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A. General information

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1. General information

Focal point:

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Institutions consulted:

- Ministry of Justice
- Ministry of Interior - Asset Recovery Office
- Ministry of Foreign Affairs and International Cooperation (MAECI)
- Anticorruption National authority / Autorità Nazionale Anticorruzione (ANAC)
- Agenzia Nazionale per l'amministrazione e la destinazione dei beni sequestrati e confiscati alla criminalità organizzata (ANBSC)
- UIF
- Banca d'Italia

Please provide information on the ratification/acceptance/approval/accesion process of the United Nations Convention against Corruption in your country (date of ratification/acceptance/approval of/accesion to the Convention, date of entry into force of the Convention in your country, procedure to be followed for ratification/acceptance/approval of/accesion to international conventions etc.).

The Convention was signed by Italy on 9 December 200; its ratification was authorized by the Parliament on 3 August 2009 and the inherent Law was signed by the President of the Republic Giorgio Napolitano on 3 August 2009. Italy deposited its instrument of ratification with the Secretary-General of the United Nations on 5 October 2009.

Please briefly describe the legal and institutional system of your country.

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 (Const.), 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 underline that many provisions of the Italian Constitution are not directly enforceable and need to be further implemented through the enactment of primary and secondary legislation..

The **President of the Republic** is the Head of the State and represents the national unity (**Article 87 Const.**). He is elected by the two chambers of Parliament in joint session for a period of seven years at the end of which he can be re-elected. He appoints the Prime Minister and five judges of the Constitutional Court. He presides over the Supreme Council of the Judiciary (*Consiglio Superiore della*

Magistratura”). He can veto bills and send them back to the Parliament for a new examination. He can dissolve the Parliament. The President serves as a point of connection between the three branches of government: he is elected by the lawmakers, he appoints the executive, and is the president of the judiciary. 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.**):

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

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. (See under article 11 for further details)

Legal Status of International binding instruments in Italy

Article 10 [International Law], paragraph one, of the Italian Constitution states that :

- (1) The legal system of Italy conforms to the generally recognized principles of international law.

Article 117 [State and Regional Legislative Power], paragraph 1, of the Italian Constitution states that :

- (1) “Legislative power belongs to the state and the regions in accordance with the constitution and within the limits set by European union law and international obligations.”

This means that international agreements, such as UNCAC, rank higher

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

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 3.08.2009, and entry into force on 4.11.2009 in accordance with Article 68 of the Convention.

In a separate communication addressed and e-mailed to the secretariat (uncac.cop@unodc.org), please provide a list of relevant laws, policies and/or other measures that are cited in the responses to the self-assessment checklist along with, if available online, a hyperlink to each document and, if available, summaries of such documents. For those documents not available online, please include the texts of those documents and, if available, summaries thereof in an attachment to the e-mail. If available, please also provide a link to, or the texts of, any versions of these documents in other official languages of the United Nations (Arabic, Chinese, English, French, Russian or Spanish). Please revert to this question after finishing your self-assessment to ensure that all legislation, policies and/or other measures you have cited are included in the list.

Please provide a hyperlink to or copy of any available assessments of measures to combat corruption and mechanisms to review the implementation of such measures taken by your country that you wish to share as good practices.

Please provide the relevant information regarding the preparation of your responses to the self-assessment checklist.

Please describe three practices that you consider to be good practices in the implementation of the chapters of the Convention that are under review.

Please describe (cite and summarize) the measures/steps, if any, your country needs to take, together with the related time frame, to ensure full compliance with the chapters of the Convention that are under review, and specifically indicate to which articles of the Convention such measures would relate.

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II. Preventive measures

5. Preventive anti-corruption policies and practices

2. Paragraph 1 of article 5

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

Is your country in compliance with this provision?

(Y) Yes

Italy is in full compliance with this provision.

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The Italian legislation provides for several principles public officials must comply with, which are relevant in fighting misconduct. First of all, as members of the public administration, in performing administrative actions, Italian public officials are bound to principles of impartiality, efficiency, effectiveness and best value for money, in order to ensure an overall good management (see Constitution, article 97, [available at https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf](https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf)).

Impartiality principle requires that public officials shall not follow their personal interests or external influences, but solely their institutional goals: to this end they “are exclusively at the service of the Nation” (Constitution, article 98). Public officials (as well as all the entire citizenry, bound by a duty of solidarity (Constitution, article 2), have to be faithful to the Republic, its Constitution and laws. Furthermore, public officials’ duties go beyond the legal minima: i.e. they must additionally “uphold” the law (Constitution, article 54, par. 1). This provision is supported by the following one, which requires public officials have the duty to fulfill their functions with discipline and honour, taking an oath in those cases established by law. (Constitution, article 54, par. 2). Corruption harms these principles because it undermines the duty of solidarity among citizens; breaching this solidarity principle can be even more serious when committed by public officers whose very task is to protect public function against personal interest. Finally, public officials are directly liable, under criminal, civil and/or administrative law, for breaching citizens’ rights (Constitution, article 28). Although in practice plaintiffs may find advantageous to sue the public administration the officer belong to, the legal provision under article 28 is important in that it clearly assigns the public officials with the obligation to a) be

directly liable to citizens they serve and b) ensure the people with an adequate service. Moreover, this makes the citizens (i.e. ultimate stakeholders in the administrative action), the subject that can best monitor the development of the public function, by acting as watchdog against the outcomes of public procurement.

Moreover, in accordance with article 5 paragraph 1 of UNCAC, Italy, has adopted several tools to prevent corruption based on the principles of integrity, transparency and accountability.

The Italian legal system is based on two major pillars. On one hand, a) relevant legislation on transparency of the procedures of the Public Entities and Entities subject to the law; and b) specific law/s on anti-corruption, anti-corruption (Transparency, Conflict of interest, Incompatibilities, Ineligibility, Asset/property declaration, Whistleblowing and Code of Conducts and Ethical Codes). On the other hand, the creation of a specifically dedicated National Anti-corruption Authority (Autorità Nazionale Anti-Corruzione, ANAC) tasked, inter alia, with the supervision of public procurement related to works, services, supply, concessions both for classical sector and utilities sector.

In light of the anti-corruption acts, anti-corruption the Italian system is now based on three main principles:

- All activity of the public administration must be transparent
- Each public agency/administration must include a corruption prevention officer (*Responsabili della Prevenzione della Corruzione e della trasparenza - RPCT*).
- Each agency/administration must establish its own anti-corruption plan in accordance with the the national anti-corruption plan (Piano Triennale per la Prevenzione della Corruzione - PTPC)

More precisely, the Law n°190 of 2012 (hereinafter “the Anti- Corruption Law”), aims at ensuring a more balanced approach towards anti-corruption policies and provides for a strengthened preventive policy and enhanced accountability within public administration.

The notion of integrity, as understood within the context of international law, has now become integral part of the Italian legal system. This development was reached thanks to the Anti-corruption law, which came into existence in a scenario where the conceptual categories of corruption were solely of criminal law significance. In the past, the only focus was toward the incriminating situations, established by the Criminal Code (for example Art. 314 – a provision that introduces the section on “*Delitti contro la Pubblica Amministrazione*” crimes against public administration). Today instead, the notion of corruption is based on the awareness that the term is eclectic. It is no a coincidence that n.the *Dipartimento della Funzione pubblica* (civil service department), with directive circular n. 1 (of 25 January 2013) in response to certain interpretational issues regarding the anti-corruption law (Law n. 190/2012), has clarified extensively this

concept. In fact, the department indicates that, when used with respect to prevention, the term refers to a “concept of corruption in the broad sense, inclusive of various situations in which, during administrative activities, abuse, on the part of an individual, of the power accorded to him/her, takes place, for the purposes of private gain”

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

The PNA (*Piano Nazionale Anticorruzione*, or national anti-corruption plan) (in its various editions: 2013, updated in 2015 and 2016) describes corruption in a similar fashion.

The law a) provides, inter alia, for a national anti-corruption authority in charge of the overall policy (see answer to article 6), b) extends the scope of corruption offences, c) criminalises trading in influence through a new provision that covers also the active side of the offence, d) criminalises private sector corruption, and e) increases criminal penalties for a number of corruption-related offences. The law also provides for the ineligibility of those individuals convicted of offences against public administration.. The law introduces an obligation upon administration to develop its own anti-corruption action plan, introduces provisions on enhanced transparency on public finance, and increases access to information, asset disclosures (i.e. disclosure of information related to politically exposed persons - such as elected officials and any other person with policy-making powers at national, regional and local levels). Additionally, the law establishes material accountability for public administration’s reputational damage ; it provides for codes of ethics; it introduces provisions on whistle-blowers’ protection and it reinforces some provisions on either conflicts of interest, incompatibilities (such as introduction of cooling-off periods, to name but one) and disciplinary proceedings.

The Anti-Corruption Law calls on sub-national public authorities to prevent corruption at regional and local level administration and in any enterprise they may control.

Concerning the general anti-corruption model, it should also be noted that the norms introduced by Law n. 190/2012, find an essential complement in the implementing Decrees n. 33 (on transparency) and n. 39 (on the system of ineligibility and incompatibility of positions in public administration) of 2013 law, in addition to the Presidential Decree n. 62/2013 (on rules of conduct for all public employees under contract).

The anti-corruption model is carried out through a complex and particularly articulated framework of relationships among multiple actors with different roles (such as the Government, Department of Public administration (*Dipartimento per le Finanze Pubbliche* - DFP), National Anti-corruption Authority, Court of Auditors, Prefects and, within the entities, the subject responsible for the prevention of corruption (RPC) and the independent evaluation body (*Organismo Indipendente di Valutazione* - OIV) and through an articulated mechanism of accountability for the implementation of anti-corruption measures within each administration.

In addition, in order to focus the activity of the National Anti-corruption Authority on its core tasks (namely transparency and prevention of corruption in public entities), the functions related to measurement and evaluation of performance were transferred to the Department of Public Administration (under the Council of Ministers' Presidency, from the date of entry into force of the law of conversion of the decree n. 90/2014. The functions of the Department of Public Administration of the Presidency of the Council of Ministers in the field of prevention of corruption as referred to in art. 1 of Law n. 190/2012, are transferred to the National Anti-corruption Authority.

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

The Anti-Corruption Law introduces a system of integrity risk assessment and risk management measures based on the model proposed by Legislative Decree 231/2001. In addition, the Law requires that each public administration should establish a prevention plan devoted to, on one hand, assess the degree of risk of corruption's exposure and, on the other hand, draw tailor-made organisational measures as to mitigate such risks.

Each public administration should adopt a three-year Plan for the Prevention of Corruption (Piano triennale prevenzione corruzione - PTCP) based on the PNA adopted by the National Anti-corruption Authority. The PTCP analyzes and estimates any specific administration's risk of corruption entities and indicates appropriate preventive measures. In order to be effective, the PTCP must contain appropriate targets and adequate measuring indicators. In addition, it should be systematically integrated into the whole programming tool-kit, including: the budget, the Plan of Performance and the training Plan. The PNA is structured as a programmatic tool, updated annually by the inclusion of newly established indicators and targets. This continuous updating allows for the monitoring and detection of potential discrepancies (targets/results) arising from the factual implementation of the PNA.

Incompatibilities and conflicts of interests

The Anti-Corruption Law establishes a regime of incompatibilities for managerial and elective posts, both in the civil service and state-owned/controlled enterprises. The Anti-Corruption Law has also made important changes to Legislative Decree 165/2001 (the Public Employment Single Act), namely: 1) the mandatory verification of potential conflict of interests in certain situations (such as when appointing a consultant); 2) regulating the practice of *pantouflage* (aka "revolving doors") so that public officials who have held managerial and negotiating positions in the previous three years may not exercise related duties in a private-sector entity; 3) the voiding of contracts and/or appointments made in breach of the *pantouflage* prohibition and the banning of the private entity from business dealings with the public sector for the following three years. The Law also requires the government to issue a Code of conduct to all public

officials, aiming at preventing corruption in the civil service. Any breach of the code of conduct's obligations will result in the perpetrator being bound to civil law liability and prosecution.

As mentioned above, the norms introduced by Law n. 190/2012, find an essential complement in the Legislative Decree n. 39/2013 (which regulates law implementation of important principles and guidelines on the system of ineligibility and incompatibility of positions in the public administration). The Legislative Decree n. 39/2013 has stepped in to regulate the hypothesis of ineligibility and incompatibility of positions in the public entities, with the clear intention to avoid any form of interference or confusion between politics and administration. The ultimate goal is to prevent corruption and conflicts of interest, and preserve the principle of impartiality of administrative action (enshrined into the Constitution).

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

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

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

The principles provided by the Anti-corruption law have been also enshrined at the regulatory level, through the adoption of national codes of conduct for public officials, adopted by the Presidential Decree 12 Aprile 2013, n. 62 (See text (in Italian) at <http://www.gazzettaufficiale.it/eli/id/2013/06/04/13G00104/sg>).

Whistleblowing (see answer to article 8)

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

e revealed without their consent.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

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

<http://www.anticorruzione.it/portal/public/classic/AttivitaAutorita/AttiDellAutorita/Atto?ca=6550>

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

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

3. Paragraph 2 of article 5

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

Is your country in compliance with this provision?

(Y) Yes

Italy is in full compliance with this article.

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

ANAC cooperates with another national body, the National School of Public Administration (SNA), as to plan the training programs on ethics and anti-corruption for public entities and to share information about the results of the training activities. In general, ANAC has signed several other agreements with public institutions in order to give thorough and appropriate implementation to the anti-corruption provisions. An important example is the project initiated with the Ministry for Public Instructions, aimed at introducing integrity classes and courses at secondary/high school level.

Additionally, the national anti-corruption authority carries out relationships with relevant private actors, as to share information, data, experiences and good practices in the field of transparency and anti-corruption.

Other initiatives involve the adoption of Information and Communications Technology (ICT) as for digital government actions, such as:

- promotion of open data within the public entities: see the *Linee Guida Nazionali per la Valorizzazione del Patrimonio Informativo Pubblico 2016* (National Guidelines on Increasing the Value of the Public Information Asset (available at <http://www.dati.gov.it/content/linee-guida-open-data-2016>), in Italian); The document describes some actions as to dealing and releasing information in compliance with the open data standards;
- legal obligation for any public administration to set-up a peculiar part of its website (named PAT - *Pubblica Amministrazione Trasparente*, namely transparent public administration), as to disclose information related to committed expenses and disbursements.
- set-up of dedicated websites aimed to offer as much as possible public entities' data to the citizens/customers (see point 3.), with the aim of facilitating a democratic control of the public entities' general trends.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

ANAC publishes open data about public contracts awarded by contracting entities on its website and the results of its supervision activity:

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

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

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

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

4. Paragraph 3 of article 5

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

Is your country in compliance with this provision?

(Y) Yes

Italy is in full compliance with this article

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Significant functions and powers of regulation, supervision and control are attributed to the National Anti-corruption Authority (see answer article n. 6) . The Authority, in addition to the already existing regulatory powers, has also been called upon to formulate guidelines for the preparation of the Three-year Program for Transparency and Integrity, as well as the codes of conduct for single entities.

In terms of the effectiveness of the law, it is important that one single agency (ANAC) is tasked with the supervision of the implementation and control over the efficiency of the measures indicated in the above-mentioned plans, and their compliance with transparency obligations. In practice, the assessment powers may materialize in different ways in the of an inspection (for example through the request of information, records and documents to the inspected entities). In fact, they may bring to issuing an order to adopt or remove certain acts or behaviors that are in contrast with the measures indicated under the above plans. Similarly, for activities related to prevention of corruption, the Authority is the recipient of the communication by the Prefect on the dismissal of the Secretary of a local authority .

Moreover, in the framework of Law n. 190/2012 (See text in Italian at <http://www.gazzettaufficiale.it/eli/id/2012/11/13/012G0213/sg>), the Authority has a continuous relationship with the various entities which, first of all, have the obligation to appoint the responsible for corruption prevention (RPC) who has the important tasks of: 1) proposing the corruption prevention plan for adoption by the relevant political body; 2) verify its correct implementation and its continuing suitability, as well as 3) report annually the results of the activity.

It is evident that the RPC, together with the OIV, are important figures, with a significant set of responsibilities in the prevention of corruption as well as in the assessment of transparency compliance.

It is worth noticing that, according to, the corruption prevention manager can be sanctioned if the organization is convicted for corruption, unless he/she proves

that the anti-corruption plan was “diligently implemented”.

5. Paragraph 4 of article 5

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

Is your country in compliance with this provision?

(Y) Yes

Italy is in full compliance with this article

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

A.N.AC. fully cooperates with the corresponding international bodies and in general with international and foreign peer agencies in the field of anti-corruption, with the goal to share information and methodologies for the implementation of anti-corruption strategies (See more at <http://www.anticorruzione.it/portal/public/classic/AttivitaAutorita/AttivitaEuropea>).

An important example of international cooperation is the cooperation between ANAC and OECD to collaborate in developing new methodological knowledge aimed at increasing transparency and integrity in the tender procedures, used for the EXPO 2015. Joint working sessions, on-site visits, public events and two analysis reports have been delivered within the framework of a Memorandum of Understanding signed in October 2014 between the two organizations (<http://www.anticorruzione.it/portal/public/classic/AttivitaAutorita/ProtocolliIntesa/2014>).

In exercising its role, the OECD has used the analytical frameworks previously developed and linked it to the OECD Recommendation on Public Procurement namely: the 2009 Guidelines and the 2012 Recommendation for Fighting Bid Rigging in Public Procurement (<http://www.oecd.org/daf/competition/guidelinesforfightingbidrigginginpublicprocurement.htm>).

The Memorandum of Understanding between the ANAC and the OECD has been conceived as a kind of pilot project that may provide a more general control template for institutional cooperation on the supervision of public contracting procedures and of their subsequent performance; all this in accordance with the highest possible standards and leading international best practices.

Indeed, just as in the case of EXPO 2015, this project creates a range of rules particularly fit to balance the interest for speedy and complex works with the risk of integrity these may imply.

For this reason, within the framework of the Memorandum of Understanding and

building on the EXPO Milano 2015 experience, the ANAC and the OECD have drawn more general lessons learned and principles, and suggest them as a possible model for the international community and actors involved in delivering large one off events (such as universal expositions, sporting, politicalcultural and other grand events).

In a complex context, the strong commitment by the Italian government, the new smart regulation in the fields of transparency and anti-corruption, collaboration from all the institutional players involved in EXPO, the checks carried out by the Italian National Anti-Corruption Authority (ANAC), also thanks to the contribution of the OECD's methodological experience, allowed the major event to be opened on time and in compliance with integrity in works and services tendering procedures.

After the conclusion of EXPO, ANAC and the OECD have issued the “High-level principles for integrity, transparency and effective control of major events and related infrastructures”(https://www.anticorruzione.it/portal/rest/jcr/repository/collaboration/Digital%20Assets/anacdocs/Attivita/AttivitaInternazionale/High_Level_Principles_Publication.2016.pdf). The principles represent a further legacy of the EXPO experience, by outlining a general model of institutional synergies, integrated and collaborative checks asto prevent and fight the occurrence of illegality, and guarantee that works are completed on schedule. The Principles will be open to subsequent accession, development and integration by various stakeholders from the international community.

6. Technical Assistance

The following questions on technical assistance relate to the article under review in its entirety.

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

No action is required

Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:

(NO) No assistance would be required

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

6. Preventive anti-corruption body or bodies

7. Paragraph 1 of article 6

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

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

Is your country in compliance with this provision?

(Y) Yes

Italy is in full compliance with this article

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

In 2009, an Independent National Commission for Evaluation, Transparency and Integrity (aka CiVIT, Commissione indipendente per la valutazione, la trasparenza e l'integrità delle amministrazioni pubbliche) was set up by the Law n. 15/2009 and additionally regulated by the legislative Decree n. 150/2009.

Since its institution in December 2009, CiVIT has been operating in the areas of transparency and integrity to prevent corruption; improvement and enhancement of performance and more in general, quality of services. The Anti-corruption law, n. 190 (approved by the Parliament on October 31st 2012 and entered into force on November 28th 2012), qualifies CiVIT as the Italian Anti-corruption Authority, thus giving full execution to the article 6 of the United Nations Convention against Corruption (UNCAC).

Afterwards, by law n. 125 (approved by Parliament on October 29th 2013 and entered into force on October 31st 2013), CiVIT was named A.N.AC. the Autorità Nazionale Anti-Corruzione (the National Anti-Corruption Authority) for the evaluation and transparency of public entities.

The institution was further empowered in the last three years. The law of 24th June 2014, n. 90 (aka on "Urgent measures for the simplification and administrative transparency and for the efficiency of the courts"), introduces innovative and impactful measures in the anti-corruption system and within the ANAC activities. According to art. 19 of the decree, the Authority for the supervision of public contracts (in Italian the *Autorità per la vigilanza sui contratti pubblici* or AVCP) is abolished. The tasks and functions carried out by the AVCP are then transferred to ANAC.

The integration of the functions of the two institutions into one, and the consequent extension of the powers of ANAC, has set the conditions to oversee more effectively the scope of the contracts and public procurement, which represents a significant part of the corruption phenomenon.

According to the Anti-corruption law, A.N.AC. analyses causes and factors of corruption to point out actions to prevent and fight corruption.

The main functions of A.N.AC. are the following: to adopt the National Anti-corruption Plan; to analyze the causes and factors of corruption and identify measures to prevent it; to monitor the implementation and effectiveness of public entities' Anti-corruption plans and the compliance to transparency rules. Regarding these functions, the Law assigns to A.N.AC. inspection powers: the power to enquire, to demand the exhibition of documents, to command the adoption of acts as well as the removal of acts and behaviours contrasting with law and with transparency rules. A.N.AC. also gives optional advices to the state bodies and all the public entities on the compliance of public employees with the code of conduct; defines criteria, guidelines and standard models for the code of conduct regarding specific administrative areas; reports annually to the Parliament on the actions against corruption; criminality in public entities and on the effectiveness of the measures adopted.

The decree law n. 90 of 2014 has furthermore introduced the possibility for ANAC to impose a pecuniary sanction against those public entities lacking anti-corruption plan, the transparency program and/or the code of conduct.

Moreover, with specific reference to effectiveness of the law, ANAC has the power to control over the implementation and the efficiency of the measures identified in the organizations' plans and over the compliance with obligations of transparency. Hence, ANAC has the power to order a public entity to comply with the anti-corruption and transparency legislation. More exactly, such power has been clarified by the resolution of ANAC (n. 146/2014, See text in Italian at <http://www.anticorruzione.it/portal/public/classic/AttivitaAutorita/AttiDellAutorita/Atto?id=0c3a66f40a77804267604f703a9b9b98>), which has given specific indications in case the entities are not complying with ANAC's decision in the field of anti-corruption and transparency. In parallel, ANAC can publish on its website the final decisions on the adoption or removal of those acts or behaviours in contrast with the anti-corruption measures (this is considered a sort of "reputational" sanction).

The Authority achieves its goals by mainly fulfilling a regulatory and supervising function, in order to adopt a systematic, harmonized and holistic approach in the field of corruption prevention. In this way, many concerns have been addressed and solved through interpretative resolutions *erga omnes* (of general nature). Concerning transparency (regulated by legislative decree n. 33/2013), the Authority can impose pecuniary sanctions for the violation of the obligations on publications of elected offices (article 14) and related to data on supervised public agencies, publically controlled private agencies as well as investments in private companies (article 22).

In addition, the Authority is tasked with the interpretation of the complex legal

framework on “the ineligibility and incompatibility of positions in the public administration”, as well as the supervision on the correct enforcement of the legislative discipline.

A.N.A.C., in the execution of the anti-corruption inspection powers, can rely on the support and collaboration of the “*Guardia di Finanza*” (financial police) for investigations and inspections.

In order to properly exercise all these powers, the Authority is the receiver of relevant information on corruption and misconduct within the public administration from different actors (for example, it receives complaints from whistleblowers). In prosecuting corruption or similar financial crimes, the public prosecutor must inform ANAC (ex art. 7 law 27 May 2015, n.69). Administrative judge dealing with litigations on public procurement have a similar duty: they must inform ANAC about the facts related to misconducts or violation of transparency rules (art. 32 bis Anti-corruption Law). Finally, even the *Prefetto* (Prefect - the government local representatives) has to inform ANAC whenever, for anti-mafia reasons, a resolution of “*commissariamento*” (i.e. replacement of an elected official with a special *ad interim* “commissioner”) is adopted (see below).

According to the anti-corruption law, ANAC analyses causes and factors of corruption in order to conceive appropriate actions to prevent and fight corruption. In doing so, ANAC carries out the following activities:

- It cooperates with relevant international organizations and foreign peer agencies;
- It approves the national anti-corruption plan (prepared by the Department for Public Administration), including the guidelines for the anti-corruption three-year plans of public entities;
- It analyzes causes and factors of corruption and establish tailor-made actions to prevent and fight corruption;
- It monitors the compliance and effectiveness of public entities’ anti-corruption plans and transparency rules;
- It gives optional advice and counselling to the State bodies and national public entities on the authorizations for executive officials to hold external assignments;
- It defines code of conduct criteria, guidelines and standard models for specific administrative areas;
- It verifies that the removal of the Secretary of a local authority, communicated to ANAC by the Prefect, is not connected to corruption

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

- a) to supervise the developments in the execution of public contracts, in cooperation with local monitoring entities (so called *Osservatori regionali sui*

lavori pubblici);

- b) to prepare, develop and guide the implementation of the legislation concerning public contracts and the standard tender documents;
- d) to gather information related to the contract and the tender proceedings;
- e) to compile and publish statistics related to the quantity, price and other elements;
- f) to regulate the principles and the main provisions;

Anac also reports annually to Parliament

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

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

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Please see the ANAC's website: www.anticorruzione.it
<<http://www.anticorruzione.it>>

8. Paragraph 2 of article 6

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

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The National Authority Anticorruption is an independent council body. The Anti-Corruption Laws states that ANAC is “fully autonomous and independent in its evaluations. The national anti-corruption authority is therefore included in the pertaining Directory of the United Nations.

It is composed of five members. The Minister for Public Administration select ANAC’s members and the competent parliamentary commission must then approve them by a two-thirds majority. The candidates are then approved by the Council of Ministers and officially appointed by the President of the Republic.

The President of ANAC is appointed under proposal of the Minister of Public administration, the Minister of Justice and the Minister of the Interior; the proposal is approved by the the competent parliamentary commission by a two-thirds majority. The candidate is then approved by the Council of Ministers and officially appointed by the President of the Republic.

This procedure is meant to ensure ANAC’s independence from the executive.

Members of the board are appointed for six years and for one time only. The can not perform any professional or advisory activity on their own interest, can not have or governing or other responsibilities in public or private entities, can not be elected or take responsibilities in political parties.

The merging of ANAC with the Authority of the Supervision of Public contracts gave ANAC a staff of 300 persons. The staff is recruited, basically, by opena national competition and it is compose mostly of lawyers, engineers, economists .

The new institutional mission, after 2014, has required a deep revision of the organization and an intervention on the activities carried out by the Authority, in order to increase its effectiveness, as well as to obtain a

reduction of costs. In this contest the Authority has adopted a Reorganizational plan sent to the Government for approval at the end of December 2014.

The Plan is not called to serve a mere function of "reorganization" but it leads to the establishment of a new Authority that has integrated the functions and the resources of the previous two and, moreover, that has different and additional powers and tasks.

The Plan has been approved by the Government in february 2016.

According to law 266/2005, since 2006, financial autonomy as also been recognized to AVCP and then to ANAC, on the basis of a contribution fee charged to operators and contracting authorities who take part into awarding procedure.

As far as the structure of the national anticorruption authority is concerned, you can consult the institutional site:

Link:

<http://www.anticorruzione.it/portal/public/classic/AmministrazioneTrasparente/Organizzazione/ArticolazioneUffici>

In particular the data concerning the administration can be found on the link to the title "Delibera numero 1196 del 23 novembre 2016. Riassetto organizzativo dell'Autorità Nazionale Anticorruzione a seguito dell'approvazione del Piano di riordino e delle nuove funzioni attribuite in materia di contratti pubblici e di prevenzione della corruzione e della trasparenza, e individuazione dei centri di responsabilità in base alla missione istituzionale dell'Autorità".

Link:

<http://www.anticorruzione.it/portal/public/classic/AttivitaAutorita/AttiDeIAutorita/Atto?id=846862da0a7780420180a5001fedebad>

It's attached furthermore the Authority's reorganization plan approved by the Council of Ministers on 1 February 2016, which was given notice in Official Gazette no. 76 of 1 April 2016.

Link:

<https://www.anticorruzione.it/portal/public/classic/AttivitaAutorita/PianoRiordino>

<https://www.anticorruzione.it/portal/rest/jcr/repository/collaboration/Digital%20Assets/anacdocs/Attivita/PianoRiordino/PianoRiordinoAnac.accessibile.pdf>

10. Technical Assistance

The following questions on technical assistance relate to the article under review in its entirety.

