



**UNODC**

United Nations Office on Drugs and Crime

## **Country Review Report of Italy**

Review by Kazakhstan and Liechtenstein of the implementation by Italy of articles 15 – 42 of Chapter III. “Criminalization and law enforcement” and articles 44 – 50 of Chapter IV. “International cooperation” of the United Nations Convention against Corruption for the review cycle 2010 - 2015

## **I. Introduction**

The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.

In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.

The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.

The review process is based on the terms of reference of the Review Mechanism.

## **II. Process**

The following review of the implementation by Italy of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Italy, and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Kazakhstan and Liechtenstein, by means of telephone conferences, videoconferences, e-mail exchanges. A country visit, agreed to by Italy, was conducted from 9 to 2 September 2013.

## **III. Executive summary**

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

*Italy signed the United Nations Convention against Corruption (UNCAC) on 9 December 2003 and deposited its instrument of ratification with the Secretary-General on 5 October 2009. International agreements, such as the Convention, rank higher than ordinary laws. Once they have been ratified and have come into effect, they form an integral part of domestic law and override any other contrary provision of such law. Accordingly, the Convention has become an integral part of Italy's domestic law following its ratification by the Parliament and signature by the President of the Republic on 3 August 2009, and entry into force on 4 November 2009 in accordance with Article 68 of the Convention. Italy is a parliamentary democratic republic since 2 June 1946, with a multi-party system and a unitary State, but it recognizes the political autonomy of its twenty regions, which are endowed with legislative and administrative powers.*

*The Italian legal system, as designed by the Constitution, provides for different types of jurisdiction. Ordinary jurisdiction is exercised by ordinary judges and prosecutors (Article 102 Const.). The Constitution grants the privilege of independence (Articles 101-104 Const.) and self-government of the judiciary*

through an ad hoc body: the Superior Council of the Judiciary, “Consiglio Superiore della Magistratura”. Ordinary jurisdiction is divided into criminal and civil jurisdiction, with criminal proceedings being instituted by a public prosecutor in accordance with Article 107 of the Constitution. Italy has adopted a strict principle of legality in prosecution matters.

The national legal framework against corruption includes the relevant provisions of the Criminal Code and Criminal Procedure Code, the Civil Code, as well as specific legislation on the public sector, money-laundering, and liability of legal persons. Law no. 190/2012 of 6 November 2012 on preventing and combating corruption and illegal activity in public administration introduced several reforms in the legal and institutional framework that strengthened Italy’s compliance with the Convention.

The main institutions tasked with preventing and combating corruption in Italy are the judiciary, including the Ministry of Justice, the various law enforcement authorities (Guardia di Finanza, Carabinieri, State Police), the FIU, the ANAC, the AVPC, and the Public Administration Department.

## **2. Chapter III: Criminalization and law enforcement**

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

*Bribery and trading in influence (articles 15, 16, 18, 21)*

Articles 317 to 321 of the Italian Criminal Code criminalize active and passive bribery of public officials. The elements of promise and offering are specifically covered in Article 322. Article 357 of the Criminal Code provides the definition of public officials, defined as those who perform legislative, judicial or administrative public functions. Italian jurisprudence interprets “public function” to the widest possible extent and may also include employees of public enterprises and companies which have been officially granted licenses to perform public services.

Italy criminalizes active and passive bribery of officials of EU and EU MS, through the first paragraph of Article 322 bis, as well as active bribery of foreign officials and officials of public international organizations in relation to the conduct of international business through the second paragraph of Article 322 bis by reference to Articles 321 and 322 of the Criminal Code. Case law has been developed on the interpretation of the concept of foreign officials and officials of public international organisations.

Active and passive trading in influence is criminalized in Articles 346 and 346-bis of the Criminal Code respectively.

Italy has criminalized bribery in the private sector in Article 2635 (Bribery between Private Persons) of the Civil Code. However, prosecution may only be initiated if there is a complaint by the victim or if there has been a distortion in competition.

*Money-laundering, concealment (articles 23, 24)*

Italy criminalizes money laundering and concealment through Article 648-bis (Money laundering) and Article 648-ter (Use of money, property and advantages of unlawful origin) of the Criminal Code respectively. Article 379 of the Criminal Code (Aiding an offence) covers the element of helping to evade the legal consequences of the commission of corruption offences as required by article 23, paragraph 1(a) (i) of the Convention. Article 648 of the Criminal Code (Receiving of stolen property) covers the elements required by Article 23, paragraph 1 (b) (i). Elements envisioned in article 23 (b) (ii) (i.e., participation, association, conspiracy to commit, aiding, abetting, facilitating and counselling) are covered by Article 56 (Attempted crime), Article 110 (Punishment for those who participate in an offence) of the Criminal Code. Self-laundering is not

*criminalized under Italian law, which was noted as one of the practical shortcomings of the current legislation.*

*Italy uses 'all crimes approach' for predicate offences (Articles 648-bis, 648-ter and 379 of the Criminal Code).*

*The Italian law does not impose any limitation for the prosecution of money laundering offences when relevant predicate offences are committed abroad, as long as they are considered offences under Italian law.*

*Embezzlement, abuse of functions and illicit enrichment (articles 17, 19, 20, 22)*

*Embezzlement, misappropriation and other diversion of any property by public officials are criminalized by Articles 314 (Embezzlement), 316 (Embezzlement by taking advantage of another's error) and 323 (Abuse of office) of the Criminal Code. The Italian authorities noted that the embezzlement of immovable property could be covered by Article 323 (Abuse of office) or Article 633 (Trespass) of the Criminal Code. Other diversion of property could be covered by Article 323.*

*Embezzlement of property in the private sector is generally criminalized through Article 646 of the Criminal Code (Embezzlement), however, some of the elements are not clearly provided for in article 646. The prosecution of the embezzlement is possible only upon report of the victim in case when aggravating circumstances are absent.*

*Abuse of functions is criminalized by Article 323 of the Criminal Code and Article 328 (Refusal to perform and act of office). Omission covers the element of the failure to perform an act in violation of laws by a public official in some circumstances.*

*Italy considered but decided not to criminalize the offence of illicit enrichment due to incompatibility with the fundamental principles of the Italian legal system. However, Italy provides for mandatory confiscation of assets where offenders cannot justify their origin. There are also specific rules imposing patrimonial disclosure obligations on elected officials and top public officials, and stipulating sanctions for non-disclosure.*

*Obstruction of justice (article 25)*

*The Italian Criminal Code criminalizes obstruction of justice through Articles 377 (Subornation), 377-bis (Inducement not to give statement or to give an untruthful statement before the judicial authority) and 336 (Violence or threat to a public official).*

*Liability of legal persons (art. 26)*

*Italy has established administrative, civil and criminal liability for legal persons. Legislative Decree no. 231/2001, as amended by Legislative Decree no. 146/2006 on money-laundering, and by Law no. 190/2012, establishes administrative liability of legal persons for certain offences. Legal persons are defined as entities endowed with legal personality, as well as companies and associations without legal personality, excluding the State and other public entities exercising public powers. Pursuant to Article 5 of Legislative Decree no. 231/2001, legal entities are criminally liable for offences committed, for their own benefit or interest, by a person acting as a representative, manager or director, a person exercising powers of management and control, or a person subject to the direction or control of one of the aforementioned persons. Liability may be waived or mitigated in case the legal person is found to have an organizational model in place, but this has rarely happened in practice. The liability of legal persons does not prejudice the criminal liability of the natural persons who have committed the offences, according to Article 8 of Legislative Decree 231/2001. Article 9 of Legislative Decree No. 231/2001 provides for sanctions, including fines, disqualification from certain activities, confiscation, and the publication of the judgment. Interim protection measures also exist to*

enable freezing and seizing of proceeds of crime. A central register of companies indicted and convicted of corruption was set up and became operative in May 2007 (*Anagrafe delle sanzioni amministrative dipendenti da reato*). Furthermore, articles 11 and 12 of Legislative Decree 231/2011 provide the criteria for ensuring that pecuniary sanctions are determined in each case with due regard to proportionality.

*Participation and attempt (art. 27)*

Article 110 of the Criminal Code establishes a general provision on participation: 'when more than one person participates in the same offence, each shall be subject to the penalty prescribed for such offence, except as provided in the following articles.' Participatory acts are therefore punishable as principal offences and it was confirmed that this general rule was reflected in the specific offences under the Convention. Article 56 of the Criminal Code criminalizes the attempt to commit offences, and it was noted that the same provision applied to the preparation of offences.

*Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)*

Criminal responsibility is personal and sanctions are tailored to each offence. Corruption offences are generally regarded as serious offences with correspondingly proportionate punishment and aggravating circumstances, and possible additional sanctions such as disqualification.

Italy does not foresee any immunities or jurisdictional privileges in relation to offences under the Convention.

The principle of mandatory prosecution applies in Italy under Article 112 of the Constitution. Public prosecutors oversee and direct criminal investigations by the police, and the prosecution's decision as to whether there is sufficient evidence for indictment is verified by a judge for preliminary investigations. Article 371 of the Criminal Procedure Code provides for coordination at the national level.

The Criminal Procedure Code contains several precautionary requirements that can be put in place by a judge, including preventive detention. There is no possibility for bail applications to avoid detention as the presence of the defendant at trial is not required. Conditional release and parole are foreseen in the Criminal Code.

Several provisions of the Criminal Procedure Code enable judges to take precautionary measures such as suspension and temporary prohibitions for public officials who are suspects or accused. The Law of 2012 extends the duration of such measures. Articles 28, 29 and 31 of the Criminal Code foresee the possibility of imposing accessory sanctions after conviction, including temporary or permanent disqualification from public office. Article 32 provides for disqualification from management functions including such functions in public companies

Legislative Decree no. 165/2001 governs the relation between disciplinary and criminal proceedings, along with Article 653 of the Criminal Procedure Code and Legislative Decree 150/2009. Disciplinary proceedings may be carried out and concluded in parallel to criminal proceedings, or suspended pending final judgment, which depending on conviction or acquittal may also lead to reviewing disciplinary sanctions. Further provisions are contained in the anti-corruption law of 2012.

Article 27 of the Italian Constitution and the Law no. 354 of 1975 provide for measures to reintegrate convicts into society.

Mitigating circumstances may be considered by judges under Article 62 and 62-bis of the Criminal Code, in particular, where the alleged offender

*has paid compensation or attempted to minimize or remove the consequences of the offence, before the trial proceedings. In such cases, the sentence may be reduced up to one third. Plea-bargaining is provided for in Italian criminal procedure, but there can be no immunity from prosecution. The protection of participants in the offence was subject to the same provisions as for witnesses and collaborators of justice and no agreements in accordance with article 37 paragraph 5 of the Convention had been entered into.*

*Protection of witnesses and reporting persons (arts. 32 and 33)*

*Italy has extensive provisions for the protection of witnesses, under Law no. 82 of 1991, and for the protection of collaborators of justice, under Law no. 45 of 2001. Protection measures are requested by the public prosecutor, decided on by the Central Commission and implemented by the Central Protection Service. Protection measures may include security, relocation, provisional or definitive identity change, and the possibility of testifying by videoconference. Measures may also extend to the person's relatives and apply to victims insofar as they are witnesses. There are no specific protection measures for experts and Italy has not concluded any agreements for relocation with other States in relation to offences under the Convention.*

*The anti-corruption law no. 190/2012 establishes new provisions for whistle-blower protection in the public sector for public officials and employees who report cases of misconduct to the judicial authorities, Court of Auditors, or their hierarchical authorities. Several measures taken to establish whistle-blower protection in the private sector were also reported during the consultations with stakeholders.*

*Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)*

*Article 240 of the Criminal Code establishes a general provision on confiscation by an order of a judge of proceeds and instrumentalities of the offence. Further provisions exist in Articles 322, 325 and 335 of the Criminal Code, as well as in Legislative Decree no. 306/1992 and Law no. 97/2001. Confiscation can be value-based and is mandatory in several cases. Authorities may initiate investigations in order to identify, trace and freeze the proceeds of crime. Seizure is provided for in Articles 253 to 255 and 321 of the Criminal Procedure Code. It was noted that such measures were often ordered, which raised issues considering the length of criminal proceedings in Italy and the fact that such interim measures could therefore be imposed for a substantial period of time. The National Agency for the Administration and Destination of Seized and Confiscated Assets was set up in 2010 to assist judicial authorities in the management of assets. Confiscation applies also to proceeds that have been transformed, converted or intermingled, if necessary through their corresponding value, as well as income or benefits derived from such proceeds. Judicial authorities may seize bank records under Article 255 of the Criminal Procedure Code, as well as request information under Law 55/1990. Italy provides for mandatory confiscation of assets where offenders cannot justify their origin. The system of the protection of the rights of bona fide third parties is in place.*

*Italy does not allow bank secrecy and access to bank records is foreseen for criminal investigations under the Criminal Procedure Code carried out by judicial authorities.*

*Statute of limitations; criminal record (arts. 29 and 41)*

Articles 157 to 161 of the Criminal Code establish general principles for the period of limitation, as well as provisions for its beginning, suspension, interruption and consequences thereof. The statute of limitations period is calculated according to the maximum penalty which can be incurred for the offence in question. The recently adopted Law no. 190 of 2012 introduced new corruption offences and more severe penalties and therefore applies to such offences committed after this law's entry into force. The length of period for limitation is overall consequently increased and the period may be suspended or interrupted due to prosecutorial activity. It was noted, however, that there was an ongoing need for reform of statute of limitations.

Article 12 of the Criminal Code provides for the recognition of any decision of foreign judicial authorities handing down a conviction for a serious crime on demand of the prosecution, for such aims as the recognition of the status of repeat offender, the application of an accessory penalty under Italian law, a security measure, or the execution of the accessory provisions on compensation of damages and restitution.

#### *Jurisdiction (art. 42)*

Territorial jurisdiction is established by Article 6 of the Criminal Code, with Article 4 of the same Code detailing that for purposes of criminal law this includes 'the territory "of the Republic", and every other place subject to the sovereignty of the State. Italian ships and aircraft shall be deemed to be territory of the State wherever located, unless subject, under international law, to a foreign territorial law.' Italy has also established jurisdiction over offences committed against one of its nationals or against the Italian State by foreigners present in its territory, for offences committed by its nationals or stateless persons residing in Italy, as well as offences under article 42 paragraph 2 (c) of the Convention. Italian nationals may be extradited if provided for in an international treaty, in accordance with Article 26 of the Constitution, or on the basis of "international courtesy" under Articles 696-722 of the Criminal Procedure Code. Article 9 of the Criminal Code provides for jurisdiction over offences committed abroad by Italian nationals, allowing for prosecution in case nationals are not extradited. Similar provisions are contained in Article 10 for aliens. It was noted that Italy may consult with other States on coordinating actions in exercising jurisdiction.

#### *Consequences of acts of corruption; compensation for damage (arts. 34 and 35)*

Article 1418 of the Italian Civil Code establishes a general provision on the nullity of contracts. Article 135 of Legislative Decree 163/2006 containing the Code of Public Contracts and amendments introduced by the 2012 law foresee the termination of a contract or withdrawal of qualification where the contractor has been convicted of corruption offences. The Authority for the Supervision of Public Contracts is tasked with transmitting the relevant case files to competent judicial authorities and can impose administrative sanctions.

The Criminal Code contains general provisions on compensation for damage under Articles 185 and 186, and entitlement to civil claims are foreseen in Articles 74 and 75 of the Criminal Procedure Code.

#### *Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)*

Three law enforcement authorities are tasked with investigating corruption offences, under the supervision and direction of the public prosecutor: the Guardia di Finanza, the Carabinieri and the State Police. Whereas the Guardia has specialized competences and expertise for economic and financial crime, including a specific unit for combating corruption in public administration, the Carabinieri and State Police have general competence. There is coordination between the different law enforcement

authorities and independence through an autonomous duty to detect and investigate offences, though public prosecutors determine which law enforcement authority should carry out investigations.

Public officials and persons tasked with a public service are required to report to the public prosecutor or to the police criminal offences they become aware of in the exercise of their functions, in accordance with Article 331 of the Criminal Code. Articles 361 and 362 also criminalize the failure to report offences. Several national authorities, including the FIU and the Authority for the Supervision of Public Contracts, also report cases to the police or public prosecutors. The Italian Anticorruption Authority (ANAC) performs several functions to prevent and combat corruption and also reports cases to public prosecutors. While Article 371 of the Criminal Procedure Code addresses coordination of investigations, no specific provisions exist for coordination among the different prosecutors that may have concurrent territorial jurisdiction.

In addition to general provisions in the Criminal Procedure Code, specific measures are contained in Legislative Decree no. 231/2007 on preventing and combating money-laundering and terrorism financing, which provide for the obligation to report suspicious transactions for certain authorities and entities to the Financial Intelligence Unit. The FIU conducts the financial analysis of the suspicious transactions reports and contributes to the awareness-raising for reporting subjects by developing tools such as models of behaviour and indices profiles to assist those subjects. In order to encourage reporting of suspicious transactions which could be related to money laundering of proceeds of corruption, measures have been taken in the public and private sectors to protect whistleblowers and reporting entities and establish channels of communications.

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

Overall, the following successes and good practices in implementing Chapter III of the Convention in Italy are highlighted:

- The participatory and inclusive self-assessment and dialogue process were positively noted, in particular with the regard to the consultation of private sector stakeholders.
- Recent legislative and institutional developments, in particular through Law no. 190/2012, are welcomed and contribute to further strengthening implementation of the Convention.
- The 'all crimes' approach taken with regard to predicate offences for money-laundering.
- The comprehensive measures taken in relation to the establishment of liability of legal persons, including the enactment of legal provisions encompassing different forms of such liability, the possibility for the legal entity to use the defence of "organizational model", as well as the broad range of sanctions foreseen.
- Wide scope and practice for seizing and confiscation of proceeds of crime, including value-based seizure and confiscation.
- Specialization of the Guardia di Finanza and coordination during investigations among the different police forces.
- Recent efforts to encourage the reporting of corruption offences by persons or entities, inter alia by providing for whistleblower protection.

### **2.3. Challenges in implementation**

*The following steps could further strengthen existing anti-corruption measures:*

- Take legislative measures to ensure that the domestic provisions implementing article 17 of the Convention fully cover the following: the element of third-party beneficiaries; the broad scope of property to include immovable property as well; and the conduct of “other diversion of property”.*
- Consider removing the requirement that the prosecution of the offence of bribery between private persons can be started only by complaint of a victim of the offence or in case of the distortion of competition.*
- Consider extending the scope of embezzlement in the private sector to all types of property, as defined in article 2(d) of the Convention, and consider removing the requirement of a complaint by the victim.*
- Consider criminalizing self-laundering in accordance with article 23 paragraph 2 (e).*
- Furnish copies of laws that give effect to article 23 to the Secretary-General of the United Nations.*
- Continue efforts to establish and strengthen disciplinary proceedings against public officials accused or convicted of corruption offences.*
- As a general issue, the length of judicial proceedings was of concern, in particular with regard to the statute of limitations. Therefore efforts geared towards streamlining the relevant legal framework need to be made.*
- Enhance coordination among law enforcement authorities and the public prosecutors, in particular with a view to avoiding overlaps in territorial jurisdiction for corruption cases.*
- Strengthen capacity to collect and analyse cases and statistics.*

## **3. Chapter IV: International cooperation**

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

*Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)*

*Under Article 696 of the Code of Criminal Procedure, extradition is governed by international conventions in force and by rules of general international law (Article 696 of the Criminal Procedure Code).*

*It was noted that due to the unavailability of statistics it was not possible to assess effectiveness of the practical implementation of the provisions under review.*

*The Ministry of Justice conducts a preliminary verification of the incoming extradition request to assess whether this request meets the requirements of the domestic legislation (or the applicable extradition treaty). If that is the case, the request is forwarded to the competent judicial authority which makes a decision on the eligibility of extradition. Italy makes extradition subject to review by the Court of Appeal; its decision can be appealed before the High Court. The final decision is political and belongs to the Minister of Justice, which could be appealed before the administrative court. With regard to other Member States of the European Union, the surrender of fugitives is carried out in line with the requirements of the European Council Framework Decision of 13 June 2002 on the European Arrest Warrant (EAW) and the surrender procedures between Member States of the European Union. The surrender procedure based on the*

*EAW is removed outside the realm of the executive and is placed in the hands of the judiciary.*

*Extradition requests may be granted only subject to the requirement of dual criminality. Italian law does not contain minimum penalty requirements for the offence to be extraditable. As all UNCAC mandatory offences are generally criminalized in Italy, they are considered as extraditable ones.*

*Italy considers the Convention as a legal basis for extradition. Italy does not require a treaty with a requesting state. Extradition can be granted on the basis of mere international courtesy with a promise of reciprocity.*

*Under Italian law (Article 701 of the Criminal Code), the consent of the person sought is required for simplified extradition procedures to be applied.*

*Although nationality is a ground for refusal of extradition, an Italian national can still be extradited in cases explicitly provided in international conventions (Article 26 of the Constitution). Italy is in compliance with the provisions of paragraphs 11, 12 and 13 of article 44 of UNCAC that are directly applied by virtue of Article 696. The legal principle of “aut dedere aut iudicare” is the cornerstone of the Italian legal system.*

*Italy ratified the European Convention for Extradition (1957) and its Second Additional Protocol (1978) and has bilateral extradition treaties with 20 countries. Negotiations for several additional bilateral extradition treaties were ongoing at the period of the review process.*

*Fair treatment protection during extradition proceedings is afforded under the Constitution (Article 111) and numerous corresponding ad hoc and procedural rules.*

*Italy has a practice of consulting with requesting States before refusing extradition. Paragraph 17 of article 44 of the Convention is applied directly.*

*Italy is a party to the Council of Europe Convention on the Transfer of Sentenced Persons (1983) and has signed five bilateral treaties to that effect.*

*Italy indicated that it will be willing to transfer to other Member State proceedings for the prosecution of corruption offences in case such need arises.*

#### *Mutual legal assistance (article 46)*

*Italy is a party to the European Convention on Mutual Legal Assistance in Criminal Matters (1959) and its First Additional Protocol (1978). Italy also has bilateral MLA treaties with 23 States. The negotiation of more treaties was ongoing at the time of the review process.*

*The general comment above about the lack of the corresponding statistical information was reiterated with regard to article 46 as well.*

*Legal assistance in cases involving legal persons can be provided based on the Legislative decree no. 231 of 2001.*

*Italy can provide the types of assistance listed in subparagraphs 3 (a-i) of article 46 UNCAC based on Article 723 et. Seq of the Criminal Procedure Code; and subparagraphs 3 (j-k) based on Articles 740-bis and 740-ter of the Criminal Procedure Code.*

*Dual criminality is not a required condition to provide assistance under the Italian law.*

*The spontaneous exchange of information is feasible through the direct applicability of paragraphs 4-5 of article 46.*

*Bank secrecy is not a ground for refusing mutual legal assistance.*

*The provisions of subparagraphs 10 and 11 of Article 46 can be directly applied in relation to other States Parties to the Convention.*

*On 10 December 2009, Italy notified the UN Secretary-General that its Central MLA Authority is Office II of the General Directorate of Criminal Justice of the Ministry of Justice. Italy would also accept urgent MLA requests via Interpol channels.*

*After receiving an MLA request, the Central Authority would transfer it to the competent judicial Italian authority within approximately 10 days. The judicial authorities responsible for the execution of the request are designated by the Court of Appeals.*

*The Italian law allows hearings to take place by video conferences and in the presence of foreign judicial authorities.*

*The confidentiality of information or evidence furnished by the requested State in the context of MLA is protected by virtue of Articles 729 and 191 of the Criminal Procedure Code.*

*Italian law does not contain any grounds for refusal of MLA beyond the grounds listed in paragraph 21 of article 46 of the Convention.*

*Italy can provide government records based on paragraph 29 of article 46 of the Convention by virtue of Article 696 of the Criminal Procedure Code.*

*Law enforcement cooperation; joint investigations; special investigative techniques (articles 48, 49, 50)*

*Italy is a member to regional (Europol and SIRENE) and global (Interpol) international police organizations. Information between law enforcement agencies is shared through the SIS database in Europe and through the ICPO-Interpol database worldwide.*

*Italy concluded agreements on bilateral police cooperation with 104 countries, a multilateral agreement with SICA (Central American Law Enforcement Network) and is currently negotiating an agreement with SELEC (Southeast European Law Enforcement Center).*

*The Italian Police Service of International Cooperation has liaison officers stationed in 19 countries. The Italian Financial Guard also has liaison officers stationed in 13 countries in addition to 3 officers specifically covering EU, OECD and the UN.*

*Italy considers the Convention as a basis for mutual law enforcement cooperation.*

*Although, no provisions have been introduced until now for the establishment of joint investigation teams in the Italian Criminal Code, Italy clarified that such could be established based on the Convention on an ad hoc basis.*

*Special investigative techniques may be used only with regard to the most serious offences, the list of which currently does not include most of the corruption offences except the offence of money-laundering.*

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

*The following successes and good practices in respect of the implementation of Chapter IV of the Convention are highlighted:*

- Considering UNCAC as a legal basis for extradition and law enforcement cooperation.*
- Existence of bilateral treaties on extradition and MLA and continuing efforts to conclude additional treaties with other States.*
- Membership in law enforcement cooperation networks and a large number of bilateral agreements on police cooperation.*

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

*The following steps could further strengthen existing anti-corruption measures:*

- *Create a comprehensive mechanism for collecting the statistical information on the execution of extradition and MLA requests.*
- *Consider adopting clearer rules on confidentiality of the spontaneously transferred information from other States in domestic legislation.*
- *Notify the Secretary-General of the languages acceptable for Italy for MLA requests.*
- *Consider adopting legislative amendments of internal procedure containing the approximate time limits for execution of MLA requests.*
- *Consider amending corresponding domestic legislation in order to include corruption offences in the list of the most serious offences to allow the use of special investigative techniques in the investigation of such offences.*

## **IV. Implementation of the Convention**

### **A. Ratification of the Convention**

Italy signed the Convention on 9 December 2003 and following ratification by Parliament and signature by the President of the Republic, Giorgio Napolitano, on 3 August 2009, Italy deposited its instrument of ratification with the Secretary-General on 5 October 2009.

### **B. Legal system of Italy**

**Article 10** of the Constitution states that:

The legal system of Italy conforms to the generally recognized principles of international law.

**Article 117** of the Constitution states that :

Legislative power belongs to the state and the regions in accordance with the constitution and within the limits set by European union law and international obligations.

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

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

Italy is a parliamentary, democratic republic since 2 June 1946, with a multi-party system and an unitary State, but it recognizes the political autonomy to its twenty regions, which are endowed with legislative and administrative powers.

The fundamental law of the Italian Republic is the Constitution of the Republic, enacted by the Constituent Assembly on 22 December 1947 and entered into force on the 1st January 1948. Its 139 articles are divided into three main parts: the Fundamental Principles, Part I concerning Rights and Duties of Citizens and Part II concerning the Organization of the Republic, followed by 18 Transitional and Final Provisions. It is important to note that the Constitution primarily contains general principles which cannot be applied directly. As with many written constitutions, only few articles are considered to be self-executing. The majority require enabling legislation, referred to as “accomplishment of Constitution”.

The **President of the Republic** is the Head of the State and represents national unity (**Article 87 Const.**). He is elected by the two chambers of Parliament in joint session for a period of seven years at the end of which he can be re-elected. He appoints the Prime Minister and five judges of the Constitutional Court. He presides over the Supreme Council of the Judiciary (“*Consiglio Superiore della Magistratura*”). He can veto bills and send them to Parliament for a new inspection. He can dissolve the Houses of parliament. The President serves as a point of connection between the three branches of government: he is elected by the lawmakers, he appoints the executive, and is the president of the judiciary. The president is also commander-in-chief of the armed forces.

**Executive power** is exercised by the Cabinet under the direction of the Prime Minister (**Article 92, paragraph 1 Const.**), officially titled President of the Council, “*Presidente del Consiglio*”. He is appointed by the President of the Republic and he proposes to the latter the name of the Ministers. The Cabinet (Council of Ministers, “*Consiglio dei Ministri*”) is the principal organ of the Government. It comprises the President of the Council, Ministers, and the Undersecretary to the President of the Council. The government must be supported by a parliamentary majority. All the Ministers are jointly responsible for the implementation of the country's legislation and can propose new bills to the Parliament. The current cabinet is composed of 18 ministers (6 of which without portfolio).

The **Legislative power** is exercised by the Parliament (**article 70 paragraph 1 Const.**). The Italian Parliament is made up of two chambers, namely the Chamber of Deputies (“*Camera dei Deputati*”) and the Senate (“*Senato*”). The two Houses of Parliament have the same powers, according to a perfect bicameral system. Both Houses are elected for a maximum of five years, but they may be dissolved by the President of the Republic before the expiration of their normal term. All bills must be passed by both Houses before being turned into laws.

The Houses of Parliament, deliberating by absolute majority after two successive debates at intervals of not less than three months, may amend the Constitution (Article 138 Const.).

The **Judicial power** is exercised by the Judiciary. The Italian legal system, as designed by the Constitution, provides for different types of jurisdiction.

The **Constitutional jurisdiction** is assigned to the Constitutional Court, which consists of fifteen judges. One third of these judges are appointed by the President of the Republic, one third by Parliament in joint session and one third by the highest-instance ordinary and administrative courts (**art. 135 Const.**).

The Constitutional Court rules (**art. 134 Const.**):

- on disputes concerning the constitutional consistency of laws and decisions having the force of law of the State and the Regions;
- on conflicts of jurisdiction of the powers of the State, the State and Regions, and the Regions;
- c) on charges against the President of the Republic, pursuant to the Constitution (see **Article 90 Const.**).

**Ordinary jurisdiction** is exercised by ordinary judges and prosecutors (**Article 102 Const.**). The Constitution grants the privilege of independence (**Articles 101-104 Const.**) and self-government of the judiciary through an *ad hoc* body: the Superior Council of the Judiciary, “*Consiglio Superiore della Magistratura*”.

Ordinary jurisdiction is divided into: (i) criminal jurisdiction, where judges are called to make a decision on whether the criminal proceedings instituted by a public prosecutor against a given individual are founded and (ii) civil jurisdiction, aimed at the legal protection of rights in relations between private subjects or private subjects and the public administration, if in exercising its duties, the administration prejudices the subjective right of a person.

Criminal proceedings are instituted by a public prosecutor (**Article 107, last paragraph, Const.**). Italy has adopted a strict principle of legality in prosecution matters, prescribing that a public prosecutor is under the obligation to institute criminal proceedings (**art. 112 Const.**).

This principle should be interpreted in the sense that, once the competent public prosecutor has been informed of an offence, he must conduct investigations and submit the outcome of his investigations to the judge's appraisal, making the relevant requests. This applies both when the public prosecutor requests the setting aside of the case because there is insufficient evidence to prove the alleged offence and when the public prosecutor requests the committal to trial of an individual in respect of a particular alleged offence.

The current Code of criminal procedure is in force since 1988 and has introduced an adversarial system, based, amongst other principles, on equality of arms between the prosecution and the defense and on the creation of evidence before the judge during the trial. The Code of criminal procedure has undergone a number of sectorial amendments over the years.

Currently, civil and criminal justice is administered by: Justices of the peace, the Courts, the Courts of Appeal, the Court of Cassation, the Juvenile Courts and the *Tribunale di Sorveglianza* sitting both as a single judge and as a panel of judges.

**Courts of First Instance** (“*Tribunale, Giudice di Pace, Tribunale per i minorenni, Corte d’Assise*”). *Tribunale*: court of general jurisdiction for all civil and criminal disputes as well as disputes that do not have a determinable value. Generally, only one judge will hear a case, whereas matters of particular importance will be judged by a panel of three judges. It may act as an appellate court for the decisions rendered by the *Giudice di Pace*. *Giudice di Pace*: honorary judge with jurisdiction over minor civil claims and minor criminal matters. Its decisions may be appealed before the *Tribunale*. *Tribunale per i minorenni*: composed of 2 professional judges and 2 experts; it has civil and criminal competence for all disputes and

procedures concerning minors (under 18). *Corte d'assise*: composed of 2 professional judges and 6 lay judges; it has competence over felonies. Its decisions may be appealed before the *Corte d'assise d'appello*.

**Courts of Second Instance** (*Tribunale*, for appeals against decisions of the *Giudice di Pace*; *Corte di appello*, for appeals against decisions of the *Tribunale*; *Corte d'assise d'appello*, for appeals against decisions of the *Corte d'assise*).

*Corte di appello*: jurisdiction over appeals from the Courts of First Instance; jurisdiction over enforcement proceedings in Italy of decisions rendered by foreign courts and arbitrators; jurisdiction proceedings for nullity or damages in competition matters. It sits in a panel of 3 judges, and is divided into sections for criminal, civil and labour disputes.

*Corte d'assise d'appello*: composed of 2 professional judges and 6 lay judges. It hears appeals against the decisions of the *Corte d'assise*.

**Court of Cassation** (*Corte di cassazione*): the highest court in Italy, located in Rome. It is divided into Divisions, for criminal, civil and labour law disputes. For particularly important matters it may judge in joint divisions (“a sezioni unite”). Competence over: appeals, on questions of law only, of second-instance court judgments; conflicts of competence between ordinary judges; conflicts of jurisdictions.

The Constitution prohibits the establishment of new "extraordinary or special" judges. However, divisions specialising in specific sectors may be set up within the ordinary jurisdiction bodies (e.g. the specialised agrarian divisions; company law court) (Article 102 of the Constitution). Certain special judges are, in any event, prescribed by the Constitution, such as administrative judges, the State Auditors' Court and military judges, who had already been established prior to the Constitution coming into force (Article 103 Const.).

The national legal framework against corruption includes the relevant provisions of the Criminal Code and Criminal Procedure Code, the Civil Code, as well as specific legislation on the public sector, money-laundering, and liability of legal persons. Law No. 190/2012 of 6 November 2012 on preventing and combating corruption and illegal activity in public administration introduced several reforms in the legal and institutional framework that strengthened Italy's compliance with the Convention.

The main institutions tasked with preventing and combating corruption in Italy are the judiciary, including the Ministry of Justice, the various law enforcement authorities (Guardia di Finanza, Carabinieri, State Police), the Financial Intelligence Unit (UIF), the Anti-Corruption Authority (ANAC), the Authority for the Supervision of Public Contracts (AVPC), and the Public Administration Department.

Further information was provided during the dialogue on the new anti-corruption body.

The Anticorruption Law, approved by the Parliament on the 31st of October 2012 and entered into force on the 28th of November 2012, qualifies the National Commission for Evaluation, Transparency and Integrity (CiVIT)<sup>1</sup> as the Italian Anti-corruption Authority, in execution of

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<sup>1</sup> During the course of the dialogue, the CiVIT was renamed as the Autorità Nazionale Anticorruzione (ANAC) and the references to this authority in the observations under specific articles are updated to reflect its new name.

the art. 6 of the United Nations Convention against Corruption. The Anti-corruption Law assigns to CiVIT functions and powers, concerning the prevention of corruption, complementary to those previously assigned to CiVIT by the Legislative Decree 150/2009 in the field of transparency to foster integrity. The main functions of CiVIT are the following: to cooperate with corresponding international bodies; to approve the national Anti-corruption plan prepared by the Department for Public Administration (DPA); to analyze the causes and factors of corruption and identify measures to prevent it; to monitor compliance and effectiveness of public administrations Anti-corruption plans and on Transparency rules. Regarding these functions, the Law assigns to CiVIT inspection powers, the power to command the exhibition of documents and the adoption of acts as well as to remove acts and behaviours contrasting with law and with Transparency rules. CiVIT has also the function: to give optional advices to the state bodies and all the public administrations on the compliance of public employees with the code of conduct; to define criteria, guidelines and standard model for the code of conduct regarding specific administrative areas as specification and integration of the general code of conduct laid down by the Government; to report annually to the Parliament on the activities against corruption and illegality in the administrations and about the effectiveness of the measures applied.

General note on the statistical data referred to in this checklist:

The collection of data on existing judicial procedures before Italian Courts is hindered by the fact that no unified national register of criminal proceedings exists, with every court (first degree, appeal, Supreme Court of Cassation) handling an independent register.

Hence, collection of data by the Ministry of Justice presupposes a request to the registry of each individual court to extract manually the data from their register. A similar request would have to be made to each prosecution office attached to each court in order to obtain data on pending investigations.

In order to keep administrative burden for the court administrations to an acceptable level, this Ministry (through the General Directorate for Statistics) acquires on a periodical basis data relating to the proceedings treated by courts of first instance (number of new criminal proceedings starting in a given year, number of decisions closing proceedings in first degree, number of proceedings pending at the end of the year). The last available data refers to 2010 and is included, where available, in this questionnaire. The data covers 86% of proceedings inscribed in the registers and 85% of proceedings defined in first degree (not all judicial offices have provided timely replies on the proceedings in question)

## Chapter III. Criminalization and law enforcement

### **Article 15 Bribery of national public officials**

#### **Subparagraph (a)**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;*

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

Italy has indicated that it implemented this provision of the Convention.

Bribery of domestic public officials or persons in charge of a public service is criminalised pursuant to Articles 317, 318, 319 and 319 *ter* (passive bribery) and Articles 321 and 322 (active bribery) of the Criminal Code.

Italy cited the following implementation measures:

**Passive bribery** is provided for by the following provisions:

#### **Article 317 of the Criminal Code**

##### **Extortion by colour of office [concussione].**

A public officer who, by abusing his position or powers, forces someone to unduly give or promise to him or a third person, money or other advantage, shall be punished by imprisonment for from six to twelve years.

#### **Article 318 of the Criminal Code**

##### **Bribery for the performance of one's functions.**

A public official who, in order to perform his functions or powers, unduly receives for himself or others, money or other advantage, or accepts the promise of it, shall be sentenced to imprisonment from one to five years.

#### **Article 319 of the Criminal Code**

##### **«Bribery for the performance of an act contrary to official duties.**

A public official who, in order to omit or delay or having omitted or delayed an act related to his office, or in order to perform or having performed an act contrary to the duties of his office, receives for himself or others money or other advantage, or accepts the promise of it, shall be sentenced to imprisonment from four to eight years».

#### **Article 319 *ter* of the Criminal Code**

##### **«Corruption in judicial proceedings.**

If the facts specified in Articles 318 and 319 are committed with a view to favour or damage a party to a civil, criminal or administrative proceeding, the punishment shall be a term of imprisonment from four to ten years.

If the fact gives rise to an unfair conviction to imprisonment for no longer than five years, the punishment shall be from five to twelve years of imprisonment; if it gives rise to an unfair conviction to imprisonment for longer than five years or to life imprisonment, the punishment shall be a term of imprisonment from six to twenty years».

#### **Article 320 of the Criminal Code**

##### **Bribery of persons charged with a public service.**

The provisions of Articles 318 and 319 shall also apply to persons charged with a public service. In any case, the punishments shall be reduced by no more than one third.

**Active bribery** is provided for by the following provisions:

#### **Article 321 of the Criminal Code**

##### **«Punishment against the briber.**

The penalties provided for under first subsection of the section 318, 319, 319-bis, 319-ter, and 320 in relation with the above-mentioned hypotheses specified in the section 318 and 319 shall apply also to whoever gives or promises money or other benefits to the public official or person in charge of a public service».<sup>2</sup>

#### **Article 322 of the Criminal Code**

##### **«Aiding and abetting bribery.**

A person who offers or promises undue money or other advantage to a public official or person in charge of a public service for the performance of his functions or powers, if the offer or promise is not accepted, shall be subject to the penalty specified in paragraph one of Article 318, reduced by one third. If the offer or promise is made to induce a public official or a person in charge of a public service to omit or delay a duty of his/her office, or rather to make an act contrary to his/her office, if the offer or promise has not been accepted, the offender is bound by section 319 to the punishment provided for therein, reduced by one third. The penalty referred to in paragraph one shall apply to a public official or person in charge of a public service who solicits the promise or giving of money or other advantage for the performance of his functions or powers. The punishment provided for under second subsection shall apply to the public official or person in charge of a public service who solicits a promise, or giving of money, or other benefits by a private individual, for the purposes specified under section 319».

The texts of the articles provided above refer to the concept of public official stipulated in article Article 357 of the Criminal Code (under Title II “Crimes against public administration” - Chapter III “Common provisions to the preceding chapters”) which gives the definition of **public official**:

#### **Article 357 of the Criminal Code**

##### **Definition of public official.**

As provided for under the criminal law, those who perform a legislative, judicial, or administrative public function are public officials.

As provided for under the same law, the administrative function is public when it is regulated by public law provisions and authority’s acts; when it is featured by the formation and statement of the public administration’s will or by its implementation by means of authority and certifying powers.

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<sup>2</sup> It must be noted that, following the amendment of Article 318 Criminal Code by Article 1, paragraph 75, of Law no. 190/2012, this Article no longer consists of two subsections<sup>2</sup>; however, the new provision contains all elements which were formerly part of the two separate subparagraphs, and the reference in Article 321 remains thus applicable without substantial change.

In addition, Article 358 of the Italian Criminal Code refers to a similar public or private figure with the term “**person in charge of a public service**” that corresponds to the definition of public official of the Convention as well.

#### **Article 358 of the Criminal Code**

##### **Definition of person in charge of a public service.**

For the purposes of criminal law, whoever performs a public service for whatever purpose shall be considered to be in charge of a public service.

Public service shall mean an activity that is governed in accordance with the same modalities as a public function, although in the absence of the power vested in the latter, and excluding the performance of simply ordinary tasks and exclusively manual work.

According to Article 320 Criminal Code, as cited above, persons in charge of a public service can be also subject to the rules on passive corruption.

Extensive jurisprudence and academic studies on the notion of public official confirm that, in the framework of criminal legislation, this is to be interpreted to the widest possible extent (beyond administrative law). Any person who carries out a public function is a public official; a formal appointment is not a condition for public official status (Court of Cassation, Criminal Division VI, 7 June 2001, n. 32938).

The decisive factor in determining whether an individual is a public official or not lies with the nature of the functions he/she performs, rather than the public/private law status of the entity that is employing the said person or that he/she represents. In this context, the term “public official” would not only cover those persons carrying out a public function in the State administration (whether at central, regional or local level), but also individuals vested with public authority to perform certain duties of State administration, e.g. employees of public enterprises, employees of companies which have been officially granted particular rights or licences to perform public services, etc., irrespective of their type of contract and the temporary/permanent character of the functions performed (Court of Cassation, Criminal Division VI, 21 February 2003, n. 11417; Court of Cassation, Criminal Division VI, 22 October 2010, n. 37775).

The concept of “public official” implies a certain decision-making power (“when it is featured by the formation and statement of the public administration’s will or by its implementation by means of authority and certifying powers”). The term “person in charge of a public service” refers to a person whose function is in between that of a mere executor and of a public official. Although the definition of “person in charge of a public service” excludes from its scope the performance of simply ordinary tasks and exclusively manual work, courts interpreted the concept of “person in charge of a public service” very broadly, so as to cover clerks of a Government office issuing driving licenses, persons collecting motorway tolls, security guards driving a security convoy from the Government, train ticket inspectors, etc.

#### ***Elements of the criminal offence:***

##### ***• promise, offering or giving***

The “promise, offering or giving” are objective elements of the description of the offences of active bribery. In fact, Article 321 of the Criminal Code explicitly states: “any person giving or promising money or other assets to a public official”. The fact that “offering” is not explicitly mentioned does not mean that it is not included in the description of the offence of

corruption. Indeed, Article 322 of the Criminal Code provides for a lower penalty when the offer or promise is not accepted by the public official: therefore, the mere offer, when accepted, amounts to active bribery.

• ***directly or indirectly***

Corruption offences have a bilateral structure, i.e. there must be two persons who act according to the provisions of articles 318-320 and 321. This model may include a third (or even more) person(s) who act as intermediary and who indirectly allow the promising, offering or giving. There are no doubts about this possibility, which is also admitted by the uniform case law of the Supreme Court: thus, a third person may take part in committing the offence, and he will be charged according to the rules of participatory acts (Court of Cassation, Criminal Division V, decision n. 26625 of 25 March 2004).

The Court of Cassation has clarified that the corruption offence does not require an agreement reached through direct contact between the public official and the corruptor, because the corruption agreement can be struck also through the activity of third persons - intermediaries - who link the two parties, provided that the public official consents to the corruption agreement (Court of Cassation, Criminal Division II, decision n.10962 of 14 November 1988).

• ***an undue advantage***

The concept of “advantage” in the Italian legislation (equivalent to that of “benefit”) covers both material and immaterial advantages, through the use of the following wording: “money or other advantages”.

Article 318 of the Criminal Code explicitly includes the notion of “undue” advantage, On this matter, the case law of the Supreme Court states that, within the scope of application of article 318 of the Criminal Code, there is no criminal liability only when the low value of the gift excludes the possibility that the public official’s actions in the exercise of his duties may be influenced; i.e. when the small gifts cannot be considered the compensation for the action of the public official, provided that there is not disproportion between the gift and the public official’s act (Court of Cassation, Criminal Division VI, decision n. 16837, 1 December 1989).

The Supreme Court has further highlighted that the concept of proportion concerns only article 318 of the Criminal Code because in the different case of article 319 - where the public official exercises an act contrary to his/her official duty - there is always criminal liability when the giving is related the action contrary to the official duty (Court of Cassation, Joint sections (*Sezioni Unite*), n. 2780 15 March 1996 and Court of Cassation, Criminal Division VI, decision n. 23776 of 9 June 2009).

• ***for the official himself or herself or another person or entity***

The Italian Criminal Code includes these notions with the same wording: “for him/herself or others”

• ***act or refrain from acting in the exercise of his or her official duties***

The Italian Criminal Code includes these notions. “to perform the duties of his/her office...”, “to omit or delay, or having omitted or delayed a duty of his/her office, or rather to perform or having performed an act contrary to the duties of his/her office...”.

***Mental or subjective element***

The fact that the conduct must be intentional is based on one of the general rules of the Italian Criminal Code – Article 42 – which describes different criminal liabilities according to different levels of culpability:

**Article 42 of the Criminal Code**

**Liability for acts committed with malice aforethought or with negligence or for a preterintentional offence. Objective liability.**

No person may be punished for an action or omission contemplated by law as an offence, if he has not committed it consciously and wilfully.

No person may be punished for a fact contemplated by law as a crime, if he has not committed it intentionally (with malice aforethought), save in cases of a preterintentional (*meaning “beyond the intention”, i.e., referring to those events which were not foreseen by the perpetrator when committing a crime*) or unintentional crime expressly contemplated by law. The law determines the cases in which the event is otherwise ascribed to the agent, as a consequence of his action or omission.

In infringements, each person answers for his own conscious or voluntary action or omission whether wilful or unintentional.

According to this general rule, corruption offences cannot be committed with negligence, because Italian domestic law does not contemplate this degree of culpability for these kind of offences.

Italy provided the following statistical information on the implementation of the provision under review:

Concerning active bribery, the data available is as follows:

ARTICLE	TITLE	NEW PROCEEDINGS	CLOSED PROCEEDINGS	FINAL PENDING
321 CC	<b>Punishment against the briber (concerns the crimes of bribery as defined by articles 318, 319, 319ter CC)</b>	169	164	329

Italy cited the following examples of implementation:

Concerning the notion of public official, this notion, as laid out in legislation and further interpreted by the case law of the courts, covers all individuals who are described as “officials”, “public officers” and “judges, prosecutors and holders of judicial offices” .

The Court of Cassation stated that any person who carries out a public function is a public official. A formal appointment is not a condition for public official status (Court of Cassation, Criminal Division VI, 7 June 2001, decision n. 32938).

The Court of Cassation, Joint Sections - no, 15208, 25 February 2010 ruled that crime of corruption can be committed either by accepting the promise or through the giving-receiving advantage. It specifies that when the promise is followed by the giving-receiving, it is only at this moment that the offense itself is committed.

The same decision, from a different point of view, confirms that corruption in judicial proceedings can be committed even if the advantage is given after the public official has already acted in a way to favour or damage a proceeding and even if his/her conduct is in

compliance with his/her duties. It also confirms that the offender can be the public official or a private person (e.g. a witness who gave false testimony).

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

Articles 317 to 321 of the Italian Criminal Code criminalize active and passive bribery of public officials, generally covering all the elements of the offence as required by the Convention. The elements of promise and offering are specifically covered in Article 322. Article 357 of the Criminal Code provides the definition of public officials, defined as those who perform legislative, judicial or administrative public functions. It was confirmed during the country visit that Italian jurisprudence interprets “public function” to the widest possible extent and that it may also include employees of public enterprises and companies which have been officially granted licenses to perform public services. It was noted that the concept of ‘advantage’ was very broad, as further defined in case law as well as the recently approved Code of conduct for public officials.

With regard to the Italian Supreme Court’s judicial interpretation of Article 318 (Bribery for the performance of once functions) which limited the application of the provision where gift offered to a public official is of such modest value that it excludes a possible intent to use it as a remuneration of the public official by a private party for an act performed by the public official in his official capacity (i.e., Court of cassation, Criminal division VI, decision no. 30268 of 9.7.2002; decision no. 2714 of 30.10.1995), Italy additionally clarified that this exception never applies to offers or gifts directly related to the performance (or omission of the performance) of acts contrary to the duties of the public official; regardless of the value of the object that is being offered as a gift or donation.

Italian law does not offer a specific threshold, monetary or otherwise, to distinguish cases in which the object is a “customary gift” from cases when it constitutes a bribe. A judge in a concrete case, takes into account all circumstances of the conduct, to identify such value. As an example, the donation of a full set of kitchen furniture in relation to the performance of a legally permissible act has been qualified as bribe by Courts (Court of Cassation, Criminal division VI, decision no. 16837 of 26.9.1989).

Additionally, a newly approved Code of Conduct for Public Servants (Decree of the President of the Republic no. 62 of 16 April 2013, published in the Official Journal no. 129 of 4 June 2013, valid as of 19 June 2013) in its Article 4 prohibits public servants to solicit or accept any gift for the performance of their duties, excluding those that are customary and of modest value. Paragraph 5 of said Article provides that the modest value shall be understood as any gift which has a value of no more than 150 Euro, or an equivalent discount. However, each public administration, when adopting their own code of conduct, may lower this threshold.

**Code of Conduct for Public Servants**

**Art . 4. Gifts, compensation and other benefits**

1.The employee does not ask and does not urge, for himself or for others, gifts or other benefits.

2.The employee shall not accept, for himself or for others, gifts or other benefits, except those of modest value occasionally made in accordance with normal courtesy relationships and with the international customs.

...

4. Gifts and other utilities anyway received out of the cases permitted by this article, shall be made available to the Administration, by the same employee who received them, for their return or for other institutional purposes.

5. For the purposes of this article, gifts or other benefits of modest value are those which value do not exceed approximately 150 euro, even in the form of discount. Specific codes of conduct adopted by the administrations may provide lower limits, even forbidding any possibility to receive them, according to the characteristics of the administration and the type of tasks performed by the employee.

It must be noted that the violation of this rule may only bring to disciplinary liability of the public servant and does not in itself entail the automatic applicability of the rule contained in Article 318 c.c., for which the case law cited above continues to apply.

Following the country visit, Italy additionally provided clarifications with regard to the application of the provisions on active/passive bribery where the advantage for the corrupted person is not of a patrimonial nature.

According to the case law of the Supreme Court of cassation, the following non-patrimonial advantages have been considered as constituting bribery:

- the promise to the public official of a future assistance in obtaining a promotion in the administration where he worked (Criminal division VI, decision no. 29789 of 27.6.2013);
- the promise of a mediation towards local politicians to obtain a decision in line with the interest of the corrupted official (Criminal division VI, decision no. 24656 of 30.6.2010);
- the engagement to strengthen the presence of a political party in a public administration by promising to hire persons linked to the political party of the corrupted official (Criminal Division VI, decision no. 33843 of 19.6.2008);
- the promise not to report a crime committed by the corrupted public official (Criminal Division III, decision no. 6400 of 10.6.1991);
- the performance of sexual favours (Criminal Division III, decision no. 860 of 27.1.2000; Criminal Division VI, decision no. 4317 of 9.4.1998; Joint Criminal Division, decision no. 7 of 23.6.1993).

Italy also provided clarifications with regard to the application provisions on active/passive bribery where the advantage has been destined to a third person or to a legal person.

In this regard, the following case recently decided by the Italian Court of cassation was highlighted. The offence of corruption was in the payment of the bribe in the form of an amount of money to a movie company (legal person) to favor the engagement of the son of the corrupt public official (third person beneficiary) who aspired to begin a career in acting (this case is equally relevant for explaining the relevance of non-patrimonial advantages) (Criminal Division VI, decision no. 28264 of 26.3.2013);

Italy has implemented the provision under review.

## **Article 15 Bribery of national public officials**

### **Subparagraph (b)**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.*

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

Italy has indicated that it implemented the provision under review.

Italy cited the following implementation measures.

Passive bribery is criminalized pursuant to Articles 318, 319 and 319 *ter* of the Criminal Code as cited under subparagraph a above.

The interpretation of the different elements of passive bribery included in Articles 318, 319 and 319 *ter* of the Criminal Code (e.g. concept of advantage, third party beneficiaries, in return for an official act) is the same as explained under subparagraph a above, since the rules on active corruption, according to Article 321 of the Criminal Code, refer to the provisions on passive corruption.

The concept of undue advantage as clarified under subparagraph above similarly applies to passive bribery.

The concept of public official as explained under subparagraph a above and stipulated in Article 357 of the Criminal Code (under Title II “Crimes against public administration” - Chapter III “Common provisions to the preceding chapters”), similarly applies to passive bribery.

The following elements are specific to passive bribery.

**Solicitation or acceptance**

The conduct of “solicitation or acceptance” corresponds to the Italian provisions on passive bribery. Indeed, Article 318 of the Criminal Code explicitly state: “The public official who...receives ...or accepts “.

Article 319 of the Criminal Code explicitly provides for the wording “receives for himself or for anyone else..., or accepts a promise”.

With regard to the examples of implementation, Italy has referred to the cases cited under subparagraph a above.

Italy provided the following statistical data with respect to the prosecution of passive bribery offences:

ARTICLE	TITLE	NEW PROCEEDINGS	CLOSED PROCEEDINGS	FINAL PENDING
318 CC	<b>Bribery for the performance of one’s functions</b>	19	12	29
319 CC	<b>Bribery for the</b>	217	202	409

	<b>performance of an act contrary to official duties</b>			
319 ter CC	<b>Corruption in judicial proceedings</b>	14	5	32

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

Please see observations under subparagraph a above.

Additionally, following the country visit, Italy additionally clarified with regard to the coverage that the element of “solicitation” of an undue advantage by a public official as required by the provision under review in its relevant legislation and practice. It was highlighted that the conduct of the public official who “solicits” (literal expression) a bribe which is eventually not given is punished as an accomplished crime according to Article 322 paragraphs 3 (for the performance of an act of the office) and 4 (for the performance of an act contrary to the duties of office).

Italy has implemented the provision under review.

