughout the country [2009 Recommendation III(ii) and V, Phase 2 evaluation, recommendation 1(a)];

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

i) About training of police services:

Corruption is a subject matter in the training of the Italian police forces personnel. In the framework of the Italian National Police officers' training this subject is included in the Criminal Law Module of the second level master course in Security Sciences that is conducted in cooperation with the "Sapienza" University of Rome. Likewise, international corruption is dealt with in the criminal disciplines covered by the courses organized in the Carabinieri Corps schools and over 2,000 Carabinieri officers are trained yearly on this specific subject.

The above also applies to the Guardia di Finanza, whose specific tasks imply an enhanced personnel training through the regular organization of dedicated conferences and seminars in this operative sector.

In addition to the training organized by the police forces it is worth highlighting the activity carried

out by the European Police Academy CEPOL, which organized two courses in Rome on money laundering with the participation of trainers/experts of the Bank of Italy, the Ministry of Treasury and the academic world.

Moreover, CEPOL organized various courses at European level ("Economic and Financial crime -- Investigating Corruption", "Fight Corruption", "Money Laundering", "Investigating and Preventing Corruption") with the participation as trainers of officers from the Italian National Police, the Guardia di Finanza and the Carabinieri Corps.

The Italian CEPOL National Unit participated in the "Euromed III Police Project" by sending a Guardia di Finanza trainer to the course "Fight against International Corruption", which was held in the United Kingdom from 10 to 14 December 2012.

A full list of the training initiatives organized by police forces will follow.

About training of prosecutors and judges,

In 2013 the new Scuola Superiore della Magistratura – SSM (Superior School of the Judiciary) entered into functioning while the Consiglio Superiore della Magistratura abandoned its competences in the field of judicial training.

In 2013, in the framework of the continuous training program for judges and prosecutors, the SSM organized the course nr. P13045 devoted to the subject of the investigations in the field of corruption (*Note by the Secretariat: Annex available upon request*); one entire working group was devoted to the subject of international bribery.

In 2014 a new project (course P14042) will be devoted to the same subject and an entire session will deal with the issue of international bribery.

In the framework of initial training, the 2 programs for magistrates newly appointed (Magistrati in Tirocinio Ordinario - M.O.T.) in 2012 and 2013 have included conferences and training on the subject of corruption and corruption related offences.

A rough estimation of each continuous training course attendance is of about 90 magistrates while the global number of M.O.T. who have went through an initial training until now (from the opening of the SSM) is of 645.

If no action has been taken to implement recommendation 4(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

N.A.

Text of recommendation :

4. Regarding the investigation and prosecution of foreign bribery cases, the Working Group recommends that Italy:

(b) Use proactive steps to gather information from diverse sources at the pre-investigation stage both to increase sources of allegations and enhance investigations, in addition to having Italian embassies and consular offices report suspicions of crime and acquire information about related legal proceedings in the foreign jurisdictions;

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

Since many years already Italy has followed a pro-active approach in detecting and investigating international corruption cases, making use of all the synergies available and with an enforcement action not limited solely to some geographical Regions or Courts.

If it is undoubtful that the Court of Milan has concentrated a lot of very important investigations in the field of international bribery and this is due to the efficiency of local prosecutors as well as to its strategic and geographical position.

On the other hand it is also true that, in particular in recent years, prosecutions against international bribery have spread around the Country stemming not only from information coming from abroad but also from internal proactive investigations.

The very important and world known case about “Indian Helicopters”, at present under trial in the Court of Busto Arsizio, was in fact originated by an investigation in Naples for illicit financing of political parties (see “Il Sole 24ore”, 13 feb 2013, p. 3).

Internal controls have also originated the opening of criminal investigations on another important case of international bribery at present under investigation in Naples (related to the tender for the building of prisons in Panama).

We should also recall that, following the directive of the Ministry of Foreign affairs n.4/2011, Embassies and Consulates systematically report to the Ministry of Foreign Affairs, to the Ministry of Justice and to the Public Prosecutor in Rome every single criminal case involving Italian natural or legal persons (including cases of international bribery). Due to the principle of mandatory prosecution provided for by the Italian Constitution, such report will unavoidably bring to the opening of a criminal investigation by the public prosecutor.

If no action has been taken to implement recommendation 4(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

N.A.

Text of recommendation :

4. Regarding the investigation and prosecution of foreign bribery cases, the Working Group recommends that Italy:

(c) Considering taking the following steps to ensure effective investigations and prosecution: (i) establishing specialised divisions where highly skilled police forces would work together and specialise in foreign bribery as was done for other crimes in Italy; (ii) establishing working groups specialised in the foreign bribery offence within the Public Prosecutor's Offices that are the most likely to be involved in foreign bribery; (iii) raising awareness at national level about the need to prioritise the investigation of foreign bribery offence; and (iv) reinforcing the resources available in PPOs and tribunals to deal with foreign bribery; and [2009 Recommendation III(ii) and V];

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

i. Police

The structure of the Italian police forces includes units responsible for the fight against corruption.

In particular, it should be highlighted that in 2008 a reorganization envisaged ad hoc units named “Sections to Combat Crimes against Property and the Public Administration” within the Criminal Investigation Units of the *Questure*.