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:

(NO) No assistance would be required

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

7. Public sector

11. Paragraph 1 of article 7

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

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

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

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

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

Is your country in compliance with this provision?

(Y) Yes

Yes, it is. Italy has well developed systems for the recruitment, hiring, retention and promotion of civil servants, which will be outlined in the answers that follow. Then, it can be said that Italy is compliant with this provision.

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

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

a. through selective procedures in order to assess the required professional skills, and which ensure adequate access for external candidates;

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

Recruitment procedures in public entities must in any case ensure adequate transparency and impartiality of the selection as well as the adoption of objective and transparent mechanisms to verify the fulfillment of the requirements required in relation to the position to be covered. To this purpose, it is foreseen that examination boards are composed exclusively of experts with acknowledged competencies on the subjects of the examination. These experts are selected

among people without political responsibility and that are trade union representatives or appointed by confederations and unions or professional associations.

With reference to senior management, all senior civil servants are enlisted in sections for every national administration, subdivided in subsection for top managers and middle managers. For local governments and local authorities, senior management is regulated according to their own regulations in accordance with the general principles established by national law.

Middle managers are selected through specific and focused public competition or through a fast programme called "*corso-concorso*", whereas for senior managers there are two main channels: on one hand, the possibility to run a public competition for as many as 50% of available positions (art. 28 bis legislative decree 165/2001), on the other hand, middle manager may be appointed to senior positions and after five years gain the formal rank. There is also a channel of external appointments thanks to which external professional can be hired with fixed-term contract with particular and proven skills and qualifications, which can not be found within the human resources of the administration. In any case these external appointments may be made only within a given percentage limit (i.e. between 8% and 10% of the whole amount of managerial positions).

The appointment of managerial positions is carried out by decree of the President of the Council of Ministers or of the political body responsible of the public entity on the basis of a motivated proposal which identifies the best candidate, the objectives to be achieved and the duration of the mandate. The appointment decision is integrated by an individual contract of employment. Every appointment of senior civil servants is subject to administrative and accounting controls run by audit services.

In order to ensure transparency and impartiality of recruitment procedures, rules have been issued (see legislative decree n. 33/2013) which clarify all the phases of the procedure, from the publication of the notice of competition, to the appointment of the selection board, the assessment criteria and the final hiring.

In order to foster awareness of public competitions among all citizens, adequate advertising of the selection is required, including through the publication of the notice in the Official Gazette of the Italian Republic.

The candidates who take part in the competition procedure are generally entitled to file a complaint in front of an administrative Court, while every civil servant can file a complaint against any decision pertaining his position in front of a labour judge.

With reference to the retention and promotion measures taken by Italian Public administration it must be noted that the general legal framework of civil servants provides that any public administration is responsible of arranging for appropriate training for their employees in view of the development of careers (art. 7 legislative decree 165/2001). Access to training is granted upon request and after an objective assessment of the needs of the employee and of the service of the employee. The national school of administration (Scuola Nazionale d'Amministrazione - SNA) is in charge of the national programme for training of civil servants.

Furthermore, career development is handled through internal competitive

procedures, except for positions that are necessarily assigned upon general public competition. The internal procedures are generally based on performance assessment, professional experience, seniority and education, thus ensuring impartial and objective criteria of promotion.

Since 2009, Italy has also launched and developed a large reform for the introduction of performance appraisal within the public administration. The legal framework (legislative decree 150/2009) is recently undergoing an important revision thanks to an upcoming legislative decree that is supposed to enhance the system of performance measurement, at individual and organizational level, as well as the relevance of performance-related salary, acknowledging growing importance to this matter as a decisive tool to improve the civil service effectiveness and attractiveness.

With reference to retirement, it must be said that the statutory law bears a binding legal framework according to which civil servants may file for formal retirement either when they reach an age ceiling (that is nowadays set at 67 years on average) or after a certain amount of years of contribution (on average 42 years). There are also special provisions to anticipate retirement and dismiss civil servants who have reached the threshold.

In relation to subparagraph 1 (b), the Anti-corruption law (law n. 190/2012) identifies four types of proceedings considered especially vulnerable to corruption:

- a) authorization or concession;
- b) the choice of the contractor for the assignment of works, supplies and services, in accordance with the public tender law issued in compliance with EU regulations;
- c) Granting and disbursement of subsidies, grants, subsidies, financial aids and the attribution of economic benefits of any kind to public and private persons and entities;
- d) selective competitions and tests for staff recruitment and career progression.

Positions related to these areas are the ones that receive greater attention both in the selection of subjects to whom assignments must be endowed with specific professionalism and experience, and on the ways in which they are to be carried out to ensure maximum transparency of all stages of the procedure. To this end, it is established that public entities define appropriate procedures to select and train, in cooperation with the National school of administration (SNA), employees delegated to operate in these sectors as well as staff rotation on the basis of the criteria established by Anti-Corruption Authority (to this regard see:

<http://www.anticorruzione.it/portal/public/classic/AttivitaAutorita/AttiDellAutorita/Atto?ca=6550> at page 26).

It is noteworthy to recall that the legislative decree 39/2013 represents a full body of provisions to prevent conflict of interests of people appointed in managerial positions.

In relation to subparagraph 1 (c), the Department of Public Administration verifies that the organizational models adopted by public authorities:

- pursue the aim of downsizing the cost of public labour and enhance efficiency;
- are consistent with workforce planning and financial programming documents in order to pursue the best employment of civil servants;
- Ensure integrated controls on public expenditure for public labour thanks to the interconnection with the Ministry of economics and finance.

Public employment legal framework is ruled by several bodies of provisions: the Constitution, the Civil Code, the collective agreement and the individual contract. The National Collective Employment Contract forms the basis for determining the pay scale for civil servants, which is bargained at the national level between the Agency tasked for negotiating on behalf of the Government (*Agenzia Rappresentanza Negoziata Pubbliche Amministrazioni* - ARAN) and labor union organizations and regulates the industrial relations system at national, regional and corporate level, except for special categories of civil servants that are ruled by specific provisions (e.g. police forces, judges, etc). According to an agreement between the Government and the Unions, future pay scales for civil servants might be linked to the consumer price index (indice dei **prezzi** al consumo armonizzato - IPCA).

For senior civil servants, monthly salary is expected to reward all the functions and duties performed by the manager. For non-executive staff, pay scale is divided in pay range for each professional profile. Performance bonuses are additional to basic salary and are granted on the basis of appraisal systems. It is worth noticing that an overarching reduction of pay scale has been accomplished recently (through the legislative decree 201/2011 and decree-law 66/2014) so that there is a general limit for civil servants remuneration set at € 240,000 per year: special instructions have been undertaken to ensure full compliance to this new regulations.

In relation to subparagraph 1 (d):

Act n. 150/2009 governs the process of evaluating the performance of civil servants, managers and non-managers in Italy.

The individual assessment aims to enhance the contribution of the officer to the achievements of the organization, depending on: the rate of objectives achieved, and in terms of quantity-quality of services performed, to both internal and external users.

The individual assessment takes into account two essential components:

1. Extent to which objectives have been achieved;
2. Behaviour and skills demonstrated in the pursuit of those goals.

The two components have a different impact on the overall evaluation depending on whether the evaluated role is managerial or non. As for the latter, the individual assessment is more closely linked to the extent to which objectives of the organization have been achieved. Among the goals envisaged for managers, mention must be made to the ones related to the adoption of appropriate measures to combat corruption.

Accordingly, the evaluation outcome impacts on: the delivery of performance-related bonuses; the allocation of management positions; and the careers'

advancement.

At present, the Government is about to amend Act n. 150/2009, with a view to further strengthening, inter alia, the link between performance-related results and reward mechanisms.

The National School of Administration (SNA) is the institution for the education and training of public officials; inter alia, it provides the staff with appropriate training to enhance the awareness of the risk of corruption inherent the performance of their functions.

In 2015 the school has provided 85 training courses on anti-corruption, for a total of 1351 hours and 2653 participants. In 2016 the training courses have increased: the school has provided 123 courses, for a total of 1641 hours and 4538 participants.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

In relation to subparagraph 1 (a), it must be drawn attention to the successful experience of special programmes for young public managers, on the wake of the best practice of French ENA: the National School of administration has held so far six rounds of selection and training that have enrolled hundreds of talented young public managers (see more at <http://sna.gov.it/it/cosa-offriamo/corso-concorso/>).

In relation to subparagraph 1 (b), a remarkable oversight of civil servant positions or public sectors considered to be especially vulnerable to corruption can be found in the National anti-corruption Prevention Plan (updated on yearly basis: see more at: <http://www.anticorruzione.it/portal/public/classic/AttivitaAutorita/AttiDellAutorita/Atto?ca=6550>) and in the report to the Parliament of the National anti-corruption authority (see more at <https://www.anticorruzione.it/portal/public/classic/AttivitaAutorita/Pubblicazioni/RelazioneParlamento>).

In relation to subparagraph 1 (c), official statistics on the matter of remuneration of civil servants are issued twice a year by ARAN (can be found at : <http://www.aranagenzia.it/statistiche-e-pubblicazioni/rapporti-sulle-retribuzioni.html>).

12. Paragraph 2 of article 7

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

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Provisions governing ineligibility, disqualification, and incompatibility of national elective offices

Articles 65 and 122 of the Italian Constitution set out a state **saving clause**: the former article for the determination of Parliament ineligibility and incompatibility; the latter article for the determination of fundamental principles on ineligibility and incompatibility at a regional level for government and representative offices.

The legal provisions above affect the right to stand for elections, generally guaranteed under article **51 of the Constitution** and included by the Constitutional Court in the sphere of inviolable rights under article 2 of the Constitution.

As regards the entitlement to vote, **article 48**, fourth paragraph - defining the negative requirements of the right to vote - refers to the Law when determining the cases of limitation of such right.

Ineligibility, incompatibility and disqualification of the members of National Parliament

Ineligibility

Any Italian citizen holding the right to vote can be elected as member of the Chamber of Deputies and of the Senate, provided that such citizen is at least 25 and 40 years old, respectively (Constitution, article 56, third paragraph, and article 58, second paragraph). The loss of the right to vote produces - as a direct consequence - the loss of the right to stand for elections.

The **causes of ineligibility as Members of the Chamber of Deputies and Senate** are regulated under Presidential Decree 361/1957, containing the Consolidated Law for the election to the Chamber of Deputies, also applying to the election to the Senate by virtue of the reference contained in article 5 of

legislative decree no. 533 dated 20th December 1993, Consolidated Law governing the election to the Italian Senate.

Ineligibility as Members of the Chamber of Deputies and Senate involves: Presidents of Provincial Councils, Mayors of municipalities with a population exceeding 20,000 inhabitants, Chief and Vice-Chief of Police, and the Inspectors General of public security, heads of the Cabinet of Ministers, Government Commissioners of the Regions, Prefects, Vice-Prefects and Public security officers (Presidential Decree 361/1957, article 7, first paragraph) and general officers, admirals and officials of the Armed Forces in the constituencies of their territorial Command (Legislative Decree 66/2010, article 1485).

The ineligibility causes above shall not be effective in case the exercise of the relevant functions was terminated at least 180 days before the date of parliamentary term (Presidential Decree 361/1957, article 7, second paragraph). In case of early termination of parliamentary term by over 120 days, ineligibility shall not be effective in case the functions above were terminated within 7 days following the date of publication of Parliament dissolution in the Official Journal (Presidential Decree 361/1957, article 7).

The acceptance of candidature as members of the Chamber of Deputies or Senate entails, in any case - for the Presidents of Provinces and the Mayors of municipalities with a population exceeding 20,000 inhabitants - the loss of the elective offices held (Presidential Decree 361/1957, article 7, fifth paragraph; Legislative Decree 267/2000, article 62).

According to article 53 of the Consolidated Law on local authorities under Presidential Decree 267/2000, the resignation by mayors or presidents of provinces becomes effective and irrevocable after 20 days as from the date of submission to the relevant council. In such case, the council is dissolved and a commissioner is appointed.

According to article 53 above, in case of permanent impediment, removal, lapse or death of mayors or presidents of provinces, the council ends its term and is dissolved. Councils remain in office until new councils, mayors and presidents of provinces are elected. Until the elections above, the offices of mayors and presidents of provinces are held by vice-mayors and the vice-presidents, respectively.

Vice-mayors and vice-presidents replace mayors and presidents of provinces in case of **temporary impediment or absence**.

The dissolution of municipal or provincial councils determines in any case the revocation of mayors and presidents of provinces, as well as of their local executive committees.

A specific case of ineligibility concerns **magistrates** in the constituencies entirely or partly under the jurisdiction of the offices they held in the six months preceding the date of acceptance of candidature. Ineligibility also applies in case of early dissolution of the Parliament and by-elections. In any case, in order to

stand for election, magistrates shall be on personal leave at the moment of accepting their candidacy (Presidential Decree 361/1957, article 8).

A **second set** of ineligibility causes concerns those individuals that have **relations with foreign Governments**: diplomats, consuls, vice-consuls, embassy attachés, foreign legations and consulates, living both in Italy and abroad, as well as all those who, although maintaining the Italian citizenship, are employed by foreign Governments (Presidential Decree 361/1957, article 9).

A **third set** of ineligibility causes concerns those individuals having particular **economic or business relations with the State**: the subjects being either owners or legal representatives of companies being awarded contracts or contributions, administrative authorisations or concessions with a high economic value; the representatives, directors and managers of private companies receiving continuous subsidies from the State; company legal and administrative consultants (Presidential Decree 361/1957, article 10).

Ineligibility also applies to **constitutional judges** (Law 87/1953, article 7, fifth paragraph).

Law 175/2010 introduced a **new case** of ineligibility to any elective offices, linked to the breach of the prohibition to carry out electioneering involving individuals subject to preventive measures.

Incompatibility

A set of **incompatibility causes** to hold a parliamentary mandate and other offices is directly defined by the Constitution or by constitutional laws: incompatibility between the office of Member of the Chamber of Deputies and Member of the Senate (Constitution, article 65, second paragraph), between President of the Republic and any other office (Constitution, article 84, second paragraph), between Member of Parliament and member of the High Council of the Judiciary (Constitution, article 104, last paragraph), between Member of Parliament and Regional Councillor or Executive (Constitution, article 122, second paragraph), between Member of Parliament and Judge of the Constitutional Court (Constitution, article 135, sixth paragraph).

Article 65, first paragraph, of the Constitution, states that the Law shall determine any other causes of incompatibility.

General provisions on this matter were set out by Law no. 60 of 13 February 1953, providing for incompatibility between parliamentary offices and Government or State Administration offices, positions in associations or authorities managing services on behalf of the public administration, or receiving public funds, positions in joint-stock companies with a prevailing financial activity. Subsequent specific legislative provisions clarified and confirmed such general incompatibility criteria for some specific offices.

Furthermore, any office as member of the Chamber of Deputies or Senate, or member of the Government, is incompatible with the office of member of legislative assemblies or executive bodies, both national and regional, in **Foreign Countries** (Law 60/1953, article 1-bis, as added by article 10, Law 459/2001).

The overlapping of parliamentary mandate with other offices is also prohibited under specific provisions contained in ordinary laws, including Law no. 78 of 27 March 2004, stating the incompatibility between the office of **Member of the European Parliament** and the office of Member of the Chamber of Deputies and Senate.

The Decree-Law no. 138 of 13 August 2011 (converted into Law no. 148 of 14 September 2011), article 13, paragraph 3, also provides for the incompatibility between the office of member of the Chamber of Deputies and of the Senate, as well as Government offices, with **any other public-elected monocratic office for territorial governing bodies of public authorities** having, on the date of appointment or in which elections are announced, **a population exceeding 15,000 inhabitants**.

In the end, a set of incompatibility causes was introduced by legislative decree no. 39 of 2013, enacted in the scope of implementation of one of the delegated laws under the **anticorruption law** (Law no. 190 of 2012).

In particular, the incompatibility between the office as Member of Parliament and the following offices is set out for:

- Top administrative offices (secretary general, head of department, director general, and similar ones) in state, regional and local administrations, as well as managerial offices in national, regional and local public authorities (article 11, paragraph 1)
- Managerial offices in public administrations, public authorities, and in private organisations under public control (article 12, paragraph 2)
- Chairman and Chief Executive Officer of national, regional and local private organizations under public control (article 13, paragraph 1)
- Director General, medical director and administrative director in Local Health Authorities (article 14, paragraph 1).

The Members of Parliament shall notify the President of their relevant Chamber any offices held with a view to assessing eventual causes of incompatibility. In case of incompatibility, a Member of Parliament shall chose between the parliamentary mandate and the office deemed incompatible.

Disqualification

A series of disqualifications are set out in the regulations in force, applying to electoral candidacy as members of parliament.

In particular, legislative decree no. 235 of 31 December 2012 includes the Consolidated Law on disqualification and prohibition to hold elective and

Government offices following **final judgements of conviction for non-culpable offences**.

This provision was enforced by the Government under the delegated power set out in article 1 of Law no. 190 dated 6 November 2012; among its guiding principles, this law sets out the temporary disqualification of those convicted for some specific offences, being understood the provisions of the criminal code on the permanent disqualification from holding public offices.

The text provides for the disqualification from the Chamber of Deputies and the Senate, besides stating that those who were **convicted through a final judgment**, also in case of application of penalties upon request of the parties (the so-called plea bargaining procedure) under article 444 et seq. of the code of criminal procedure, for three classes of final judgments relating to non-culpable, perpetrated or attempted offences, shall not - in any - case stand for election.

The first category concerns **prison sentences exceeding 2 years for the offences under article 51, paragraphs 3-bis and 3-quater of the Code of Criminal Procedure**.

Paragraph 3-bis refers to the following types of offences falling within criminal association:

- article 416, paragraph 6, Criminal Code (criminal organisation aimed to perpetrate offences including trafficking and slavery or servitude, or purchase or selling of slaves, as well as trafficking in illegal migrants);
- article 416, paragraph 7, criminal code (criminal organisation aimed to perpetrate sexual offences against minors, or to perpetrate sexual violence against minor, sexual activities with minors or gang rapes against minors, or to perpetrate offences including solicitation of children);
- article 416, criminal code, to perpetrate the offences provided for under articles 473 and 474 (criminal organisation aimed to perpetrate offences including counterfeiting and marketing of products with fake marks);
- article 416-bis, criminal code (mafia association), including all the offences perpetrated under the conditions provided for in article 416-bis above, or to facilitate the activities under said article;
- article 74 Consolidated Law on drugs (organisation aimed to the illicit traffic in narcotic drugs and psychotropic substances);
- article 291-quater Consolidated Law on customs (criminal organisation aimed to tobacco smuggling).

Paragraph 3-bis adds to the offences above the trafficking in human beings and the placing and holding individuals in conditions of slavery or servitude, or the trade in slaves (articles 600, 601 and 602 of the criminal code), kidnapping for ransom or reward (article 630 criminal code), bargaining of votes between politicians and members of Mafia (article 416-ter Criminal Code) and organised offences for the illegal traffic of waste (under article 260 of the Environmental Code, Legislative Decree 152/2006).

Paragraph 3-quater concerns offences, not listed in the Code, aiming to terrorist activities.

The regulatory provision includes both the typical offences perpetrated by the organised crime (i.e. criminal association with purposes of terrorism including international terrorism, or subversion of the democratic order, ex article 207-bis, Criminal Code), and any common offences aggravated by the purposes of terrorism, defined under article 270-sexies of the criminal code.

The second category is represented by **prison sentences exceeding 2 years**

for the offences under Book II, Title II (Offences against the Public Administration), Head I (**Offences by public officials against the Public Administration**) of the criminal code, made up of articles from 314 to 335-bis.

The third category - for which the Code is not exhaustive, as there are at least 400 special laws providing for particular criminal cases - concerns the cases of **prison sentences exceeding 2 years for the offences** for which **imprisonment is imposed for at least 4 years** under article 278 of the Code of Criminal Procedure. This article defines the determination of the penalty for the purpose of defining the supervision measures to be imposed.

The assessment of disqualification is carried out on the occasion of the **submission of the lists of candidates** and within the deadline set for their acceptance.

Such assessment is performed by the **Central Constituency Office** - for the Chamber of Deputies - and by the **Regional Electoral Office** - for the Senate - and by the **Overseas Constituency** - for the Members of Parliament to be elected abroad -, on the basis of the statutory declarations stating the absence of the disqualification condition, made by each candidate under article 46 of the Consolidated Law as per Presidential Decree 445/2000 on administrative documentation.

The electoral offices assess the disqualification condition also on the basis of the documents at their disposal, attesting their right to stand as candidates.

In case of appeals against the decisions on the assessment of disqualification, article 23 of the Consolidated Law for the Election to the Chamber of Deputies applies.

In case of disqualification either intervened or assessed after the submission of lists, and **before the announcement of elected members**, the relevant electoral offices (the Central Constituency Office - for the Chamber of Deputies - and by the Regional Electoral Office - for the Senate - and by the Overseas Constituency - for the Members of Parliament to be elected abroad) perform a statement of non-proclamation towards the disqualified subject.

In case a cause for **disqualification** either **intervenes** or is assessed during the elective office, the **Chamber of which he or she is a member** decides during the credential verification phase, in compliance with article 66 of the Constitution, according to which each House of the Parliament decides the qualifications for admission of its members and subsequent causes of ineligibility and incompatibility. To this end, the final convictions entailing disqualification, issued against members of parliament currently in office, are **immediately notified** to the relevant Chamber by the public prosecutor at the executing judge (article 665 Code of Civil Procedure).

In case the assessment of disqualification intervenes in the **phase of validation** of the candidates elected, the Chamber involved, also while waiting for the completion of such phase, immediately resolves on the non-validation.

In case of a vacant seat, the relevant Chamber, while validating the

membership of the successor, assesses the absence of disqualification conditions of the latter.

As regards the duration of disqualification for the mandate of Members of Parliament, it is effective as from the date in which the judgment becomes final and is in force for a period corresponding to the double of the duration of the ancillary penalty of temporary disqualification from holding public offices imposed by the judge. In any case, also without an ancillary penalty, the disqualification has a minimum duration of six years.

The period of disqualification increases by one third in case the offence that determines the disqualification is perpetrated through an abuse of powers or in breach of the duties related to the elective office.

The decision of rehabilitation of the sentenced person represents a cause of early termination of disqualification, whereas the eventual revocation of the rehabilitation decision entails the recovery of disqualification for the remaining period of time. Furthermore, the disqualification is terminated in case of "anti-mafia" rehabilitation as per article 70 of Legislative Decree 159/2011, the so-called Anti-Mafia Code.

Lastly, the mayors and the presidents of provinces considered as liable for the **financial difficulties (bankruptcy)** of the relevant local authority shall be disqualified for ten years for the national and European Parliament, for any elective offices as mayor, president of province, president of regional executive council, and as member of municipal councils, provincial councils, and regional committees and councils (Legislative Decree 267/2000, article 248, paragraph 5, as amended by Legislative Decree 149/2011, article 6, paragraph 1, and by Legislative Decree 174/2012, converted into Law 213/2012, article 3, paragraph 1, letter s).

Focus

Legislative Decree 39/2013 and parliamentary offices

Legislative Decree 39/2013 enforces the delegated powers set out by paragraphs 49 and 50 of article 1, Law 190/2012, and provides for specific cases of:

- **disqualification**, meaning the prohibition, either permanent or temporary, to confer offices to those charged of criminal judgments for the offences under Head I, Title II, Book II of the Criminal Code, as well as those who held offices in private organisations governed or funded by public administrations, or who carried out professional activities in favour of such public administrations, and those who were members of policy guidance organisations (article 1, paragraph 2, lett. *g*);
- **incompatibility**, determining the obligation, for the subject entrusted with the mandate, to chose - within the time-limit of fifteen days - between keeping the office and holding the offices and tasks in private-law organisations governed or funded by the public administration that confers such mandate, carrying out professional activities or taking on the mandate as members of policy guidance organisations (article 1, paragraph 2, lett. *h*).

The decree does not amend the provisions on incompatibility and multiple offices, already provided for in article 53 of Legislative Decree 165/2001. The regulation on the placing in personal leave of the employees of public administrations remains therefore urgent.

Furthermore, the provisions on the criteria for the conferment of managerial tasks and for the placement in personal leave - as per articles 19 and 23 bis, respectively, of Legislative Decree 165/2001 - are not affected.

In particular, legislative decree 39/2013 on incompatibility and disqualification includes the **office as Member of Parliament** among those falling within the definition (article 1) of «members of policy guidance organisations» [individuals that participate, either through elections or appointments, in political guidance organisations of national, regional and local administrations, such as President of the Council of Ministers, Minister, Vice-Minister, Undersecretary, and Special Government Commissioner, as per article 11 of law no. 400 dated 23 August 1988, Member of Parliament, President of the Local executive council or Mayor, councillor in regions, provinces and municipalities, and in associations involving local authorities, or in governing bodies of public authorities, or private organisations under public control, being them national, regional and local], to which the decree ascribes a series of cases of disqualification and incompatibility of offices.

Article 8 sets out that the offices of director general, medical director and administrative director in Local Health Authorities cannot be conferred to those that in the previous year held the office of Members of Parliament.

Article 14 sets out that the offices of director general, medical director and administrative director in Local Health Authorities are incompatible with the office of President of the Council of Ministers, Minister, Vice-Minister, Undersecretary of State and Special Government Commissioner as per article 11 of law no. 400 dated 23 August 1988, as well as director of public authorities or private organisations under public control performing activities such as audit, supervision or financing of the national health service or Member of Parliament.

Article 11 states that top administrative offices in state, regional and local administrations, as well as managerial offices in national, regional and local public authorities, are incompatible with the office of President of the Council of Ministers, Minister, Vice-Minister, Undersecretary of State and Special Government Commissioner as per article 11 of law no. 400 dated 23 August 1988, as well as of Member of Parliament.

Article 12 states that Managerial offices in public administrations, public authorities, and in private organisations under public control are incompatible, during the mandate, with the office of President of the Council of Ministers, Minister, Vice-Minister, Undersecretary of State and Special Government Commissioner as per article 11 of law no. 400 dated 23 August 1988, as well as of Member of Parliament.

Article 13 states that the offices of Chairman and Chief Executive Officer in national, regional and local private organizations under public control, are

incompatible with the office of President of the Council of Ministers, Minister, Vice-Minister, Undersecretary of State and Special Government Commissioner as per article 11 of law no. 400 dated 23 August 1988, as well as of Member of Parliament.

Parliamentary procedure under way: the reform of the regulations governing the conflict of interest and the amendments to ineligibility provisions

In its session of 25 February 2016, the Chamber of Deputies approved a Consolidated Law of the draft bills (Rf. 275) aimed to set out new regulations governing the settlement of conflicts of interest, replacing the regulation presently in force under Law no. 215/2004.

The draft bill is presently examined by the Constitutional Affairs Committee of the Senate (A.S. 2258), that on 5 July 2016 performed a series of informal hearings and published the documentation collected on such occasion.

As regards the examination at the Chamber of Deputies, the **concept of conflict of interest** proposed by the text, having a **preventive** nature, differs from the one currently in force under law 215/2004, setting out an intervention that mainly occurs at a later time.

The recipients of the new regulation are those who hold political offices; in detail, they include the holders of national government offices (President of the Council of Ministers, Minister, Vice-Minister, Undersecretary of State and Special Government Commissioner as per article 11 of law no. 400 dated 23 August 1988); the holders of regional government offices (the Presidents of autonomous regions and provinces, and the members of autonomous regional and provincial executive councils); the Members of Parliament; regional councillors. The law provisions apply to the members of independent administrative authorities.

The regions shall comply with the law within six months as from its coming into force; after this term, the law will be enforced. In case of regions owning a special status and the autonomous provinces of Trento and Bolzano, these provisions apply in compliance with the statutes and the relevant implementing rules.

AGCM, the Italian Communications Authority, is in charge of implementing the new provisions. Its members were increased from three to five, the procedures for their election were redefined, and they shall be endowed with specific skills and professionalism.

In general, the new text identifies the rising of a conflict of interests in all those cases in which the holder of a government office also **has a private economic interest** that influences the exercise of his/her public functions, or changes the market rules relating to free competition.

In comparison with the provisions in force, the text confirms the obligations to declare any cases of conflict of interest, although a **compulsory list of situations and assets to be declared** shall be submitted, with a timing that is stricter than the present one and with precise sanctions eventually imposed. Furthermore, in comparison with the regulatory framework presently in force, the number of

subjects involved is extended. Within 30 days, the Authority performs an assessment on the thoroughness and truthfulness of the statements made, and may ask for clarifications or additional information to the declarant, ensuring however compliance with the principle affirming the right to a fair hearing.

In case of non-compliance with these obligations, the Authority imposes - according to the severity of the breach - either a fine or a penalty.