**Article 16 Bribery of foreign public officials and officials of public international organizations**

*1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.*

*2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.*

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

Italy has cited the following implementation measure:

**Article 322-bis, Criminal Code**

**«Embezzlement, extortion by colour of office, undue inducement to give or promise an advantage, bribery and incitement to bribery of the members of bodies of the European Communities and officials of the European Communities and foreign States**

The provisions set forth in articles 319-quater paragraph 2, 314, 316, from 317 to 320 and 322, third and fourth paragraphs, shall also apply:

1. to the members of the Commission of the European Communities, of the European Parliament, of the Court of Justice and of the Court of Auditors of the European Communities;

2. to contracted officials and agents in accordance to either Staff Regulations applying to officials of the European Communities or to the provisions applying to agents of the European Communities;
3. to any person seconded to the European Communities by the Member States or by any public or private body, who carries out functions corresponding to those performed by the officials or agents of the European Communities;
4. to members and servants of bodies created on the basis of Treaties establishing European Communities;
5. to those who, within other Member States of the European Union, carry out functions or activities corresponding to those performed by public officials or persons in charge of a public service.

The provisions set forth in article 321 and 322, first and second paragraphs, shall also apply whereas the money or other benefits are given, offered or promised:

1. to persons who are referred to in the first paragraph of this article;
2. to persons carrying out functions or activities corresponding to those performed by public officials and persons in charge of a public service in other foreign States or public international organisations, whereas the offence was committed in order to obtain an undue advantage in international business transactions to their benefit or to the benefit of a third party, or to obtain or retain an business or financial activity.

Persons indicated in the first paragraph are assimilated to public officials, whereas they carry out equivalent functions, and to persons in charge of a public service in all the other cases.»

Italy further clarified that the first paragraph of Article 322 *bis* of the Criminal Code provides for passive and active bribery of members, officials, agents etc., of EU institutions (see the first part of the first paragraph for passive bribery and number 1. of the second paragraph for active bribery). In other words, both the corrupted and the briber can be punished.

The second paragraph of the same Article 322 *bis* of the Criminal Code at number 2. provides also for active bribery of officials of foreign Countries or International public Organizations related to international business transactions. It means that in these cases (i.e., officials of organizations other than the EU and public officials of third Countries other than those of other Member States of the EU, which are covered by the first paragraph) only the corruptor, and not the corrupted, can be punished, provided that the corruption is related to an international business transaction.

The elements of the bribery offence are the same as explained under article 15 above.

Concerning the notion of public official of a foreign State, it must be noted that the Italian Supreme Court ruled that in the trial for the crime of corruption of an official of a foreign Country, the judge must proceed, also ex-officio, to acquire the text of the foreign legislation that disciplines the functions and the activities pertaining to said State official, so as to ascertain the correspondence thereof with those of Italian public officials (Court of Cassation, Criminal Division VI, 5 November 2009, n. 49532). The ascertainment consequential to the application of this principle, however, does not go as far as requiring the proof of the law of the official's country, but rather allows the judge to ascertain the concrete case also through proactive research of and reference to foreign law.

Italy has provided the following case relevant to the implementation of the provision under review:

The Supreme Court ruled that in the trial for the crime of corruption of an official of a foreign Country, the judge must proceed, also *ex-officio*, to acquire the text of the foreign legislation that disciplines the functions and the activities pertaining to said State official, so as to ascertain the correspondence thereof with those of Italian public officials (Court of Cassation, Criminal Division VI, 5 November 2009, n. 49532).

For a case of application of this provision, in the OIL FOR FOOD case, the Court of first instance and then the Court of Appeal of Milan prosecuted two authorized representatives of CO.GE.P, as well as P.L., commercial manager of CO.GE.P and M.G.D.P.M., a factual associate responsible for relations with the Iraqi State Agency S.O.M.O., for bribing several Iraqi officials in order to obtain undue advantages relating to the buying and selling of oil drums.

Through its decision 10 March 2009, the Court carries out an exegesis of the incrimination of foreign bribery provided for article 322 bis of the Italian Criminal Code.

Firstly, the Court observes that the cross reference made by article 322 bis to the articles dedicated to the sanctions for the briber (article 321) and the offence of incitement to bribery (article 322), that refer, them, to the articles incriminating corruption for actions within an official's duty (article 318) and actions contrary to his/her duties (article 319), leads to the delimitation of figures of foreign bribery criminalised in the Italian legal system.

Secondly, the Court analyses whether the case of the payment of bribes could be authorised or consented by written laws or regulations of the country of the foreign public official, including case-law. The Court considers that even if a note by the Iraqi Oil Ministry established that, from September 2000 on, a surcharge should be solicited on the selling of oil, it represent neither a written law, nor a regulation, nor a case law.

Thirdly, the Court qualifies the alleged acts as corruption for the performance of an act contrary to official duties, considering that even if the public officials acted following the guidelines established by the Iraqi regime, the receipt of bribes was contrary to their duties.

Moreover, the judge recognizes that the bribe was finalised to obtain the undue benefit deriving from the conclusion of the contracts, but also to maintain those already concluded and partially executed. As a consequence, he retains the continuation of the crimes.

Italy provided the following statistical data which is available with respect to bribery of foreign public officials:

ARTICLE	TITLE	NEW PROCEEDINGS	CLOSED PROCEEDINGS	FINAL PENDING
322-bis CC	<b>Embezzlement, extortion by colour of office, undue inducement to give or promise an advantage, bribery and incitement to bribery of the members of bodies of the European Communities and officials of the European Communities and foreign</b>	2	2	8

	<b>States</b>			
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**(b) Observations on the implementation of the article**

Italy criminalized active and passive bribery of foreign officials and officials of public international organizations in relation to the conduct of international business via the second paragraph of Article 322 *bis* by reference to Articles 321 and 322 of the Criminal Code. Those provisions also cover active and passive bribery of the officials of EU and EU MS. Case law has been developed on the interpretation of the concept of foreign officials and officials of public international organisations.

Following the desk review, Italy further clarified the scope of the case law cited in its response with regard to the implementation of the provision under review. Italy explained that the principle in the decision of the Court of Cassation, Criminal Division VI (5 November 2009, n. 49532) with regard to ascertaining that functions of a particular foreign public official correspond to that of Italian officials does not entail that the nature of the functions of the foreign public official is assessed on the basis of the provisions of Italian law, but rather that in addition to that assessment the judge must, even *ex officio* if needed, ensure that the alleged foreign public official is indeed considered such also under the law of the foreign State where he exercises his duties. In the concrete case brought to the attention of the Court of Cassation, that legal principle was used to refute the reasoning of the Tribunal of Palermo based on a lack of information as to the role of the financial institution at stake and led to void the appealed decision of acquittal (and send the case back to the court of first instance in order to implement the above principle).

Italy has implemented the provision under review.

**Article 17 Embezzlement, misappropriation or other diversion of property by a public official**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.*

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

Italy indicated that embezzlement, misappropriation or other diversion of any property by a public official, for his or her benefit or for the benefit of another person or entity, are criminalized by Articles 314, 316 and 323 of the Criminal Code:

**Article 314 of the Criminal Code**

**Embezzlement [peculato].**

A public official or person in charge of a public service who, having by virtue of his office or service the possession or in any case the availability of money or other movable property of others, appropriates it, shall be sentenced to imprisonment from three to ten years.

A sentence of imprisonment from six months to four years shall be imposed when the offender acted for the sole purpose of making a temporary use of the property, and this, after such momentary use, was immediately returned.

### **Article 316 of the Criminal Code**

#### **Embezzlement [peculato] by taking advantage of another's error**

A public officer (357) or person charged with a public service, who, in the exercise of his office or service, by availing himself of another's error, wrongfully receives or retains for himself or a third person, money or other advantage shall be punished by imprisonment for from six months to three years.

Italy provided further details with regard to the coverage of different elements of the offence in its legislation.

#### ***The embezzlement, misappropriation or the other diversion.***

Article 314 includes both the conducts of embezzlement and of misappropriation.

Uniform case-law interprets the conduct of appropriation as negation of the rights of the person entitled to the object of the offence and, at the same time or subsequently, as affirmation of the agent's power on the same object, through the exercise of the powers typical of the legitimate owner of the object (such as selling, destroying, or using it for his/her own benefit).

As far as embezzlement is concerned, although this conduct is not explicitly mentioned by Article 314 Criminal Code, it falls within the scope of application of the conduct of misappropriation, since any appropriation implies the deduction of the object from its original destination.

Furthermore, should the object be destined to a different, yet still public use, the conduct would fall within the scope of application of Article 323 Criminal Code (Abuse of functions: see under question 74.), which allows punishment of said conduct.

Article 314 of the Italian Criminal Code provides lower sanctions in the cases of temporary use of the goods or objects, without the purpose of permanent appropriation, and immediate return of the same. The temporary nature of the use must be assessed in light of the time necessary to make an "ordinary" use of the object.

Article 316 criminalizes the behavior of receiving or holding money or other assets, in the performance of such office or service, by taking advantage of another person's error.

In this case, it is not necessary that the public official has already possession or availability of the goods: the central element is the error of the victim and the exploitation thereof by the offender to commit the crime.

In this respect, the provision of the second paragraph of Article 314 Criminal Code, which specifically punishes the temporary use of a thing for the benefit of the public official who has custody over it, or for the benefit of a third party. The Court of Cassation has specified that this attenuated form of the offence applies only when the use of the object is momentary: if it is repeated and prolonged, the general provision on "peculato" (paragraph 1) will apply (Criminal Division VI, decision no. 1745 of 4.12.1991).

#### ***Any property, public or private funds or securities or any other thing of value entrusted to the public official.***

The object of the crime provided for article 314 is *money or movables* (having any significant economic value) belonging to anyone other than the agent. The consequence is that the victim could be both the public administration or a private person. Therefore, the provision covers both embezzlement and misappropriation.

#### ***by virtue of his or her position***

Article 314 explicitly provides the necessity of possession or disposal “by reason of such office or service”.

### ***Entrusted***

Article 314 explicitly provides the necessity of the “possession or the disposal” of goods by the public official, by virtue of his functions. It means that any relationship with the money or other object, by reason of such his/her office or service, even if it is customary, is relevant for the commission of this crime.

### ***Committed intentionally***

One of the general rules of the Italian Criminal Code – article 42 (as cited under subparagraph a of article 15 above) – describes different criminal liabilities according to different levels of culpability.

According to the general rule, embezzlement offences cannot be committed with negligence, because Italian domestic law does not contemplate this degree of culpability for this kind of offences.

### ***For his or her benefit or another person or entity.***

Although the provision does not expressly state so, it is evident that the misappropriation must always be committed for the benefit of the agent or of a third person, since the acquisition of full control over the object of the offence allows the public official to use it for his own or a third person’s advantage.

In case a public official appropriates himself of public property not for his benefit, but for the benefit of a third party, according to the ordinary rules on participation (Article 110 Criminal Code), both the public official and the third party who finally receives the property in question will be liable for the offences set out in Articles 314, 316 and 323 of the Criminal Code, as appropriate. The relevant case authority in that regard is Court of Cassation, Criminal Division VI, decision no. 6317 of 30.5.1994.

On the contrary, Article 316 employs the same wording as the Convention, providing that the public official must receive or retain the object for his/her own benefit.

### **Article 323 Criminal Code.**

#### **Abuse of office**

Unless the act constitutes a more serious offence, a public official or person charged with a public service who, in the exercise of his office or service, by infringing a law or regulation, or omitting to abstain in the presence of an interest of himself or of a next of kin, or in the other cases prescribed, willfully procures to himself or others an undue patrimonial advantage or causes to others an undue harm, shall be sentenced to imprisonment from one to four years.

The penalty shall be increased if the advantage or harm are particularly significant.

Italy has provided the following case relevant to the implementation of the provision under review:

The Court of Cassation has ruled that the conduct of appropriation is based on the possession or availability of the goods, by reason of the public office or service of the agent. According to the Court, this is the main difference between embezzlement and fraud, which is based on

the fraudulent obtaining of the possession (Court of Cassation, criminal division IV, decision no. 32863 of 25 May 2011).

The country under review provided the following statistical data with respect to embezzlement, embezzlement by taking advantage of another's error and abuse of office:

ARTICLE	TITLE	NEW PROCEEDINGS	CLOSED PROCEEDINGS	FINAL PENDING
314 CC	<b>Embezzlement</b>	349	286	610
316 CC	<b>Embezzlement by taking advantage of another's error</b>	6	12	16
323 CC	<b>Abuse of office</b>	578	460	1197

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

Following the country visit Italy additionally provided the following clarifications with regard to the limitation of the applicability of Article 314 of the Criminal Code only to movable property.

According to the general principles of Italian law, the possession of movable property with the appearance of bona fide is considered equivalent, for what concerns the rights of third parties, to the actual property. Thus, the person who has possession of movable property and does not appear prima facie to have obtained that possession unlawfully, but nevertheless is not the owner of that object, may validly transfer its property to third parties who acquire all legal rights over it by a contract which does not require a particular form. In this case, the original rightful owner of the property loses his rights on the object and therefore may only apply for restoration of pecuniary damages against the possessor who has alienated the property (save, of course, for any criminal liability).

On the contrary, for immovable property (e.g. real estate), the transfer of ownership is subject to the condition that the contract be stipulated in writing by a notary public or authenticated by him. Furthermore, third parties, even bona fide, cannot oppose their title to the original owner unless the contract by virtue of which they have acquired the property has been annotated in public registers of ownership. In other words, even if a person who is not the owner of a real estate has the possession thereof, it is extremely difficult for him to unlawfully appropriate himself, for himself or others, of said property: indeed, this operation presupposes forgery of documents and the participation of a notary public. Thus, the Italian Criminal Code awards special protection to movable property against misappropriation or embezzlement committed by public officials because, in accordance to the rules set out above, it is substantially easier to commit this offence with respect to movables rather than immovable property. However, the Criminal Code does not ignore the possibility, however unlikely, of a public official misappropriating or embezzling unmovable property entrusted to him for reasons of office. In that case the provisions on abuse of office (Article 323) will apply.

Based on the above, embezzlement, misappropriation and other diversion of any property by public officials are criminalized by Articles 314 (Embezzlement), 316 (Embezzlement by taking advantage of another's error) and 323 (Abuse of office). However, *not all* elements of the offence, as required by article 17 of the Convention, are *clearly* established in the relevant provisions. Those elements include the illicit conduct in favour of third-parties beneficiaries,

non-coverage of immovable property as a possible object of the offence; additionally, the conduct of other diversion of property is not clearly stipulated.

Italy has partly implemented the provision under review.

It is recommended that Italy take legislative measures to ensure that the domestic provisions implementing article 17 of the Convention fully cover the following: the element of third-party beneficiaries; the broad scope of property to include immovable property as well; and the conduct of “other diversion of property”.

## **Article 18 Trading in influence**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;*

*(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.*

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

Italy has indicated that it chose to implement the provisions of Article 18 by supplementing its existing legislation (Article 346 Criminal Code – Boasting of Influence (“Millantato credito”)) with the introduction, by Article 1, paragraph 75, lett. r) of Law No. 190 of 6 November 2012, of a new provision specifically labeled “Trading in illegal influence” (Article 346-*bis* Criminal Code – “Traffico di influenze illecite”):

#### **Article 346 Criminal Code.**

##### **Boasting of Influence (“Millantato credito”)**

«Whoever makes a fraudulent representation of his influence with a public officer or a State employee engaged in a public service, receives or causes to be given or promised to himself or others, money or other utility, as the price for his good offices with the public officer or employee, shall be punished by a term of imprisonment from one to five years and a fine from 309 Euros to 2.065 Euros.

The penalty shall be a term of imprisonment from two to six years and a fine from 516 Euros to 3.098 Euros, if the offender receives or causes to be given or promised to himself or others, money or other utility, on the pretext that he must obtain the favour of a public official or state employee or must compensate him.»

#### **Article 346-*bis*.**

##### **Trading in illegal influence [Traffico di influenze illecite]**

«A person who, in cases other than those of complicity in the offences referred to in Articles 319 and 319-ter, taking advantage of the existing relationship he has with a public official or person charged with a public office, unduly makes someone give or promise to give, to him or others, money or other patrimonial advantage as the price for his unlawful mediation with the

public official or person in charge of a public service, or to remunerate him, in respect of the performance of an act contrary to his official duties or to the omission or delay to perform an act of his office, shall be sentenced to imprisonment from one to three years.

The same penalty shall be imposed on the person who unduly gives or promises money or other patrimonial advantage.

The penalty shall be increased if the person who unduly makes someone give or promise to give, to him or others, money or other patrimonial advantage has the status of public official or person in charge of a public service.

The penalties shall also be increased if the acts are committed in respect of judicial activities.

If the acts are particularly insignificant, the penalty shall be reduced.»

Article 346 Criminal Code concerns the individual who, by affirming falsely that he/she has an influence over (the decision-making of) a public official, receives an advantage from a third party, either explicitly for him/herself as price of the mediation (paragraph 1) or as alleged price of the corruption of a public official (paragraph 2). The central element consists in boasting of an inexistent influence over a public official (the name of which can also not be disclosed); according to the prevailing case-law (see e.g. Court of Cassation, Criminal Division V, decision no. 8043 of 2 May 1983; Criminal Division VI, decision no. 5569 of 25 February 1998), the legal interest which is protected is the prestige of the public administration, which is prejudiced by such conduct which gives rise to the idea of the seeming corruptibility of public officials. Consequently, the person who promises or gives money or other utility is not punishable, being considered in a position similar as the victim of a fraud (see e.g. Court of Cassation, Criminal Division VI, decision no. 2740 of 6 March 1997).

By contrast, the newly introduced Article 346-*bis* Criminal Code aims at the punishment of undue remunerations for illegal influence when there is an existing relationship of influence between the agent and the public official. Paragraphs 1 and 2 of the Article concern, respectively, the case in which the money or utility is given as price for the mediation and that in which it is given with the aim of corrupting the public official. In this latter case, the reserve clause in paragraph 1 (“in cases other than those of complicity in the offences referred to in Articles 319 and 319-*ter*”) should be interpreted in the sense that the new provision of Article 346-*bis* paragraph 2 applies only if the bribe is not given to the public official under influence of the agent; otherwise, the conduct would be punishable as aiding and abetting in the crime of corruption.

The use of the phrases “unduly makes someone give or promise to give” and “unlawful mediation” in the description of the offence implies that, when the mediation is lawfully carried out in accordance with specific non-criminal provisions, Article 346-*bis* Criminal Code does not apply.

For what in particular concerns the implementation of paragraph a of article 18 of UNCAC), the person giving or promising money or other utility is punishable according to Article 346-*bis*, paragraph 3, with the same penalties provided for by the person who trades the illegal influence.

The aggravating circumstances set out in paragraphs 3 and 4 of Article 346-*bis* (person trading the illegal influence being a public official or person in charge of a public service; trading of illegal influence in relation to judicial proceedings), as well as the mitigating circumstance set out in paragraph 5 (acts of lesser severity) apply also to the person giving or promising money or other utility.

This second provision, which has only recently entered into force, has not yet received concrete application.

Both provisions require the subjective element of intention for their application.

Italy cited the following cases relevant to the implementation of the provision under review, in addition to the cases cited above:

With respect to the crime provided for by Article 346, mention should also be made of a judgment of the Supreme Court of Cassation – Joint Sections, decision no. 12822 of January 21, 2010 - which stated that: “As to boasting of influence (“millantato credito”), in the case mentioned in paragraph 2 of Article 346 of the Criminal Code (which is an autonomous kind of offence and not an aggravating circumstance of the offence under paragraph 1 of the said Article), it is irrelevant that the initiative originates from the person who is asked to give the money or any other advantage; nor is it necessary that the agent mentions the names of the officials or employees whose good offices must be bought or paid”. The perpetrator of the crime was therefore convicted although his/her conduct was “generic” in the sense that he/she did not mention the public employees he/she would turn to buy their good offices.

The Court of Cassation (Criminal division VI, decision no. 35060 of 21 May 2010) also ruled that the conduct of the person who only prospected having the possibility to put the other person in contact with a public official, without leading him to believe that he can exert a real influence on him, does not constitute the crime of boasting of influence.

The following statistical data was provided with respect to boasting of influence (“Millantato credito”):<sup>3</sup>

ARTICLE	TITLE	NEW PROCEEDINGS	CLOSED PROCEEDINGS	FINAL PENDING
346 CC	<b>Boasting of influence</b>	69	58	147

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

Active and passive trading in influence is criminalized in Articles 346 and 346-*bis* of the Criminal Code. While Article 346 criminalizes passive fraudulent trading of influence, a recently adopted Article 346-*bis* covers both the active and passive offence. As further clarified by Italy, if the undue advantage reaches the public official, corresponding provisions on bribery of public officials will apply.

Italy has implemented the provision under review.

**Article 19 Abuse of Functions**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.*

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

Italy has cited the following implementation measures.

<sup>3</sup> Since the data refers to 2010 and the new offence of trading in influence (Art. 346-*bis* CC) has only been introduced in 2012, no data is as yet available on this second offence

Abuse of functions is criminalized pursuant to Article 323 of the Criminal Code.

**Article 323 Criminal Code.**

**Abuse of office**

«Unless the act constitutes a more serious offence, a public official or person charged with a public service who, in the exercise of his office or service, by infringing a law or regulation, or omitting to abstain in the presence of an interest of himself or of a next of kin, or in the other cases prescribed, willfully procures to himself or others an undue patrimonial advantage or causes to others an undue harm, shall be sentenced to imprisonment from one to four years.

The penalty shall be increased if the advantage or harm are particularly significant.»

Italy has provided further details with regard to the coverage of different elements of the offence in its legislation.

***the abuse of functions or position.***

Abuse of functions is expressly provided for by Article 323 though the criminalization of the conduct of the public official or the person in charge of a public service who acts “by infringing a law or regulation, or omitting to abstain in the presence of an interest of himself or of a next of kin, or in the other cases”.

***the performance or failure to perform an act.***

Even if it is not expressly provided for by Article 323, the failure to perform an act is implicitly included because it can consist in the violation of the prescriptions of laws and regulations, when there is a duty to act; this is confirmed by the case law (see e.g. Court of Cassation, Criminal Division VI, decision n. 41697 of 9 November 2010).

Article 323 also criminalizes the conduct of the public official who “omit[s] to abstain in the presence of an interest of himself or of a next of kin, or in the other cases prescribed”.

***in violation of laws.***

Article 323 explicitly employs the wording “by infringing a law”, and it refers also to regulations, that are legal acts of secondary nature emanated by different authorities, rather than by the Parliament.

Accordingly, the case law has excluded the relevance of conduct which violates merely administrative provisions such as disciplinary norms (Court of Cassation, Criminal Division VI, decision no. 5531 of 27 March 1996), internal norms of administrations (Criminal Division VI, decision no. 34049 of 20 February 2003) or calls for public tenders (Criminal Division VI, decision no. 24480 of 12 June 2009).

***in the discharge of his or her functions.***

This element is included in the article 323, which explicitly states that the crime can be committed only “in the exercise of his office or service” and by violating laws or regulations.

***for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.***

Article 323 expressly employs the wording “procures to himself or others an undue patrimonial advantage”.

The Italian criminal code criminalizes also the conduct of the public official who “causes an unjust damage to others”.

### ***Undue.***

Article 323 of the Criminal Code explicitly encompasses the notion “undue”, i.e. by using the word “unjust”.

### ***Committed intentionally.***

One of the general rules of the Italian Criminal Code – article 42 (as cited under subparagraph a of article 15 above) – describes different criminal liabilities according to different levels of culpability.

According to this general rule, abuse of function offence cannot be committed with negligence, because Italian domestic law does not contemplate this degree of culpability for these kind of offences.

Italy provided the following **statistical** data with respect to the offence of abuse of office:

ARTICLE	TITLE	NEW PROCEEDINGS	CLOSED PROCEEDINGS	FINAL PENDING
323 CC	<b>Abuse of office</b>	578	460	1197

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

Abuse of functions is criminalized by Article 323 of the Criminal Code. During the country visit it was further clarified that the failure performed to perform an act in violation of laws is additionally separately criminalized in Article 328 (Refusal to perform and act of office) of the Criminal Code.

#### **Article 328 of the Criminal Code**

##### **Refusal to perform an act of office. Omission**

The public official of the person entrusted with a public service who unduly refuses an act of his office which, for reasons of justice, public security, public order or hygiene or sanitation has to be performed without delay, is punished with imprisonment between six months and two years. Outside the cases provided for in paragraph 1, the public official of the person entrusted with a public service who, after 30 days of receiving a request by the interested person, does not perform the act of his office and does not reply stating the reasons of the delay, is punished with imprisonment up to one year or fine of up to 1032 Euro. The request has to be submitted in writing and the term of 30 days starts running from its reception.

This provision covers specific cases of undue omission of an act of office, which must pertain to specific sectors of the action of the public administration.

In all other cases, it was noted that the consolidated jurisprudence of the Court of Cassation admits the applicability of the general rule on abuse of office also in cases of undue omission of an act of office: see in this respect, among many others, Criminal Division VI, decision no. 41697 of 9.11.2010; Criminal Division VI, decision no. 10009 of 22.1.2010; Criminal Division VI, decision no. 18360 of 24.2.2003).

Italy has implemented the provision under review.

### **Article 20 Illicit Enrichment**

*Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.*

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

The establishment of illicit enrichment as an offence in the Italian legal system would entail serious doubts as to its consistency with the Constitution and the fundamental principles of the Italian criminal law system. According to Article 25 of the Constitution and Article 1 of the Criminal Code, which set out the principle of legality, an offence must be described in detail by law.

**Article 25 Constitution**

No case may be removed from a court, but must be heard as provided by law. No punishment is allowed except provided by a law already in force when the offence was committed. No one may be subject to restrictive measures except in those cases provided for by law.

**Article 1 Criminal Code**

**Offences and punishments: express provision of law**

No one may be punished for an act which is not expressly designated as an offence by law, nor with punishments which are not thereby prescribed.

Furthermore, the creation of the offence of illicit enrichment could amount to an infringement of the constitutional principle of the “presumption of innocence” set out in the Italian legal system by Article 27 of the Constitution, whereby “a defendant is not considered guilty until his conviction becomes final”. The fact that illicit enrichment, as defined in Article 20 UNCAC, would somehow establish a reversion of the burden of the proof is a further ground for the choice not to introduce the offence in the Italian legal system.

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

Italy considered but decided not to criminalize the offence of illicit enrichment due to incompatibility with the fundamental principles of the Italian legal system.

However, Italy provides for mandatory confiscation of assets where offenders cannot justify their origin. As clarified under article 31 subparagraph 1 (a) below, a special kind of confiscation (“*confisca allargata*”) is provided for by Article 12 *sexies* of Legislative Decree 306 of 8 June 1992 and allows for confiscation of money or other assets for which a person who has been convicted for a number of serious offences (including corruption offences) cannot justify the origin.

Additionally, Italy also has specific rules in place imposing patrimonial disclosure obligations on elected officials and top public officials, and stipulating sanctions for non-disclosure.

**Article 21 Bribery in the private sector**

**Subparagraph (a)**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:*

*(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;*

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

Italy has indicated that it chose to implement the provisions of Article 21 UNCAC through Article 1, paragraph 76, of Law n. 190 of 6th November 2012, which has substantially amended the existing criminal offence provided for by Article 2635 Civil Code (formerly labeled as “Disloyalty as consequence of a payment”):

**Article 2635, Civil Code.**

**Bribery between private persons.**

Unless the act constitutes a more serious offence, managers, general directors, executive officers responsible for drafting the accounting documents of a company, auditors and official receivers who, upon receiving or accepting the promise for themselves or others the promise of money or other advantage, perform or omit to perform acts, in breach of the obligations inherent to their office and duties of loyalty, thereby causing a harm to the company, shall be sentenced to imprisonment from one to three years.

A sentence to imprisonment for up to one year and six months shall be imposed if the act is committed by a person subject to the direction or supervision of any of the subjects indicated in paragraph one.

Whoever gives or promises money or other advantage to the persons indicated in paragraphs one and two shall be sentenced to the penalties specified therein.

The penalties specified in the above paragraphs shall be doubled in the case of a company with shares traded on regulated markets in Italy or other States of the European Union, or which are largely widespread within the meaning of Article 116 of the consolidated legislation on financial intermediation [Testo unico delle disposizioni in materia di intermediazione finanziaria] in Legislative Decree No.. 58 of 24 February 1998 as amended.

Prosecution is started on complaint of the victim, unless a distortion of competition in purchase of goods or services derives from the act.

The main elements of the offence, in relation to the active bribery contemplated by Article 21 lett. A) UNCAC are as follows:

Active corruption can be committed by anyone.

The conduct consists of giving or promising to the subject of passive corruption money or other utility in order for him to “perform or omit to perform acts, in breach of the obligations inherent to their office and duties of loyalty”. This description of the conduct is modeled on the corresponding provisions concerning bribery in the public sector.

In order for the offence to be committed, the act or omission to which the bribe refers must have taken place and, as a consequence, the legal entity for which the subject of passive corruption operates must have suffered a damage. This damage must not necessarily be of strictly pecuniary nature.

This identifies the interest protected by the criminal provision as the economic integrity of the company for which the subject of passive corruption operates.

Coherently, the provision provides for an obligation of the victim of the crime (i.e., the company which has suffered damage) to report in order for criminal proceedings to be instated. However, paragraph 5 of Article 2635 Civil Code now states that prosecution follows *ex officio* if the bribery gives rise to a distortion in competition, thus underlining the protection of the general interest in the integrity of the market.

According to paragraph 3 of Article 2635 Civil Code, the penalty for the subject of active corruption is, respectively, imprisonment from one to three years or up to one year and six months, depending upon the fact that the subject of passive corruption falls among the “managers, general directors, executive officers responsible for drafting the accounting documents of a company, auditors and official receivers” (paragraph 1) or is a subordinate of one of these (paragraph 2).

Paragraph 4 of Article 2635 Civil Code provides for an aggravating circumstance if the damaged company is public on a EU financial market or its stocks are otherwise widely diffused.

It must be recalled that by virtue of the reserve clause at the beginning of paragraph 1, Article 2635 Civil Code does not apply if the conduct constitutes a more serious criminal offence.

Italy has indicated that there is no case law or statistical data as yet available on this provision.

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

Active bribery in the private sector is criminalized in Paragraph 3 of Article 2635 of the Italian Civil Code. Paragraph 3 of Article 2635 distinguish between penalties for the bribery of the managers, general directors, executive officers responsible for drafting the accounting documents of a company, auditors and official receivers and persons under the direction of the former, providing lower penalties in the second case.

In order to initiate a case a complaint by the victims of the corrupt conducts would be necessary, which can limit the application of the provision under review. Alternatively, a State Prosecution can open case on his own, but only when there is a clear indication of the distortion of fair completion in the relevant context.

Italy has partly implemented the provision under review and in that regard, Italy is recommended to consider removing the requirement that the prosecution of the offence of bribery between private persons can be started only by complaint of a victim or the offence or in case of the distortion of competition.

### **Article 21 Bribery in the private sector**

#### **Subparagraph (b)**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:*

*(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.*

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

Italy has referred to the information cited under subparagraph (a) above.

Italy has provided additional clarifications with regard to the subject of the offence of passive bribery in the private sector.

According to paragraph 1 of Article 2635 of the Civil Code, the person who receives the bribe or the promise thereof must be vested with a managerial position of a legal person under private law. This position is described as “managers, general directors, executive officers responsible for drafting the accounting documents of a company, auditors and official receivers”. What must further be stressed is that Italy has chosen to limit the scope of application of this provision only to those facts of private corruption which concern entities such as legal persons, given the need to protect their patrimonial means as these are the only guarantee of solvency towards third parties.

In addition to this first category of persons, Law. 190/2012 has widened the scope of application of the provision to any person who, although not vested with one of the positions described above, is subject to his/her “direction or supervision” (see Article 2635 Civil Code, paragraph 2). The scope of the phrase covers not only employees of the same company, but also external collaborators, contract agents, etc. who work in the interest of the company and under instructions of its managers can be subjects of passive corruption.

Law 190/2012 has raised the levels of penalties for the offence provided for by paragraph 1 of Article 2635 Civil Code (now imprisonment from one to three years). The subject of passive corruption according to paragraph 2 is subject to a penalty of imprisonment up to 18 months.

Italy has indicated that there is no case law or statistical data as yet available on this provision.

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

Passive bribery in the private sector is criminalized in Paragraph 1 and 2 of Article 2635 of the Italian Civil Code. Paragraph 3 of Article 2635 distinguish between penalties for the passive bribery of managers, general directors, executive officers responsible for drafting the accounting documents of a company, auditors and official receivers and persons under the direction of the former, providing lower penalties in the second case.

Please see the recommendation under the observations to the information provided under subparagraph (a) above.

**Article 22 Embezzlement of property in the private sector**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position*

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

Italy has cited the following implementation measure.

## **Article 646 Criminal Code**

### **Embezzlement.**

« Whoever, to procure an undue profit for himself or others, appropriates money or other removable asset of which he has possession for any reason, is punished, upon report of the victim, with imprisonment up to three years and a fine up to 1032 Euro.

If the object is the possession of the author as necessary deposit, the penalty is raised.

Prosecution follows *ex officio* if the aggravating circumstance outlined in the previous paragraph, or any of the aggravating circumstances provided by Article 61, no. 11, apply. »

The scope of application of this provision is substantially broader than that of Article 22 UNCAC and covers all cases in which the author of the crime, having lawfully obtained the material possession of money or other removable thing, embezzles it by performing any act which is incompatible with the right to property of the lawful owner and shows the intention of the agent of exercising that right himself.

The offence can be committed by anyone; however, in case the agent receives the object of the offence by reason of his/her office or by reason of as a result of a contractual relationship with the victim, this falls within the scope of application of the general aggravating circumstance provided for by Article 61 n. 11 Criminal Code which not only increases the penalty but also allows prosecution *ex officio* for the crime.

According to settled case law, the contractual relationship in question doesn't have to be formal: what is relevant is the exercise by the agent of any activity which has caused the victim to entrust him with the material possession of the object of the crime, and which has facilitated the commission of this (see e.g. Court of Cassation, Criminal Division II, decision no. 4124 of 9 May 1984).

As an example, this aggravating circumstance applies to the employee of a bank who appropriates money deposited on the bank's accounts (see e.g. Court of Cassation, Criminal Division VI, decision no. 16638 of 22 September 1989), or entrusted to his care even outside any kind of formal contractual relationship (Court of Cassation, Criminal Division VI, decision no. 2936 of 26 November 1987).

As for the subjective element of the offence, one of the general rules of the Italian Criminal Code— article 42 – describes different criminal liabilities according to different levels of culpability as cited under subparagraph (a) of article 15 above.

According to this general rule, The criminal offence provided for by Article 646 Criminal Code cannot be committed with negligence, because Italian domestic law does not contemplate this degree of culpability for this offence.

Italy has indicated that no statistical data is available, since the offence provided for by Art. 646 Criminal Code has a much wider scope of application than that covered by the corresponding Article of UNCAC.

Italy did not identify any challenges in fully implementing the provision under review.

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

Following the desk review Italy further clarified with regard to the requirement of a report by a victim that is essential for the prosecution of the offence of embezzlement in the private sector.

The systematic principle in the Italian criminal law system is that – at least in ordinary cases – it should be left to the initiative of the victim to choose whether or not to initiate criminal proceedings in the area that aims at the protection of purely private economic interests such as embezzlement under Article 646. This principle applies to a number of other offences in the c.c. (e.g., simple cases of theft, damaging of property). This is true unless these offences are committed in the presence of a number of aggravating circumstances, in which case there is no need for a report of the victim and the prosecutor can act *ex officio*.

In general, when prosecuting a crime for which a report of the victim was needed but this report is not filed, prosecutors will file for dismissal of the case (see below, comments under paragraph 3 of Article 30); should this omission be found at the trial stage, the judge will immediately pronounce a decision of acquittal.

It was also noted that Article 646 is limited only to the embezzlement of movable property. In that regard, Italy, additionally, referred to Article 633 (Trespassing on lands or buildings) that provides criminalizes some instances of the similar criminal conduct.

#### **Article 633 Criminal Code**

##### **Trespassing on lands or buildings**

Whoever arbitrarily trespasses on another's lands or buildings, be they public or private, for the purpose of occupying them or otherwise deriving benefit therefrom, shall be punished, upon complaint of the victim, by a term of imprisonment up to two years or a fine of two hundred thousand up to two million liras.

Both penalties shall be applied, and prosecution shall be initiated *ex-officio* if the act is committed by more than five persons, of whom at least one is openly armed, or by more than ten people, even though unarmed.

Embezzlement of property in the private sector is generally criminalized by Article 646 of the Criminal Code (Embezzlement), however, some of the elements are not clearly provided for. The prosecution of the embezzlement is possible only upon report of the victim in case when aggravating circumstances are absent.

Italy has partly implemented the provision under review and it is recommended that Italy consider extending the scope of embezzlement in the private sector to all types of property, as defined in article 2(d) of the Convention, and consider removing the requirement of a complaint by the victim.

#### **Article 23 Laundering of proceeds of crime**

##### **Subparagraph 1 (a) (i)**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;*

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

Italy has indicated that the provisions of Article 23 are addressed in its domestic legislation through a range of provisions in the Criminal Code.

#### **Article 648 Criminal Code**

##### **Receiving of stolen goods**

Except in the case of participation to a crime, whoever, in order to procure a profit for himself or others, receives or conceals money or things resulting from any crime, or if he is in any case involved in arranging for such money or things to be acquired, received or concealed. The crime is punishable by two to eight years' imprisonment and a fine from Euro 516 to 10.329,00.

The penalty is imprisonment up to six years and a fine up to 516 Euro if the case is particularly tenuous.

This Article applies even if the author of the crime from which the money or assets originate is not punishable or in case of lack of a condition for prosecution in relation to said crime.

#### **Article 648-bis of the Criminal Code**

##### **Money laundering**

“Apart from cases of complicity in the offence, whoever replaces or transfers money, property or other advantages deriving from a non-negligent crime, or performs other operations with regard to them aimed at preventing detecting their criminal origin, shall be punished by imprisonment for from four to twelve years and by a fine of from 1,032 Euros to 15,493 Euros. The punishment shall be increased when the offence was committed in the exercise of a professional activity.

The punishment shall be reduced if the money, property or other advantages derived from a crime for which the maximum punishment prescribed is imprisonment for less than five years. The last paragraph of Article 648 shall be applicable”.

#### **Article 648-ter of the Criminal Code**

##### **Use of money, property or advantages of unlawful origin**

“Whoever, apart from the cases of complicity in an offence and the cases designated in Articles 648 and 648 bis, uses money, property or other advantages deriving from crime in financial or economic activities, shall be punished by imprisonment for from four to twelve years and by a fine of from 1,032 Euros to 15,493 Euros.

The punishment shall be increased when the offence was committed in the exercise of a professional activity.

The punishment shall be reduced in the case set forth in paragraph 2 of Article 648. The last paragraph of Article 648 shall be applicable”.

#### **Article 379 of the Criminal Code**

##### **Aiding an offence**

“Whoever, apart from the cases of complicity in an offence and the cases designated in Articles 648, 648 bis and 648 ter, aids anyone to secure the fruits or benefits or proceeds of an offence, shall be punished by imprisonment for up to five years if a crime [*delitto*] was concerned, and by a fine of from 51 Euros to 1,032 Euros if a misdemeanour [*contravvenzione*] was concerned.

The provision of the second and the last paragraphs of the preceding Article shall be applicable”.

The provision in Article 648-*bis* Criminal Code applies to any conduct aimed at obtaining an effect of dissimulation, by concealing the illicit origin of money, objects or any other utility which constitutes the proceed of a predicate offence (see e.g. Court of Cassation, Criminal Division I, decision no. 1470 of 11 December 2007). The provision has a scope which goes beyond that of Article 23, subparagraph 1 (a) (i) UNCAC, in that it covers not only conducts of “conversion” or “transfer” of the proceeds of crime, but in general any operation aiming at disguising their illicit origin. As such, it covers also the cases provided for by Article 23, subparagraph 1 (a) (ii) UNCAC. The conduct consists in the mere performance of the

operation aimed at obtaining the disguising effect, and does not require the concrete production of such effect (see Court of Cassation, Criminal Division I, decision no. 871 of 9 February 1996).

The offender can be anyone, save for the offender who committed predicate offence, by virtue of the reserve clause in the first paragraph of Article 648-*bis* Criminal Code.

In accordance with the general rule on the subjective element of criminal offences, the offence can only be committed willfully. The subjective element requires the knowledge of the illicit origin of the object of the behavior. In this regard, settled case law admits that this knowledge can be inferred when, in the concrete case, there are objective circumstances which would univocally show to anyone the illicit origin of the goods or money (see. e.g. Court of Cassation, Criminal Division VI, decision no. 4077 of 20 November 1989; Criminal Division II, decision no. 3735 of 22 May 1990). The doubt as to the illicit origin of the object is equally relevant for the application of the provision in question, when the agent has acted accepting the risk that the object constitutes proceeds of crime (see Court of Cassation, Joint Criminal Divisions, decision no. 12433 of 26 November 2009).

Article 648-*ter* Criminal Code provides for a special case of the offence described by Article 648-*bis*, consisting in the use of the proceeds of crime (“money, goods or other utility”) in the context of an “economic or financial activity”. According to the principle of speciality, this offence applies with precedence over that provided for by Article 648-*bis*, should all its elements be present in the concrete case.

Should Articles 648-*bis* or 648-*ter* Criminal Code not be applicable to a particular case (e.g. because the predicate offence does not attain the required level of seriousness), Article 379 Criminal Code provides for a more general offence, punishing – with lower penalties – the conduct of any person (again, save for the author of the predicate offence) who “helps” to ensure the proceeds of a crime.

With regard to the relevant statistical information, Italy has noted that since the offences provided for by Arts. 648, 648 bis and 648 ter Criminal Code have a much wider scope of application than that covered by the corresponding Article of UNCAC and it was not possible to single out data with reference to the proceeds of the crimes contemplated by UNCAC.

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

Following the desk review, Italy provided additional clarifications with regard to the meaning of the term “replacement” in Article 648 of the Italian Criminal Code. “Replacement” (in the Italian original the word employed is “sostituisce” referred to the conduct of the agent) encompasses all conducts which have as an effect that the object derived from the predicate offence (money, property, other benefits) is exchanged against another object which, being unrelated to the predicate offence, is more difficult to track down. A typical example is that of a sum of money of illicit origin (e.g., a payment for a bribe) which the author of the person committing money laundering deposits on a bank account. Since this implies that the original sum is lost and the depositor acquires a credit towards the bank, this has as an effect the replacement of the money and therefore the commission of the offence (see, e.g., Court of Cassation, Criminal division VI, decision no. 43534 of 24.4.2012; decision no. 495 of 15.10.2008). The same is the case when the person committing money laundering cashes a cheque of illicit origin (Court of Cassation, Criminal division VI, decision no. 495 of

15.10.2008). Replacement can also refer to the sale of stolen jewels against cash (Court of Cassation, Criminal division VI, decision no. 1472 of 2.11.1998). “Conversion of property” is likewise to be considered as included in the scope of the offence, as it constitutes a type of replacement. In addition, conversion or transfer may be performed in order to provide assistance to any person helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action.

Italy has implemented the provision under review by criminalizing money laundering through Article 648-bis (Money laundering) of the Criminal Code.

## **Article 23 Laundering of proceeds of crime**

### **Subparagraph 1 (a) (ii)**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;*

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

Italy has referred to the information provided under subparagraph 1(a)(i) above.

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

Article 648-*bis* corresponds to the provision of subparagraph 1 (a) (i) of Article 23 of the UNCAC with regard to criminal prosecution for concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property.

Italy has implemented the provision under review.

## **Article 23 Laundering of proceeds of crime**

### **Subparagraph 1 (b) (i)**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) Subject to the basic concepts of its legal system:*

*(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;*

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

Italy has referred to the information provided under subparagraph 1(a)(i) above.

Italy has further clarified that the repression of all conducts consisting in handling or receiving stolen goods offence is provided for by Article 648 Criminal Code as cited under subparagraph 1(a)(i) above.

The conduct consists in acquiring, receiving or hiding “money or things deriving from any crime” or participating such activity. As is the case with the offences described in Articles 648-*bis* and 648-*ter* Criminal Code, this Article does not apply to the person who has committed the predicate offence.

In addition, the subjective element of the offence requires the intention to procure “profit” to the agent or a third party; this profit may also be of non-pecuniary nature (see e.g. Court of Cassation, Criminal Division II, decision no. 44378 of 25 November 2010); however, if the aim of the action is to help the author of the predicate offence in eluding investigations, conserving the proceeds of crime or hindering the identification of their illicit origin, the specific provisions under Articles 648-*bis*, 648-*ter* or 379 Criminal Code apply.

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

Italy has implemented the provision under review through Article 648 of the Criminal Code (Receiving of stolen goods).

### **Article 23 Laundering of proceeds of crime**

#### **Subparagraph 1 (b) (ii)**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) Subject to the basic concepts of its legal system:*

*(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.*

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

Italy has indicated that participation (under all the forms provided for by Subparagraph 1 (b) (ii) of article 23 UNCAC) and attempt to commit the offences described under questions 83. – 85. above are regulated according to the general principles of the Italian Criminal Code:

#### **Article 56 Criminal Code Attempted crime**

(1) Anyone who does acts aptly directed in an unequivocal manner towards the commission of a crime shall be liable for an attempted crime if the action is not completed or the event does not take place.

(2) A person guilty of an attempted crime shall be punished (with imprisonment for from twenty-four to thirty years, if the law prescribes the punishment of death for the crime); with imprisonment for not less than twelve years, if the punishment prescribed is life imprisonment; and, in other cases, with the punishment prescribed for the crime, reduced by from one-third to two-thirds.

(3) If the offender voluntarily desists from action, he shall be subject to punishment only for the acts completed, where these constitute in themselves a different offence.

(4) If he voluntarily prevents the event, he shall be subject to the punishment prescribed for the attempted crime, reduced by from one-third to one-half.

## **Article 110 Criminal Code**

### **Punishment for those who participate in an offence**

When more than one person participates in the same offence, each shall be subject to the penalty prescribed for such offence, except as provided in the following articles.

The author(s) of the predicate offence cannot commit the offences described above, not even as participation to the offence.

In regards to case law, the country under review stated that the settled case law admits the possibility that the crimes provided for by Articles 648, 648-*bis*, 648-*ter* or 379 Criminal Code be punished in their attempted form (see e.g. Court of Cassation, Criminal Division II, decision no. 7831 of 19 March 1980).

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

Following the desk review, Italy additionally clarified on the coverage of the elements of conspiracy to commit and counselling the commission of any of the offences established in accordance with Article 23 as required by the provision under review.

Concerning conspiracy, as outlined in more detail in the replies under Article 27 below, under the Italian criminal law system (see Article 56 c.c.), the mere agreement between two or more people to commit a crime may amount to a punishable attempt if it is considered sufficiently serious and apt to bring to the execution of the planned offence, even if a posteriori this never takes place. The same rules apply to the offences contemplated under Article 23 UNCAC. As an example, the crime of receiving goods of illicit origin (Article 648 c.c.) is committed in an attempted form if there is agreement between the author of the predicate offence and the person committing the offence contemplated under Article 648 c.c. for the handing over of the money or property of illicit origin, but this agreement transfer never takes place (see e.g. Court of Cassation, Criminal division II, decision no. 19644 of 16.5.2008).

As for counselling, as outlined in more detail in the replies under Article 27 below, according to Article 110 c.c., any type of contribution to the offence, be it material or psychological (thus also counselling), is considered sufficient to amount to participation in the offence if it has any effect in allowing or facilitating the material commission of the offence, or even if it merely reinforces the criminal intent of the main perpetrator.

Italy has implemented the provision under review.

## **Article 23 Laundering of proceeds of crime**

### **Subparagraphs 2 (a) and 2 (b)**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;*

*(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;*

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

Italy has indicated that its criminal law policy towards all types of criminal offences related to laundering or concealment of proceeds of crime has always been particularly strict.

The identification of the predicate offences in the provisions set out above differs between the various offences, in consideration of the varying degree of seriousness of the offence.

Preliminarily it must be observed that in the Italian criminal law system offences (“reati”) are divided among “crimes” (“delitti”) and “misdemeanors” (“contravvenzioni”), according to the type of sanctions – both pecuniary sanctions and sanctions involving deprivation of liberty – imposed. Crimes are always considered more serious than misdemeanors.

In Article 648 Criminal Code, as cited under subparagraph 1(a)(i) above, the predicate offence is defined as “any crime”, thus covering even crimes committed with negligence.

Furthermore, Article 648, paragraph 3, Criminal Code, clarifies that the author of the predicate offence does not have to have been punished or punishable, on account of personal conditions (e.g., a minor) or of lack of a condition for prosecution. Settled case law has further stated that in order for Article 648 Criminal Code to be applicable, it is not necessary that the commission of the predicate offence be established through judicial proceedings, nor that its author be identified, nor even that it be identified as a specific criminal offence, as long as its existence may be proven in the criminal proceedings, even if through inferential deductions (see e.g. Court of Cassation, Criminal Division II, decision no. 10101 of 15 January 2009).

The same description of the predicate offence is employed in the wording of Article 648-ter Criminal Code, as cited under subparagraph 1(a)(i) above,, while Article 648-bis, as cited under subparagraph 1(a)(i) above, employs the slightly narrower concept of “any willfully committed crime”. Both these Articles refer to Article 648, paragraph 3, Criminal code, for what concerns the possibility to establish the offence even when the predicate offence remains unpunished.

Lastly, the residual provision of Article 379 Criminal Code defines the predicate offence as “any offence”, thus encompassing also misdemeanors.

It is thus evident how the Italian legislation covers a vast range of predicate offences, including all offences established in accordance with UNCAC (which are all defined as crimes to be committed willfully).

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

As explained by Italy in the self-assessment checklist and further discussed in the course of the direct dialogue, offences concerning bribery may be predicate offences of the laundering offences set out in Articles 648-bis, 648-ter and 379 of the Criminal Code, and that in general these provisions cover a vast array of predicate offences (all offences committed with intention, save for very minor offences classifiable as misdemeanours (“contravvenzioni”). Thus Italy uses “all crimes approach” for predicate offences for the purposes of money laundering.

Italy has implemented the provision under review.

## **Article 23 Laundering of proceeds of crime**

### **Subparagraph 2 (c)**

2. For purposes of implementing or applying paragraph 1 of this article:

*(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;*

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

Italy has clarified that its legislation concerning criminal offences related to laundering or concealment of proceeds of crime goes further than what is required by UNCAC under this provision. With regard to the identification of predicate offences when committed outside Italian territory, it is only required that the conduct be abstractly punishable under Italian law, whereas there is no need for the conduct to amount to a criminal offence under the law of the State where it is committed.

The Italian jurisdiction with respect to criminal offences committed outside its territory is defined by Articles 7, 8, 9 and 10 Criminal Code. Although in some cases prosecution for offences committed outside the Italian territory is dependent upon a request of the Minister of Justice, the lack of this condition, according to Article 648, paragraph 3, Criminal Code (applicable to all offences set out under questions 83. – 86.) does not preclude the application of the different laundering offences.

#### **Article 7 of the Criminal Code**

##### **Universal jurisdiction**

An Italian citizen or an alien who commits any of the following offences in foreign territory shall be punished according to Italian law:

- (1) Crimes against the personality of the State.
- (2) Crimes of counterfeiting the seal of the State and of using such counterfeited seal.
- (3) Crimes of counterfeiting money which is legal tender in the territory of the State, or duty-bearing paper or Italian public credit securities.
- (4) Crimes committed by public officers serving the State by abusing their powers or violating the duties connected with their functions.
- (5) Any other offence for which specific provisions of law or international conventions prescribe the applicability of Italian criminal law.

#### **Article 8 of the Criminal Code**

##### **Political crimes committed abroad**

A citizen or alien who commits in foreign territory a political crime not among those specified in subparagraph (1) of the preceding Article shall be punished according to Italian law on demand of the Minister of Justice.

With respect to crimes punishable on complaint of the victim, in addition to such a demand, a complaint shall also be required.

For purposes of criminal law, a political crime shall be any crime which injures a political interest of the State or a political right of a citizen. A common crime inspired, in whole or in part, by political motives shall also be deemed a political crime.

#### **Article 9 of the Criminal Code**

**Applicability of criminal legislation of Italy to citizens who commit a criminal offence abroad (national jurisdiction)**

An Italian citizen who, apart from the cases specified in the two preceding Articles, commits in foreign territory a crime for which Italian law provides the punishment of death, or life imprisonment, or imprisonment for a minimum of not less than three years, shall be punished in compliance with Italian law, provided that he is in the territory of the State.

If it is a crime for which a punishment restricting personal freedom for a shorter period is provided for, the offender shall be punished on demand of the Minister of Justice or following a petition or a complaint of the victim.

In the cases provided for by the preceding provisions, when it is a crime committed to the detriment of European Communities or a foreign State or an alien, the offender shall be punished on demand of the Minister of Justice, provided that his extradition has not been granted or has not been accepted by the Government of the State in which he committed the crime.

**Article 10 of the Criminal Code**

**Applicability of criminal legislation of Italy to aliens who commit a criminal offence abroad (conditional universal jurisdiction)**

An alien who, apart from the cases specified in Articles 7 and 8, commits in a foreign territory, to the detriment of the State or a citizen, a crime for which Italian law prescribe the punishment of life imprisonment or imprisonment for a minimum of not less than one year, shall be punished according to Italian law, provided he is within the territory of the State and there is a demand by the Minister of Justice, or a petition or complaint by the victim.

If the crime was committed to the detriment of a foreign State or an alien, the offender shall be punished according to Italian law, on demand of the Minister of Justice, provided that:

- (1) he is within the territory of the State;
- (2) the crime is one for which the punishment prescribed is life imprisonment or imprisonment for a minimum of not less than three years; and
- (3) his extradition has not been granted, or has not been accepted by the Government of the State in which the crime was committed, or by that of the State to which he belongs.

**Article 648 Criminal Code**

**Receiving of stolen goods** (as cited under subparagraph 1 (a) (i) above)

Article 648 applies even if the perpetrator of the predicate offence from which the money or assets originate is not punishable or in case of lack of a condition for prosecution in relation to said crime.

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

The Italian law does not impose any limitation for the prosecution of money laundering offences when relevant predicate offences are committed abroad, as long as they are considered offences under Italian law.

**Article 23 Laundering of proceeds of crime**

**Subparagraph 2 (d)**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;*

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

Italy indicated that it has not furnished copies of its laws to the Secretary-General of the United Nations.

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

It is recommended that Italy furnish copies of laws that give effect to article 23 (d) to the Secretary-General of the United Nations.

**Subparagraph 2 (e)**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.*

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

All provisions in the Italian Criminal Code concerning laundering or concealment of proceeds of crime, as cited above, expressly exclude the application of the offence to the perpetrator of the predicate offence. It is indeed considered that, when it is this person that acts to conceal the proceeds of crime, disguise their illicit origin or ensure their conservation, these actions amount to a mere *post-factum* to the predicate offence, and thus are not subject to an autonomous punishment.

**Article 648-bis of the Criminal Code**

**Money laundering** (as cited under subparagraph 1 (a) (i) above)

**Article 648-ter of the Criminal Code**

**Use of money, property or advantages of unlawful origin** (as cited under subparagraph 1 (a) (i) above)

**Article 379 of the Criminal Code**

**Aiding an offence** (as cited under subparagraph 1 (a) (i) above)

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

Applicable Italian legislation specifically excludes the application the offence of money laundering to the perpetrators of the predicate offence. During the country visit, the lack of the criminalization of self-laundering was highlighted as one of the obstacles to the successful prosecution of and prevention of money laundering. It was noted that proposals to introduce the offence of money laundering were discussed among Italian legislators in 2011. Additionally, at the end of 2012 a working group consisting of the representatives of judiciary, law enforcement and academia was set up to specifically study possible implications of the introduction of the offence of self-laundering in the domestic legislation.