With regard to the specific tasks of the *Guardia di Finanza* mention should be made of the Tax Police Units that, in particular, carry out economic and financial police tasks, i.e.:

1. the *Nucleo Speciale Pubblica Amministrazione*, (special unit dealing with corruption in the public administration), which supports the Anti-Corruption National Unit in the activities to prevent corruption in the public administration, as well as to measure and assess the public administration's performance, transparency and integrity;
2. the *Nucleo Speciale Tutela Mercati*, (special unit dealing with market protection), which cooperates with the Italian Authority for the Surveillance of Public Procurement of Works, Services and Supplies to check fairness and transparency of awarding procedures, as well as cost effectiveness in the implementation of contracts with a view to ensuring fair competition.

ii. Prosecutors

Italy has an extensive experience of groups of prosecutors specialized in various matters (not only corruption but also organized crime, terrorism, human trafficking, environment, sexual abuses, etc.). The creation of such working groups is dependent on the dimension of the Office in question and the relevance of the criminal phenomenon in the geographical situation.

Specialised Groups of Prosecutors against corruption offences exist since long in every Prosecutor Office of medium/large dimension.

The special attention devoted to the foreign bribery in the more relevant situations has recently brought the Chief Prosecutor of Milano (from far the Prosecution Office most involved in such cases in Italy), to create an “*Office of European and International Affairs*” aimed at “*granting the continuous relationship with foreign judicial authorities and an uniform treatment of rogatory letters in the economic crimes field; keep constant relationships with European and International Bodies (OECD, FATF, GRECO, UNODC); act as referent point for the investigations in the field of economic crimes and in the*

field of international corruption”

Mr Fabio de Pasquale, a senior prosecutor well known also in WGB context, has been appointed as coordinator of this new specialized Office (*Note by the Secretariat: Annex available upon request - Decision of the Chief Prosecutor of Milan, Mr Bruti Liberati, of 31 Jan 2014*).

If no action has been taken to implement recommendation 4(c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

N.A.

Text of recommendation :

4. Regarding the investigation and prosecution of foreign bribery cases, the Working Group recommends that Italy:

(d) Consider the establishment of a national database for all on-going cases, in line with private data protection legislation, with a view to ensure coordination of foreign bribery investigations nationally and to avoid intelligence gaps [Convention, Article 3 and 12; 2009 Recommendation III(ii) and V];

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

No specific action taken.

If no action has been taken to implement recommendation 4(d), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

In relation to the possibility to set up a national database for the ongoing investigations into international corruption and in consideration of the secrecy concerning preliminary investigations, the creation of an ad hoc database containing the information on the investigations conducted by the national investigative units has not been envisaged at present taking into account the specificity of the Italian prosecutorial system, based on the independence and autonomy of each single Prosecution Office.

The only existing exception to the present situation is represented by the Anti-Mafia National Directorate database, which stores the data supplied by the Anti-Mafia District Directorates (D.D.As) and resulting from the investigations falling under the responsibility of the Anti-Mafia District Prosecutor's Offices. Information on international corruption cases shall also be included should mafia-type organisations be involved in them.

It is also to be underlined that the Italian police forces have a single national database, the –SDI- Investigation System, that since 2001 has been the official statistical database of crimes, as well as the place where the investigative offices store the relevant measures (referrals to the judicial authorities,

restrictive measures, etc.).

On the judicial side, we should consider that the relatively restricted number of cases of investigations on international bribery together with the very high level of specialisation of the prosecutors working on them ensure an appropriate coordination of foreign bribery investigations at national level.

See also under 3 c) about SICP.

Text of recommendation :

4. Regarding the investigation and prosecution of foreign bribery cases, the Working Group recommends that Italy:

(e) Make public, where appropriate and in line with its data protection rules and the provisions of its Constitution, through any appropriate means, certain elements of the arrangements reached through patteggiamento, such as the reasons why patteggiamento was deemed appropriate in a specific case and the terms of the arrangement, in particular, the amount agreed to be paid [Convention, Article 3, Phase 2 evaluation, follow-up issue 8(e)]; and

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

No specific action taken.

If no action has been taken to implement recommendation 4(e), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Italy has carefully examined the change recommended by the WGB but we considered that, unlike other systems where the plea bargain procedure is a bilateral affair among the accused person and the prosecutor, in our system the judicial control from the judge on the “patteggiamento” (and on all its elements) does not seem to make it necessary such publicity.

In any case, since “patteggiamento” is a judicial decision, its terms are public including the amount agreed to be paid. Since cases of international bribery are not that numerous and in general very well-known and followed by the national and international press, the NGO’s and the general public, the control over the decisions taken seems to be already quite effective and satisfactory.

Text of recommendation :

4. Regarding the investigation and prosecution of foreign bribery cases, the Working Group recommends that Italy:

(f) Urgently (i) take the necessary steps to significantly extend, including for “first time offenders,” the length of the “ultimate” limitation period with respect to the prosecution and sanctioning of foreign bribery, through any appropriate means; and (ii) re-evaluate the impact of

the shorter base limitation period applicable to legal persons and consider aligning that period to the limitation period applicable to individuals (as extended according to (i) above) [Convention, Article 6, Phase 2 recommendation 7(b)].