The text also identifies a **system of incompatibility much stricter** than the regulations in force, followed by an option by the holder of the government office, without prejudice to the personal leave in case of public or public employment, and the suspension from rolls and professional lists for the entire duration of the office. In case of failure to provide an option, it is understood that the subject chose the position incompatible with the government office, and suitable dissemination of such information is made by the Authority. In order to avoid a statement of incompatibility, entrepreneurs may also opt for a trusteeship management or a sale, in agreement with the Authority. Within 30 days as from the date of receipt of the statements, the Authority assesses the situations of incompatibility and notifies the person involved; the latter shall - within 30 days - decide between maintaining the government office and maintaining the incompatible position. As from the date of notification, the holder of the government office being in a situation of incompatibility shall abstain.

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

After examining the statements made by the holder and by other subjects provided for by the law, the Authority implements its decision - according to the provisions on the conflict of interest - in case the holder of the national government office owns - including through third parties or trust companies - any relevant shares in specific sectors or when, in consideration of the concentration of financial interests and assets by the holder of the national government office in the same market sector, it is deemed that they might have an impact on the exercise of public functions held by such person, or might alter the market rules on free competition. In these cases therefore the Authority, after hearing the sector-related competent authorities, submits to the holder of the national government office - within thirty days as from the receipt of the relevant statements - a proposal for the enforcement of the measures needed to prevent the conflict of interest (trusteeship contract; sale of the main assets and businesses).

As regards the holder of elective offices (members of parliament and regional councillors) the text sets out new provisions on **ineligibility**.

As to **regional councillors**, some amendments are made to law no. 165 of 2 July 2004, providing the general principles for the implementation of article 122,

first paragraph, of the Constitution; by means of this amendment, the regions shall provide for an ineligibility clause for the regional councillors owning or however controlling - including indirectly - a company performing its business exclusively or mainly through authorisations and concessions issued by the State or by the Region, with a remarkable economic value.

As regards the **Members of Parliament**, through the amendments introduced by article 10 of the Consolidated Law on the provisions for the election to the Chamber of Deputies (Presidential Decree no. 361 of 30 March 1957) ineligibility also applies to those that:

- are constrained with the State for "public contracts involving works, services and supplies of remarkable economic value " (the previous reference was updated), or administrative authorisations or concessions of a remarkable economic value, entailing the obligation to fulfil specific provisions, the compliance with general or particular rules safeguarding the public interest, which the concession or the authorisation is subject to;
- those that have within a company - that mainly performs its business under an authorisation or a concession of remarkable economic value, entailing an obligation to fulfil specific provisions, the compliance with general or particular rules safeguarding the public interest, which the concession or the authorisation is subject to - the ownership or control, including indirect control, the exercise of a dominating position, the possibility to avail oneself of all or part of it, either directly or indirectly, the possibility to define its governance, including the power ascribed by indirect shareholding;
- the representatives, directors and manager of companies and enterprises devoted to the profit of private parties and subsidised by the State through continuous subsidies or under guarantees of grants or interests, whenever such subsidies are not granted on the basis of a general law of the State;
- legal and administrative consultants permanently providing their advice to the persons, the companies and the enterprises mentioned above, constrained towards the state in the ways mentioned above.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

See above, under question 2.

13. Paragraph 3 of article 7

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

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

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

REGULATORY FRAMEWORK

The decree-law no. 149 of 28 December 2013 (converted by Law no. 13 of 21 February 2014) **abolished the direct public financing** of political parties and introduced new transparency rules.

In the past, the financing of political parties was carried out in the form of funds aimed to the reimbursement of election expenses for general, European and regional elections, paid in annual instalments.

Legislative Decree 149/2013 set out, in particular, a gradual reduction of public financing (election reimbursement and co-financing), amounting to 25, 50 and 75 % for 2014, 2015 and 2016, respectively, until the **final abrogation starting from 2017**. During the transitional period, the payment of contributions is subject to the positive outcome of the **controls** performed by a guarantee Commission on political parties, established at the Chamber of Deputies.

The Commission for the Guarantee of the Statutes and for the Transparency and Control of Political Parties' Accounts, established by law no. 96 of July 2012, on the area of financing of political parties and movements, is in charge of performing controls on the regularity and the compliance with the law of the **statement of accounts** of political parties, according to the procedures therein set out. It is made up of 7 magistrates and ratified by the joint appointment of the Presidents of the Senate and the Chamber of Deputies, published in the Official Journal. By means of such act, the President-Coordinator of the Commission is identified among its members. The members of the Commission are selected among the magistrates of the relevant jurisdictional orders, and their qualification shall be at least Counsellor to the Court of Cassation, or similar. They

shall be outplaced and supported by a special staff. The mandate of the members of the Commission lasts 4 years, and can be renewed only once.

Direct public contributions to political parties are replaced by **tax reliefs** for voluntary contributions by citizens. In particular:

- Tax deductions for donations by individuals and companies;
- Voluntary allocation of 0.2% of the personal income tax (IRPEF) to a political party (the so-called *due per mille*).

The access to these forms of contributions is subject to the **requirements of transparency and democracy** set out by the Decree-Law 149/2013, which also establishes a **register** of political parties with a view to the access to benefits.

The Decree-Law 149/2013 has therefore replaced direct public donations, previously made to political parties in the form of contributions for election campaigns, with an **indirect system**, based on tax benefits for the voluntary contributions by citizens (tax allowances for free donations and voluntary allocation of 0.2% of the personal income tax (IRPEF)).

According to this new provision, in order to access the benefits provided for by the law, political parties have to enrol in a **national register** kept by the Guarantee Commission on Political Parties, established at the Chamber of Deputies.

Registration is only possible after political parties endow themselves with **statutes**, adopted in the form of public deeds and complying with a detailed set of transparency and democracy requirements provided for in the Decree-Law.

The Commission for the Guarantee of the Statutes and for the Transparency and Control of Political Parties' Accounts is in charge - as already mentioned - of checking the regularity and the compliance with the law of the statement of accounts of political parties. To this end, according to the deadlines set by the law, the legal representatives or the treasurers of the political parties that obtained at least 2 per cent of qualifying votes during the elections for the Chamber of Deputies, or that have at least one member elected at the Chamber of Deputies or at the Senate or at the European Parliament or in a Regional Council or in the councils of the autonomous provinces of Trento e di Bolzano, shall send to the Commission the **statement of accounts and the related annexes**. Furthermore, the party shall send to the Commission the report containing the **opinion on the statement of accounts by an audit company**, as well as the **minutes containing the approval** of such statement of accounts by the competent body of the political party. The Commission performs its controls by also checking the compliance of the expenses incurred and of the revenue with the documentation produced as evidence.

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

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

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

The provisions above fall within a **process**, developed over the last few years, of a progressive reduction in the amount of direct contributions to political parties, established in 1974 and mainly paid, as from 1993, in the form of contributions for the expenses of elections campaigns. Through these provisions, the **partial reform of Law 96/2012** is surpassed; according to the reform, the system of reimbursement of election expenses was sided by a co-financing by the State, proportional to the self-financing capacity of political parties, which is now abolished.

The part of Law 96/2012 that is kept unchanged concerns **transparency** and auditing of balance sheets, as well as the constraint between internal democracy and granting of benefits, here introduced for the first time.

As regards the alternative forms of contribution set out by the Decree-Law, they involve the **strengthening of an already-existing provision (the tax deductibility of private funding)** as well as a mechanism (**0.2% of the personal income tax**) tested in a different form for a short period in 1997 (Law 2/1997 and mostly repealed by Law 157/1999).

Forms of disclosure of contributions to political subjects

Article 4 of Law no. 659 dated 18 November 1981 sets out that in case of **financing or contributions to the Members** of national Parliament, to the Italian members of the European Parliament, to regional, provincial and municipal councillors, to the candidates to the offices above, to the internal groups of political parties, and to those that hold posts such as presidency, secretariat and political and administrative governance at a national, regional, provincial and municipal level in political parties **exceeding 5,000 euros per year under any form whatsoever**, including the availability of services, both the subject granting and the subject receiving the benefits shall issue a **joint declaration** by also signing a document filed to the presidency of the Chamber of Deputies or sent to it through a registered letter with acknowledgement of receipt. As far as the election campaign is concerned, the financing or contributions or services above, may also be declared through a self-certification by candidates.

At the same time, article 5 of Decree-Law 149/2013 sets out that political parties shall ensure transparency and access to the information on their organisation, bodies, internal functioning and balance sheets, including the financial statements, also through a **website** complying with the principles of high accessibility - also by the disabled - thoroughness of information, clarity of language, reliability, easiness of reading, quality, homogeneity and interoperability.

By 15 July each year, the websites of political parties will include the **statutes** of the relevant parties after the compliance checks performed by the Guarantee Commission, as well as - after the compliance check - the **financial statements** equipped with the Management Report and the Notes to the Financial Statement, the Auditor's Report or the Auditing Company Report, if any, and the minutes of the approval of the financial statements by the competent body of the political party. The documents above are also **notified to the Presidents of the Chamber of Deputies and the Senate** and highlighted in the **official website of the Italian Parliament**. The website also contains, in compliance with legislative decree no. 33 of 14 March 2013, the data relating to the assets and liabilities and the income of the holders of **Government offices and Members of Parliament**. With a view to such publication, the Members of Parliament and the holders of Government offices notify their assets and liabilities and their income in the forms and according to the conditions set under Law no. 441 of 5 July 1982.

The subjects obliged to provide information on assets and liabilities and income shall equip said statements with the **amounts received**, either directly or through the supporting committees established, however named, as donations for any amount exceeding 5,000 euros per year. Said statements are referred to in the

official website of the Italian Parliament whenever published in the website of the relevant organisation.

The provisions under Law no. 659, article 4, third paragraph of 18 November 1981 (*described above*) shall not apply to the **financing or contributions paid in favour of the political parties** included in the register of political parties and not exceeding the annual amount of **euro 100,000**, made through **means of payment other than cash**, allowing to guarantee the traceability of transactions and the exact identity of the donor. In these cases the legal representatives of the parties benefiting from the donations shall send to the **Chamber of Deputies the list of subjects** that made donations or issued funds amounting to an annual value exceeding 5,000 euros, as well as the relevant accounting documents. This obligation shall be fulfilled within three months before the financing or the contribution is received. In case of non-compliance with said obligation or in case of mendacious statements, the sanctions under Law no. 659, article 4, paragraph 6 of 1981 will be imposed. **The list of subjects** donating the funds or contributions above, and the relevant amounts, are **published** in an easily accessible way in the website of the Italian Parliament. The list of subjects donating the above-mentioned funds or contributions, as well as the relevant amounts, is published as an annex to the financial report in the website of the political party.

The provisions mentioned above on transparency and disclosure of statutes and balance sheets shall apply to the Foundations and Associations whose members are either entirely or partly determined by deliberations of political parties or movements, as well as the foundations donating amounts or contributing to the funding of initiatives or free of charge services in favour of political parties, movements or their internal branches, or members of parliament or regional councillors in a percentage exceeding 10% of their revenue for the previous financial period.

According to the provisions of article 5, paragraphs 2 and 3 of Law Decree 149/2013, converted into Law 13/2014, the website of the Italian Parliament - section on "[Transparency of information on political parties](http://www.parlamento.it/1177)" - shows the information that must be published in the official website of the Italian Parliament, in compliance with the legislation in force on financing of political parties. In particular, 2 paragraphs are complied with: par. 2 and 3, article 5 of Law Decree no. 149 of 28 December 2013 that <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:2013-12-28;149~art5!vig=>> - as already said - set out the publication:

- of the communications with which political parties notify the Presidents of the Chambers of Parliament the publication in their websites of the **financial statements** and related annexes (paragraph 2)
- of the **contributions exceeding 5,000 euros** on an annual basis, paid in favour of the political parties listed in the national register of political parties (paragraph 3).

Article 5, paragraph 2, Decree-Law no. 149 of 2013 <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:2013-12-28;149~art5!vig=>> sets out that by 15 July each year, the websites of political parties shall include, after the compliance checks performed by the Commission

for the Guarantee of the Statutes and for the Transparency and Control of Political Parties' Accounts, the financial statements equipped with the relevant documentation. Such publication shall be notified to the Presidents of the Chambers of Parliament and highlighted in the official website of the Italian Parliament.

In compliance with article 5, paragraph 3, fifth sentence, of Decree-Law no. 149 dated 28 December 2013, <<http://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=2013-12-28&atto.codiceRedazionale=13G00194¤tPage=1>>the above-mentioned section of the website www.parlamentoitaliano.it <<http://www.parlamentoitaliano.it/>> also contains a **list of the subjects that issued funds or contributions** exceeding - during the relevant year - 5,000 euros, in favour of the political parties listed in the national register of political parties as per article 4 of the above-mentioned Decree-Law no. 149 of 2013.

In compliance with the provisions of article 5, paragraph 3, seventh sentence, of the above-mentioned decree-law, only the information relating to the subjects that provided their written consent to publication shall be published, in compliance with articles

<<http://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=2013-12-28&atto.codiceRedazionale=13G00194¤tPage=1>>22, paragraph 12, and 23, paragraph 4, of the code on the protection of personal information, as per Legislative Decree no. 196 of 30 June 2003.

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

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

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

Provisions under parliamentary scrutiny

In June 2016 the **Chamber of Deputies approved** a consolidated text - presently under Senate Review (Senate Rf. [2439](#) <<http://www.senato.it/leg/17/BGT/Schede/Ddliter/47011.htm>>) - intervening on the provisions on political parties with rules to foster transparency and democratic participation, by also introducing a new regulation on the financing of political parties or their political-organisational branches.

The text also introduces **provisions aimed to ensure transparency**, in particular through the publication of the following items in a specific section of the **website** of the Ministry of the Interior called "Transparent Elections": the symbol of each party or organised political group; the statutes or the disclosure statement; the electoral programme; the lists of candidates presented in each constituency.

Furthermore, the following items shall be published in a special section of the **website** of each **political party** called "**Transparency**":

- The financial statement and the statutes, and, in case of political parties not enrolled in the register, the procedures for the approval of proceedings, in addition to other items such as the number, the composition and the term of deliberative bodies - both executive and supervisory - the procedures for candidate selection, and the body in charge of legal representation;
- The list of properties owned by the parties;
- The financing amounting to or exceeding 5,000 euros per year, showing the name of the grantor, the exact amount and the year in which the amount was received; financing between 5,000 and 15,000 euros can only be published subject to the consent by the grantor. The data relating to the financing is published until 31 December of the second year following the one in which the financing was paid.

In case of **financing** - amounting to or exceeding 5,000 euros per year - **in favour of political parties or their political-organisational branches**, parliamentary groups, **members (and candidates)** of the national Parliament, Italian members (and candidates) of the European Parliament, regional, provincial, metropolitan and municipal councillors (and candidates), holders of offices such as presidency, secretariat, political and administrative government of political parties and movements, a **joint statement** must be made by both the donor and the beneficiary (a provision similar to paragraphs 3, 4 and 5 of article 4, Law 659/1981, which are subsequently repealed). In case of financing to candidates to elective offices or made by subjects either residing or living abroad, the joint statement can be replaced by a self-certification by the beneficiary. In case of donations to parties, movements and political groups, made through traceable means of payment, the joint statement can be replaced by a statement by the legal representative or the treasurer of the party.

Joint statements and certifications are notified to the Guarantee Commission of political parties within three months as from the date on which the financing was received; the Commission shall also guarantee to **all the citizens the right to know** (subject to consent in case of financing to political parties with an amount between 5,000 and 15,000 euros).

In case of financing lower than 5,000 euros, the consolidated text introduces the obligation of publication in an aggregate form within the report annexed to the financial statement.

The obligation to submit a report is limited to the parties that have a representative elected to the Chamber of Deputies, the Senate or the European Parliament.

Furthermore, the **system of sanctions** in case of breach of the obligations on disclosure and transparency of balance sheets is extended, and fines are imposed in addition to the reduction of benefits due to the parties.

In the end, the availability of goods, services and premises by territorial authorities for the carrying out of the political activity is also regulated.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

See above

14. Paragraph 4 of article 7

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

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

(Please see answer to articles 5 and 8)

According to the principle of exclusive service, stated under art. 98 of Italian Constitution “public employees are at the exclusive service of the Nation”, which is to say that public employees should abstain from providing services for their own personal interest or for that of the political party which they belong to.

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

Therefore, regarding the Italian law:

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

- Disqualification (Inconferibilità): it is a general preventive measure (the illegitimate behavior is avoided ex ante through the prohibition to accept the office).

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

As far as PUBLIC ADMINISTRATION - PUBLIC OFFICIALS is concerned, the provisions are summarized as below:

a) Responsible for Administrative Procedure and executives:

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

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

b) Top executive public officials; administrative officials (Managerial positions)

(Legislative decree n. 39/2013 (adopted due to the provisions of art. 1 , paragraph 49 of Law n. 190/2012)).

-impossible (inconferibile)

-not compatible

(prohibition to discharge other public or political office)

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

d.lgs. 39/2013 (adopted due to the provisions of art. 1 , paragraph 49 of Law n. 190/2012)

- Not conferible (art. 7)

d) Top Executive public officials in Local Health Authorities

- Impossibility (art. 7)

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

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

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

In the Italian system it is necessary to distinguish between Substantial and Formal conflict of interest.

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

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

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

a) Responsible for Administrative Procedure and Executives:

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

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

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

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

- From adoption of decisions or activities that may involve:

- * his/her own affiliates, or affiliated persons within the second degree;
- * the spouse;
- * partners;
- * persons with whom he/she has frequent attendance;

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

- > a case pending;
- > or serious hostility;
- > or significant credit or debts,

* persons or organizations of which He/She is guardian, curator, prosecutor or agent,

* bodies, associations not recognized, Committees, companies or establishments of which He/She is an administrator or manager or manager.

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

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

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

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

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

b) Civil Servant - Public Procurement

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

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

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

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

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

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

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

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

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

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

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

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

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

b) Top Executive public officials in Local Health Authorities

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

- 1) Those who in the past five years have been candidates in the elections (European; national; local elections) in constituencies including the territory of the Local Health Authority;
- 2) Those who in the past two years have been:
 - Prime Minister
 - Minister of the Health;

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

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

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

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

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

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

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

- Members of the Regional Council or of the Executive Regional Council
- Administrator/CEO in public or private bodies in charge of supervision or financing of the Regional Health Service
- Members of the Council or of the Executive Council of a Municipality/metropolitan area with more than 15.000 inhabitants whose territory is included in the Local Health Authority one

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

Disqualification (or Inconferibilita') : For those that in the past two years, have been elected or appointed public officials in political decision-making bodies at a

regional or local level, or either CEO of a private body under public control (of the same Region or local Authority) is NOT possible to accept a Public Office as (art. 7 d.lgs. 39/2013) :

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

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

A.1) habituality and professionalism

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

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

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

(b) cases where the law provisions expressly allow or provide for public employees the participation and / or taking over of offices in companies controlled or participaed by public Bodies (see, not exhaustive, art. 60 of the dPR 3/1957, Article 62 of the dPR 3/1957, Article 4 of the dIn 95/2012 - cases for top manager and top executives are now disciplined by d.lgs. 39/2013);

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

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

activity).

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

A.2) Conflict of Interest

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

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

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

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

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

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

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

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

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

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

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

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

B.1) Conflict of Interest

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

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

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

1. Assignments, including those included in the authorization under art. 53, paragraph 6 d.lgs.. 165/2001, which interfere with the ordinary activities carried out by the public official in relation to the time, duration and commitment required, taking into account the employment or workplace institutions which are actually useful for the conduct of the activity; The evaluation must be carried out considering the qualification, the professional role and / or the professional position of the employee, the position within the administration, the assigned functions and the working time.
2. Offices taking place during office hours or which may presume a commitment or availability by appointment even during the service hours, unless the employee has access to permits, vacations or other abstinence from the employment or employment relationship.
3. The assignments, which are added to those already conferred or authorized, increase the risk of conflict with action in discharge of office or official duty impairment of the service activity.
4. Assignments held using means, property and equipment owned by the administration and which the employee has for office reasons or which are held in the office premises, unless the use is expressly authorized by the rules or required by the nature of the assignment conferred office by the administration.
5. Assignments in favor of public officials registered in professional and

professional activities, subject to the exceptions permitted by law (Article 1, paragraph 56 bis of Law No 662/1996).

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

15. Technical Assistance

The following questions on technical assistance relate to the article under review in its entirety.

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:

(NO) No assistance would be required

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

8. Codes of conduct for public officials

16. Paragraph 1 of article 8

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

Is your country in compliance with this provision?

(Y) Yes

Italy is in full compliance with this article

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

As already enlightened in answer to article 5, Italian Constitution provides for rules to guarantee and promote integrity, honesty and responsibility among public officials.

The Constitution enshrines the principles of loyalty, discipline and honorability in the performance of a public function (Articles 28, 54, 97, 98 Constitution).

Article 54 provides that "All citizens have the duty to be loyal to the Republic and to uphold its Constitution and laws. Those citizens to whom public functions are entrusted have the duty to fulfil such functions with discipline and honour, taking an oath in those cases established by law."

According to Art. 28 of the Constitution, officials of the State or public agencies shall be directly responsible under criminal, civil, and administrative law for acts committed in violation of rights. In such cases, civil liability shall extend to the State and to such public agency.

Art. 97 provides that Public offices are organised according to the provisions of law, so as to ensure the efficiency and impartiality of administration. The regulations of the offices lay down the areas of competence, the duties and the responsibilities of the officials. Employment in public administration is accessed through competitive examinations, except in the cases established by law.

According to Art. 98 Civil servants are exclusively at the service of the Nation. If they are Members of Parliament, they may not be promoted in their services, except through seniority. The law may set limitations on the right to become members of political parties in the case of magistrates, career military staff in active service, law enforcement officers, and overseas diplomatic and consular representatives.

Over the last few years, Italy has introduced major reforms designed to modernize public administration, improve services, and increase citizens' participation in public decision-making. Reforms have included measures to

foster transparency, accountability, and organisational performance.

The civil service reform of February 1993 instituted contract-based relations between public employees and the State. This process was known as the “privatisation of public employment”, the aim of which was on one hand, to put an end to certain privileges enjoyed by public employees and on the other hand, to bring their regulations in line with those of the private sector.

The legislative decree n° 165/2001 establishes which are the public entities (article 1) and it identifies civil servants who are regulated by the decree itself and private labour laws (article 2) and public employees who have not been privatised (article 3), in order to guarantee their independence.

By means of the provisions of the “Severino Law” and the Decree of the President of the Republic n. 62/2013 (Art. 1.44) mentioned in answers to the articles 5 and 6 and 8, par. 2 and 3, Italy complies with the obligation as set forth in the convention. More recent moves in this direction are the “Legge Madia” (No. 124/2015) and the numerous legislative decrees that are to concretely implement the principles set forth. These measures are adopted with a view to reorganizing and simplifying public administration, also from the angle of the assertion of integrity as a value.

Recently, disciplinary procedures have been implemented against persons in public administration when found to be involved in corruption.

This aim is furthered by the provisions of Legislative Decree n. 116 of 20 June 2016 concerning disciplinary dismissal as implemented by Art. 17.1, subsect. s. of the aforementioned “Madia Law”. In consideration of the contents of the measure currently in the form of a Legislative Decree, these disciplinary measures regarding senior administrative officials should also work toward this objective. Pursuant to the mandate as per Art. 11 of the “Madia Law”, the decree also regards the hypothesized responsibilities of senior officials within the ambit of their duties (artt. 4-6).

17. Paragraph 2 and 3 of article 8

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

Is your country in compliance with these provisions?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with these provisions of the Convention.

In 2013 the Presidential Decree n. 62/2013 - "Code of conduct for the public employees"- has been issued. This Decree contains rules and provisions that in general terms contribute to contrast the phenomenon of bribery.

The code defines the standard of conduct of due diligence, loyalty, impartiality and proper conduct public officials have to comply with. The code establishes general principles of conduct, replying those ones settled within the Constitution and specifying them, for instance by addressing the duty of abstention in case of conflicts of interest. The code also outlines the issues of gratuities, establishing a general principle according to which public officials are not allowed to receive gratuities due to the risk of corruption of the public function they exercise. The codes also establish that public officials have to fully comply with the anti-corruption plan adopted by the public administration he belongs to as well as with the transparency legal framework. The violation of the provision settled by the code, moreover, is a basis for disciplinary measures against the public official who has breached it. The public bodies have to adopt specific codes of conduct for their own sake, in compliance with the Constitutional provision and the National code of conduct for public officials. The code includes a section dedicated to senior civil servants.

On 2014, Decree Law n. 90 of 24 June 2014, subsequently enacted into Law n. 114 of 11 August 2014, introduced the possibility for ANAC to impose a monetary sanction to public entities considered responsible for not having adopted - inter alia- the Code of conduct.

In the perspective of differentiation, following the enactment of Presidential Decree n. 62/2013, "Regulations on the code of conduct for civil servants, in accordance with Article 54 of Legislative Decree n. 165 of 30th March 2001", the Authority, following a series of meetings with entities and after consulting with them, adopted Resolution n. 75/2013 "Guidelines on codes of conduct for the public sector", according to which entities should proceed with the adoption of individual codes of conduct. The guidelines aim at creating the conditions for the preparation of differentiated codes depending on the particularities of each

administration, thus avoiding that the codes themselves are resolved, as already happened in the past, on the basis of previous legislation, in a generic and not very useful repetition of the contents of the general code. The contents of the guidelines can also be a benchmark for the development of codes of conduct and ethics on the part of other subjects covered by Law n. 190/2012 (public financial agencies, publically controlled private law agencies, controlled or financed private law agencies, independent authorities).

First of all, Resolution n. 75/2013 points out the strong connection of the codes of conduct with the PTPC; the identification of the different level of exposure of the offices to the risk of corruption in the PTPC is preliminary to the specification of the particular obligations for these offices in the preparation of the code of conduct. The guidelines also specify the roles and responsibilities of the various figures, both inside and outside the administration, involved in various ways in the preparation phase and in the implementation of the code of conduct. The guidelines also underline that the adoption of the codes, as well as their periodic updating, shall be by public notice and with the involvement of stakeholders, the identification of which may vary depending on the peculiarities of each administration.

Breaches of the code shall result in disciplinary action.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Information about Code of conduct can be found on the website of the ANAC:

See

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

18. Paragraph 4 of article 8

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

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The whistleblower is implicitly protected by the principle of freedom of expression sanctioned by art. 21 of the Italian Constitution, other Italian sectorial laws also provide an implicit protection such as employment law (L. 300/1970) and the Legislative Decree n. 231/2001 concerning liabilities of companies.

At the constitutional level (Article 21) the principle of freedom of expression regulates and governs the situation where a person has, according to its status (employee), access to particular information, due to his employment, that allows him to have a more qualified opinion compared to other external subjects. The right of expression is protected under the whistleblowing regulation only when the information disclosed is related to fraud, crime or other hazards. It is obvious, therefore, that there is no protection when the report is made in bad faith and / or relates to false statements.

In the field of labor law, article 1 of the Workers' Statute implicitly provides a reference to the right of expression for those who report abuses.

The Law 190/2012 introduced a provision (Article 54-bis) in the Act 165/2001 (General provisions on public employment organization), which protects the civil servant who reports wrongdoings:“- 1. Other than in cases of accountability for slander or defamation, or for the same title pursuant to Article 2043 of the Civil Code, a civil servant who submits a complaint to the judicial authority or the Court of Auditors, or reports to his immediate superior unlawful conduct of which he has become aware due to his employment relationship, cannot be penalized, dismissed or subjected to direct or indirect discriminatory measures, having an effect on working conditions for reasons directly or indirectly linked to the complaint.

2. Within the context of the disciplinary procedure, the whistleblower's identity cannot be revealed without his consent, provided that the dispute of the disciplinary accusation is based on separate and further investigations with respect to his report. If the dispute is based, in whole or in part, on his report, his identity may be revealed if his knowledge is absolutely essential to the defence of the accused.

3. The adoption of discriminatory measures shall be reported to the

Department of Public Service, for the provisions of competence, by the interested party or the most representative trade union organizations in the administration in which they were put in place.

4. The complaint is removed from access as provided for in Articles 22 et seq. of Law No. 241 of August 7 1990, and subsequent amendments”.

The public employee is protected from any action, which adversely affects his rights (dismissal, victimization, mobbing) linked directly or indirectly to his reporting. Provided that the report is not, however, object to false and defamatory statements or statements that can harm any interest recognized and protected by the legal system.

The alert may be issued directly to the judicial authorities, the Court of Auditors or to the immediate superior or to the National Anti-corruption Authority. Object of the message is any conducts that are unlawfully discovered by the public employee in the workplace, by reason of his employment. The identity of the reporting employee is subject to confidentiality, as it cannot be revealed without his consent. But confidentiality, however, is not absolute: the norm identifies the possibility of disclosure of the identity of the employee when, during the proceedings, the accused person, absolutely needs the identity of the whistleblower for reasons of legal defense.