It is recommended that Italy consider criminalizing self-laundering in accordance with article 23 paragraph 2(e) of UNCAC.

## Article 24 Concealment

*Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.*

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

Italy has indicated that it addressed the criminal conduct covered in the provision under review in the provisions of Articles 648, 648-bis, 648-ter and 379 of the Criminal Code. Regarding the constituent elements and the conditions for application of these offences Italy to its responses given under subparagraph 1 (a) (i) of article 23 above.

With regard to the statistical data, Italy has referred to the information provided under article 23, subparagraph 1 (a) (i) above.

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

Italy has implemented the provision under review.

## Article 25 Obstruction of Justice

### Subparagraph (a)

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;*

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

Italy has cited the following implementation measures.

#### **Article 377 Criminal Code**

##### **Subornation**

Whoever offers or promises money or other advantage to a person summoned to give a statement before the judicial authority, or a person requested to give a statement by the defence counsel during investigations, or an expert witness, or a technical advisor or an interpreter, to induce him to commit the offences provided for in Articles 371-bis, 371-ter, 372 and 373 shall be subject, whenever the offer or promise is not accepted, to the punishment prescribed in the same articles reduced by from one-half to two-thirds.

The same provision shall apply whenever the offer or promise is accepted but the false statement is not made.

Whoever uses violence or threats for the purposes mentioned in the first paragraph shall be subject, whenever the purpose is not attained, to the punishment prescribed for the offences referred in the same first paragraph, reduced by not more than one-third.

The punishments provided for in the first and third paragraphs shall be increased if the conditions referred to in Article 339 concur.

Conviction shall entail disqualification for public office [28 of the Criminal Code]”.

**“Article 377-bis Criminal Code**

**Inducement not to give statement or to give an untruthful statement before the judicial authority**

Unless the act constitutes a more serious offence, whoever, by violence or threats, or by offering or promising money or other advantage induces a person summoned to give a statement usable in criminal proceedings before the judicial authority, not to give statement, when such a person has the right to remain silent, or to give an untruthful statement, shall be punished by imprisonment for from two to six years.”

Paragraph 1 of Article 377 Criminal Code refers to conducts aiming at corrupting the witness for the purpose of giving false testimony, whereas paragraph 3 refers to the use of physical or psychological violence to obtain the same result.

Article 377-bis Criminal Code aims at complementing the provisions of Article 377 by punishing the analogous conduct of obstruction committed with regard to persons who, although called to give testimony in criminal proceedings, may abstain from doing so in relation to their personal position in the facts of the case (e.g., participants to the same crime against whom separate proceedings have been brought).

According to settled case law, the offence provided by Article 377 aims at punishing the mere offering of undue advantages or violence towards the witness for the purpose of inducing him to give false testimony, and therefore applies irrespective of the fact whether the false testimony is indeed given as a consequence of this conduct or not (see Court of Cassation, Joint Criminal Divisions, decision no. 37503 of 30 October 2002).

However, if the corruption or intimidation of the witness, expert witness or interpreter obtains its effect, the action is punishable, respectively, according to Article 319-ter Criminal Code (Corruption in judicial proceedings) or Article 336 Criminal Code (Violence towards a public official). According to settled case law, the witness is qualified as public official from the moment of summoning (see e.g. Court of Cassation, Joint Criminal Divisions, decision no. 15208 of 25 February 2010).

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

Italy has implemented the provision under review.

**Article 25 Obstruction of Justice**

**Subparagraph (b)**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.*

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

Italy has indicated that the provision under review covered by the broader criminal offence provided for under Article 336 Criminal Code.

#### **Article 336 Criminal Code**

##### **Violence or threat to a public official**

Whoever uses violence or threat against a public official or a person charged with a public service to force him to perform an act contrary to his duties or to omit an act of the office or service is punished with imprisonment from six months to five years.

The penalty shall be imprisonment up to three years if the offence is committed to force any of the persons mentioned in the previous paragraph to perform an act of his office or service, or to influence him in any manner.

Justice or law enforcement officials fall within the definition of public official provided for by Article 357 Criminal Code (as cited under subparagraph a of article 15 above) and therefore duties in relation to the commission of the offences provided for under UNCAC fall within the scope of application of Article 336.

The provision of Article 336 Criminal Code aims at punishing the conduct consisting in the use of violence or intimidation towards a public official with the aim of forcing him either to perform an act which is contrary to his duties (or to omit a dutiful act) (paragraph 1), or to perform an acts in conformity to his duties (paragraph 2). In this latter case, the penalty is lower.

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

Following the desk review, Italy additionally clarified that under Italian law enforcement officials of all police forces and similar bodies are to be considered public officials under Article 357 (as cited under subparagraph a of article 15 above) and, therefore, may be the victim of the offence provided for by Article 336; since they perform a function regulated by norms of public law and consisting in acts of authority (Article 357, paragraph 2).

Italy has implemented the provision under review.

#### **Article 26 Liability of legal persons**

##### **Paragraphs 1 and 2**

- 1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.*
- 2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.*

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

Italy confirmed that it fully implemented this provision of the Convention.

##### Scope of application

Liability of legal persons has been introduced in the Italian legal system through Legislative Decree No. 231 of 8 June 2001, which establishes administrative liability of legal persons for certain offences, specifically set out under Articles 24 to 25-*duodecies*. These include (see in

particular Article 25) the offences related to bribery in the public sector, both of national and foreign public official, related to Articles 15 and 16 UNCAC (see above under questions 63. – 68.).

Corporate administrative liability is also applicable in connection with money laundering offences (see above under questions 83.-87.) pursuant to Article 10(5) of Law 146/2006 and Article 25-*octies* of Legislative Decree 231/2001.

Furthermore, Law No. 190 of 6 November 2012, in Article 1, paragraph 77, lays down amendments to Legislative Decree No. 231/2007, introducing the offence of unduly inducing someone to give or promise an advantage (corresponding to the new Article 319-*quater* of the Criminal Code) and in imposing a fine from two hundred to four hundred quotas for the offence of corruption among private persons in the cases provided for by Article 2635 of the Civil Code (see Article 25-*ter* of Legislative Decree No. 231/2007).

#### Subjective aspects

Legal persons are defined as entities endowed with legal personality, as well as companies and associations without legal personality, excluding the State and other public entities exercising public powers (e.g. bodies of local administration). Pursuant to Article 5 of Legislative Decree No. 231/2001, legal entities are liable for offences committed, for their own benefit or interest, by a person acting as a representative, manager or director, a person exercising powers of management and control (whether on a *de iure* or a *de facto* basis), or a person subject to the direction or control of one of the aforementioned persons.

It is possible to assign liability to the legal person even when no natural person has been convicted or identified (Article 8, Legislative Decree No. 231/2001).

#### Procedure

In principle, the liability of a legal person is determined within the framework of the same proceedings as those against the physical perpetrator and a single decision is taken. However, it is possible to conduct separate proceedings, for example, if different defensive strategies are followed by the natural and the legal person, respectively. In such cases, it may occur that the company is found guilty before, and independently, of the natural person.

#### Sanctions

See below.

#### Organisational models

Liability may be waived if the so-called “defence of organisational models” is successfully invoked. In particular, pursuant to Article 6(1) of Legislative Decree No. 231/2001, an entity is not liable for offences committed by persons in senior positions if it proves the following: (1) prior to the commission of the offence, the entity’s management had adopted and effectively implemented an appropriate organisational and management model to prevent offences of the kind that have occurred; (2) the entity had set up an autonomous organ to supervise, enforce and update the model; (3) the latter autonomous organ had sufficiently supervised the operation of the model; (4) the perpetrator committed the offence by fraudulently evading the operation of the model.

Article 6(2) of Legislative Decree No. 231/2001 lays out general criteria on the necessary elements that an “acceptable” organisational model is to include (e.g. identification of activities which may give rise to offences, procedures through which the body makes and implements decisions relating to the offences to be prevented, procedures for managing financial resources to prevent offences from being committed, disciplinary system for non-compliance, etc.). Where an organisational model was not in place at the time an offence

occurred, a company's sanction may be reduced if, in the time between the offence and the trial, "an organisational model in order to prevent offences such as the one which occurred has been adopted and made effective" (Article 12(2)b, Legislative Decree No. 231/2001). The main aim of the defence of organizational models is to provide an incentive for companies to set in place their own self-regulatory models for preventing and fighting corruption (e.g. in the form of corporate ethical codes). It is possible to confiscate the benefit of the offence even in those cases where the defence of organizational models is successfully pleaded (Article 6(5), Legislative Decree No. 231/2001).

No examples of implementation or case law was provided by Italy. No statistics were provided by the reviewed country.

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

Further information was provided during the dialogue on the administrative liability of legal persons for offences related to "money laundering":

Article 25-octies Legislative Decree 231/2001

(Receiving stolen goods, money laundering and use of money, goods or benefits of illegal origin)

In relation to the offences referred in Articles 648, 648-bis and 648-ter of the Criminal Code, a fine of 2 hundred up to 8 hundred quotas shall be applied to the legal person. In the event that the money, goods or other benefits derive from an offence for which the maximum prison term exceeds five years the fine shall be between 400 and 1000 quotas.

In cases of conviction for one of the offences referred to in paragraph 1, the prohibitory sanctions provided for in Article 9(2) shall be applied to the legal person for a period not exceeding 2 years.

In relation to the illegal acts referred to in paragraphs 1 and 2, the Ministry of Justice, after consulting the FIU, shall draw up the observations referred to in Article 6 of Legislative Decree 231/2001.

Italy has established administrative, civil and criminal liability for legal persons. Legislative Decree no. 231/2001, as amended by Legislative Decree no. 146/2006 on money-laundering, and by Law no. 190/2012, establishes administrative liability of legal persons for certain offences. Legal persons are defined as entities endowed with legal personality, as well as companies and associations without legal personality, excluding the State and other public entities exercising public powers. Pursuant to Article 5 of Legislative Decree no. 231/2001, legal entities are criminally liable for offences committed, for their own benefit or interest, by a person acting as a representative, manager or director, a person exercising powers of management and control, or a person subject to the direction or control of one of the aforementioned persons. Liability may be waived or mitigated in case the legal person is found to have an organizational model in place, but this has rarely happened in practice.

During the public consultation at the direct dialogue, several stakeholders commented on the model of liability for legal persons, noting that it excludes the State, territorial and municipal entities. A distinction was also often made with regard to the triggering persons, depending whether they were higher or lower level, with a presumption that there is an identification between the legal entity and the higher level person. It was also noted that the legislative decree was a good incentive for compliance and cooperation. Incentives for self-reporting were discussed (see below observations under Article 33 of the Convention).

The mechanism of using the defence of ‘organizational models’ was also addressed by private sector entities during the direct dialogue, and it was noted that this defence had only been accepted by a judge in one case so far out of approximately a 100 procedures as the standard of proof was very rigorous.

Italy has implemented the provision under review.

## **Article 26 Liability of legal persons**

### **Paragraph 3**

*3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.*

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

Italy confirmed that it fully implemented this provision of the Convention.

In principle, the liability of a legal person is determined within the framework of the same proceedings as those against the physical perpetrator and a single decision is taken. However, it is possible to conduct separate proceedings, for example, if different defensive strategies are followed by the natural and the legal person, respectively. In such cases, it may occur that the company is found guilty before, and independently, of the natural person.

It is possible to assign liability to the legal person even when no natural person has been convicted or identified (Article 8, Legislative Decree No. 231/2001).

No examples of implementation or case law was provided by Italy. No statistics were provided by the reviewed country.

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

The liability of legal persons does not prejudice the criminal liability of the natural persons who have committed the offences, according to Article 8 of Legislative Decree 231/2001.

Art. 8. - Autonomy of the legal person’s liabilities. - 1. The legal person’s liability exists also when :a) the perpetrator of the crime has not been identified or is not indictable; b) the crime is extinguished for a cause other than amnesty.

Art. 35. - Extension of the discipline relating to the accused. - 1. The procedural provisions relating to the accused apply to the legal person, insofar as they are compatible...

Art. 39. - Representation of the legal person. - 1. The legal person participates in the criminal proceeding with its own legal representative, unless the latter is charged with the crime on which the administrative infringement depends.

Italy has implemented the provision under review.

## **Article 26 Liability of legal persons**

### **Paragraph 4**

*4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.*

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

Italy confirmed that it fully implemented this provision of the Convention.

Legislative Decree No. 231/2001 (Article 9) provides for the following types of sanctions where a legal person is found administratively liable:

finances ranging between 26,000 and 1,550,000 EUR (Articles 25, 25-ter, 25-octies, Legislative Decree No. 231/2001). The amount of the fine is determined by the seriousness of the offence and the financial capacity of the legal person. The specific provisions relating to each offence for which the legal person may be held liable provide for specific aggravating circumstances. On the other hand, fines may be reduced if certain mitigating factors concur (Article 12, Legislative Decree No. 231/2001); nevertheless, regardless of the applicable mitigating factors, a fine cannot be reduced to less than 10,400 EUR.

disqualification from certain activities e.g. professional bans, suspension or revocation of authorisations, licenses or concessions instrumental to the commission of the offence, prohibition to contract with public administration, etc. If the court considers that none of the aforementioned temporary disqualifications/bans are adequate, it may prohibit the legal person from conducting business activities. The disqualification penalty may be waived if: (a) prior to the start of a trial, the legal entity implements an appropriate organisational model to prevent similar offences in the future; (b) fully compensates all victims; (c) takes effective steps to eliminate any consequences of the offence; and (d) surrenders any profits derived from the offence for confiscation (Article 17, Legislative Decree No. 231/2001);

confiscation; and publication of the verdict.

Finally, safeguards are provided to prevent companies and their officers avoiding penalties through institutional changes, as for example, mergers, severance or breaking up of legal persons (Articles 28 to 33, Legislative Decree No. 231/2001).

Recording sanctions

According to Article 84 of Legislative Decree No. 231/2001, the final judgment against the legal person is communicated to the authority exercising control or supervision over the entity. Pursuant to Articles 9 to 14 of the Decree of the President of the Republic No. 313 of 14 November 2002, a central register of companies found guilty of corruption was set up (Anagrafe delle sanzioni amministrative dipendenti da reato). The register became operative in May 2007 and is run by the Ministry of Justice. It is mandatory to register both the indictments and the final (conviction) judgments.

No statistics were provided by the reviewed country.

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

Article 9 of Legislative Decree No. 231/2001 provides for sanctions, including fines, disqualification from certain activities, confiscation, and the publication of the judgment. Interim protection measures also exist to enable freezing and seizing of proceeds of crime. A central register of companies indicted and convicted of corruption was set up and became operative in May 2007 (Anagrafe delle sanzioni amministrative dipendenti da reato). Furthermore, articles 11 and 12 of Legislative Decree 231/2011 provide the criteria for

ensuring that pecuniary sanctions are determined in each case with due regard to proportionality.

Further information was provided the determination of the seriousness of offence in line with administrative law and with regard to proportionality. Articles 11 and 12 of Legislative Decree 231/2011 provide the criteria for ensuring that pecuniary sanctions are determined in each case with due regard to proportionality. They read as follows:

**Art. 11**

**Criteria of proportioning a pecuniary sanction**

In proportioning the pecuniary sanction the judge decides the number of quotas allowing for the gravity of the fact, the degree of the agency's liability and the activity carried out to eliminate or attenuate the consequences of the fact and to prevent the committing of further infringements.

The amount of the quota is fixed on the basis of the agency's economic condition and assets, in order to ensure that the sanction shall be effective.

In the cases foreseen in Art. 12, subs. 1, the amount of the quota is always two hundred thousand lire.

**Art. 12**

**Cases of reduction of a pecuniary sanction**

The pecuniary sanction shall be reduced by one-half and in any case may not exceed two hundred million lire if:

the doer of the crime has committed the fact mainly in his own interest or that of others and the agency has not obtained any advantage from it or has obtained a minimum advantage therefrom the financial harm caused is particularly slight.

The sanction is reduced by one-third to one-half if, prior to the opening of the trial of first instance:

the agency has fully recompensed the damages and has eliminated the harmful or dangerous consequences of the crime or has in any case acted effectively in that sense  
an organizational model has been adopted and made operative which is suitable to prevent crimes of the same sort as the one committed.

If both the conditions foreseen in the letters of the preceding subsection occur, the sanction shall be reduced by one-half to two-thirds. At all events, the pecuniary sanction may not be less than twenty million lire.

(Please note that the text was approved before the introduction of the euro (1 euro = 1936,27 Lire).)

Concerning disqualification measures, the judge's discretion is guided by the principles set out in Articles 14 and 16:

**Art. 14**

**Criteria of choice of interditory sanctions**

Interditory sanctions have as their object the specific activity to which the agency's infringement refers. The judge determines the type and the duration on the basis of the criteria indicated in Article 11, taking account of the suitability of the single sanctions to prevent infringements of the same type as the one committed.

Disqualification from contracting with the public administration may also be limited to given types of contract or to given administrations. Debarment from exercising an activity entails the suspension or the revocation of authorizations, licences or concessions functional to the carrying out of the activity.

If necessary, interdictory sanctions may be applied jointly.

Debarment from exercising an activity is applied only when the inflicting of other forms of interdictory sanctions is inadequate.

**Art. 16**  
**Interdictory sanctions applied on a definitive basis**

Definitive debarment from exercising activity may be ordered if the agency has obtained a considerable profit from the crime and has already been sentenced at least three times in the last seven years to temporary debarment from exercising its activity.

The judge may apply to the agency, on a definitive basis, the sanction of disqualification from contracting with the public administration or debarment from publicizing goods or services when it has already been sentenced to the same sanction at least three times in the last seven years.

If the agency or one of its organizational units is regularly used for the sole or main purpose of permitting or facilitating the commission of crimes in relation to which its liability is foreseen, its definitive debarment from exercising its activity shall be ordered and the provisions foreseen in Article 17 shall not be applied.

Confiscation may be applied in the cases provided by Article 19 Leg. Dec. 231/2011:

**Art. 19**  
**Confiscation**

In the sentence of conviction of the agency, confiscation is always ordered of the price or the profit of the crime, except for the part that may be returned to the damaged party. Rights acquired by third parties in good faith are held good.

When it is not possible to carry out confiscation as per subsection 1, it can be made of sums of money, goods or other utilities of equivalent value to the price or to the profit of the crime.

Publication of the decision is indeed a sanction and may applied in the cases provided by Article 18 Leg. Dec. 231/2011:

**Art. 18**  
Publication of the sentence of conviction

Publication of the sentence of conviction may be ordered when an interdictory sanction is applied to the agency.

The sentence is published once only, in the form of an excerpt or in full, in one or more newspapers indicated by the judge in the sentence and by being affixed in the municipality where the agency has its head office.

Publication of the sentence is carried out, at the care of the court clerk's office of the judge, at the agency's cost.

Italy has implemented the provision under review.

Furthermore, comprehensive measures taken in relation to the establishment of liability of legal persons, including the enactment of legal provisions encompassing different forms of such liability, the possibility for the legal entity to use the defence of “organizational model”, as well as the broad range of sanctions foreseen, were flagged as good practices.

## **Article 27 Participation and attempt**

### **Paragraph 1**

*1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.*

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

Italy confirmed that it fully implemented this provision of the Convention. Italy's legal system is compliant with Article 27 paragraph 1 UNCAC through the general rule on participation in criminal offences.

#### **Article 110 Criminal Code**

##### **Punishment for those who participate in an offence**

«When more than one person participates in the same offence, each shall be subject to the penalty prescribed for such offence, except as provided in the following articles».

The general rule is that participatory acts (aiding and abetting) are punishable as principal offences (Article 110 Criminal Code). Moreover, the penalty for the principal offence can be increased when certain aggravating factors exist, such as the participation of 5 or more persons to the offence, the promotion or organisation of collaboration in an offence or the direction of persons participating in the same offence, or the inducement of persons subject to the offender's authority to commit an offence (Article 112 Criminal Code). Finally, the modulation of the responsibility of accomplices is to take into account the aforementioned general rules in combination with the specific rules laid out in the incrimination of the offence itself (consequently, for corruption offences, Articles 110 and 112 Criminal Code are to be read in the context of Articles 317, 318, 319, 319 ter, 321, 322, 322 bis Criminal Code, as well as Article 2635 Civil Code).

Pursuant to well established case law, the rules on participation also apply to any contribution material or psychological, provided at any stage in the planning, organising and executing of an offence, including the encouragement or reinforcement of the will to commit it. For what more specifically concerns corruption offences, the case-law also clarifies that, apart from the necessary participation of the public official and the briber, whoever has contributed, either through acts or omissions /or mental acts like encouraging conducts, provided his *mens rea* consist in the awareness of participating in the whole prohibited bribery program, can be charged with aiding or abetting the commission of bribery (e.g. Court of Cassation, Criminal Division VI, 4 December 2002, n. 3388).

The only available statistical data refers to **aiding and abetting bribery**, which is provided for by a separate Article in the Criminal Code (Art. 322):

ARTICLE	TITLE	NEW PROCEEDINGS	CLOSED PROCEEDINGS	FINAL PENDING
322 CC	<b>Aiding and abetting bribery</b>	115	123	105

No data is available on other forms of the offences covered by this provision.

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

It was clarified during the dialogue that the Italian legal system provides for a single, general formula on participation of more than one person in the commission of an offence, according to the rule set out in Article 110 c.c. Settled case law interprets this provision in the widest possible sense, by stating that the act or acts committed by each participant are sufficient to ascribe liability for the offence if they bring any sort of contribution, be it material or psychological, no matter how small, to the accomplishment of any phase of the conduct which constitutes the criminal offence. This contribution can take place in the phase of planning (see above concerning conspiracy), material organization or execution of the offence, provided that the person knows he is acting together with other persons. If that is the case, the actions of each single participant are ascribed, from the point of view of criminal liability, also to each and every single one of the other participants, and all together must answer for the same offence (see e.g. Court of Cassation, Criminal division VI, decision no. 467 of 20.1.1992). It derives from the above that all forms of participation in the offence, including those listed in Article 26 paragraph 1 UNCAC (accomplice, assistant or instigator, conspirator, etc.) are subject to punishment in the Italian criminal law system, subject to the conditions set out above.

In addition, examples related to participation in committing other corruption offences apart from the bribery provided for in Article 322 of the Criminal Code were provided.

Embezzlement of public funds: the public official who, in the knowledge of the fraud, issues payment order in favour of another public official for fictitious expenses is liable, in participation with the beneficiary of the payment, for the offence provided by Art. 314 c.c. (Court of Cassation, Criminal Division VI, decision no. 37030 of 10.6.2003).

Still on the subject of embezzlement of public funds, even the agreement by the person responsible for a later control over the acts by which the main perpetrator appropriates public funds to omit such control is sufficient to affirm liability for participation in the offence of embezzlement of public funds (Court of Cassation, Criminal division VI, decision no. 10813 of 22.9.1994).

Abuse of office: the private party who is a beneficiary of the abusive act issued by the public official can be held liable for participation in the offence of abuse of office (Art. 323 c.c.) if there is proof of a prior agreement with the public official, or persuasion of the same (Court of Cassation, Criminal division VI, decision no. 37531 of 14.6.2007; decision no. 2844 of 1.12.2003).

Boasting of influence: the person who, in agreement with the main perpetrator, contributes to reinforcing in the victim the persuasion that the main perpetrator may influence a public administrative proceeding, is liable as participant for the offence set out in Article 346 c.c. (Court of Cassation, Criminal division VI, decision no 14196 of 16.1.2009).

Italy has implemented the provision under review.

## **Article 27 Participation and attempt**

### **Paragraphs 2 and 3**

*2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.*

*3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.*

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

Italy confirmed that it fully implemented these provisions of the Convention.

According to settled case law, the provision punishing attempt to commit an offence (Article 56 Criminal Code – see under question 102.) is applicable to preparatory acts, whenever these are suitable for the commission of the offence and univocally directed thereto. Suitability must be assessed *ex ante* taking into account the circumstances in which the agent performs the preparatory acts and the modalities thereof, in order to ascertain the existence of a clear and present danger of violation of the interest protected by the incrimination (see e.g. Court of Cassation, Criminal Division VI, decision no. 23706 of 17 February 2004; Criminal Division VI, decision no. 27323 of 20 May 2008; Criminal Division I, decision no. 19511 of 15 January 2010).

#### **Article 56 of the Criminal Code**

##### **Attempted crime**

Anyone who does acts aptly directed in an unequivocal manner towards the commission of a crime shall be liable for an attempted crime if the action is not completed or the event does not take place.

A person guilty of an attempted crime shall be punished (with imprisonment for from twenty-four to thirty years, if the law prescribes the punishment of death for the crime); with imprisonment for not less than twelve years, if the punishment prescribed is life imprisonment; and, in other cases, with the punishment prescribed for the crime, reduced by from one-third to two-thirds.

If the offender voluntarily desists from action, he shall be subject to punishment only for the acts completed, where these constitute in themselves a different offence.

If he voluntarily prevents the event, he shall be subject to the punishment prescribed for the attempted crime, reduced by from one-third to one-half.

No statistics were provided by the reviewed country.

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

During the dialogue, a query arose as to whether if the bribe was not fully or partially accepted due to circumstances beyond the control of the bribe-taker, would his or her action be considered as an attempt to accept the respective bribe? If a person refuses from accepting the alleged bribe, would the action of the bribe-giver be considered as the attempt to give a bribe? Italy clarified that according to case law, bribery offences are considered as accomplished in two alternative

situations: if there has been the promise of a bribe and later the material delivery of the payment, the offence is accomplished at the moment of the payment; however, if there has been the promise but no payment has followed, the offence is accomplished at the moment of the promise (Court of Cassation, Joint Criminal Divisions, decision no. 15208 of 21.4.2010 and others).

This means that in the first cases highlighted the offence will be punished as an accomplished offence, and not as attempted offence, because the corruptive pact has been in any event followed by a partial payment. However, the same holds true of the second case, where the corruptive pact itself accomplishes the offence, since the payment does not take place (over disagreement on the agreed bribe).

In the case of bribery offences, therefore, the attempted form can be found only if the acts committed by the parties do not reach a full agreement: it has been indeed established that, in case of a beginning of negotiation between the parties on a possible corruptive pact, when no agreement is found, the persons answer of the offence of attempted bribery (Court of Cassation, Criminal division VI, decision no. 11461 of 16.8.1990).

Italy has implemented the provisions under review.

## **Article 28 Knowledge, intent and purpose as elements of an offence**

*Knowledge, intent or purpose required as an element of an offence established in accordance with this Convention may be inferred from objective factual circumstances.*

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

According to the general rule of Article 42 Criminal Code, corruption offences must be committed wilfully (“dolo”) and cannot be committed with negligence, because Italian domestic law does not contemplate this degree of culpability for these kind of offence.

According to the constant interpretation of the jurisprudence of the Court of Cassation, the proof of the subjective element of the offence can be derived in any way by the analysis of the subjective elements (e.g., the motives of the offence, the personality of the author) but most of all of the objective elements of the conduct (the means used by the offender, the modalities of the conduct, the behaviour before and after the commission of the offence) (among many others see Criminal Division II, decision no. 1209 of 23.6.1986; Criminal Division I, decision no. 7315 of 4.4.1995; Criminal Division I, decision no. 15023 of 14.2.2006). These principles apply to all criminal offences under the Italian legal system, including those concerning corruption.

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

It was added during the dialogue that Article 42 of the Criminal Code entails different kinds of liability depending on the gravity of offence. According to paragraph 1 of this Article, no person may be punished for an action or omission contemplated by law as an offence, if he or she has not committed it consciously and wilfully. Therewith, no person may be punished for a fact contemplated by law as a crime, if he or she has not committed it intentionally (with malice aforethought), save in cases of a preterintentional or unintentional crime expressly contemplated by law. The law determines the cases in which the event is otherwise ascribed to the agent, as a consequence of his or her action or omission (paragraph 2 of Article 42).

Paragraph 3 of this Article states that in infringements, each person answers for his or her own conscious or voluntary action or omission whether wilful or unintentional.

Italy has implemented the provision under review.

## **Article 29 Statute of limitations**

*Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.*

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

Italy confirmed that it fully implemented this provision of the Convention.

Italy cited the following texts:

#### **Article 157 of Criminal Code Statute of limitations.**

«An offence shall be extinguished after a period of time corresponding to the maximum penalty prescribed by law and in any case a period of time of not less than six years for major offences and four years for minor offences, even if only punished by a fine. In order to establish how much time is required to extinguish an offence, account shall be kept of the penalty set forth by law for perpetrated or attempted offences, without taking account of any reduction due to the mitigating circumstances and any increase due to the aggravating circumstances, except for aggravating circumstances for which the law establishes a penalty other than an ordinary one, and for aggravating circumstances with special legal effect, in which case account shall be kept of the maximum increase in penalty provided for by the aggravating circumstance.

The provisions set forth by Article 69 shall not apply and the time required to extinguish an offence shall be established by paragraph 2.

When a sentence of imprisonment and a fine are prescribed either jointly or alternatively by law for the offence, then only the sentence of imprisonment shall be taken into account in determining the period of limitation.

When penalties other than imprisonment and fines are prescribed by law, the period of limitation is of three years.

The periods of limitation set forth in the paragraphs above shall be doubled for offences as per Articles 449 and 589, paragraphs 2 and 3, as well as for offences as per Article 51, paragraphs 3-bis and 3 quarter, of the code of criminal procedure.

A limitation period can always be expressly waived by a defendant.

The period of limitation shall not extinguish offences punished by life imprisonment, as well as offences punished by a penalty that becomes life imprisonment when aggravating circumstances apply».

#### **Article 158 of the Criminal Code Beginning of the period of limitation**

(1)The period of limitation shall run, in the case of a completed offence, from the day of consummation; in the case of an attempted offence, from the day on which the offender ended his activities; in the case of a persisting or continuing offence, from the day on which its persistence or continuation ended.

(2) When the law makes punishability for the offence depend on the occurrence of a subsequent condition, the period of limitation shall run from the day on which that condition occurred.

However, in the cases of offences punishable on complaint, petition or demand, the period of limitation shall run from the day on which the offence was committed.

#### **Article 159 of the Criminal Code**

##### **Suspension of the period of limitation**

(1) The running of the period of limitation shall be suspended in cases of authorisation to prosecute, or of issues remanded for consideration in other proceedings, and in any case in which suspension of criminal proceedings is required by a particular provision of law.

(2) The suspension of the running of the period of limitation, in the cases of authorisation to prosecute referred to in the first paragraph, shall occur when the public prosecutor makes the relevant request.

(3) The period of limitation shall resume running from the day on which the basis for its suspension ceased to exist. In cases of authorisation to prosecute, the period of limitation shall resume running from the day on which the competent authority granted the request.

#### **Article 160 of the Criminal Code**

##### **Interruption of the period of limitation**

(1) The running of the period of limitation shall be interrupted by a judgement or a decree of conviction.

(2) A period of limitation shall also be interrupted by an order applying personal precautionary measures, an order validating arrest [*fermo*] or temporary police detention [*arresto*], interrogation before a public prosecutor or a judge, a summons to appear before a public prosecutor for interrogation, an order of the judge setting the hearing in chambers to decide on the request to dismiss a case, a request of committal for trial, a decree setting the preliminary hearing, an order providing for abbreviated trial, a decree setting the hearing for the decision on the request for the application of punishment, an appearance or summons for summary trial, a decree providing for immediate trial, a decree providing for trial, a decree summoning for trial.

(3) A period of limitation which has been interrupted shall begin to run anew from the day on which it was interrupted. If there is more than one basis for interruption, the period of limitation shall run from the last of these, but in no case may the time limits prescribed by Article 157 be extended beyond the time limits referred to in Article 161 paragraph 2, except with respect to the offences referred to in Article 51, paragraphs 3-bis and 3 quater of the Code of Criminal Procedure.

#### **Article 161 of the Criminal Code**

##### **Consequences of suspension and interruption**

«The suspension and the interruption of the statute of limitations affect all those who committed a crime.

Unless we proceed for the crimes referred to in Article 51, paragraph 3-bis and 3-c of the Code of Criminal Procedure, under no circumstances the interruption of the statute of limitations may result in an increase of more than a quarter of the time need to prescribe, in half the cases referred to in Article 99, second paragraph, two-thirds in the case of Article 99, fourth paragraph, and the double in the cases referred to in Articles 102, 103 and 105».

#### General principles.

The period of limitation for the conclusion of a prosecution depends on the maximum term of the sanctions which can be imposed for the offence in question (Article 157 Criminal Code).

The limitation period commences to run when the offender completes the offence or, in the case of an attempt, when he ceases to perform the activities that are punishable as an attempt (Article 158 Criminal Code). On this matter, the decision of Court of Cassation, Joint Sections, 25 February 2010, no. 15208, states that the crime of corruption can be committed

either by accepting the promise or through the giving-receiving advantage. It specifies that when the promise is followed by the giving-receiving, it is only at this last moment that the offense itself is committed. The decision ruled a case where after the promising, the giving consisted in a deposit in a bank account in the name of a company and not in the name of the defendant. The Court stated that the crime was committed when the defendant used the money that was deposited in the bank account.

This decision has solved a contrast about two different positions of the same Court. Indeed, regarding cases where the bribery agreement provides for installment payments, the Court of Cassation in 2003 ruled that the limitation period cannot commence at the time of the reaching the bribery agreement. At that time the Court stated that as the offence of corruption is a result crime, characterized by the peculiarity that the crime is committed alternatively by accepting the promise or by receiving the advantage by the public official, when both these elements are in a logical time sequence, the second one does not lower to an irrelevant post factum, since in this latter case the crime is committed at the time of giving the bribe. It follows that, if the agreement provides for instalment payments, the crime is committed at the time of each payment (Court of Cassation, Criminal Division VI, 7 February 2003 n. 23248).

Afterwards in 2004 the same Court ruled that the offence of bribery is to be considered as a single conduct and even if the agreement provides for installment payments, these are to be considered only as conditions of implementing the agreement itself, so that the statute of limitations commence at the time of the reaching the bribery agreement (Court of Cassation, Criminal Division VI, 26 April 2004 n. 26071).

The limitation period may be suspended or interrupted in certain circumstances (Articles 159, 160 and 161 Criminal Code). A suspension merely stops the running of time temporarily. An interruption resets the limitation period and time runs anew from the end of the event causing the interruption. The effects on an interruption are limited in time. In particular, Article 161 Criminal Code provides for a maximum term caused by interruptions (absolute statute of limitation); when this term is reached, the proceedings must be permanently stopped.

This absolute statute of limitation is mainly based on the subjective condition of the accused person:

- no maximum limit for offences not provided with a statute of limitation (i.e. offences sanctioned with a life sentence) and for mafia-related crimes;
- extension of a quarter of the statute of limitations for contraventions, culpable and intentional offences committed by a simple recidivist;
- extension of a third of the statute of limitations for intentional offences committed by the aggravated recidivist;
- extension of a two third of the statute of limitations for intentional offences committed by the repeated recidivist;
- extension to the double of the statute of limitation for intentional offences committed by the habitual criminal.

Both the base and the absolute limitation periods commence at the same time. The only difference between the two periods is that no suspensions or interruptions apply to the absolute limitation period.

A limitation period can always be expressly waived by a defendant.

Statute of limitations in relation to corruption related offences.

The recently approved anti-corruption package (Law n. 190 of 6 November 2012), which has not only introduced new offences in order to complete the criminal law system for the repression of corruption, but also significantly increased levels of penalties for existing offences, has also had the effect to extend the statute of limitation period in the case of “suspension” or “interruption” due to a prosecutorial activity started during the period, which occur most of the times.

Thus, in the case of first time offenders (*incensurato*) and recidivism (*recidiva semplice*), the period of limitation can be suspended and interrupted, due to a prosecutorial activity started during the period, up to an “ultimate” or “absolute limitation period” equivalent to the maximum length extended by one fourth (article 161 of the Criminal Code). In the case of aggravated recidivism (*recidiva aggravata*) the maximum length is extended by one half; in the case of repeated recidivism (*recidiva reiterata*) by two thirds and in the case of habitual offender (*delinquenti abituali*) is doubled.

Just to give an example, one of the main provisions on corruption, namely Article 319 of the Criminal Code, which incriminates corruption relating to an act in breach of official duties, as recently amended, provides a sanction of imprisonment « between four and eight years» (before it was between two and five years); therefore, the situation of time limitation is now the following: the basis is statute of limitation is 8 years, that corresponds to the maximum term of sanction for the related offence. In the case of first time offenders and recidivism, this period can be extended from the previous up to 10 years (8 years plus one fourth); in the case of aggravated recidivism up to 12 years; in the case of repeated recidivism up to 3 years and 4 months and in the case of habitual offender up to 16 years.

Several other prison sanctions have been increased.

In particular, a bribe offered, promised or given to a public official to obtain the performance of acts related to the public official’s office (article 318 of the Criminal Code) is now sanctioned with a maximum of 5 years imprisonment, while it was previously sanctioned with a maximum of 3 years. In the case of first time offenders and recidivism, this period can be extended from three years up to 7 years and 6 months (6 years plus one fourth); in the case of aggravated recidivism up to 12 years; in the case of repeated recidivism up to 5 years and 4 months and in the case of habitual offender up to 16 years.

The table below sets out the amendments which have occurred and facilitates the understanding of the system introduced by the recent anti-corruption bill.

### Statute of Limitation BEFORE Anti- Corruption Law

Offence	Maximum Penalty	(Base) Statute of Limitation	Absolute Statute of Limitation	Recidivism (simple) Art. 99 (1) CC	Recidivism (aggravated) Art. 99 (2) CC	Recidivism (reiterated) Art. 99 (4) CC	Habitual criminal (Arts. 102, 103, 105 CC)
(Art. 317 CC) <i>Concussione</i>	12 years	12 years	15 years	15 years	18 years	20 years	24 years
(Art. 318 CC) Passive bribery lawful	3 years	6 years	7 years and 6 months	7 years and 6 months	9 years	10 years	12 years

official acts							
(Art. 319 CC) Passive bribery unlawful official acts	5 years	6 years	7 years and 6 months	7 years and 6 months	9 years	10 years	12 years
(Art.319 ter CC) Passive bribery judicial proceedings	8 years	8 years	10 years	10 years	12 years	13 years and 4 months	16 years
(Art. 320 CC) Passive bribery of persons in charge of a public service	Article 318: 3 years	Article 318: 6 years	7 years and 6 months	7 years and 6 months	9 years	10 years	12 years
	Article 319: 5 years	Article 319: 6 years	7 years and 6 months	7 years and 6 months	9 years	10 years	12 years
(Art. 321 CC) Active bribery	Article 318: 3 years	Article 318: 6 years	7 years and 6 months	7 years and 6 months	9 years	10 years	12 years
	Article 319: 5 years	Article 319: 6 years	7 years and 6 months	7 years and 6 months	9 years	10 years	12 years
(Art. 322 CC) Incitement to bribery	2 years	6 years	7 years and 6 months	7 years and 6 months	9 years	10 years	12 years
(Art. 322-bis CC) Foreign bribery	Article 317: 12 years	Article 317: 12 years	15 years	15 years	18 years	20 years	24 years
	Article 318: 3 years	Article 318: 6 years	7 years and 6 months	7 years and 6 months	9 years	10 years	12 years
	Article 319: 5 years	Article 319: 6 years	7 years and 6 months	7 years and 6 months	9 years	10 years	12 years
	Article 319 ter: 8 years	Article 319 ter: 8 years	10 years	10 years	12 years	13 years and 4 months	24 years
	Article 322: 2 years	Article 322: 6 years	7 years and 6 months	7 years and 6 months	9 years	10 years	12 years
(Art. 323 CC) Abuse of office	3 years	6 years	7 years and 6 months	7 years and 6 months	9 years	10 years	12 years
(Art. 346 CC) <i>Millantato credito</i>	5 years	6 years	7 years and 6 months	7 years and 6 months	9 years	10 years	12 years
(Art. 2635 Civil Code) Private Bribery	3 years	6 years	7 years and 6 months	7 years and 6 months	9 years	10 years	12 years

## AFTER Anti- Corruption Law

Offence	Maximum Penalty	(Base) Statute of Limitation	Absolute Statute of Limitation	Recidivism (simple) Art. 99 (1) CC	Recidivism (aggravated) Art. 99 (2) CC	Recidivism (reiterated) Art. 99 (4) CC	Habitual criminal (Arts. 102, 103, 105 CC)
(Art. 317 CC) <i>Concussione</i>	12 years	12 years	15 years	15 years	18 years	20 years	24 years
(Art. 318 CC) <i>Corruzione per l'esercizio delle funzioni</i>	5 years	6 years	7 years and 6 months	7 years and 6 months	9 years	10 years	12 years
(Art. 319 CC) Passive bribery unlawful official acts	8 years	8 years	10 years	10 years	12 years	13 years and 4 months	16 years
(Art.319 ter CC) Passive bribery judicial proceedings	10 years	10 years	12y and 6 m 6months	12 years and 6 months	15 years	17 years and 6 months	20 years
(Art 319 quater (I) CC) <i>Induzione indebita a dare o promettere utilità</i>	8 years	8 years	10 years	10 years	12 years	13 years and 4 months	16 years
(Art 319 quater (II) CC) <i>Induzione indebita a dare o promettere utilità</i>	3 years	6 years	7 years and 6 months	7 years and 6 months	9 years	10 years	12 years
(Art. 320 CC) Passive bribery of persons in charge of a public service	Article 318: 5 years	Article 318: 6 years	7 years and 6 months	7 years and 6 months	9 years	10 years	12 years
	Article 319: 8 years	Article 319: 8 years	10 years	10 years	12 years	13 years and 4 months	16 years

(Art. 321 CC) Active bribery	Article 318: 5 years	Article 318: 6 years	7 years and 6 months	7 years and 6 months	9 years	10 years	12 years
	Article 319: 8 years	Article 319: 8 years	10 years	10 years	12 years	13 years and 4 months	16 years
(Art. 322 (I-III) CC) Incitement to bribery	3 years and 4 months	6 years	7 years and 6 months	7 years and 6 months	9 years	10 years	12 years
(Art 322 (II-IV) CC) Incitement to bribery	5 years and 4 months	6 years	7 years and 6 months	7 years and 6 months	9 years	10 years	12 years
(Art. 322-bis CC) Foreign bribery	Article 317: 12 years	Article 317: 12 years	15 years	15 years	18 years	20 years	24 years
	Article 318-320: 5 years	Article 318-320: 6 years	7 years and 6 months	7 years and 6 months	9 years	10 years	12 years
	Article 319-320: 8 years	Article 319-320: 8 years	10 years	10 years	12 years	13 years and 4 months	16 years
	Article 319 ter: 10 years	Article 319 ter: 10 years	12 years and 6 months	12 years and 6 months	15 years	16 years and 8 months	20 years
	Article 319 quater (I): 8 years	Article 319 quater (I): 8 years	10 years	10 years	12 years	13 years and 4 months	16 years
	Article 319 quater (II): 3 years	Article 319 quater (II): 6 years	7 years and 6 months	7 years and 6 months	9 years	10 years	12 years
	Article 322 (I-III): 3 years and 4 months	Article 322 (I-III): 6 years	7 years and 6 months	7 years and 6 months	9 years	10 years	12 years
	Article 322 (II-IV): 5 years and 4 months	Article 322 (II-IV): 6 years	7 years and 6 months	7 years and 6 months	9 years	10 years	12 years
(Art. 323 CC) Abuse of office	4 years	6 years	7 years and 6 months	7 years and 6 months	9 years	10 years	12 years
(Art. 346 (I) CC) <i>Millantato Credito</i>	5 years	6 years	7 years and 6 months	7 years and 6 months	9 years	10 years	12 years

(Art. 346 (II) CC) <i>Millantato Credito</i>	6 years	6 years	7 years and 6 months	7 years and 6 months	9 years	10 years	12 years
(Art. 346 bis CC) <i>Traffico di influenze illecite</i>	3 years	6 years	7 years and 6 months	7 years and 6 months	9 years	10 years	12 years
(Art. 2635 Civil Code) Private Bribery	3 years	6 years	7 years and 6 months	7 years and 6 months	9 years	10 years	12 years

To complete of the above, it must be finally noted that in November 2012, shortly after the publication in the Official Journal of the anti-corruption law, at the Ministry of Justice a Commission has been set up in order to prepare an overall reform of the discipline relating to statute of limitation in the Italian legal system.

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

Articles 157 to 161 of the Criminal Code establish general principles for the period of limitation, as well as provisions for its beginning, suspension, interruption and consequences thereof. The statute of limitations period is calculated according to the maximum penalty which can be incurred for the offence in question. The recently adopted Law no. 190 of 2012 introduced new corruption offences and more severe penalties and therefore applies to such offences committed after this law's entry into force. The length of period for limitation is overall consequently increased and the period may be suspended or interrupted due to prosecutorial activity.

A further clarification was sought as to whether the statute of limitations could be suspended in case if the alleged offender evades the administration of justice. It was noted in this respect that the situation when a person is declared absconding under Italian criminal procedural law (i.e., when in the course of the proceedings a custodial measure must be executed against him and he is not found – Articles 295, 296 Code of criminal procedure) does not suspend the statute of limitations. However, since in the Italian criminal procedural system the presence of the defendant is not required at trial, the system allows proceedings in absentia against the person absconding to be concluded, including passing a final judgment against him.

In case the person absconding has not already appointed a lawyer to defend him, the judicial authority, in issuing the decree declaring this status, appoints a lawyer ex officio who will represent him at the trial. This means that, under the current Italian procedural system, no suspension of the statute of limitations is necessary in case of evasion of justice.

Should the person who has been judged in absentia appear after the sentence, he may apply for retrial in case he can prove that he was unaware of the proceedings held against him through no fault of his own, or for reasons of force majeure (Art. 175 Code of criminal procedure).

Extensive discussions took place during the direct dialogue on the issue of statute of limitations. The recent Council of Europe GRECO report and the OECD report for Italy that addressed the same issue was also brought to the attention of the reviewing experts.

It was noted for example, as mentioned in other observations, that complex cases involving multiple defendants and the possibility of plea bargaining agreements with different files used in alternate proceedings also had effects on the statute of limitations, but that these were usually extended as a result. During the direct dialogue, judicial authorities noted that the length of criminal proceedings, including because of the difficulty of obtaining evidence in complex cases, was taken into account in the new law and that it reduced the risk of the statute of limitations running out.

It was also highlighted that offences committed prior to the new law continued to be covered by the former statute of limitations, therefore both are reproduced above.

It was noted, however, that there was an ongoing need for reform of statute of limitations. As a general issue, the length of judicial proceedings was of concern, in particular with regard to the statute of limitations.

Italy has implemented the provision under review.

## **Article 30 Prosecution, adjudication and sanctions**

### **Paragraph 1**

*1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.*

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

Italy confirmed that it fully implemented this provision of the Convention.

The source of the principle of proportionality - sanctions must be in proportion to the offence - can be found in the principle of reasonableness and also in the need to deter the commission of the offence and to ensure rehabilitation of offenders. It is one of the fundamental principles of the Italian criminal law system and of the international community.

The necessity of proportion between the seriousness of the offence and the punishment, viewed also as a general method of congruence between legal measures and the purposes to be pursued, is provided for by **articles 3 and 27, 1st and 3rd paragraphs** respectively, **of the Italian Constitution**, which impose differentiated treatment of different situations and also the fairness of the punishment.

#### **Article 3**

«All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions.

It is the duty of the Republic to remove those obstacles of an economic or social nature which constrain the freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the political, economic and social organisation of the country»

#### **Article 27**

«Criminal responsibility is personal.

A defendant shall be considered not guilty until a final sentence has been passed.

Punishments may not be inhuman and shall aim at re-educating the convicted.

Death penalty is prohibited».

*Article 49 of the Charter of Fundamental Rights of the European Union* provides for the principle of proportionality, stating that: «The severity of penalties must not be disproportionate to the criminal offence».

As seen above (see replies related to Articles 15,16,17,18,19,21,22,23,24,25 and 26), Italian law considers corruption offences serious offences and therefore establishes appropriate punishment. The severity of the penalties available for active/passive bribery in the public sector depends on the unlawful/lawful nature of the act of the public official bribed and generally ranges from 4 to 8 years. More severe sanctions can apply when bribery occurs in the context of judicial proceedings – in which case imprisonment is increased to a maximum term of up to 12 years or in case of participation (aiding and abetting) when certain aggravating factors exist, such as the participation of 5 or more persons in the offence, the promotion or organisation of collaboration in an offence or the direction of persons participating in the same offence, or the inducement of persons subject to the offender's authority to commit an offence. Additional sanctions include a general disqualification from public office (see further under reply to) and specifically referring to corruption offences, disqualification from doing business with the public administration (**Article 32-quater**) and termination of the work or employment relationship (Article 32-quinquies ).

#### **Article 32-quater of the Criminal Code**

##### **Cases where the convicted persons are disqualified from negotiating with the public administration**

Every conviction related to crimes provided for in Articles...318, 319, 319 bis, 320, 321, 322, 322 bis committed with prejudice to or in favour of an entrepreneurial activity or related to it shall entail the impossibility to negotiate with the public administration.

#### **Article 32-quinquies of the Criminal Code**

##### **Cases in which conviction involves the termination of the work or employment relationship**

Except as provided in Articles 29 and 31, a sentence to imprisonment for a term of not less than three years for the crimes referred to in Articles 314 paragraph 1, 317, 318, 319, 319 ter, 319 quater paragraph 1 and 320 shall also entail the termination of the work or employment relationship for employees of public administrations or bodies or bodies in which the State has a majority holding.

Italy did not provide information on the execution of sentences.

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

Corruption offences are generally regarded as serious offences with correspondingly proportionate punishment and aggravating circumstances, and possible additional sanctions such as disqualification.

Furthermore, the new law of 2012 generally foresees increased sanctions also to enable a longer statute of limitations for corruption offences. However, in some cases the practice of plea bargaining agreements (see observations under Article 37 of the Convention) could lead to diminishing sanctions for corruption offences.

Italy has implemented the provision under review.

Following the country visit Italy additionally provided the following general statistical information with regard to sentences and acquittals relevant to the prosecution of corruption offences.

#### Sentences for corruption/natural persons

Offence	2011	2012	2013	Total
Art. 314 c.p.	306	237	62	605
Art. 316 c.p.	7	1	1	9
Art. 316 bis c.p.	14	4	5	23
Art. 317 c.p.	105	68	8	181
Art. 318 c.p.	12	3	0	15
Art. 318 comma 2 c.p.	1	3	0	4
Art. 319 c.p.	117	91	12	220
Art. 319 bis c.p.	6	5	0	11
Art. 319 ter c.p.	9	3	0	12
Art. 321 c.p.	79	32	18	129
Art. 322 c.p.	132	87	23	242
Art. 322 bis c.p.	0	0	0	0
Art. 323 c.p.	89	47	11	147
Art. 346 c.p.	44	20	3	67
Art. 346 bis c.p.	n/a	n/a	0	0
Art. 2635 c.c.	0	0	0	0
<b>Total</b>	<b>921</b>	<b>601</b>	<b>143</b>	<b>1665</b>

#### Acquittals for corruption/natural persons<sup>4</sup>

Offence	2011	2012	2013	Total
Art. 314 c.p.	0	1	0	1
Art. 316 c.p.	0	0	0	0
Art. 316 bis c.p.	0	0	0	0
Art. 317 c.p.	0	0	0	0
Art. 318 c.p.	0	0	0	0
Art. 318 comma 2 c.p.	0	0	0	0
Art. 319 c.p.	0	0	0	0
Art. 319 bis c.p.	0	0	0	0
Art. 319 ter c.p.	0	1	0	1
Art. 321 c.p.	0	1	0	1
Art. 322 c.p.	0	0	0	0
Art. 322 bis c.p.	0	0	0	0
Art. 323 c.p.	0	0	0	0
Art. 346 c.p.	0	0	0	0

<sup>4</sup> With regards to the acquittals, only the ones for which a security measure was provided are registered in the records office's information system. Furthermore, with regards to the data relevant to legal persons, it is noted that no measures were taken for the relevant offences.

<b>Art. 346 bis c.p.</b>	n/a	n/a	0	<b>0</b>
<b>Art. 2635 c.c.</b>	0	0	0	<b>0</b>
<b>Total</b>	<b>0</b>	<b>3</b>	<b>0</b>	<b>3</b>

## **Article 30 Prosecution, adjudication and sanctions**

### **Paragraph 2**

*2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.*

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

Italy confirmed that it fully implemented this provision of the Convention.

Italy cited the following applicable measures:

There is no need to adopt and implement any measures because the Italian legal system does not accord any kind of immunity or jurisdictional privilege to its public officials for the performance of their functions in relation to corruption-related offences such as those set out in UNCAC. The immunity granted to members of Parliament and other electoral bodies (e.g., members of the regional assemblies) only relates to the votes given or opinions expressed in discharging their mandate (Article 68 Constitution) and therefore does not extend to the behaviours which are the object of the criminal offences examined above.

For concrete instances where the issue of immunities and/or jurisdictional or other privileges were accorded to public officials as well as for examples of implementation and relevant official inquiries or reports, please refer to previous answers.

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

Italy has implemented the provision under review.

## **Article 30 Prosecution, adjudication and sanctions**

### **Paragraph 3**

*3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.*

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

Italy confirmed that it fully implemented this provision of the Convention.

In the Italian system Prosecutors control criminal investigations and are responsible for directing the police in the conduct of investigations (Article 109 of the Italian Constitution :”The legal authorities have direct use of the judicial police”; Articles 56 and 327 Criminal Procedure Code). The Italian criminal system is based on the principle of mandatory prosecution (principle of legality) which aims at ensuring the equal application of the criminal law by mandating its full enforcement with no discretion: the law denies the prosecutor authority to make exceptions in individual cases, thus precluding favouritism or considerations of political nature. The prosecutor's duty to file charges whenever there is sufficient evidence is enshrined in Art. 112 of the Constitution Article 112, Constitution Art. 112 “The public prosecutor has the obligation to institute criminal proceedings”). The principle of mandatory prosecution eliminates prosecutorial discretion and leads to a very large number of prosecutions because all reported offences not manifestly unfounded must result in criminal proceedings. Rules of procedure ensure an effective and transparent mechanism so the prosecution’s decision as to whether or not the results of the investigation show sufficient grounds for indictment are verified by judicial authority (*giudice per le indagini preliminary*, judge for preliminary investigations).

Legal powers relating to the prosecution of persons for bribery offences are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences. For this purpose larger prosecutors’ offices are encouraged to establish specialised working groups dealing with specific offences - like the bribery offences, within the group of offences against public administration - namely those located in the district capitals – (42 out of 49 prosecution offices at first degree courts have established such specialised groups); prosecutors at smaller PPOs are also advised to specialise in given offences (20 out of 116 offices have specialised groups concerning offences against public administration).

Furthermore it is possible to appoint specialised expertise in cases of complex financial investigations (Article 359 of the Criminal Procedure Code); this is indeed a regular practice in Italy with respect to the prosecution of corruption offences, that often are treated with priority, according to the advice given to prosecutors by the *Consiglio Superiore della Magistratura* (High Council of Judiciary).