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

This was one of the main changes brought in by Law 190/2012.

In order to implement the recommendation, increased sanctions have been provided for in relation to offences of Corruption in the performance of acts in breach of official duties (“*corruzione propria*”, sect. 319 c.c.) previously sanctioned from 2 to 5 years of imprisonment and now from 4 to 8 years; of Corruption in judicial proceedings (sect. 319 ter c.c.), previously from 3 to 8 years of imprisonment and now from 4 to 10 years; of abuse of office (art. 323 c.c.), previously from 6 months to 3 years of imprisonment and now from 1 to 4 years, and of misappropriation of public property or public funds (“*Peculato*”) (art. 314 c.c.) previously sanctioned with a minimum term of imprisonment of 3 years and now of 4 years.

As a result of the above mentioned increases in the maximum penalties, together with a more dissuasive effect, there is also the extension of the period of time limitation for each of the offences; in particular, in the case of corruption in the performance of acts in breach of official duties, the minimum term of time limitation, for the “first time offenders, increases from 7 ½ years to 10 years with a parallel increase also for the offence of international corruption (sect. 322 bis c.c.).

Furthermore a special Ministerial Study Commission (“*Commissione Fiorella*”) has been put in place in 2013 to study the possibility of a more systemic reform in the field of time limitation. The final report of this Commission, also containing draft options for a reform, have been brought to the attention of the Minister of Justice and are actually under scrutiny.

See the conclusions @:

http://www.giustizia.it/giustizia/it/mg_1_12_1.wp?previousPage=mg_1_12&contentId=SPS914317

If no action has been taken to implement recommendation 4(f), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

N.A.

Recommendations for ensuring effective prevention and detection of foreign bribery

Text of recommendation :

5. Regarding raising awareness of the foreign bribery offence, the Working Group recommends that Italy (a) in relation to the public sector, further improve training programmes that address foreign bribery, including among foreign embassies abroad, with a view to assist public officials to be alert to instances of foreign bribery; and (b) in relation to the private sector, continue its efforts to raise awareness among companies, especially SMEs, about the foreign bribery offence [2009 Recommendation III(i), IX

and X.C.].

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

a) Public Sector

In general terms, it is important to underline that the Law no. 190/2012 emphasizes on the relevance of the training of public employees with reference to the prevention and contrast of corruption. These training initiatives are coordinated by the National School of Administration (*Scuola Nazionale di Amministrazione* - SNA).

The National AntiCorruption Plan (PNA) prepared by the Department of public administration and approved by A.N.AC., in chapter 3.1.12, among the training initiatives, establishes that “particular attention must be given to the international corruption, as recommended by the OECD WGB, involving, in particular, the Italian public officials that operate in foreign countries or in contact with foreign countries, with the purpose to prevent the corruption related to foreign briberies.

In relation to the public sector a huge number of initiatives have been taken in particular by the SNA and from the Ministry of Foreign Affairs with the specific purpose of raising awareness against corruption and international bribe.

The SNA has organised around 60 Seminars on transparency and anticorruption involving around 2000 officials (*Note by the Secretariat: Two annexes available upon request*). More seminars (for around 90 hours of lesson) are already planned in 2014.

Moreover the SNA, on the 30 Jan 2014 has signed a Memorandum of Understanding with the World Bank, establishing a strategic partnership in the field of anti-corruption and governance in the public sector. Among the activities planned, there is a review of existing international curricula, which also includes an in-depth analysis of their weaknesses and strengths. The results that will follow will be used for the definition of a training module entitled "The international dimension of the fight against corruption and the main measures of the phenomenon."

The Diplomatic Training Institute (*Istituto Superiore Diplomatico – ISDI*) has organised the following initiatives addressed to diplomats and to administrative officials in service abroad. In the framework of a cycle of training seminars, one session (of about 2 h.) has always been entirely devoted to the issue of international bribery. 10 Seminars on the specific subject of international corruption have been organised involving around 468 diplomats and officials of the MoFA, an impressive number if compared with the relatively small number of officials of the MoFA; the seminars have put a particular emphasis on the OECD Convention and the Recommendations addressed to Italy during the different cycles of evaluation.

ISDI Seminars on International Corruption:

DATE	CYCLE	SPEAKER	TITLE OF THE PRESENTATION	PARTICIPANTS
6 dicembre 2011	Corso di formazione per Segretari di Legazione in prova	Dott.ssa Caterina Chiaravalloti	Prevenzione nella lotta alla corruzione internazionale”	30
7 maggio 2012	Corso di aggiornamento per Consiglieri di	Dott.ssa Caterina	“Prevenzione della corruzione,	30