This principle found its application in Legislative Decree n. 62/2013, pursuant to which “senior officials shall, in a timely manner, adopt the measures required, on learning of the occurrence of unlawful conduct, and shall implement and conclude, if competent, the disciplinary procedures, or shall, in a timely manner, report the unlawful conduct to the disciplinary authority, while, when required, collaborating and, in a timely manner, reporting the said conduct to the criminal court or to the national audit body in accordance with the competences of the said bodies. In the event that an employee reports an unlawful act, the said official shall take all precautionary measures in accordance with the law to ensure that the reporting individual shall receive protection and that his/her identity shall not be unduly revealed during the disciplinary procedure, as per article 54 bis of Legislative Decree n. 165 del 2001” (Art. 13.8; adde Art. 8).

The National Anti-Corruption Plan - The P.N.A. provides for the adoption of appropriate measures to prevent the commission of offenses related to corruption. Among the measures for the prevention of corruptive phenomena, the PNA explicitly provides for the dissemination of good practices for the protection of whistleblowers; raising awareness among public employees on the positive value of whistleblowing. The main aim is to achieve a good reputation of the Public Administration, with continuous monitoring on whistleblowing and any retaliation taken against the whistleblowers.

With the aim of encouraging Public Entities to denounce internal wrongdoings and refer them to the Anti-corruption Authority, the Authority published ad hoc guidelines (resolution 6/2015); these provide the entities with recommendations on how to adequately protect whistle-blowers while creating awareness on the

necessity of having systems of protection in place.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Information about whistleblower in Italy can be found on the website of ANAC:
<<http://www.anticorruzione.it/portal/public/classic/AttivitaAutorita/Anticorruzione/SegnalIllecitoWhistleblower>>

A ruling of the Supreme Court has established that an employee which has informed the judicial authorities of a potential criminal event that took place in the workplace, even without first informing their superiors, cannot be considered a just cause of dismissal, unless the libellous nature of the report is proven (Cass., Sez. Lav., sent. n 6501 del 14 marzo 2013). With regards of the burden of proof, the retaliatory nature of the dismissal constitute an exception which needs to be raised by an employee, the lack of which detects only in the cases where the employee has shown just cause or just reasons of the dismissal.

19. Paragraph 5 of article 8

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

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

According to art.14, d.lgs. 33/2013, top-executive and (regular) executive public officials are subject to publication obligation on remuneration. They have also the duty to disclose property, asset and participations in companies to the public administration they belong to.

In relation to the holders of political offices, including central, regional or local non-elective offices, the State, the regions and the local entities shall publish the following documents and information: a) the deed or announcement of appointment, with an indication of the term of office or the electoral mandate; b) the curriculum; c) the remuneration of whatever type related to the acceptance of the office; d) the public money spent on business travels and missions; e) the data related to the acceptance of other offices, both in public and private bodies, and the relevant remuneration received on any ground; f) other appointments, if any, remunerated with public money with an indication of the relevant amount; g) the declarations and tax return provided for in Article 2 of Law 5 July 1982, n. 441, as well as the declarations and tax return referred to in Articles 3 and 4 of the same law, as amended by this decree, only with respect to the relevant individual, his/her not separated spouse and relatives within the second degree of kinship, if they have consented to such disclosure. Evidence shall in any case be given in case of lack of consent.

Each manager shall notify to the administration where he/she holds office the aggregate amount of public money he/she has received. The public administration shall publish, for each manager, on its institutional website, the aggregate amount of the aforesaid remuneration.

In the deeds of appointment of the managers and in their relevant agreements, the goals of transparency aimed at making understandable and readily accessible to citizens any published data, including, in particular, the data of the accounts concerning the expenses and the costs incurred for the personnel, to be indicated both in an aggregate form and in details, shall be reproduced.

ANAC controls the correct compliance with the obligation of publication on asset declaration, exercising its powers of inspection through request of information,

acts and documentation to the public entities and ordering to proceed, within 30 days, with the publication of data, documentation, and information required.

ANAC applies the administrative sanction from 500 to 10,000 euros in case of non-communication or incomplete communication of the information and data related to the patrimonial situation of the holder of the duty at the moment of the appointment, the stock detained in companies, his shareholdings and those of his spouse and relatives in the second degree as well as all the compensation related to the appointment.

The sanction is applied under the Regulation on sanctioning powers issued by ANAC. Non submission or incomplete submission of asset declaration by the above listed subjects, is punished with a fine from 500 to 10,000 euros (imposed by ANAC).

The act is published on the website of the administration/entity involved.

A list with the name of all non-compliant subjects is published on the website of ANAC.

Non-compliance with the obligation of publication also constitutes element of evaluation for managerial responsibility, possible cause of responsibility for damage to the reputation of the administration and are in any case evaluated for the provision of the retribution of result and accessory retribution related to the individual performance of the individuals involved.pursuant to art. 47 of legislative decree n. 33/2013

ANAC adopts guidelines to support public administration and all other entities to enforce the provisions on asset and declaration disclosure. It also defines criteria, models and standard schemes for the organization, codification and representation of the documents, information and data object to mandatory publication.

20. Paragraph 6 of article 8

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

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

See under Paragraph 2 and 3

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

See under paragraphs 2 and 3

21. Technical Assistance

The following questions on technical assistance relate to the article under review in its entirety.

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:

(NO) No assistance would be required

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

9. Public procurement and management of public finances

22. Paragraph 1 of article 9

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

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

(b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;

(c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;

(d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;

(e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.

Is your country in compliance with this provision?

(Y) Yes

Italy is in full compliance with the provision of article 9, par. 1, as described below.

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Overview of the public procurement legislation

Public procurement in Italy is governed by the Public Contracts Code (Legislative Decree 50/2016, which entered into force on 19 April 2016, hereinafter referred to as the “**Code**”).

The Code abrogated the former public contracts code (Legislative Decree 163/2006) with immediate effect from the date of its publication in the Official Journal and the implementing regulation (Decree of the President of the Republic n. 207/2010) save for a limited number of provisions which will be repealed upon the entry into force of the secondary sources.

The Code does not provide for a consolidated implementing regulation but for several secondary sources, such as Ministerial Decrees and guidelines issued by the National Anti-Corruption Authority (hereinafter referred to as the “**ANAC**”).

The Code applies to public works, supply and service contracts and concessions awarded by contracting authorities and other awarding entities, as defined by the Code (e.g. State, regional or local authorities, bodies governed by public law,

public companies, etc.).

There are many provisions in support of legality, starting from strengthening and reinforcing the role of **ANAC** as supervising authority as well as performing its functions on monitoring, promoting, supporting the exchange of best practices and information between contracting authorities. The Code empowers the **ANAC** to check the observance, by the contracting authorities and the candidates, of the general principles and rules governing the awarding procedures of public procurements, including those ones excluded from its scope.

ANAC has the task of adopting general directives as guidelines, tender models, contract models and other flexible regulation instruments, offering a steady support in the interpretation and application of the Code.

The Code has implemented the EU public procurement Directives, i.e. (i) Directive 2014/23/EU on the award of concession contracts, (ii) Directive 2014/24/EU on the public procurement, and (iii) Directive 2014/25/EU, coordinating the procurement procedures for the award of the same contracts by entities operating in the water, energy, transport and postal services sectors (hereinafter together referred to as the “EU Directives”). In the EU, public procurement law is based upon the general principles stemming from the Treaty on the Functioning of the European Union (“TFEU”), and is aimed at ensuring equal access for all operators within the EU internal market to procurement opportunities in other EU Member States, as well as fair competition for public contracts.

However, the scope of the Code is wider than the EU Directives, since it regulates all awarding procedures for contracts both above and below EU thresholds and it contains further rules that are not provided for by the EU Directives, although inspired by the same principles.

With respect to the Government Procurement Agreement (“GPA”), its purpose is to open up as much of this business as possible to international competition. It is designed to make laws, regulations, procedures and practices regarding government procurement more transparent and to ensure that they do not protect domestic products or suppliers, or discriminate against foreign products or suppliers. Since the provisions of the EU Directives and the GPA are closely aligned, compliance with the Code (which in turn implements the Directives) ensures de facto compliance by Italy with the GPA.

The award of contracts executed by the State, regional or local authorities and other bodies governed by public law entities, must comply with the basic principles set forth by the EU Treaty and EU Directives and in particular with the principle of freedom of movement of goods, freedom of establishment and freedom to provide services, as well as the principles deriving therefrom, such as the principle of equal treatment, non-discrimination, mutual recognition, proportionality and transparency.

By ensuring the opening-up of public procurement to competition, the public procurement legislation also aims at allowing contracting authorities to achieve the so-called “Best Value for Money”.

The provisions of the public procurement legislation should be interpreted in accordance with both the aforementioned basic underlying principles.

The Code distinguishes between the ordinary sector and special sectors. Special sectors include: (i) gas and heat; (ii) electricity; (iii) water; (iv) transport services;

(v) ports and airports; (vi) post services; and (vii) extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels. The special sectors are subject to specific provisions, in particular with regard to the publicity of the tender documentation.

Specific provisions are also provided for the contracts relating to: (i) social services; (ii) cultural heritage; and (iii) research and development.

Public procurements in the defence and security sectors are currently governed by the Code and Legislative Decree n. 208/2011, implementing the Directive n. 2009/81/EU (“Defence Decree”). The Defence Decree sets forth special rules with regard to contracts falling in its scope of application. The relevant provisions are applicable to procedures and contracts whose calls for tender (if any) or invitation to submit the bid occurred after 15 January 2012.

According to article 45 of the Code, Italian contracting authorities shall allow the economic operators established in EU Member States to take part in bidding procedures.

With regard to economic operators established in countries which entered into international agreements on public procurement with the Italian Republic or the EU (e.g. the GPA), article 49 of the Code provides that Italian contracting authorities shall ensure to said foreign economic operators, a treatment no less favourable than that accorded by the Code for the economic operators established in Italy.

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

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

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

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

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

specific rules concerning awarding procedure, provided that the general principles are complied with.

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

The gradual move towards procedures fully managed in a digital way has been planned, with the following reduction of administrative burdens.

The Code distinguishes between ordinary and special procedures.

Ordinary procedures include:

- a. open procedures: the contracting authority publishes a call for tender and any interested economic operator may submit a tender according to the conditions and timescales set forth by the call for tender; and
- b. restricted procedures: the contracting authority will solicit economic operators to submit a request to participate in the tender and, subsequently, only the operators invited by the contracting authority may submit a bid.

The contracting authority is free to choose between open tender and restricted tender procedures.

Special procedures include:

- a. competitive procedure with negotiation: the contracting authority publishes a tender notice open to all the economic operators. The potential bidders shall file their request of participation indicating the qualitative requirements listed under the tender notice. On the basis of such information, the contracting authority invites the qualified bidder to negotiate;
- b. negotiated procedure without previous publication of the call for tender: as a matter of fact, such procedure is similar to a private negotiation, except for the fact that the awarding authority will be required to apply the general principles of transparency, non-discrimination, equal treatment and proportionality; and
- c. competitive dialogue procedure: the contracting authority publishes a call for tender in which there is a list of both the requisites to be met by the competitors and the evaluation criteria of the bids. Any economic operator may request to participate in the tender procedure. Then, the contracting authority conducts a dialogue with the candidates admitted to that procedure, with the aim of developing one or more suitable alternatives capable of meeting its requirements, and on the basis of which the candidates chosen are invited to tender.

The competitive procedure with negotiation and the negotiated procedure without previous publication of the call for tender are characterized by a certain degree of flexibility in terms of a limited capacity of the participants to discuss and/or negotiate with the awarding authority the conditions as set out in the

tender documentation.

The competitive procedure with negotiation and the competitive dialogue procedure can be carried out only upon the occurrence of specific and exceptional conditions, and namely for the awarding of works, supplies and services contracts:

- a. where the needs of the contracting authority cannot be satisfied by means of immediately available solutions;
- b. which require the planning of new innovative solutions;
- c. where a previous negotiation is mandatory because of the features, complexity or financial/legal regulation of the scope of the contract or because of the risks connected thereto;
- d. where the technical specifications cannot be precisely indicated by the contracting authority; and
- e. in the event that a previous tender procedure has been carried out but only irregular or not correct tenders have been submitted.

The negotiated procedure without previous publication of the call for tender can be used only under exceptional conditions (e.g. only one operator can perform the contract because of specific skills, protection of exclusive rights, urgency, etc.). Finally, it is also worth noting that the contracting authorities may call special procedures and apply specific rules whenever they need to award standard supplies and services (so-called dynamic purchasing systems) or residential housing works.

Time limits to receive the requests to participate in the tender procedure and to receive the tenders are provided by the Code, depending on the type of tender procedure.

In general, when fixing the time limits for the receipt of tenders and requests to participate, contracting authorities shall take account of the complexity of the contract and the time required for drawing up tenders, without prejudice to the minimum time limits set by articles 60, 61, 62, 64 and 65 of the Code. Such provisions set forth minimum timescales which are basically compliant with those fixed by the EU Directives.

There are three sets of requirements which must be met by the bidders in order to participate in a public procurement procedure, namely:

- a. general morality requirements;
- b. economic and financial capacity; and
- c. technical and professional skills.

Requirements under letters b) and c) must be drawn up by the awarding authorities and proportionate to the subject-matter of the public procurement.

Generally speaking, through such requisites, the Code aims to exclude from the tender: entities which have been convicted of certain types of crimes (such as participation in a criminal organisation, corruption, bribery, fraud, etc.); entities facing bankruptcy (or entering into a proceeding for the declaration of bankruptcy); entities which failed to pay social security contributions or taxes; subjects who have been found guilty of material professional misconduct; and entities which rendered misrepresentations, etc. The Code indicates a precise list of offences causing exclusion. Furthermore, the ANAC shall specify which evidence is appropriate to demonstrate such exclusions by means of guidelines

not issued yet and that will be published on the ANAC website. Means of evidence referred to in the Code are imperative just for the awarding authorities. However, other means may be used by the competitors.

Should a competitor make good any damage caused and adopt measures to prevent other crimes, it may be readmitted.

Furthermore, the awarding authorities have been granted new powers in order to demonstrate, for the purposes of the exclusion, that the company was guilty of serious misconduct putting in doubt its integrity and reliability.

In the event of missing, incomplete or essential irregularities of the documentation filed by the bidder, the latter is entitled to regularise the documentation within 10 days from the relevant notice received from the contracting authority, upon payment of a fine with a value included between 1‰ and 1% of the tender value and in any case not higher than Euro 5,000. Moreover, as regards the non-essential irregularities, no fines are applied but they shall be regularised.

Fundamentally, public contracts can be awarded on the basis of the most economically advantageous tender criterion or, in specific and limited cases, on the basis of the lowest price criterion. The most economically advantageous tender criterion consists of the best quality/price ratio. Such criterion specifically takes into account both the economical and the technical aspects (e.g. quality, price, technical merit, aesthetic and functional characteristics) allowing the awarding authority to pursue the best trade-off.

Such criterion is mandatory for (i) social services, (ii) hospital, assistance and school catering, (iii) labour intensive services, and (iv) contracts to award architectural and engineering services exceeding Euro 40,000.

The tender documents establish the features assessed by the most economically advantageous criterion, in accordance with the nature, object and characteristics of the contract.

When using the lowest price criterion, the contracting authority shall give evidence of the grounds of such choice in the tender documentation.

A number of rules on debriefing unsuccessful bidders are set forth by article 76 of the Code.

In general, contracting authorities shall, as soon as possible, inform candidates and tenderers of any decisions reached concerning the award of the contract, including the grounds for any decision not to award a contract for which a call for tender was published. In particular, upon written request of the party concerned, the contracting authority shall, as quickly as possible, inform in writing:

- any unsuccessful candidate of the reasons for the rejection of its application;
- any unsuccessful tenderer of the reasons for the rejection of its tender; and
- any tenderer who has made an admissible tender of the characteristics and relative advantages of the tender selected, as well as the name of the successful tenderer.

The time taken to respond may in no circumstances exceed 15 days from receipt of the written request.

However, it is worth noting that contracting authorities may decide to withhold

certain information referred to in the paragraph above, regarding the contract award, where the release of such information would impede law enforcement, would otherwise be contrary to the public interest, would prejudice the legitimate commercial interests of economic operators, whether public or private, or might prejudice fair competition between them. In any case, where there is a lack of written request by the competitor, the contracting authority shall inform the unsuccessful tenderers, in writing, of their exclusion within five days from the exclusion notice.

Contracting authorities can carry out autonomous tender procedure only provided that they are qualified by the ANAC to do that. Non-qualified contracting authority shall necessarily purchase works, supplies and/or services from or through a central purchasing body. Such bodies can be used also by qualified contracting authorities.

Central purchasing bodies can:

- a. award works contracts as well as enter into and implement agreements on behalf of the contracting authorities;
- b. enter into framework agreements which can be used by qualified awarding authorities to award public tenders; and
- c. manage dynamic purchasing systems and electronic markets.

ANAC maintains a register of qualified contracting authorities, which includes the central contracting authorities (Centrali di committenza). The qualification system for determining qualified contracting authorities relates to authorities entering into a specific kind of contract, and depends on the complexity of the contract and the value of the underlying contract (value ranges are provided in the New Code). Authorities constituting qualified contracting authorities are selected based on certain criteria regarding technical and organizational abilities.

Should two or more awarding authorities, who also possess cumulatively the qualifications required, jointly carry out specific public procurements and concessions, they will be jointly liable for the fulfillment of the obligations arising from the Code.

At State level, the most relevant CPB (Central Purchasing Body) is Consip, a joint stock company set up in 1997 by the Ministry of Economy and Finance (MEF), its sole shareholder.

Its mission is to make the use of public resources more efficient and transparent, by providing tools and skills, to public entities and economic operators, in order to allow the performance of efficient public purchases in a competitive environment.

Along with providing support to individual entities during the entire procurement value chain, and to train and assist end users in the use of eprocurement tools, it mainly acts as the national CPB when centralizing, implementing and awarding tenders on behalf of other Entities.

The review system

According to Legislative Decree 104/2010 (hereinafter, referred to as the “**Code of the Administrative Trial**”), any dispute arising from, or connected to, awarding procedures of public works, services and supplies, including relevant claims for

damages, falls within the exclusive jurisdiction of the administrative courts. Any measure adopted during the awarding procedures may be challenged by any interested party before the Regional Administrative Court (hereinafter, referred to as the “**Administrative Appeal**”).

The Administrative Appeal aims at obtaining the annulment of the challenged administrative measures (e.g., call for tender, exclusion of a candidate, etc.) in order to allow the claimant to participate in the tender or to be awarded with the contract, depending on the procedural stage at which the challenged administrative measure has been adopted by the contracting authority. However, if such a result cannot be obtained (e.g. because the contract has already been performed), alternatively, the claimant is entitled to claim for damages (including the loss of chances). In the context of the same proceedings, the claimant can also ask for interim measures aimed at suspending the effectiveness of the measure challenged during the proceedings.

Should the Administrative Appeal be brought against the awarding measure (so-called “*aggiudicazione*”) and the latter be annulled, the administrative judge is entitled to declare the ineffectiveness, in whole or in part, of the contract in the specific cases listed under articles 121, paragraph 1 and 122 of the Code of the Administrative Trial (e.g. award of the contract without duly advertising the call for tender, use of negotiated procedure out of the allowed cases, inobservance of the standstill period for the signing of the contract, etc.). In such cases, should the contract not be declared ineffective because of imperative needs requiring the contract to maintain its effects, the judge may: (i) apply pecuniary sanctions ranging from 0.5% to 5% of the contract value; or (ii) reduce the duration of the contract up to a maximum of 50% of the remaining duration at the date of publication of the extract of the decision.

The decisions issued by the Regional Administrative Court may be further challenged before the Council of State (Court of second instance). Exceptional remedies may also be lodged against the decisions of the Council of State (i.e. appeal to revoke the decision in the exceptional cases provided by article 395 of the Italian Civil Code and appeal before the Supreme Court for reasons of jurisdiction).

After the contract has been signed, any disputes arising from its performance fall within the jurisdiction of Italian Civil Courts, unless connected to the awarding procedure.

In 2014, new provisions have been introduced in the Code of the Administrative Trial in order to reduce the length of the judicial proceedings, so as to have a judgment in reasonable time in order to avoid the contracting authority, the awarded company and the claimant being kept in an uncertain situation for too long and, meanwhile, the contract is not performed.

With the entry into force of the Code, article 120 of the Code of the Administrative Trial has been amended in order to rationalise the process in the field of public tenders.

In particular, the Code repealed the prior notice of the intention to propose a claim and pursuant to article 204 of the Code, a special rite before the Regional Administrative Court has been introduced. In particular, it is provided that defects related to the composition of the commission and exclusion from the

tender because of a shortage of subjective, economic, financial and technical requirements are immediately harmful and can be appealed before the Regional Administrative Court within 30 days from the publication of the composition of the commission or the list of unsuccessful or successful candidates. The proceedings must be defined within 30 days from the expiration of the term within which the parties separate from the claimant must appear before the judge.

Furthermore, failure to challenge these provisions also precludes from challenging the same by means of cross-appeal.

The Administrative Appeal must be filed with the Administrative Regional Court within 30 days from the relevant notification or publication or, at the latest, from the acknowledgment of the challenged deeds. Should the calls for tender not be published, the 30-day period starts from the publication of the awarding notice listing the reasons of the choice not to publish the call for tender. If such information is not included in the notice, the contract may be challenged no later than six months from the day following its signing.

The appeal before the Council of State must be made no later than 30 days from the notification of the challenged decision. Should the challenged decision not to be notified, the appeal shall be filed within three months from the publication of the decision.

In principle, the signed contract may be declared ineffective by the administrative judge as a result of the breach of the rules governing the awarding procedure. However, the ineffectiveness of a contract will generally depend on a range of further factors (e.g. public and private interests involved in the performance of the contract, the stage of performance of the contract, the possibility for the claimant to step-in the contract, etc.). Should the annulment not be obtained, the only remaining remedy will be the claim for damages.

In addition, it must also be highlighted that any disputes between the parties arising from the performance and interpretation of a signed contract fall within the jurisdiction of Italian Civil Courts, unless connected with the awarding procedure. Therefore, any breaches of the contract pertaining to its performance and interpretation may be challenged before the civil court.

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

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

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

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

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

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

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

Special measures to prevent corruption in public procurement

Focus: ANAC

ANAC's mandate and functions were extended and reinforced by Decree Law 24 June 2014, n. 90, (converted into law with amendments by Law n. 114/2014) which, among other measures, provided for the abolition of the Authority for the Supervision of Public Contracts («AVCP») and its organisational and functional integration with ANAC.

The new institutional mission consists in the prevention of corruption in public entities and in subsidiaries and state-controlled companies through the implementation of transparency in all aspects of management; through supervisory activities in the framework of public contracts, and in every area of the public administration that can potentially develop corruption phenomena, as well as through the orientation of the behaviors and activities of public employees by means of advisory and regulatory interventions.

The legislator's choice to entrust ANAC of the supervision of public contracts represents a significant intervention intended to strengthen the fight against corruption in Italy.

The integration of the functions of the two institutions, and the consequent extension of the powers of ANAC, in fact, establishes the conditions for a more effective oversight of the scope of contracts and public procurement.

The new Code identifies (article 213) the ANAC as the responsible entity for the supervision and regulation of public contracts in order to ensure compliance with the principles of transparency, legitimacy and competition of the operators in the public procurement market, in order to prevent corruption.

The Authority supervises the entire public procurement system, at both state and regional levels. In particular, it supervises the correct application of laws and regulations, while verifying the regularity of award procedures and the efficiency of contract execution.

The Authority reports to both the Parliament and the Government on particularly serious cases concerning the failure to comply with public procurement legislation or its distorted application; it also proposes legislative modifications to the Government and suggests revisions of implementing regulations to the Minister of Infrastructure.

The supervisory activity aims to ensure the fairness and transparency of procurement procedures, to guarantee the efficient execution of contracts and compliance with the European principles.

It is articulated into powers of verification, also through inspections and sanctions.

The Authority supervises the entire public procurement system, at both state and regional levels, in order to ensure compliance with the principles of legitimacy and transparency in awarding procedures and with the effective performance of contracts as well as compliance with competition rules and the efficiency of contract execution.

The supervision also affects the system of qualification of competitors participating in public procurement contracts. This is a particularly exposed area to corruption phenomena, in which the role of the Authority is crucial in terms of

prevention and repression with strong punitive measures, which include, among others, suspension and cancellation of certificates, suspension and the loss of the authorization for the SOA activity.

ANAC introduced in 2014 the “collaborative supervision” as a particular and exceptional form of verification, above all preventive, aimed at fostering a profitable control collaboration with the contracting authorities and thus guaranteeing the correct functioning of the tender operations and the contract execution, also preventing attempts of criminal infiltration in the tenders.

The “collaborative supervision” is now provided in article 213, par. 3, lett. h) of the New Code.

ANAC no longer intervenes to sanction and condemn illicit behaviour ex post (after the fact), when damage done is often difficult to remedy, but to prevent anomalies ex ante (before they occur) by guiding the administration towards better and more transparent choices. MoUs specifying the conditions and the methods for the implementation “collaborative supervision” have been signed between the ANAC and several contracting authorities.

ANAC has the power of requiring that the contracting authorities as well as economic operators provide data and information about public contracts in progress;

ANAC has the power to impose fines when any subject involved in a public contract procedure has not submitted the requested documents or has submitted counterfeit or false documents or has formulated false information about itself.

The sanctioning powers exercised, not only through the financial penalties applied in case of information and/or documentation not transmitted, but even through the records of the companies in the Data base of the Authority. Such records cause the exclusion of the companies in the sector from calls for tenders, in cases of misrepresentation on the requirements and conditions of participation in the tender and of misrepresentation and failure of proof of technical and economic requirements in the tender

Other measures

Conflict of interest

Pursuant to article 42 of the Code, appropriate measures shall be taken by the awarding authorities to prevent and resolve any conflict of interest in the awarding procedures in order to avoid any distortion of competition as well as ensure equal treatment between tenderers. Whoever find themselves in a situation of conflict of interest must inform the awarding authorities and abstain from participating in the awarding procedure, thereby avoiding incurrence of disciplinary responsibility.

The independence of the Awarding Commissions is encouraged choosing their components from a public register held by ANAC. The application of specific rules is also provided for secret contracts or for those ones which need special security measures, in that case the strengthening of the Court of Auditors’ powers is required.

Rating of legality

Approved by Parliament at the end of 2012, the rating of legality is the instrument with which Italian Competition Authority attributes a score, from one to three “little stars”, to the honest businesses that have a turnover of more than EUR 2 million per year and that meet a number of legal and “quality” requirements. To obtain a “little star”, the owner of the company and other executives should not have previous convictions for the offences referred to in Legislative Decree number 231 of 2001 and for major crimes against the public administration as well as for tax offences. Furthermore, these persons should not have been prosecuted for crimes related to the mafia.

In December 2014 a MoU has been signed by the Anti-corruption Authority and National Competition Authority to combat corruption in public contracts and on new criteria to assign the legality rating to companies. The common activities consist of reporting any alleged phenomena of tampering and collusion in breach of norms in force for the protection of trade competition and to access to information collected in the national database of public contracts.

The article 213, par 7 of the New Code provides that ANAC collaborates with the Italian Competition Authority for this activity.

The rating of legality shall be considered by ANAC as an element for the evaluation of the economic operator’s behavior under the company’s rating system.

The White Lists (WLs)

The WLs are a peculiar instrument against organized crime. In Italy, WLs were used for the first time in April 2009, after the earthquake in Abruzzo, as a tool to choose the eligible firms for rebuilding. At the beginning, the WLs were optional. As a result, the contracting parts of each public procurement can decide to apply it or not. Since their introduction, WLs have been applied in many situations. Then, the WLs were transformed into a mandatory tool, by 190/2012 Act.

Integrity pacts/legality protocols

It consists of an agreement between a government or contracting authority’ and all bidders for a public sector contract, setting out rights and obligations to the effect that neither side will pay, offer, demand or accept bribes; nor will bidders collude with competitors to obtain the contract, or bribe representatives of the authority while carrying it out.

Under Article 1(17) of Law No 190 of 6 November 2012 on measures for the prevention and suppression of corruption and illegal conduct in the public administration : ‘*Contracting authorities may state in public procurement notices, invitations to tender or letters of invitation that failure to comply with the clauses of legality protocols or integrity agreements is to constitute a ground for exclusion from the tendering procedure.*’

Transparency of the procurement procedures

With regard to the transparency measures, the use of electronic means in the area of information and communication is foreseen, the full advertising of the preliminary and following stages of the procurement procedures along with the

publication of the notices and the invitations to tenders.

The article 29 provides moreover that the contracting authorities shall publish on their websites and in the ANAC's website acts and information about the whole single procurement process.

The Code also foresees the adoption of measures aiming at rationalizing databases which have been reduced to two lists, one of which is managed by ANAC, performing its monitoring and supervision functions and the other one is governed by MIT (Ministry of Infrastructures and Transport) through assessing the compliance to general requirements for economic operators in order to make them able to respond to the invitation to tender.