The activity of the different PPOs throughout the national territory is coordinated on the basis of **Article 371 of the Criminal Procedure Code**, which establishes the obligation for law enforcement authorities to cooperate, exchange information, set up joint investigative teams, as necessary.

#### **Article 371 of the Criminal Procedure Code**

##### **Relations between different offices of prosecutors.**

The different offices of prosecutors proceeding to connected investigations, shall coordinate among themselves for the sake of the expeditiousness, economy and effectiveness of investigations. To that end, they shall make provisions for the exchange of acts and reports as well as the communication of orders respectively given to the Judicial Police. They may also proceed, jointly, to the accomplishment of specific acts.

The investigations carried out by different offices of prosecutors are considered to be connected: where proceedings are connected as per Article 12; (1)

where they involve offences and some of them have been committed on the occasion of others, or to obtain or secure to the author or others the profit, price, product or impunity thereof, or that have been committed by more persons than one to the mutual detriment of one another, or where the evidence of an offence or a circumstance of it affects the evidence of another offence or another circumstance; (2)

where the evidence of more than one offence derives, also in part, from the same source. Without prejudice to the provisions of article 12, the connection of investigations shall have no effect on jurisdiction.

The country under review provided the following examples of implementation

This provision is implemented by articles 318, 319, 319 bis, 319 ter, 320, 321, 322, 322 bis of the Italian Criminal Code. In this regard, the efforts made by the State Police Investigation Offices as to the fight against the afore-said offences, are confirmed by several recent investigations that are reported in the answers at the questions of art. 50 of this questionnaire.

As far as the “detering effect” of such provisions, it should be stressed that the increase in punishment terms provided for by the law could impact on the decrease of corruption levels in our Country. In this direction goes the new ad hoc anti-corruption legislative reform, recently approved by the Italian Parliament.

Also on a preventive perspective the Italian police forces are very active, in particular with training initiatives. The programs of all Carabinieri training Institutes include analysis and discussion, from a juridical perspective, of “corruption” as a criminal offence contained in the Criminal Code. In particular, by the Carabinieri Institute for Investigation Techniques (ISTI), created in 2008, is given a qualified training to the officer of all ranks, employed in investigation teams, concerning the corruption offence and the techniques aimed to search and seize its price or proceeds. Since the year of its institution 2.800 officers have been trained. Moreover, periodically a number of Carabinieri officers take part to workshops, seminars and courses held by the European Police Academy (CEPOL).

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

The principle of mandatory prosecution applies in Italy under Article 112 of the Constitution. Public prosecutors oversee and direct criminal investigations by the police, and the prosecution’s decision as to whether there is sufficient evidence for indictment is verified by a judge for preliminary investigations. Article 371 of the Criminal Procedure Code provides for coordination at the national level.

During the dialogue, Italy provided further information on the prosecution’s decision as to whether or not the results of the investigation show sufficient grounds for indictment are verified by judicial authority.

The procedure for dismissing a case after the investigation phase can be summarized as follows: if the prosecutor in charge of the investigation concludes that the offence cannot be prosecuted (because the facts are inexistent, the offender has not been identified, there is not sufficient evidence, etc.), he files a reasoned request for dismissal (“richiesta di archiviazione”) to the office of the judge for preliminary investigations (Article 408 Code of criminal procedure).

According to Article 409 Code of criminal procedure, the judge for preliminary investigation can either accept the request and close the investigation or, in case of disagreement or doubt, call for an in camera hearing with the prosecutor, the suspected person(s) and his/their lawyers. After this hearing, the judge may close the investigation order further investigative acts to be carried out by the prosecutor within a specified deadline in case he thinks that the evidence gathered is already sufficient to prosecute, order the prosecutor to formulate and indictment within 10 days.

#### **Code of Criminal Procedure:**

## **Article 56**

Services and sections of the judicial police

1. Judicial police functions are carried out under the authority and direction of the judicial authority:
  - a) by the judicial police services provided for by law;
  - b) by the judicial police divisions set up at every Prosecutor's Office and composed of judicial police services personnel;
  - c) by the officials and judicial police officers belonging to other bodies for whom the law makes it compulsory to carry out an investigation following a notitia criminis .

## **Article 327**

### **Responsibility for directing the preliminary investigation**

1. The Public Prosecutor shall direct the investigation and have the judicial police directly at his disposal. Even after the communication of the notitia criminis, the judicial police shall continue to carry out activities on its own initiative according to the procedures described in the following articles.

## **Article 408**

### **Request for dismissal for lack of grounds of the notitia criminis**

1. Within the time-limits prescribed by the previous articles, the public prosecutor shall submit a request for dismissal to the judge if the notitia criminis is unfounded. Along with the request, he/she shall forward the file containing the notitia criminis, the documentation pertaining to the investigations that were carried out and the records of the acts carried out before the judge for preliminary investigations.
2. The notice of the request shall be served – through the public prosecutor - upon the victim who, in the notitia criminis or subsequently to its submission, has expressed his/her wish to be informed about any possible dismissal.
3. The notice shall specify that, within ten days, the victim may consult the documents and file an objection - together with a reasoned request - to continue the preliminary investigation.

## **Article 409**

### **Measures of the judge on the request for dismissal**

1. Apart from the case in which the objection mentioned in Article 410 has been lodged, if the judge grants the request for dismissal, he/she shall issue a reasoned decree and return the documents to the public prosecutor. The measure ordering the dismissal shall be served upon the person under investigation if in the course of the proceedings the measure of pre-trial custody has been imposed on him/her.
2. If he/she rejects the request, the judge shall set the date of an in camera hearing and shall inform the public prosecutor, the person under investigation and the victim. The proceedings shall take place according to the procedure under Article 127. The documents shall remain filed with the clerk's office until the day of the hearing and the defense counsel shall have the right to take copies of them.
3. The judge shall inform also the Prosecutor General at the Court of Appeal of the setting of the hearing.
4. Following the hearing, if he/she believes that further investigation is necessary, the judge shall inform the public prosecutor about it by means of an order setting the deadline which is necessary to carry out the investigation.
5. Apart from the case covered by para. 4, when he/she rejects the request for dismissal, the judge shall issue an order directing the public prosecutor to formulate the indictment within ten

days. Within two days after the formulation of the indictment, the judge shall set – by decree - the preliminary hearing. Where applicable, the provisions of Articles 418 and 419 shall be complied with.

6. The order of dismissal can be appealed against to the Court of Cassation only in cases of nullity under Article 127, para. 5.

Other rules are provided by art. 55/59, 329, 347/357, 407 of the Criminal Procedure Code and art. 5/20 of the Implementing Provisions of the Criminal Procedure Code.

During meetings with judicial authorities at the direct dialogue, it was reiterated that investigation from the time of the complaint up to the decision by the prosecution are exclusively entrusted to public prosecutor assisted by police having powers dependent on subject area. The public prosecutor is the only focal point of the investigation and the judicial police only reports to the public prosecutor. There are no federal prosecuting offices which have relations with the government, the public prosecutor has the same safeguards as judges and prosecutors' offices assigned to local courts. In the court of cassation there is one prosecutor office that also performs function of representation before the court of cassation.

The Ministry of Justice only has a coordinating role by providing resources and procedures of international cooperation and is the central authority without any power to interfere into criminal proceedings to which those procedures are related to.

The Notia Criminalis comes from Law enforcement police and complaints by citizens giving rights to so-called preliminary investigations which are supervised and checked by the public prosecutor. Public prosecutor will assess the conduct by entering the person in the register of notitia criminalis. Prosecutors can identify criminal conduct or conclude that it doesn't constitute an offence without entering it into the register.

The principal feature is compulsory prosecution, however there is an ongoing debate about this system due to the coverage of minor offences. The only space for discretion is in the cases involving non-serious offences committed by minors and conduct is unlikely to be repeated.

Italy has implemented the provision under review.

## **Article 30 Prosecution, adjudication and sanctions**

### **Paragraph 4**

*4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.*

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

Italy confirmed that it fully implemented this provision of the Convention.

In the Italian system a sentence can be served only when the judicial decision has become final. Before the judgment of conviction is final precautionary measures, adopted during the preliminary investigations or afterwards, aim at preventing the defendant from fleeing, from

committing another crime or from destroying true evidence or creating false evidence. The Judge competent to adopt these measures is either the Judge for the Preliminary Investigations (before indictment), the Judge of the Preliminary Hearing or the Judge of the Trial (first instance and appeal judicial authorities), according to the phase of the proceeding they are in, when the Public Prosecutor asks restrictions on personal freedom.

**Article 13 of the Constitution** expressly guarantees *personal freedom*, by stating that freedom may only be restricted by the judicial authorities and only in those cases provided for by law. It states that personal freedom may only be restricted by a motivated order of a court in the cases specified by the law

**Art. 13 of the Italian Constitution**

«Personal liberty is inviolable.

No one may be detained, inspected, or searched nor otherwise subjected to any restriction of personal liberty except by order of the Judiciary stating a reason and only in such cases and in such manner as provided by the law.

In exceptional circumstances and under such conditions of necessity and urgency as shall conclusively be defined by the law, the police may take provisional measures that shall be referred within 48 hours to the Judiciary for validation and which, in default of such validation in the following 48 hours, shall be revoked and considered null and void.

Any act of physical and moral violence against a person subjected to restriction of personal liberty shall be punished.

The law shall establish the maximum duration of preventive detention»

In compliance with the Constitution the law lists the requirements for adopting these precautionary measures (**Art 274 Code of Criminal Procedure**). They consist of serious circumstantial evidence of guilt and at least one of the following: a) risk of absconding; b) risk that the suspect may conceal, alter or destroy evidence; c) risk of repetition of the offence. Likewise, measures must be revoked when the above-mentioned requirements are no longer satisfied.

Furthermore, Italian judges must order the release of an accused person when:

- the judge does not proceed to interrogate the arrested person within 5 days from the apprehension;
- imprisonment exceeds the maximum terms established by law for pre – trial detention.

Terms are calculated in relation to each stage of the trial (Investigations, First instance trial, Appeal, Supreme Court appeal) and vary depending on the offense.

The Italian system provides for different kinds of precautionary measures and according to the *extrema ratio* principle, preventive detention must be used only when all other remedies are deemed ineffective. Moreover, detentive measures are applicable only in relation to crimes punished with at least four years of imprisonment.

Other typical non-custodial precautionary measures are, on the contrary, applicable to crimes punishable with at least three years of imprisonment.

Precautionary measures alternative to preventive detention applicable to corruption offences are:

house arrest (Art. 284 Code of criminal procedure); prohibition to (or, alternatively, duty to) reside in a certain place (Art. 283); duty to stay away from home (Art. 282-*bis*); prohibition to have contacts with the injured person (Art. 282-*ter*); duty to report regularly at a police station (Art. 282); prohibition to expatriate (Art. 281); suspension from public offices (Art. 289); temporary prohibition to practise professional or business work (Art. 290).

With regard to serious crimes, such as terrorism or organised crime, preventive detention is mandatory, except in case of absence of any precautionary need (Article 275 section 3 Code of criminal procedure reverses the burden of proof with regard to precautionary needs).

In ordinary cases, on the contrary, the Judge, upon request of the Public Prosecutor, applies the measure which is adequate to the precautionary needs and proportionate to the seriousness of the crime and to the final sentence.

Usually, the Judge cannot apply to the defendant more than one precautionary measure for the same crime. Article 276 Code of criminal procedure provides for this possibility in case of infringement of the measure originally applied.

The Italian system does not consider the possibility for the defendant to apply for bail and avoid detention before his/her trial or appeal. Yet in our system the presence of the defendant at subsequent criminal proceedings is not compulsory and he/she can be represented by his/her lawyer unless the judge asks the police to take him before the court in order to admit on evidence different from his/her examination.

The dissuasive effect of bail is correspondingly diminished.

#### **Article 274 of the Criminal Code**

##### **Illicit participation in associations having an international character**

Whoever participates in the territory of the State in an association, entity or institution or branch thereof, of an international character, for which the authorisation of the Government has not been granted, shall be punished by a fine of from 200,000 Liras to 2,000,000 Liras.

The same punishment shall apply to a citizen residing in the territory of the State who, without authorisation of the Government participates in associations, entities or institutions of an international character which have their headquarters abroad.

By judgement no. 193 of 28 June 1985 the Constitutional Court declared this article unconstitutional.

#### **Article 274 of the Code of Criminal Procedure**

##### **Precautionary requirements**

Precautionary measures shall be ordered:

1. When there are specific and imperative requirements concerning the investigations on the facts which are being prosecuted, having regard to a clear and present danger for the gathering and authenticity of the evidence, grounded on factual circumstances expressly indicated in the order, falling which said order shall be held null and void even on the judge's own motion. The refusal of the person under investigation or the defendant to give statements and admit charges shall not constitute a real and present danger;
2. When the defendant fled or there is a real danger that the defendant could flee, provided that the judge holds that a term of imprisonment for more than two years may be imposed;
3. When, on account of particular circumstances of the facts and the way in which they were committed, the personality of the person under investigation or the defendant, inferred from their conducts or actual actions or criminal records, there is a real danger that they commit serious offences by the use of arms or other means of personal violence or offences against the constitutional order or organized crime offences or offences of the same kind as the one being prosecuted. If the danger concerns the perpetration of offences of the same kind as the one being prosecuted, pre-trial custody measures shall only be ordered for offences punishable by a maximum term of imprisonment of at least four years.

#### **Article 289 of the Code of Criminal Procedure**

##### **Suspension from holding public offices or services**

By a decision ordering suspension from holding public offices or services, the judge shall temporarily disqualify the defendant from carrying out all or part of the relevant activities.

When an offence against central and local government is being prosecuted, suspension from holding public offices or services may be ordered against a public officer or a person in charge of a public service also by imposing punishment thresholds other than those provided for in Article 287, paragraph 1. During the preliminary investigations, prior to ruling on the request for suspension from holding public offices or services submitted by the public prosecutor, the judge shall examine the defendant in the forms indicated in Articles 64 and 65. Suspension shall not be ordered against the holders of elective offices directly elected by the people.

#### **Article 290 of the Code of Criminal Procedure**

##### **Temporary prohibition from exercising certain professional or entrepreneurial activities**

By a decision ordering prohibition from exercising certain professions, businesses or management functions in legal persons and businesses, the judge shall temporarily prohibit the defendant from exercising all or part of the relevant activities.

When an offence against public safety or against public economy, industry and trade or one of the offences specified in the criminal provisions in respect of companies and groups of companies and in Articles 353, 355, 373, 380 and 381 of the criminal code is being prosecuted, temporary prohibition from exercising certain professional or entrepreneurial activities may be ordered also by imposing punishment thresholds other than those provided for in Article 287, paragraph 1.

The country under review did not provide examples of implementation. Italy indicated that no statistical data is available.

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

Italy has implemented the provision under review.

#### **Article 30 Prosecution, adjudication and sanctions**

##### **Paragraph 5**

*5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.*

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

Italy confirmed that it fully implemented this provision of the Convention.

The Italian legal system includes several alternative measures to imprisonment, which represent an essential corollary of the re-educative principle provided by Art. 27 of the Italian Constitution, which states that the penalty must re-educate convicted people.

##### **Italian Constitution Art. 27**

«Criminal responsibility is personal.

A defendant shall be considered not guilty until a final sentence has been passed.

Punishments may not be inhuman and shall aim at re-educating the convicted.

Death penalty is prohibited».

Therefore alternative measures to detention allow convicted people who served a certain amount of imprisonment to resume contact with everyday life.

Alternative measures, regulated by criminal law and prison law, are:

1. Community service – *affidamento in prova ai servizi sociali* (Art. 47 and ff. Penitentiary Law (PL));
2. Day release – *semilibertà* (Artt. 48, 50 and 51 PL);
3. Home detention – *detenzione domiciliare* (Art. 47 ter PL);
4. Conditional release – *liberazione condizionale* (Art. 176, 177 CL).

Usually, alternative measures are granted (or revoked) by a specialized court (called “Surveillance Court”) which has jurisdiction over sentencing matters.

**Community service** could be compared to the system of *probation* existing in common-law countries, but in the Italian legal system it does not replace the custodial sentence and may be granted only after the final sentence has been passed. This measure may be granted when the final penalty does not exceed three years imprisonment or when, in the course of execution, the remainder of the sentence to be served is three years imprisonment; but it cannot be granted to those who have been convicted for committing very serious crimes, such as sexual offences, criminal association, aggravated robbery. Applying this measure, the court places the offender under the supervision of a social service imposing strict requirements on his conduct. Successful probation extinguishes the penalty.

**Day release.** Day released offenders may work - or study - outside of jail. This measure may be granted to convicts who served at least half of their sentence.

Lifers may be admitted to day release after twenty years of imprisonment; serious crimes offenders must have served two thirds of their sentence.

**Home detention** may be granted to:

pregnant women; mothers of children under the age of 10; people aged over 60; seriously ill people; people under the age of 21 for study or work when the penalty that remains to be served is not over four years of imprisonment.

All other convicted people may access home detention when, in the course of execution, the remainder of the sentence to be served is one year imprisonment.

**Conditional release** may be granted to people who:

- have served at least 30 months in prison and at half the sentence imposed;
- have compensated the damage caused;
- have shown clear signs of having repented for the crime committed.

The country under review did not provide examples of implementation. Italy indicated that no statistical data is available.

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

Further information was provided during the dialogue on the possibility of granting conditional release. If the conditions set out in the law are fulfilled, there is no limit to the possibility for a court to concede the benefit of parole (“*liberazione condizionale*”) to a sentenced person. Therefore, the benefit may be applied to persons sentenced for any of the offences covered by UNCAC.

### **Criminal Code:**

#### **Article 176.**

##### **Parole**

The person sentenced to a term of imprisonment who, during the period of execution of the sentence, has behaved in a way as to conclude he/she really repented, may be granted parole

if he/she has served at least thirty months and, in any event, at least half of his/her sentence, if the remainder of the sentence does not exceed five years.

As to recidivists, in the cases covered by the paragraphs of Article 99, the sentenced person – in order to be granted parole - must have served at least four years of the punishment and not less than three-quarters of the sentence imposed on him/her.

A person sentenced to life imprisonment may be granted parole when he/she has served at least twenty-six years of the sentence.

The granting of parole is subject to the fulfillment of civil obligations arising from the offense, unless the sentenced person proves that he/she is unable to fulfill them.

#### **Article 177**

##### **Revocation of parole or extinction of punishment**

When a sentenced person is granted parole, the execution of the preventive detention measure to which the sentenced person has been subjected, either upon conviction, or through a subsequent order, shall be suspended. Parole shall be revoked, if the released person commits a felony or misdemeanor of the same kind, or fails to comply with the obligations pertaining to release under supervision ordered in accordance with Article 230, para. 2. In that case, the time spent on parole shall not be counted as part of the period of the sentence and the sentenced person cannot be granted parole again. When the full term of punishment imposed has elapsed, or 5 years from the date of the parole measure in cases of a person sentenced to life imprisonment, without any ground for revocation having occurred, the punishment shall be extinguished and the personal preventive measures, ordered by the judge, either upon conviction or through a subsequent order, shall be revoked.

Italy has implemented the provision under review.

#### **Article 30 Prosecution, adjudication and sanctions**

##### **Paragraph 6**

*6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.*

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

Italy confirmed that it fully implemented this provision of the Convention.

Italy cited the following applicable measures:

Precautionary measures include suspension from public offices (**Art. 289 Code of criminal procedure**) and temporary prohibition to practise professional or business work (**Art. 290**). Only Judicial authorities are competent to adopt these measures. They require the public official to be a suspect or an accused, provided that conditions mentioned in paragraph 110 (above) are met. The recent anti-corruption law (**Article 1, paragraph 78 of Law 190 /2012**) extended the duration of these precautionary measures for crimes like bribery, embezzlement, misappropriation, i.e from 2 months to 6 months beginning from their implementation.

Apart from these criminal law measures, disciplinary procedures, typical of the category to which the public official belongs to, can lead to suspension or reassignment to a different office of the official. These procedures are conducted in such way to safeguard all the rights of the suspects and at the same time to prevent the accused from obstructing the investigation by influencing or intimidating witnesses or destroying evidence.

**Article 1, paragraph 78 of Law no. 190 /2012**

In Article 308 of the Code of Criminal Procedure after paragraph 2 the following is added:

«2-bis. Where the prosecution involves one of the offences provided for by Articles 314, 316, 316-bis, 317, 318, 319, 319-ter, 319-quater, paragraph 1, and 320 of the Criminal Code, the interdictive measures shall lose their validity after six months from the beginning of their execution. In any case, where they have been ordered for evidentiary requirements, the judge may order their renewal also after six months from the beginning of the execution, it being understood that in any case they shall lose their validity where a period of time equal to triple amount of the limits provided for by Article 303 has lapsed from the beginning of their execution.»

**Article 289 of the Code of Criminal Procedure**

**Suspension from holding public offices or services**

By a decision ordering suspension from holding public offices or services, the judge shall temporarily disqualify the defendant from carrying out all or part of the relevant activities.

When an offence against central and local government is being prosecuted, suspension from holding public offices or services may be ordered against a public officer or a person in charge of a public service also by imposing punishment thresholds other than those provided for in Article 287, paragraph 1. During the preliminary investigations, prior to ruling on the request for suspension from holding public offices or services submitted by the public prosecutor, the judge shall examine the defendant in the forms indicated in Articles 64 and 65.

Suspension shall not be ordered against the holders of elective offices directly elected by the people.

**Article 290 of the Code of Criminal Procedure**

**Temporary prohibition from exercising certain professional or entrepreneurial activities**

By a decision ordering prohibition from exercising certain professions, businesses or management functions in legal persons and businesses, the judge shall temporarily prohibit the defendant from exercising all or part of the relevant activities.

When an offence against public safety or against public economy, industry and trade or one of the offences specified in the criminal provisions in respect of companies and groups of companies and in Articles 353, 355, 373, 380 and 381 of the criminal code is being prosecuted, temporary prohibition from exercising certain professional or entrepreneurial activities may be ordered also by imposing punishment thresholds other than those provided for in Article 287, paragraph 1.

The country under review did not provide examples of implementation. Italy indicated that no statistical data is available.

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

Several provisions of the Criminal Procedure Code enable judges to take precautionary measures such as suspension and temporary prohibitions for public officials who are suspects or accused. The Law of 2012 extends the duration of such measures.

Further information was provided during the direct dialogue with regard to the new legislation and the ANAC's<sup>5</sup> role in monitoring public administrations and developing codes of conduct. In this context, it was noted that the National Action Plan also aimed to specify the link between disciplinary sanctions and corruption offences. ANAC has requested from each ministry to explain what disciplinary sanctions it would impose for each corruption offence. Furthermore, since 2013 violations of codes of conduct are now subject to disciplinary sanctions.

Italy has implemented the provision under review.

It was nevertheless recommended that Italy continue efforts to establish and strengthen disciplinary proceedings against public officials accused or convicted of corruption offences.

## **Article 30 Prosecution, adjudication and sanctions**

### **Subparagraph 7 (a)**

*7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:*

*(a) Holding public office; and*

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

Italy confirmed that it fully implemented this provision of the Convention.

Italy cited the following applicable measures:

“Accessory sanctions” (pene accessorie) to sentence include disqualification from public office (**Articles 28 and 29 Criminal Code**). A penalty of not less than 5 years imprisonment results in permanent disqualification from holding a public office; a penalty of not less than 3 years imprisonment results in disqualification from public office for 5 years. Other general measures are the disqualification from public office and from exercising the profession, trade or occupation of the convicted person (Article 31 CC) relating to abuse of functions or the breach of duties.

#### **Article 28 of the Criminal Code**

##### **Disqualification for public office**

Disqualification for public office shall be permanent or temporary.

Permanent disqualification for public office, except as the law provides otherwise, shall deprive the convicted person of:

- (1) the right to vote or to participate in any election and every other political right;
- (2) any public office, any non-compulsory position in the public service and any characteristics pertaining to a public officer or person charged with a public service;
- (3) the office of guardian or curator even temporary, and any other office related to guardianship or curatorship;
- (4) academic degrees and distinctions, titles, decorations or other insignia of public honour;
- (5) salaries, pensions and allowances paid by the State or other public body (1);
- (6) any privileges pertaining to any of the offices, services, degrees, titles, characteristics, distinctions or decorations specified in the preceding subparagraphs;

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<sup>5</sup> Formerly the CiVIT.

(7) the capacity to assume or acquire any right, office, service, characteristic, degree, title, distinction, decoration and honour specified in the preceding subparagraphs.

Temporary disqualification shall deprive the convicted person of the capacity to acquire, exercise or enjoy, during the period of disqualification, the aforesaid rights, offices, services, characteristics, degrees, titles and honours.(2)

This period may not be less than one year nor more than five years.

The law shall define those cases in which disqualification for public office will be limited to particular offices.

(1) By judgement no. 3 of 13 January 1966, the Constitutional Court declared this paragraph unconstitutional with reference to Articles 3 and 36 of the Constitution only with regard to the part establishing that the rights provided for therein originate from an employment relationship.

Subsequently, by judgement no. 113 of 19 July 1968 the Constitutional Court declared this paragraph unconstitutional with regard to war pensions.

(2) by judgement no. 3 of 13 January 1966 the Constitutional Court declared this paragraph unconstitutional only with regard to the part establishing that the rights provided for therein originate from an employment relationship.

#### **Article 29 of the Criminal Code**

##### **Cases in which conviction involves disqualification for public office**

A sentence to life imprisonment or a sentence to imprisonment for a term of not less than five years shall entail permanent disqualification of the convicted person for public office; and a sentence to imprisonment for a term of not less than three years shall entail his disqualification for public office for a period of five years.

A finding of habitual or professional criminality or of propensity to delinquency shall entail permanent disqualification for public office.

#### **Article 31 of the Criminal Code**

##### **Conviction for crimes committed through abuse of a public office or of a profession or trade**

Every conviction for a crime committed through abuse of the powers or violation of the duties pertaining to a public office, or a public service, or any of the offices specified in subparagraph (3) of Article 28 or through abuse of a profession, trade, industry, business or occupation, or through the violation of the duties pertaining thereto shall entail temporary disqualification for public office or for the profession, trade, industry, business or occupation.

The country under review did not provide examples of implementation. Italy indicated that no statistical data is available.

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

Italy has implemented the provision under review.

#### **Article 30 Prosecution, adjudication and sanctions**

##### **Subparagraph 7 (b)**

*7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:*

*(b) Holding office in an enterprise owned in whole or in part by the State.*

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

Italy confirmed that it fully implemented this provision of the Convention.

Other “Accessory sanctions” include legal disqualification (**Article 32 Criminal Code**), disqualification from holding the position of director in legal persons and companies (**Article 32 bis CC**) or disqualification from entering into contracts with the public administration (**Article 32quater CC**).

**Article 32 of the Criminal Code**

**Legal disqualification**

A person sentenced to life imprisonment shall be in a state of legal disqualification.

A sentence to life imprisonment shall also entail loss of parental authority.

A person sentenced to imprisonment for a term of not less than five years shall be in a state of legal disqualification during the period of punishment; the sentence shall also result, during the period of punishment, in suspension of the exercise of parental authority, unless the judge provides otherwise.

With respect to the disposition and control of property and to representation in transactions relating thereto, the rules of civil law concerning judicial interdiction shall apply to legal disqualification.

**Article 32-bis of the Criminal Code**

**Temporary disqualification from holding management functions in legal persons and businesses**

Disqualification from holding management functions in legal persons and businesses shall deprive the convicted person – during the period of disqualification - of the capacity to exercise the functions of manager, auditor, receiver, general director, and all other functions implying the power of representing the legal person or businessman.

Disqualification shall follow all sentences to imprisonment for not less than six months for crimes committed through abuse of the powers or violations of the duties pertaining to the function.

**Article 32-quater of the Criminal Code**

**Cases where the convicted persons are disqualified from negotiating with the public administration**

Every conviction related to crimes provided for in Articles...318, 319, 319 bis, 320, 321, 322, 322 bis committed with prejudice to or in favour of an entrepreneurial activity or related to it shall entail the impossibility to negotiate with the public administration.

The country under review did not provide examples of implementation. Italy indicated that no statistical data is available.

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

It was noted that the provisions cited involving the termination of the work or employment relationship, with regard to whom a sentence was made pursuant to Articles 317, 318, 319 or 319-ter, implements this provision.

Italy has implemented the provision under review.

**Article 30 Prosecution, adjudication and sanctions**

## Paragraph 8

*8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.*

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

Italy confirmed that it fully implemented this provision of the Convention.

Italy cited the following applicable measures:

Legislative Decree 30 March 2001, n. 165, concerning public employment, regulates the relation between disciplinary proceedings and criminal proceedings. It states that the former can be carried out and even concluded if the latter is pending (Art. 55-ter, paragraph 1, D.Lgs. n. 165/2001). Disciplinary proceedings may be suspended in case criminal proceedings are pending, until the termination of the criminal proceedings themselves. Meanwhile, it is possible to adopt measures against the employee, included suspension from office (provided by Art. 55-ter, paragraph 1); it is possible to conclude the disciplinary proceedings and, if necessary, reopen them after the criminal decision has become final.

Furthermore, **Law 27 March 2001 n. 97**, “*Norme sul rapporto tra procedimento penale e procedimento disciplinare ed effetti del giudicato penale nei confronti dei dipendenti delle amministrazioni pubbliche*” (“*Provisions on the relation between criminal and disciplinary proceedings and effects of res iudicata against civil servants*”) has amended Article 653 Code of Criminal Procedure concerning the effect of criminal decisions on disciplinary proceedings.

The country under review cited the following texts:

#### **Article 55-ter, 1st paragraph Legislative Decree no.165/2001 Relations between disciplinary and criminal proceedings.**

Disciplinary proceedings involving, in whole or in part, facts prosecuted by the judicial authority, shall be continued and concluded also when criminal proceedings are pending. For the violations of lesser importance, provided for by Article 55-bis, paragraph 1, first sentence, the suspension of proceedings shall not be admitted. For the most serious violations, provided for by Article 55-bis, paragraph 1, second sentence, the competent office, when the ascertainment of the fact with which the employee is charged is particularly complex, and, after the conclusion of the investigation, it does not have elements sufficient to motivate the infliction of a sanction, may suspend disciplinary proceedings until criminal proceedings are concluded, without prejudice to the possibility of adopting the suspension or other precautionary instruments in respect of the employee.

Where the unsuspended disciplinary proceedings conclude with the infliction of a sanction and, subsequently, criminal proceedings are defined by a final judgment of acquittal that recognizes that the fact with which the employee has been charged never took place, or that it does not constitute a criminal offence, or that the same employee did not commit it, the competent authority, upon request of the party, that has to be filed, on pain of lapse, within the term of six months from the final criminal judgment, shall re-open the disciplinary proceedings to modify or confirm its conclusive act in connection with the outcome of the criminal trial.

Where the disciplinary proceedings conclude with the filing in the archives and the criminal trial concludes with a final judgment of conviction, the competent authority shall re-open disciplinary proceedings to adjust the conclusive determinations to the result of the criminal trial. The disciplinary proceedings shall also be re-opened where it results from the final

judgment of conviction that the fact with which the employee may be charged at a disciplinary level entails the sanction of dismissal, but a different sanction has been applied.

In the cases provided for by paragraphs 1, 2 and 3, the disciplinary proceedings shall be, respectively, resumed or re-opened within 60 days from the communication of the judgment to the administration to which the worker belongs or the filing of the application for re-opening, and shall conclude within 180 days from the resumption or re-opening. The resumption and re-opening shall take place through a renewal of the charge by the competent disciplinary authority and proceedings shall continue according to the provisions of Article 55-bis. For the purposes of conclusive determinations, the proceeding authority shall apply the provisions of Article 653, paragraphs 1 and 1-bis, of the Code of Criminal Procedure in resumed or re-opened disciplinary proceedings (1).

#### **Article 653 of the Criminal Procedure Code**

Effectiveness of a criminal judgment in disciplinary proceedings.

A final criminal judgment of acquittal (1) has the effect of *res iudicata* in proceedings for disciplinary liability before the public authorities with regard to a finding that a fact never took place or does not constitute a criminal offence or (2) that the defendant did not commit it.

A final criminal judgment of acquittal has the effect of *res iudicata* in proceedings for disciplinary liability before the public authorities with regard to the ascertainment of the existence of the fact, its illegality and the allegation that the defendant committed it (3).

The words “*of acquittal*” and “*pronounced further to a trial*” were repealed by Article 1 of Law no 97 of 27 March 2001.

The words: “*does not constitute a criminal offence*” were inserted by Article 1 of Law no 97 of 27 March 2001.

(3) Paragraph added by Article 1 of Law no 97 of 27 March 2001.

The country under review did not provide examples of implementation.

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

Legislative Decree no. 165/2001 governs the relation between disciplinary and criminal proceedings, along with Article 653 of the Criminal Procedure Code and Legislative Decree 150/2009. Disciplinary proceedings may be carried out and concluded in parallel to criminal proceedings, or suspended pending final judgment, which depending on conviction or acquittal may also lead to reviewing disciplinary sanctions. Further provisions are contained in the anti-corruption law of 2012.

Information provided during the direct dialogue on disciplinary measures noted that after reform of 2009, disciplinary proceedings can be started and concluded parallel with criminal proceedings; the administration shall not have to wait for the outcome of the trial for the criminal trial. The administration may suspend proceedings awaiting for the conclusion of criminal trial. There are no statistics however.

ANAC noted that on violations of codes of conduct, it had organized many meetings with different types of administration and after those meetings collected specific information on disciplinary sanctions in each administration. It was reiterated that the code approved in 2013 violation has disciplinary profile while the previous code was only ethical in nature.

Italy has implemented the provision under review.

It was nevertheless recommended that Italy continue efforts to establish and strengthen disciplinary proceedings against public officials accused or convicted of corruption offences.

## **Article 30 Prosecution, adjudication and sanctions**

### **Paragraph 10**

*10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.*

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

Italy confirmed that it fully implemented this provision of the Convention.

According to art. 27 of the Italian Constitution punishments may not be inhuman and shall aim at re-educating the convicted.

According to art 1. of Law n.354 of 26 July 1975 (treatment and re-education), prison treatment shall be humane and shall assure respect for the dignity of each individual.

Treatment of accused persons shall be based on the principle that they are not considered guilty until the final sentence has been pronounced. Convicted offenders and internees shall undergo a rehabilitation treatment, aimed at their social re- inclusion, also by means of contacts with the outside community. Treatment shall be tailored to each individual with regard to the specific personal needs and circumstances.

If a sentence imposed does not exceed three years, the sentenced offender may be assigned to the Probation Service outside prison, for a period equal to the length of the sentence to be served.

A sentence of imprisonment not exceeding four years, even when representing the remaining part of a longer sentence, and the sentence of arrest may be served at the offender's own home or in another private home, or in a public health care centre or attendance centre or housing centre, in the following circumstances:

- a) pregnant women or mothers of children under the age of ten who are living with them;
- b) fathers having the parental responsibility for children under the age of ten living with them, where the mother is dead, or completely unable to take care of the children;
- c) persons with particularly serious health conditions, requiring constant care from health facilities outside prisons;
- d) persons over 60 years of age when disabled or partially disabled;
- e) persons under the age of 21 with documented needs in relation to health, study, work, family. (Home Detention).

The regime of semi-liberty consists of allowing a sentenced person and an internee to spend part of their day outside prison for purposes of work, education, or participation in other activities useful for their social reintegration. The beneficiaries of such a regime are assigned to special establishments or to separate units in ordinary prisons.

Art. 1 of the Regulations of execution of Penitentiary law also provides for treatment intervention .

Treatment of accused persons under measures of deprivation of liberty consists in offering direct interventions aiming at supporting their Human, cultural and professional interests. Re-educational treatment of prisoners and internees also aims at promoting the process of changing of personal conditions and behavior as well as of social and family relationships hindering a social constructive participation.

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

Further information was provided during the dialogue on examples of this provisions. It was noted the entire Italian penal system is based on the principle of re-education and strives to promote reintegration in society of convicted persons. By way of example it was referred to the case of Sergio Cusani, who was sentenced to 5 years 10 months imprisonment in 1995 for participation in bribing of government officials in the framework of the “Enimont” proceedings (the largest criminal proceedings held in the framework of the “Clean Hands” (“Mani Pulite”) investigations in Milan in 1992-1995). Mr. Cusani spent 4 years in prison and was subsequently awarded freedom on parole in 1998. He then proceeded to work for an NGO dealing with reintegration of ex-convicts as well as promoting numerous projects dealing with ethical finance. In 2009, in consideration of his efforts after his release, he was granted rehabilitation by the Court of appeal of Milan, which extinguished any further consequence of the crime committed.

Italy has implemented the provision under review.

**Article 31 Freezing, seizure and confiscation**

**Subparagraph 1 (a)**

*1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:*

*(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;*

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

Italy confirmed that it fully implemented this provision of the Convention.

Italy cited the following applicable measures:

The Italian legal system – the criminal code and special laws – basically provides for two types of confiscation that are different in nature: a security measure and a preventative measure.

Generally, when we speak of confiscation we refer to a security measure which is *post delictum*, i.e. after the offence has been ascertained.

Confiscation as a security measure, provided for by **Article 240 of the Criminal Code** and by numerous other provisions also enshrined in special laws, aims at preventing further crimes from being committed and concerns assets that are found to be, or assumed to be, a danger since they can be used to perpetrate further offences. Generally a part of the assets of the person subjected to the measure is attacked.

Confiscation of properties the value of which corresponds to that of such proceeds is also possible, even if in this latter case the aim is not deterrence but only depriving the offender of the profit derived from the offence itself.

Confiscation is ordered by a judicial authority after the conviction becomes final.

Article 240 CC is a general rule about confiscation. It provides for the confiscation of assets used or intended for use in committing an offence, or which constitute the proceeds or the profit of a crime. These assets (proceeds or profit) may also be confiscated cumulatively. In general, confiscation has a discretionary nature and can be decided by a court upon conviction of the perpetrator. Confiscation is, however, mandatory in a number of cases. In particular, confiscation is mandatory when the assets are the “price” or/and the profit of a public active/passive bribery or a fraud offence (**Articles 322ter and 335-bis CC**), or when the offence committed has a link with transnational organised crime (Article 11, Law 146/2006). Likewise, confiscation is mandatory when the assets are the “price” of the offence (meaning the price paid by a third party to commit the offence), or the production, use, transport, possession or transfer of which constitute an offence. In the latter case, confiscation is possible even in the absence of a conviction.

As just explained, confiscation is applicable to proceeds and instrumentalities of a criminal offence. There is no definition of the term “proceeds”, but, in practice, it is generally understood in a broad sense to cover both direct and indirect proceeds.

Expenditures for gaining criminal proceeds are not tax-deductible.

Value confiscation of corruption proceeds is possible pursuant to and to the extent provided by Article 322-ter Criminal code.

Confiscation cannot be ordered if the assets belong to *bona fide* third parties, provided that they are not involved in the commission of the offence. Under the Italian case-law, as developed by the Court of Cassation, the burden of proof of the *bona fide* lies on the third party who must prove, beyond any reasonable doubt, that s/he was not aware of the illicit origin of the asset owned. Moreover, as far as corruption offences are concerned, Article 322-ter of the Criminal Code establishes that confiscation of those assets to which the “offender has access” (implying the power to dispose of the assets) may be ordered. In practice, this covers corruption proceeds transferred to the offender’s closest relatives, although it would appear to possibly include other situations.

As said above, Article 322 ter of the Criminal Code provides that the judicial authority shall always order the confiscation (obligatory confiscation) of assets constituting the profit or price of the offence in case of conviction for bribery and corruption offences. When the confiscation of the price or profit is not possible, the judge may order the confiscation of assets the offender has the availability of, for an amount corresponding to that price.

**Article 6 of Law 27 March 2001, n. 97** provides that property confiscated in accordance with Articles 322-ter and 335-bis of the Criminal Code, i.e. assets of every kind derived from or obtained, directly or indirectly, through the commission of bribery offence and its price, is mandatorily acquired by the municipality in whose territory it is located. A judgment ordering confiscation is required for the transcription in the land register.

Assets different from real estate are generally sold.

Another kind of confiscation, “*confisca allargata*”, provided for by Article 12 *sexies* of Legislative Decree 306 of 8 June 1992 and amendments, fits into the category of confiscation as a security measures. It requires a conviction or the application of a sentence at the request of the parties. It is worth mentioning because pursuant thereto, a confiscation system has been introduced that is linked to a lesser extent to the criminal activity set forth in the indictment and more to the disproportion between the convict’s assets and his income or business, the

origin of which he cannot justify. The person concerned has to be convicted for serious offences such as mafia-type association or criminal association for the purposes of human trafficking, human trafficking, extortion, kidnapping for extortion, usury, money-laundering, terror offences and nearly all of the offences against the public administration, including corruption offences.

Italy cited the following texts:

**Article 240 Criminal Code**

**Confiscation**

«Upon a conviction, the judge may order the confiscation of anything which was used or intended for use in committing the offence, and anything which is the product or profit thereof. Confiscation shall always be ordered for:

- 1) anything which represents the proceeds of the offence;
- 2) of things whose manufacture, use, transportation, possession, or transfer constitutes an offence, even though no conviction has been pronounced.

The provisions of the first paragraph and of the subparagraph (1) of the preceding paragraph shall not apply if the thing belongs to a person who was not concerned in the offence.

The provisions of the subparagraph (2) shall not apply if the thing belongs to a person who was not concerned in the offence and its manufacture, use, transportation, possession, or transfer is permissible when proper administrative authorisation is obtained».

**Article 322-ter Criminal Code**

**Confiscation**

«In case of conviction, or of application of punishment upon request of the parties pursuant to art. 444 of the Code of Criminal Procedure, for any of the offences as per articles 314 to 320, even though they were committed by the persons referred to in article 322-bis, first paragraph, confiscation of the goods representing the price or the proceeds thereof shall always be ordered, unless the said goods belong to a person who has not committed the offence; if said confiscation is not possible, the confiscation of the goods which the offender has at his disposal shall be ordered for a value corresponding to such price.

In case of conviction or of application of punishment pursuant to article 444 of the Code of Criminal Procedure, as regards the offence provided for in article 321, even though it was committed in relation to art.322-bis, second paragraph, confiscation of the goods representing the proceeds thereof shall always be ordered, unless the said goods belong to a person who has not committed the offence; if said confiscation is not possible, the confiscation of the goods which the offender has at his disposal shall be ordered for a value corresponding to that of the said proceeds and, at all event, for a value which is not inferior to that of money or other assets given or promised to the public official or to the person in charge of a public service or to other persons referred to in art.322-bis, second paragraph.

In the cases provided for in paragraphs 1 and 2 the judge shall also determine, with the conviction, the sums of money or indicate the goods which shall be confiscated since they represent the price or proceeds of the offence or since they have a value corresponding to that of such proceeds or price»

**Article 325-bis Criminal Code**

**Pecuniary provisions**

Without prejudice to the provisions set forth in Article 322ter, in case of conviction for the offences as per this chapter, the confiscation shall at all events be ordered also as regards cases provided for in Article 240, first paragraph.

(Introduced by Article 6 of Law 27 march 2001, n. 97)»

**Article 335bis of the Criminal Code**

**Pecuniary provisions**

«Without prejudice to the provisions set forth in art.322ter, in case of conviction for the offences as per this chapter, the confiscation shall at all events be ordered also as regards cases provided for in art.240, first paragraph».  
(Introduced by Article 6 of Law 27 march 2001, n. 97)

**Article 6 of Law 27 march 2001, n. 97**

«The property confiscated in accordance with Articles 322-ter and 335-bis of the Penal Code is mandatory acquired by the municipality in whose territory it is located. The judgment ordering the confiscation, is required for the transcription in the land register».

**Article 12sexies of Legislative Decree 306 of 8 June 1992**

**Special cases of confiscation**

«1. In the cases of conviction or imposition of punishments upon request pursuant to Article 444 of the Code of Criminal Procedure, for any of the offences as per Articles 314, 316, 316 bis, 316 ter, 317, 318, 319, 319 ter, 320, 322, 322 bis, 325, 416 bis, 629, 630, 644, 644bis, 648, except for the cases referred to in paragraph 2, 648bis, 648ter of the Criminal Code, and per Article 12quinquies, paragraph 1, of Decree-Law no. 306 of 8 June 1992, converted, with amendments, into Law no. 356 of 7 August 1992, or for any of the offences designated in Articles 73, except for the cases as per paragraph 5 thereof, and 74 of the consolidated text of the law regulating narcotic drugs and psychotropic substances, prevention, care and rehabilitation of the corresponding drug-dependencies, approved with Presidential Decree no. 309 of 9 October 1990, confiscation shall always be ordered of the money, goods or assets whose origin cannot be accounted for by the offender and which the latter, with or without the agency of natural or legal persons, is found to own or have at his disposal for whatever purpose out of all proportion to his income, as reported in the income tax return, or to his own economic activity».

The country under review cited the following examples of implementation:

By means of the decision issued on 8 March 1997, the Court of Naples convicted the former Minister for Health Mr. Francesco De Lorenzo to 8 years and 4 months imprisonment, and 3.600 million lire fine because he had been judged liable for the offences of conspiracy aimed at bribery, bribery, and illegal financing of political parties, for an overall amount of 67 offences; because, on several occasions, he received undue sums of money (more than 9 billion lire) by pharmaceutical entrepreneurs in order to quickly negotiate and positively define the practices of their enterprises at the Ministry of Health. In the case in point, the practices concerned the determination and revision of the price of medicines by the drugs' C.I.P. (the inter-ministerial committee on the price of drugs).

Furthermore, by means of the above-mentioned judgement, the confiscation of the sums of money and valuables seized has been provided, as they were the price of the bribery offences charged to the defendant.

By means of the judgement issued on 7 July 2000, the Court of Appeal of Naples substantially confirmed the first instance judgement sentencing the defendant for other four offences, discharging and acquitting him from other 7 offences, and calculating again the inflicted penalty to 7 years, 6 months, and 20 days imprisonment.

The above-mentioned judgement was confirmed by the Court of Cassation, become definitive on 14 June 2001.

The subject of the confiscation was:

- 1) the sum of 3,994,000,000 lire seized by seizure decree on 22 November 1994;
- 2) 285 golden pounds seized enforcing the seizure provided for on 23 September 1994 by the Court of Naples;

3) nine ancient shepherd statues and precious objects seized by virtue of the seizure decree ordered by the public prosecutor on 14 July 1993.

By means of the order on 18 December 2003, the Court of Appeal of Naples provided for the enforcement of the above-mentioned judgement concerning the confiscation of the above-mentioned assets.

By means of the judgement issued on 12 February 2005, deposited on 21 April 2005, the High Court of Cassation, 5<sup>th</sup> section, overturned the above-mentioned ruling recommitting the decision to the Court of Appeal for a new procedure.

By means of the order on 7 December 2006, the Court of Appeal of Naples ordered the restitution, to De Lorenzo, of 9 ancient shepherd statues and other precious objects. It declared also the inadmissible nature of the restitution request filed by the same De Lorenzo, as well as the request placed by the prosecutor general for enforcing the confiscation of the sum of money amounting to 3,994,000,000 lire, believing that the competence was up to the Court as far as the provisions on the matter were concerned.

Poggiolini Duilio, general director of the pharmaceutical service of the Ministry of Health, was convicted by the Court of Naples, by means of the judgement issued on 20-21 July 2000, to 7 years and 6 months imprisonment for 27 bribery offences, because he received undue sums of money amounting to more than 9 billion lire, by the pharmaceutical entrepreneurs for quickly negotiating and positively defining the practices of their enterprises at the Ministry of Health.

Furthermore, by means of the above-mentioned judgement, the confiscation of the following assets was ordered. They constituted the price of the bribery offences:

- 1) the sum of 29,700,000,000 lire deposited on the current account registered in the name of Poggiolini at the Bank of Italy;
- 2) the sum of 10,526,000,000 lire seized to Pierr Di Maria (Poggiolini's wife);
- 3) gold bars whose value amounted to some 710 million lire seized to Poggiolini;
- 4) some pictures seized to Poggiolini.

By means of the judgment issued on 28 February 2002, the Court of Appeal of Naples discharged/acquitted Poggiolini from 15 offences, re-determining the inflicted penalty to 4 years and 4 months imprisonment, confirming the remaining part of the first instance judgement; in the case in point, the rulings concerning the confiscation.

The above-mentioned judgement became definitive on 14 June 2001.

Italy indicated that no information on the number and types of cases in which proceeds were confiscated, or on the amount of confiscated proceeds of offences established in accordance with the Convention, is available.

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

Article 240 of the Criminal Code establishes a general provision on confiscation by an order of a judge of proceeds and instrumentalities of the offence. Further provisions exist in Articles 322-ter, 325-bis and 335-is of the Criminal Code, as well as in Legislative Decree no. 306/1992 and Law no. 97/2001. Confiscation can be value-based and is mandatory in several cases. Authorities may initiate investigations in order to identify, trace and freeze the proceeds of crime.

It was further noted during the direct dialogue that if a person is convicted for offences against public administration and if his assets are disproportional, there are instances of confiscation.

Furthermore, during the public consultations in direct dialogue, it was noted by civil society organizations that the practice of using confiscated assets for the public good had been implemented successfully in Italy through law 109/96.

The legislation and the examples of law enforcement practices provided by Italy shall be considered as good practices with regard to the practice of implementation and enforcement of the provision under review.

Italy has implemented the provision under review.

## **Article 31 Freezing, seizure and confiscation**

### **Subparagraph 1 (b)**

*1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:*

*(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.*

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

Italy confirmed that it fully implemented this provision of the Convention.

Italy cited the following applicable measures:

See previous reply (under subparagraph 1 (b)) in particular with reference to Article 240 Criminal code. It provides that the judge may order the confiscation of things used to commit the offence (*corpus delicti*): “confiscation of assets used or intended for use in committing an offence”.

The Code of criminal procedure (Articles 321, 253 and 354) enables law enforcement agencies or judicial authorities to seize equipment and other instrumentalities used in or destined for the commission of crimes, when the seizure is functional to the future confiscation which may be ordered by a court with the final decision.

**Article 240 Criminal Code  
Confiscation  
(see citation above)**

**Article 322-ter Criminal Code  
Confiscation  
(see citation above)**

#### **Article 19.1 LD 231/2001:**

“the confiscation of the price or the proceeds of the offence, apart from the portion which may be given back to the damaged person, shall always be ordered against the body.” Furthermore, article 19.2 provides that confiscation of “sums of money” or property of equivalent value (“goods or other advantages”) is possible where the bribe or proceeds themselves may no longer be available

The country under review did not provide examples of implementation.

No information was available regarding the amount/types of property, equipment or other instrumentalities confiscated.

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

Italy has implemented the provision under review.

**Article 31 Freezing, seizure and confiscation**

**Paragraph 2**

*2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.*

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

Italy confirmed that it fully implemented this provision of the Convention.

The country under review cited the following texts:

Seizure as an interim security measure is provided for by **Articles 253-255 and 321 of the Criminal Procedure Code (CPC)**. In particular, the seizure of assets prior to confiscation can be ordered by the competent judge (or public prosecutor in urgent cases), at any moment during the investigation process, in two cases: (1) when it is necessary to prevent the commission of an offence - or its continuation - or when they are subject to confiscation (preventive seizure); (2) when the assets can serve as evidence in the investigation (probatory seizure). Such seizure can be executed without prior notice to the party concerned. If urgent investigatory action is required, the competent prosecution and police authorities may temporarily seize assets; these measures must be confirmed by the court within 48 hours (**Article 321(3)-ter CPC**).

Pursuant to Article 61 of Law 133/2008, as well as Article 2 of Legislative Decree 143/2008, the Justice Single Fund (Fondo Unico Giustizia) is entrusted with monies or other financial/credit titles seized and confiscated. This institution was created, in particular, with the aim of collecting all incomes from fines, etc. in order to redistribute them to priority objectives in the functioning of justice. The management of other seized/confiscated movable/immovable assets is entrusted to the National Agency for managing and allocating seized and confiscated assets of the organized crime (Agenzia Nazionale per l'amministrazione e la destinazione dei beni sequestrati e confiscati alla criminalità organizzata), set up by the Law 50/2010 and the Italian Public Property Agency (Agenzia del Demanio) deals with support activities to the National Agency for managing and allocating seized and confiscated assets to the organized crime.

The authorities may initiate specific investigations aimed at identifying, tracing and freezing the proceeds of crime and are entitled to request data on the suspect from different bodies, e.g. tax authorities, banks, etc. The competent judge is entitled to order the seizure of documents, valuables, bonds, shares, securities and money deposited in bank accounts (**Article 255 CPC**) belonging to, not only the main suspect, but also third persons (so-called nominees) when reasonable grounds exist to believe that those assets were acquired in the framework of the commission of the offence being investigated. Further investigative measures may be employed by law enforcement authorities to prosecute criminal offences effectively, for example, Law 172/92 allows for the controlled delivery of funds suspected to be linked to a money laundering operation. Likewise, Law 146/2006 implementing the Palermo Convention, allows public prosecutors to continue to investigate, trace and identify those assets deriving

from transnational organised crime offences until the date of conviction before the court (Article 12, Law 146/2006).

### **Article 321 Code of Criminal Procedure**

#### **Preventive seizure**

«When there is the danger that the free availability of a thing pertaining to the offence could aggravate or extend the consequences of the offence or facilitate the commission of other offences, the judge having jurisdiction to rule on the merits, upon request of the public prosecutor, shall order by reasoned decree that said thing be seized. Prior to the initiation of criminal proceedings, seizure shall be ordered by the judge for preliminary investigations.

The judge may also order the seizure of any property that may be confiscated.

(2-bis) During criminal proceedings relating to the offences specified in Chapter I, Heading II of the second Book of the criminal code, the judge shall order the seizure of any property that may be confiscated.

Seizure shall immediately be revoked upon request of the public prosecutor or the person concerned when the conditions of applicability provided for in paragraph 1 are not met, also as the result of subsequent events. During the preliminary investigations, the public prosecutor shall rule by reasoned decree served on all those entitled to lodge an appeal. When the person concerned requests that seizure be revoked, the public prosecutor who holds that such a request is to be even partially turned down, shall send it to the judge and shall submit his/her specific requests and the elements on which his/her reasoning is grounded. The request shall be transmitted no later than the day following the day on which it was filed with the judge's clerk.

(3-bis) During the preliminary investigations, when it not possible to wait for the judge's decision, because of the situation of urgency, seizure shall be ordered by the public prosecutor by reasoned decree. In the same cases, prior to the intervention of the public prosecutor, seizure shall be carried out by judicial police officers who, within 48 hours from seizure, shall transmit their written report to the public prosecutor of the place where the seizure was carried out. The public prosecutor who does not order that the property seized be returned, shall ask the judge to confirm the seizure and to issue the decree provided for in paragraph 1 within 48 hours from seizure, when the seizure was ordered by the public prosecutor, or from receipt of the written report, when the seizure was carried out by the judicial police on their own motion.

(3-ter) Seizure shall lapse when the time limits provided for in paragraph 3-bis are not complied with or when the judge does not issue the confirmation order within ten days from receipt of the request. A copy of the order shall be immediately served on the person whose property has been seized».