	Legazione	Chiaravalloti	interventi legislativi e proposte normative	
31 maggio 2012	Giornate di formazione multidisciplinare sulla cultura dell'integrit�, del benessere e della sicurezza al MAE	Dr.ssa Caterina Chiaravalloti	Prevenzione nella lotta alla corruzione internazionale	23
14 novembre 2012	Giornate di formazione multidisciplinare sulla cultura dell'integrit�, del benessere e della sicurezza al MAE	Dr.ssa Caterina Chiaravalloti	Prevenzione nella lotta alla corruzione internazionale	16
24 gennaio 2013	Giornate di formazione multidisciplinare sulla cultura dell'integrit�, del benessere e della sicurezza al MAE	Cons. Lorenzo Salazar	Prevenzione e contrasto nella lotta alla corruzione internazionale	61
23 aprile 2013	Giornate di formazione multidisciplinare sulla cultura dell'integrit�, del benessere e della sicurezza al MAE	Cons. Alessio Scarcella Ministero della Giustizia	Prevenzione e contrasto nella lotta alla corruzione internazionale	65
6 maggio 2013	Corso Alta formazione per Capi struttura e Corso di aggiornamento per Consiglieri di Legazione	Consigliere Ermanno Granelli - Corte dei Conti	“Trasparenza, etica, misure di prevenzione della corruzione nelle P.A”	80
8 luglio 2013	Giornate di formazione multidisciplinare sulla cultura dell'integrit�, del benessere e della sicurezza al MAE	Cons. Lorenzo Salazar	Prevenzione e contrasto nella lotta alla corruzione internazionale”	48
15/10/2013	Giornate di formazione multidisciplinare sulla cultura dell'integrit�, del benessere e della sicurezza al MAE	Cons. Lorenzo Salazar	Prevenzione e contrasto nella lotta alla corruzione internazionale	35
4 febbraio 2014	Giornate di formazione multidisciplinare sulla cultura dell'integrit�, del benessere e della sicurezza al MAE	Cons. Lorenzo Salazar	Prevenzione e contrasto nella lotta alla corruzione internazionale	80

b) Private Sector

Confindustria, as the main organization representing Italian manufacturing and services companies,

makes its efforts in tackling bribery, considered as a widespread phenomenon which undermines sustainable economic development and distorts international competitive conditions in national and international business transactions. In fact firms that lose out unfairly are bribery's immediate victims: each bribe offered or accepted determines a loss in free and fair competition.

Confindustria offers training through workshops and conferences to the purpose of establishing an anti-bribery culture in the network association.

In order to raise firm's awareness about the foreign bribery offence, Confindustria and Consip - a State-owned enterprise which supplies goods and services to the public administration - work together to provide information and training to companies, in particular small and medium size enterprises, about foreign bribery issues.

If no action has been taken to implement recommendation 5, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

N.A.

Text of recommendation :

6. Regarding reporting suspicions of foreign bribery, the Working Group recommends that Italy:
- (a) continue to remind public officials of their obligation under article 331 CCP to report suspicions of foreign bribery detected in the course of performing their duties to law enforcement; and (b) create and publicize a clear means by which private individuals can report suspicions of foreign bribery [2009 Recommendation IX(ii); Phase 2 evaluation, recommendation 1(b)].

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

Last year the Presidential Decree no. 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. In addition, it is provided that each administration adopts its own code of conduct. At this respect A.N.AC. has already issued some general guidelines and in the further coming sectorial guidelines A.N.AC. will explicitly include the OCSE recommendations on foreign bribes with reference to some specific administrations.

The National Anti-Corruption Plan prepared by the Department for Public Administration and approved by the National Anti-Corruption Authority in September 2013, provides:

- a) in choosing the procedures for the implementation of training processes aimed at preventing corruption, pursuant to paragraph 5 of Article 1 of Law 190/2012 (Anti-Corruption Law), the public administrations, in collaboration with the National School of Administration, should pay particular attention to issues relating to foreign bribery, involving in particular officials operating abroad or in contact with foreign countries, in order to prevent corruption in international business transactions (paragraph 3.1.12);

- b) in order to prevent and combat corruption, the public administrations evaluate mode, organizational solutions and times for the activation of channels dedicated to reporting (from outside the administration, even anonymously, and in informal mode) of cases of bad administration, conflict of interest, corruption, also enhancing the role of the offices for public relations (URP) as organizational network that operates as a communication interface inside/outside (paragraph 3.1.14).

If no action has been taken to implement recommendation 6, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

N.A.

Text of recommendation :

7. Regarding whistleblower protection, the Working Group recommends that Italy (a) ensure that appropriate measures are in place to protect from discriminatory or disciplinary action both public and private employees who report in good faith and on reasonable grounds to the competent authorities suspected acts of foreign bribery; and (b) take steps to raise awareness of these mechanisms [2009 Recommendation IX(iii), Phase 2 evaluation, recommendation 2].

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

Law no. 190/2012 has introduced, for the first time in Italy, a provision specifically related to the whistleblowing regulation in the public sector. The whistleblowing mechanism is further developed in chapter 3.1.11 of the PNA: "protection of the employee who reports illegal activities." The whistleblower cannot be punished, dismissed or discriminated on grounds which are directly or indirectly connected with him/her blowing the whistle. During the disciplinary proceedings, the identity of the whistleblower cannot be disclosed without his/her consent, unless this is a sine qua non condition for the defence of the accused person. Any discriminatory measures must be reported to the Department for Public Administration by the whistleblower or by the trade unions representing the administration involved. The whistleblower's report is a protected disclosure as per Law 241/90.