Even before the adoption of the new Code, the legislation has provided the full transparency of the procedures. According to art. 1, par 32 of Law No 190 of 6 November 2012 (Anti-corruption LAW), contracting Authorities shall publish on their web sites the following information : the subject of the contract notice; the economic operators invited to tender; the successful contractor; the amount of the award; the time limit for completion the work, service or supply; the amount paid. Each year, by the end of 31 January, the information on the previous year is published in summary tables, freely available in digital format to download, that allow to assess the data, also for statistical purposes; Contracting Authorities shall transmit such information in digital format to the ANAC that shall publish it on its web site, in a section freely available to all citizens, listed by contracting authority and Region. The Authority with its own deliberation, identifies the relevant information and the method of transmission; Each year, by the end of 30 April, the Authority shall transmit to the Court of Auditors the list of entities which have not provided and published, in whole or in part, the information in digital format. According to the Code of Public Contracts, if the information is not provided or false information has been provided, administrative sanctions can be inflicted by the Authority.

The Code strongly encourages the adoption of digital tools to perform procurement procedures.

The tracking of the entire procurement cycle phases and user's behavior, together with the digital storage of data and documents produced during the procedure itself, strongly enhance transparency in the entire process and the capacity to prevent and contrast corruption phenomena.

An important example of full digitalization of the purchasing procedure is represented by the MEPA, the public administration electronic marketplace, managed by Consip on behalf of the Ministry of Economy and Finance (MEF).

The MEPA is an entirely digital system that manages low value purchases, below the EU threshold, that otherwise would have low visibility, no tracking and very difficult access to data and documents.

During 2016 more than 600.000 low value purchases were managed on the MEPA. Thus the system builds a huge amount of digital information that can be easily accessed by monitoring Authorities and could be the base for an open data strategy that allows larger participation also by the civil society.

Traceability of financial flows

To fight mafia penetration, Law 136/2010, Article 3, introduces the principle of traceability of financial flows, making it mandatory for contractors to have a dedicated bank or post office account for funds connected with public contracts. The contracting authorities must therefore include, under penalty of nullity, a clause on the traceability of financial flows; further, the contract must contain an express rescission clause to activate whenever a transaction is carried out not via a bank or Poste Italiane Spa postal account.

Any payment shall contain the indication of the Competition Identification Code (CIG, Codice Identificativo Gara), assigned by the ANAC, and, if required, the Unique Project Code (CUP); the aforementioned operators communicate to Contracting Authority the dedicated bank-account number.

Focus on the special powers of the President of A.N.AC. Measures for extraordinary and temporary management - Law Decree 24 giugno 2014, n. 90 - Art. 32

The art. 32 of law decree n. 90/2014 provides an innovative and disruptive measure, aimed to the complete execution of the contract under the penal proceeding, able to immediately intervene in situations where corruption phenomena have arisen to contrast them, without interfering with the normal activity of the company:

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

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The annual reports issued by ANAC includes information about statistics, the effectiveness of the system of public procurement and the extent to which it is based on transparency, competition and objective criteria in decision-making.

23. Paragraph 2 of article 9

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

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

Is your country in compliance with this provision?

(Y) Yes

Broadly speaking, Italy is compliant with the above provisions. Moreover, between 2009 and 2015 Italy has passed a relevant budget reform, through which public finance and accounting rules have been revised to adapt to the new EU framework and to new institutional arrangements between central and local governments. The reform also focused on increasing further transparency of the national budget process and increasing the quality of the data on the revenue and expenditure.

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

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

The applicable rules and procedures for the preparation and adoption of the national budget are laid down in **here attached Law 196/2009 and subsequent modifications**, in particular from Article 21 to Article 32. A kind of pre-budget statement, the Economic and Financial Document (**article 7 and article 10**), is submitted to parliamentary deliberation in April, updated in September (**article 7 and article 10-bis**) and the Draft Budget Law issued in mid-October (**article 7 and articles 21-32**). The Parliamentary Budget Office monitors forecasts contained in the economic and financial policy documents and makes the findings public (**article 10-ter**).

The Chamber of Deputies and the Senate, as well as the Court of Auditors, have direct access - in processable electronic format - to the relevant budget data and to other general government data (article 13 and 14). Parliamentary discussion of the national budget is regulated by the **rules of procedure** of the Chamber of Deputies (in English here: http://en.camera.it/4?scheda_informazioni=31) and Senate (in English here: <https://www.senato.it/3807>).

Budget proceedings are made public in a timely manner both through direct

access to the main institutional actors and through the Ministry of finance open data portal “BDAP”

(<http://www.bdap.tesoro.it/sites/openbdap/cittadini/Pagine/default.aspx>).

Legal provisions for such initiatives are laid in article 6. Finally, a dedicated web and mobile application called “Bilancio Aperto” (Open Budget) is also available for the national budget and updated monthly to follow the budget execution (<http://bilancioaperto.mef.gov.it/landing.html>). The latter two channels include figures and tables to ease communication to the general public, in addition to detailed downloadable datasets with the whole budget up to the chapter/line item level. The proposed budget and enacted budget data are made available on these channels within 48 hours from official transmission to Parliament.

Moreover, there are specific provisions for all public administrations (i.e. local governments and other central and local public administrations with budget autonomy) to publish detailed data and a simplified and understandable version of the enacted budget and final account statement on their websites. These provisions are laid in the general public administration transparency and anti-corruption laws, in which they are mostly aimed at favoring participation and diffused control of public affairs by civil society (in particular, **Legislative Decree 33/2013 and its subsequent modifications**). This strand of legislation requires, for example,

- Obligation for all public administrations to publish on their website detailed data and a simplified and understandable version of Enacted Budget and End-of-Year budget for Citizens for the within 30 days from presentation (and fixed schemes are provided for in subsidiary legislation (**article 29 Legislative Decree 33/2013**))

- Criteria on timeliness and open data formats (**article 7 and 29 Legislative Decree 33/2013 and article 2 of the Digital administration Code**)

- Indication on where in the institutional website such information can be accessed (**article 29 Legislative Decree 33/2013 and its annexed Table 1**)

Furthermore, specific requirements for «opening» administrative databases concerning public expenditure at a more detailed level are provided for daily transactions within the General Government Payments Information System (OpenSIOPE, <https://www.siope.it/Siope2Web/>), as required by **article 14, par. 6-bis, Law 196/2009**) and detailed statistics on public employees, data on all public buildings (ownership and lease rentals); complete audit reports of the internal audit office and Court of auditors.

As concerns State guarantees, the principal and subsidiary guarantees provided by the State in favor of agencies and other entities are listed with the national budget, in attachment to the expenditure budget for the Ministry for the Economy and Finance in the Draft Budget Law (**article 31**). Information about funds that do not form part of regular budgets (“off-budget funds”) are available in an attachment for expenditure budget for each Ministry in the Draft Budget Law (**article 32**).

Opportunity for public input and debate concerning the proposed national budget before its adoption stem from the media and Parliamentary auditions. There are no public documents on the results of Government consultations that

take place before the budget is tabled in Parliament, but several hearings are held during preliminary examination of the Draft Budget Law, involving various types of interest groups.

(b) Timely reporting on revenue and expenditure

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

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

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

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

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

Recent developments have improved the institutional setting for delivering the implementation of accrual IPSAS/EPAS based accounting reform. In fact, a constitutional reform in 2012, following the adoption of the Budgetary Framework Directive (Directive 2011/85/UE), brought back the competence on harmonization of public accounting under the remit of the State, together with the transposition of the balanced budget rule and the debt rule. This constitutional law and the following national legislation represented another impulse to the accrual accounting reform.

Despite progress made, the current situation still remains heterogeneous. The Italian Ministry of Finance intends to complete the design to move towards a harmonized accrual accounting system among levels of governments.

In order to develop a reform accrual compliant, Italy plays an active role in the working groups at international level (IPSAS Board) and European level (EPAS Working Group).

Although the Ministry of Finance has already established a Working Group to take stock of the current situation, it would be beneficial to and in the interest of the reform to take advantage of international best practices concerning the design and the road map for implementing an harmonized accruals accounting systems. The technical support is therefore useful to facilitate the latter rather than to provide direct expertise to implementing the reform.

The Ministry of Finance therefore set up, in co-operation with the Structural Reform Support Service of the European Commission, a project in order to enhance the existing capacity of the government to design the accrual accounting system across general government sector through the contribution of international experts (which have proven to have implemented similar reform successfully in other EU countries setting international best practice). Furthermore, an action plan which sets out the timeline and the actions for a future implementation of the reform will be develop during the project.

The transition to the accrual accounting system needs a long period of time to be fully implemented. There is an urgency to start as soon as possible to complete the design of a fully harmonized accrual/IPSAS/EPAS based accounting and preparing an action plan for its implementation. Italy, and in general each Member State, has a timetable planned by Eurostat to define the first accrual Opening Balance Sheet (2020) and the first EPAS Opening Balance Sheet (2025). It will be a strong impulse towards the develop of new accounting systems.

Internal audit system

In the Italian public administration there's not an internal audit system in the

strict sense of term. Nevertheless, the reform introduced by Legislative Decree No. 150/2009 outlines a new framework to measure and evaluate the organisational and individual performances of public administrations. It represents an important step towards implementation of a performance audit system. In particular, Decree's purpose is to implement an appraisal system, based on performance evaluation, in order to award the productivity of public-sector employees. This function is performed in each administration by an independent evaluation body (OIV) that accomplishes many tasks, such as: ensuring that the measuring and evaluation processes are correct in order to uphold the principle of rewarding merit and professionalism; promoting and certifying transparency and integrity; monitoring the overall operation of the system of evaluation, transparency and integrity of the internal controls and drawing up an annual report on its state.

Therefore, it is clear that there are some points in common between the function of evaluation of public employees and internal audit. In particular, the similarity relates to the independent nature of the body responsible, the scheduling of the activity that is the object of the control and the planning of the control.

At a more general level, an important legislative intervention is represented by the Law No. 190/2012 that designed an anti-corruption system based on prevention and introduced in Italy the National Anti-Corruption Authority. The new anti-corruption law aims to ensure a more balanced approach towards anti-corruption policies and providing for a strengthened preventive line and enhanced accountability within public administration. The Anti-Corruption Law has delegated the implementation of important principles and guidelines to the Legislative Decrees No. 33 and No. 39 of 2013 with reference, respectively, to the transparency and to the system of ineligibility and incompatibility of positions in public administration.

The system has been completed in 2014 with the integration of the supervision on public contracts in the system of corruption prevention, according to the Law Decree No. 90/2014.

The purpose of making public administrations more responsible is based on the implementation of a triennial plan to prevent corruption within each public organization.

According to the regulatory framework, the anti-corruption plan should include a processes mapping and, in particular, a detailed description of the following elements: an analysis of the internal and external context, a description of the activities performed, a breakdown of the activities into phases, a further breakdown of the phases into actions, the corruption risk level corresponding to

each action, the preventive measures.

The need to adopt internal control and audit systems is spreading in the Italian public administration. For example, a very recent measure adopted by the Ministry of Economy and Finance, the Decree of 8 June 2017, aimed at the reorganising the offices of the Ministry, provides, inter alia, the implementation of a new Office with the task of analysing the internal processes within the General Accounting Office.

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

On the basis of the above considerations, it can be affirmed that Italian public administration is trying to introduce risk management and internal control systems and to adopt rules designed to ensure compliance with the principles aimed at promoting transparency and accountability within the organizations.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The most recent Economic and Finance Document (concerning 2018-2020) is available at the following link:

The Update to the Economic and Finance Document for financial year 2017 was deliberated on 27 September 2016. Full documentation is available at the following links:

- [http://www.dt.tesoro.it/modules/documenti_it/analisi_programmazione/documenti_programmatici/Nota di Aggiornamento del DEF 2016 - Finale.pdf](http://www.dt.tesoro.it/modules/documenti_it/analisi_programmazione/documenti_programmatici/Nota_di_Aggiornamento_del_DEF_2016_-_Finale.pdf)
- [http://www.dt.tesoro.it/modules/documenti_it/analisi_programmazione/documenti_programmatici/Relazione al Parlamento NdA del DEF 2016 FINALE.pdf](http://www.dt.tesoro.it/modules/documenti_it/analisi_programmazione/documenti_programmatici/Relazione_al_Parlamento_NdA_del_DEF_2016_FINALE.pdf)
- [http://www.rgs.mef.gov.it/Documenti/VERSIONE-I/Attivit--i/Contabilit e finanza pubblica/DEF/Leggi pluriennali di spesa/2016/Leggi Pluriennali NAGG DEF 2016 - VOL I.pdf](http://www.rgs.mef.gov.it/Documenti/VERSIONE-I/Attivit--i/Contabilit_e_finanza_pubblica/DEF/Leggi_pluriennali_di_spesa/2016/Leggi_Pluriennali_NAGG_DEF_2016_-_VOL_I.pdf)
- [http://www.mef.gov.it/inevidenza/documenti/rapporto evasion e 2016 2709 H.16.37 definitivo.pdf](http://www.mef.gov.it/inevidenza/documenti/rapporto_evasion_e_2016_2709_H.16.37_definitivo.pdf)
- [http://www.mef.gov.it/inevidenza/documenti/Relazione evasion e fiscale e contributiva 0926 ore1300 xversione definitiva-x-29 settembre 2016.pdf](http://www.mef.gov.it/inevidenza/documenti/Relazione_evasion_e_fiscale_e_contributiva_0926_ore1300_xversione_definitiva_x-29_settembre_2016.pdf)

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

- [http://www.rgs.mef.gov.it/VERSIONE-I/Attivit--i/Bilancio di previsione/Bilancio finanziario/2017/Disegno-di-Legge-di-Bilancio/](http://www.rgs.mef.gov.it/VERSIONE-I/Attivit--i/Bilancio%20di%20previsione/Bilancio%20finanziario/2017/Disegno-di-Legge-di-Bilancio/)
- [http://www.rgs.mef.gov.it/ Documenti/VERSIONE-I/Attivit--i/Bilancio di previsione/Bilancio finanziario/2017/Sezione I - Relazione e Articolato.pdf](http://www.rgs.mef.gov.it/ Documenti/VERSIONE-I/Attivit--i/Bilancio%20di%20previsione/Bilancio%20finanziario/2017/Sezione%20I%20-%20Relazione%20e%20Articolato.pdf)
- [http://www.rgs.mef.gov.it/ Documenti/VERSIONE-I/Attivit--i/Bilancio di previsione/Bilancio finanziario/2017/Sezione II - Deliberativo - quadri generali riassuntivi.pdf](http://www.rgs.mef.gov.it/ Documenti/VERSIONE-I/Attivit--i/Bilancio%20di%20previsione/Bilancio%20finanziario/2017/Sezione%20II%20-%20Deliberativo%20-%20quadri%20generali%20riassuntivi.pdf)
- [http://www.rgs.mef.gov.it/ Documenti/VERSIONE-I/Attivit--i/Bilancio di previsione/Bilancio finanziario/2017/Sezione II - Deliberativo per stati di previsione.pdf](http://www.rgs.mef.gov.it/ Documenti/VERSIONE-I/Attivit--i/Bilancio%20di%20previsione/Bilancio%20finanziario/2017/Sezione%20II%20-%20Deliberativo%20per%20stati%20di%20previsione.pdf)
- [http://www.rgs.mef.gov.it/VERSIONE-I/Attivit--i/Bilancio di previsione/Bilancio finanziario/2017/Disegno-di-Legge-di-Bilancio/Allegato-t-17-19/](http://www.rgs.mef.gov.it/VERSIONE-I/Attivit--i/Bilancio%20di%20previsione/Bilancio%20finanziario/2017/Disegno-di-Legge-di-Bilancio/Allegato-t-17-19/)

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

- <http://www.bdap.tesoro.it/sites/openbdap/cittadini/Pagine/default.aspx>
- <http://bilancioaperto.mef.gov.it/landing.html>

Examples of quarterly consolidated cash accounts for central government:

- [http://www.rgs.mef.gov.it/ Documenti/VERSIONE-I/Attivit--i/Contabilit e finanza pubblica/Trimestral/2016/TrimestraleDiCassa-settembre-2016.pdf](http://www.rgs.mef.gov.it/ Documenti/VERSIONE-I/Attivit--i/Contabilit%20e%20finanza%20pubblica/Trimestral/2016/TrimestraleDiCassa-settembre-2016.pdf)
- [http://www.rgs.mef.gov.it/VERSIONE-I/Attivit--i/Contabilit e finanza pubblica/Trimestral/2016/index.html](http://www.rgs.mef.gov.it/VERSIONE-I/Attivit--i/Contabilit%20e%20finanza%20pubblica/Trimestral/2016/index.html)

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

[http://www.rgs.mef.gov.it/ Documenti/VERSIONE-I/Attivit--i/Contabilit e finanza pubblica/Rapporto mensile sul conto consolidato di ca](http://www.rgs.mef.gov.it/ Documenti/VERSIONE-I/Attivit--i/Contabilit%20e%20finanza%20pubblica/Rapporto%20mensile%20sul%20conto%20consolidato%20di%20ca)

[ssa_del_settore_statale/Rapporto_mensile_-_Giugno-2017.pdf>](#)

25. Technical Assistance

The following questions on technical assistance relate to the article under review in its entirety.

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:

(NO) No assistance would be required

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

10. Public reporting

26. Subparagraph (a) of article 10

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

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

Is your country in compliance with this provision?

(Y) Yes

Italy is in full compliance with the provision of article 10, par. 1, as described below.

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

‘Administrative action shall pursue objectives laid down by law and be governed by the criteria of economy, efficiency, impartiality, right of access and transparency in accordance with the rules set out in this law and other provisions governing distinct procedures as well as by principles derived from the Community legal order.’

Since 2009, with enhancement of the measure in 2013, public entities and companies in which part of the share capital is in public ownership, have been obliged to publish data and information on their activities, organization and use of public resources on their web sites.

The provisions of legislative decree n. 33 of 2013 regard a considerable amount of information and data.

ANAC is endowed with powers for vigilance over compliance with disclosure obligations. It is also endowed with regulatory powers for the purposes of simplifying and working toward application of the law. ANAC may also inflict pecuniary administrative sanctions for, for example, failure – on the part of persons holding political offices (and, as from June 2016, of functionaries) – to provide, or fully provide, information concerning their incomes or estates.

In order to ensure compliance with transparency obligations and foster democratic participation, lawmakers have acknowledged that each citizen has the right to demand disclosure of data if the administration does not publish them in accordance with the law (known as citizens’ access - *accesso civico*).

Since June 2016, the “obligatory transparency” regimen has been accompanied by “general citizens’ access”, i.e. FOIA, introduced by d.lgs. (legislative decree) 97 of June 2016. The law conferred upon ANAC the power to adopt guidelines for entities concerning application of FOIA.

All public entities are obliged to release documents, data and information **in their possession to all parties** requesting such material, with no need for the said parties to provide reasons for their requests. The material must be released within 30 days of the request.

From the Italian lawmakers’ point of view, FOIA enables “*a move toward diffused forms of control of the pursuit of institutional functions and of use of public resources, and the fostering of participation in the public debate*”. The inspiring principle is that of ensuring that access be as broad as possible. Access may be limited only in certain given circumstances.

Indeed, public entities can deny access, while providing adequate reasons for doing so, only in order to avoid probable and concrete prejudice to efforts to safeguard public interests in regard to:

- public security and law and order
- national security
- defence and military issues
- international relations
- politics and the financial and economic stability of the State
- investigations into crimes and prosecution of criminals
- normal conduct of inspections.

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

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

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

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

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

procedure.

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

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

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

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

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

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

Lawmakers have issued the provision that ANAC, in collaboration with the Italian Data Protection Authority, adopt Guidelines with practical indications for the purpose of identifying cases in which general access is ruled out, linked to the question of safeguarding the public and private interests indicated generically by lawmakers and as set forth above. The aim is to provide assistance to entities through examples.

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

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

- This institute is an absolute novelty for Italy, and very little time was foreseen for adjustment (six months). The entities are organizing their offices and are providing training so that answers may be provided at the earliest opportunity, and shall be consistent (in the case of very large entities with many offices).
- Citizens, too, must familiarise themselves with this institute and with how it is to be used, to avoid inadmissible requests (some requests are generic) or requests that overburden public entities in their efforts to make data available

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

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

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

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

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

27. Subparagraph (b) of article 10

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

...

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

Is your country in compliance with this provision?

(Y) Yes

See under subparagraph (a)

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

See under subparagraph (a)

28. Subparagraph (c) of article 10

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

...

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

Is your country in compliance with this provision?

(Y) Yes

See under subparagraph (a)

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

See under subparagraph (a)

29. Technical Assistance

The following questions on technical assistance relate to the article under review in its entirety.

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:

(NO) No assistance would be required

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

11. Measures relating to the judiciary and prosecution services

30. Paragraph 1 of article 11

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

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Constitutional and legal framework - The principle of independence

1. The structure of the Italian judiciary is laid out in the Constitution (Articles 101-113, Title IV, Constitution), which enshrines its independence and autonomy (Article 104, Constitution). The principle of impartiality of judges is ensured by the provisions of the Constitution concerning (i) prohibition to institute *ex officio* proceedings (Article 24(1), Constitution); (ii) establishment of judges by law (Article 25(1), Constitution); (iii) prohibition to set up extraordinary (or special) courts (Article 102, Constitution); and (iv) the requirement that judges be subject to law (Article 101(2), Constitution).
2. In particular, as a cornerstone principle, the Italian Constitution guarantees independence of the judiciary as a whole and of judges individually. Pursuant to Article 104 of the Constitution, the judiciary is an independent and autonomous body vis-à-vis other powers. When performing judicial functions, judges are independent and responsible only to the Constitution and to the law and any influence on judges while performing their judicial function is prohibited. The principle of independence is further assured by security of tenure, as enshrined in Article 107 of the Constitution.
3. The principles, structure and organisation of the Italian judicial system are further regulated in Royal Decree No. 12/1941 (Fundamental Law on the Judiciary) and following amendments. A series of legislative decrees have introduced important reforms over the years regarding, inter alia, recruitment mechanisms; assessment of magistrates' professional skills; initial and in-office training; organisation of prosecuting offices; transition from the position of public prosecutor to that of judge and vice versa; disciplinary measures. Moreover, secondary legislation applying to the judicial system includes regulations, resolutions and circulars issued by the High Council of the Judiciary (Consiglio Superiore della Magistratura, hereinafter CSM). An overall reform of the judiciary is currently underway. A commission of experts, set up at the Ministry of Justice, has submitted draft proposals focusing, in particular, on: abolishment of some judicial offices; magistrates' recruitment and career; disciplinary liability; incompatibilities; organisation of prosecutorial offices.

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

Courts

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

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

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

8. Justices of the peace are lay judges who administer jurisdiction, in both civil and criminal matters, for lower value claims and less serious offences.

Civil and criminal courts of first instance (tribunals) have a general and residual jurisdiction covering issues not specifically assigned to other courts. Specific matters such as labour, bankruptcy and family, are dealt with by special divisions within the same court. Cases are adjudicated by a single judge or a panel of three judges, depending on their importance. In criminal proceedings, the most serious offences are tried before the Court of Assizes which consists of a panel of eight judges, two professional judges and six jurors. The establishment plan provides for 3,533 posts as justice of the peace. In September 2017 1,318 posts are filled.

9. Appellate Courts are second instance courts which consist of three or more divisions: criminal, civil and labour. Juvenile courts have jurisdiction in criminal and civil proceedings involving minors; their decisions are reviewed by juvenile divisions at appellate courts.

10. The Court of Cassation is the highest Italian court. It assures the correct observance and uniform interpretation of the law, compliance with the limits of the various jurisdictions, decides jurisdictional issues, and fulfils other duties conferred on it by law. The Court of Cassation hears appeals both in civil and criminal matters against decisions by lower courts, but it only rules on points of law without examining the merits of cases. To be appointed magistrate at the Court of Cassation, a judge, as a general rule, is to have at least 4th degree seniority (i.e. 16 years of service). The analytical and scientific capacity required by the law is assessed by a special committee, nominated by the CSM, on the basis of the applicant's merit and scientific qualifications, which include written publications; final decisions on appointment are taken by the CSM.

11. The main functions of special courts are enshrined in Article 103 of the Constitution. The administrative courts review administrative decisions taken by public authorities and comprise the regional administrative courts (Tribunali Amministrativi Regionali) as first instance courts, and the Council of State. Jurisdiction over accounting matters is exercised by the Court of Audit (Corte dei Conti) and, in particular, by Regional Chambers, as first level courts and the Central Chamber. The military jurisdiction is exercised by Military Courts (Tribunali Militari), Military Appeals Courts (Corti Militari di Appello) and Military Surveillance Courts (Tribunali Militari di Sorveglianza) in cases concerning military offences committed by members of the Armed Forces. Administrative, accounting and military jurisdictions are exerted by professional magistrates, recruited through a public competition among candidates with specific requirements. The special jurisdiction courts have their self-government bodies, namely the Presidency Council of administrative magistrates; the Presidency Council of the Court of Audit, and the High Council of Military Judiciary, which are responsible for career, promotions, transfers, disciplinary proceedings etc. The current number of magistrates of special jurisdiction is: 420 administrative magistrates; 527 accounting magistrates; 58 military magistrates.

12. Jurisdiction in fiscal matters is exercised by fiscal courts at provincial

(Commissioni Tributarie Provinciali) and regional level (Commissioni Tributarie Regionali), respectively. The Court of Cassation is competent to hear appeals against decisions of fiscal courts. The members of tax courts are appointed by the President of the Republic, upon proposal of the Minister of Economic and Financial Affairs, following the decision of the Presidency Council of Fiscal Courts, the self-governing body of the fiscal jurisdiction. Tax courts of first and second instance have a mixed composition of (i) professional magistrates (both sitting and retired) belonging to ordinary, administrative and military jurisdictions; and (ii) other professional categories, including, university professors, university researchers or secondary school teachers in legal and economic matters; civil servants, sitting or retired, with a seniority of at least ten years and a law or economic degree; retired officers of the Guardia di Finanza; accountants and professionals listed in the registers of engineers, architects, building surveyors etc. They are in any case chaired by professional magistrates. Disciplinary sanctions consist of reprimand, censure, dismissal from office and are adopted by the Presidency Council of fiscal courts. According to the statistics provided, 14 disciplinary sanctions were imposed in 2014 and three in 2015, respectively. The current number of members of fiscal courts is 3 354 at provincial level, and 1 314 at regional level, respectively. A recent law reform on tax litigation has provided the recruitment of new tax judges exclusively among applicants who are already judges or are practicing as lawyers or certified accountants. Considering that 47% of all the civil cases pending before the Court of Cassation (more than 50,000) fall within the competence of the tax division and that it is "an unrelenting rising trend", with a simulated projection by 2020 and 2025 according to which tax disputes will reach 56% and 64%, respectively, by resolution of 15 March 2017, the High Council proposed to the Ministry of Justice the creation of a task force at the Court of Cassation, with the task of clearing the existing backlog in proceedings in fiscal matters.

Lay judges

13. In accordance with Article 106 of the Constitution, the law regulates cases where justice is administered by lay judges. The Italian legal framework comprises different categories of lay judges: justices of the peace, tribunal lay judges (giudici onorari di tribunale), experts in juvenile courts and juvenile divisions at appellate courts, experts in courts competent for supervision over enforcement of judicial decisions (tribunali di sorveglianza). Moreover, lay judges can replace a professional magistrate on a panel of three judges. Lay magistrates belong to the judiciary and when performing their duties are to comply with the same principles and rules as professional magistrates. Supervision over lay judges is exerted by the CSM; measures have been recently taken to strengthen professional checks over lay judges, notably, through triennial appraisals. The establishment plan provides for 2712 posts as honorary judges. In September 2017, 2441 posts are filled.

14. According to Law No. 57/2016 ("Delegation to Government to undertake a comprehensive reform of lay magistrates and justices of the peace"), on 13th July 2017 the Government adopted Legislative Decree nr. 116, which provides for a global reform of honorary magistrates, establishing a single

status of lay magistrates and, inter alia, enhancing their professional training, supervision and assessment.