### **Article 253 of the Code of Criminal Procedure**

#### **Seizure – Object and formalities**

«The judicial authority shall order by reasoned decree the seizure of the *corpus delicti* and things pertaining to the offence which are necessary to ascertain the facts.

*Corpus delicti* means things on which or through which the offence was committed as well as things that constitute the product, benefits or proceeds of the offence.

The judicial authority or a judicial police officer delegated by the above-mentioned decree shall personally carry out the seizure.

Copy of the seizure decree shall be given to the person concerned, if present».

### **Article 254 of the Code of Criminal Procedure**

#### **Seizure of correspondence**

In any place providing postal, telegraph, computerized or telecommunication services, the judicial authority may seize letters, envelopes, parcels, valuables, telegrams and any other correspondence, even if sent via a computer, when it has well-founded grounds to believe that

they were sent by the defendant or were addressed to the latter, also under a different name or by means of a different person, or that they may be in any case related to the offence <sup>(1)</sup>.

When seizure is carried out by a judicial police officer, the latter shall deliver the correspondence seized to the judicial authority, without opening or modifying it or getting knowledge of its contents.

Papers and other documents seized which do not fall within the correspondence that may be seized shall immediately be returned to the person entitled to them and in no case shall they be used.

Article thus modified by Article 8, paragraph 3, of Law n. 48 of March 18, 2008.

#### **Article 255 of the Code of Criminal Procedure**

##### **Banking seizure**

«The judicial authority may seize documents, securities, assets, money deposited in current accounts and any other property held in banks, even if kept in safe-boxes, when it has well-founded grounds to believe that they are pertaining to the offence, although they do not belong to the defendant or are not registered in the defendant's name».

The country under review did not provide examples of implementation. Italy indicated that no statistical data is available.

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

Seizure is provided for in Articles 253 to 255 and 321 of the Criminal Procedure Code. It was noted that such measures were often ordered, which raised issues considering the length of criminal proceedings in Italy and the fact that such interim measures could therefore be imposed for a substantial period of time.

During the dialogue and public consultations, representatives of the private sector raised concerns with regard to the implementation of article 321 of the Criminal Procedure Code. They noted that protection measures and sequester of assets during the preliminary investigation were often pronounced both in Italy and abroad, and that there was a lack of uniformity in the consequences for ventures outside of the country. There was also an issue with regard to the deferred prosecution agreements agreed to abroad but not recognized in Italy.

Given the length of criminal proceedings, that has been flagged a concern for Italy, assets were under such preventive protective measures for extended periods thereby affecting operations pending the outcome of the proceedings.

Italy has implemented the provision under review.

#### **Article 31 Freezing, seizure and confiscation**

##### **Paragraph 3**

*3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.*

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

Italy confirmed that it fully implemented this provision of the Convention.

Italy cited the following applicable measures:

The national civil and criminal procedural framework provide for the administration of seized and confiscated assets and goods.

Furthermore, as to the provisions regulating the administration of seized or confiscated property, please refer to Law Decree Nr. 159/2011 (“Code of Anti-mafia Laws and preventive measures, and new provisions on anti-mafia documents, in compliance with articles 1 and 2 of the August 13, 2010 Law Nr. 136): in particular, we would like to highlight the role played by the Agenzia Nazionale per l’Amministrazione e la Destinazione dei Beni Sequestrati e Confiscati (National Agency for the Administration and Destination of Seized and Confiscated Assets) (hereinafter “The Agency”) in ensuring a correct management of seized and confiscated assets related to serious criminal offences, including offences related to organized crime as well as corruption related offences.

The Agency has been set up with Decree of 4 February 2010, no. 4, converted by Parliament into Law 31 March 2010, no. 50. The Agency has, among others, competence to assist the judicial authorities in the management and custody of goods seized – among others - according to Article 12-sexies of Decree 8 June 1992, no. 306, converted into Law 7 August 1992, no. 356. This competence is confirmed by paragraph 4-bis of said Article 12-sexies, as recently amended by Article 1, paragraph 190, of Law 24 December 2012, no. 228, operative as of 1 January 2013.

In particular, paragraph 1 of this provision provides for the mandatory confiscation, in case of conviction or agreement on application of a penalty for a list of criminal offences, including the corruption offences provided by the Italian Criminal Code (Articles 314, 316, 316-bis, 316-ter, 317, 318, 319, 319-ter, 320, 322, 322-bis, 325), of “money, assets or other utilities of which the convicted person cannot justify the origin and which he owns or disposes of, directly or through a third natural or legal person”.

Furthermore, the Agency has competence, after the final decision and the confiscation of said assets, to administer them and organize their destination to institutional or social purpose.

Although the main remit of the Agency concerns the management of property confiscated from organized crime, it also carries out its functions for the best possible administration of the assets confiscated as a result of convictions in the field of corruption.

Italy indicated that Since the competence of the Agency in relation to corruption offences has been attributed only since January of this year, there is as yet no available information on concrete cases.

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

The National Agency for the Administration and Destination of Seized and Confiscated Assets was set up in 2010 to assist judicial authorities in the management of assets.

It was also clarified that a receiver is appointed based on the direction of the judge in pre-trial stage, a prosecutor, and then a trial judge during the trial.

Italy has implemented the provision under review.

### **Article 31 Freezing, seizure and confiscation**

#### **Paragraph 4**

*4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.*

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

Italy confirmed that it fully implemented this provision of the Convention.

Italy cited the following applicable measures:

According to established case-law, the product of an offence means the result of an offence or the property created through the illicit activity; the profit of the offence means the economic advantage and profit obtained through an offence: it includes primary and also secondary proceeds i.e., the ones transformed or converted into other property. The price of an offence means the agreed consideration.

Section 322 of the Criminal Code applied to the offences therein provided shall regulate the obligatory confiscation of the assets constituting the price of the offence, that is the corresponding value, or rather the profit or indirect advantage obtained through the offence.

According to Article 322 ter Criminal Code (Confiscation) and under the provision of the Leg. Decree n. 231/01, in case of proceeds of crime have been transformed or converted, it is possible to ask for and obtain the confiscation of different values and goods until up to the amount of the proceeds gained.

The country under review did not provide examples of implementation. Italy indicated that no statistical data is available.

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

In Italy, confiscation applies also to proceeds that have been transformed, converted or intermingled, if necessary through their corresponding value, as well as income or benefits derived from such proceeds.

Italy has implemented the provision under review.

**Article 31 Freezing, seizure and confiscation**

**Paragraph 5**

*5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.*

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

Italy confirmed that it fully implemented this provision of the Convention.

Italy cited the following applicable measures:

Confiscation can be likewise set up to the value of the proceeds of crime (reference is made to the text of the afore-mentioned article 322 ter:“Confiscation”) .

The confiscation of the equivalent amount is provided for by section 322 ter of the criminal code, last paragraph, for the offences therein specified (corruption, bribery, etc.), as well as

for the offences provided for under section 640, 640 bis and ter of the criminal code. (fraud, aggravated fraud to obtain public disbursement and computer fraud).

Over the years, the case-law specified that the confiscation of equivalent amounts has the aim of “neutralising the economic advantages obtained through the criminal activity” and that, unless the confiscation as provided for under section 240 of the criminal code, does not ask for a relationship between the offence and asset. In fact the confiscation of equivalent amounts asks for a) the perpetration of one of the offences specified under section 322 ter of the criminal code is verified; b) the asset does not belong to a third party; c) the price or profit of the offence has not been found out among everything available to the author of the offence.

The Italian Court of Cassation, Joint Sections, decision no. 26654 of 27 March 2008 and recently, Court of Cassation, Criminal Division II, decision no. 20976 of 22 February 2012, has ruled that, for the purpose of confiscation, the profit of the crime in the preventative seizure consists in the economic advantage deriving directly and immediately from the crime and it is determined by the net real profit (benefit) achieved and cannot include the lawful activities carried out in the same context.

The reasoning of the decision explains that the profit subject to confiscation cannot spread up to determine an unreasonable and essential duplication of the measure when the result of the economic activity carried out cannot be linked directly with the crime, even if the original source was illicit.

In this regard, the case law, in line with scholarly opinions, has made it clear that confiscation is not anymore based only on the danger arising from the availability of instrumentalities for committing the crime and with the aim of preventing further crimes from being committed. In fact, the only purpose of the value confiscation is to deprive the offender of the profit derived from the offence itself.

For instance, if the bribery helped in the phase of awarding a contract, but then the contracting firm has regularly fulfilled the obligations arising from the contract (lawful) the advantage of the bribery offence for the briber does not correspond to the full price of the contract, but only to the economic advantage obtained for having been adjudged the contract itself and that corresponds to the net profit of the business assets.

**Article 322-ter Criminal Code  
Confiscation  
(see citation above)**

The country under review did not provide examples of implementation. Italy indicated that no statistical data is available.

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

In Italy, confiscation applies also to proceeds that have been transformed, converted or intermingled, if necessary through their corresponding value, as well as income or benefits derived from such proceeds.

Italy has implemented the provision under review.

**Article 31 Freezing, seizure and confiscation**

## **Paragraph 6**

*6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.*

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

Italy confirmed that it fully implemented this provision of the Convention.

Italy cited the following applicable measures:

See previous replies. Legislation in force enables the competent authorities to “attack” any benefits derived from crime proceeds.

Indeed, according to the national legal framework, also the income or other benefits into which the proceeds of crime have been invested can be subject to the a/m discretionary confiscation.

In case of goods that must be confiscated do not totally match with the proceeds of crime, the so called “confiscation for equivalent” can also be applied to other income or benefits that belong to the defendant.

Furthermore, if the proceeds of crime have been invested by “third” people who are aware about the illicit origin of the goods/money, they can be convicted for money laundering.

The country under review did not provide examples of implementation. Italy indicated that no statistical data is available.

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

In Italy, confiscation applies also to proceeds that have been transformed, converted or intermingled, if necessary through their corresponding value, as well as income or benefits derived from such proceeds.

Italy has implemented the provision under review.

## **Article 31 Freezing, seizure and confiscation**

### **Paragraph 7**

*7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.*

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

Italy confirmed that it fully implemented this provision of the Convention.

Italy cited the following applicable measures:

Seizure of bank records is provided for by **Article 255 of the Criminal Procedure Code (CPC)** for banks and **Article 1, paragraph 6 of Law 19 March 1990, n. 55** for Public Administration Offices, credit companies, firms, companies and any other body.

According to the national legal framework in the field of tax audits and criminal investigations, the Guardia di Finanza and Carabinieri are entitled to demand disclosure of bank records for financial records. These documents can also be seized in order to prove the charges.

Please see also the replies to Article 31 (2) UNCAC.

The country under review cited the following texts:

**Article 255 of the Code of Criminal Procedure  
Banking seizure**

«The judicial authority may seize documents, securities, assets, money deposited in current accounts and any other property held in banks, even if kept in safe-boxes, when it has well-founded grounds to believe that they are pertaining to the offence, although they do not belong to the defendant or are not registered in the defendant's name».

**Article 1, paragraph 6 of Law 19 March 1990, no. 55**

«The State Prosecutor and the Police Superintendent may request, directly or through Judicial Police officers or agents, to any Office of the Public Administration, any credit institution, as well as any enterprise, company and entity of any kind, information and copies of the documents deemed useful for the purposes of investigations in respect of the persons indicated in the preceding paragraphs. Upon authorization of the State Prosecutor or the Prosecuting Judge, the Judicial Police officers may proceed to the seizure of documents by the modalities laid down in Articles 253, 254 and 255 of the Code of Criminal Procedure»

The country under review did not provide examples of implementation. Italy indicated that no statistical data is available.

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

In Italy, judicial authorities may seize bank records under Article 255 of the Criminal Procedure Code, as well as request information under Law 55/1990.

Italy has implemented the provision under review.

**Article 31 Freezing, seizure and confiscation**

**Paragraph 8**

*8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.*

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

Italy confirmed that it fully implemented this provision of the Convention.

Italy cited the following applicable measures:

Please see previous reply especially with regard to the “confisca allargata”

If the seizure has been executed during a “prevention” proceedings – including, in any case, all forms of guarantee of criminal proceedings (right to defense, to discussion, to different degrees of judgment – the offender (or his frontman) is required to demonstrate the lawful origin of such alleged proceeds of crime, according to the principle of “reversed burden of proof.

In this way, the offender can always demonstrate the lawful origin of the alleged proceeds of crime.

On the other hand Law Decree 306/92, article 12 sexies provides for the mandatory confiscation, in case of conviction or agreement on application of a penalty for a list of criminal offences, including the corruption offences provided by the Italian Criminal Code (Articles 314, 316, 316-bis, 316-ter, 317, 318, 319, 319-ter, 320, 322, 322-bis, 325), of “money, assets or other utilities of which the convicted person cannot justify the origin and which he owns or disposes of, directly or through a third natural or legal person”.

The country under review did not provide examples of implementation.

Italy indicated that no data is available regarding recent cases where an offender has been required to demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation.

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

Italy provides for mandatory confiscation of assets where offenders cannot justify their origin.

Italy has implemented the provision under review.

**Article 31 Freezing, seizure and confiscation**

**Paragraph 9**

*9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.*

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

Italy confirmed that it fully implemented this provision of the Convention.

Italy cited the following applicable measures:

See previous replies. Confiscation cannot be ordered if the assets belong to bona fide third parties, provided that they are not involved in the commission of the offence. Under the Italian case-law, as developed by the Court of Cassation, third parties are not deemed to be involved in the commission of the offence when they are in bona fide. The burden of proof of the bona fide lays on the third party who must prove, beyond any reasonable doubt, that s/he was not aware of the illicit origin of the asset owned. Moreover, as far as corruption offences

are concerned, Article 322-ter of the Criminal Code establishes that confiscation of those assets to which the “offender has access” (implying the power to dispose of the assets) may be ordered. In practice, this covers corruption proceeds transferred to the offender’s closest relatives, although it would appear to possibly include other situations.

The country under review did not provide examples of implementation.

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

The system of the protection of the rights of bona fide third parties is in place.

Italy has implemented the provision under review.

**Article 32 Protection of witnesses, experts and victims**

**Paragraph 1**

*1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.*

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

Italy confirmed that it fully implemented this provision of the Convention.

Italy cited the following applicable measures:

In Italy, the protection of collaborators of justice is provided for by Law no. 82 of 5 March 1991 and Law no. 45 of 13 February 2001.

The cooperation of witnesses may concern any type of crime (unlike what is provided for collaborators of justice, for whom specific types of offences are envisaged) and their cooperation must be inherently reliable in order to apply the protection measures. The protection measures may be applied to witnesses when the persons for whom the measures are proposed are in serious and impending danger in relation to the quality and relevance of the statements made before the Italian Judicial Authority, and to the type of reaction or threat posed by the criminal group in relation to which cooperation is provided and statements are made shall be taken into account and assessed with specific reference to the force of intimidation the local criminal group avails itself of.

According to the Italian law, a witness is a person who, in relation to the offences on which he testifies, is the victim of a crime and is not involved in any offence. The persons involved as defendants or defendants of a related crime in a criminal case don’t have this status.

The admittance procedure into the protection program is submitted by the Judicial Authority and authorized by the Central Commission for the special protection measures.

The country under review cited the following text:

Law no.82 of 5 March 1991 and Law no. 45 of 13 February 2001.  
(see excerpts cited below)

The country under review provided the following examples of implementation:

Based on Italy's experience, the offence of corruption hasn't so far shown a modus operandi which would require the application of security/surveillance measures on the persons involved. Since it is an offence involving public officials, non-violent forms of coercion/persuasion are generally preferred towards both the persons directly concerned and their families.

Therefore it is impossible to make reference to any case history and provide specific elements.

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

Italy has extensive provisions for the protection of witnesses, under Law no. 82 of 1991, and for the protection of collaborators of justice, under Law no. 45 of 2001.

Protection measures are requested by the public prosecutor, decided on by the Central Commission and implemented by the Central Protection Service.

Protection measures may include security, relocation, provisional or definitive identity change, and the possibility of testifying by videoconference. Measures may also extend to the person's relatives and apply to victims insofar as they are witnesses. Italy does not provide specific protection measures for experts.

It was also noted during the direct dialogue that Italy experienced challenges in obtaining informers, or persons to report corruption offences as they were secretive by nature. In some cases, agreements between prosecution and defence to resolve cases through plea-bargaining affected the implementation of this provision.

Italy provided the following additional information regarding the special measures of protection of witnesses.

The protection of witnesses is granted by economic assistance for the social reintegration. Where requested by security reason, the witness is moved to a new safe location, then it is also provided a new identity (change of name and new documents).

Italy highlighted that standard protection measures (fixed surveillance, houses and properties radio surveillance, escort and protection services) are provided for those subjects being at risk because of their cooperation (matter under discussion here) or their institutional activity (judges, senior officials, members of Parliament, etc), or for their professional or personal condition. These measures, which are normally carried out by local Police forces, cover house and work surveillance, escorting the subject to the places he/she must reach for his/her essential life needs, and any other actions adopted by the competent Authorities. Whenever the above mentioned measures prove to be inadequate, special protection measures can be adopted for collaborators of justice only, if provided for by the law.

Provisions regarding collaborators of justice and their family units were introduced by Decree-law no. 8 dated 15 January 1991, converted into Law no. 82 dated 15 March 1991. This Law was amended extensively by Law no. 45 dated 13 February 2001, which regulated

the enforcing aspects of this matter through a series of Inter-Ministerial Decrees. Law no. 45/2001 introduced some new elements, including the distinction between informants and witnesses.

Informants: whoever faces criminal charges, but agrees to cooperate with the judicial authorities by giving testimony, thus exposing themselves and their family members to a serious impending danger. The kind of crimes committed giving admittance to the protection programme are: criminal association of mafia-type, criminal association aimed at tobacco smuggling, enslavement, child prostitution and pornography, possession of child pornography images, sex tourism, trafficking in human beings, criminal association aimed at drug trafficking, subversion and terrorism. Justice collaborators are granted alternative measures to imprisonment, reduced sentences and others imprisonment benefits.

Witnesses: any victim of a serious crime or having witnessed a crime who testifies at trials, thus exposing himself/herself to a serious impending danger. They can distinguished as follows: eyewitnesses, witnesses of criminal facts occurred in their domestic or environmental context (e.g. relatives of members of criminal groups), and entrepreneurs and traders having been the victims of racket. Between witnesses and informants there are some differences regarding their status (rights and obligations) and the way they are managed from an administrative point of view.

Law 45/2001 introduced another new element: informants with a criminal past must indicate their properties, which are then seized by the judicial authorities, under some specific conditions.

The protection system introduced by Law no.82/91 and by Law 45/2001, introduces three reference points: the Public Prosecutor, (or the judge appointed by the Antimafia Direction), who requests the protection program; the Central Commission, which makes the decision about the proposal; and the Central Protection Service, responsible for implementing the program.

The protection proposal for justice collaborators is put forward by the judicial authorities and examined by the Central Commission, which is made up by the Deputy Minister of the Interior (President), two judges, and five Police Officers having a vast experience in the field of organized crime, but who are not assigned to investigative offices investigating on cases or criminal proceedings linked to organized crime, mafia, and terrorism. The judges of the Central Commission cannot exercise their judging functions in the criminal proceedings in which the protected persons are involved. The Commission makes the decision on the admission to the protection programme, its revocation or its termination, and on financial and new legal identities requests.

The Central Protection Service, together with its 19 Local Operational Units all over Italy, is responsible for implementing protection programmes and temporary protection plans, that is, it provides assistance measures in favour of protected persons, maintains contacts with central and local agencies to solve problems concerning the collaborators' human relationships (school, health, work, etc.), assists local Police forces in ensuring their safety.

The special protection measures for collaborators of justice are applied in the following cases:

- when there is a serious impending danger;
- when the danger derives from the cooperation or the statements made during criminal proceedings;
- when the cooperation refers to a particular kind of crime (see crimes listed above);
- when standard measures which can be adopted by the Law Enforcement Authorities or the Penitentiary Administration (for detainees) are inadequate.

If the candidate is a witness, that is, if he/she makes statements in his/her quality of injured party, or as “an informed witness” or a witness, he/she can be admitted to the protection scheme regardless the type of crime for which he/she cooperates.

The law also clarifies the characteristics of cooperation in order to create the conditions for the implementation of the special protection measures. In fact, the cooperation and the statements made by the collaborators must be trustworthy and provide new full and additional information, or be of major importance for the investigation follow-up.

Special protection measures have a time limit, which is fixed by the Central Commission: no less than six months and no longer than five years. Within this period of time, reviews are carried out in order to establish whether the programme has to be modified or revoked.

Law 45/2001 introduced another new element: the candidate must supply the following information to the Public Prosecutor, within 180 days from the moment he/she has manifested his/her will to cooperate :

- all useful information he/she can possess to reconstruct the facts and circumstances on which he/she is questioned;
- all useful information he/she can possess to reconstruct other serious and socially dangerous facts;
- all useful information he/she can possess to locate and arrest the perpetrators of serious and socially dangerous crimes;
- all useful information to identify, seize and confiscate money, goods, and any other assets the candidate can possess directly or indirectly.

These statements are extremely important because, according to the law, special protection measures and even imprisonment benefits depends on them.

As for the above-mentioned benefits, the law envisages that informants sentenced for a crime included among the ones entitling to obtain the cooperating status are granted such a status departing from the provisions in force, though the measures departing from the minimum sentence terms can be adopted only after the informants have served at least one quarter of their prison sentences or ten years in the event of a life sentence.

The special protection measures, which can be extended to the persons living permanently with the witness or the informant as well as to the persons exposed to a serious impending danger, in particular situations, due to their relationships with the collaborators, are the following:

- temporary plan of protection;
- special protection measures adopted in the place of origin;
- special protection measures carried out through a special protection programme with relocation in a secret place.

The temporary plan of protection.

The procedure for the definition of the special protection programme is initiated with the Public Prosecutor making a recommendation to the Central Commission for a witness or an informant and, if necessary, for their relatives. This temporary plan can be requested as soon as informants or witnesses express their intention to make statements.

The proposal must contain a summary of the facts for which the candidate has expressed his/her will to cooperate and the reasons why his/her statements have to be considered trustworthy and of major importance, as well as the circumstances proving that the danger is really serious and the urgent need for protection. Once the temporary plan is adopted, collaborators are relocated to a secret place. The temporary plan of protection and the protection programme are inspired by the principles of “camouflage”, which is only possible when the person is relocated in a different social context. All measures envisaged, from the

provisional identity documentation (for temporary use) to the change of identity (new legal identity), from the assistance measures to the relocation to a secret place, would prove vain if the collaborator remains in his/her place of origin, where he would obviously be identifiable. This temporary plan represents a provisional measure.

Special security measures in the place of origin.

The first step for a witness or an informant and, if necessary, for their family members to be admitted to the programme is the transmission of a proposal by the Public Prosecutor's Office to the Central Commission. As a rule, this proposal concerns the witness only, when he/she expresses his/her unavailability to move to a secret place, since he/she wishes to keep on attending his/her own financial activity in his/her place of origin. The special security measures are decided on by the Central Commission, then adopted and implemented by the Civil Governor (in Italy called Prefetto) of the witnesses' or informants' place of residence, when the danger they are exposed to is not so high as to require their relocation in a secret place, or when they express their unavailability to be relocated. Such measures do not include financial assistance, except for specific interventions aimed at facilitating their social reintegration and for the technical security measures to be installed at their houses and buildings, such as video surveillance and remote alarm systems.

Special protection programme in a secret place.

After the transmission of the proposal by the judicial authorities to the Central Commission, a dossier is started and the National Antimafia Directorate is asked to express its advice. Once these elements have been acquired, the Commission prepares the special protection scheme quoting a set of obligations which the co-operating witness and his/her family members agree to comply with. The programme includes: personal and financial assistance measures, relocation of non-detained persons in a safe place, provisional identity documentation (if requested), identity change, measures aimed at facilitating the social reintegration of witnesses and informants and their family members admitted to the programme, as well as other special measures which prove to be necessary. The assistance measures are the following: accommodation, transfer fees, health care, legal and psychological assistance, and a monthly allowance for collaborators who are unable to work.

Withdrawal and reviews of the special protection measures.

In the document allowing the subject to resort to the special protection measures, the Central Commission indicates the term (no longer than five years and no less than six months) within which assessments have to be carried out in order to review or withdraw the programme. The programme is withdrawn when the conditions which required its adoption do not exist any longer, that is, the existence of a serious impending danger. Measures can be withdrawn by the Commission also for the following reasons: bad conduct of the person admitted to the programme; non-compliance with his/her legal obligations; perpetration of offences indicating the subject is still active in the criminal circuit; express renunciation to the special protection measures; unauthorized return to the place from which he/she has been relocated; any action involving the revealing and dissemination of his/her new identity, of his/her place of residence and of all other measures applied. Finally, the assessment in view of withdrawing or reviewing the special security measures will also take into account the time elapsed since the cooperation started up, the stage and level of the criminal proceedings in which statements were made, and the existence of dangerous situations. The collaborators of justice and his/her family members can also quit the programme by undersigning a written renunciation.

The so-called “capitalization” for collaborators of justice under the special protection programme.

The protection programme can include measures aimed at facilitating social reintegration of the witness/informant and of other persons enjoying protection or other special measures which would prove to be necessary. It is the so-called “capitalization”, which is granted at the end of the cooperation path, once the subject has completed his/her commitments with justice. As far as informants are concerned, the “capitalization” of financial assistance measures consists in granting a sum of money equal to the amount of the monthly allowance for two years, but it can be paid up to five years, in the presence of documents and definite plans of social and employment reintegration. A lump sum is added to the above-mentioned amount for accommodation. Such criteria also apply to all family units under the protection programme. As for witnesses, “capitalization” can cover a period up to ten years, if a social and employment reintegration project is present. Furthermore, witnesses are entitled to assistance measures even beyond the protection termination, in order to guarantee them the same standard of living they had before being admitted to the programme, until they can earn their own money; if they are civil servants, they preserve their job on paid leave of absence; they are also entitled to receive a sum of money as a reimbursement for income loss; to secured loans for a full reintegration in financial and social life for them and their relatives; to the purchase by public revenue of witnesses’ real estates, against payment of a sum of money equivalent to their market price.

Obligations of the cooperating witness/informant.

Protected collaborators must fill, before the competent Authority, a full and detailed form indicating their marital status, giving details on their family unit as well as on their assets and liabilities, their obligations, if any, stemming from the law, from judicial decisions or judicial transactions, and any pending criminal, civil or administrative proceedings, their qualifications or professional certifications, any authorizations, licences, concessions they hold. Furthermore, they must appoint a general agent or special representatives in view of the acts to be carried out. Finally, they commit themselves to:

- observing the prescribed security rules and cooperating actively to the carrying out of the protection measures;
- agreeing to be questioned, examined or being available for any other acts to be carried out, including the drafting of a record on their cooperation contents;
- fulfilling all obligations provided for by the law and all commitments taken on;
- not making any statements to subjects other than the judicial authorities, the police forces and their defending counsel regarding the facts of the proceedings in connection with which they have made statements or are making statements; they also commit themselves to not meeting or contacting any person involved in crime or other persons cooperating with justice, except if duly authorized by the judicial authorities for serious reasons deriving from family life;
- specifying in detail all personal properties, possessed or controlled, directly or through an intermediary, as well as all other assets they have at their disposal, directly or indirectly. Immediately after their admission to the special protection measure, they must also hand over any illicit profits. The judicial authorities seize the above mentioned sums of money as well as their properties and assets without any further delay. The latter obligation is not envisaged for witnesses.

Special techniques and technical tools.

In Italy, the protection system is based on the principle of “camouflage”, that is to say, the achievement of complete anonymity. For this reason, the subjects of special security measures

are generally moved from their place of residence and relocated to a new secure area. Furthermore, in order to ensure safety, confidentiality and social reintegration to the persons admitted to the protection programme, they are given a provisional identity document. This document can be used during the protection term only, thus having temporary validity. In particularly sensitive situations, regulations also provide for an identity change, which is carried out in the strictest secrecy.

Further information was provided on the legal procedures/instruments pertaining to the effective protection of persons mentioned in this article:

Legal framework.

Decree-law no. 8 of 15 January 1991, New provisions on kidnapping for ransom and witnesses protection, and for the protection and sanctioning of informants.

Law no. 82 dated 15 March 1991, New regulations concerning collaborators of justice.

Inter-Ministerial Decree no. 687 dated 24 November 1994, Regulation establishing the standards for collaborators of justice and implementation rules.

Decree-law no. 119 dated 29 March 1993, on identity change.

Law no. 45 dated 13 February 2001, Amendments to the rules on the protection and sanctioning of informants, and measures in favour of witnesses.

Decree no.161 dated 23 April 2004, Ministerial Regulation on special protection measures for informants and witnesses.

Decree no.138 dated 13 May 2005, Measures for the social reintegration of informants and other protected persons, as well as of minors included in the special protection measures scheme.

Decree no. 144 dated 7 February 2006, Regulation in compliance with art.19 par.2, of Law no.45 dated 13 February 2001, on the penitentiary treatment of informants.

In Italy's experience there have been no situations so far where there was a need to protect victims. In case there were cases connected to organised crime persons involved would receive protection.

On the right to anonymity and need for cross-examination in cases of corruption, the Italian legal system rules out anonymity of witnesses and the judge has to access each witness only after the defence examines the witness. The only exception is for covert agents.

Italy has implemented the provision under review.

## **Article 32 Protection of witnesses, experts and victims**

### **Subparagraph 2 (a)**

*2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:*

*(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;*

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

Italy confirmed that it fully implemented this provision of the Convention.

Italy cited the following applicable measures:

Protection measures for witnesses include: physical protection, a new place of residence, and an undercover identity, in order to ensure the witnesses' safety during their testimony. Such measures are extended also to their relatives.

Witness protection is provided for by Law no.82 of 5 March 1991 and Law no. 45 of 13 February 2001.

These rules apply to all types of crime and not, specifically, to corruption related offences.

The country under review did not provide examples of implementation. Italy indicated that no statistical data is available.

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

Based on the information provided during the direct dialogue regarding means of physical protection, Italy has implemented the provision under review.

**Article 32 Protection of witnesses, experts and victims**

**Subparagraph 2 (b)**

*2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:*

*(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.*

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

Italy confirmed that it fully implemented this provision of the Convention.

Italy clarified that its legal system provides for the possibility for witnesses/collaborators of justice to testify in trials by video-conferencing.

The country under review did not provide examples of implementation.

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

Italy allows for the possibility of testifying by videoconference.

Italy provided the text of Legislative Decree n. 271 of 28 July 1989 ("Implementing Provisions of the Code of Criminal Procedure"), which regulates the possibility for witnesses and collaborators of justice to testify in trials by communication tools.

**Art. 146-bis.**  
*(Participation at a distance in a trial).*

1. Whenever a proceeding relating to any of the offences as per article 51(paragraph 3-*bis*) and 407 (paragraph 2, lett. *a n.* 4) of the Criminal Procedure Code concerns a person who is in custody, for whatever reason, participation in said proceeding shall take place at a distance in the following cases:

a) if there are serious reasons relating to public safety or public order;

b) if the trial is especially complex and participation at a distance is found to be necessary in order to prevent delays. In assessing the need to prevent the trial from being delayed, account shall also be taken of the circumstance that other proceedings are simultaneously pending before other judicial authorities in respect of the same defendant;

*1.bis* With the exception of the cases provided in paragraph 1, participation in the proceeding shall take place at a distance whenever the measures laid down in Article 41-*bis* of Law no. 354 of 26.07.75, as subsequently amended and supplemented, has been ordered in respect of the defendant, or, where possible, when a person in custody shall be heard as a witness, unless decided otherwise by the judge.

2. Participation at a distance in a trial shall be provided for, even *ex officio*, either by the presiding judge of the court or assize court through an order with a statement of reasons, to be issued during the pre-trial phase, or by the judge through a decree issued during the trial. The aforesaid order shall be communicated to the parties and defence counsel at least ten days before the date of hearing.

3. If participation at a distance has been provided for, audio-visual links shall be set up between the courtroom and the place of custody, in such a way as to ensure that the persons present in both places are simultaneously, actually and mutually visible and can hear whatever is said therein. Where the above measure has been taken in respect of a plurality of defendants who are all in custody in different places, for whatever reason, each of them shall be enabled to see and hear the others by the same method.

4. The defence counsel or his deputy shall always be allowed to be present in the place where defendant is located. The defence counsel or his deputy who are in the courtroom and defendant may privately consult one another by means of suitable technical devices.

5. The place in which audio-visual links with defendant are set up shall be equivalent, for all purposes, to the courtroom.

6. A justice's clerk appointed by the judge or, in urgent cases, the presiding judge of the court panel shall attend in the place where defendant is situated and attest to the latter's identity, also verifying that the exercise of the rights and powers to which such defendant is entitled is in no way impaired or limited. He shall also verify compliance with the provisions laid down in paragraph 3 and in the second sentence of paragraph 4 and with the precautions taken to ensure lawfulness of the examination, if any, with regard to the place in which he is situated. To that end he shall hear defendant and defence counsel, if necessary. The judge or, in urgent cases, the presiding judge of the court panel may designate a judicial police officer to attend in the place in which defendant is located as a substitute for the justice's clerk, for as long as the defendant is not examined during the trial; said judicial police officer shall be chosen among those who do or did not take part in investigations or protection programmes concerning defendant or the facts in which he is allegedly involved. An activity report shall be drawn up by the justice's clerk or the judicial police officer in pursuance of Article 136 of the Code.

7. Whenever it is necessary to carry out confrontation with or identification of defendant during the trial, or any other activity involving inspection of defendant in person, the judge

shall, if he considers it necessary, after hearing the parties, authorise defendant to attend in courtroom for no longer than is necessary to carry out the said activities.

Italy has implemented the provision under review.

## **Article 32 Protection of witnesses, experts and victims**

### **Paragraph 3**

*3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.*

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

Italy indicated that they have not implemented this provision of the Convention. Italy indicated that no such agreement has yet been concluded by Italy in relation to UNCAC offences.

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

Italy has not concluded any agreements for relocation with other States in relation to offences under the Convention.

To advance in the implementation of such international agreements, Italy may wish to consider entering into agreements or arrangements with other States for the relocation of witnesses, experts and victims.

## **Article 32 Protection of witnesses, experts and victims**

### **Paragraph 4**

*4. The provisions of this article shall also apply to victims insofar as they are witnesses.*

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

The country under review stated that in Italy there is an ad hoc law for the protection of victims whose provisions are different from the ones envisaged for the protection of witnesses. Unlike international law, the Italian legal system provides for compensation for single categories of victims, limiting protection to the trial and compensation stages.

Italy did not cite any applicable measures or texts. The country under review did not provide examples of implementation.

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

In Italy, protection measures may also extend to the person's relatives and apply to victims insofar as they are witnesses.

Further information was provided during the direct dialogue concerning the law adopted on the issue of victims in 2001, noting that any victim of a serious crime or having witnessed a crime who testifies at trials, thus exposing himself/herself to a serious impending danger. They can be distinguished as follows: eyewitnesses, witnesses of criminal facts occurred in

their domestic or environmental context (e.g. relatives of members of criminal groups), and entrepreneurs and traders having been the victims of racket. Between witnesses and informants there are some differences regarding their status (rights and obligations) and the way they are managed from an administrative point of view.

**Section 147-bis Examination of persons collaborating with justice and of defendants in a related crime.**

The examination during hearing in court of persons included, in compliance with the law, in protection programmes or measures, also urgent or provisional, takes place resorting to the those precautions which are deemed necessary to protect the person to be questioned. Precautions are set – ex officio or at the request of one the parties or of the authority having ordered the protection programme or measures – by the judge or, in urgent cases, by the President of the Court or the Court of Assizes.

If suitable technical instruments are available, the judge or the President, after hearing the parties, may decide, also ex officio, that the examination shall take place via videoconference granting concurrent visibility to the persons who are present in the place where the person to be examined finds himself. In this case, a court clerk who is authorized to assist the judge during the hearing, and is appointed by the judge himself, or, in urgent cases, by the President, stands in the place where the person to be questioned finds himself and certifies his personal details. The court clerk also ensures the compliance with the provisions contained in this subsection and with the precautions taken to grant the regularity of the examination with reference to the place where he stands. The court clerk draws up a report in accordance with the provisions of article 136 of the Code of Criminal Procedure.

Unless the judge considers the presence of the person to be questioned absolutely necessary, the hearing shall take place via videoconference under the provisions provided by subsection 2 in the following cases:

when the persons included – according to the law – in protection programmes or measures are questioned in a trial for one of the crimes under article 51, subsection 3-bis, as well as under article 407, subsection 2, letter a), n. 4 of the Code of Criminal Procedure;

when the person to be questioned is the subject of a change of identity order under article 3 of legislative decree 29 March 1993, n. 119; in this case, while proceeding with the examination, the judge or the President conforms to the contents of article 6, subsection 6, of the above mentioned legislative decree, and orders the adoption of ad hoc precautions so that the person's face is not visible;

when during the trial for one of the crimes pursuant to article 51, subsection 3-bis, or by article 407, subsection 2, letter a), n. 4, of the Code of Criminal Procedure, the persons to be questioned are included among those indicated in article 210 of the Code who are indicted for one of the crimes under article 51, subsection 3-bis or article 407, subsection 2, letter a), n. 4 of the Code of Criminal Procedure, even if the proceedings are separate.

If the person to be examined is assisted by a defence lawyer, the provisions under article 146 bis, subsections 3, 4, and 6 shall apply.

Measures under subsection 2 shall also be adopted , at the request of one of the parties, to examine a person who has been newly admitted to the programme under article 495, section 1, of the Code of Criminal Procedure, or in case of serious difficulties to ensure the presence of the person to be examined.

Italy has implemented the provision under review.

## **Article 32 Protection of witnesses, experts and victims**

### **Paragraph 5**

*5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.*

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

The country under review stated that the victims' role in criminal proceedings under the Italian system, as far declarations are concerned and regardless of the offence being investigated or prosecuted, is that of a witness. In this respect, the ordinary guarantees of the rights of the defence apply (i.e., no anonymous witnesses allowed, right of direct cross examination, right to contest the credibility of the witness where necessary through the acquisition of documents relating to their position or to prior convictions, etc.).

The country under review did not provide examples of implementation.

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

It was confirmed that the victims' role in criminal proceedings under the Italian system of criminal justice, as far declarations are concerned and regardless of the offence being investigated or prosecuted, is that of a witness. In this respect, the ordinary guarantees of the rights of the defence apply.

It was also confirmed that in the Italian system victims have the same guarantees whether or not they act as witnesses. For instance, they can bring a civil action in the criminal proceedings; have the right to be informed/served by the Judicial Authority with the relevant information at certain stages of the proceeding; have the right to take part in gathering evidences before the trial.

Italy has implemented the provision under review.

## **Article 33 Protection of reporting persons**

*Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.*

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

Italy confirmed that it fully implemented this provision of the Convention.

The ordinary rules on victims and witness protection apply.

The country under review did not provide examples of implementation.

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

It was further clarified during the direct dialogue that the new anti-corruption law no. 190/2012 establishes new provisions for whistle-blower protection in the public sector for public officials and employees who report cases of misconduct to the judicial authorities, Court of Auditors, or their hierarchical authorities.

Additional elements were provided on the legal framework for the protection of whistleblowers.

The Anti-Corruption Law introduces the first provision specific to the protection of whistleblowers in the Italian legal framework. It is Article 1.51 of the Law, entitled "Introduction of Article 54 bis into Legislative Decree No. 165 of 30 March 2001", which states the following:

The following Article shall be introduced after Article 54 of Legislative Decree No. 165 of 30 March 2001: Article 54 bis - (Protection for public employees reporting offences).

1. Except in cases involving liability for slander or defamation or on the same basis pursuant to Article 2043 of the Civil Code a public employee who reports to the judicial authorities or the Court of Auditors or informs his superior of unlawful conduct which has come to his attention in the performance of his duties may not be punished, dismissed or subjected to direct or indirect discriminatory measure, having an effect on his working conditions for reasons directly or indirectly related to the report.
2. The identity of the individual making the report may not be disclosed without his consent during disciplinary proceedings, provided that the disciplinary action was initiated on the basis of different evidence in addition to the report. If the disciplinary action was initiated entirely or partly on the basis of the report, the individual's identity may only be disclosed if this information is absolutely indispensable for the defence of the individual accused of misconduct.
3. The adoption of discriminatory measures shall be reported to the Department for Public Administration by the interested party or by the trade union organizations with greatest representation within the administration in which they were implemented in order to enable the appropriate action to be taken.
4. The statement shall not be available for access in accordance with Articles 22 et seq. of Law no. 241 of 7 August 1990.

This article introduces whistleblower protection provisions into Legislative Decree 165/2001 which regulates the general employment rules and procedures for public service employees. According to Paragraph 1, persons liable for slander (untruthfully reporting to the relevant authority a person for committing an offence or simulation of the proof of a crime), for defamation (any communication that harms the reputation of another person or persons), or liable for an unjust action (due to pay compensation for damages) will not be afforded the foreseen protection. With these three exceptions, public employees should receive protection when reporting unlawful conduct. However, in order to obtain protection the public employee needs first to report wrongdoing to a judicial authority, the Court of Auditors, or his/her superior.

With regard to the wrongdoing reported or disclosed, the Law describes it as any illicit behaviour of which a public employee becomes apprised of through his/her employment. Whistleblowers are protected against three types of workplace reprisal

they may undergo as a result of reporting wrongdoing: i) dismissal, ii) disciplinary sanctions; iii) direct or indirect discriminatory measures. The list of possible retaliatory actions, particularly discriminatory measures, could be interpreted to include a wide variety of reprisals, such as demotion, harassment, forced transfer, bullying, etc. The Law also provides that discriminatory measures must be referred to the DPA.

Article 1.51 also provides that a whistleblower's identity shall be kept confidential. It may, however, be revealed in cases where disciplinary charges against the alleged wrongdoer are based exclusively on the whistleblower's report, or where the knowledge of the whistleblower's identity is absolutely necessary to the alleged wrongdoer's defence.

The rules on whistleblowing are implemented by the National Anti-Corruption Plan approved on September 2013. The Plan provides all the measures that the public administrations should take in their Three-year Plans for the Prevention of Corruption:

- provide different channels for receiving reports
- provide reserved codes for the identification of the complainant
- prepare models for receiving reports
- establish duties of confidentiality for all those who receive or become aware of the report.

To this end the National Plan recommends the creation of a computerized system for reporting and provides that the protection of complainants will also be supported by effective awareness, communication and training through the website of each public administration.

The protection must be designed to also protect employees who report suspected cases of foreign bribery (Article 322 bis of the Criminal Code).

The ANAC reported during direct dialogue that it was required to verify that the removal of a Secretary of a local authority, communicated to it by the Prefect, is not connected to the activities done by the same Secretary regarding their function to prevent corruption.

In addition, several measures taken to establish whistle-blower protection in the private sector were also reported during the public consultations with stakeholders. In particular, contributions made by companies and trade organizations as attached in annex to this report reflect voluntary measures put in place to protect whistleblowers. For instance, a representative of ENI noted the issue of self-reporting as well as of internal investigations and mentioned that there were approximately 200 to 300 reports every year to be dealt with by the Audit Department. Feedback was to be given to the reporting person and recommendations to the control bodies. This was to be put in relation with the observations under Article 26 of the Convention with regard to the defence of organizational mechanisms for the liability of legal persons. There were also mechanisms to incentivize reporting though no automatic rewards.

During the consultations, the role of Italy's stakeholders in the Global Compact was also highlighted.

Italy has implemented the provision under review.

#### **Article 34 Consequences of acts of corruption**

*With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.*

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

Italy confirmed that it fully implemented this provision of the Convention.

Italy cited the following applicable measures:

**Article 32 *quater* of the Criminal Code** provides for certain measures that apply to the specific offences of active and passive bribery and other similar offences. This provision prohibits persons who have been convicted of bribery crimes from negotiating with the public administration.

**Article 32 *quinquies* of the Criminal Code** provides for the cessation of the employment for persons who have been sentenced for the offences described in Articles 317, 318, 319, 319 *ter* of the Criminal Code, which are the corruption offences.

Furthermore the general rule on disqualification for holding a public office is provided for by **Article 29 of the Criminal Code** that provides for a permanent disqualification and a disqualification for a specified period (at discretion of the judicial authority) from one to five years; the latter is a consequence of a conviction to not less than three years of imprisonment.

Other general measures are the disqualification from exercising the profession, trade or occupation of the convicted person (Article 31 of the Criminal Code), from holding the position of director in legal persons and companies (Article 32 of the Criminal Code), or from entering into contracts with the public administration (Article 32 *quater* of the Criminal Code).

In case the contents of a contract have been influenced by the payment of a bribe, it is possible to annul the contract according to **Article 1418 of the Italian Civil Code**.

The aggrieved party may always claim compensation for material and non-material damage both before the civil and criminal judge (please see the reply under article 35).

Furthermore, according to Article 1, paragraph 58 of the recent Anti-Corruption Law n. 190/2012, providing amendments of **article 135 of the Code of Public Contracts (D.Lgs. 163/2006)**, the contract can be annulled in the event of a conviction by final judgment of the contractor for crimes of corruption and bribery (crimes under art. 51 paragraphs 3-bis and 3-quater of the Criminal Code, articles 314, first paragraph, 316, 316-bis, 317, 318, 319, 319-bis, 319-ter and 320 of the Criminal Code), in relation to the status of the execution of the contract and possible consequences in respect to its aims.

It is also relevant to recall that, after the conclusion of the contract, if any infiltration of organized crime has been verified, the contract can be annulled or the concession can be withdrawn

**Article 29 of the Criminal Code**

**Cases in which conviction involves disqualification for public office** A sentence to life imprisonment or a sentence to imprisonment for a term of not less than five years shall entail permanent disqualification of the convicted person for public office; and a sentence to imprisonment for a term of not less than three years shall entail his disqualification for public office for a period of five years.

A finding of habitual or professional criminality or of propensity to delinquency shall entail permanent disqualification for public office.

#### **Article 32 quater of the Criminal Code**

**Cases where the convicted persons are disqualified from negotiating with the public administration.**

«Every conviction related to crimes provided for articles...318, 319, 319 bis, 320, 321, 322, 322 bis ...committed with prejudice or in favour of an entrepreneurial activity or related to it entails the impossibility to negotiate with the public administration».

#### **Article 32-quinquies of the Criminal Code**

**Cases in which conviction involves the termination of the work or employment relationship**

Except as provided in Articles 29 and 31, a sentence to imprisonment for a term of not less than three years for the crimes referred to in Articles 314 paragraph 1, 317, 318, 319, 319 ter, 319 quater paragraph 1 and 320 shall also entail the termination of the work or employment relationship for employees of public administrations or bodies or bodies in which the State has a majority holding.

#### **Article 1418 Civil Code**

**Causes of nullity of contract.**

A contract that is contrary to mandatory rules is void, unless the law provides otherwise.

A contract is rendered void by the lack of one of the requisites indicated in Article 1325, unlawfulness of *causa*, unlawfulness of the motives in the case indicated in Article 1345, and lack in the object of the requisites set forth in Article 1346.

A contract is also void in the other cases established by law.

#### **Art. 135. Of the Legislative Decree 12 aprile 2006, no 163 "Codice dei contratti pubblici relativi a lavori, servizi e forniture in attuazione delle direttive 2004/17/CE e 2004/18/CE" Termination of contract for offences established and withdrawal of the qualification certificate**

Without prejudice to other statutory provisions, where a contractor has been reached by a final order imposing the application of one or more preventive measures provided for by Article 3, of Law no 1423 of 27 December 1956, and Articles 2 and following of Law no 575 of 31 May 1965, or a judgment of conviction which has the force of *res iudicata* has been passed for the offences of usury, money laundering or frauds to the detriment of the contracting authority, subcontractors, providers, workers or other subjects concerned in any case in the works, as well as for violations of the obligations relating to work safety, the person in charge of the procedure shall propose to the contracting authority, in connection with the state of the works and the possible consequences in respect of the aims of the intervention, to terminate the contract.

1.bis Where the contractor's qualification certificate is no longer valid, because false documents were produced or false statements were rendered, and this results from the information record, the contracting authority shall terminate the contract.

2. In case of termination, the contractor shall be entitled only to the payment of the works regularly carried out, after having curtailed the additional expenses deriving from the termination of the contract.

#### **DPR 252/1998, Article 11, paragraph 3**

### **Time limits for the release of information**

1. When the ascertainties ordered are particularly complex, the prefect shall inform without delay the administration concerned and shall provide the acquired information within the subsequent thirty days.
2. After the lapse of a term of forty-five days from the receipt of the request, or, in urgent cases, also immediately after the request, the administrations shall proceed also in the absence of information from the prefect. In such a case, the contributions, loans, benefits and the other supplies as per paragraph 1 shall be paid under a resolutive condition and the administration concerned may revoke the authorizations and the concessions, or withdraw from the contract, without prejudice to the payment of the value of the works already performed and the reimbursement of the expenses incurred for the performance of the remaining, within the limits of the benefits achieved.
3. The faculties of revocation and withdrawal as per paragraph 2 shall be applied also when elements relative to attempts of Mafia infiltrations are established after the conclusion of a contract, the award of works, or the authorization of a sub-contract.
4. The payment of the supplies as per letter f) of Article 10 of Law no 575 of 31 May 1965, may in any case be suspended until the information is received that neither the causes of prohibition or suspension provided for by Article 10 of Law no 575 of 31 May 1965, nor the prohibition provided for by Article 4, paragraph 6, of Legislative Decree no 490, exist.

The country under review did not provide examples of implementation.

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

Article 1418 of the Italian Civil Code establishes a general provision on the nullity of contracts. Article 135 of Legislative Decree 163/2006 containing the Code of Public Contracts and amendments introduced by the 2012 law foresee the termination of a contract or withdrawal of qualification where the contractor has been convicted of corruption offences.

The Authority for the Supervision of Public Contracts is tasked with transmitting the relevant case files to competent judicial authorities and can impose administrative sanctions. Further information was provided by the Authority during the direct dialogue, including its cooperation with other public bodies such as ANAC, the Ministry for Public Administration and Innovation, and Ministry of Internal Affairs. The Authority manages the National Database of Public Contracts (NDBPC) that can be checked by contracting authorities to verify if candidates satisfy criteria.

Italy has implemented the provision under review.

#### **Article 35 Compensation for damage**

*Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.*

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

Italy confirmed that it fully implemented this provision of the Convention.

Italy cited the following applicable measures:

In the Italian system all the victims, i.e. entities or persons, who have suffered damage as a result of a crime have the right to initiate legal proceedings against those responsible for that

damage in order to obtain compensation. This right can be asserted both in criminal and civil proceedings. This principle works for all offenses, included those related to corruption **Art 185 of Criminal Code**.

When criminal proceedings have started before the competent criminal court the victim , i.e. the person (physical or legal) who has suffered damage as a result of that crime, can sue for damages in that same criminal court. Consequently, the judge in addition to the sentence decides the amount of damages in case the plaintiff is entitled to receive compensation. The victim can also decide differently to sue to recover damages caused by the offender in civil court.

#### **Articles 185 of the Criminal Code**

##### **Restitution and compensation for harm**

Every offence shall give rise to an obligation to make restitution in accordance with the rules of civil law (1168, 1169 of the Civil Code).

Every offence which has caused property or non-property damage shall give rise to an obligation to pay compensation on the part of the offender and the persons who, in accordance with the rules of civil law, are liable for his act (2043, 2054 of the Civil Code).

#### **Article 186 of the Criminal Code**

Reparation for harm through publication of the judgement of conviction

Beyond what is prescribed in the preceding article and other provisions of law, every offence shall obligate the offender to publish the judgement of conviction at his own expense, whenever such publication constitutes a means of repairing the non-property damage occasioned by the offence.

#### **Article 74 of the Criminal Procedure Code**

##### **Entitlement to a civil claim.**

«Civil action for restitution and damages referred to in article 185 of the criminal code may be brought in criminal proceedings against the defendant and the person civilly liable by the person who suffered a damage resulting from the offence or by his/her universal heirs».

#### **Article 75 of Criminal Procedure Code**

##### **Relationship between civil action and criminal action.**

«Civil action introduced before a civil judge may be moved to criminal proceedings until a trial judgment, even if not final, is rendered in civil proceedings. The exercise of such a right shall imply discontinuance of action. The criminal judge shall also rule on the costs of civil proceedings.

Civil action shall continue before the civil judge if it is not moved to criminal proceedings or if it was initiated when bringing civil action in criminal proceedings was not allowed any more.

When the action is brought against the defendant in civil proceedings after a civil action has been introduced in criminal proceedings or after a criminal trial judgment has been rendered, the civil trial shall be stayed until a criminal judgment which is no longer subject to challenge is rendered, except as otherwise provided for by the law».

The country under review did not provide examples of implementation.

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

In order to illustrate the enforcement of this provision, Italy provided further information on such compensation.

It noted that Art. 185 c.c. provides for the obligation of the person responsible of any crime to compensate those who have suffered damage as a result of any offence (including corruption). Following this general provision a successful example can be found in the ruling of the Court of appeal of Milan of 9 July 2011 ordering former Prime Minister Silvio Berlusconi's holding company Fininvest to pay 560m euro (£500m) in damages to a rival media group, CIR, over bribery allegations. The Court's ruling concerned Fininvest's winning control of publisher Mondadori from CIR in 1991. The takeover was sanctioned by a judge who was later sentenced for corruption. Fininvest had appealed against an earlier order to pay 750m euro in damages to CIR.  
(@ <http://www.bbc.co.uk/news/world-europe-14091890>).

The National Anti-Corruption Authority (ANAC) reported during the direct dialogue that it had carried out research on this topic to assess the damage done to the State through data provided by the Court of Auditors but also criminal convictions. It had found wide regional variations in its analysis on a territorial and sectoral basis. The statistics collected in cooperation with the Institute of Statistics are based on court decisions where the damage is included and where those cases that have been prosecuted and adjudicated. This was to better understand which sectors are the most affected.

Conversely however, the State and local bodies cannot be held liable, except in civil cases with regard to public officials who have committed illegal acts.

Italy has implemented the provision under review.

### **Article 36 Specialized authorities**

*Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.*

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

Italy confirmed that it fully implemented this provision of the Convention.

As observed by the lead examiners during the III OCSE Evaluation round, the Guardia di Finanza is a highly trained police service specialising in financial based crime. Members of the Guardia are also specifically trained as tax auditors. It has always been a privileged stakeholder with reference to economic crimes.

Nevertheless, there isn't a specialised investigative Unit or Bureau in bribery or foreign bribery, although the Guardia di Finanza has a special unit dealing with bribery (Nucleo Speciale Tutela Pubblica Amministrazione).

Furthermore within the Guardia di Finanza there is a Group Against Corruption and for Transparency that carries out activities upon request and/or mandate of the Civil Service Inspectorate in the field of corruption, compliance with the monitoring procedures on costs, performance and outcomes, controls on administrative and accounting regularity, transparency and integrity of the public departments, as well as of employees' absenteeism.

As far as Carabinieri Corp is concerned, all Carabinieri investigation Units, from the minimum order levels (Investigative Teams) to the Special Divisions (i.e. Carabinieri Special Operation Group, Carabinieri for Agriculture Policies Command, Carabinieri Healthcare Command, Carabinieri Currency Anti-Counterfeiting Command, .etc.) are prepared on how to tackle the phenomenon of “corruption”, as much as the personnel seconded to the Anti-Mafia Investigation Department, assuming that the fact is within the specific sphere of competence.