Each administration will have to introduce and specify precise measures and actions in the field of whistleblowers protection in its three-year Plan for the prevention of corruption, to be adopted by January 31, 2014. The A.N.AC., as provided by the Law no. 190/2012, art. 1, c. 2, letter. f) will also verify and control the implementation of these measures.

About whistleblowing in the private sector a bill has been presented in the Chamber (AC 1751) on the 30 October 2013:

http://www.camera.it/_dati/leg17/lavori/stampati/pdf/17PDL0015170.pdf

If no action has been taken to implement recommendation 7, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation :

8. Regarding money laundering, the Working Group recommends that Italy maintain statistics on:
- (a) sanctions in money laundering cases; (b) the predicate offence for money laundering, with a view to identifying cases where foreign bribery is a predicate offence; and (c) STRs that result in or support bribery investigations, prosecutions and convictions [Convention, Article 7].

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

The main purpose of the Italian AML framework is to prevent the use of the legal channels by the criminals. The system based on the suspicious transactions reports moves in this logic, which is essentially preventive. This approach is taken into account by the article 2 of Legislative Decree 231/2007, which states that "in order to prevent use of the financial system and the economy for the purpose of money laundering and terrorist financing, (the decree) lays down measures aimed at safeguarding these systems' integrity and proper conduct. The preventive action referred to (in the previous paragraph) shall be coordinated with the activities repressing money laundering crimes and terrorist financing,

a) Sanctions in money laundering cases.

From the strict point of view of the FIU operational framework, the Legislative Decree 231/2007 (article 60) states that "records relating to persons in whose regard a definitive sanction is issued on the basis of (the article) shall be retained in the information system of the FIU for a period of ten years. The measures by which the administrative fines provided for in (the decree) are imposed shall be notified to the supervisory authorities, the FIU and the professional associations, for initiatives within their respective spheres of competence).

b) Predicate offences for money laundering with a view to identifying cases where foreign bribery is a predicate offence.

It's worth noting that the Italian suspicious transactions reporting system is characterized by the performance of preventive action consisting in the analysis and enrichment of the financial aspects of the reports. STRs and the subsequent financial analysis carried out by the FIU normally provide a starting point for investigations, sometimes producing information about specific crimes (such as foreign or domestic bribery).

Nevertheless, anomalous transactions presumably linked to cases of corruption often emerged from the Unit's reconstruction of financial flows. Identifying cases of corruption is sometimes tricky, since the way in which the price is paid is often abstractly symptomatic of a host of different types of financial anomaly. The difficulty lies in the increased recourse to modes of payment that give the person corrupted non-financial benefits, which normally do not leave specific traces.

Transfers of sums of money by means of cash, the use of cheques or, more rarely, credit transfers to or from front accounts in permissive regulatory systems and tax havens were found in the reports referable to episodes of corruption. Only by exactly identifying the subjective profile of the reported party was it possible to define the transactions described by the intermediaries with a greater degree of precision. The professional status of the reported parties, the activity they performed and their possible links to the public

sphere made it possible to detect signs pointing to corruption.

Two particular types of transaction were found to be used by the reported parties in attempting to disguise transfers of money to the corrupted party: the payment of invoices, sometimes issued by front companies indirectly linked to the final recipient of the sums, for non-existent services, and the payment of fees for fictitious consulting services or professional opinions.

c) STRs that result in or support bribery investigations, prosecutions and convictions.

STRs are transmitted to both the Bureau of Antimafia Investigation and the Special Foreign Exchange Unit of the Finance Police. The first examines them for the presence of evidence of organized crime. The analysis of the second investigative authority seeks to identify the reports to be examined in more detail using its special powers.

The outcomes of the inquiry are notified to the FIU under Article 48(2) of Legislative Decree 231/2007 when reports are not followed by further investigation.

According to the Finance Police, of the more than 18,000 reports for which further investigations were completed in the period 2010-11, a total of 8,365 (or about 46%) were incorporated into penal proceedings already under way at a public prosecutor's office or gave rise to new proceedings for money laundering and/or the utilization of the proceeds of criminal activities. In 2012 more than 12,000 STRs were analyzed by the Finance Police, among which 2,000 linked to penal proceedings in course. Almost 1,200 were acquired by the Judicial Authority or determined new investigations.

If no action has been taken to implement recommendation 8, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

N.A.

Text of recommendation :

9. Regarding accounting and auditing requirements, the Working Group recommends that Italy:
- (a) Ensure that its legislation provides effective, proportionate and dissuasive sanctions for all cases of false accounting regardless of (i) monetary thresholds, (ii) whether the offence is committed in relation to listed or non-listed companies, and (iii) whether the offence causes damage to shareholders or creditors [2009 Recommendation X.A(iii); Phase 2 recommendation 3]; and

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

As far as external audit is concerned, Italy's domestic legislation has been significantly affected by the process of compliance with Directive 2006/43/EC on statutory audit of annual and consolidated accounts, pursued through Italy's Decree-Law n. 39/2010. In particular, Italy's Ministry of Economy and Finance (MEF) has been working on implementing Decree-Law n. 39/2010 for statutory auditors and audit firms that perform audit engagements on entities other than public interest entities, whose external auditors or audit firms are instead subject to *Consob* oversight.