15. The main contents of the reform are listed below:

- a. To be nominated as an honorary magistrate, Legislative Decree n. 116/2017 requires: Italian citizenship, full exercise of civil and political rights, good reputation, age over 27 years and below 60 years, a law degree following a minimum 4 years university course, not having been convicted for intentional crimes, not having been submitted to security or preventative measures, not having been disciplinary sanctioned.
- b. Lay magistrates are appointed by decree of the Minister of Justice in accordance with the decision of the CSM, on proposal of the competent Judicial Council.
- c. Before the final appointment, lay magistrates are required to attend a six months' internship under the supervision of a professional magistrate, during which they are evaluated in order to be confirmed;
- d. CSM and the High School of the Judiciary are responsible for ensuring the professional training of lay magistrates
- e. the duty of lay magistrates is indefensibly temporary (max 8 years: 4+4) and is carried out in such a way as to be compatible with other working or professional activities; in any case, it does not give rise to a public employment relationship
- f. In order to secure such compatibility, each lay magistrate cannot be required a total commitment of more than two days a week;
- g. Assignment of cases, tasks and duties has to be done in such measure as to respect the aforementioned compatibility;
- h. The Decree includes provisions about incompatibility and conflict of interests (recusal and withdrawal);
- i. Justices of the peace may be assigned either to the "Justices of the peace's Office" or to the "Office for the proceedings", the latter being set up in each District Court.
- j. Justices of the peace, who are assigned to the "Justices of the peace's Office", exercise jurisdiction in civil and criminal matters and perform judicial conciliation in civil matters, according to the Codes of Civil and Criminal procedure and to special laws.
- k. Justices of the peace, who are assigned to the "Office for the proceedings", cannot exercise neither the civil nor the criminal jurisdiction. Only when there are specific circumstances of overloading of the Court, which are listed in Legislative Decree nr. 116/2017, and no other appropriate measure can be taken, justices of the peace may be required to deal with civil or criminal proceedings, in a limited range of matters among those falling within the competence of the Court; in the same cases, they may be appointed as members of a panel of three judges (max 1 lay judge per panel);
- l. During the first two years after the appointment, Justices of the peace shall be assigned to the "Office for the proceedings" only, and may perform functions and tasks which only relate to such Office;
- m. In order to make justice more efficient and reduce the length of proceedings, in 2021 the competence of lay magistrates will be extended and the global number of lay magistrates will be increased up to 8000 (they are currently about 4000)

15bis. More specifically, Article 1 of Legislative Decree nr. 116/2017 identifies two types of honorary magistrates: one is the honorary justice of the peace, acting as judge, and the other is the honorary deputy prosecutor, acting as prosecutor. This overcomes the diversified and patchy rules in this field, and above all the previous divide regarding competence, professional status and remuneration among the three different types of honorary magistrates which existed until then: on the one hand, the category of judges including justices of the peace and court honorary judges; on the other hand, the prosecuting authorities comprising honorary deputy prosecutors. The former were governed by Law No. 374/1991 and the latter two by Articles 42ter et seq. of Royal Decree No. 12/1941 and subsequent amendments.

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

In compliance with these principles, the same paragraph 3 of Article 1 of the above-mentioned Legislative Decree specifies that "in order to ensure this compatibility, each honorary magistrate cannot be required a commitment of more than two days a week". This provision, which plays a central role in the overall structure of the reform, is in line with its guiding principles and with the limits laid down by the delegated law, considering that the basic framework of the reform clearly defines a type of honorary magistrate who works part time and can perform at the same time other working or professional activities (see Article 2, paragraph 13 (b) and paragraph 4 (b)).

A tendency towards unification of remuneration for all honorary magistrates is also clearly identifiable.

Until Legislative Decree 116/2017 court honorary judges and honorary deputy prosecutors were paid for each hearing they handled, without any additional financial incentives for any decisions made; justices of the peace, instead, were basically paid per piece of work done, with a small fixed amount; as a consequence, the average total remuneration of justices of the peace exceeded by far that of the two other categories of honorary magistrates.

On the contrary, the Legislative Decree referred to above, in compliance with the guiding criteria set out in Article 2, paragraph 13, of the delegated law, provides for payment, on a quarterly basis, of "a fixed gross annual salary of € 16,140, including social security contributions" (Article 23, paragraph 2). In addition to this fixed salary there is a variable rate of compensation, which "can be paid in an amount of not less than 15% and not more than 30% of the fixed salary".

The system is designed in such a way that an honorary magistrate may perform judicial functions only after attending an appropriate training period in the judicial office where he can work subsequently under the supervision of "a coordinating magistrate assisted by professional magistrates designated by him/her, to whom the trainees are assigned for court practice

in civil and criminal matters" (Article 7, paragraph 5); in addition to the training in judicial offices, the traineeship "also consists of the compulsory and successful attendance of theoretical and practical courses of a duration of no less than 30 hours, organised by the High Judicial School (Scuola Superiore della Magistratura)" (Article 7, paragraph 6).

Admission to a traineeship is determined on the basis of a notice of open competition, which should highlight the selection criteria established in general terms by law (Article 4). Admission to a traineeship is awarded to a number of applicants which is equal, where possible, to the number of posts available increased by half. Therefore, not all those who are admitted to the traineeship are sure that, in case of a successful outcome of the traineeship itself, they will obtain a job in the office. Trainees who have been found suitable "may be assigned, upon request, to other offices which have been identified...and appear to be vacant".

After receiving their appointment, honorary justices of the peace must be assigned, at least for two years, to the "Office for the proceedings" (ufficio per il processo) and they may perform "only the duties and functions related thereto" (Article 9, paragraph 4).

Within the Office for the proceedings "justices of the peace shall assist professional judges in support of whom the office has been set up and, under the supervision and coordination of professional judges, shall perform, including in proceedings in which the court tries the case as a panel of judges, all the preparatory acts useful for the exercise of jurisdiction by the court, being entrusted, in particular, with the examination of the case files, an in-depth study of the case-law and law theory, and the preparation of draft decisions. Honorary judges may be present at hearings in private" (Article 10, paragraph 10). Only in civil proceedings professional judges may delegate to honorary judges some duties relating to the pre-trial stage (hearing of witnesses, attempts of conciliation) and specific conclusive decisions. Honorary justices of the peace "shall perform the activities delegated to them, in compliance with the directions agreed with professional judges in charge of the case", having, however, the possibility, where they do not agree upon these directions, of returning their delegated powers to the professional judge. Likewise, professional judges, who are responsible for "supervising the activity carried out by honorary judges" can order "withdrawal of the delegation" previously conferred "subject to the existence of justified reasons" (Article 10, paragraph 15).

During the first two years of activity, honorary justices of the peace, only "in case of absence or temporary impediment of professional judges", may "replace professional judges in some duties, including as members of panels of judges" (Article 13). However, it is ruled out that reasons for replacement may include a high workload or a considerable number of vacancies in respect of the available posts for professional judges.

After two years of assignment to the office for the proceedings, honorary justices of the peace may be employed, basically, in two ways: they can remain at the office for the proceedings, where they may also be entrusted with civil and criminal proceedings and be members of civil or criminal panel

of judges, or, alternatively, they can exercise civil and criminal jurisdiction at the office of justices of the peace.

However, in accordance with the provisions of the delegated law, the assignment of honorary judges to panels of judges is subject to very stringent requirements defined by the same delegated law as "imperative, exceptional and contingent" (Article 2, paragraph 5 (b)). Always in accordance with a specific guiding criterion established by the delegated law, even if less stringent in this regard, the allocation of civil and criminal proceedings to honorary judges working for the office for the proceedings is subject to strict limits; even if the conditions prescribed by law are fulfilled, there is a number of matters which cannot be assigned to honorary judges.

From the organisational viewpoint, the Minister of Justice, after hearing the opinion of the High Council of the Judiciary, determines for each district the number of honorary justices of the peace assigned to the office for the proceedings and the number of those tasked with exercising jurisdiction directly. In the framework of this distribution of personnel, it is the President of the Court who, on the basis of specific criteria laid down in Article 10, allocates honorary judges to the office for the proceedings or entrusts them with the exercise of jurisdiction.

As regards justices of the peace tasked with exercising jurisdiction, the powers of the office of the justices of the peace (*ufficio del giudice di pace*) will increase considerably in civil matters in respect of proceedings instituted, in some cases, as from 31 October 2021, and in others as from October 2025 (Article 32).

An ongoing professional updating is provided both to honorary judges and honorary deputy prosecutors, consisting in the compulsory participation both in regular meetings held by the office they are assigned to, with the presence of professional judges, and in the attendance of training courses organised, including at decentralized level, by the High Judicial School "at least every six months".

Finally, the Legislative Decree contains detailed transitional rules. In this regard, Chapter XII of this set of rules stipulates that : a) magistrates who are in service at the date of entry into force of the Decree may be confirmed for three subsequent four-year periods, after the expiry of the first four-year period (totalling sixteen years); b) their term of office terminates when they reach the age of 68, while for honorary magistrates appointed after the entry into force of the Decree, termination of office is at the age of 65; c) for the first four-year period following the entry into force of the law, honorary justices of the peace in service may be assigned to the Office for the proceedings only on request and "civil and criminal proceedings which have been newly instituted and which fall within the jurisdiction of the office of the justice of the peace" may be allocated only to them; d) for the first four-year period court honorary judges who are in service may be assigned to the Office for the proceedings and, in any event, they may be members of panels of judges and be allocated independent proceedings, even in the absence of the stringent conditions laid down for the future by Articles 12

and 11 of Legislative Decree; e) unless the High Council of Judiciary recognises the existence of specific conditions of the office they belong to, during the last four-year period of their office neither honorary justices of the peace nor honorary deputy prosecutors may exercise direct jurisdiction, and they can only perform activities to support professional magistrates; f) for the first four-year period following the entry into force of the delegation, honorary magistrates in service will be remunerated in accordance with the previous legislation and, in the same period, the limit of two days a week placed on their commitment will not apply.

15ter. Auxiliary judges at court of appeals

The underlying reason for introducing this professional figure by Decree-Law No. 69 of 21 June 2015 2013, converted with amendments into Law No. 98 of 9 August 2013, is the usefulness of enhancing the contribution given by lawyers, university teachers and retired State lawyers as honorary magistrates in support of professional judges in service in order to bring to conclusion the cases which have already reached the stage of decision, providing for a compensation for each case which is concluded. Therefore, the persons referred to above may be appointed auxiliary judges at the courts of appeals, up to a maximum of 600, in order to bring to conclusion civil proceedings declared as having priority by the programs for the management of pending disputes.

Since auxiliary judges are considered to be magistrates included in the judiciary, they are appointed by Decree of the Ministry of Justice, after prior decision of the C.S.M, on proposal made by the judicial council having territorial jurisdiction.

The term of the appointment as auxiliary judge is five years and may not be extended.

Auxiliary judges, whom the legal status as honorary magistrates is granted, are subject to the same rules as ordinary magistrates in respect of incompatibilities and ineligibility; their term of office terminates when they reach the age of 77; their office ceases due to voluntary resignation or where a ground for incompatibility arises. At any time, the head of a judicial office may propose to the Judicial council the revocation of an auxiliary judge who is unable to perform his duties in a diligent and efficient manner, or who behaves in a faulty or negligent way.

Auxiliary judges receive for their activity a remuneration consisting of an allowance of two hundred euros for each judgment closing a case, or for each record of conciliation. In any case, allowances may not exceed the gross amount of € 20,000 per year.

The establishment plan provides for 400 posts as auxiliary judges. In September 2017 381 posts are filled.

15quater Honorary members of specialized sections

As already reported above, Article 102 of the Italian Constitution states that qualified citizens who are not members of the judiciary may be appointed as members of specialized sections for specific matters established within

ordinary judicial bodies. As seen above, the contribution of non-professional magistrates ensures that the decision is (also) made on the basis of knowledge which goes beyond that of which judges are usually in possession.

Experts in juvenile courts or in juvenile divisions at courts of appeals, qualified as experts by Article 50 of the Italian Judicial System, are to be placed in this context. They support professional judges as members of panels and provide extra-legal knowledge and expertise in this particular area, characterized by the peculiar human and social sensitivity of the matters which are dealt with.

A similar rationale explains the presence of experts in courts supervising the enforcement of sentences (tribunali di sorveglianza), as established by Law No. 354 of 26 July 1975.

Both experts in juvenile courts and experts in courts supervising the enforcement of sentences are appointed by the High Council of the Judiciary, which is also competent for all the measures concerning their status, precisely on the grounds that they participate in the administration of justice.

Further honorary members in the administration of justice are experts in special agrarian courts (sezione specializzata agraria), and experts of the Regional Court of Public Waters and the High Court of Public Waters.

15quinquies Jurors

Article 102, paragraph 3, of the Italian Constitution stipulates that the ordinary law regulates the cases and forms of the direct participation of the people in the administration of justice.

The implementation of this provision is represented by the composition of Courts of Assizes and of Courts of Assizes of Appeal, in which the judicial authority hearing the case - in particular proceedings - includes jurors. Six jurors, whose service is governed by Law No. 287 of 10 April 1951, complete the composition of Courts of Assizes (the jurisdiction of which is established by Article 5 of the Code of Criminal Procedure) in first instance proceedings, and of Courts of Assizes of Appeal in second instance proceedings; hence, they form the court hearing the case together with two professional judges (one of them acting as Presiding judge).

It is a mandatory office for ordinary citizens, not necessarily having a particular legal or specific knowledge, who exercise their functions for the period of time strictly necessary to conduct the trial. Jurors are drawn by lot from an appropriate register held by the Municipality and sent by the Mayor to the Presiding Judge of the Court.

Ministry of Justice

16. Under the Italian Constitution (Article 110), the Minister of Justice is responsible for the organisation and running of the service necessary for the exercise of judicial functions (staff recruitment, administration, provision of buildings and operational structures etc.). The Minister of Justice is also responsible for disciplinary actions against magistrates

(Article 107, Constitution) and oversees the correct functioning of the justice system. To fulfil these duties, the Minister of Justice is entitled to exercise functions of inspection and to conduct administrative enquiries.

Self-governing bodies

17. The Italian judiciary has a strong component of self-administration. Under Article 104 of the Constitution, the High Council of the Judiciary (Consiglio Superiore della Magistratura, CSM) is established as an independent and autonomous body to provide for and guarantee the independence and autonomy of the judiciary. It is responsible for recruitments, transfers, promotions, professional assessments and disciplinary measures (Article 105, Constitution). Moreover, it drafts proposals and opinions concerning the organisation of the judicial system. The Council is also vested with the authority to protect the image of the judiciary and to respond to any behaviour which may jeopardise the credibility and the independence of the judiciary. The CSM was set up for the first time in 1958. A reform of the CSM is currently subject to discussion; a Commission of Experts (so-called Commissione Vietti), set up at the Ministry of Justice, has recently presented draft proposals in this respect (e.g. regarding the day to day functioning of the CSM, the distribution of work for disciplinary proceedings, transparency of the voting system in plenary sessions of the CSM, etc.). The authorities underscored that the current CSM has given priority to internal reform of its functioning in order to enhance its transparency and accountability, and steps are being taken accordingly (e.g. new rules on the selection of high posts in the judiciary dating from 30 July 2015, reform of internal rules of 26 September 2016, etc.)

18. As to its composition, the CSM includes three members in their own right: the President of the Republic (who also chairs the CSM; in that role, s/he represents national unity and guarantees abidance by the Constitution), the President of the Court of Cassation, and the Prosecutor General at the Court of Cassation (Article 104, Constitution). As far as the 24 elected members are concerned, 16 are judicial members elected by all the magistrates from among those belonging to the various categories: two magistrates from the Court of Cassation (judges and/or public prosecutors), four public prosecutors and 10 judges from courts deciding on the merits (i.e. first or second instance courts). Members from the judiciary are elected according to a majority system in a single nationwide constituency for each of the three categories. The remaining eight non-judicial/lay members are elected at a joint session of Parliament (a majority of three-fifths of the members of the two Houses is required at the first two ballots, whilst a majority of three-fifths of the voting members is enough as from the third ballot onwards), which selects them from among university professors in legal matters and advocates having experience in the legal profession for at least 15 years. Elected members hold office for four years and may not be re-elected for the next term. Members of the CSM elect a Vice President among lay members. The Vice President chairs the plenary meetings in case of absence of the President of the Republic and exercises the functions delegated to him by the President. Moreover, s/he chairs the Presidency Committee, entrusted with the task of promoting the activity of the council, implementing the resolutions issued and managing the budgetary funds. The CSM has financial and accounting autonomy. In Italy, the President of the Republic is the Head of State, appointed for a period of seven years by a two-thirds

vote of Parliament, among any Italian citizen who is 50 years or older and enjoys civil and political rights. His/her term and conditions of tenure are independent from political parties; the President's term may only end by voluntary resignation, death, permanent disability (due to serious illness), and dismissal for crimes of high treason or an attack on the Constitution. The office of President of the Republic is incompatible with any other office. The President of the Republic only has formal or ceremonial powers: presidential acts must be countersigned by a member of the Government (with the exception of the autonomous presidential powers of pardons and commutations) and political responsibility lies with the government (Articles 83 to 91, Constitution).

19. The organisation, duties and competence of the CSM are further regulated in Law No. 195/1958 on Composition and Functioning of the CSM, as amended by Law No. 695/1975, and in the internal rules of procedure adopted by the Council. For the CSM's resolutions to be valid, at least 10 judges and five members elected by Parliament must be present. Decisions are adopted on the basis of a majority of votes; in the event of a tied vote, the vote of the President shall prevail. The Council carries out its duties in plenary settings, upon proposal of the competent commission. Each commission consists of six regular members (four magistrates and two lay members) and is competent for specific matters.
20. The CSM is the head of the bureaucratic organisation in charge of managing judicial-governing functions. To fulfil its tasks, it is supported - on different grounds - by Judicial Councils and the heads of courts and public prosecutor's offices. Judicial Councils are local self-governing bodies established in each judicial district; they draft opinions and proposals concerning the organisation of courts and the career of magistrates, such as professional appraisals, opinions for promotions, change of functions etc. Judicial Councils also carry out the preparatory activities related to proceedings concerning lay magistrates and exert supervisory functions over the activity of judicial offices within the districts. The Judicial Councils' opinions and proposals are submitted to the CSM which is ultimately responsible for the final decision.

Recruitment, career and conditions of service

21. To become ordinary magistrates, candidates have to pass a competitive public examination (Article 106, Constitution) consisting of three written exams and an oral interview. The basic requirements for admission to the competition are: to hold Italian citizenship, not to be banned from civil rights, irreproachable conduct. Background checks are stringent and specific requirements include: absence of criminal convictions; not to be subject to preliminary investigations; not to have been displaced or dismissed from office in the public administration for poor performance, etc.
22. Only candidates who have a law degree and the diploma issued by the post-graduate Schools for Legal Professions are admitted to the examination. Furthermore, candidates belonging to the following categories may participate in the exam without the Schools for Legal Profession diploma: administrative and accounting magistrates; civil servants having a law degree and at least five years' seniority in upper-level positions; university professors in legal matters, lawyers who have

not been subject to disciplinary sanctions; honorary magistrates having at least six years of professional experience; law graduates with a PhD in legal matters. Successful candidates are appointed (as) magistrates by decree of the Minister of Justice upon decision of the CSM, which is to approve the ranking list established by the Commission.

23. Newly appointed magistrates do not exercise judicial functions, but have to undergo a training period of eighteen months (one year of general training and six months of specialised training, corresponding to the functions that the magistrate shall discharge, i.e. as judge or prosecutor). The training consists of theoretical and practical courses and it is partly conducted at the Higher Judicial School (six months), part-time (twelve months) within the different judicial offices.
24. At the end of the general training, the CSM is to assess whether magistrates can be conferred with judicial functions on the basis of the comments expressed by the competent Judicial Council and the trainee's coordinating magistrate (on the basis of the different assessments made during the training period by the responsible senior supervising magistrates of the trainees. Coordinating magistrates are contact points for several (normally, five) new recruits). Opinions are also expressed by the High Judicial School (Scuola Superiore della Magistratura). Criteria to be taken into account include: professional expertise, legal analysis skills, ability to perform the functions responsibly; productivity and dedication to work; diligence; independence and impartiality. In case of a negative appraisal, a magistrate is admitted to a new training period of one year; a second adverse appraisal implies being dismissed from employment. At the end of the training, magistrates are appointed by decree of the Minister of Justice on proposal of the CSM. Magistrates cannot carry out functions as pre-trial investigation judge, criminal single judge (for the most serious offences: newly appointed magistrates can administer justice as single judges in proceedings concerning the offences listed in Article 550 of the Code of Criminal Procedure) and preliminary hearing judge before they undergo their first professional appraisal, four years after their appointment.
25. As an exception to recruitment by competitive examination, regular university law professors and lawyers of at least fifteen years' standing and registered in the special rosters entitling them to practise in the higher jurisdiction courts may be appointed Counsellors of the Supreme Court of Cassation on exceptional merit (Article 106, Constitution).
26. Security of tenure is enshrined in Article 107 of the Constitution and magistrates may only be suspended, exempted from service or transferred upon a resolution by the CSM and in cases set up in the law (principle of irremovability). Accordingly, a magistrate as a rule may be transferred to another district and/or entrusted with different functions exclusively with his/her consent upon a resolution by the CSM.
27. Notwithstanding the security of judges' tenure, pursuant to Article 19 of Legislative Decree No. 160/2006, judges at first instance courts and appellate courts cannot exert the same functions within the same office for more than a certain period, which the CSM has established to be 10 years. This measure is designed to prevent the excessive concentration of powers

and to guarantee a fair rotation among magistrates.

28. Transfers follow a competitive procedure which starts upon publication of the list of available positions; the allocation of candidates is based on objective criteria such as seniority and qualifications. Health and/or family reasons can be taken into consideration in particular cases. The exceptions to this rule, i.e. the cases in which magistrates may be transferred *ex officio*, are set forth exclusively by law: transfers to cover specific service needs; transfers due to abolition of the office or workforce reduction; transfers due to incompatibility reasons. *Ex officio* transfers can be challenged before the administrative court.
29. Moreover, magistrates can be transferred *ex officio* whenever they are unable to discharge their functions in an independent and impartial manner due to reasons for which they may not be considered responsible. Such a measure, which is administrative in nature, is adopted by the CSM in cases where judicial functions cannot be properly exerted for reasons which do not necessarily require disciplinary measures (for instance, this was adopted in respect of a chief prosecutor as a consequence of serious conflicts and a breakdown of trust between him and the other magistrates in the office). This transfer is different from the disciplinary one, which can be imposed as a precautionary measure or an accessory sanction as a consequence of a disciplinary offence. According to the information provided, since 2011 the CSM adopted only two transfers for "incompatibility reasons" (most cases were closed as the magistrates concerned applied for a different post before the decision was adopted).
30. Career advancement is the same for judges and prosecutors. The work of all magistrates is subject to regular evaluation on the basis of objective and uniform criteria and standards stipulated by the law and detailed in the CSM's circulars. Judges and prosecutors undergo appraisal every four years, until they pass their seventh professional appraisal, after 28 years of employment. The criteria governing the appraisal proceedings include: 1) legal expertise and professional skills; 2) productivity and efficiency; 3) diligence; and 4) commitment. Indicators to be taken into account include for evaluating the aforementioned criteria refer, *inter alia*, to quality of judicial decisions; outcome of judicial decisions (i.e. whether the number of decisions overturned reveals some anomalies); number of judicial decisions issued and number of proceedings closed; compliance with timelines; degree of participation and contribution to the proper function of the office (i.e. availability in replacing colleagues, frequency of attendance of training courses, contribution to solving organisational issues, etc.). Independence, impartiality and balance are prerequisites which are considered indispensable for the discharge of judicial functions and are expressly taken into account by the CSM, Judicial Councils and heads of judicial offices when appraising magistrates; failure to meet these fundamental requisites lead to a negative appraisal. The law provides for specific consequences, both professional and economic, as a result of a "non-favourable" or "negative" appraisal; a magistrate is to be released from service in case of a double negative appraisal. In the last five years the CSM issued 44 negative appraisals, 117 "non-favourable" appraisals and 9 428 favourable appraisals.
31. Regarding termination of judicial office, a magistrate is dismissed in the following cases: in case of a double negative appraisal; when the

disciplinary sanction of dismissal is imposed; when they are not able to properly perform judicial duties due to health reasons. Magistrates retire at the age of 70 years.

32. As to the remuneration of magistrates, the salaries of judges and prosecutors follow the same grading system. Magistrates, at the start of their career, receive annually a gross salary of 46 703.95€ (29 446.90€ net). Trainee judges and prosecutors are entitled to the following allowances when they are appointed to the first duty station which is different from the place of residence: 1) assignment allowance for one year (about 400€ net for six months and 200€ for a further six months); 2) one-time installation allowance (about 1750€ net for magistrates who move with their family); 3) reimbursement of travel costs and removal expenses to reach the new duty station. The salary increases at the third, fifth and seventh professional evaluation, respectively after 12, 20 and 28 years from the appointment. The gross salary of magistrates who undergo the seventh and last professional assessment is 170 078.97€ (92 965.81€ net). The first president of the Court of Cassation receives a gross annual salary of 240 000€ (127 398.02€ net), so-called remuneration cap. Magistrates are not entitled to additional benefits, such as family and library allowance, special taxation regime, or housing benefits.

33. Changing from the position of judge to prosecutor (and vice versa) is possible, but specifically forbidden by law in the following cases (i) within the same judicial district; (ii) within other districts of the same region; (iii) within the district of the court of appeal established by law as holding jurisdiction in the matter of criminal liability of magistrates of the district where the magistrate holds office when changing functions. A magistrate can change from one function to another four times at the most during his/her whole career, and has to exercise a given function for at least five years before changing again. Before changing functions, magistrates are required to attend a specific training course. Moreover, they need the favourable appraisal of the CSM, issued on the basis of the opinion by the responsible Judicial Council indicating that the relevant magistrate is suitable to exercise the different function. In the last five years, 96 judges moved to the position of prosecutor, and 128 prosecutors switched viceversa.

34. Finally, all decisions of the CSM concerning promotions, evaluations, transfers and, in general, magistrates' careers are subject to appeal before the administrative court.

Case management and procedure

35. The Italian Constitution provides for the principle of pre-determination of natural judge under the law, i.e. a judge selected on the basis of objective and predetermined criteria set forth in advance by law. This fundamental principle is intended to ensure impartiality of judicial functions as well as independence of judges.

36. The assignment of cases within the competent court is first done according to the divisions dealing with specific matters (i.e. criminal, civil, labour, family law, bankruptcy, company law). Cases are distributed automatically on the basis of objective and pre-established criteria laid down in court schedules (tabelle di organizzazione). Heads of courts are to set the

organisational programmes of the office under their responsibility, every three years, following the rules provided by the CSM in a circular establishing the objective criteria for the allocation of cases, both civil and criminal, to chambers, panels and single judges. The court schedules take into account the structure and the organisation of the judicial office, the workload, the number of judges (both professional and lay magistrates), etc. They are submitted for approval to the competent Judicial Council, which drafts an opinion, and subsequently subject to approval by the CSM. Derogation from the predetermined criteria is admissible only in cases of proven service needs and must be specifically motivated. A judge can be removed from hearing a case if there are grounds for disqualification.

37. Court proceedings are, as a main rule, public and oral but the public may be excluded by decision of the court (for instance to protect a State secret, to preserve public order and morality, to protect the privacy of private parties or witnesses, or in proceedings concerning sexual offences. See Article 128 Civil Procedure Code and Article 472 of the Code of Criminal Procedure). As for civil proceedings, parties, lawyers, judges and judicial staff have direct access to the whole judicial file (on-line civil trial, so-called *processo civile telematico*), while public can access an area containing information on the stage of the procedures and other non-confidential information. Moreover, almost all judicial offices have a website.
38. The principle of reasonable length of proceedings is enshrined in the Italian Constitution (Article 111) and it is also recognised in Law No. 89/2001, which entitles parties to claim fair pecuniary compensation from the State in case this right is violated. In order to prevent the excessive length of proceedings, heads of courts check that judges conclude proceedings without unnecessary delay and adopt the organisational measures to ensure efficiency and compliance with the deadline established by the law. Pursuant to Article 37 of Law No. 111/2011, heads of judicial offices adopt an annual work programme, which is aimed at managing the pending cases and reducing the length of proceedings. Moreover, reiterated, serious and unjustified delay in performing judicial activity is considered a disciplinary offence.
39. In recent years, the Italian authorities have taken a number of legislative measures to increase efficiency in the justice system, including through the reorganisation and rationalisation of courts, introduction of mandatory mediation in civil matters, settlement of disputes outside court, development of on-line civil trials, "filter" system for appeals in civil proceedings, etc. The so-called "filter" phase is aimed at selecting only the deeds of appeal deemed by the court to be likely to succeed. Where the court decides, on the basis of a preliminary examination of the case, that there is no "reasonable probability" of a positive outcome, the deed of appeal will be declared inadmissible. The decision must be taken at the first hearing, after having heard the parties, and through a motivated decision. When the appeal is declared inadmissible, the appealing party may challenge the first instance decision only before the Court of Cassation. The "filter" phase is not applicable to proceedings where the involvement of the Public Prosecutor is required (e.g. bankruptcy declaration proceedings), or to summary proceedings. Positive results have already been seen and Italy is registering a slight decrease in incoming cases.

39bis

By resolution of 5 July 2017 the C.S.M. has set out the guidelines on the preliminary examination of appeals and the techniques for drawing up judicial orders/decisions relating thereto in order to obtain an effective answer from judicial authorities and a reasonable duration of proceedings and to achieve legal certainty. The aim stated by the High Council of Judiciary is the identification of good practices and efficient organizational models for offices and for drawing up orders/decisions allowing to examine appeals, to assess the complexity of the legal issues to be dealt with and to plan work.