With regard to the State Police, all the investigative offices of this LEA have general competence in prosecuting crimes. Therefore, “corruption”, (in its different aspects mentioned in the answer to article 30, paragraph 3) is prosecuted – as all other forms of crimes provided for by our criminal code, - by bodies and persons who are granted the necessary independence, in accordance with the competent Judicial Authority’s guidelines, - and impartiality when other concomitant priorities occur.

In this context, further stimulus to the fight against corruption could derive from the following factors:

The increase in the investigative resources (human/technical/financial) involved in this kind of investigations;

The extension of the rules concerning “undercover operations” and “controlled deliveries” to the investigations on “corruption”, such as “special investigation techniques” (as defined by Article 50 of the UN Convention).

The country under review did not provide examples of implementation.

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

Three law enforcement authorities are tasked with investigating corruption offences, under the supervision and direction of the public prosecutor: the Guardia di Finanza, the Carabinieri and the State Police. Whereas the Guardia di Finanza cooperates directly with the national anti-corruption authority and has specialized competences and expertise for economic and financial crime, including a specific unit for combating corruption in public administration, the Carabinieri and State Police have general competence.

There is coordination between the different law enforcement authorities and independence through an autonomous duty to detect and investigate offences, though public prosecutors determine which law enforcement authority should carry out investigations. In fact, in the case of overlapping investigations it is up to the public prosecutors to organise and coordinate the work between the different law enforcement authorities. All law enforcement agencies have internal mechanisms to ensure the dissemination of the information collected during investigations and regional meetings are held between the investigators that work on the same case. It was noted by law enforcement during the direct dialogue that there were two instruments to avoid the overlap of investigations: the national level signaling of telecoms for double interceptions by two different judicial authorities; and, the Registro Notizie Reato. It was also mentioned that on police coordination, usually minor investigations would go to the territorially competent force.

With Decree Law n. 68 the Guardia di Finanza was recognized as a special force. Together with the Carabinieri, it shares the mandate on investigations of economic and financial crimes.

In difficult and complex cases it is usually the Guardia di Finanza that leads the investigations. In particular, the Guardia di Finanza is called upon for its specialized expertise in financial analysis for different types of offences including corruption, tax evasion and the determination of illicit financial flows. The Carabinieri are often used in more dynamic approaches, for instance where wiretaps or interceptions are required.

In Italy, the independent bodies and persons that counter corruption, do so following the indications and orders issued with formal mandates by the judicial authorities competent to investigate a case. It is recalled that in Italy coercitive measures needs to be ordered by a judge, upon request of the prosecutor. Italy clarified that the judicial authorities do not affect nor influence the independence of Law Enforcement Agencies. In fact, according to the Italian criminal procedure code, Law Enforcement Agencies have an autonomous duty to prevent, investigate and tackle violations to the law. Once a crime has been discovered by one of the national Law Enforcement Agencies, a criminal offence report must be sent to the prosecutor. From this point onwards, it is the duty of the prosecutor to lead the investigations. Italy highlighted that the specialized bodies are public officials and their powers arise from the criminal code and other special laws. Officials engaged in these specialized bodies have the same powers as the other police officers and their activities are regulated by the mandate of the body they are in.

All law enforcement agencies, as well as specialised bodies, are obliged to respect the Constitution, the criminal code and criminal procedure code, all laws, regulations and statutes.

In Italy, the Anticorruption Law has been approved by Parliament on the 31st of October 2012 and has entered into force, on the 28th of November 2012. This Law qualifies the National Commission for Evaluation, Transparency and Integrity (CiVIT) as the Italian Anti-corruption Authority, in compliance with article 6 of the United Nations Convention against Corruption.<sup>6</sup> The renamed body, ANAC is an independent Authority and one key element of its independence is, equally to other Italian independent Authorities, the appointment process of the Commissioners. The Law establishes that ANAC's members are appointed by the President of the Italian Republic, according to the decision of the Council of Ministers, which has to be previously approved by the competent Parliamentary Committees with qualified majority (2/3). The requirement that a qualified majority (2/3) is needed for the appointment of ANAC members is meant to ensure its independence from the executive and is common to other Italian independent authorities. Moreover, the nature of this independent Authority has been also recognized by the Council of State (advice n. 1081, dated 22nd March 2010) and by the Administrative Trial Code (art. 133.1, letter 1, Legislative Decree n.104/2010). ANAC is also included in the List of National independent Authorities provided by the National Institute of Statistics (ISTAT). According to Legislative Decree n. 150/2009, ANAC can employ thirty staff members and ten experts. The staff is selected through open comparative procedures according to criteria of specialization.

Information was also provided during the dialogue on the mandate and role of the Financial Intelligence Unit (UIF), that had been established in 2008 by legislative decree 231/2007 as an administrative type unit under the Banca d'Italia. There is a separation between the financial analysis of STRs and investigative analysis. The UIF is autonomous and independent operationally and has several divisions, including international cooperation,

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<sup>6</sup> Please see explanatory footnote about the change of name of this authority in introduction.

STRs, normative and cooperation with other authorities, analysis and statistics. The UIF proceeds with financial analysis and transmits its findings to the investigative bodies. It was reported by the UIF that between 2008 and 2012 the STRs received by it went up by 300%, for a total of 67000 received in 2012. In addition, the Banca d'Italia has given the UIF access to other databases of control authorities for example. It was estimated that 50% of STRs are solved through police investigation, and the UIF employs an all crimes approach for predicate offences.

Italy clarified that the execution of investigations following STR is not ascribed only to the phenomenon of corruption and money laundering but is carried out in relation to a wide range of offences. However, when the STR concerns a corruption case, it is almost certain that investigations will be sustained. Once a STR is received, a preliminary analysis on the advisability of executing investigations is carried out. After the preliminary analysis, most of the STR are either set aside or administratively examined and referred to the judicial police. The investigation are initiated on the request of the judiciary.

Italy provided the following figures concerning the offences of corruption and abuse of office in 2013:

	<b>Investigations carried out</b>	<b>Arrests</b>	<b>Value of seized capital (€)</b>
<b>Corruption</b>	330	348	450 million
<b>Abuse of office</b>	4081	85	4.5 million

Italian authorities explained that, though the investigative bodies of the State Police and of the Carabinieri have general competence in investigations, they are not in charge of the management of relevant data and statistics and therefore are not able to provide any. All the information coming from the investigation reports is inserted in a data system that is under the responsibility of the Ministry of Justice. Italy clarified that the Ministry of Justice collects all the data on confiscation of assets and on the proceedings. However, the data presents many gaps and, therefore, no consistent data or statistics can be provided with regards to the whole process, from the beginning of the investigation to the actual status of the process.

Italy stated that the investigations on organized crime can involve other countries. For example, when telephone companies on different territories report interception activities on the same number, the investigations will be coordinated following the decision of the two national authorities involved.

The staff of specialised bodies has the possibility to attend refresher courses during their service period. Italy explained that the anticorruption law 190 of 2012 gives mandate to the National School of Administration (NSA) to set up a training programme addressed to support the implementation of the preventive aspects of the law. The NSA has launched training programmes addressed to three different target groups: managers and civil servants responsible for organizational units; persons responsible for transparency plans, internal audit and independent review organs; persons responsible for anticorruption plans and managers of organizational units under high risk of corruption.

Italy has implemented the provision under review.

Furthermore, the specialization of the Guardia di Finanza and coordination during investigations among the different police forces was flagged as a good practice.

It was recommended that Italy strengthen capacity to collect and analyse cases and statistics.

## **Article 37 Cooperation with law enforcement authorities**

### **Paragraphs 1 to 3**

- 1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.*
- 2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.*

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

Italy confirmed that it fully implemented this provision of the Convention.

Italy cited the following applicable measures:

The Italian system provides for some general mitigating circumstances that determine the reduction of the sentence up to one third.

Number 6 of Article 62 of the Criminal Code provides the circumstance when, before the trial begins, the offender has paid damages, fully or in part, or when he spontaneously and efficaciously did his/her best in order to remove or minimize the damaging or dangerous consequences of his/her crime.

When the judge ascertains the presence of the circumstance he/she can reduce the sentence up to one third.

The Italian system does not provide for the possibility to award immunity from prosecution for persons who have provided substantial cooperation to an investigation. Italy elaborated that the Italian legal system is governed, in the matter of prosecution of criminal offences, by a strict principle of legality, enshrined in Article 112 of the Constitution. Accordingly, every alleged criminal offence reported to prosecution offices or any police authority must be investigated and, if sufficient evidence is gathered, prosecuted. Therefore, there cannot be any immunity from prosecution, even in case of collaboration to the investigations of the person or persons involved in a crime. Any such collaboration may be only taken into consideration in the exercise of the judge's discretion in determining the sentence in case of conviction.

The country under review did not provide examples of implementation. Italy indicated that no statistical data is available.

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

During the dialogue, it was requested that Italy clarify whether the actions of offender who “did his or her best in order to remove or minimize the damaging or dangerous consequences of his or her crime” stipulated by paragraph 2 of Article 62 can be considered as the actions on reporting useful information or providing specific assistance to competent authorities.

Italy noted that according to settled judicial interpretation of Art. 62 n. 6 c.c., this mitigating circumstance may be applied by the judge whenever the offender, before the judgment, has spontaneously tried to eliminate the damaging consequences of his activity, thus showing the intentions to reintegrate the social order that his crime has upset and to abandon the anti-social status he has put himself into through his activity (Court of Cassation, Criminal division VI, decision no. 4432 of 28.5.1986). This activity must be able to eliminate the consequences of the crime: a mere confession of personal responsibilities is not sufficient (Court of Cassation, Criminal division V, decision no. 3404 of 2.2.2005), but must be accompanied, e.g., by the recovery of the proceeds of crime, by the elimination of any distortion in a contractual relationship deriving from the corruption, by the unveiling of further cases of corruption in which the defendant is not directly involved, etc.

In addition, it was recalled that even a mere confession may be relevant for a reduction of the penalty in that it may be a reason for the judge to apply to the case generic mitigating circumstances in accordance with Art. 62 bis c.c. This Article provides for the discretionary possibility for the judge to reduce the penalty by 1 / 3 in case he deems this appropriate in relation to the seriousness of the offence or the criminal capacity of the offender. The parameters to judge these elements are given by Art. 133 c.c. which, in para. 2, n. 3) c.c., specifically mentions “the conduct held at the same time or after the offence”. Settled case law affirms that confession is a valid reason to apply these generic mitigating circumstances (see e.g. Court of Cassation, Criminal division VI, decision no. 14412 of 2.11.1990).

It was also noted during the direct dialogue that challenges arose in complex cases involving multiple defendants as preliminary investigations were to be kept secret and at times those defendants entered into plea-bargaining agreements that affected the scope of the case and the other defendants.

Italy has implemented the provisions under review.

**Article 37 Cooperation with law enforcement authorities**

**Paragraph 4**

*4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.*

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

Italy confirmed that it fully implemented this provision of the Convention.

Italy cited the following applicable measures:

Persons who are at the same time participants in the crime and witnesses against other participants may benefit from the general measures on witness protection.

The country under review did not cite texts, or provide examples of implementation.

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

It was clarified that the same framework applicable under Article 32 of the Convention was applicable to this provision.

Italy has implemented the provision under review.

**Article 37 Cooperation with law enforcement authorities**

**Paragraph 5**

*5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.*

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

Italy indicated that no such agreement exists yes as far as Italy is concerned.

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

Italy has not implemented the provision under review.

**Article 38 Cooperation between national authorities**

**Subparagraphs (a) and (b)**

*Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:*

- (a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or*
- (b) Providing, upon request, to the latter authorities all necessary information.*

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

Italy confirmed that it fully implemented this provision of the Convention.

Italy cited the following applicable measures:

**Article 331 of the Criminal Procedure Code** obliges public officials and other persons charged with a public service who, in the exercise of or because of their function or their service, become aware of criminal offences, to report without delay to the public prosecutor or to the police.

In a symmetric way, **Article 361 of the Criminal Code** makes it a crime for a public official to fail to report a crime which he learned of through his duties. Fines range from 30 to 516 EUR.

Similarly, **Article 362 of the Criminal Code** makes it a crime for a person in charge of a public service to fail to report a crime which he learned of through his duties. Fine can be up to 103 EUR.

The first offence is more serious and thus punished more severely.

Police forces work in close cooperation with authorities responsible for investigating and prosecuting criminal offences, as already said in answer 109. Paragraph 3 of article 30. In fact, Prosecutors can make direct investigations or, in most cases, conduct them through orders and directives given to “judicial police detectives “ which anyway can make their own investigations in coordination with the Prosecutor:

#### **Article 361 of the Criminal Code**

##### **Failure on the part of a public officer to report an offence**

(1) A public officer (357) who omits or delays reporting to the judicial authorities or to other authorities who are obligated to report to the judicial authorities, an offence of which he has had notice in the exercise or by reason of his office (331 of the Code of Criminal Procedure; 221 of the coordinating provisions of the Code of Criminal Procedure) shall be punished by a fine of from 60,000 Liras to 1,000,000 Liras.

(2) the punishment shall be imprisonment for up to one year if the offender is an officer or agent of the judicial police (57 of the Code of Criminal Procedure) who in any way had notice of an offence which he was required to report (347 of the Code of Criminal Procedure).

(3) The preceding provisions shall not apply in the case of a crime punishable on complaint of the victim.

#### **Article 362 of the Criminal Code**

##### **Failure on the part of a person charged with a public service to report an offence**

(1) A person charged with a public service (358) who omits or delays reporting to the authorities specified in the preceding Article an offence of which he has had notice in the exercise or by reason of his service (331 of the Code of Criminal Procedure; 221 of the coordinating provisions of the Code of Criminal Procedure) shall be punished by a fine of up to 200,000 Liras.

(2) Such provision shall not apply with respect to offences punishable on complaint of the victim, nor to persons in charge of therapeutic socio-rehabilitation communities with respect to offences perpetrated by drug-addicted persons committed thereto to carry out programs determined by a public service.

The country under review did not provide examples of implementation. Italy indicated that no statistical data is available.

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

Public officials and persons tasked with a public service are required to report to the public prosecutor or to the police criminal offences they become aware of in the exercise of their functions, in accordance with Article 331 of the Criminal Code. Articles 361 and 362 also criminalize the failure to report offences. Several national authorities, including the FIU and the Authority for the Supervision of Public Contracts, also report cases to the police or public

prosecutors. The Italian Anticorruption Authority (ANAC) performs several functions to prevent and combat corruption and also reports cases to public prosecutors. While Article 371 of the Criminal Procedure Code addresses coordination of investigations, no specific provisions exist for coordination among the different prosecutors that may have concurrent territorial jurisdiction.

It was further highlighted that the discovery of many corruption offences was complicated due to their latent nature and early informing by the respective public authorities or cooperation at early stage was necessary.

The only provision of the Code of Criminal Procedure dealing with coordination among different prosecution offices is Article 371, however, there are no specific procedural rules as to how this coordination is to be carried out, which means that prosecution offices are free to choose the most convenient and efficient method of coordination, in a totally informal way. In accordance with Article 371 para. 3 Code of criminal procedure, this coordination does not affect subsequent decisions on competence for the trial phase of the proceedings, which means that each prosecution office will then remain free to conduct the trial phase independently of the others.

There is no legal sanction for the lack of coordination in accordance with Article 371 Code of Criminal Procedure; any disagreement between prosecution offices will thus have to be settled informally.

ANAC, as National anti-corruption Authority, in the execution of the anti-corruption inspection powers assigned by the Law, can use the collaboration of the Guardia di Finanza for investigations and inspections. At the same time, ANAC can request inspections and reports to the Inspectorate of the Department for Public Administration.

ANAC has also signed an agreement with Authority for the Supervision of Public Contracts for works, services and supplies (Autorità per la vigilanza sui contratti pubblici di lavori, servizi e forniture - AVCP) to work together for preventing illegal behaviours in the field of the public contracts, to coordinate the implementation of their respective functions in the field of transparency and to identify and empirically assess corruption risk indicators in the procurement field.

ANAC also cooperates with another national body which overall operates in the anti-corruption field, the National School of Public Administration (SNA), for planning the training programs on ethics and anti-corruption for public administrations and for sharing information about the results of the training activities.

It was noted by judicial authorities during the direct dialogue that there was only one single division that is devoted to offences against the public administration, that dealt with about 150 cases each year and had at time of reporting 74 trials, not counting the cases with plea bargaining.

The role of the Financial Intelligence Unit and the Ministry of Finance as well as a network of bodies dealing with financial intelligence was highlighted. The Ministry of Finance for instance assists judicial authorities when they request information or financial analysis (in the annual report from 2012, 270 such requests were mentioned). This also enable the FIU to seek cooperation from other such bodies in other countries and information such as bank accounts could then be handed over to the judicial authorities. The Polizia di Stato, that has a general

competence, reported on its database of all investigations classified according to denunciations and stage of process (Servizio Analisi Criminali).

The Court of Auditors plays a role with regard to offences against the public administration, that gives criteria for the evaluation of the damage. It was reported that the INPS (National Institute of Social Security) was awarded a prize by the United Nations DESA office for accentuating inter-institutional cooperation with local prosecutors and judges and establishing better links between social security bodies and the public prosecutor: <http://www.inps.it/portale/default.aspx>

Italy has implemented the provision under review.

It was nevertheless recommended that Italy enhance coordination among law enforcement authorities and the public prosecutors, in particular with a view to avoiding overlaps in territorial jurisdiction for corruption cases.

## **Article 39 Cooperation between national authorities and the private sector**

### **Paragraph 1**

*1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.*

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

Italy confirmed that it fully implemented this provision of the Convention.

Italy cited the following applicable measures:

There is a general rule in the Italian legislation stating that anyone who has information about a crime may report it to the judiciary or criminal police (**Art. 332 Code of the Criminal Procedure Code**).

Furthermore there are specific provisions regarding the prevention of money laundering and the relationship between money laundering and corruption is clear: corrupt money is usually laundered in an attempt to legitimize it and hide its source.

Italian legislation on preventing and combating money laundering and the financing of terrorism (**Legislative Decree no. 231/2007**) puts the Financial Intelligence Unit (*Unità di Informazione Finanziaria - UIF*) at the centre of a complex network of relationships with several institutions, both public and private, national and foreign. The proper functioning of the defenses against money laundering depends on the commitment and co-operation among the supervisory authorities, investigative bodies and judicial authorities.

The agreement reached in 2009 between the UIF and the Bank of Italy exploits the synergies between the two institutions and gives special importance to the relationships of complementarity and integration between banking supervision and anti-money laundering checks.

Daily contacts with investigative bodies (Bureau of Antimafia Investigation – DIA - and the Special Foreign Exchange Unit of the Finance Police - NSPV) are intended to pursue increasingly efficient and advanced forms of co-operation and exchange of information.

The UIF receives information on a systematic basis from investigative bodies concerning the analyzed and transmitted suspicious transaction reports (STRs). In particular, according to **article 48 (2) of Legislative Decree no. 231/2007**, the investigative bodies shall inform the UIF of STRs that are no longer under investigation.

The Italian suspicious transactions reporting system is characterized by the performance of preventive action consisting in the analysis of the financial aspects of the reports, independently of the activity aimed at the repression of crimes.

Reports and the subsequent financial analysis normally provide a starting point for investigations and only in exceptional circumstances do they produce information about specific crimes.

According to the law regulating the obligation to report suspicious transactions, (**articles 41-48 Legislative Decree no. 231/2007**), reports shall be made without delay as soon as the person required to make it has grounds for suspicion.

As a consequence, on the one hand, the obligation to report must be complied with regardless of when the transaction is executed. On the other, the obligation to report takes place when the person required to make report has actually grounds for suspicion.

The use of computer-based channels foster the promptness of both the transmission and the correction of STRs. In addition, every relevant information for the knowledge of the operational context in which the suspicion arose can be forwarded without delay.

According to the report on the preventive action taken in 2009 - presented by the Minister for the Economy and Finance to Parliament – both in 2008 and 2009 more than 50% of the STRs transmitted from the UIF were investigated by DIA and NSPV.

In 2010 the UIF signed with DIA and NSPV a memorandum of understanding on the exchange of information on STRs in order to ensure the maximum protection of the identity of the individuals who make reports.

The Memorandum establishes that the transmission of STRs, any other requests for an in-depth analysis or for further details, as well as the exchange of information between the UIF, NSPV and DIA have to be sent electronically, with encoded message and digital signature. Those authorities shall grant, also in their internal organizational structure, through the adoption of specific measures, the protection of the identity of the individuals who make reports. The internal information flows shall ensure the data protection as well as the identification of members of the staff (individuals who manage the information) and the traceability of those who access the database.

Cooperation with the judicial authorities is more and more intensified so that UIF makes a valuable contribution to important and delicate financial investigations.

For instance in 2009 off-site and on-site inspections led to 89 cases of potentially penal relevance being reported to the competent judicial authorities (there were 31 cases in 2008) and in 2010 a total of 118 requests for documentation and cooperation were received from the judicial authorities (94 requests in 2009 and 53 in 2008).

#### **Article 332 of the Code of Criminal Procedure**

##### **Content of the report.**

The report shall contain the statement of the essential elements of the alleged criminal act and shall indicate the day of acquisition of the information as well as the evidentiary sources already known. When possible, it shall also contain the personal data, the domicile, or anything else that may help identify the person to whom the fact is attributed, or the aggrieved person, and those who are able to report circumstances that are significant for the reconstruction of the facts.

#### **Article 48 of Legislative Decree no. 231/2007**

##### **Return flow of information.**

1. The transmission of a report to the investigative bodies referred to in Article 8, paragraph 3, or the closure of a report shall be communicated, when this does not affect the outcome of the investigations, by the FIU directly to the complainant or through the professional associations referred to in Article 43, paragraph 2.

2. The investigative bodies referred to in Article 8, paragraph 3, shall inform the FIU of reports of suspicious transactions that shall not be investigated more in depth.

3. The FIU, the Financial Police and the Anti-Mafia Investigative Directorate shall provide to the Financial Security Committee, in the context of the communication referred to in Article 5, paragraph 3, letter b, information on the types and phenomena observed in the preceding calendar year, in the context of activity of prevention of money laundering and terrorist financing, and on the results of the reports divided by category of complainant, transaction type and geographical areas.

4. The return flow of information shall be subject to the same prohibitions of communication to the customers or third parties, referred to in Article 46, paragraph 1.

The country under review did not provide examples of implementation. Italy indicated that no statistical data is available.

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

In addition to general provisions in the Criminal Procedure Code, specific measures are contained in Legislative Decree no. 231/2007 on preventing and combating money-laundering and terrorism financing, which provide for the obligation to report suspicious transactions for certain authorities and entities to the Financial Intelligence Unit. The FIU conducts the financial analysis of the suspicious transactions reports and contributes to the awareness-raising for reporting subjects by developing tools such as models of behaviour and indices profiles to assist those subjects. In order to encourage reporting of suspicious transactions which could be related to money laundering of proceeds of corruption, measures have been taken in the public and private sectors to protect whistleblowers and reporting entities and establish channels of communications.

Further information was provided during the dialogue on cooperation with other organizations of the private sector. ANAC intends to carry out relationships with relevant private actors to share information, data, experiences and practices in the field of transparency and anticorruption. For this purpose, ANAC has already established a collaborative relationship with the Italian branch of Transparency International and with World Bank's experts in Anticorruption.

In addition, on cooperation established between the prosecution authorities and private sector organizations, obligations provided for in the Italian anti-money laundering legislation (Legislative Decree 231/2007) cover all corruption related predicate offences and apply to Financial intermediaries and other persons engaged in financial activities, Professionals, Auditors, Persons engaged in credit recovery, custody and transport of cash and securities, transport of cash, securities or valuables, management of casinos, real-estate broking, etc. Article 3 of this decree (General principles) provides that the measures in this Decree shall also be based on the active collaboration of the persons subject to its provisions, who shall adopt suitable and appropriate systems and procedures in relation to the obligations of adequately verifying customers, reporting suspicious transactions, retaining documents, internal control, assessing and managing risk, ensuring compliance with the relevant provisions, and communicating to prevent the carrying out of money laundering transactions and terrorist financing. These persons have to fulfil their obligations taking into account the

information in their possession or acquired in connection with their institutional or professional activity.

During the public consultation held at direct dialogue, further information was provided by stakeholders on cooperation with public authorities and international or regional bodies such as the OECD, B20 and Global Compact.

Italy has implemented the provision under review.

## **Article 39 Cooperation between national authorities and the private sector**

### **Paragraph 2**

*2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.*

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

Italy confirmed that it fully implemented this provision of the Convention.

For applicable measures, Italy refers to citations above.

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

Further information was provided during the dialogue on cooperation of citizens informing national investigation and prosecution authorities about corruption, and it was noted that the anticorruption Law 190 of 2012 introduces whistleblower protection provisions into Legislative Decree 165/2001 which regulates the general employment rules and procedures for public service employees. According to Paragraph 1, persons liable for untruthfully reporting to the relevant authority a person for committing an offence or simulation of the proof of a crime, for defamation or liable for an unjust action will not be afforded the foreseen protection. With these three exceptions, public employees will receive protection when reporting unlawful conduct. However, in order to obtain protection the public employee needs first to report wrongdoing to a judicial authority, the Court of Auditors, or his/her superior. With regard to the wrongdoing reported or disclosed, the Law describes it as any illicit behaviour of which a public employee becomes apprised of through his/her employment. Whistleblowers are protected against three types of workplace reprisal they may undergo as a result of reporting wrongdoing: i) dismissal, ii) disciplinary sanctions; iii) direct or indirect discriminatory measures. The Law also provides that discriminatory measures must be reported to the Department of public administration.

In the public consultation held during the direct dialogue, it was highlighted that close partnerships between the public and private sectors and also between public administrations and citizens was to be encouraged.

In this regard, recent efforts to encourage the reporting of corruption offences by persons or entities, inter alia by providing for whistleblower protection was regarded as a good practice.

Italy has implemented the provision under review.

## **Article 40 Bank secrecy**

*Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.*

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

Italy confirmed that it fully implemented this provision of the Convention.

Italy cited the following applicable measures:

For all kind of domestic criminal investigations there is ample provision for gaining access to bank records. This method of investigation (**Arts. 248 and 255 of the Code of Criminal Procedure**), which is strictly regulated and subject to approval by the Judiciary, is often adopted in the field of criminal law – including instances of bribery of public officials. Similarly, national legislation provides for searches (**Art. 352 Code of Criminal Procedures**), seizures (**Art. 252 Code of Criminal Procedures**) and the confiscation of the assets of public officials tainted with the offence of bribery.

Anonymous accounts are not permitted. Credit institutions and Bancoposta provide bearer passbook accounts, provided the balance is €1,000 or less. They cannot be transferred anonymously.

In practice the Italian system does not provide for the bank secrecy therefore there is no need to overcome any obstacles that may arise out of its application.

#### **Article 248 of the Code of Criminal Procedure Request for delivery**

«When specified goods are sought through a search, the judicial authority may request that they be delivered. When said goods are delivered, the search shall not take place, unless it shall be deemed useful to carry out the search for the thoroughness of the investigations.

In order to trace the goods to be seized or establish other circumstances that may be helpful to the investigations, the judicial authority or the judicial police officers delegated by the latter may examine acts, documents and correspondence as well as data, information and information programs <sup>(1)</sup> held in banks. In case of refusal, the judicial authority shall carry out the search.

Words thus modified by Article 8, paragraph 3 of Law n. 48 of March 18, 2008».

#### **Article 255 of the Code of Criminal Procedure Banking seizure**

«The judicial authority may seize documents, securities, assets, money deposited in current accounts and any other property held in banks, even if kept in safe-boxes, when it has well-founded grounds to believe that they are pertaining to the offence, although they do not belong to the defendant or are not registered in the defendant's name».

The country under review did not provide examples of implementation. Italy indicated that no statistical data is available.

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

Italy has implemented the provision under review.

## **Article 41 Criminal record**

*Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.*

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

Italy confirmed that it fully implemented this provision of the Convention.

Italy cited the following applicable measures:

According to Article 12 of the Criminal Code, any decision of foreign judicial authorities handing down a conviction for a serious crime (“delitto”) may be recognized (on demand of the prosecution) for the aims listed in the same Article, including the recognition of the status of repeat offender, the application of an accessory penalty under Italian law, a security measure, or the execution of the accessory provisions on compensation of damages and restitutions.

Recognition presupposes the existence of an extradition agreement with the Country where the decision has been passed or a request of the Minister of Justice.

The country under review did not cite texts or provide examples of implementation.

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

It was clarified during the dialogue that once a foreign conviction has been recognized in accordance with Article 12 c.c. it is annotated in the criminal record of the convicted person, along with all national convictions.

Italy has implemented the provision under review.

## **Article 42 Jurisdiction**

### **Subparagraph 1 (a)**

*1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:*

*(a) The offence is committed in the territory of that State Party; or*

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

Italy confirmed that it fully implemented this provision of the Convention.

Italy cited the following applicable measures:

The principle of territoriality, as basic parameter to establish jurisdiction under Italian law, is enshrined in Article 6 of the Criminal Code. Territorial jurisdiction is established over offences that are committed wholly or partially within the national territory and even in those cases where the consequences of the conduct take place in the national territory.

According to the case law of the Court of Cassation, in order to establish jurisdiction in accordance with the principle of territoriality it is sufficient that even only a fragment of the conduct be committed in Italy, even if in itself this part of the action would not amount to a punishable attempt (Court of Cassation, Criminal Division IV, decision no. 17026 of 17 December 2008).

In order to establish jurisdiction, it is sufficient that the agreement to participate in the commission of an offence be met in Italy, even if the material commission of the conducts takes place outside its territory (Court of Cassation, Criminal Division VI, decision no. 2890 of 29 September 1987). The same principle is applied in case the incitement to commit the offence has taken place in Italy (Court of Cassation, Criminal Division I, decision no. 2640 of 7 December 1995).

The country under review cited the following texts:

**Article 6, Criminal Code: Territorial jurisdiction**

Whoever commits an offence on the territory of the State shall be punished according to Italian law.

An offence is considered as committed on the territory of the State when the action or omission constituting it, occurred there in whole or in part, or when an event which is a consequence of the action or omission took place there.

The country under review did not provide examples of implementation.

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

Italy has implemented the provision under review.

**Article 42 Jurisdiction**

**Subparagraph 1 (b)**

*1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:*

*(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.*

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

Italy confirmed that it fully implemented this provision of the Convention.

The applicability of Italian jurisdiction over vessels and aircrafts registered in Italy is expressly provided for by Article 4 Criminal Code:

**Article 4 of the Criminal Code**

**Italian citizen. Territory of the State**

For purposes of criminal law “Italian citizens” shall include citizens [of the colonies, colonial subjects]\*, persons belonging by origin or choice to places subject to the sovereignty of the State and stateless persons residing in the territory of the State.

For purposes of criminal law “the territory of the State” shall include the territory “of the Republic”, [that of colonies]\* and every other place subject to the sovereignty of the State. Italian ships and aircraft shall be deemed to be territory of the State wherever located, unless subject, under international law, to a foreign territorial law.

\* no longer applicable

The country under review did not provide examples of implementation.

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

Italy has implemented the provision under review.

**Article 42 Jurisdiction**

**Subparagraph 2 (a)**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*(a) The offence is committed against a national of that State Party; or*

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

Italy confirmed that it fully implemented this provision of the Convention.

Italy cited the following applicable measures:

The Italian criminal law system provides for jurisdiction in cases of an offence committed against one of its citizens as a residual criterion, i.e. if jurisdiction cannot be established according to rules relating to territoriality (Article 6 Criminal Code – see under question 161.) or to the nationality of the offender (Articles 7, 9 Criminal Code – see under question 164.).

According to Article 10 Criminal Code, Italy has jurisdiction over a foreigner, when he/she is present on the Italian territory, for an offence committed abroad that is not referred in Articles 7 or 8 when the offence is committed to the detriment of the Italian State or an Italian citizen and is punishable by life imprisonment or at least 1 year of imprisonment, as well as when the offence is committed to the detriment of the EU or any foreign country or foreigner and is punishable by life imprisonment or at least 3 years of imprisonment. If the offence is committed to the detriment of the Italian State or an Italian citizen, jurisdiction can only be established at the request of the Minister of Justice or upon the application or complaint of the victim.

Dual criminality is not required for Italy to establish jurisdiction over an offence that takes place abroad.

**Article 10 of the Criminal Code**

**Applicability of criminal legislation of Italy to aliens who commit a criminal offence abroad (conditional universal jurisdiction)**

An alien who, apart from the cases specified in Articles 7 and 8, commits in a foreign territory, to the detriment of the State or a citizen, a crime for which Italian law prescribe the punishment of life imprisonment or imprisonment for a minimum of not less than one year, shall be

punished according to Italian law, provided he is within the territory of the State and there is a demand by the Minister of Justice, or a petition or complaint by the victim.

If the crime was committed to the detriment of a foreign State or an alien, the offender shall be punished according to Italian law, on demand of the Minister of Justice, provided that:

- (1) he is within the territory of the State;
- (2) the crime is one for which the punishment prescribed is life imprisonment or imprisonment for a minimum of not less than three years; and
- (3) his extradition has not been granted, or has not been accepted by the Government of the State in which the crime was committed, or by that of the State to which he belongs.

#### **Article 42 of the Criminal Code**

##### **“Liability for acts committed with malice aforethought or with negligence or for a preterintentional crime. Objective liability**

No person may be punished for an action or omission contemplated by law as an offence, if he has not committed it consciously and wilfully.

No person may be punished for a fact contemplated by law as a crime, if he has not committed it intentionally (with malice aforethought), save in cases of a preterintentional or unintentional crime expressly contemplated by law. The law determines the cases in which the event is otherwise ascribed to the agent, as a consequence of his action or omission.

With regard to misdemeanours [*contravvenzioni*], each person answers for his own conscious or voluntary action or omission whether wilful or unintentional.”

The country under review did not provide examples of implementation.

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

Italy has implemented the provision under review.

#### **Article 42 Jurisdiction**

##### **Subparagraph 2 (b)**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or*

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

Italy confirmed that it fully implemented this provision of the Convention.

Italy cited the following applicable measures:

Articles 7 and 9 Criminal Code establish the limits of the Italian jurisdiction with respect to its own citizens and implement the recommendation in Article 42 paragraph 2 b) UNCAC.

For what in particular interests the offences contemplated by UNCAC, Article 7 number (4) establishes jurisdiction without further conditions when the offender is a public official (for the notion of public official – Article 357 Criminal Code – see under question 63.); in all other cases, the Italian citizen committing an offence on foreign territory is punishable when he is on Italian territory and subject to the condition that the punishment for the offence reaches a particular threshold (in certain cases a request by the Minister of Justice is required).

As far as stateless persons are concerned, Article 4 Criminal Code assimilates them to Italian citizens if they “reside in the territory of the State”. The case law of the Court of Cassation has clarified that the notion of residence is not an occasional or temporary stay in the Country but rather an habitual residence, characterised by a material element (establishment of the domicile) and by a subjective element (the intention to maintain the domicile steadily) (Court of Cassation, Criminal Division III, decision no. 5745 of 29 October 1962; Criminal Division II, decision no. 3229 of 4 July 1967).

**Article 4 of the Criminal Code**  
**Italian citizen. Territory of the State**  
(see citation above)

**Article 7 of the Criminal Code**  
**Universal jurisdiction**

An Italian citizen or an alien who commits any of the following offences in foreign territory shall be punished according to Italian law:

Crimes against the personality of the State.

Crimes of counterfeiting the seal of the State and of using such counterfeited seal.

Crimes of counterfeiting money which is legal tender in the territory of the State, or duty-bearing paper or Italian public credit securities.

Crimes committed by public officers serving the State by abusing their powers or violating the duties connected with their functions.

Any other offence for which specific provisions of law or international conventions prescribe the applicability of Italian criminal law.

**Article 9 of the Criminal Code**

**Applicability of criminal legislation of Italy to citizens who commit a criminal offence abroad (national jurisdiction)**

An Italian citizen who, apart from the cases specified in the two preceding Articles, commits in foreign territory a crime for which Italian law provides the punishment of death, or life imprisonment, or imprisonment for a minimum of not less than three years, shall be punished in compliance with Italian law, provided that he is in the territory of the State.

If it is a crime for which a punishment restricting personal freedom for a shorter period is provided for, the offender shall be punished on demand of the Minister of Justice or following a petition or a complaint of the victim.

In the cases provided for by the preceding provisions, when it is a crime committed to the detriment of European Communities or a foreign State or an alien, the offender shall be punished on demand of the Minister of Justice, provided that his extradition has not been granted or has not been accepted by the Government of the State in which he committed the crime.

The country under review did not provide examples of implementation.

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

Italy has implemented the provision under review.

**Article 42 Jurisdiction**

**Subparagraph 2 (c)**

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or

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

Italy confirmed that it fully implemented this provision of the Convention.

Italy cited the following applicable measures:

According to Article 6 Criminal Code, jurisdiction is established in Italy even if only a fraction of the conduct takes place on the Italian territory (see above under question 161.). Thus, if the offence established in accordance with Article 23 paragraph 1 (b) (ii) UNCAC (see under questions 83. to 86.) is punishable in relation to a main conduct committed on the Italian territory, it will also fall under Italian jurisdiction.

If Italian jurisdiction cannot be established according to this rule, it may be established in accordance with the nationality principle (see above under question 164.) or with Article 10 Criminal Code, when the injured party is an Italian national (see under question 163.).

**Article 6 of the Criminal Code**  
**Territorial jurisdiction**  
(see citation above)

**Article 10 of the Criminal Code**  
**Applicability of criminal legislation of Italy to aliens who commit a criminal offence abroad (conditional universal jurisdiction)**

An alien who, apart from the cases specified in Articles 7 and 8, commits in a foreign territory, to the detriment of the State or a citizen, a crime for which Italian law prescribe the punishment of life imprisonment or imprisonment for a minimum of not less than one year, shall be punished according to Italian law, provided he is within the territory of the State and there is a demand by the Minister of Justice, or a petition or complaint by the victim.

If the crime was committed to the detriment of a foreign State or an alien, the offender shall be punished according to Italian law, on demand of the Minister of Justice, provided that:

- (1) he is within the territory of the State;
- (2) the crime is one for which the punishment prescribed is life imprisonment or imprisonment for a minimum of not less than three years; and
- (3) his extradition has not been granted, or has not been accepted by the Government of the State in which the crime was committed, or by that of the State to which he belongs.

The country under review did not provide examples of implementation.

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

Italy has implemented the provision under review.

**Article 42 Jurisdiction**

## **Subparagraph 2 (d)**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*(d) The offence is committed against the State Party.*

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

Italy confirmed that it fully implemented this provision of the Convention.

Italy cited the following applicable measures:

This case of jurisdiction is established in accordance with Article 10 Criminal Code. See above under question 163.

#### **Article 10 of the Criminal Code**

**Applicability of criminal legislation of Italy to aliens who commit a criminal offence abroad (conditional universal jurisdiction)**

(see citation above)

The country under review did not provide examples of implementation.

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

Italy has implemented the provision under review.

#### **Article 42 Jurisdiction**

##### **Paragraph 3**

*3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.*

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

Italy confirmed that it fully implemented this provision of the Convention.

Italy cited the following applicable measures:

The Italian legal system is compliant with the requirements of Article 42 paragraph 3 UNCAC through the principle enshrined in Article 9 paragraph 3 Criminal Code.

According to Article 26 of the Italian Constitution, an Italian citizen can only be extradited if this is provided by an international Convention.

According to Article 9 paragraph 3 Criminal code, if the offence has been committed by an Italian citizen abroad and to the detriment of a foreign national or foreign State, in case extradition is refused (for any reason, including citizenship), the offence may be judged by Italian Courts at the request of the Minister of Justice.

The case law of the Court of Cassation has clarified that, in order for the Italian jurisdiction to apply, it is not necessary that an extradition procedure has been unsuccessfully concluded, but it is sufficient that the foreign State has, even implicitly, waived its jurisdiction, e.g. by notifying the Italian authorities about the offence committed on its territory (Court of Cassation, Criminal Division I, decision no. 4805 of 20 February 1980; Criminal Division IV, decision no. 4297 of 29 March 1984; Criminal Division I, decision no. 2957 of 12 June 1987).

#### **Article 9 of the Criminal Code**

##### **Applicability of criminal legislation of Italy to citizens who commit a criminal offence abroad (national jurisdiction)**

An Italian citizen who, apart from the cases specified in the two preceding Articles, commits in foreign territory a crime for which Italian law provides the punishment of death, or life imprisonment, or imprisonment for a minimum of not less than three years, shall be punished in compliance with Italian law, provided that he is in the territory of the State.

If it is a crime for which a punishment restricting personal freedom for a shorter period is provided for, the offender shall be punished on demand of the Minister of Justice or following a petition or a complaint of the victim.

In the cases provided for by the preceding provisions, when it is a crime committed to the detriment of European Communities or a foreign State or an alien, the offender shall be punished on demand of the Minister of Justice, provided that his extradition has not been granted or has not been accepted by the Government of the State in which he committed the crime.

The country under review did not provide examples of implementation.

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

It was reiterated in the direct dialogue that Italian nationals may be extradited if provided for in an international treaty, in accordance with Article 26 of the Constitution, or on the basis of “international courtesy” under Articles 696-722 of the Criminal Procedure Code. Article 9 of the Criminal Code provides for jurisdiction over offences committed abroad by Italian nationals, allowing for prosecution in case nationals are not extradited. Similar provisions are contained in Article 10 for aliens.

Italy has implemented the provision under review.

#### **Article 42 Jurisdiction**

##### **Paragraph 4**

*4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.*

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

Italy confirmed that it fully implemented this provision of the Convention.

Italy cited the following applicable measures:

The Italian legal system complies with the provision of Article 42 paragraph 4 UNCAC through Articles 9 (see above under question 167.) and 10 Criminal Code.

For what concerns this last provision, Italy has chosen to limit its jurisdiction to the most serious offences, and in particular to those with an applicable minimum penalty of at least three years imprisonment.

Concerning the condition related to the lack of extradition, see the case law cited under below in Chapter IV.

**Article 10 of the Criminal Code**

**Applicability of criminal legislation of Italy to aliens who commit a criminal offence abroad (conditional universal jurisdiction)**

(see citation above)

The country under review did not provide examples of implementation.

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

Italy has implemented the provision under review.

**Article 42 Jurisdiction**

**Paragraph 5**

*5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.*

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

Italy confirmed that it fully implemented this provision of the Convention.

Italy cited the following applicable measures:

As Member State of the European Union, Italy is bound by Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings, which imposes upon the competent authorities of the EU Member States, when it becomes known that parallel criminal proceedings are taking place in two or more Member States, to consult “in order to reach consensus on any effective solution aimed at avoiding the adverse consequences arising from such parallel proceedings” (Article 10).

In general, the Italian competent authorities may, at any time and of their own motion, take contact with their counterparts in other jurisdiction as appropriate in relation to the good conduct of proceedings.

The country under review did not provide examples of implementation.

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

Italy specified that the law does not provide for a specific mechanism of consultation with other States for the coordination of actions in the investigations, prosecutions or judicial proceedings. Italy explained that the Italian judicial authorities may at any time and on their own accord contact foreign judicial authorities for a consultation. Furthermore, the Ministry of Justice's intervention can be requested in order to facilitate the contact between the judicial authorities. Italy clarified that this arrangement applies to both EU Member States and other States.

Italy has implemented the provision under review.

## **Article 42 Jurisdiction**

### **Paragraph 6**

*6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.*

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

Italy confirmed that it fully implemented this provision of the Convention.

With respect to crimes punishable on complaint of the victim, in addition to such a demand, a complaint shall also be required.

The country under review did not provide examples of implementation.

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

It was clarified during the direct dialogue by Italy that the Convention can in no instance exclude the jurisdiction established in accordance with the provisions of the Italian criminal code.

Italy has implemented the provision under review.

## **Chapter IV. International cooperation**

According to Article 13 of the Italian Criminal Code and Article 696 of the Italian Criminal Procedure Code, the international treaties are a constituent part of the legal system and would govern the process of extradition and mutual legal assistance. Those provisions allow for the direct self-execution of UNCAC in the areas not covered by the domestic legislation of Italy.

The Ministry of Justice conducts a preliminary verification of the incoming extradition and mutual legal assistance requests to assess whether this request meets the requirements of the domestic legislation (or the applicable extradition treaty). If that is the case, the request is forwarded to the competent judicial authority which makes a decision on the eligibility of extradition or performs necessary actions are required in a mutual legal assistance request. Mutual legal assistance requests generally can also be directly communicated to relevant judicial authorities. However, requests based on UNCAC shall be addressed to the Ministry of Justice who was designated as the central authority for the purposes of article 46 of the Convention. Italy makes extradition subject to review by the Court of Appeal; its decision can be appealed before the High Court. The final decision is political and belongs to the Minister of Justice, which could be appealed before the administrative court.

Dual criminality is a necessary condition for the execution of extradition requests but is not required for the provision of mutual legal assistance.

The reviewing experts noted that the lack of case examples and statistical information was an obstacle to the understanding how the relevant provisions of the Convention are implemented in practice. In that regard, Italy was recommended to create a comprehensive mechanism for collecting statistical information on the execution of extradition and MLA requests.

### **Article 44 Extradition**

#### **Paragraph 1**

*1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.*

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

Italy has indicated that a general principle of the Italian system is that international cooperation is directly ruled by the international conventions in force in Italy; and, in the absence of international conventions, or other provisions, by the rules of the Italian code of criminal procedure (Article 696 of the Criminal Procedure Code). Therefore, after ratifying the Convention, the Italian system provides for the principle of dual criminality. Besides, this principle was already in force under Article 13 of the Criminal Code and applied to extradition in the absence of conventions on this matter.

Italy cited the following applicable measures:

Article 13 Criminal code, Article 696 Code of Criminal Procedure

## **Article 13 Criminal Code**

### **Extradition**

Extradition shall be governed by Italian criminal law, by conventions and international habits. Extradition shall not be admitted, if the fact object of the request for extradition is not provided for as an offence by Italian law and by foreign law. Extradition can be granted or offered also for offences which are not provided for by international conventions provided that they do not expressly forbid it. Extradition of a national is not admitted unless it is expressly allowed in international conventions.

## **Article 696 of the Code of Criminal Procedure**

### **Supremacy of international conventions and general international law.**

1. Extraditions, letters of request, effects of foreign criminal judgments, enforcement abroad of Italian criminal judgments and the other relations with foreign authorities concerning dispensation of justice are governed by the provisions of the European Convention of legal assistance signed in Strasbourg on 20 April 1959 and by the other provisions of international conventions in force in the State and by the rules of general international law.

2. Failing these provisions or if it is otherwise provided by them, the following rules shall apply.

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

Under Article 696 of the Code of Criminal Procedure of Italy, extradition is governed by international conventions in force and by rules of general international law (Article 696 of the Criminal Procedure Code).

The Ministry of Justice conducts a preliminary verification of the incoming extradition request to assess whether this request meets the requirements of the domestic legislation (or the applicable extradition treaty). If that is the case, the request is forwarded to the competent judicial authority which makes a decision on the eligibility of extradition. Italy makes extradition subject to review by the Court of Appeal; its decision can be appealed before the High Court. The final decision is political and belongs to the Minister of Justice, which could be appealed before the administrative court. With regard to other Member States of the European Union, the surrender of fugitives is carried out in line with the requirements of the European Council Framework Decision of 13 June 2002 on the European Arrest Warrant (EAW) and the surrender procedures between Member States of the European Union. The surrender procedure based on the EAW is removed outside the realm of the executive and is placed in the hands of the judiciary.

Extradition requests may be granted only subject to the requirement of dual criminality.

Italy stated that no cases have been recorded of rejection of extradition requests based on the UNCAC due to the status of “national” of the person whose extradition is requested.

Italy has implemented the provision under review in its legislation.

## **Article 44 Extradition**

### **Paragraph 2**

*2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.*

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

Italy indicated that has not implemented this provision of the Convention.

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

Extradition requests may be granted only subject to the requirement of dual criminality.

**Article 44 Extradition**

**Paragraph 3**

*3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.*

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

Italy has indicated the Convention will apply directly with regard to the provision under review by virtue of Article 696 of the Code of Criminal.

Italy had already ratified the European Convention for Extradition, whose article 2, paragraph 2 is worded as follows.

**Art. 2**

2. If the request for extradition includes several separate offences each of which is punishable under the laws of the requesting Party and the requested Party by deprivation of liberty or under a detention order, but of which some do not fulfil the condition with regard to the amount of punishment which may be awarded, the requested Party shall also have the right to grant extradition for the latter offences.

Italy did not cite texts or provide examples of implementation.

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

Italian law does not contain minimum requirements for the offence to be extraditable.

Italy clarified that, in cases of extradition for the prosecution of an offence, the minimum penalty requirement that serves as a prerequisite for the existence of an extraditable offence is an arrest warrant. In cases of extradition for the execution of a sentence, the minimum penalty requirement that serves as a prerequisite for the existence of an extraditable offence is a prison sentence.

Italy indicated that there are no known cases in which extradition has been refused on the basis of an insufficient minimum penalty for the offences relating to the UNCAC specified in the extradition request.

Italy has implemented the provision under review.

## **Article 44 Extradition**

### **Paragraph 4**

*4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.*

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

Italy has cited the following applicable measures:

The conducts provided for as an offence by the present convention are considered as an offence also in Italian system which does not include them among political offences. Therefore they are considered as extraditable offences in all the international agreements already concluded.

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

As all UNCAC mandatory offences are generally criminalized in Italy, they are considered as extraditable ones. Italy additionally explained during the country visit that on the basis of Article 696 of the Code of Criminal Procedure, UNCAC prevails over bilateral treaties on extradition. Therefore, bilateral treaties can in no way conflict with a possible extradition in accordance with this provision of the Convention.

Italy has implemented the provision under review.

## **Article 44 Extradition**

### **Paragraph 5**

*5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.*

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

Italy has indicated that it does not make extradition conditional on the existence of a treaty.

Italy considers the UNCAC as the legal basis for extradition in respect to any offence to which the article under review applies.

Extradition can be granted also on the basis of mere international courtesy, with promise of reciprocity.

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

Italy does not make extradition conditional on the existence of a treaty. Italy also considers UNCAC as the legal basis for extradition with respect to UNCAC offences.

## **Article 44 Extradition**

### **Subparagraph 6 (a)**

*6. A State Party that makes extradition conditional on the existence of a treaty shall:*

*(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and*

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

Italy indicated that it does not make extradition conditional on the existence of a treaty.

Italy considers the UNCAC as the legal basis for extradition in respect to any offence to which the article under review applies.

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

Please see observations under paragraph 5 above.

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

Considering UNCAC as a legal basis for extradition can be regarded as a good practice.

## **Article 44 Extradition**

### **Subparagraph 6 (b)**

*6. A State Party that makes extradition conditional on the existence of a treaty shall:*

*(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.*

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

Italy indicated that it does not make extradition conditional on the existence of a treaty.

Italy considers the UNCAC as the legal basis for extradition in respect to any offence to which the article under review applies.

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

Please see observations under paragraph 5 above.

## **Article 44 Extradition**

### **Paragraph 7**

*7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.*

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

Italy has referred to its answers under paragraph 1 above.

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

As all UNCAC mandatory offences are generally criminalized in Italy, they are considered as extraditable ones. Italy considers the Convention as a legal basis for extradition and does not make extradition conditional on the existence of a treaty.

Italy fulfils the requirements of this provision.

**Article 44 Extradition**

**Paragraph 8**

*8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.*

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

Italy has indicated that under Article 696 of the Code of Criminal Procedure, extradition is governed by international conventions in force for the State and by rules of general international law. In default of these provisions or if it is otherwise provided by them, the provisions of the Code of Criminal Procedure shall apply.

The Code of Criminal Procedure (Article 705 Code of Criminal Procedure) provides that, if it not otherwise provided in the relevant convention, the judicial authorities render a judgment in favour of extradition if there is serious circumstantial evidence or if there is a final conviction and if no prosecution is ongoing for the same fact against the person whose extradition is requested or no final judgment was issued against him/her in the state.

Furthermore Italy does not grant extradition:

if the requesting state does not assure the respect of fundamental rights during the criminal proceeding,

if the judgment whose execution was at the basis of the extradition request contains prescriptions contrary to the fundamental principles of the State's legal order;

If there is risk that the person can be submitted to inhuman treatments.

The country under review cited the following texts:

Article 705 Code of Criminal Procedure; Article 696 Code of Criminal Procedure; Article 698 Code of Criminal Procedure.

**Article 696 of the Code of Criminal Procedure** (as cited under paragraph 1 above).

**Article 698**

**Political offences. Safeguard of personal fundamental rights**

1. Extradition cannot be granted for a political offence when there are grounds to believe that the defendant or sentenced person will be persecuted or discriminated for reasons related to his/her race, religion, sex, nationality, language, political opinion or personal or social conditions or will be submitted to cruel, inhuman or degrading punishments or treatments or in any case to acts violating one of the personal fundamental rights.

**Article 705**

**Conditions for the decision**

When there is no extradition treaty or it is otherwise provided by it, the Court of Appeal shall render a decision in favour of extradition if there is serious circumstantial evidence or if there is a final conviction and, for the same fact, no criminal proceeding is ongoing or no a final judgment was issued in the State.

The Court of Appeal renders in any case a decision contrary to extradition:

if, for the offence for which extradition was requested, the person was or will be submitted to a proceeding which does not assure the respect of fundamental rights;

if the judgment for the execution of which extradition was requested contains prescriptions contrary to the fundamental principles of the State's legal order;

if there grounds to believe that the persons will be submitted to the acts, punishments or treatments indicated in Article 698 paragraph 1.

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

Following a discussion in the course of the country visit Italy additionally provided the following generic example of a case of refusal of extradition in accordance with the conditions provided by the Italian domestic law.

**Corte di Cassazione, VI Sezione (Court of Cassation, Sect. 6). Judgment no. 15578 of February 11, 2011.**

The court declared that “As to extradition to foreign countries, there is a ban on surrender in compliance with Article 705, para. 2, of the Code of Criminal Procedure if the offence the person sought has been charged with is punished under the legislation of the Requesting State with the penalty of forced labour, considering that this provision is contrary to Articles 4, para. 2, of the European Convention of Human Rights and 5, para. 2, of the EU Charter of Fundamental Rights –according to which no one shall be required to perform forced or compulsory labour - and contrary to the respect of fundamental rights required by Article 698, par. 1, of the Code of Criminal Procedure”. In implementation of this principle, the Supreme Court held that the conditions for extradition - requested by the Republic of Belarus for an offense of computer fraud, punished also with forced labour under Article 212 of the Belorussian Criminal Code - didn't exist.

Italy has implemented the provision under review.

**Article 44 Extradition**

**Paragraph 9**

*9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.*

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

Italian system provides, with European Arrest Warrant, in force between the Member States of the European Union, a simplified extradition system also with regard to the offences under the present Convention.

In particular in European Arrest Warrant system political assessment, typical of extradition procedure is abolished in favour of an extremely accelerated practice (90 days at the most since the arrest to the surrender decision) which is conducted almost in full by Judicial Authorities.

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

Between EU member states, a faster procedure is possible through the European Arrest Warrant procedure.