In this framework, the main point that may be of interest with regard to this point of the OECD recommendation is:

Ensuring the enforcement of independence standards on external auditors and audit firms.

Such independence is provided for in Article 10 of Decree-Law n. 39/2010, which prohibits any involvement by auditors or partners of the audit firm in the decision-making process of the audited entity, requiring them to avoid all and any relationship with the governing bodies and to adopt appropriate measures to restrain threats to independence, whereby identified.

Besides, Art. 10 of the mentioned Decree-Law requires the enactment of professional standards for auditors' independence. Such standards may be proposed by professional bodies and subsequently enacted by MEF and *Consob* (the Stock exchange Commission) or may be directly enacted via *ad-hoc* decree.

MEF has set up a Working Group composed of representatives from main professional associations and from MEF itself, with the task of presenting a set of standards on auditors' ethics. The Working Group has approved a project aimed at adapting the IAASB Code of Ethics for the Accountant Profession to Italy's legal framework, and has just completed a set of draft standards, which will be submitted to MEF for approval, via decree, as soon as a final review has been completed.

If no action has been taken to implement recommendation 9(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation :

9. Regarding accounting and auditing requirements, the Working Group recommends that Italy:
- (b) Engage in awareness-raising activities with auditors, including through providing training regarding (i) the detection of indications of suspected acts of foreign bribery; (ii) the obligation under LD 58/1998 to report such acts to company management and criminal law enforcement authorities; and (iii) the legal protections that may be available to auditors who report suspicions of wrongful conduct [2009 Recommendation X.B];

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

a) Reporting of suspected acts of bribery identified in the course of external audit

The reporting of suspected acts of bribery as well as of any other offence by the audited entity, members of its governing body, staff, auditors, and/or audit firms members is mandatory. Furthermore, failure to comply with such obligation shall be punished according to relevant national legislation.

The weak point affecting such provision prior to the introduction of Decree-Law n. 39/2010 lied in the lack of oversight on the activities performed by auditors and audit firms. The provision of a quality control system envisaged by Decree-Law n. 39/2010 should remedy such lack of oversight, and a draft regulation has been proposed to check the work performed by approximately 150,000 auditors and audit firms within a six-year period. This quality control system shall also allow supervisory authorities to pave the way for a sanction proceeding against auditors or audit firms failing to comply with national law and professional standards when performing an audit.

b) Awareness-raising activity for auditors

In accordance with the European Union's legal framework, Italy's national legislation envisages adequate and constant professional training for auditors. Training shall be in part provided for by MEF and in part by the professional bodies concerned, subject to MEF verification and acknowledgement of programmes' consistency with the theoretical and practical knowledge required by law.

Professional deontology and the principles of independence of auditors and audit firms are subjects of qualification exams for professional auditors and fall within lifelong education subject matters.

If no action has been taken to implement recommendation 9(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

N.A.

Text of recommendation :

10. Regarding corporate compliance, internal controls and ethics programs, the Working Group recommends that Italy encourage companies, particularly SMEs, (a) to adopt or further develop adequate internal controls, ethics and compliance programmes or measures for preventing and detecting foreign bribery; and (b) to make statements in their annual reports or otherwise publicly disclose their internal controls, ethics and compliance programs or measures for preventing and detecting bribery [2009 Recommendation X.C, Annex II].

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

Confindustria (the Association of Italian Companies) plays an essential role in assisting companies in building compliance practices in order to prevent and detect suspected acts of bribery of foreign public officers.

Under Italian law, legal persons can be liable for the bribery of foreign public officers by persons associated with it. In order to avoid offences and the consequent responsibility of legal persons, since 2001 Confindustria produced Guidelines about measures which companies can put in place to prevent offences, included bribery.

At present, in order to adapting the regulation at the legislations' evolution and enforce the struggle against bribery, Confindustria is reviewing its Guidelines paying specific attention to bribery issues.

Through this guidance Confindustria explains how enterprises can adopt effective internal controls, ethics and compliance programs to prevent offences. These measures, to the purpose of being effective, have to take into account the individual circumstances of an organization, including characteristics such as size, type, legal structure and geographical and industrial sector of operation.

In order to prevent bribery Confindustria recommends that companies should:

make a careful risk assessment: the management have to think about the bribery risks that company might face, identifying who confronts and deals with bribe solicitation;

put in place and apply due diligence procedures to prevent bribery in order to mitigate identified bribery risks;

ensure that its bribery prevention policies and procedures are embedded and understood throughout the organization by internal and external communication, including questionnaires and feedback from training or surveys;

create a monitoring body, independent of management, which regularly monitor, review and make improvements to ensure the effectiveness of the company's internal control, ethics and compliance programs.

Confindustria's Guidelines also encourage companies to reward employees who report to the competent authorities offences, included suspected act of bribery of foreign public officials in international business transactions. So the regulation of a business organization - as Confindustria is - can fill a serious gap in the Italian law system, which, despite OECD's Recommendation, have put in place measures to protect the whistleblower only in the public sector.

If no action has been taken to implement recommendation 10, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

N.A.