40. As for human resources, the Italian authorities are working hard in order to increase the number of judges and of court officers.

Ethical principles and rules of conduct

41. The fundamental values concerning the judiciary and conduct expected from judges are enshrined in Title IV of the Constitution (Articles 101-113). Moreover, pursuant to Article 54 of the Constitution, those citizens entrusted with public functions have the duty to fulfil such functions with discipline and honour, taking an oath in those cases established by law. Additionally, Article 1 of Legislative Decree No. 109 of 23 February 2006 on Duties of Members of the Judiciary provides that (i) judges and public prosecutors perform their duties impartially, correctly, diligently, industriously, discretely and with equanimity, and shall respect personal dignity while exercising their duties, and that (ii) even when not performing their duties, judges and public prosecutors do not engage in conduct which, even though legal, may compromise their credibility, prestige and decency or the reputation of the judiciary as a whole.

42. The Code of Ethics adopted by the National Association of Magistrates (ANM) in 1994 is the oldest in Europe. The Code, which was reviewed in 2010, consists of 14 provisions covering the conduct of the judiciary, as understood in its broadest scope, thereby including judges, public prosecutors and heads of judicial offices. It contains a compilation of ethical principles and rules with which judges and prosecutors must comply when performing their judicial functions, as well as in their public life (e.g. dignity, impartiality, diligence and professionalism, respect and consideration of others, discretion, cooperation, etc.). Pursuant to the Statute of the ANM, a special body, Collegio dei Probiviri (Probiviri Committee) is responsible for exerting disciplinary powers over associated magistrates when their acts contravene the general purposes of the Association and might discredit the judiciary (Article 9, Statute of the ANM). Disciplinary sanctions entail censure, suspension of social rights for up to one year, and expulsion from the association. The sanctions are decided by the Central Directive Committee of the ANM upon proposal of the Probiviri Committee.

43. 13 procedures had been opened since the code was in place and that no sanctions have ever been imposed, as in most cases the concerned magistrates spontaneously resigned from the association. The main monitoring functions on magistrates' ethics are exerted by the organs

responsible for disciplinary proceedings. Indeed, disregard for most principles and rules enshrined in the Code's provisions may also constitute a breach of duty or irregular performance of judicial service under the Law on Disciplinary Offences and give rise to disciplinary sanctions. Since spring 2017 the C.S.M. has a new website. The substantial restructuring of the website of the C.S.M. highlights the space dedicated by the Council to the ethical profile, including the Code of Ethics adopted by National Association of Magistrates. Access to this documents is allowed to all those who are interested therein and not only to magistrates.

Conflicts of interest

Recusal and routine withdrawal

44. Procedural safeguards are in place to prevent and resolve conflicts of interest arising from private activities and interests, or connected with persons close to a judge or prosecutor (for family reasons or business relationships). The aforementioned safeguards are established, pursuant to Articles 34, 35 and 36 CPC, as follows:

1) specific cases: a) a judge must withdraw if he/she has interest in the proceeding or if one of the private parties is a debtor or creditor towards him/her, his/her spouse or his/her children; b) the judge is tutor or employer of one of the parties in the proceeding, or his/her spouse or close relative is a party's defendant or tutor or employer; c) the judge has expressed an opinion or provided advice with respect to the object of the case outside the scope of his/her function; d) serious enmity occurs between the judge or his/her close relatives and one of the private parties in the proceeding; e) a judge's spouse or close relative is a victim or is damaged by the criminal offence or is a private party; f) a judge's close relative, or a close relative of his/her spouse, performs or has performed as prosecutor in the proceeding;

2) more generally, when any serious reason that cast doubts on his/her impartiality arises. Similar rules apply to civil proceedings.

45. Judges must, immediately upon becoming aware of the existence of any reason for withdrawal, submit the declaration of abstention to the court president. The declaration is examined by the President of the Court of Appeal when the impediment regards the president of a court of first instance. Similarly, the President of the Court of Cassation shall decide on the statement of abstention of the President of the Court of Appeal. The competent president shall appoint a substitute where grounds for disqualification are found. Under similar grounds, parties and the defence counsel may submit to the court president a motion for recusal of the judge. In criminal proceedings, a ruling denying a recusal motion may be challenged before the court of appeal. Concerning the withdrawal of the President of the Court of Cassation, s/he is replaced by another judge of the Court of Cassation, whose appointment is based on objective predetermined criteria.

46. Other reasons for incompatibility are established in Articles 16, 18 and 19 of Royal Decree No. 12/1941 concerning relations between magistrates and their spouses or relatives. As a general rule, a judge/prosecutor cannot exert functions in judicial offices where his/her spouse or cohabitee, relatives up to second degree or an in-law within the first degree practise the legal profession as a lawyer. Moreover, family or affinity relationship between judges and prosecutors are considered as reasons for incompatibility within the same judicial office. Magistrates in situations of incompatibility can be transferred ex-officio.
47. Grounds for incompatibilities are assessed by the CSM following an opinion by the competent Judicial Council on the basis of elements such as: the size of the judicial office, its organisational structure, the specialisation functions exerted by the magistrate, the significance of the legal profession practiced by the magistrate's spouse, cohabitee or relative. The matter is exhaustively regulated in several circulars issued by the CSM.

Prohibition or restriction of certain activities, post-employment

48. As a general rule, judges and prosecutors cannot hold another public office or perform other jobs or activities. Pursuant to Article 16(1) of Royal Decree No. 12/1941, magistrates cannot hold private or public posts or offices, except for those as senator, national counsellor or unpaid administrator of charitable public institutions. They cannot even engage in businesses or trades or any liberal profession; likewise, they cannot accept jobs or take the role of arbitrator without the authorisation of the CSM.
49. The CSM regulates in detail the matter making a distinction between activities which can be carried out without restrictions (activities in scientific and educational sectors, if not remunerated, as well as work protected by copyright) and activities submitted to previous consent of the CSM, such as teaching and training activities, whether remunerated or not. (CSM Circular No. 22581/2015 on incompatibilities is the latest guidance issued on the matter, as of March 2016). The relevant authorisation is to be granted on condition that the individual task is compatible with official duties and does not jeopardise the magistrate's independence and impartiality.
50. As for prohibited activities, magistrates are explicitly banned from engaging in private consultancy activities, taking assignments in sports justice, managing private schools for legal professions, exerting arbitration functions.
51. The performance of activities which are deemed to be incompatible with the judicial function constitutes a disciplinary offence. Taking extrajudicial posts or activities without the prescribed authorisation by the CSM is a disciplinary offence too.
52. There are no restrictions for magistrates as regards financial interests, including holding shares in companies, but this must be in accordance with the prohibition on engaging in businesses or trades established under Article 16 of Royal Decree No. 12/1941. Magistrates are banned from carrying out any form of administration activity in companies. Moreover,

the magistrates' involvement in financial and economic activities of other persons is considered a disciplinary offence when it may affect the exercise of judicial functions and the image of the concerned magistrate (Art. 3, letter h Legislative Decree No. 109/2006).

53. There are no provisions limiting the right for magistrates to be employed in certain posts/positions or engage in other remunerated or unremunerated activities after performing judicial functions. When practicing the legal profession, the use of any information acquired while performing previous judicial functions is prohibited.

54. Magistrates may perform different functions than those within the judiciary and be temporarily out of the judiciary role. For example, they may be appointed to the Ministry of Justice, the CSM (as secretariat or researchers), the Constitutional Court, the Presidency of Republic or seconded to international bodies and institutions. In some cases the functions performed are characterised by direct cooperation with political authorities, such as Ministers and the Presidency of the Council of Ministers. Pursuant to Article 66 of Law No. 190/2012 on Provisions for Preventing and Fighting Corruption and Illegality within Public Administration, magistrates holding high positions within national and international institutions, public bodies and entities, move out of the judicial function during the period of appointment in those other positions.

55. The principles regulating the matter are further elaborated in CSM Circular No. 13778/2014, as follows: 1) the need for prior authorisation from the CSM, which is to assess whether the different functions meet the interest of justice and do not threaten the impartiality and independence of the magistrate concerned and of the judiciary as a whole; 2) the temporary nature of the different functions. As a general rule, the maximum period in functions other than those within the judiciary is ten years. Pursuant to Law No. 18/2000, the maximum number of magistrates temporarily out of the judiciary role is 200.

56. As regards magistrates' participation in political life, they are banned from membership in political parties. Pursuant to Article 3, letter h, of Legislative Decree No. 109/2006, membership in political parties, as well as the continuous and systematic participation in political parties' activities is a disciplinary offence. On the other hand, magistrates, like any other citizen, may participate in national parliamentary elections, and in regional, provincial and municipal elections. Moreover, they can be appointed as members of the national government and of the executive bodies in all levels of local government
<https://en.wikipedia.org/wiki/Local_government>.

57. The law regulates some cases of ineligibility concerning magistrates. For national parliamentary elections, under Article 8, Law No. 361/1957, magistrates are not eligible in the constituencies where they exert judicial functions, or where they have exerted functions in the six months prior to accepting a candidature. The same provision obliges magistrates to take special leave if they compete for elections. Similarly, magistrates cannot be elected as mayors, presidents of provinces, or members of municipal or provincial councils in the territory where they exert judicial functions; this ineligibility ceases when they take special leave before they compete for

elections (Article 60, paragraph 6, Legislative Decree No. 267/2000). Similar rules apply for regional councils (Article 5, Law No. 108/1968). The matter is also regulated in circulars issued by the CSM (in particular Circular No. 13778/2014) laying down territorial, functional and temporal restrictions for magistrates to return to judicial functions after political elections.

Gifts

58. Legislative Decree No. 109/2006 bans the acceptance of gifts by magistrates. The use of the position as a judge or prosecutor in view of obtaining undue advantages for him/herself or others is a disciplinary offence.

59. In addition, the provisions on passive bribery apply when a gift, independent of its value, is received for a magistrate to act in breach of his/her official duties. Article 319ter CP provides for a specific offence of passive bribery in judicial proceedings. Law No. 69/2015 has significantly increased the available range of sanctions for this offence, which now range from imprisonment of between six and 12 years where the offence is committed in favour of or against a party to a civil, criminal or administrative proceeding; imprisonment of between six and 14 years where the offence results in another being wrongfully sentenced to a term of imprisonment of up to five years; and imprisonment of between eight and 20 years where the offence results in another being wrongfully sentenced to a term of imprisonment of more than five years.

Misuse of confidential information and third party contacts

60. Disclosure of confidential information from a case is a criminal offence under Article 326 CP. Moreover, the breach of confidentiality is a disciplinary offence pursuant to Article 3, letter u, Legislative Decree No. 109/2006. The Code of Ethics also prohibits disclosure or use of confidential information.

Declaration of assets, income, liabilities and interests

61. Law No. 441 of 5 July 1982 on Provisions on making public the financial situation of elected officials and public officials in management positions applies to ordinary magistrates by virtue of Article 17, paragraph 22 of Law No. 127/1997. Consequently, magistrates are required to submit to the CSM, within three months from their appointment: (i) a statement on his/her real rights on immovable properties and movable properties recorded in a public register, shares in companies, stakes in companies, performance of company manager or auditor functions, as well as (ii) a copy of the latest personal income tax return, and (iii) financial situation and income tax return of his/her spouse, unless separated, and his/her cohabiting children, if they give their consent. In addition, a report must be filed no later than one month from the expiry date for submitting the personal income tax return, if any changes occur since the previous declaration. Magistrates are also required to file a report within three months from the day of termination of office. In case of violation of the rules, the name of the magistrate shall be published on the Official Gazette

of the Republic. Interested persons are allowed to submit a grounded request to have access to the statements made by magistrates. The High Council of the Judiciary considers the interests underpinning this request, and justifies, if necessary, the reasons for refusing, postponing or limiting examination of documents, with a decision which can be challenged before the administrative judge.

Supervision and enforcement

General supervision

62. The justice system in Italy is largely self-managed with the existence of the CSM and the local Judicial Councils responsible, at different stages, for the careers and promotions of magistrates. Moreover, the chairpersons of judicial offices exert general supervision and appraisal responsibility as regards the conduct and the work of individual magistrates and have the duty to report to the Minister of Justice and the General Prosecutor at the Court of Cassation any disciplinary offence.

Criminal and civil liability

63. Magistrates can be held criminally liable for offences committed outside and in the exercise of their functions. They do not enjoy any kind of immunity. As regards the statistics concerning the number of disciplinary proceedings against magistrates running in parallel to criminal proceedings, for the period 2011-2016 most of them are defamation cases. Regarding corruption-related cases, there was one case in 2011, one case in 2012, two cases in 2013, five cases in 2014, three cases in 2015, and two cases in 2016, respectively.

64. As concerns civil liability, Law No. 117/1988, as amended by Law No. 18/2015, established the right to compensation for any unfair damage resulting from the conduct, decision or judicial order issued by a magistrate either with "intention" or "serious negligence" while exercising his/her functions, or resulting from a "denial of justice".

Disciplinary liability

65. Legislative Decree No. 109/2006 regulates disciplinary offences and their corresponding sanctioning regime. Breaches of disciplinary rules can be divided into two categories: (i) violations committed in the exercise of the judicial functions, listed in Article 2 (e.g. any conduct that, contravening the duties of a magistrate, causes unfair damage or unfair advantage to one of the parties; the intentional non-compliance with the obligation to abstain; serious violations of the law caused by inexcusable ignorance or negligence and the misinterpretation of facts caused by inexcusable negligence; the serious, repeated and unjustified delay in the discharge of judicial functions etc.); and (ii) offences committed when not performing judicial functions, listed in Article 3 (e.g. using the title of magistrate to obtain an unfair advantage for oneself or others; discharging extra-judicial activities without the required authorisation; granting, directly or indirectly, loans or other benefits by persons who are parties in civil or criminal proceedings pending before the office where the magistrate performs judicial functions or before other offices within the same district, etc.). Moreover, criminal liability does not exclude disciplinary liability

(Article 4).

66. Disciplinary sanctions range from: (i) reprimand, (ii) censure, (iii) loss of seniority, up to two years, (iv) temporary incapacity to hold managerial or semi-managerial positions in judicial offices, from six months up to two years, (v) suspension from judicial functions and salary, (vi) dismissal from office. The accessory sanction of transfer may be applied if a more severe sanction than a warning is imposed, as provided by law. A transfer ex officio can also be ordered as a precautionary and temporary measure when reasons of urgency occur. Appeals are possible before the Court of Cassation. The statute of limitations for disciplinary offences is ten years.
67. Disciplinary proceedings are judicial in nature and are regulated by the principles of the CPC. The competent authority is the Disciplinary Division of the CSM, which consists of six members: the Vice-President of the CSM, who is an ex officio member and chairs the Commission; and five members elected by the CSM from among its members, one of whom is a "laymen", one is a judge/prosecutor with the rank and functions of a Court of Cassation judge/prosecutor, two are judges and one prosecutor. Disciplinary proceedings are initiated by the Minister of Justice and the Prosecutor General attached to the Court of Cassation. Prosecution for disciplinary offences is mandatory for the Prosecutor General, while it is discretionary for the Minister of Justice, who exerts this faculty by requesting the Prosecutor General to carry out investigations. The Minister usually decides to initiate disciplinary proceedings as a result of inspections carried out by the General Inspectorate.
68. The Minister of Justice can exercise his/her authority to autonomously initiate a disciplinary proceeding and request the Prosecutor General to conduct investigations. The Minister of Justice can also intervene in disciplinary proceedings promoted by the Prosecutor General by requesting the extension or change of disciplinary charge.
69. The General Inspectorate is an office of direct cooperation with the Minister, entrusted with supervisory powers (See Law No. 1311 of 12 August 1962). The General Inspectorate carries out its duties essentially through three kinds of inspections of judicial offices: 1) ordinary inspections, which usually take place every three years and are ordered by the Chief of the Inspectorate in order to verify whether the different services within the official offices are performed in compliance with the laws, regulations and directives in force; 2) special inspections, where shortcomings or irregularities have been reported or found; 3) target inspections, which can be ordered by the Minister of Justice whenever he/she deems necessary to verify the productivity, output and the timely performance of professional duties by individual magistrates. As a result of the inspection, the report can be used by the Minister to initiate a disciplinary proceeding.
70. In the last five years (September 2012 - September 2017) 263 disciplinary sanctions have been imposed. Most of them concern delays in performing judicial activities (106).

Advice, training and awareness

71. Legislative Decree No. 26/2006 established the High Judicial School (Scuola Superiore della Magistratura), an institution which is structurally and functionally distinct from the CSM. The School is an independent entity with legal personality under public and private law. The courses organised by the School are aimed at professional in-service training; training for newly appointed magistrates; special training for magistrates who move from adjudication to prosecution functions and vice versa or for magistrates who apply for managerial functions. The School also provides initial and in-service training to lay judges and prosecutors. The training activities of the School are organised both on a central and local basis, in order to ensure a broader participation of magistrates, representatives from the academia and legal practitioners.

72. Initial training is addressed at apprentice magistrates who, once appointed, are obliged to attend professional training at least annually in the first four years of function. Serving magistrates have the right and the duty to participate in such training and must attend at least one course organised by the School every four years. The contents of the training modules are both theoretical and practical. In order to facilitate access to training throughout the judicial offices, a dynamic approach is taken by developing a network of decentralised trainers and e-learning modules/remote training programmes. The School also conducts training programmes in collaboration with similar structures of foreign States or professional associations.

73. As regards training on ethics, in the context of the initial training of judges and prosecutors, a specific half-day session, which is compulsory and held at the High School of the Judiciary, focuses on the "Ethics and Deontology of Judges and Prosecutors and the relevant Disciplinary System". As regards in-service training, the 2016 annual programme provided for a three-day course - reserved for 90 judges and prosecutors - on the theme: "The Fight against Corruption in the Public Administration and in Courts", which included a half-day session on the topic: "Corruption in the Justice System". According to the guidelines issued by the CSM, the 2017 training curricula includes a specific focus on ethics, particularly targeted at new recruits. As is being done in 2017, the High Council of Judiciary and the High Judicial School confirm for 2018 their joint commitment to implement the training on appropriate conduct and professional ethics of both professional and honorary magistrates.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

See above

31. Paragraph 2 of article 11

2. Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Overview of the prosecution service

1. As indicated earlier, prosecutors and judges belong to the same professional order of "magistrates". Therefore, the prosecutorial service is largely governed by the same rules in respect of judges, as per the provisions included in the Constitution, primary legislation and secondary regulation issued by the CSM. Thus, decisions regarding the professional status of prosecutors (e.g. appointment, appraisal, promotion, transfers, disciplinary liability) are taken in accordance with the rules mentioned relating to judges.
2. Prosecutors, as members of the judiciary, are independent vis-à-vis the other State powers (Article 104, Constitution); they are to perform their duties without being subject to any external influence. They enjoy the guarantees established in the provisions concerning the organisation of the judiciary (Article 107, Constitution), including security of tenure. Public prosecutors are to assure observance of the law and the prompt and regular administration of justice, protect the rights of the State, and repress the commission of criminal offences.
3. Italy abides by the principle of mandatory prosecution (Article 112, Constitution). Prosecutors are responsible for directing the police in the conduct of investigations (Article 109, Constitution; Articles 56 and 327, Code of Criminal Procedure). In the discharge of their duties, public prosecutors are to act with impartiality and objectivity and are to acquire any facts or circumstances, even in favour of the person under investigation. Once the investigation is concluded, the prosecutor may either file a formal indictment, when sufficient evidence is collected, or request the judge for preliminary investigations to dismiss the case. At the trial stage, the public prosecutor represents the prosecution before criminal courts. Public prosecutors are also responsible for the procedures for the execution of judgments. In addition to criminal functions, public prosecutors have competencies in civil proceedings in cases provided by the law and supervisory functions over civil status.
4. The structure of the prosecution service mirrors that of the courts. According to Article 2 of Royal Decree No. 12/1941, prosecutors' offices are attached to courts of first instance and juvenile courts, appellate courts and

the Court of Cassation. Therefore the current structure of the prosecution service consists of: 136 offices of first instance, established in each province or municipality where a court is in place; 26 offices at appellate courts; and one office at the Court of Cassation. The establishment plan provides for 2,491 posts as prosecutors. In September 2017 374 posts are vacant (15.01%). The posts as honorary deputy prosecutor are 2,079. In September 2017 1,925 posts as honorary deputy prosecutor are filled.

With respect to organised crime and other serious criminal offences (the list is provided by Article 51 of the Code of Criminal Procedure, which includes - inter alia - drug trafficking, enslavement, kidnapping, child prostitution and pornography), prosecutorial functions are carried out by the District Anti-Mafia Divisions, which are set up within the prosecutor's office located in the district capitals. The National Anti-Mafia Division (*Direzione Nazionale Antimafia*), operating within the General Prosecutor's Office at the Court of Cassation, coordinates and supervises the investigations carried out by the District Divisions. Law Decree No. 7 of 18 February 2015, converted into Law on 17 April 2015, enhanced the coordinating and supervisory role of the National Anti-mafia Prosecutor (now National Anti-mafia and Counterterrorism Prosecutor) in the field of the fight against terrorism.

5. According to Legislative Decree 116/2017, honorary deputy prosecutors may only be assigned to the "Office of the Public Prosecutor" (prosecution office), where they are placed after a traineeship (which takes place with the same procedure as that described above for honorary justices of the peace). They may be employed for two not-alternative tasks: they may either assist the professional magistrate within the "office of honorary deputy prosecutors", which has been set up recently "being entrusted with the examination of the case files, an in-depth study of the case-law and law theory, and the preparation of draft decisions", or carry out delegated activities relating to the direct exercise of jurisdiction. During the first year of activity, they cannot perform delegated activities; subsequently the latter can consist not only in the participation in trial hearings (in the proceedings for which justices of the peace and professional single judges have jurisdiction), but also, for the same proceedings, in the requests for penalty orders and for dismissal of the case, and in the consent to the application of a sentence at the request of the parties (plea bargaining). Honorary deputy prosecutors must follow the directions given by the prosecutor, who, possibly with the assistance of one or more professional magistrates, supervises honorary deputy prosecutors and may withdraw the delegation conferred on them "subject to the existence of justified reasons".
General rules provided for lay magistrates apply to lay prosecutors (See above).

6. The Italian prosecutorial service currently consists of 2 192 professional public prosecutors (1 265 are men and 927 women - Data from the official home page of the CSM, as of March 2016). As of March 2016, the number of honorary prosecutors in service was 1 740 (out of 2 067 posts - Data from the Ministry of Justice).

Internal organisation

7. As for the structure and functioning of the public prosecution service, important changes were introduced by Legislative Decree No. 106/2006, as amended by Law No. 269/2006.
8. Each prosecutor's office consists of a chief public prosecutor and an appropriate number of public prosecutors. A deputy chief prosecutor is appointed in offices where there are more than nine public prosecutors. To fulfil the tasks falling under the scope of the work of the office, the chief prosecutor may appoint a deputy prosecutor as his/her substitute, in case of absence or impediment. Moreover, the chief prosecutor may delegate specific areas of activities to one or more deputy prosecutors or to one or more public prosecutors within the office. The Prosecutor General at the Court of Cassation is appointed by the CSM; there is no hierarchical link between the various prosecution offices of the country and the General Prosecution Office at the Court of Cassation (See Resolution CSM of 20 April 2016).
9. Following the 2006 reform, the hierarchical structure within the prosecution office was strengthened. The chief public prosecutor represents the public prosecution and is responsible for criminal action in accordance with the law. The chief prosecutor can exert criminal action personally or by assigning proceedings (or specific acts) to public prosecutors within the office. In the latter case, the chief prosecutor may establish criteria with which prosecutors shall comply. Furthermore, chief public prosecutors have the duty to guarantee appropriate, timely and uniform prosecution and to ensure that safeguards for a fair trial are fully respected. Pursuant to Article 3 of Legislative Decree No. 106/2006, the prior written approval of the chief prosecutor is necessary for some acts issued by the public prosecutors and, in particular, for preventive measure requests (e.g. restraining orders, house arrest, provisional detention, interditory measures, seizure, etc.). The chief prosecutor is responsible, among other duties, for ensuring that the office under his/her responsibility works in an efficient, coherent and coordinated manner, including by assigning responsibilities and work division within the office.
10. In accordance with Article 1, paragraph 6 of Legislative Decree No. 106/2006, chief prosecutors are to lay down criteria for: (1) the general organisation of the office; (2) the assignment of proceedings to the public prosecutors within the office; (3) the typology of criminal offences for which automated case allocation applies. Organisational programmes issued by chief public prosecutors are to be submitted to the CSM, but neither the law nor the secondary regulation of the CSM requires a formal approval of such programmes.

Self-governing bodies

11. As for judges, the CSM is the key self-governing body, with major responsibilities to appoint, transfer, promote, evaluate public prosecutors and to issue decisions on disciplinary offences (Article 105, Constitution). See above for details.

Recruitment, career and conditions of service

12. Prosecutors and judges are basically subject to the same rules and they undergo the same recruitment paths and the same professional evaluations. See above for details.

Case management and procedure

13. According to Legislative Decree No. 106/2006, the chief prosecutor, being responsible for criminal prosecution, can decide to personally exert criminal action or assign cases to prosecutors within the office. Cases are generally allocated on a random basis, according to the general criteria laid out in the relevant organisation programme of the office and taking into consideration the specialised groups of magistrates within the office. The chief prosecutor can withdraw a case assignment, as follows: (i) when the public prosecutor does not comply with the criteria laid down in the general organisational programme or specifically issued for the individual case; (ii) in case of a divergence between the chief public prosecutor and the public prosecutor concerning the criminal investigation (such as in case of disagreement concerning the determination of a criminal offence, or concerning the decision of whether to prosecute or not, etc.). The law requires that the decision to withdraw the case is motivated. The public prosecutor within ten days after receiving the decision can submit written comments to the chief prosecutor, who is to send them to the CSM.
14. Criteria laid down in the internal organisational programme issued by the chief prosecutor play a major role in the assignment of cases. The CSM provided guidelines to structure the chief prosecutors' management powers and to guarantee a balance between the hierarchical structure of the prosecutorial office and the internal autonomy and independence of the individual public prosecutors (See, in particular, Resolution of 12 July 2007 and Resolution of 21 July 2009). In line with the CSM resolutions, when drafting the organisational programme, chief prosecutors are to pursue the objectives laid down in the law and are to guarantee, in particular: (i) the reasonable duration of trials and the rapid and effective completion of criminal investigations, taking into consideration the workload of the office and determining priority criteria; (ii) the appropriate, timely and uniform prosecution of criminal offences. To fulfil this objective, chief prosecutors establish specialised working groups within the office and develop uniform criteria, guidelines and an adequate exchange on information and professional experience between public prosecutors; (iii) the efficient direction of investigative police and the efficient use of economic and technological resources.
15. As stressed above, the 2006 reform enhanced the hierarchical structure of prosecutorial offices and the chief prosecutors' role, both in terms of organisational functions, assignment of cases and relations with the magistrates within the office. The CSM might intervene when a conflict between chief prosecutors and public prosecutors arises or when assessing the managerial expertise of the head of the office, after the first four-year mandate.
16. A Commission of Experts (*Commissione Scotti*), set up at the Ministry of Justice, has presented draft proposals in this respect: organisational programmes of prosecutorial offices would be sent to the CSM at the time of their adoption, or whenever changes are made. The CSM expressed its remarks in a Resolution of 13 September 2016, which goes in the same

direction as the Commission draft proposals, supporting the adoption of organisational programmes, which are stricter than the current ones.

Ethical principles and rules of conduct

17. Prosecutors are subject to the same ethical rules already mentioned in respect of judges. Article 13 of the Code of Judicial Ethics is specifically addressed to prosecutors. In particular, prosecutors act with impartiality in the performance of their duties. They direct the investigation towards the pursuit of truth, by also gathering evidence that could be in favour of the suspect. They do not hide from the judge the existence of facts that could be in favour of the suspect or the defendant. They refrain from issuing statements personally concerning parties to the proceedings, witnesses or third parties, which are not relevant to the decision on the case; they abstain from expressing any criticism or appreciation of the professionalism of judges or defence lawyers. They participate actively in coordination initiatives and ensure a proper promotion thereof. They do not ask judges to disclose in advance their decisions, nor do they disclose to judges, in an informal way, any information on facts concerning on-going proceedings.