In addition, regardless of the identity of the requesting state, a simplified procedure is provided in Italy when the person, whose extradition is requested, gives his/her consent based on Article 701 of the Criminal Procedure Code. In this case the positive decision of the Judicial Authority (Court of Appeal) is not necessary.

**Article 701 of the Criminal Procedure Code  
Jurisdictional guarantee.**

1. The extradition of a person accused or convicted in a foreign country may not be granted without a favourable decision of the Court of Appeal.
2. However, no proceedings shall take place in the Court of Appeal when the person accused or convicted abroad consents to the requested extradition. The possible consent must be expressed in the presence of the defence counsel and it is mentioned in the record.
3. A favourable decision of the Court of Appeal or the consent of the person do not make extradition mandatory.
4. The competence to decide belongs, in order, to the Court of Appeal in whose district the person accused or convicted has his residence, where he may temporarily be residing, or where he has his domicile when the request for extradition is received by the Minister of Grace and Justice, or the Court of Appeal which ordered the provisional arrest provided for by article 715, or the Court of Appeal whose presiding Judge ordered the validation of the arrest as specified in article 716. If competence may not be determined in the ways thus indicated, the Court of Appeal of Rome shall be competent.

Although Italy has not provided the average duration of the extradition procedure. Certain deadlines are stipulated in Article 708 of the Criminal Procedure Code.

**Article 708 of the Criminal Procedure Code  
Order for extradition. Surrender.**

1. The Minister of Grace and Justice shall decide on the merits of extradition within 45 days of the reception of the record noting consent to extradition, or of the notice that the deadline for appeal has expired, or of the filing of the Court of Cassation judgment.
2. If said deadline has expired without a decision by the Minister, the person whose extradition is requested – if imprisoned – shall be set at liberty.

3. The same person shall furthermore be set at liberty in case of denial of extradition.
4. The Minister of Grace and Justice shall, without delay, communicate the decision to the requesting State and, if the decision is positive, he shall indicate the place of surrender and the date as of which it shall be possible to proceed to this, furthermore giving precise indications on the restrictions of personal freedom suffered by the person to be extradited for the purposes of extradition.
5. The deadline for surrender shall be 15 days of the date set as per paragraph 4 and, upon a motivated request of the requesting State, it may be extended by 20 more days.
6. The order granting extradition shall lose its effect if, by the deadline set, the requesting State does not take custody of the person to be extradited; in such case the latter shall be set at liberty.

Italian legislation, based on the above, provides for a simplified extradition procedure, where a person whose extradition is sought voluntarily consents to be extradited.

## **Article 44 Extradition**

### **Paragraph 10**

*10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.*

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

Italian system allows the judicial police to arrest the person sought, in urgent cases (Article 716 of the Code of Criminal Procedure). Furthermore, the precautionary measure of custody in prison (or a less serious measure) can be also requested at any time, by the Ministry of Justice (Articles 714 and 715 of the Code of Criminal Procedure). Precautionary measures are generally applied in extradition proceedings, except in those cases where there are grounds to believe that the person in question will not avoid surrender decision, if any. However, in practice there have been cases where the precautionary measures have been revoked as a result of the necessary documents not being submitted by the requesting state within 40 days.

Italy has cited the following implementation measures:

Article 714, 715 and 716 of the Code of Criminal Procedure

#### **Article 714**

##### **Coercive measures and seizure**

Coercive measures may be imposed on any person whose extradition was requested at any time, upon request by the Minister of Justice. Similarly, the seizure of the physical evidence and all the objects connected with offence for which extradition was requested may be ordered at any time by the Minister of Justice.

The provisions of Title I of Book IV on coercive measures are also applicable, except those of articles 273 and 280, and the provisions of Section III of Title III of Book III. When imposing coercive measures the need to make sure that the person sought does not avoid surrender is particularly taken into account.

(...)

#### **Article 715**

##### **Temporary application of precautionary measures**

At a request submitted by the foreign State and a grounded request of the Minister of Justice, the Court of Appeal may order, temporarily, a coercive measure before the receipt of the request for extradition.

The aforesaid measure can be ordered if:

the foreign State stated that an order restricting the person's personal freedom or a conviction to a custodial sentence were rendered against the person in question and that it intends to file a request for extradition;

the foreign State provided a statement of the facts, specifying the offences and sufficient elements to identify the person;

there is risk that the person may flee.

The court of appeal of the district where the person has his/her residence, domicile or abode or the court of appeal of the district where the said person is found shall have jurisdiction respectively. If jurisdiction cannot be established as indicated above, the court of appeal of Rome shall have jurisdiction.

The Court of Appeal can also order that the physical evidence and the objects connected with the offence be seized.

The Minister of Justice shall immediately notify the foreign country the temporary application of coercive measure and seizure, if any.

Any coercive measure shall be revoked if the Ministry of Foreign Affairs does not receive any request for extradition and the documents provided for by Article 700 within forty days from the above notice.

#### **Article 716**

##### **Arrest by judicial police**

In urgent cases, judicial police may arrest the person against whom a request for temporary arrest was lodged if the conditions under Article 715 paragraph 2 are met. Judicial police can also seize physical evidence and the objects connected with the offence.

The authority executing the arrest shall immediately the Minister of Justice and places the arrested person at the disposal of the chief justice of the court of appeal where the arrest was carried out and for these purposes shall forward the relevant transcript as soon as possible and in any case within forty-eight hours from the arrest.

Except when release is to be ordered, the chief justice of the court of appeal shall confirm the arrest within ninety-six hours with an order and shall impose a coercive order. He shall immediately notify the Minister of Justice.

Any coercive measure shall be revoked if the Minister of Justice does not request that it be continued within ten days from its confirmation.

The provisions of Article 715 paragraphs 5 and 6 shall apply.

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

Italy has implemented the provision under review in its legislation.

#### **Article 44 Extradition**

##### **Paragraph 11**

*11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in*

*particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.*

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

Italy has clarified that the principle “aut dedere, aut iudicare” is a cornerstone of its system and it is corroborated in the international conventions signed and ratified by Italy, including the present Convention which is directly applied in its system by virtue of Article 696 quoted above. Additionally, the European Convention on Extradition, to which Italy adheres, also contains relevant provisions.

**Article 6 – Extradition of nationals**

A Contracting Party shall have the right to refuse extradition of its nationals.

Each Contracting Party may, by a declaration made at the time of signature or of deposit of its instrument of ratification or accession, define as far as it is concerned the term "nationals" within the meaning of this Convention.

Nationality shall be determined as at the time of the decision concerning extradition. If, however, the person claimed is first recognised as a national of the requested Party during the period between the time of the decision and the time contemplated for the surrender, the requested Party may avail itself of the provision contained in sub-paragraph a of this article.

If the requested Party does not extradite its national, it shall at the request of the requesting Party submit the case to its competent authorities in order that proceedings may be taken if they are considered appropriate. For this purpose, the files, information and exhibits relating to the offence shall be transmitted without charge by the means provided for in Article 12, paragraph 1. The requesting Party shall be informed of the result of its request.

As was already said, in any case, tank to Article 696 of the Code of Criminal Procedure, mentioned above, the present Convention is a further legal basis for prosecution if extradition is refused.

In the European Arrest Warrant procedure, a sort of simplified extradition in force between the Member States of the European Union, then, if the national has to be submitted to a trial in the requesting state, he is surrendered provided that the penalty imposed, if any, by the requesting Authority, is served in the requested State (state of nationality); if, on the contrary, he person is requested to serve a penalty abroad, the requested State can refuse the surrender and execute directly the penalty imposed abroad on its national.

**Article 18 Law n. 69 of 2005**

(Refusal of surrender)

1. The Court of Appeal shall refuse surrender in the following cases:

a) (...)

r) if the European Arrest Warrant was issued in view of the execution of a penalty or a security measure depriving the person in question of his/her personal liberty, when the

person sought is an Italian national, provided that the Court of Appeal orders that this penalty or security measure be executed in Italy in compliance with its domestic law;

(...)

**Article 19 Law n. 69 of 2005**

(Guarantees requested to the Issuing Member State)

1. The execution of the European Arrest Warrant by the Italian Judicial Authority, in the following cases, depends on the following conditions:

a) (...)

c) if the person object of the European Arrest Warrant in view of a criminal prosecution is an Italian national or resident in the Italian State, the surrender depends on the condition that the person, after being examined, be returned to the administering Member State to serve the penalty or security measure imposed on him/her, if any, in the issuing Member State.

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

By virtue of Article 696 of the Italian Criminal Procedure Code, the paragraph under review is applied directly.

The legal principle of “aut dedere aut judicare” is the cornerstone of the Italian legal system.

Although nationality is a ground for refusal of extradition, however, an Italian national can still be extradited in cases explicitly provided in international conventions (Article 26 of the Constitution).

**Article 26 Italian Constitution**

Extradition of a national is allowed only in cases explicitly provided for in international conventions (...)

Italy did not provide any statistical data on criminal proceedings adopted against its own nationals, nor on criminal proceedings directly based on UNCAC and outside the scope of application of the European Convention on Extradition or bilateral agreements.

In addition, the extradition of a national is possible through the European Arrest Warrant procedure.

Italy has implemented the provision under review in its legislation.

**Article 44 Extradition**

**Paragraph 12**

*12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.*

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

Italy has referred to its responses given under paragraph 11 above.

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

By virtue of Article 696 of the Italian Criminal Procedure Code, the paragraph under review is applied directly.

Italy has implemented the provision under review in its legislation.

**Article 44 Extradition**

**Paragraph 13**

*13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.*

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

Italy has referred to the provisions of the Code of Criminal Procedure relevant to the recognition and enforcing of foreign criminal sentences.

**Article 731** - Recognition of foreign criminal judgments pursuant to international agreements (Code of Criminal Procedure)

The Minister of Justice, if he/she considers that - pursuant to an international agreement - a criminal judgment delivered abroad must be enforced in the State, or however, that other effects must be attributed to it in the state, shall request its recognition. To that end, he/she shall forward to the Prosecutor General at the Court of Appeal in the district where the competent office of the judicial records is located, a copy of judgment, together with a translation into the Italian language, along with the acts attached to it, and with the available documentation and information. He/she shall also forward a possible request - for enforcement in the [Italian] State - from the foreign state, or the document by which this state agrees to enforcement.

1-bis. The provisions of paragraph 1 shall also apply in cases of execution of confiscation and when the relevant measure has been adopted by the foreign judicial authority by means of a decision other than a judgment of conviction.

2. The Prosecutor General shall request the recognition to the Court of Appeal. Where the necessary conditions are met, he/she shall request that recognition be also approved for the purposes provided for in Article 12, para.1 (1), (2) and (3) of the Criminal Code.

**Article 733** - Requirements for recognition (Code of Criminal procedure)

The foreign judgment cannot be recognized if:

- a) the judgment has not become final according to the laws of the state in which it was delivered;
- b) the judgment contains provisions contrary to the fundamental principles of the legal system of the State;
- c) the judgment was not rendered by an independent and impartial judge or the defendant

was not summoned to appear in court before a foreign authority or he/she was not given the right to be questioned in a language which he/she can understand and be assisted by a lawyer

- d) there are reasonable grounds to believe that considerations concerning race, religion, gender, nationality, language, political opinions or personal or social conditions have affected the development or outcome of the trial;
- e) the fact for which the judgment was delivered is not considered to be an offence under the Italian law;
- f) a final judgment was delivered in the State for the same fact and against the same person;
- g) criminal proceedings are taking place in the State for the same fact and against the same person.

1-bis Without prejudice to Article 735-bis, a foreign judgment may not be recognized for the purposes of confiscation if this involves property whose confiscation would not be possible under the Italian law, should the same fact be prosecuted in the State.

#### **Article 734** - Decision of the Court of Appeal (Code of Criminal Procedure)

The Court of Appeal shall decide upon the recognition, complying with the procedure set out in Article 127, by means of a judgment in which the effects resulting from it are expressly stated.

An appeal against the judgment may be lodged with the Supreme Court (606) by the Prosecutor General at the Court of Appeal and by the person concerned.

#### **Article 735** - Determination of the penalty and confiscation order (Code of Criminal Procedure)

When it pronounces the recognition of a foreign judgment for enforcement purposes, the Court of Appeal shall determine the sentence that must be executed in the State.

2. To that end, it converts the penalty established in the foreign judgment into one of the penalties provided for the same act by the Italian law. Such penalty must correspond in nature, as far as possible, to the penalty imposed by the foreign judgment. The amount of the penalty is determined, taking possibly into account the criteria provided by the Italian law, on the basis of the amount fixed in the foreign judgment; however, the amount cannot exceed the maximum amount provided for the same fact by the Italian law. When the amount of the penalty is not established in the foreign judgment, the Court shall determine it on the basis of the criteria set out in Articles 133, 133-bis and 133-ter of the Criminal Code.

3. In no case may the penalty thus determined be more severe than the one established in the foreign judgment.

4. If in the foreign State where the judgment was delivered, the sentence was conditionally suspended, the Court shall also order, along with the judgment of recognition, the suspended sentence under the Criminal Code (Article 163 of the Criminal Code); if in that State the sentenced person was conditionally released, the Court shall replace the foreign measure with parole (Article 176 of the Criminal Code) and, in determining the requirements for probation [*libertà vigilata*], the supervising judge cannot make the overall treatment - in terms of penalties established in foreign provisions, more severe.

5. To determine the pecuniary penalty, the amount established in the foreign judgment shall be converted into the equivalent value in Italian liras at the exchange rate of the day when the recognition is deliberated.

6. When the Court pronounces recognition for the purpose of execution of a confiscation (Article 240 of the Criminal Code), the latter shall be ordered with the same judgment of recognition.

#### **Article 736** - Coercive measures (Code of Criminal procedure)

1. At the request of the Prosecutor General, the Court of Appeal - competent for the recognition of a foreign judgment for the enforcement of a penalty restricting personal liberty

- may order a coercive measure (281-286) against the sentenced person who is in the State.
- 2 Where applicable, the provisions of Title I of Book IV on coercive measures shall be complied with, except for those referred in Article 273.
- 3 The Presiding Judge of the Court of Appeal shall, as soon as possible and in any event within five days of execution of the coercive measures, see to the identification of the person. The provision under Article 717, para 2, shall apply.
- 4. The coercive measure, ordered pursuant to this Article, shall be revoked if since the beginning of its execution six months have elapsed without the Court of Appeal having pronounced judgment of recognition, or, in the case of an appeal lodged with the Court of Cassation against that judgment, ten months have passed without a final judgment of recognition having been handed down.
- 5. The revocation and substitution of the coercive measure shall be ordered in chambers (Article 127) by the Court of Appeal.
- 6. A copy of the measures issued by the Court shall be communicated and transmitted, after their execution, to the Prosecutor General, the person concerned and his/her defense counsel, who may lodge an appeal with the Court of Cassation for violation of law.

**Article 738** Execution following recognition (Code of Criminal Procedure)

1. In cases of recognition for the purpose of execution of a foreign judgment, the penalties and confiscation following recognition shall be executed according to the Italian law. The sentence served in the sentencing State shall be counted for the purpose of execution.
2. The Prosecutor General at the Court of Appeal which deliberated the recognition shall see to the execution *ex officio*. This Court shall be – to all intents and purposes- treated as equivalent to the judge who pronounced the conviction in an ordinary criminal proceeding.

**Article 739** Ban on extradition and new proceedings (Code of Criminal Procedure)

1. In cases of recognition for the purpose of execution of the foreign judgment, except in the case of execution of a confiscation (240 Criminal Code), the sentenced person cannot be extradited; neither can he/she be subjected one again to criminal proceedings in the State for the same offense, even if the latter is considered differently in terms of *nomen iuris*, degree or circumstances (649).

Italy has additionally indicated that, in particular, in the European Arrest Warrant procedure a simplified extradition in force between the Member States of the European Union exists. Any request to execute an enforceable European Arrest Warrant can be accepted and the person sought shall serve in Italy the penalty imposed by the Judicial Authorities of the Requesting State.

Italy has also referred to its see Subparagraph 11 above.

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

The paragraph under review is directly applied by virtue of Article 696 of the Criminal Procedure Code.

The Criminal Procedure Code also contains standards and procedural rules governing the enforcement of foreign criminal sentences.

However, Italy did not provide any statistical data on the enforcement of sentences or remainder of sentences imposed abroad against its own nationals.

Italy has implemented the provision under review in its legislation.

## **Article 44 Extradition**

### **Paragraph 14**

*14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.*

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

Italy has cited the following implementation measure.

Constitutional Law n. 2 of 1999 Article 111 of the Italian Constitution was modified as follows:

#### **“Article 111**

Jurisdiction shall be implemented through fair trial ruled by law.

Each trial takes place with the hearing of the parties, under parity conditions before an impartial judge acting as third party. Law assures the trial’s reasonable duration.

In criminal trial, law makes sure that any person charged with an offence is informed confidentially as soon as possible of the nature and grounds of charges against him/her; has the time and conditions necessary to prepare his/her defence; has the right, to examine or make examine before the judge the persons who make statements against him, to obtain that the persons for his defence be summoned and examined under the same conditions as prosecution and that any other means of proof for him/her be acquired; is assisted by an interpreter if he/she does not speak the language used in the trial.

Criminal trial is governed by the principle of cross-examination of the parties when establishing evidence. The defendant’s guilt cannot be proved on the basis of statements made by anyone who, out of his/her own choice has always avoided being examined by the defendant or his/her defence counsel.

The law provides for the cases in which evidence is not established with the hearing of the parties, when the defendant consents to it or when it is objectively impossible or as a result of a proven illicit conduct.

Each jurisdictional decision shall be proved.

An appeal to the Court of Cassation for infringing the law is always possible against the judgments and decisions affecting personal liberty rendered ordinary or special courts.

The only exception to this provision is admitted for the judgments rendered by war courts in wartime.

Appeals against the decisions of the Council of State and State Auditors’ Department are admitted for grounds connected with jurisdiction only.”

Italy additionally clarified that the general provision above, from which numerous ad hoc and procedural rules are stemmed, is applicable to all Italian criminal trials, not only to those related to the offences under the present Convention.

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

Fair treatment protection during extradition proceedings is afforded under the Constitution (Article 111) and numerous corresponding ad hoc and procedural rules.

Italian authorities also demand specific guarantees from the requesting state when in doubt of its compliance with the ECHR standard. However, Italy did not provide any data on the number of times that such guarantees are requested.

Italy has implemented the provision under review in its legislation.

## **Article 44 Extradition**

### **Paragraph 15**

*15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.*

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

Italy has cited the following implementation measures.

As a general principle Article 698 of the code of criminal procedure provides that:

#### **Article 698 of the Code of Criminal Procedure**

1. Extradition cannot be granted for a political offence when there are grounds to believe that the defendant or sentenced person will be persecuted or discriminated for reasons related to his/her race, religion, sex, nationality, language, political opinion or personal or social conditions or will be submitted to cruel, inhuman or degrading punishments or treatments or in any case to acts violating one of the personal fundamental rights.

Another relevant provision is provided for by Article 705 of the Code of Criminal Procedure, according to which:

#### **Article 705 Conditions for the decision**

1. When there is no extradition treaty or it is otherwise provided by it, the Court of Appeal renders a decision in favour of extradition if there is serious circumstantial evidence or if there is a final conviction and, for the same fact, no criminal proceeding is ongoing or no a final judgment was issued in the State.

2. The Court of Appeal renders in any case a decision contrary to extradition:  
if, for the offence for which extradition was requested, the person was or will be submitted to a proceeding which does not assure the respect of fundamental rights;  
if the judgment for the execution of which extradition was requested contains prescriptions contrary to the fundamental principles of the State's legal order;  
if there grounds to believe that the persons will be submitted to the acts, punishments or treatments indicated in Article 698 paragraph 1.

Also at the level of European Arrest Warrant, where requests for surrender based on persecutory criminal proceedings are supposed to be excluded, Italian legislator was extremely cautious and introduced an ad hoc ground to refuse surrender.

#### **Article 18**

(Refusal of surrender)

1. The Court of Appeal shall refuse surrender in the following cases:

a) if there are objective grounds to believe that the European Arrest Warrant was issued in view of prosecuting or punishing a person owing to his/her sex, race, religion, ethnical origin, nationality, language, political opinions or sexual inclination or if this person's position can be jeopardized for one of these reasons;

(...)

There follows a recent decision of the Court of Cassation implementing this principle in extradition matters.

**Court of Cassation, 6th Division, Decision n. 15578 of 11 February 2011 Cc (Filed on 18 April 2011) Rv. 250034**

In the matter of extradition abroad, surrender is forbidden under Article 705, paragraph 2 of the Code of Criminal Procedure, when the fact to which the person sought has to answer is punished by the legislation of the Requesting State with the penalty of forced labour, since this provision is at odds with Articles 2, paragraph 2 of the European Convention of human rights and 5, paragraph 2 of the Charter of Fundamental Rights of the European Union according to which nobody can be obliged to forced or obligatory labour – as well as with respect for fundamental rights required by Article 698, paragraph one, of the code of criminal procedure (When implementing this principle the Court of Cassation considered that the conditions were not met for the extradition requested by the Republic of Belarus for an offence of computer-related fraud punished by Article 212 of the Belarusian code of criminal procedure also with forced labour).

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

Italy has implemented the provision under review.

**Article 44 Extradition**

**Paragraph 16**

*16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.*

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

Italy cited the following implementation measures.

Italian system already complied with this provision before ratifying the present convention, which now is predominant under Article 696 of the code of criminal procedure. In particular, Italy had already ratified the second additional protocol to the European Convention on Extradition, adopted in Strasbourg in 1978, in which Article 2 is worded as follows:

"Fiscal offences"

1. For offences in connection with taxes, duties, customs and exchange extradition shall take place between the Contracting Parties in accordance with the provisions of the Convention if the offence, under the law of the requested Party, corresponds to an offence of the same nature.

2. Extradition may not be refused on the ground that the law of the requested Party does not impose the same kind of tax or duty or does not contain a tax, duty, custom or exchange regulation of the same kind as the law of the requesting Party."

Additionally, there is a decision of the court of cassation in this matter:

**Court of Cassation 6th Division, Judgment n. 18536 of 27 April 2012 Cc. (Filed on 15 May 2012) Rv. 25252.**

In the matter of extradition abroad, in view of implementing Article 2 of the Second Additional Protocol of 17 March 1978, made enforceable in Italy by Law 18 October 1984, n. 755, allowing extradition also for fiscal offences, the principle of “special dual criminality” is to be intended in the sense that the notion of punishing the offences in the two legislations is equivalent without expecting them to be fully superimposable in that it is inevitable that there are various kinds of offences provided for given the specific and complex nature of fiscal matters. (Cases where fiscal offences for which the person sought had been convicted in Romania and those provided for by Law n. 516 of 1982 repealed were fully superimposable whereas this was not the case with regard to the offences under Legislative Decree n. 74 of 2000).

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

The paragraph under review is directly applied by virtue of Article 696 of the Criminal Procedure Code.

Italy additionally clarified that the implementation of Art. 2 of the Second Additional Protocol to the European Convention on Extradition was established with the Law of 18 October 1984, n. 755.

**Law no. 755 of October 18, 1984.**

Ratification and implementation of the Second Additional Protocol to the European Convention on Extradition, adopted in Strasbourg on March 17, 1978  
The Chamber of Deputies and the Senate have approved;

THE PRESIDENT OF THE REPUBLIC PROMULGATES  
the following law:

– Article 1

The President of the Republic shall be authorized to ratify the Second additional Protocol to the European Convention on Extradition, adopted in Strasbourg on March 17, 1978.

– Article 2

Full and complete implementation shall be given to the Protocol referred to in Article 1 as from the date of its entry into force, pursuant to Article 36 of the said Protocol.

This Law, bearing the State seal, shall be included in the Official Collection of laws and decrees of the Italian Republic. It is mandatory for anyone to comply with it and enforce it as a law of the State.

Done at Rome, on October 13, 1984.

Italy has implemented the provision under review.

**Article 44 Extradition**

## **Paragraph 17**

*17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.*

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

Italy has clarified that it complies with this provision after ratifying UNCAC by virtue of Article 696 of the code of criminal procedure mentioned above.

Furthermore Italy had already ratified the European Convention on extradition, signed in Paris in 1957, in which Article 13 is worded as follows:

#### **Article 13 – Supplementary information**

If the information communicated by the requesting Party is found to be insufficient to allow the requested Party to make a decision in pursuance of this Convention, the latter Party shall request the necessary supplementary information and may fix a time-limit for the receipt thereof.

A similar power is provided for by Article 704, paragraph 2 of the code of criminal procedure

#### **Article 704 – Proceeding before the Court of Appeal**

1. (...)

2. The Court shall decide with a judgment rendered in chambers if the conditions are met to grant the request for extradition after taking the relevant information and ordering that the necessary investigations be carried out and after hearing the public prosecutor, the defence counsel and, the person sought and the representative of the requesting State, if they appear.

These requests for additional information are very frequent in extradition procedures.

There follows the maxim of a decision of the Court of Cassation in this matter:

**Court of Cassation 6th Division Decision n. 40859 of 2 October 2001 Cc. (Filed on 15 November 2001 Rv. 220318)**

In an extradition procedure any order rendered by the Court of Appeal with which clarifications and explanations are requested to the requesting Government is not abnormal, regardless the extent of the requested elements, in that it is a measure which is expressly provided for by Article 704, paragraph 2, of the code of criminal procedure and by article 13 of the European Convention on extradition signed in Strasbourg on 13 December 1957.

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

The paragraph under review is applied directly. During the country visit Italy additionally clarified that it has a practice of consulting with requesting States before refusing extradition.

The most frequent supplementary information requests concern documents (e.g. decisions) and information about the national law of the requesting State.

Italy has implemented the provision under review.

## **Article 44 Extradition**

### **Paragraph 18**

*18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.*

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

Italy provided the following list of bilateral extradition treaties::

#### **Argentina**

Convention on extradition (Rome, 1987)

Additional Protocol to the Convention on extradition of 9 December 1987 (Rome, 2003)

#### **Australia**

Extradition Treaty (Milan, 1985)

#### **Austria**

Additional agreement to the European Convention on extradition of 13 December 1957 and aimed at facilitate its implementation (Vienna, 1973)

#### **Bahamas**

Treaty between Italy and Great Britain for the mutual surrender of fugitive criminals (Rome, 1873)

#### **Bolivia**

Treaty of friendship and extradition (Lima, 1890)

#### **Brazil**

Extradition Treaty (Rome, 1989)

#### **Canada**

Extradition Treaty (Rome, 1981)

Extradition treaty between the Government of the Italian Republic and the Government of Canada (Rome, 2005)

**Costa Rica**

Convention on extradition and legal assistance (Rome, 1873)

**Cuba**

Convention on extradition (Avana City, 1928)

**Germany**

Additional agreement to the European Convention on extradition of 13 December 1957 and aimed facilitating its implementation (Rome, 1979)

**Kenya**

Treaty between Italy and Great Britain for the mutual surrender of fugitive criminals (Rome, 1873)

(Rome, 1873)

**Lesotho**

Treaty between Italy and Great Britain for the mutual surrender of fugitive criminals (Rome, 1873)

**New Zealand**

Treaty between Italy and Great Britain for the mutual surrender of fugitive criminals (Rome, 1873)

**Paraguay**

Extradition Treaty (Asunción, 1997)

**Peru**

Extradition Treaty between the Government of the Italian Republic and the Government of the Republic of Peru (Rome, 1994)

**Holy See**

Treaty of Lateran between the Holy See and Italy (Rome, 1929)

**Singapore**

Treaty between Italy and Great Britain for the mutual surrender of fugitive criminals (Rome, 1873)

**Sri Lanka**

Treaty between Italy and Great Britain for the mutual surrender of fugitive criminals (Rome, 1873)

## **United States**

Extradition Treaty (Rome, 1983)

Extradition Treaty (Rome, 2006)

## **Uruguay**

Convention for the extradition of offenders (Rome, 1879)

Protocol modifying Article 5 of the Extradition Convention of 14 April 1879

Furthermore, several bilateral negotiations are ongoing, at a more or less advanced stage on extradition with China, Mexico, India, Hong Kong Special Administrative Region, Panama, Costa Rica, Kosovo, Ecuador, Kenya, Tunisia, Dominican Republic, Qatar, Pakistan, Uruguay, Colombia, Venezuela, Nigeria, Libya; Jordan.

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

Italy ratified the European Convention for Extradition (1957) and its Second Additional Protocol (1978) and has bilateral extradition treaties with 20 countries. Negotiations for additional bilateral extradition treaties were ongoing at the period of the review process.

Italy's endeavours to conclude additional extradition treaties are to be assessed positively.

Italy has implemented the provision under review.

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

Existence of bilateral treaties on extradition and continuing efforts to conclude additional treaties with other States in this are positively noted as a good practice.

## **Article 45 Transfer of sentenced persons**

*States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.*

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

Italy has indicated that among bilateral conventions on this matter, Italy ratified the Convention of the Council of Europe on the transfer of sentenced persons (Strasbourg, 1983). Furthermore Italy signed and ratified several bilateral autonomous or additional conventions on this matter with regard to the aforesaid Strasbourg Convention, which are listed below:

#### **Albania**

Additional agreement to the Convention on the transfer of sentenced persons of 21 March 1983 (Rome, 2002)

## **Hong Kong**

Agreement on the transfer of sentenced persons (Hong Kong, 1999)

## **Peru**

Treaty on the transfer of sentenced persons and minors in special treatment (Rome, 1994)

## **Romania**

Agreement between the Italian Republic and Romania on the transfer of sentenced persons on whom a deportation order or accompanying to the border order where imposed (Rome, 2003)

## **Thailand**

Cooperation Treaty for the enforcement of criminal judgments (Bangkok, 1984)

Furthermore, several bilateral negotiations are ongoing, at a more or less advanced stage on the transfer of prisoners with India, Morocco, Kosovo, Kenya, Tunisia, Qatar, Pakistan, Uruguay, Colombia, China, Argentina, Libya, Jordan.

Also, since December 2011 the Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union, implemented in Italian system by Legislative Decree of 7 September 2010 n. 161. This new instrument replaces the aforesaid Strasbourg Convention within the European Union and simplifies the relevant procedure thanks to the principle of mutual recognition of the decisions taken by judicial authorities within the European Union.

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

Italy is a party to the Council of Europe Convention on the Transfer of Sentenced Persons (1983) and has signed five bilateral treaties to that effect. It is not known whether Italy is also planning to ratify the Additional Protocol of 18 December 1997 to the Convention of the Council of Europe on the transfer of sentenced persons. Nonetheless, Italy's endeavours to conclude more supplementary treaties concerning the transfer of sentenced persons are to be assessed positively.

Italy has implemented the provision under review.

## **Article 46 Mutual legal assistance**

### **Paragraph 1**

*1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.*

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

Italy has indicated that it provides legal assistance both based on international conventions (also by virtue of Article 696 of the code of criminal procedure) and based on international courtesy.

There follows a list of the relevant Conventions:

**Multilateral**

European Convention on Legal Assistance in criminal matters (Strasbourg, 1959)

Additional Protocol to the European Convention on Legal Assistance in criminal matters (Strasbourg, 1978)

**Bilateral**

**Algeria**

Convention on legal assistance in criminal matters between the Government of the Italian Republic and the People's Democratic Republic of Algeria (Alger, 2003)

**Argentina**

Convention on legal assistance in criminal matters (Rome, 1987)

**Australia**

Treaty on mutual assistance in criminal matters (Melbourne, 1988)

**Austria**

Additional agreement to the European Convention on legal assistance in criminal matters of 20 April 1959 and aimed at facilitating its implementation (Vienna, 1973)

**Bolivia**

Treaty on legal assistance in criminal matters (Cochabamba, 1996)

**Brazil**

Treaty on legal assistance in criminal matters (Roma, 1989)

**Canada**

Treaty on mutual legal assistance in criminal matters (Roma, 1990)

**Chile**

Treaty on legal assistance in criminal matters between the Italian Republic and the Republic of Chile (Rome, 27 February 2002)

**El Salvador**

Convention on extradition of offenders (Guatemala, 1871)

**Germany**

Additional agreement to the European Convention on legal assistance in criminal matters of 20 April 1959 and aimed at facilitating its implementation (Rome, 1979)

**Japan**

Agreement between the European Union and Japan on legal assistance in criminal matters (Brussels, 30 November 2009; Tokyo, 15 December 2009)

**Hong Kong**

Agreement between the Government of the Italian Republic and the Government of Hong Kong Special Administrative Region mutual legal assistance in criminal matters (Rome, 28 October 1998)

**Lebanon**

Convention on mutual legal assistance in civil, commercial and criminal matters, enforcement of judgments and arbitral decisions and extradition (Beirut, 1970)

**Morocco**

Convention on mutual legal assistance, enforcement of judgments and extradition (Rome, 1971)

**Mexico**

Extradition Treaty (Mexico City, 1899)

**Monaco**

Convention on extradition of offenders (Florence, 1866)

**Paraguay**

Extradition Treaty (Asunción, 1907) (Only Article 16 is in force)

**Peru**

Treaty on legal assistance in criminal matters (Rome, 1994)

**San Marino**

Friendship and Good Neighbourly Convention (Rome, 1939)

**United States**

Treaty on mutual legal assistance in criminal matters between the Government of the Italian Republic and the Government of the United States of America (Rome, 2006)

### **Switzerland**

Agreement between Italy and Switzerland completing the European Convention on legal assistance in criminal matters of 20 April 1959 and facilitating its implementation (Rome, 1998).

### **Tunisia**

Treaty on legal assistance in civil, commercial and criminal law, the recognition and implementation of judgements and extradition. (Rome, 1967)

### **Venezuela**

Treaty on extradition and legal assistance in criminal matters (Caracas, 1930).

Furthermore, several bilateral negotiations on legal assistance are ongoing, at a more or less advanced stage, including with China, Mexico, Panama, Costa Rica, Kosovo, India, Ecuador, Kenya, Serbia, Montenegro, Bosnia-Herzegovina, Croatia, FYROMacedonia, Tunisia, Dominican Republic, Qatar, Pakistan, Uruguay, Colombia, Venezuela, Canada, Nigeria, Jordan.

Italy has provided the following practical examples relevant to the implementation of the provision under review.

#### *Outgoing mutual legal assistance requests based on UNCAC*

Four letters rogatory were forwarded (to Bangladesh, South Africa, Germany and Greece), between 2008 and 2009, in the course of criminal proceedings with no. 10378/07 r.g.n.r.<sup>7</sup> of the Office of the State Prosecutor of Milan, relating to alleged hypotheses of international bribery in respect of SIEMENS officers in contracts and supplies procedures.

Moreover, two letters rogatory were forwarded (to Algeria and Singapore) between 2012 and 2013, in the course of criminal proceedings with no. 25303/10 r.g.n.r. of the Office of the State Prosecutor of Milan, relating to alleged bribes committed by SAIPEM officers in the making of pipelines.

#### *Incoming mutual legal assistance requests based on UNCAC*

Letters rogatory relating to international bribery were received, between 2009 and 2012, from Hungary, Colombia and Brazil.

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

Italy is a party to the European Convention on Mutual Legal Assistance in Criminal Matters (1959) and its First Additional Protocol (1978). Italy also has bilateral MLA treaties with 23 States. The negotiation of more treaties was ongoing at the time of the review process.

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<sup>7</sup> Translator's note: General Register of Reported Offences

Italy explained that all the enumerated legal assistance treaties also cover the criminal offences provided for by the UNCAC. When the requesting state is not a Contracting Party to the European Convention on Mutual Assistance in Criminal Matters, nor is it a state with which Italy has signed a bilateral treaty, Italy can still afford it mutual legal assistance on the basis on the UNCAC, if it is a State Party to the convention, or on the basis of international courtesy.

Italy did not provide any data on nor example of cases in which mutual legal assistance was afforded pursuant to the UNCAC.

It was positively noted that Italy is undertaking to conclude further mutual legal assistance treaties. Italy declared that it intends to ratify the Second Additional Protocol to the European Convention on Mutual Assistance on Criminal Matters.

Italy has implemented the provision under review.

## **Article 46 Mutual legal assistance**

### **Paragraph 2**

*2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.*

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

Italy has indicated that it will be able to provide such assistance based on the Convention and its direct application per Article 696 of the Code of Criminal Procedure as cited under paragraph 1 of article 44 above.

Italy additionally clarified that Legislative Decree 231 of 2001 enables criminal judges to prosecute legal persons in the interest or to the advantage of which a corruption offence was committed.

#### **Legislative Decree 8 June 2001, n. 231**

“Regulation of administrative responsibility of legal persons, companies and associations, also deprived of corporate status, under Article 11 of Law 29 September 2000, n. 300”

(...)

Art. 25

Corruption, unduly inducing someone to give or promise utilities and bribery

1. With regard to the perpetration of the offences under Articles 318, 321 and 322, paragraphs 1 and 3 of the Criminal Code a fine up to two hundred shares shall be applied.

2. With regard to the perpetration of the offences under Articles 319, 319-ter, paragraph 1, 321, 322, paragraphs 2 and 4 of the Criminal Code, a fine from two hundred to six hundred shares shall be imposed on the organisation.

3. In connection with the perpetration of the offences under Articles 317, 319, aggravated under Article 319-bis when the organization obtained considerable profit, 319-ter, paragraph 2, 319 quarter and 321 of the Criminal Code, a fine from three hundred to eight hundred shares shall be applied.

4. The fines provided for by the offences under paragraphs from 1 to 3, shall apply on the organization also when these offences were committed by the persons indicated in Articles 320 and 322-bis.

5. In the cases of conviction for one of the offences under paragraphs 2 and 3, the restraining sanctions provided for by Article 9, paragraph 2 shall be applied for not less than one year.

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

Legal assistance in cases involving legal persons can be provided based on the Legislative decree no. 231 of 2001.

As an example of such mutual legal assistance proceedings Italy indicated the US investigation into Italian companies involved in the export of helicopters in violation of the UN embargo against a Third country. Although this case concerns offences that are not covered by the UNCAC, Italy clarified that it illustrates adequately how mutual legal assistance requests are fulfilled. For security reasons, the names of the companies involved were not mentioned. (Proceedings no. 33.4.5-9698)

There have there been no cases in Italy in which mutual legal assistance was refused with the justification that legal persons are not criminally responsible according to the domestic law.

Italy has implemented the provision under review in its legislation.

**Article 46 Mutual legal assistance**

**Subparagraphs 3 (a) to 3 (i) of article 46**

*3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

- (a) Taking evidence or statements from persons;*
- (b) Effecting service of judicial documents;*
- (c) Executing searches and seizures, and freezing;*
- (d) Examining objects and sites;*
- (e) Providing information, evidentiary items and expert evaluations;*
- (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;*
- (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;*
- (h) Facilitating the voluntary appearance of persons in the requesting State Party;*
- (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;*

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

Italy has indicated that it can offer and generally offers cooperation according the procedures indicated based on the self-execution of UNCAC.

Additionally Article 723 et. seq of the Criminal Procedure Code stipulates the details of rendering relevant assistance in Italy.

### **Criminal Procedure Code**

#### **Article 696**

##### ***Supremacy of international conventions and of general international law***

1. Extraditions, international letters of request, the effects of judgments by foreign criminal courts, the enforcement in a third country of judgments by Italian criminal courts as well as any further relationships with foreign authorities in respect of criminal law shall be governed by the international conventions which are in force for Italy and by general international law.

2. In the absence of the above provisions, or where it is not provided otherwise, the following provisions shall apply.

...

### **LETTERS ROGATORY FROM ABROAD**

#### **Article 723**

##### ***Powers of the Minister of Justice***

1. The Minister of Justice shall order the enforcement of a letter rogatory by a foreign authority for notifications, services and the gathering of evidence, unless he holds that the actions required compromise the sovereignty, security or other essential interests of the State.

2. The Minister shall not order the enforcement of a letter rogatory when it is proven that the actions required are expressly banned by the law or do not adhere to the fundamental rights of the Italian legal system. The Minister shall not enforce a letter rogatory also when there are well-founded reasons to believe that prejudices on account of race, religion, sex, nationality, language, political opinions or personal or social conditions have affected the development or outcome of the trial and the accused person has not freely given his consent to the letter rogatory.

3. If the letter rogatory concerns the summons of a witness, an expert or an accused person before the foreign judicial authority, the Minister of Justice shall not enforce the letter rogatory when the requesting State does not provide enough safeguards for the protection of the summoned person.

4. The Minister of Justice is also entitled to interrupt the letter rogatory if the requesting State does not provide enough safeguards of reciprocity.

#### **Article 724**

##### ***Jurisdictional proceedings***

1. With the exception of the cases provided for in Articles 726 and 726-ter, the letter rogatory shall not be enforced by the foreign authority without a prior favourable decision by the Court of Appeal of the place where the actions required shall be carried out.

1-bis. If the request for judicial assistance concerns actions which shall be enforced in several districts of the Court of Appeal, such request shall be forwarded directly to the foreign authority or, through the Minister of Justice or another Italian judicial authority that may have been involved, to the Court of Cassation, which decides which Court of Appeal is competent following the provisions of Articles 32, paragraph 1, and 127, provided such provisions are compatible. The decision shall also be taken considering the number and types of actions to be

carried out as well as their importance, with reference to the location of the various courts concerned. The notice referred to in Article 127, paragraph 1, shall be notified exclusively to the General Public Prosecutor attached to the Court of Cassation. The Court of Cassation shall forward the case file to the appointed Court or Appeal, notifying the Minister of Justice of the decision.

2. After receiving the documents from the Minister of Justice, the General Public Prosecutor shall deliver his own closing speech before the Court of Appeal and forward without delay a copy of the letters rogatory of the foreign authority concerning the crimes referred to in Article 51, paragraph 3-bis, to the National Anti-Mafia Prosecutor.

3. The President of the Court shall set the date of the hearing and inform the General Public Prosecutor.

4. The Court shall enforce the letter rogatory by means of an order.

5. The enforcement of the letter rogatory shall be rejected if:

a) the actions required are banned by the law or do not adhere to the principles of the Italian legal system;

b) the criminal act prosecuted by the foreign authority is not deemed an offence by the Italian law and the accused person has not freely given his consent to the letter rogatory;

c) there are well-founded reasons to believe that prejudices on account of race, religion, sex, nationality, language, political opinions or personal or social conditions have affected the development or outcome of the trial and the accused person has not freely given his consent to the letter rogatory.

5-bis. The enforcement of the letter rogatory shall be suspended if the latter may compromise ongoing investigations or criminal proceedings in Italy.

#### **Article 725**

##### ***Enforcement of letters rogatory***

1. While ordering the enforcement of a letter rogatory, the Court shall delegate one of his members or the preliminary investigation judge of the place where the actions shall be carried out.

2. The rules of this Code shall apply while carrying out the actions required, provided that compliance with the procedures expressly required by the foreign judicial authority does not conflict with the principles of the Italian legal system.

#### **Article 726**

##### ***Summons of witnesses upon request of foreign authorities***

1. The summons of witnesses having their habitual or temporary residence in the Italian territory, requested by a foreign judicial authority, shall be forwarded to the Public Prosecutor of the Republic of the place where it must be enforced, who shall serve it under Article 167.

#### **Article 726-bis**

##### ***Direct service on the person concerned***

1. If international conventions or agreements allow direct service on the person concerned by means of postal mail and such service is not used, also the request for service by the foreign judicial authority on the accused having his habitual or temporary residence in the Italian territory shall be forwarded to the Public Prosecutor of the Republic of the place where it must be enforced, who shall serve it under the provisions of Articles 156, 157 and 158.

#### **Article 726-ter**

##### ***Letters rogatory by foreign administrative authorities***

1. If an international agreement envisages the submission of the request for judicial assistance in proceedings concerning an offence also by a foreign administrative authority, the

preliminary investigation judge of the place where the requested actions must be carried out shall decide on the letter rogatory, upon request of the Public Prosecutor of the Republic. The provisions of Articles 724, paragraphs 5 and 5-bis, and 725, paragraph 2, shall apply.

## **LETTERS ROGATORY ABROAD**

### **Article 727**

#### ***Forwarding of letters rogatory to foreign authorities***

1. The letters rogatory which are issued by courts and public Prosecutors and addressed, within their respective assignments, to foreign authorities for notifications, services and the gathering of evidence, shall be forwarded to the Minister of Justice, who shall send them to their addressees by diplomatic means.
  2. Within thirty days of receipt of the letter rogatory, the Minister shall order by decree the non-enforcement of the letter rogatory if he believes it may compromise the security or any other fundamental interests of the State.
  3. The Minister shall inform the requesting judicial authority of the date of receipt of the request and of the dispatch of the letter rogatory or decree provided for in paragraph 2.
  4. If the letter rogatory has not been forwarded by the Minister within thirty days of receipt and no decree provided for in paragraph 2 has been issued, the judicial authority may directly send the letter rogatory to the diplomatic or consular agent and shall inform the Minister of Justice.
  5. In cases of urgency, the judicial authority shall forward the letter rogatory according to paragraph 4, after the Minister of Justice has received a copy of such letter. The provision of paragraph 2 shall in any case be applied until the letter rogatory is forwarded by the diplomatic or consular agent to the foreign authority.
- 5-bis.* Whenever the letter rogatory may be enforced according to Italian law procedures, pursuant to international agreements, the judicial authority shall specify in the letter, the procedure and the necessary requirements for the requested documents to be used at trial.
- 5-ter.* In any case, a copy of the letters rogatory issued by Public Prosecutor magistrates and drawn up during proceedings related to the crimes referred to in Article 51, paragraph 3-bis, shall be forwarded to the National Anti-Mafia Prosecutor without delay.

### **Article 728**

#### ***Temporary immunity of the summoned person***

1. If the letter rogatory concerns the summons of a witness, an expert or an accused person before an Italian judicial authority, the summoned person appearing before the court shall not be deprived of his liberty as a consequence of the enforcement of a sentence or security measure nor shall he be subject to other measures depriving him of his liberty for criminal acts prior to the service of the summons.
2. The immunity provided for in paragraph I shall cease if the witness, the expert or the accused person has not left the Italian territory within fifteen days from the moment when his presence is no longer required by the judicial authority, although he was given the possibility to do so, or he had left the State and voluntarily returned to it.

### **Article 729**

#### ***Use at trial of documents gathered by letter rogatory***

1. The breach of the rules referred to in Article 696, paragraph 1, concerning the gathering or forwarding of documents or other means of evidence following a letter rogatory abroad shall result in the exclusion of the gathered or forwarded documents or means of evidence. If the foreign State has imposed conditions on the possible use of the requested documents, the judicial authority is obliged to comply with such conditions.

1-*bis*. If the foreign State enforces the letter rogatory following a different procedure to that specified by the judicial authority according to Article 727, paragraph 5-*bis*, the evidence forwarded by the foreign authority shall not be used.

1-*ter*. The statements concerning the content of the documents to be excluded according to paragraphs 1 and 1-*bis* shall in no case be used, irrespective of the person who made them.

2. The provision of Article 191, paragraph 2, shall be applied.

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

Italy can provide the types of assistance listed in subparagraphs 3 (a-i) of article 46 of UNCAC based on Article 723 et. seq of the Criminal Procedure Code. Also, Article 737-*bis*, cited under subparagraphs 3(j) and (k) can be regarded as a measure conducive to the implementation of subparagraph 3(g) of article 46 of UNCAC. Based on the same articles. Italy can also afford the above indicated kinds of mutual legal assistance to countries that are not Contracting Parties to the European Convention on Mutual Assistance in Criminal Matters and with which no bilateral treaty exists.

However, Italy did not provide any data on nor example of cases in which mutual legal assistance was afforded directly pursuant to the UNCAC.

Italy has implemented the provision under review in its legislation.

### **Article 46 Mutual legal assistance**

#### **Subparagraph 3 (j) and 3 (k)**

*3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

*(j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;*

*(k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.*

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

Italy has indicated that it can offer and generally offers cooperation according the procedures indicated based on the self-execution of UNCAC.

Italy has cited the following implementation measures

**Article 731** - Recognition of foreign criminal judgments pursuant to international agreements (Code of Criminal Procedure) as cited in the responses under paragraph 13 of article 44 above.

**Article 732** - Recognition of foreign criminal judgments for civil purposes (Code of Criminal Procedure)

1. Anyone who has an interest in relying on the criminal provisions of a foreign judgment before a court of law in order to obtain restitution or compensation for damages or for other civil purposes, may request recognition of the judgment to the Court of Appeal where the office of the judicial records competent for registration is located (685).

**Article 733** - Requirements for recognition (Code of Criminal procedure) as cited in the responses under paragraph 13 of article 44 above.

**Article 734** - Decision of the Court of Appeal (Code of Criminal Procedure) as cited in the responses under paragraph 13 of article 44 above.

**Article 735** - Determination of the penalty and confiscation order (Code of Criminal Procedure) as cited in the responses under paragraph 13 of article 44 above.

**Article 735-bis** - Confiscation consisting in an order to pay a sum of money (Code of Criminal procedure)

1. When enforcing a foreign confiscation order consisting in an order to pay a sum of money corresponding to the value of the price, of the product or of the proceeds of a crime, the provisions on the enforcement of fines shall apply, except for the one concerning the compliance with the maximum penalty limit provided for in Article 735, para. 2.

**Article 736** - Coercive measures (Code of Criminal procedure) as cited in the responses under paragraph 13 of article 44 above.

**Article 737** Seizure (Code of Criminal Procedure)

At the request of the Prosecutor General, the Court of Appeal competent for the recognition of a foreign judgment for the purposes of enforcement of a confiscation may order the seizure of things that may be subjected to confiscation (240 Criminal Code).

2. If the Court rejects the request, the order may be appealed against before the Court of Cassation (606) by the Prosecutor General. The seizure order may be appealed against before the Court of Cassation for violation of law by the party concerned. The appeal does not have any suspending effect.

3. Where applicable, the provisions governing the execution of preventive seizure shall be complied with.

**Article 737-bis** - Investigations and seizure for the purpose of confiscation (Code of Criminal Procedure)

1. In the cases provided for in international agreements, the Minister of Justice shall order that the request from a foreign authority be complied with and investigations be initiated into property which, at a later stage, may be the subject of a request for confiscation, or the seizure thereof.

2. To this end, the Minister of Justice shall transmit the request, along with the enclosed acts, to the Prosecutor General at the competent Court of Appeal for the recognition of the foreign judgment for the subsequent confiscation. The Prosecutor General shall apply to the Court of Appeal which shall decide by an order in accordance with the procedures under Article 724.

3. The request for investigation or seizure shall be refused:  
a) if the actions sought are contrary to the principles of the legal system of the State, or are prohibited by law, or if these would not be allowed, should the same facts be prosecuted in the State;

b) if there are any reasons to believe that the conditions for a subsequent confiscation do not exist.

4. As to the carrying out of investigations, the provisions in Article 737 shall apply.

5. In the cases of a requests for seizure, the provisions in Article 737, paras 2 and 3, shall apply.

6. A seizure ordered pursuant to this article shall cease to have effect and the Court of

Appeal shall order that the property seized be returned to anybody who is entitled to it if, within two years from its execution, the foreign State does not request the execution of confiscation. This term can be extended several times for a maximum period of two years; the Court of Appeal which ordered the seizure shall decide on the request.

**Article 738** Execution following recognition (Code of Criminal Procedure) as cited in the responses under paragraph 13 of article 44 above.

**Article 739** Ban on extradition and new proceedings (Code of Criminal Procedure) as cited in the responses under paragraph 13 of article 44 above.

Italy has additionally clarified that in order to fully implement the Convention, two additional articles of the Italian Code of Criminal Procedure were introduced when ratifying it

**Article 740-bis. Transfer to a foreign State of confiscated properties.**

In the cases provided for by international agreements in force in the State, properties confiscated with a final judgment or another irrevocable order shall be transferred to the foreign State where the confiscation order was issued or adopted.

The transfer under paragraph 1 shall be ordered when the following requirements are met:

The foreign State made an explicit request;

The judgment or the order under paragraph 1, were recognized in the State under Articles 731, 733 and 743.

**Article 740-ter of the Code of Criminal Procedure. Transfer order**

The Court of Appeal, when recognizing a foreign judgment or a confiscation order, shall order that confiscated properties under Article 740-bis be transferred.

A copy of this order shall be immediately sent to the Minister of Justice, who shall agree on the transfer procedure with the requesting State.

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

Italy can provide the types of assistance listed in subparagraphs 3 (j-k) based on Article 731 et seq. of the Criminal Procedure Code.

However, Italy did not provide any examples nor statistical data relevant to the implementation of the provision under review.

Italy has implemented the provision under review in its legislation.

**Article 46 Mutual legal assistance**

**Paragraph 4**

*4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.*

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

Italy has indicated that its law allows spontaneous exchange of information.

In the past already this possibility was provided for by Article 46 of the Convention implementing the Schengen Agreement, ratified by Italy with Law n. 388 of 1993, which is worded as follows:

**Article 46**

1. In specific cases, each Contracting Party may, in compliance with its national law and without being so requested, send the Contracting Party concerned any information which may be important in helping it combat future crime and prevent offences against or threats to public policy and public security.

2. Information shall be exchanged, without prejudice to the arrangements for cooperation in border areas referred to in Article 39(4), via a central body to be designated. In particularly urgent cases, the exchange of information within the meaning of this Article may take place directly between the police authorities concerned, unless national provisions stipulate otherwise.

(...)

With the ratification of this Convention, there is an additional legal basis with a wider scope for exchange of information.

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

The spontaneous exchange of information is feasible through the direct applicability of paragraphs 4 and 5 of article 46. Furthermore, for the purpose of the spontaneous transmission of information to other Contracting Parties, Italy also acknowledges the direct applicability of article 10 of the European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

**Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg, 8.XI.1990)**

**Article 10 – Spontaneous information**

Without prejudice to its own investigations or proceedings, a Party may without prior request forward to another Party information on instrumentalities and proceeds, when it considers that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings or might lead to a request by that Party under this chapter.

Italy explained that the law enforcement agencies can decide themselves when information can be transmitted, without prior request, to States that are not contracting Parties to the European Convention mentioned above and with which no bilateral treaty exists. Additionally, the Italian judicial authority can informally exchange information with other foreign judicial authorities.

However, Italy did not provide any data on nor examples of cases in which information was transmitted without the need of a prior request.

Italy has implemented the provision under review in its legislation.

**Article 46 Mutual legal assistance**

## Paragraph 5

*5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.*

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

Italy has referred to the rules on secret under Article 329 of the Code of Criminal Procedure as a measure implementing the provision under review.

#### **Article 329 Obligation to keep secret**

1. Investigation acts accomplished by the Public Prosecutor and Judicial Police are classified until the defendant can be informed of them and in any case the closing of preliminary investigations.
2. When it is required for continuing investigations, the public prosecutor can, making an exception to the provisions of Article 114, issue a grounded order authorizing the publishing of individual acts or parts of them. In this case, the published acts are lodged with the secretary's office of the Public Prosecutor.
3. Also when the acts are not classified anymore under paragraph 1, the public prosecutor, when it is necessary to continue investigations, can issue a grounded order establishing:
  - a) That single acts be obligatorily secret, when the defendant consents to it or when the disclosure of this act can hinder investigations on other persons;
  - b) The prohibition to publish the content of single acts or specific information on particular operations.