Text of recommendation :

11. Regarding public procurement, the Working Group recommends that Italy (a) establish mechanisms for verifying, when necessary, information submitted by prospective public contractors, including declarations regarding whether they have been previously convicted for foreign bribery and whether they are listed on IFI debarment lists; and (b) extend the grounds for debarment from public tenders administered by AVCP and other agencies to cover all offences falling within the scope of Article

1 of the Convention, not just those involving EU officials [2009 Recommendation XI(ii)].

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

According to art. 38 lett c) of the Legislative Decree 163/2006 (the Code of Public Contract), transposing art 45 of the Directive 2004/18/EC, the conviction of corruption is considered as bribery of EU public officials (from EU or/and national institutions). As a consequence the National Database of Public Contracts (based in the AVCP) cannot contain information on corruption of Non-EU official or the international financial institution debarment lists.

However the anti-corruption law 190/2012 of November 6th 2012 provides that the economic operators can be excluded for non-compliance with clauses of memoranda on integrity or integrity pacts in case it has been specified by the contracting authority in the notice, in the contact notice or in the letter of invitation (art. 1, par 17).

Moreover according to art.1, par 58 of the aforementioned law, providing amendments of art. 135 of the Code of Public Contract, the contract can be annulled in the event of conviction by final judgment of the contractor for crimes of corruption (crimes under art. 51, par. 3 bis and 3 quater of the Crime Procedure Code; articles 314, par. 1, 316 bis, 317, 318, 319, 319 ter, 319 quater and 320 of the Criminal Code), in relation to the status of execution of the contract and possible consequences in respect to its aims.

Furthermore the anti-corruption law 190/2012 provides rules fostering the transparency in order to prevent the corruption phenomena in public procurement (art. 1, par 15, par. 16, par. 32 and par 33):

- Contracting authorities shall publish on their web sites information on: the subject of the contract notice; the economic operators invited to tender; the successful contractor; the amount of the award; the time limit to complete the work, service or supply; the amount paid. Each year, by the end of 31 January, summary tables providing information, freely available in digital format, on the previous year are published in order to allow data assessment, also for statistical purposes. Contracting authorities shall transmit such information in digital format to the Authority for the Supervision of Public Contracts that shall publish it on its web site, in a section freely available to all citizens, listed by typology of contracting authority and Region. The Authority, by means of its own deliberation, identifies the relevant information and the transmission method. Moreover, each year by the end of 30 April, the Authority shall transmit to the Court of Auditors the list of administrations which have not provided and published, in whole or in part, the information in digital format. According to art. 6, paragraph 11 of 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;
- Public administrations shall publish on their websites information on budgets and final accounts, as well as on unit costs of construction of works and on costs of production of services provided to citizens; information on the costs is published on the basis of standard forms elaborated by the Authority for the Supervision of Public Contracts, that will ensure its collection and publication on its institutional website in order to allow easy comparison.

If no action has been taken to implement recommendation 11, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

N.A.

Text of recommendation :

12. Regarding export credit, the Working Group recommends that Italy require SACE and CONSIP to formalise procedures to be followed by employees for reporting credible evidence of the bribery of a foreign official to law enforcement [2009 Recommendation IX].

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

In its Phase 3 Report on implementing the OECD Anti-Bribery Convention in Italy of December 16th 2011, the OECD Working Group on Bribery commended Italy for the measures taken by SACE to implement the 2006 Recommendation on Bribery and Officially Supported Export Credits and to ensure that companies benefiting from its official support operate in ethical ways. Additionally, the OECD Working Group made a specific recommendation concerning SACE to the effect that:

SACE should establish mechanisms to verify the accuracy of information submitted by applicants, including declarations regarding whether they have been previously convicted for foreign bribery; and

SACE should formalize procedures to be followed by its employees for reporting credible evidence of the bribery of a foreign official to law enforcement authorities.

Since the publication of the OECD Report, SACE has availed itself of specific databases in order to verify the potential reputational risks of its counterparties and has adopted a Know Your Customer Procedure ("KYC Procedure") which provides guidelines for the monitoring of corruption risks to its operational structures. These two measures bring SACE in full conformity with the above-stated OECD recommendations.

Indeed, in relation to recommendation (i), the KYC Procedure requires that - both before and after official support is provided by SACE (including in the underwriting, portfolio management, indemnity and recovery phase) - its employees verify the accuracy of declarations made by the applicants and check on the relevant reputational databases the presence of SACE counterparties (i.e. insured banks, exporters, debtors, guarantors, beneficiaries, and sponsors as appropriate) on the debarment lists of national and international public authorities and multilateral organizations and/or previous convictions.

In relation to recommendation (ii), according to the KYC Procedure whenever the reputational databases (or other sources) reveal evidence of bribery of a foreign official by a SACE counterparty, the KYC Procedure establishes a mechanism for SACE employees to report such evidence to law enforcement authorities. If (a) the databases reveal that a SACE insured party or exporter has been convicted or subject to administrative measures or that legal proceedings have been brought against it for violation of international laws against bribery of foreign public officials and/or offences pursuant to Italian Legislative Decree 321/2001 or (b) there is reason to believe that bribery may be involved in the transaction, the KYC Procedure provides that the relevant SACE structure conducts an enhanced due diligence on the transaction. If such enhanced due diligence process reveals a suspected violation of international laws against bribery of foreign public officials, the Litigation Department is informed thereof

and evaluates whether to report it to the law enforcement authorities.