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

Although Italy does have some basic legislation that requires to keep the confidentiality of the information in the possession of the Public Prosecutor and Judicial Police until the defendant can be informed of them and the closing of preliminary investigations, it is recommended to consider adopting clearer rules on confidentiality of the spontaneously transferred information from other States in domestic legislation.

#### **Article 46 Mutual legal assistance**

## Paragraph 8

*8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.*

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

Italy has indicated that bank secrecy is not provided for by any Convention to which Italy is a party as a ground to refuse assistance.

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

Bank secrecy, in Italy, is not a ground for refusing mutual legal assistance, regardless of which State is requesting it, whether it is a member or not of the Council of Europe or of the European Union or a State with which Italy has not signed a bilateral treaty. Bank secrecy is also not a ground for refusing mutual legal assistance in cases of requests based on international courtesy.

The relevant procedural provisions are referred to by Italy in the comment on article 40 of UNCAC.

Italy has implemented the provision under review in its legislation.

**Article 46 Mutual legal assistance**

**Subparagraph 9 (a)**

*9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;*

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

Italy has indicated the provision under review is implemented based on the self-execution of UNCAC.

Additionally, the requirement of dual criminality is not provided for by the main international conventions on legal assistance ratified by Italy, first of all the multilateral convention signed in Strasbourg on 20 April 1959.

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

Italy has implemented the provision under review in its legislation.

**Article 46 Mutual legal assistance**

**Subparagraph 9 (b)**

*9.( b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;*

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

Italy has referred to its responses under Subparagraph 9 (a) above. The notion of *de minimis* is not present in Italian system which is based on the principle that prosecution is compulsory

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

Dual criminality, in Italy, is not a required condition to provide assistance under the Italian law.

See comments under Subparagraph 9 (a).

**Article 46 Mutual legal assistance**

**Subparagraph 9 (c)**

*9. (c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.*

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

Italy has referred to its responses under Subparagraphs 9 (a) and (b) above.

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

See comment under Subparagraph 9 (b).

**Article 46 Mutual legal assistance**

**Subparagraphs 10 and 11**

*10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:*

- (a) The person freely gives his or her informed consent;*
- (b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.*

*11. For the purposes of paragraph 10 of this article:*

- (a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;*
- (b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;*
- (c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;*
- (d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.*

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

Italy has indicated that after the ratification of the present Convention and with the reference made in Article 696 of the Code of Criminal Procedure, the provisions under review are self-executing.

Italy also ratified the European Convention on Legal Assistance signed in Strasbourg on 20 April 1959 whose Article 11 is worded as follows:

#### **Article 11**

A person in custody whose personal appearance as a witness or for purposes of confrontation is applied for by the requesting Party shall be temporarily transferred to the territory where the hearing is intended to take place, provided that he shall be sent back within the period stipulated by the requested Party and subject to the provisions of Article 12 in so far as these are applicable. Transfer may be refused:

1. if the person in custody does not consent;
2. if his presence is necessary at criminal proceedings pending in the territory of the requested Party;
3. if transfer is liable to prolong his detention, or
4. if there are other overriding grounds for not transferring him to the territory of the requesting Party.

Subject to the provisions of Article 2, in a case coming within the immediately preceding paragraph, transit of the person in custody through the territory of a third State, Party to this Convention, shall be granted on application, accompanied by all necessary documents, addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the Party through whose territory transit is requested. A Contracting Party may refuse to grant transit to its own nationals.

The transferred person shall remain in custody in the territory of the requesting Party and, where applicable, in the territory of the Party through which transit is requested, unless the Party from whom transfer is requested applies for his release.

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

The provisions of subparagraphs 10 and 11 of Article 46 can be directly applied in relation to other States Parties to the Convention.

With regard to article 11 of the European Convention on Mutual Assistance in Criminal Matters, Italy additionally clarified its application is limited to other parties to that convention..

Italy did not provide any data on, nor examples of, cases in which a person in custody is transferred to another State for purposes of investigative acts based on article 46 paragraph 10, nor of cases in which a person in foreign custody is transferred to Italy based on article 46 paragraph 11.

Italy has implemented the provision under review in its legislation.

#### **Article 46 Mutual legal assistance**

#### **Paragraph 12**

*12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.*

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

Italy has indicated that after ratifying the present Convention, by virtue of the reference made by Article 696 of the Code of Criminal Procedure, the provision is self-executing. Italy also ratified the European Convention on Legal Assistance signed in Strasbourg on 20 April 1959 whose Article 12 is worded as follows:

**Article 12**

A witness or expert, whatever his nationality, appearing on a summons before the judicial authorities of the requesting Party shall not be prosecuted or detained or subjected to any other restriction of his personal liberty in the territory of that Party in respect of acts or convictions anterior to his departure from the territory of the requested Party.

A person, whatever his nationality, summoned before the judicial authorities of the requesting Party to answer for acts forming the subject of proceedings against him, shall not be prosecuted or detained or subjected to any other restriction of his personal liberty for acts or convictions anterior to his departure from the territory of the requested Party and not specified in the summons.

The immunity provided for in this article shall cease when the witness or expert or prosecuted person, having had for a period of fifteen consecutive days from the date when his presence is no longer required by the judicial authorities an opportunity of leaving, has nevertheless remained in the territory, or having left it, has returned.

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

Italy has implemented the provision under review in its legislation.

**Article 46 Mutual legal assistance**

**Paragraph 13**

*13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent Authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.*

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

Italy has indicated that it designated as Central Authority Office II of the General Directorate of Criminal Justice of the Ministry of Justice.

Italy has cited the notice of notification:

(XVIII.14)

Reference: C.N.876.2009.TREATIES-43 (Depositary Notification)

UNITED NATIONS CONVENTION AGAINST CORRUPTION

NEW YORK, 31 OCTOBER 2003

ITALY: NOTIFICATION UNDER ARTICLE 46 (13)

The Secretary-General of the United Nations, acting in his capacity as depositary, communicates the following:

The above action was effected on 10 December 2009, with:

(Original: English)

“... the Italian Government designates the Central authority as follows:

Ministry of Justice, Department for Judicial Affairs,  
Directorate General for the Criminal Justice, Office II,  
via Arenula 80, 00186 Roma.

Tel: +39 0668852189

Fax + 39 0668897528.”

10 December 2009

Italy has further clarified that there is one Central Authority for the purposes of the provision under review in Italy.

Italian Judicial Authorities, on the basis of the various signed bilateral and multilateral conventions, generally, send letters of request through Central Authorities or even directly through INTERPOL, to the corresponding foreign Judicial Authorities. Diplomatic channels are also allowed and prescribed.

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

On 10 December 2009, Italy notified the UN Secretary-General that its Central MLA Authority is Office II, composed of four officials and the Director, of the General Directorate of Criminal Justice of the Ministry of Justice. After receiving an MLA request, the Central Authority transfers it to the competent judicial Italian authority within approximately 10 days. The judicial authorities responsible for the concrete execution of the request are designated by the Court of Appeals.

Furthermore, Italy accepts urgent MLA requests via Interpol channels. Such requests are accepted even in the absence of a relevant agreement. In this case, the requests are immediately forwarded to the competent authority for processing. The original request needs to be submitted via official channels. The requests can also be sent directly to the relevant judicial authorities based on Article 204-bis of the “Implementing Provisions of the Criminal Procedure Code – article 204-bis – Communications to the Judicial Authorities on Letter Rogatory”.

**Article 204-bis**

1. When an international agreement provides for the direct transmission of the request for judicial assistance, the judicial authority indicated in articles 724, 726 and 726-ter

of the Code of Criminal Procedure which directly receives the request or the judicial authority which directly sends it to the foreign authority shall, without delay, forward a copy thereof to the Ministry of Justice.

Italy clarified that foreign requests for mutual legal assistance, if based only on the UNCAC, cannot be accepted directly by a justice authority (e.g. office of the public prosecutor).

The requesting States are informed of the receipt of the request for mutual legal assistance and of the authorities responsible for its execution.

Italy has implemented the provision under review.

## **Article 46 Mutual legal assistance**

### **Paragraph 14**

*14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.*

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

Italy has not notified the Secretary-General of the United Nations of the languages its accepts for incoming mutual legal assistance requests based on UNCAC.

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

During the country visit Italy indicated that usually requests for mutual legal assistance are received in Italian. However, it is noted that in the case of a request in a different language, Italy would proceed with its translation.

Italy has not implemented the provision under review and is recommended to notify the Secretary-General of the languages acceptable for Italy for mutual legal assistance requests.

## **Article 46 Mutual legal assistance**

### **Paragraph 15 and 16**

*15. A request for mutual legal assistance shall contain:*

- (a) The identity of the authority making the request;*
- (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;*
- (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;*
- (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;*
- (e) Where possible, the identity, location and nationality of any person concerned; and*
- (f) The purpose for which the evidence, information or action is sought.*

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

Italy has indicated the provision under review is implemented based on the self-execution of UNCAC with the reference to Article 696 of the Code of Criminal Procedure.

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

Italy has implemented the provision under review.

**Article 46 Mutual legal assistance**

**Paragraph 17**

*17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.*

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

Italy has cited the following implementation measure.

Article 725 of the Code of Criminal Procedure actually is worded as follows:

**Article 725**

Execution of letters of request

1. (...)

2. In view of accomplishing the requested acts the provisions of this code shall apply, without prejudice to compliance with the procedures expressly requested by the foreign judicial authority which are not contrary to the principles of the State's legal system.

After ratifying the present convention the relevant legal basis became wider.

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

As an example of a procedural act that, according to article 725 paragraph 2 of the Italian Code of Criminal Procedure, is "contrary to the principles of the State's legal system", Italy indicated the case where a lie detector was used in taking statements from a person.

Italy was not able to provide cases of refusal of requests for mutual legal assistance based on the application of the provision under review.

Italy has implemented the provision under review in its legislation.

**Article 46 Mutual legal assistance**

**Paragraph 18**

*18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable*

*for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.*

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

Italy has indicated the provision under review is implemented based on the self-execution of UNCAC with the reference to Article 696 of the Code of Criminal Procedure.

Additionally, Article 205 *ter* of the Code of Criminal Procedure on remote participation in trial for a defendant incarcerated abroad is also applied to witnesses too, together with Article 147 *bis* implementing provisions.

**Article 147-bis.**

**(Examination of undercover operators, cooperating witnesses and persons charged with a connected offence.**

1. Examination during the trial of the persons admitted, under the law, to protection programs or measures also urgent or temporary, is made with the necessary precautions to safeguard the person examined, which shall be established ex officio or at the party's request or of the authority which decided the protection program or measure, by the judge, or in urgent cases, by the chief justice of the court or the court of assize.

1-*bis*. Examination at the trial of the judicial police officials or agents, also belonging to foreign police bodies, auxiliaries and third parties who operated in undercover activities as per Article 9 of Law 16 March 2006, n. 146, and subsequent amendments, is always made with the necessary precautions to safeguard the person examined and his/her confidentiality, and with procedures established by the judge or, in urgent cases, by the chief justice, in any case so as to avoid that the face of these persons is visible.

2. Where appropriate technical instruments are available, the judge or the chief justice, having heard the parties, can order, also ex officio, that the examination be held remotely, through audio-visual connection assuring at the same time that the persons present in the place where the person examined is be visible. In this case an auxiliary authorized to assist the judge at the hearing, designated by the judge or, in urgent cases, by the chief justice, is present in the place where the person examined is and attests his/her particulars, reports that the provisions contained in the present paragraph and the safeguards adopted to assure a regular examination with regard to the place where he/she is are complied with.

A transcript is drawn up by the auxiliary under article 136 of the code.

3. Unless the judge considers that the presence of the person to be examined is absolutely necessary, the examination shall take place with the procedures under paragraph 2 in the following cases:

a) When examination is ordered for persons admitted to the temporary protection scheme provided for by Article 13, paragraph 1 of Decree-law of 15 January 1991 n. 8, passed with some amendments as Law 15 March 1991 n. 82 and subsequent amendments, or the special protection measures as per the above Article 13, paragraphs 4 and 5 of this same decree-law.

b) When the order for changing the examined person's particulars under Article 3 of Legislative Decree 29 March 1993, n. 119 is issued; in this case when examining the person in question, the judge or the chief justice shall comply with the provisions under Article 6, paragraph 6 of this same legislative decree and order that the necessary precautions be taken to avoid that the person's face is visible;

c) When in a trial for one of the offences under Article 51, paragraph 3-bis, or Article 407, paragraph 2, subparagraph a), n. 4 of the code the persons indicated in Article 210 of the Code who are being prosecuted for one of the offences provided for by Article 51, paragraph 3-bis or by Article 407, paragraph 2, subparagraph a) n. 4) of the Code even if proceedings were separated, are to be examined.

*c-bis*) When judicial police officials or agents also belonging to foreign police bodies, as well as auxiliaries or third persons are to be examined also with regard to the activities carried out by them during the undercover operations under Article 9 of Law 16 March 2006, n. 146 and subsequent amendments. In these cases the judge or the chief justice orders that the necessary precautions be taken to avoid that these persons' face are visible:  
5. The procedures under paragraph 2 can also be adopted at the request of parties, in view of the examination of the person for whom a new taking of evidence was ordered under Article 495 paragraph 1, of the code, when it is very difficult to assure that the person to be examined appears.

#### **Article 205-ter**

##### **(Remote participation in a trial for a defendant incarcerated abroad)**

1. Participation in the hearing of a defendant incarcerated abroad, who cannot be transferred to Italy, shall take place through audio-video connection, when this is provided for by international agreements and in compliance with the provisions contained in them. For what is not expressly provided for by international agreements, the provision under Article 146-bis shall apply.

2. Audio-video connection is not possible if the foreign State does not assure the possibility for the defence counsel or a substitute to be present in the place where evidence is taken or if the latter has not the possibility to talk to his client confidentially.

3. The defendant has the right to be assisted by an interpreter if he/she does not know the language of the place where evidence is taken or the language used to ask him/her the relevant questions.

4. The fact that the defendant is incarcerated abroad cannot suspend or postpone the hearing when participation through audio-video connection is possible, in those cases where the defendant does not consent or refuse to assist. The provisions under Article 420-ter of the code shall apply as they are enforceable.

5. Participation in the hearing through audio-video connection of a witness or an expert takes place in compliance with the provisions and requirements established by international agreements.

For what is not expressly provided for by international agreements, the provision under Article 146-bis shall apply.

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

Italian law allows hearings to take place by video conferences and in the presence of foreign judicial authorities. Italy provides for such hearings, regardless of whether the person is in custody or not, including also by using article 46 of the Convention as the legal basis.

Italy clarified that, as long as the mutual legal assistance request is based on the UNCAC, questioning by video conference is approved also for States which are States Parties to the UNCAC but with which no other bilateral or specific multilateral agreement exists.

Italy provided the following text of article 146 bis of the Implementation Provisions of the Italian Code of Criminal Procedure:

**Art. 146-bis.**  
**(Participation at a distance in a trial).**

1. Whenever a proceeding relating to any of the offences as per article 51(paragraph 3-bis) and 407 (paragraph 2, lett. a n. 4) of the Criminal Procedure Code concerns a person who is in custody, for whatever reason, participation in said proceeding shall take place at a distance in the following cases:

a) if there are serious reasons relating to public safety or public order;

b) if the trial is especially complex and participation at a distance is found to be necessary in order to prevent delays. In assessing the need to prevent the trial from being delayed, account shall also be taken of the circumstance that other proceedings are simultaneously pending before other judicial authorities in respect of the same defendant;

*1.bis* With the exception of the cases provided in paragraph 1, participation in the proceeding shall take place at a distance whenever the measures laid down in Article 41-bis of Law no. 354 of 26.07.75, as subsequently amended and supplemented, has been ordered in respect of the defendant, or, where possible, when a person in custody shall be heard as a witness, unless decided otherwise by the judge.

2. Participation at a distance in a trial shall be provided for, even *ex officio*, either by the presiding judge of the court or assize court through an order with a statement of reasons, to be issued during the pre-trial phase, or by the judge through a decree issued during the trial. The aforesaid order shall be communicated to the parties and defence counsel at least ten days before the date of hearing.

3. If participation at a distance has been provided for, audio-visual links shall be set up between the courtroom and the place of custody, in such a way as to ensure that the persons present in both places are simultaneously, actually and mutually visible and can hear whatever is said therein. Where the above measure has been taken in respect of a plurality of defendants who are all in custody in different places, for whatever reason, each of them shall be enabled to see and hear the others by the same method.

4. The defence counsel or his deputy shall always be allowed to be present in the place where defendant is located. The defence counsel or his deputy who are in the courtroom and defendant may privately consult one another by means of suitable technical devices.

5. The place in which audio-visual links with defendant are set up shall be equivalent, for all purposes, to the courtroom.

6. A justice's clerk appointed by the judge or, in urgent cases, the presiding judge of the court panel shall attend in the place where defendant is situated and attest to the latter's identity, also verifying that the exercise of the rights and powers to which such defendant is entitled is in no way impaired or limited. He shall also verify compliance with the provisions laid down in paragraph 3 and in the second sentence of paragraph 4 and with the precautions taken to ensure lawfulness of the examination, if any, with regard to the place in which he is situated.

To that end he shall hear defendant and defence counsel, if necessary. The judge or, in urgent cases, the presiding judge of the court panel may designate a judicial police officer to attend in the place in which defendant is located as a substitute for the justice's clerk, for as long as the defendant is not examined during the trial; said judicial police officer shall be chosen among those who do or did not take part in investigations or protection programmes concerning defendant or the facts in which he is allegedly involved. An activity report shall be drawn up by the justice's clerk or the judicial police officer in pursuance of Article 136 of the Code.

7. Whenever it is necessary to carry out confrontation with or identification of defendant during the trial, or any other activity involving inspection of defendant in person, the judge shall, if he considers it necessary, after hearing the parties, authorise defendant to attend in courtroom for no longer than is necessary to carry out the said activities.

Italy did not provide any examples of hearings that have taken place by video conference based on a foreign mutual legal assistance requests.

Following the country visit Italy indicated that video conferences for interviewing witnesses are actively used.

In particularly cases with Spain, France, United States of America, Romania, as well as with Albania, Australia, Japan, Moldova, Chile, etc., were cited when outgoing requests for video conferences were sent. From 2010 to date we have been about 200 such requests.

Incoming requests (more than 100 from 2010 to date) generally come from Spain, Germany, France, Romania, Austria, but also, to a lesser extent, from Portugal, Hungary, Netherlands, Belgium etc.

Italy has implemented the provision under review.

## **Article 46 Mutual legal assistance**

### **Paragraph 19**

*19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.*

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

Italy has indicated the provision under review is implemented based on the self-execution of UNCAC with the reference to Article 696 of the Code of Criminal Procedure.

Additionally, without prejudice to international bilateral and multilateral conventions in force for Italy, Article 729 of the Code of Criminal Procedure provides that the acts acquired through a letter of request can be used only in the proceeding in which the letters of request is submitted and in compliance with the conditions imposed by the requesting State.

## **Article 729**

### **“Limitations to the use of acts acquired through letters of request**

1. The infringement of the provisions under Article 696, paragraph 1, concerning acquiring or sending documents or other means of proof following a letter of request abroad implies that the acquired or sent documents or means of proof cannot be used. If the foreign State set conditions to the use of the requested acts, the judicial authority is bound to comply with the said limitations.

1-*bis*. If the foreign State executes the letter of request following procedures other than those indicated by the judicial authority under Article 727, paragraph 5-*bis*, the acts accomplished by the foreign authority cannot be used.

1-*ter*. In any case the statements, made by whoever, whose object is the content of unusable acts under paragraphs 1 and 1-*bis* cannot be used.

2. The provision under Article 191 paragraph 2 shall apply.”

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

Italy has additionally provided the text of article 191 if the Italian Code of Criminal Procedure relevant to the implementation of the provision under review:

#### **Article 191 Code of Criminal Procedure**

1. Evidence obtained in breach of the prohibitions established by law cannot be used.

2. The “non-usability” [of evidence] may be raised also by the court of its own motion at any stage and instance of the proceedings.

Italy has implemented the provision under review in its legislation.

## **Article 46 Mutual legal assistance**

### **Paragraph 20**

*20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.*

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

Italy has referred to its responses under paragraph 19 above.

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

The confidentiality of information or evidence furnished by the requested State in the context of MLA is protected by virtue of Articles 729 and 191 of the Criminal Procedure Code.

Italy has implemented the provision under review in its legislation.

## **Article 46 Mutual legal assistance**

### **Subparagraph 21**

*21. Mutual legal assistance may be refused:*

- (a) If the request is not made in conformity with the provisions of this article;*
- (b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;*
- (c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;*
- (d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.*

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

Italy has indicated the provision under review is implemented based on the self-execution of UNCAC with the reference to Article 696 of the Code of Criminal Procedure.

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

The Italian Law does not provide other grounds for refusing mutual legal assistance beyond the refusal grounds listed in paragraph 21 of article 46 of the Convention. Italy did not provide cases in which mutual legal assistance was refused on the grounds referred to in this article.

Italy has implemented the provision under review in its legislation.

**Article 46 Mutual legal assistance**

**Paragraph 22**

*22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.*

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

Italy has indicated that the provision under review is self-executing per Article 696 of the Code of Criminal Procedure.

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

Italy has implemented the provision under review in its legislation.

**Article 46 Mutual legal assistance**

**Paragraph 23**

*23. Reasons shall be given for any refusal of mutual legal assistance.*

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

Italy has indicated that the provision under review is self-executing per Article 696 of the Code of Criminal Procedure.

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

Italy clarified that the refusal of mutual legal assistance given to the requesting State is accompanied by a justification. Italy referred to a case in which the judicial/police nature of the requesting authority was not clear, as an example of a justification accompanying the refusal of mutual legal assistance.

Italy has implemented the provision under review in its legislation.

## **Article 46 Mutual legal assistance**

### **Paragraph 24**

*24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.*

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

Italy has indicated that the provision under review is self-executing per Article 696 of the Code of Criminal Procedure.

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

Italy indicated articles 723 et seq. of the Italian Code of Criminal Procedure as the provisions governing the process of execution of foreign requests for mutual legal assistance. Italy clarified that no time limits have been established.

In the event of a delay in the execution of mutual legal assistance requests, Italy does not provide any legal remedy aside from the issue of reminders. The requesting States are only in specific cases informed of the delay. Italy clarified that the requesting State can address its inquiries on the status of the execution of the request for mutual legal assistance both to the central authority and to the judicial authority responsible for the execution. The central authority will only in specific cases take autonomous measures to monitor the execution of the foreign request by, for instance, inquiring about the status of the execution directly to the authority responsible for it.

Italy was not able to indicate the average time required for a request for mutual legal assistance to be executed.

Although, the Italian legislation meets the requirements of the provision under review, Italy is recommended to consider adopting legislative amendments of internal procedure containing the approximate time limits for execution of mutual legal assistance requests to ensure that the assistance process is conducted efficiently.

## **Article 46 Mutual legal assistance**

### **Paragraph 25**

*25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.*

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

Italy has indicated that the provision under review is self-executing per Article 696 of the Code of Criminal Procedure.

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

During the country visit Italy has additionally cited article 724 paragraph 5-bis of the Italian Code of Criminal Procedure:

“The execution of the request shall be suspended if it can compromise ongoing investigations or criminal proceedings in the State.”

Italy has implemented the provision under review in its legislation.

**Article 46 Mutual legal assistance**

**Paragraph 26**

*26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.*

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

Italy has indicated that the provision under review is self-executing per Article 696 of the Code of Criminal Procedure.

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

Italy clarified that in practice before refusing a request pursuant to paragraph 21 or postponing its execution pursuant to paragraph 25, it consults with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary, for example the submission of additional information.

The central authority and the executing authority are both responsible for the consultation with the requesting State Party. Italy stated that the consultation is the general procedure followed in the case of mutual legal assistance requests.

Italy has implemented the provision under review.

**Article 46 Mutual legal assistance**

**Paragraph 27**

*27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the*

*territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.*

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

Italy has indicated that the provision under review is self-executing per Article 696 of the Code of Criminal Procedure.

Additionally, Article 728 of the Code of Criminal Procedure (Temporary immunity of the summoned person), as cited under subparagraphs 3 (a) to 3 (i) above can be referenced as a measure implementing the provision under review.

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

Italy considers safe conduct a general principle and has ratified the European Convention on Mutual Legal Assistance.

Article 728 of the Criminal Procedure Code has reiterated the requirements of the provision under review in the domestic legislation.

Italy has implemented the provision under review in its legislation.

**Article 46 Mutual legal assistance**

**Paragraph 28**

*28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.*

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

Italy has indicated that the provision under review is self-executing per Article 696 of the Code of Criminal Procedure.

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

Italy has clarified that the principle by which the costs for the execution of mutual legal assistance are borne by the requested State, is considered a general principle. This principle is also included in the European Convention on Mutual Legal Assistance and in the European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime. Both conventions have been ratified by Italy. Italy clarified that article 34 of the European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime

introduces the possibility, through a consultation between the States, that the requesting State bears part of the costs.

**Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime** (Strasbourg, 8.XI.1990)

**Article 34 – Costs**

The ordinary costs of complying with a request shall be borne by the requested Party. Where costs of a substantial or extraordinary nature are necessary to comply with a request, the Parties shall consult in order to agree the conditions on which the request is to be executed and how the costs shall be borne.

Italy has implemented the provision under review.

**Article 46 Mutual legal assistance**

**Subparagraph 29 (a)**

*29. The requested State Party:*

*(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;*

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

Italy has indicated that the provision under review is self-executing per Article 696 of the Code of Criminal Procedure.

Italy further clarified that public documents may be requested to the national administrative authority where they are kept and sent as paper documents, by fax or through computer to the requesting State.

For citations of texts, the country under review refers to answers under Subparagraph 8 of article 44.

Italy did not provide examples of implementation.

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

Italy can provide government records based on paragraph 29 of article 46 of the Convention by virtue of Article 696 of the Criminal Procedure Code.

Italy has implemented the provision under review in its legislation.

**Article 46 Mutual legal assistance**

**Subparagraph 29 (b)**

*29. The requested State Party:*

*(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or*

*information in its possession that under its domestic law are not available to the general public.*

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

Italy has indicated that the provision under review is self-executing per Article 696 of the Code of Criminal Procedure.

Classified documents may be requested to the national administrative authority where they are kept and sent as paper documents, by fax or through computer to the requesting State, within the limits established by the law.

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

Italy can provide government records based on paragraph 29 of article 46 of the Convention by virtue of Article 696 of the Criminal Procedure Code.

Italy has implemented the provision under review in its legislation.

**Article 46 Mutual legal assistance**

**Paragraph 30**

*30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.*

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

Italy has referred to its responses given under paragraph 1(a) above.

Italy further indicated that it was negotiating numerous bilateral agreements on mutual legal assistance.

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

Italy is undertaking to conclude additional mutual legal assistance treaties in order to further improve mutual legal assistance.

Italy has implemented the provision under review in its legislation.

**(c) Successes and good practices**

Existence of bilateral treaties on mutual legal assistance and continuing efforts to conclude additional treaties with other states can be commended as a good practice.

**Article 47 Transfer of criminal proceedings**

*States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in*

*particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.*

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

Italy has clarified that it would be willing to transfer proceeding for the prosecution of offences established in accordance with UNCAC if necessary.

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

Italy indicated that it will be willing to transfer to other Member States proceedings for the prosecution of corruption offences in case such need arises.

There are no national provisions governing the transfer of criminal proceedings to a foreign country or for accepting criminal proceedings based on a foreign request.

Italy has concluded and ratified multilateral and bilateral agreements covering this topic. The European MLA Convention (art. 21) was indicated as an example.

Italy has implemented the provision under review.

**Article 48 Law enforcement cooperation**

**Subparagraph 1 (a)**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;*

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

Italy has clarified that it has multiple national police forces, 3 of which (Polizia di Stato, Carabinieri and Guardia di Finanza) have general competence in the fight against ordinary and organized crime. On the operational plane, liaison between the different law enforcement authorities, including the Antimafia Investigative Directorate (DIA) and the Central Directorate for Antidrug Services (DCSA), is ensured by the Central Directorate of Criminal Police (DCPC) – a multi-agency structure – that is part of the Public Security Department of the Ministry of the Interior. It is headed by the Deputy Chief of Police – Deputy Director of Public Security.

The DCPC includes the International Police Cooperation Service (SCIP) - a multi-agency body - which deals with and facilitates information sharing, also at operational level, in the field of international police cooperation, in close coordination with the other Directorates of the Public Security Department and law enforcement agencies (Polizia di Stato, Carabinieri and Guardia di Finanza).

It should be noted that the Multi-Agency Information System Service within the Central Directorate of Criminal Police manages the joint police database where information on offences and offenders is stored. This database provides an invaluable tool for the prevention of and fight against crime as well as for investigations.

As far as the international aspects are concerned, Italy is a party to all the international police organizations that deal with police cooperation matters both at European (Europol and SIRENE) and worldwide level (Interpol).

However, just a few cases, and mostly for preliminary checks, are processed via the police cooperation channels, due to the complexity of the checks that usually require the official form of the legal assistance because they imply access to banks, financial institutions, companies, or the formal examination of witnesses and people involved in the criminal activity.

Sometimes the Judicial Authority avails itself of the Interpol channel to send in a very rapid way the rogatory commission, or to know the foreign prosecution office to whom the rogatory commission should be addressed.

Additionally, Italy is a member of the EPAC (European Partners Against Corruption) which on the basis of the UN Convention against corruption and the EU Council Decision no. 2008/852/JHA has founded the EACN (European Anti-Corruption Network) in which each Member State designates a national PoC with the specific task to coordinate and collect information from and to the Authorities in charge of combating corruption (in Italy, all Law Enforcement Agencies) and exchange data with the other national PoCs of the network. This network has also clear connections with UNCAC, GRECO (Group of States against Corruption - Council of Europe), OLAF, IACSS (International Anti-Corruption Summer School), IACA (International Association of Crime Analysts) and OSCE-OECD (Working Group on Bribery in International Business Transactions).

At international level, in particular, Italy has undersigned specific agreements on the topic of fight against corruption with Saudi Arabia in 2007 and with Kazakhstan in 2009.

Regarding the national database where information is shared, Italy indicated that at the national level, Italian police forces have a joint database within the Department of Public Security containing information on offences and offenders or persons under investigation. At European level, most significant information is shared with other countries - within the limits imposed by the Schengen Convention - through the SIS database, a European database fed by all Schengen countries, as well as through the EIS-Europol Information System to which all EU Member States have access. At the global level, information is shared through the databases managed by the ICPO-Interpol General Secretariat in Lyon which Italy regularly contributes to. Obviously, in turn, national police forces have access to the information stored in those databases.

Italy provided the following examples of recent cases in which law enforcement authorities have exchanged information with those of other State Parties for offences covered by the Convention:

Italy is characterised by the presence of organised crime, both domestic and foreign. Furthermore, its wealth and level of development attract criminals either to perpetrate crimes

or to invest their crime proceeds. Therefore, information is constantly and regularly exchanged, on hundreds of cases a day, mainly with European countries, as well as with those countries with stronger historical, cultural and socio-economic ties. The information exchanged includes all that can assist in detecting offenders, evidence of crime, illicit profits and the laundering of crime proceeds with a view to arresting and extraditing offenders.

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

In the course of the direct dialogue Italy provided further information below.

The liaison between the national police forces "Polizia di Stato", "Carabinieri", "Guardia di Finanza", the "DIA" and the "DCSA" is ensured by the "DCPC". These authorities have the possibility to directly exchange information. National Law Enforcement Agencies have direct contacts and can exchange information directly. In order to exchange information, Law Enforcement Agencies must have the prosecutor's authorization after criminal proceedings are initiated.

Italy is a member to regional (Europol and SIRENE) and global (Interpol) international police organizations. Information between law enforcement agencies is shared through the SIS database in Europe and through the ICPO-Interpol database worldwide. The only limitations to the exchange of information via these police cooperation channels are dictated by the law. If criminal proceedings have been initiated, Law Enforcement Agencies must have the prosecutor's authorization to exchange information.

Italy concluded agreements on bilateral police cooperation with 104 countries, a multilateral agreement with SICA (Central American Law Enforcement Network) and is currently negotiating an agreement with SELEC (Southeast European Law Enforcement Center).

The Italian Police Service of International Cooperation has liaison officers stationed in 19 countries: Greece (Athens), Lebanon (Beirut), Moldova (Chisinau), Netherlands (The Hague), Cyprus (Nicosia), U.K. (London), France (Paris), China (Beijing), Montenegro (Podgorica), Kosovo (Pristina), Brazil (Rio de Janeiro), Bosnia-Herzegovina (Sarajevo), FYROM (Skopje), Bulgaria (Sofia), Albania (Tirana), Georgia (Tbilisi), Austria (Vienna), Germany (Wiesbaden), Croatia (Zagreb). The officers stationed abroad have the tasks of ensuring the sharing of all criminal information through the Interpol and Europol channel, assuring that resources are not wasted or efforts duplicated, participating as observers in joint criminal investigations, research and operations. They also forge strong ties with law enforcement agencies, governmental authorities and non-governmental organizations whose mission is to fight crime and protect the public's safety. They develop strong relations with the other police attaché displaced in the country where they are seconded and with the representatives of all organizations with a stake in the fight against international crime.

The Guardia di Finanza (Italian Financial Guard) also has liaison officers stationed in 13 countries. Article 4 of Legislative Decree 68/2001 establishes that the Financial Guard must promote and implement the international cooperation with collateral foreign bodies aimed at fighting economic and financial crimes in order to safeguard the State's and European Union's balance and finances. To achieve this goal liaison officers have been stationed in the Italian embassies and Permanent Missions in the following countries: U.K. (London), Serbia (Belgrade), Austria (Vienna), Russia (Moscow), U.S.A. (Washington D.C.), Brazil (Brasilia), Argentina (Buenos Aires), China (Beijing), India (New Delhi), Canada (Ottawa), Costa Rica (San José), Switzerland (Bern), Malaysia (Kuala Lumpur). Furthermore, 3 liaison officers are

stationed in France (Paris) at the OECD, Belgium (Brussels) at the E.U. and U.S.A. (New York) at the U.N.

Further forms of cooperation are granted by the liaison officers stationed in the following foreign institutions: R.I.L.O. W.E. (Regional Intelligence Liaison Office - Western Europe) of World Customs Organization and the Zollkriminalamt (ZKA) in Cologne (Germany); the Italian Embassy in Madrid (Spain); C.I.A.T. (Inter-American Center of Tax Administrations) in Panama.

Additionally, Italy hosts many seconded police attachés and/or liaison officers.

Italy has implemented the provision under review. Both the gathering and preparation of data in Italy as well as data exchange between domestic and foreign authorities make an exemplary impression, at least in structural terms. Moreover, Italy is a member of numerous international organizations in the field of anti-corruption and has concluded bilateral agreements in this regard as well.

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

Membership of Italy in law enforcement cooperation networks and a large number of bilateral agreements on police cooperation is commendable as a good practice.

## **Article 48 Law enforcement cooperation**

### **Subparagraph 1 (b) (i), (ii) and (iii)**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:*

*(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;*

*(ii) The movement of proceeds of crime or property derived from the commission of such offences;*

*(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;*

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

Italy has indicated that its national bureau of Europol and Interpol process messages/dossier per year related to police investigations on corruption requested to and from abroad that also includes the identity whereabouts and activities, as well as the location of persons suspected of involvement in corruption offences and other persons concerned and the movement of property equipment of other instrumentalities used or intended for use in the commission of corruption offences. All enquiries are processed without any limitation except the law.

Italian FIU (Banca d'Italia — Unità di Informazione Finanziaria (UIF)) is a member of the Egmont Group of Financial Intelligence Units, an informal organization of FIUs to facilitate

international cooperation in fighting money laundering and terrorist financing. The Egmont Group provides a useful platform for FIUs to conduct inquiries and exchange information with respect to the movement of proceeds of crime, including the proceeds derived from corruption offences.

Italy is also a member of the StAR-INTERPOL Global Focal Point Network on Asset Recovery.

Additionally, Italy has referred to European Union Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices (ARO) of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime, the Italian Chief of Police issued a Decree and designated the International Police Cooperation Service as Italy's national Asset Recovery Office under Art. 1 of the Council Decision. Italy attends the pan European high level conferences on AROs through its representatives, supported by Europol, to improve international cooperation in protecting the licit economy from criminal infiltration.

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

Italy has implemented the provision under review.

**Article 48 Law enforcement cooperation**

**Subparagraph 1 (c)**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;*

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

Italy has clarified that such measures are taken conducted through its national bureau of Interpol and Europol via corresponding networks, as well as bilaterally when such needs arise.

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

Italy provides, where appropriate, necessary items or quantities of substances for analytical or investigative purposes to their foreign counterparts as a practical matter whenever necessary.

**Article 48 Law enforcement cooperation**

**Subparagraph 1 (d)**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;*

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

Italy has clarified that on a global level it shares information on lost and stolen travel documents, daily by entering domestic data into the I.C.P.O.-Interpol General Secretariat database through a computerized procedure.

At European level the data concerning all lost/stolen personal identity documents are shared in real time with all Schengen countries by entering such information into the SIS database.

Furthermore, at G8 level Italy submitted a project aimed at stepping up the fight against document forgery, that was approved under the Italian Presidency in 2009. Such a project led to the I.C.P.O.-Interpol General Secretariat DIAL-DOC Project, now in the final implementation phase, that will allow all Member States to have access to information on the genuine documents of the various countries, to the main types of forgery/alteration of such documents and to the different kinds of modus operandi of forgers and criminals unlawfully using them.

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

Italy has implemented the provision under review in practice.

**Article 48 Law enforcement cooperation**

**Subparagraph 1 (e)**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;*

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

Italy has referred to its responses under subparagraph 1(a) above.

Italy has further clarified that it actively cooperates with other countries in order to enhance the effectiveness of the fight against the crime. In this framework, usually the cooperation agreements with other countries have all the aim to reinforce the fight against criminal organizations, which also implies the inclusion of corruption offences in the relevant framework. Such cooperation agreements usually envisage the possibility of exchanging liaison officers in order to optimize the fight against organised crime and expedite the exchange of information, even though this does not always occur concretely or immediately after the agreement has been signed. During particularly complex investigations, not only in relation to the fight against corruption, in case of need, staff are exchanged even for medium-

term periods to facilitate immediate contacts between the investigators dealing with the case in the various countries concerned.

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

Italy has implemented the provision under review.

**Article 48 Law enforcement cooperation**

**Subparagraph 1 (f)**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.*

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

Italy has referred to its responses under subparagraph 1(a) above.

Italy has further clarified that the information exchange and coordination through the channels as described in its responses under subparagraph 1(a) above also includes administrative and other measures taken as appropriately for the purpose of early identification of corruption offences.

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

Italy has implemented the provision under review in practice.

**Article 48 Law enforcement cooperation**

**Paragraph 2**

*2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.*

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

Italy has referred to its responses under subparagraphs 1(a) and (e) above.

Italy has also noted that it considers UNCAC as the basis for mutual law enforcement cooperation in respect of corruption offences.

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

Italy considers the Convention as a legal basis for mutual law enforcement cooperation.

Italy has implemented the provision under review.

**Article 48 Law enforcement cooperation**

**Paragraph 3**

*3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.*

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

Italy has indicated that its Italian law enforcement authorities have always paid special attention to offences committed through the use of modern technology and have established special services and units for the purpose of combating new types of offences, in particular Internet-related offences.

Since 1999 the Italian National Police Postal and Communication Police Service has been the central agency of the Ministry of Interior entrusted with the security and regularity of telecommunications. The Postal and Communication Police is therefore the agency specialised in the monitoring and prosecution of criminal and administrative offences perpetrated within the framework of the vast and complex subject of communications, (primarily) including Internet-related offences.

In 2001 the Guardia di Finanza Corps established a specialist unit to counter computer frauds (Special Unit for Computer Frauds); hence this Unit, too, is entrusted with the fight against computer and information technology crimes.

Although both offices do not specifically deal with the fight against corruption that, in any case, in Italy is not generally characterised by the use of specific advanced technology equipment, in case of need, they have the experience and expertise required to combat also corruption offences whenever they are committed using cutting-edge technology.

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

The international law enforcement cooperation of Italy in cases concerning the use of modern technology does not differ from general cases of such cooperation. Italy, however, has domestic agencies equipped with necessary instrumentalities to conduct such cooperation and would be willing to cooperate with other States Parties in this area in line with the Convention.

Italy has implemented the provision under review.

**Article 49 Joint investigations**

*States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.*

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

Italy has indicated that the establishment of Joint Investigation Teams has been provided for by Article 13 of the Brussels Convention of 29th May 2000 regarding mutual assistance in criminal matters, entered into force at international level on 23 August 2005, and by the subsequent Framework Decision 2002/465/JHA of 13 June 2002, whose time-limit for implementation by the Member States expired on 31.12.2002; with the Recommendation of the Council of 8th May 2003, a formal model agreement for the setting up of a joint investigation team has also been adopted, which integrates and complete the provisions contained in Article 13 of the Convention and in the Council Framework Decision,

Italy has not adopted yet the framework decision 2002/465 on joint investigation teams, nor has it ratified the Convention signed in 2000.

As a matter of fact, no provisions have been introduced until now for the establishment of joint investigation teams in the Italian legislation – in particular in the code of criminal procedure or with a special law.

The first attempts made in the domestic law to implement Framework Decision 2002/465/JHA and to guarantee the respect of the obligations imposed under this Decision, date back to the XV legislature with a bill, passed only by the Senate in May 2007, which should have introduced amendments into the code of criminal procedure, on which also the Magistrates' Governing Council had pronounced.

During the following legislature, however, the Italian Senate Justice Commission adopted, on 28 January 2009, a unified text which - contrary to the previous initial approach - set out special implementing rules not affecting the code of criminal procedure, which would be still under examination by the Commission.

In order to satisfy the need for cooperation, the possibility of creating joint investigation teams have been provided also by: the Judicial Cooperation Agreement in criminal matters between Italy and **Switzerland** (art. XXI) ratified by law 5 October 2001, No 367 (the so-called law on letters rogatory); the **Convention of the United Nations against transnational organized crime** (art. 19) adopted by the General Assembly on 15 November 2000, ratified by law 16 March 2006, No 146; the Agreement on Mutual Legal Assistance between the **United States of America** and the European Union signed on 25 June 2003 (art.5), ratified by law 16 March 2009, No 25.

Moreover, it is worth noting that law 30 June 2009, No 85, which has ratified the **Prüm Treaty** on transborder cooperation, contains provisions aimed at implementing art. 24 of the Treaty. According to this article, contracting Parties may, in maintaining public order and security and preventing criminal offences, introduce joint patrols and other (non specified) joint operations in which designated officers or other officials from other Contracting Parties participate in operations within the territory of another Party.

Although Italy has not formally adopted the mentioned European Decision, very frequently meetings and working groups aimed at exchanging information, sharing investigative experiences and cooperating in ongoing investigations are held in Italy and/or abroad between Italian and foreign investigators.

For particularly complex cases, as a well-established practice, meetings are held between the investigative authorities concerned in order to exchange information; in case of highly sensitive investigations, a staff exchange or collaboration may occur in order to follow the various investigation phases in close synergy so as to optimise investigations, expedite them and immediately know their developments. In this connection, Italy is very willing to welcome foreign investigators and offer them full cooperation within the framework of ordinary international police cooperation, working in teams so that investigations started abroad can be enhanced by the information gained in Italy and by the experience of Italian investigators. Finally, it should be stressed that for more complex cases, requiring investigations not envisaged by international police cooperation rules, judicial cooperation channels are used by forwarding international letters of request. This is a usual procedure also in relation to Italian investigations abroad.

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

Although, no legislative provisions have been introduced until now for the establishment of joint investigation teams in the Italian Criminal Code, Italy clarified that such could be established based on the Convention on an ad hoc basis.

**Article 50 Special investigative techniques**

**Paragraph 1**

*1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.*

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

Italy has indicated that its legal framework allows law enforcement agencies and Judicial authorities to use many investigative tools, such as wiretapping, financial investigation, shadowing, etc.

The Criminal Procedure Code and Law 146/2006 set forth the use of all the investigative powers by law enforcement agencies and the judicial authorities.

In particular, wiretapping, interceptions among physically present individuals (vehicles, offices and even private dwellings), interceptions of communications flows in computer systems, financial investigations and shadowing are provided by the Criminal Procedure Code (in order: articles 266, 266-bis, 255 and 348) and their use is fully allowed for corruption cases.

Law 146/2006 provides also for the use of controlled delivery, cover operations and for the delayed execution of an arrest or of a seizure, however, they are not allowed when investigating corruption offences.

#### **Article 255 of the Code of Criminal Procedure**

##### **Seizure at banks**

1. The judicial authority may proceed to the seizure at banks of documents, securities, currencies, amounts deposited in bank account and everything else, even when contained in safe-deposit boxes, when there are well-founded reasons to believe that they are relevant to the offense, although not belong to the defendant or are not registered in his name.

#### **Article 266 of the Code of Criminal Procedure**

##### **Limitations on permissibility**

1. Interception of conversations or telephone communications and of any other type of telecommunication shall be permitted in proceedings relating to the following offences:

- a) non-negligent crimes punishable by life imprisonment or by imprisonment for a maximum period in excess of five years as prescribed by article 4;
- b) crimes against the public administration punishable by imprisonment for a maximum period of at least five years as prescribed by article 4;
- c) crimes relating to narcotic drugs or psychotropic substances;
- d) crimes relating to arms and explosives;
- e) crimes relating to smuggling;
- f) crimes of abuse, threats, molestation or disturbance against persons by means of the telephone;
- f-bis) crimes designated in article 600-ter, third paragraph, of the Criminal Code, also where related to the pornographic material under article 600-quarter.1 of the same Code, and in article 609-undecies;*
- f-ter) crimes designated in articles 444, 473, 474, 515, 516 and 517-quarter of the Criminal Code;*
- f-quarter) crime designated in article 612-bis of the Criminal Code;*

2. In the aforesaid cases it shall be allowed to intercept communications between persons all present in the same place. Nevertheless, where such communications occur in the places designated in article 614 of the Criminal Code, interception shall only be permitted if there are reasonable grounds to believe that the criminal activity is being carried out therein.

#### **Article 266bis of the Code of Criminal Procedure**

##### **Interception of computer communications or telecommunications**

1. In the proceedings relating to the offences designated in article 266 as well as to those committed by means of computer or telecommunication techniques, it shall be allowed to intercept the flow of communications relating to computer or telecommunication systems or intervening between more than one system.

#### **Article 348 of the Code of Criminal Procedure**

##### **Securing the sources of evidence**

1. Even after having reported the crime, the police continue to perform the functions specified in Article 55, especially collecting all the elements for the reconstruction of the facts and the identification of the culprit.

2. For the purpose specified in paragraph 1, police proceeds, among other things:

- a) in search of things and traces relevant to the offense as well as the preservation of them and the state of the places;
- b) in search of people able to report on the circumstances relevant to the findings of fact;

#### **Art. 9 Law no. 146/2006**

## Undercover Operations

1. Without prejudice to the provisions of the article no. 51 of the Criminal Code, shall not be punishable:

- a) Officers of the Judicial Police of the State Police, Arma dei Carabinieri and Financial Guard, members of the specialized services or members of the Head Office for investigations on Mafia, within their competences, which, during specific police operations and for the sole purpose of obtaining evidences with respect of the criminal offences referred to in articles 473, 474, 629, 630, 644, 648-bis and 648-ter, as well as in the book II, title XII, chapter III, section I of the Criminal Code, crimes relating to weapons, munitions, explosives, crimes referred to in article 12, paragraph 1, 3, 3-bis and 3-ter of the Consolidated Text of the Law regulating immigration and the status of foreigners, approved with legislative decree 25 July 1998, no. 286 and further amendments, as well as crimes referred to in the Consolidated Text of the Law regulating narcotic drugs and psychotropic substances, prevention, care and rehabilitation of drug addiction, approved with Presidential Decree of 9 October 1990 n. 309, to article 260 of the Legislative Decree 3 April 2006, no 152 and article 3 of the Law 20 February 1958, no. 75, even through a third person, harbor or in any way assist member of criminal organizations, buy, receive, substitute or conceal money, weapons, documents, drugs and psychotropic substances, goods or other assets which are objects, proceeds or means of crime, or by any other means conceal their origin, allow their use, or perform instrumental or preliminary activities.
- b) The officers of the Judicial Police members of the investigative services of the State Police and Arma dei Carabinieri, specialized for combating terrorism and subversion, and of the Financial Guard services specialized for combating the financing of terrorism, which during specific police operations and for the sole purpose of obtaining evidences related to crimes committed with the purpose of terrorism or subversion, even through a third person, perform acts referred to in letter a).

1-bis. The justification referred to in chapter 1 applies to the undercover officers of the Judicial Police and to their assistants, when activities are performed in the implementation of police operations authorized and documented in accordance with this article. The provision in the previous sentence also applies to the third persons carrying out acts referred to in paragraph 1.

2. In the cases referred to in paragraph 1, the officers of the Judicial Police may use false documents, identity or indications issued by competent bodies in accordance with the decree referred to in paragraph 5, also to activate or get in contact with individuals and websites in communication networks, informing the public prosecutor immediately and anyway not later than forty-eight hours after the beginning of the activities.

3. OMISSIS

4. OMISSIS

5. [...] For the execution of the operations may be authorized the temporary use of movable goods and real estates, of false documents, the activation of sites in the networks, the establishment and management of areas of communication or exchange of data on networks or computer systems, according to the procedures established by a Minister of the Interior decree, in consultation with the Minister of Justice and with other interested ministers. With the same decree are also established forms and procedures for the coordination, also at international level, between investigative services, for information and operative purposes.

6. When it is necessary to obtain relevant evidences, or for the identification or capture of those responsible of crimes provided for in paragraph 1, as well as crimes referred to in the Presidential Decree of 9 October 1990 n. 309, limited to offences provided for in Articles 70, paragraphs 4, 6 and 10, 73 and 74, officers of the Judicial Police, within their respective competences, and customs Authorities, limited to the aforementioned articles 70, paragraphs 4, 6 and 10, 73 and 74 of the Consolidated Text approved with Presidential Decree of 9 October 1990 n. 309, as amended, may fail to perform or defer any acts for which they are competent, giving immediate notice, even orally, to the public prosecutor, who may otherwise decide, forwarding to the same public prosecutor a report with a statement of reasons, within

the following forty-eight hours. For the anti-drug activities, the same immediate notice must be received by the Central Directorate for Anti-drug Services for the necessary coordination at international level.

7. For the same reasons mentioned in paragraph 6, the public prosecutor, through a grounded order, may defer the execution of orders applying a precautionary measures, the arrest of the suspect, the order for the execution of imprisonment or the seizure. In case of urgency, deferment of the execution of the aforesaid provisions may be provided orally, but the relevant order must be issued within the following forty-eight hours. The public prosecutor gives to the police the necessary directions to monitor the developments of the criminal activity, informing the judicial authority competent for the place in which the operation shall be performed or through which the objects, proceeds and means of crime, as well as drugs and psychotropic substances and those referred to in article 70 of Consolidated Text approved with Presidential Decree of 9 October 1990 n. 309, as emended, are expected to be exported from or imported in the territory of the State.

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

Certain special investigative techniques, such as telephone tapping and electronic surveillance (i.e. video surveillance, computer surveillance, GPS tracking), are already in use in Italy for investigation of corruption cases.

However, other investigative techniques may be used in Italy only with regard to *the most serious offences*, which currently, according to Law 146/2006, do not include most of the corruption offences. More specifically, controlled delivery and undercover operations are possible in cases of terrorism, subversion, smuggling of migrants, trafficking in firearms and explosives, drug trafficking, money laundering, loan sharking extortion and trafficking in hazardous waste, but not for public administration and corruption offences.

Italy, at the time of the review, was considering to make available these investigative techniques, as well as some other methods of investigating and prosecuting corruption crimes, namely the use of persons cooperating with justice, in corruption cases, in the same way as in the proceedings against organized crime. The political discussion was still ongoing on that matter and a corresponding draft bill was being drafted for the consideration of the Parliament.

Italy has partially implemented the provision under review and is, therefore recommended to include corruption offences in the list of the most serious offences to allow the use of special investigative techniques in the investigation of such offences.

### **Article 50 Special investigative techniques**

#### **Paragraph 2**

*2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.*

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

Italy has indicated that although as of today no specific agreement has been signed by Italy in relation specifically to the offences provided for in UNCAC, numerous negotiations of cooperation agreements are ongoing, as referred in the responses under paragraph 1 of article 46 above, which provide for the possibility to use special investigative techniques.

Italy has cited the standard text of draft agreement on legal assistance used by Italy in the last few years.

**ARTICLE ...**

Compatibility with Other Instruments for Cooperation or Assistance

The provisions of this Treaty shall not prejudice any recognised right or obligation undertaken by each State through having signed other international agreements.

This Treaty shall not prevent the States from affording other forms of legal cooperation or assistance under specific agreements, arrangements or shared practices, if they comply with their respective legal systems. To this end, legal assistance may be requested also in order to:

set up joint investigation teams operating in the territories of each State in order to facilitate the investigation of or criminal proceedings relevant to criminal offences which involve both States;

carry out controlled deliveries in the territory of the Requested State ;

help law enforcement officers of the Requesting State to carry out undercover activities in the territory of the Requested State;

carry out, in the territory of the Requested State, through law enforcement officers of the Requesting State the observation, tailing and checking of persons suspected of having taken part in the commission of serious criminal offences.

In respect of the assistance activities set in paragraph 2 of this Article, the following provisions shall apply:

assistance shall be granted provided that the conduct for which it is requested constitutes a criminal offence under the law of both States, pursuant to paragraph 2 of Article 2;

the request for assistance shall be considered and decided upon by the competent Authority of the Requested State on a case-to-case basis, in compliance with its domestic law and the provisions of this Treaty;

the prosecuting Authority of the Requesting State and the competent Authority of the Requested State shall directly and preliminarily agree together all the details of the activity at issue, including its organisation, the operational procedure to follow, who shall participate in it and in which capacity, any specific conditions to be complied with, and how long such an activity shall last. These arrangements shall be communicated to the Central Authorities designated pursuant to Article 4;

the assistance activity shall be effected in compliance with the procedures provided for by the law of the Requested State and under the supervision and direction of the competent Authority of that State;

the Requested State may refuse to afford legal assistance in addition to the grounds indicated in Article 3, also on account of the nature or minor seriousness of the criminal offence, or on other well-founded grounds, which it shall communicate to the Requesting State.

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

Italy has included provisions on special investigation techniques in some of its agreements on mutual legal assistance, however, without particular focus on corruption.

In that regard the recommendation given with regard to the implementation of paragraph 1 above may be relevant.

**Article 50 Special investigative techniques**

**Paragraph 3**

*3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.*

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

Italy has indicated that such arrangements can be made on ad hoc basis. But the use of the investigative techniques in Italy may be limited as explained in the response under paragraph 1 above.

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

According to the law n. 146/2006, special investigative measures such as undercover operations and controlled delivery can be set up in case of drug trafficking, weapons trafficking, money laundering, trafficking of human being investigations. The legislation excludes the application of special investigative techniques in the cases of corruption offences.

Italy has partially implemented the provision under review.

**Article 50 Special investigative techniques**

**Paragraph 4**

*4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.*

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

Italy has referred to its responses under paragraph 3 above.

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

See observations under paragraph 3 above.