If no action has been taken to implement recommendation 12, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

N.A.

PART II: ISSUES FOR FOLLOW-UP BY THE WORKING GROUP

Text of issue for follow-up:

13. The Working Group will follow up on the issues below as case law and practice develop:

(a) The interpretation by the Italian Supreme Court of Cassation with regard to the definition of foreign public official and the implementation of the principle of “ex officio” ascertainment by the judge of the law of the foreign public official’s country to ensure that is compatible with the requirement of an autonomous definition [Convention, Article1];

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

No further developments

Text of issue for follow-up:

(b) The application of the defence of organisational model available to legal persons under LD 231/2001, articles 6(1) and 7 [Convention, Article 2, 2009 Recommendation IV, Annex I, B];

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

With regard to this issue, art 6 of L. 231/2001 is very clear about the necessity for the legal person to put in practice an organisational model to prevent the commission of crimes of bribery by the high level employees (administrators and general director) and their submitted for the advantage of legal person. Art 25 of L . 231/2001 lists the crimes that, when committed by up-level employees and subordinated, involve the liability of legal persons when are in the interest and for the benefit of the legal person.

Text of issue for follow-up:

(c) Whether LD 231/2001 imposes liability on a legal person when a principal offender bribes to the advantage of a subsidiary (or vice versa) or when an indirect advantage, such as an improved competitive situation, results from bribery [Convention, Article 2, 2009 Recommendation IV, Annex I, B];

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

We're not aware of further relevant case law after the Supreme Court judgment of 2011 (24583/2011) which has defined the necessary conditions to declare the liability of parent company of the same group. While admitting this possibility the Supreme Court has précised the conditions under which this liability can be declared; this is the case when any relationship, organic or even *de facto*, can be ascertained among the person who is the principal offender and the other company/ies of the group.

Text of issue for follow-up:

(d) Whether both the bribe and the proceeds of the bribery of a foreign public official are subject to seizure and confiscation in Italy [Convention, Article 3.3];

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Italy cannot but reiterate that the issue was basically due to a misinterpretation of the translation of art. 322 ter "... *confiscation shall always be ordered of the goods representing the price or the proceeds thereof...*". Again the accent must be put on the confiscation "of the goods" and not on the apparent alternative among "the price or the proceeds" since the good itself can only represent either the price or the proceed and not the two of them.

This absolutely unequivocal interpretation of the provision in Italy has been confirmed during a presentation made by Prof. Mezzetti, of the University of Rome 3, on the occasion of a recent seminar on Confiscation held in the Court of Appeal of Rome and addressed to practitioners.

(Note by the Secretariat: Three annexes available upon request).

Text of issue for follow-up:

(e) The status of bills A.S. 733-bis, A.C. 3986 and A.S. 1454, which would criminalise self-laundering [Convention, Article 7];

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

The above mentioned bills were voided after the end of the Legislature in 2013. After the entry into functioning of the new Parliament, two new bills have been deposited (S.846 - Sen. Alberto Airola, “Disposizioni per il contrasto al riciclaggio e all'autoriciclaggio”: presented to the Senate on 19 June 2013, currently under examination in the competent Committee from the 16 January 2014); C.612 – On. Alessandro Naccarato, “Modifiche agli articoli 648-bis e 648-ter del codice penale, in materia di autoriciclaggio”, presented to the Chamber on the 2 aprile 2013.

In 2013 the Ministry of Justice has also created a Study Commission on the subject of self-laundering (http://www.giustizia.it/giustizia/it/mg_1_12_1.wp?previousPage=mg_1_12&contentId=SPS914213) . The Study Commission, which has been inspired also by the recommendations of the WGB Report on Italy (see point 3 of the conclusions) has already transmitted its conclusions to the Ministry who is scrutinizing them in order to decide the possible follow-up at legislative level.

Text of issue for follow-up:

(f) Whether the methodology for conducting tax audits is adequate in terms of (i) the basis of risks considered when deciding which companies to audit and (ii) the time-lag between audits [2009 Recommendation I(ii)];

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

We're not aware of new developments on this matter.

Text of issue for follow-up:

(g) The impact of special tax programs, such as tax amnesty programmes, on tax officials' ability to detect suspicions of foreign bribery [2009 Recommendation III(iii); 2009 Tax Recommendation II; Phase 2 evaluation, recommendation 6];

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

We're not aware of new developments on this matter.

Text of issue for follow-up:

(h) Implementation of the extension of Italy's external audit requirements to cover certain non-listed companies [2009 Recommendation X.B];

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

We're not aware of any new development on this matter.

Text of issue for follow-up:

(i) Italy's ability to extradite an individual (i) where that person raises the *concussione* as a defence to prevent extradition and (ii) where the statute of limitations for the foreign bribery offence has expired in Italy [Convention, Article 10].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

We're not aware of any case where a defendant could have raised "concussion" as a defence to prevent extradition or where the expiration in Italy of the statute of limitations for foreign bribery could have prevented the extradition of a person accused of this offence.