Conflicts of interest

Recusal and routine withdrawal

18. Prosecutors cannot be recused. Pursuant to Article 52 of the Code of Criminal Procedure, public prosecutors have the faculty to withdraw from the case when serious reasons of opportunity arise. The declaration of abstention is submitted to the chief prosecutor who appoints a substitute when the abstention is accepted. Substitution is mandatory if the prosecutor has interest in the proceeding or if one of the private parties is a debtor or creditor towards him/her, his/her spouse or his/her children; if s/he is tutor or employer of one of the parties in the proceeding or his/her spouse or close relative is a party's defendant or tutor or employer; serious enmity occurs between the prosecutor or his/her close relatives and one of the private parties in the proceedings; and the prosecutor's spouse or close relative is a victim or is damaged by the criminal offence or is a private party (Article 36, letters a), b), d) and e), CPC). The Italian legal framework does not provide recusal in respect of prosecutors as it could be misused as a means for hindering and slowing the investigations. In effect, prosecutors are obliged to disclose every potential conflict of interest, as they are to perform their functions according to the principles of independence and impartiality. Failure to declare an interest in a case and, consequently, to withdraw, is a disciplinary offence.

Prohibition or restriction of certain activities, post-employment

19. As a general rule, judges and prosecutors cannot hold another public office or perform other jobs or activities. For specific details, see above.

Gifts

See above.

Misuse of confidential information and third party contacts

20. The disclosure of confidential information may give rise to criminal or/and disciplinary action, for details see above.

Declaration of assets, income, liabilities and interests

21. As for judges, prosecutors are to file financial reports. See above for details.

Supervision and enforcement

22. According to Article 6 of Legislative Decree No. 106/2006, General Prosecutors at the Courts of Appeal exercise supervisory powers over the activity of district prosecution offices. To fulfil this task they collect data and information aimed at verifying: a) the uniformity, effectiveness and swiftness of the prosecutorial action; b) the respect for the principles of a fair trial; c) the correct exercise by chief public prosecutors of organisational, supervisory and control powers over the office. At least once a year, prosecutors at the Courts of Appeal send a report to the General Prosecutor at the Court of Cassation. Furthermore, the General Prosecutor at the Court of Cassation can exercise control over the activity of chief prosecutors, avoid and prevent conflicts between prosecution offices and guarantee respect for the principles of a fair and equitable trial.

Advice, training and awareness

23. Prosecutors follow the training sessions organised by the High Judicial School, as already explained in respect of judges.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

See above

32. Technical Assistance

The following questions on technical assistance relate to the article under review in its entirety.

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:

(NO) No assistance would be required

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

12. Private sector

33. Paragraphs 1 and 2 of article 12

1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.

2. Measures to achieve these ends may include, inter alia:

- (a) Promoting cooperation between law enforcement agencies and relevant private entities;
- (b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;
- (c) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;
- (d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities;
- (e) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;
- (f) Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.

Is your country in compliance with these provisions?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with these provisions of the Convention.

“1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.”

Law no. 190/2012 has strengthened the act of combating corruption in the private sector, both through some changes to the crime provided by the Civil Code (Article 2635), and by introducing this crime among those that may lead to the administrative liability of legal persons (ex Legislative Decree no. 231/2001).

Recently, also Legislative Decree no. 38/2017 - Implementation of Framework Decision 2003/568/GAI adopted by the Council of the European Union on this matter - operated in the same direction. In particular, it has further expanded the range of punishable persons and conducts, it introduced ancillary penalties in the presence of certain conditions, and raised monetary sanctions and introduced interdiction sanctions with reference to the liability of legal persons.

“2. Measures to achieve these ends may include, inter alia: (a) Promoting

cooperation between law enforcement agencies and relevant private entities.”

There are instruments, equivalent to the Anglo-Saxon soft law, aimed at the spread of ethical and preventive behaviors, such as Protocols of Legality. These Protocols are useful tools to counteract the phenomenon of mafia infiltration. It is therefore a matter of voluntary agreements between the Prefecture, or other Public Security Authorities, and economic entities (including private ones) involved in the management of public works.

For example, on the 10th of May 2010, Confindustria and the Ministry of the Interior signed the Legality Protocol to promote the spread of the culture of respecting rules in economic activities. Businesses who decide to join the Protocol undergo anti-mafia checks and are committed to make a responsible selection of their suppliers. In recent months, both parties are confronting each other to introduce some changes and make the implementation of the Protocol easier and more effective.

(This last point must also be taken into account in relation to the measures required by Article 12, under (c)).

“b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;”

1. In this regard, and more generally in regard of all the measures required by art. 12, should be highlighted the Legislative Decree No. 231/2001 that introduced into the Italian legislation the concept of administrative liability of legal entities, companies and associations, including those without legal personality. Such liability - similar to criminal liability - involves serious sanctions against the company and arises from the perpetration of one of the Crimes/Administrative Offences specifically set forth in the Decree by a person who has a working relationship with the company. Specifically, according to the Decree, a company is responsible for Crimes/Administrative Offences (private corruption as well) committed in its interest or to its advantage by the company's executives or subordinates. The only defence for the body is to adopt an organizational Model which includes identification of the activities in the context of which crimes like corruption may be committed and the evaluation of existing control instruments and procedures aimed at programming the development and implementation of the decisions of the Company in relation to the Crimes/Administrative Offences to be prevented.

In February 2016, the Ministry of Justice set up an inter-ministerial study Commission to propose amendments to Legislative Decree no. 231/2001. Confindustria is a member of the Commission and has highlighted the need to introduce some changes with the following main objectives: to reduce the repressive approach of the discipline and enhance its collaborative logic; to provide more accurate indications on the essential contents of the

organizational models; to strengthen the position of companies at a procedural level. It is important to complete the work of the Commission and to initiate the legislative reform process for this discipline.

(This last point must also be taken into account in relation to all the measures required by Article 12).

2. It is necessary to highlight the contribution of the guidelines issued by the Associations of the main category pursuant to art. 6, paragraph 3, Legislative Decree 231/2001. In 2001, Confindustria published the Guidelines to support companies that intend to build the organizational model 231. Subsequently, this text was updated to new legislation, jurisprudential practices and new best practices (such as the management systems of the so-called whistleblowing). The latest revision was carried out in 2014 and work is underway for a further update which will also take into account the regulatory innovations regarding corruption offenses.
3. Based on the results of the "Investigation Model 231 and Anti-Corruption Survey" (see paragraph 3 below), Confindustria will set up a vademecum for less structured businesses containing some practical and simplified guidance to introduce effective measures to prevent offences. This initiative follows the activities of the B20 Anti-corruption Task Force Working Group which presented the international version of the so-called Anti-corruption Toolkit addressed to SMEs in 2015.
4. With the aim of promoting the proper functioning of the market, Confindustria has adopted the Code of Ethics and Associative Values which also commits the associated companies to assume behaviors which are respectful of fundamental principles such as legality, accountability and transparency both in association relations and business conduct.
5. In this context, other initiatives promoted by Confindustria are included, such as the Antitrust Compliance Guidelines for businesses and business Associations and the Responsible Payment Code.

With the former, Confindustria intended to contribute to the development of a competitive culture, where anti-competitive behaviors are considered socially repressive. With the latter, Confindustria recalls companies to the fundamental commitment to spreading efficient payment practices. In fact, punctual contractual times and punctual payments, generate benefits for suppliers on one hand and strengthen reputation and, consequently, competitiveness on national and international markets on the other.

(This last point must also be taken into account in relation to the measures required by Article 12 under d), e) ed f)).

6. In order to encourage companies to adopt responsible behaviors, Confindustria also carries out intense awareness-raising activities and advises companies that adopting organizational models and standards of high legality is important both to prevent offenses and to improve the efficiency of corporate governance. In addition, Confindustria promotes initiatives aimed at enhancing the commitment of companies that voluntarily adopt these

reinforced security measures (i.e. Legality Protocol; legality rating).

7. In December 2016 Legislative Decree no. 254/2016 - that adopts Directive 2014/95/EU and contributes to improving the transparency of information on business activities - was approved. In particular, the Decree obliges some large public interest entities to also report on some non-financial information, including anti-corruption measures.

(This last point must also be taken into account in relation to the measures required by Article 12 under c)).

(c) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;

1. From this perspective, the reference is at the anti-money laundering legislation, recently revised by Legislative Decree no. 90 of 25 May 2017 on the implementation of Directive (EU) 2015/849 on the prevention of the use of the financial system for the purpose of money laundering and the financing of terrorism and amending Directives 2005/60 / EC and 2006/70 / EC and implementing Regulation (EU) No. 2015/847 concerning the information that accompany the transfers of funds and repealing Regulation (EC) No. 1781/2006. This measure, published in G.U. n. 140 of 19 June 2017 and entered into force on the following July 4, has carried out several interventions on anti-money laundering, among which are evidenced by relevance to the provisions of art. 12 UNCAC:
 - the introduction, in the Registry of Companies, of the Register of Actual Owners of Legal Persons and Trust, with a view to greater transparency within the Entities;

- the strengthening of the powers attributed to the UIF

2. Italy has a number of anti-mafia laws aimed at repressing the phenomenon of criminal infiltrations in economic activity. The following are noteworthy:

DECREE OF THE MINISTRY OF INTERIOR 21 March 2017 - Identification of the procedures for the monitoring of infrastructure and priority settlements for the prevention and repression of attempts for mafia infiltration and the establishment, at the Ministry of the Interior, of a dedicated Coordination Committee.

LAW 6 August 2015, n. 121 - Modification of the Code of Anti-Mafia Law and Prevention Measures, provides by Legislative Decree 6 September 2011, no. 159, concerning subjects subjected to anti-mafia verification.

LEGISLATIVE DECREE 13 OCTOBER 2014, n. 153 - Additional Supplementary and Corrective Provisions to Legislative Decree 6 September 2011, no. 159, containing code of anti-mafia laws and prevention measures, as well as new provisions on anti-mafia documentation, pursuant to articles 1 and 2 of Law no. 136.

DECREE OF THE PRESIDENT OF THE MINISTERS COUNCIL 18 April 2013 - Establishment and updating of the list of suppliers, service providers and

executives of non-mafia-based attempts to infiltrate the most exposed sectors.

LEGISLATIVE DECREE 6 September 2011, no. 159 - Code of Anti-Mafia Law and Prevention Measures, as well as new anti-mafia documentation provisions, pursuant to Articles 1 and 2 of Law no. 136.

3. Is also relevant the legality rating instrument, introduced by Legislative Decree no. 1/2012 (Article 5-ter) and subsequently refined by Decree MEF-MISE on 20 February 2014 n. 57. Managed by AGCM, it facilitates access to the credit from banks and public funding to virtuous companies. By way of example, in order to obtain the minimum score, the company must declare (as far as this section is concerned) that the contractor and other relevant parties (technical director, general manager, legal representative, directors, associates) are not recipients of precautionary measures/convictions/criminal convictions, convictions for a series of offenses, and that the enterprise is not recipient of any interdiction anti-mafia information or information being valid. In addition, it necessary to declare that the company is not been under “commissariat” (by D.L. n.90 / 2014 subsequently converted into law). The company itself must not be the subject of convictions or precautionary measures for administrative offenses, depending on the offenses referred to in Legislative Decree no. 231/2001. The enterprise must also declare that makes payments and financial transactions, of the amount to more than one thousand Euros, solely with traceable instruments. The regulation provides for additional requirements that, if respected, give to the businesses a maximum score of 3 stars. These include the following:
- respect of the Protocol of Legality signed by the Ministry of the Interior and Confindustria;
 - adopt an organizational structure that supervises the compliance of company activities with applicable regulatory requirements for the enterprise or an organizational model under Legislative Decree no. 231/2001;
 - adopt processes to ensure forms of Corporate Social Responsibility;
 - have adhered to ethical codes of self-regulation adopted by the trade associations;
that it has adopted organizational models of prevention and the fight against corruption.

“(d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities;

“(e) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;”

1. Under both of these profiles it is appropriate to refer to the provisions of Law 190/2012 and also to the new Public Procurement Code of Legislative Decree no. 50/2016.
2. Under both of these profiles is to be highlighted the action of the Italian Anti-Corruption Authority (A.N.AC.). In addition to the specific competences in public contracts, the Authority intervenes in a broad spectrum of anti-corruption issues, providing regulatory acts and law interpretations also for the private sector.

Among the various initiatives for the corruption prevention also in the private sector, it is noteworthy the memorandum signed since 2009 by A.N.AC with several Italian Prosecutor's office, aimed at greater efficiency in the investigation and repression of the illegal or illicit use of public funds. The A.N.AC. also deals with issues of conflict of interest.

(This last point must also be taken into account in relation to the measures required by Article 12 under a)).

(f) Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.

In this regard, is to be highlighted the accounting control and statutory audit framework. The last update on this topic is represented by Legislative Decree no. 135 of July 17, 2016 in "*Implementation of the amending Directive 2014/56 / EU amending Directive 2006/43 / EC on the statutory audit of annual accounts and consolidated accounts*", published on 21 July 2016 on Official Gazette no. 169. The Law entered into force on 5 August 2016, except as detailed in the transitional rules.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

At the beginning of 2017, Confindustria conducted a quantitative survey with a small group of associated companies to verify the effective spread of organizational models 231 and anti-corruption measures.

Among the interesting aspects, it appears that 36% of the 45 companies interviewed adopted the model and that the other companies were primarily discouraged by the complexity of legislation, excessive organizational burdens and uncertainty with regards to the judges' evaluation of suitability of the model. However, ¾ of the companies without the model are willing to adopt it.

Within the companies that have the organizational model, 87% adopt a whistleblowing regulation system.

With particular reference to the spread of corruption in Italy, it emerges that 67% of the companies interviewed perceive a high level of risk. However, only 35%

adopt appropriate behavioral rules for public relations or procedures to handle activities that have a greater risk of corruption. In any case, all major companies adopt specific anti-corruption policies.

Eni Anti-Corruption Compliance Program

In line with the principle of “zero tolerance” expressed in the Code of Ethics, Eni since 2009 has implemented a comprehensive system of rules and controls to prevent corruption-related crimes (the Anti-Corruption Compliance Program).

The Anti-Corruption Compliance Program is characterized by its dynamism and constant attention to evolving national and international legislation and best practice. It was developed in accordance with the applicable anti-corruption legislation and with international conventions, including the United Nations Convention Against Corruption, the US Foreign Corrupt Practices Act and the UK Bribery Act.

The Anti-Corruption Compliance Program was first introduced in 2009 following the approval by the Board of Directors of the Eni of the Anti-Corruption Guidelines and issue of the relative subsidiary procedures.

To ensure that its Anti-Corruption Compliance Program is effective, in 2010 Eni created a dedicated organizational unit that is charged with providing specialist anti-corruption assistance to Eni and its unlisted subsidiaries in Italy and abroad.

On December 15, 2011, Eni updated its compliance program (already “US Foreign Corrupt Practices Act compliant”), approving, by resolution of the Board of Directors, the first version of the Anti-Corruption MSG, with the objective of prohibiting any form of active or passive corruption, not only involving public officials, but also private parties. The MSG - which is binding for Eni SpA and all of its unlisted subsidiaries - provides a systematic framework of the anti-corruption legal instruments adopted by Eni to regulate the areas at risk for corruption.

In order to continuously improve the compliance program, a number of changes to the Anti- Corruption MSG were approved by the Board of Directors, on October 29, 2014.

Eni also does all it can to ensure that the company and the entities in which Eni has a non controlling interest comply with the standards set out in its internal anti-corruption rules, adopting and maintaining an adequate internal control system that complies with the requirements of anti-corruption legislation.

Following the Board decision of July 28, 2016, a new Integrated Compliance Department was formed that reports directly to the CEO of Eni SpA, effective since September 12, 2016. It is tasked with ensuring the separation of legal compliance activities from those relating to legally defending the company. The Department also contains the Anti-Corruption Compliance unit (“ACC”).

The ACC provide specialist anti-corruption assistance in relation to the activities of Eni SpA and its unlisted subsidiaries, including, among other things:

(i) constant monitoring of regulations and case law; (ii) the updating of anti-corruption instruments; (iii) activity relating to anti-corruption communication and training program for Eni personnel; (iv) support during reliability checks on

partners, support in the management of any problems/red flags discovered and the processing of the relevant contractual requirements in areas at risk of corruption; (v) maintaining an adequate flow of information to the Eni control bodies by drafting a semi-annual report on activities that is submitted to the Watch Structure, the Board of Statutory Auditors, the Control and Risk Committee and the Chief Financial Officer of Eni SpA. In carrying out these activities the ACC uses a software application to electronically manage certain anti-corruption processes and draws on special databanks to accurately verify the anticorruption due diligence performed with potential Eni counterparties.

The Anti-Corruption MSG provides that the manager responsible for performing due diligence must report the results of the anti-corruption due diligence, including any comments by the ACC, to the person or body that authorizes the associated transaction, including the Board of Directors.

The anti-corruption training program for Eni was provided through both e-learning tools and classroom training events (workshops). These workshops are conducted by the ACC in areas judged to be at high risk for corruption based on Transparency International's Corruption Perception Index and on Eni's presence in each given area. The workshops involve discussion of practical examples and analysis of recent case law to offer a general overview of the anti-corruption laws applicable to Eni, the risks posed to persons and entities if they are violated, and the Anti-Corruption Compliance Program that Eni has adopted and implemented to counter these risks.

Eni's experience in anti-corruption issues evolves also through ongoing participation in international conferences and national and international working groups that represent, for Eni, an instrument for growth and for promoting and disseminating its values.

To name only a few examples, Eni has undertaken the following relevant working groups: PACI, B20, the UN Global Compact, the Global Compact Network Italia Foundation, the ABC Benchmarking Group (Steptoe & Johnson LLP) and the OECD.

Finally, on January 10, 2017, Eni SpA successfully completed the verification process carried out by a leading certification company in Italy of its Anti-Corruption Compliance Program to evaluate whether the program meets the requirements of ISO 37001:2016 "Antibribery Management Systems", the first international standard for anti-corruption management systems. The certifier conducted a two-stage audit to verify the appropriateness of the design of Eni's Anti-Corruption Compliance Program through examination of documentation and on-site checks and interviews to assess how it has been implemented. Eni SpA is the first Italian company to have received this certification.

For other information you can consult the site:

link: https://www.eni.com/en_IT/company/governance/the-internal-control-and-risk-management-system.page

Transparency International Business Integrity Forum and PMI Integrity Kit

The Business Integrity Forum (BIF), is a group of Italian corporate supporters <<http://www.transparency.org.uk/get-involved/business-integrity-forum/list-of-members/>> committed to the fight against corruption.

Joining the BIF allows companies to:

- Demonstrate commitment and leadership within their industry;
- Reinforce anti-corruption messaging to staff;
- Learn from TI experts and colleagues in other companies on trends in corruption and ABC best practice;
- Gain insight into TI's policy positions and submissions to government.

In this context, TI-IT hold bi-annual anti-corruption conferences, with experts from in-house compliance, legal, risk and external/public relations professionals in attendance. In addition to these meetings, TI-IT organises regular roundtables on current anti-corruption developments to keep members up-to-date on the latest thinking.

TI-IT regularly invites BIF members to help inform our view of anti-corruption best practice and our advocacy on related policy areas by joining working groups and advisory committees.

To achieve a better level of enforcement of anti-corruption legislation even in relation to small and medium enterprises, TI-IT have developed the PMI integrity kit, which brings together the tools to increase the integrity level of SMEs and that it is recently been updated with a new tool that will complement the whistleblowing guidelines.

For other information you can consult the site:

link: <<http://businessintegrity.transparency.it/>>

34. Paragraph 3 of article 12

3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:

- (a) The establishment of off-the-books accounts;
- (b) The making of off-the-books or inadequately identified transactions;
- (c) The recording of non-existent expenditure;
- (d) The entry of liabilities with incorrect identification of their objects;
- (e) The use of false documents;
- (f) The intentional destruction of bookkeeping documents earlier than foreseen by the law.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

In Italy, the conducts listed in art. 12, para 3 of the Convention are considered to be criminal conducts and are punished according to the following provisions.

Selected provisions from the Civil Code (Royal Decree no. 262, 16 March 1942):

TITLE XI: Criminal Law Provisions into the matter of companies, cooperatives and other private entities
Chapter I

Article 2621 of the Civil Code

False corporate reporting

Without prejudice to article 2622, directors, managing directors, managers in charge of drafting corporate accounting records, auditors and liquidators who, with a view to gaining undue profit for themselves or others, knowingly represent material facts not corresponding to the truth in balance sheets, reports or other corporate reports provided for by law and intended for shareholders or the public, or omit information therein whose dissemination is prescribed by law in respect of the economic, property or financial situation of the company or the group the said company belongs to, in such a way as to actually lead the receivers into error in relation to the said situation, shall be punished by a term of imprisonment from one to five years.

The punishment shall also apply in case of information regarding assets held or administered by the company on third parties' behalf.

Article 2621-bis (minor offences)

If the facts specified in article 2621 amount to a minor offence, taking into account the nature and the size of the company and the form of the conduct or the effects thereof, the punishment from six months to three years' imprisonment shall apply, unless they constitute a more serious offence.

Unless the facts constitute a more serious offence, the same punishment as the one provided for in the previous paragraph shall apply if the facts specified in article 2621 concern companies not exceeding the limits specified by the second paragraph of article 1 of Royal Decree no. 267 of 16 March 1942. In this case, the offence is prosecutable upon the complaint filed by the company, the shareholders or the other receivers of the corporate reporting.

Article 2621-ter (non punishability for particularly irrelevant facts)

For the purposes of non-punishability for particularly irrelevant facts pursuant to article 131-bis of the criminal code, the judge shall mainly assess the extent of the damage, if any, caused to the company, the shareholders or the creditors as a consequence of the facts indicated in articles 2621 and 2621-bis.

Article 2622 of the Civil Code

False corporate recording of listed companies

Directors, managing directors, managers in charge of drafting corporate accounting records, auditors and liquidators of companies issuing financial instruments admitted to trading on the Italian or on any other EU country regulated market who, with a view to gaining undue profit for themselves or others, knowingly represent material facts not corresponding to the truth in the balance sheets, reports or other corporate reports provided for by law and intended for shareholders or the public, or else omit information therein prescribed by the law in respect of the economic, property or financial situation related to the company or the group the said company belongs to, in such a way as to actually lead the receivers into error in respect of said situation, and thereby produce detrimental effects to shareholders' or creditors' assets and liabilities, shall be punished by imprisonment from three to eight years.

The following companies shall be equated to the companies described in the previous paragraph:

- 1) the companies issuing financial instruments for which an application for the admission to trading on the Italian or any other EU country regulated market has been submitted;
- 2) the companies issuing financial instruments admitted to trading on an Italian multilateral trading facility;
- 3) the companies controlling companies issuing financial instruments admitted to trading on the Italian or any other EU country regulated market;
- 4) the companies which call upon publicly raised capital or that anyhow manage it.

The law provisions specified in the previous paragraph shall apply even if the falsities or omissions concern assets in the possession of or administered by the

company on behalf of third parties.

Legislative Decree 10 March 2000, n. 74

New regulation of the offences on income and added value taxes, under Article 9 of Law 25 June 1999, n. 205.

Article 2

Fraudulent statement with the use of invoices or other documents for inexistent operations

1. Anyone who, in view of evading income and added values taxes, having recourse to invoices or other documents for inexistent operations, indicates in one of the statements ((...)) related to these taxes fictitious liabilities, shall be punished with a term of imprisonment from one year and six months to six years.
2. The fact shall be considered as committed for invoices or other documents for inexistent operations when these invoices or documents are entered in the obligatory accounting records or are kept to be used as evidence vis-à-vis financial administration.
3. Paragraph repealed by Legislative Decree 2011, n. 138, turned into Law with amendments by Law 14 September 2011, n. 148. (4)

Article 6

Attempt

1. The offences provided for by Articles 2, 3 and 4 shall not be punishable as an attempt.

Article 8

Issue of invoices or other documents for inexistent operations

1. Anyone who in view of allowing third persons to evade income or added value taxes, issues or delivers invoices or other documents for inexistent operations shall be punished with a term of imprisonment from one year and six months to six years.
2. For the purposes of the application of the provision under paragraph 1, the issue or delivery of several invoices or documents for inexistent operations during the same tax year shall be considered as one single offence.
4. ((Paragraph repealed by Legislative Decree 2011, n. 138, turned into Law by Law 14 September 2011, n. 148.))

Article 10

Dissimulation or destruction of accounting records

1. Unless the fact constitutes a more serious offence, anyone who in order to evade income or added value taxes, or to allow third persons to evade taxes, dissimulates or destroys in full or in part the accounting records or the documents whose keeping is compulsory so as to not allowing the reconstruction of the incomes or the turnover shall be punished with a term of imprisonment ((from one year and six months to six years)).

Article 12

Collateral penalties

1. The conviction for one of the offences provided for the present decree shall involve:
 - a) Disqualification from holding executive offices in legal persons or companies for a period of not less than six months and not more than three years;
 - b) Incapacity to negotiate with public administration for a period of not less than one year and not more than three years;
 - c) Disqualification from holding representation and assistance offices in tax matters for a period of not less than one year and not more than five years;
 - d) Permanent disqualification from holding the office of member of a *Commissione Tributaria* [In the Italian Legal system it is a court having jurisdiction in the field of taxes].
 - e) Publication of the judgment under Article 36 of the Criminal Code.
2. The conviction for one of the offences provided for by Articles 2, 3 and 8 shall also involve disqualification from holding public offices for a period of not less than one year and not more than three years, except in the presence of the circumstances provided for by Article 2, paragraph 3 and 8, paragraph 3.
((2-bis. For the offences provided for by Articles from 2 to 10 of the present decree the institution of probation under Article 163 of the criminal code shall not apply to the cases where the following conditions are jointly met: a) the amount of the evaded tax is higher than 30 percent of the turnover; b) the amount of the evaded tax is higher than three million euros)). ((4))

35. Paragraph 4 of article 12

4. Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct.

Is your country in compliance with this provision?

(Y) Yes

36. Technical Assistance

The following questions on technical assistance relate to the article under review in its entirety.

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:

(NO) No assistance would be required

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

13. Participation of society

37. Paragraph 1 of article 13

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

- (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;
- (b) Ensuring that the public has effective access to information
- (c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;
- (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:
 - (i) For respect of the rights or reputations of others;
 - (ii) For the protection of national security or ordre public or of public health or morals.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

In June 2016, the Government introduced a major innovation in the field of transparency by approving legislation based on the Freedom of Information Act. For the first time in Italy, citizens are granted the right to access public data and documents without having to prove a subjective interest, as it is the case in the most advanced democracies. This is a major innovation strongly encouraged by the Government with the active involvement of all civil society associations and representatives dealing with this topic.

On the wake of these innovations, we decided to strongly relaunch Italy's commitment within the Open Government Partnership and stand among the leading countries in the field of transparency, digital citizenship and participation. To draft the third Italian action plan we set up the first National Open Government Forum which liaised with the panel of central and local entities. The Forum has seen the participation of over 50 organizations from the world of associations, universities, research centers, consumers' and professional associations that worked actively with public administration in proposing and drafting the actions included in the Plan. The cooperation with civil society provided suggestions and tangible proposals on many issues, namely: the implementation of FOIA, the involvement of civil society in the SPID project, an increased publication and use of public data, cooperation between start-ups and public entities, the role of young people at the forefront of innovation processes. The Open Government Partnership (OGP) is a multilateral initiative promoted by Governments and civil society for the adoption of public policies relying on the principles of transparency, participation, anti-corruption, accountability and

innovation in the public sector. The third action plan is for our country a step forward in our commitment towards achieving these objectives in the period 2016-2018.

The document was drafted with the involvement of representatives of civil society, gathered in the newly established Open Government Forum, open to all organizations engaged in open government issues. The plan was drawn up by the Department for Public Administration on the basis of proposals made by the relevant public institutions that, when designing actions, took into account, where possible, the priorities suggested by the civil society organizations consulted.

As a result of the adoption of the Freedom of Information Act (FOIA), under the reform of public administration, we will work to enact the right to civic access and monitor its implementation, since we want to understand how to further strengthen it in the future.

In the past few years, Italy implemented major transparency projects such as Soldipubblici, OpenCoesione, ItaliaSicura and Opencantieri: with our third action plan we will ensure the continuity of these projects, we will strength them, develop additional initiatives on transparency of public investment, on the ultra broad band, on spending for international cooperation, education, the penitentiary system and the very important transport sector.

These commitments are aimed at promoting transparency as a tool of civic participation and monitoring but also at improving the quality of services delivered to citizens. This is a major innovation: for the first time, the action plan contains the commitments of entities other than central ones. This makes the plan a country-wide initiative, ensuring that open government is recognized and perceived by citizens at local level too. Regional and municipal entities will be involved in major corruption prevention projects and digital rights protection actions, in addition to participation initiatives. Digitalizing public administration means ensuring a more effective use of services through the enhancement of SPID, the public system of digital identity which allows citizens to use the same credentials to access services provided by all public entities and, for the future, also those delivered by private companies.

Moreover, in parallel with the actions aimed at promoting the culture of open administration among public employees and citizens, a single access point to services delivered by public administration - "Italia.it" - will be implemented.

The actions of the plan are described in detail, in line with OGP standards and are grouped in three areas:

1. Transparency and open data
2. Participation and accountability
3. Digital citizenship and innovation

Each action contains information on the lead implementing administration and the other PAs involved, the goals, the specific commitments, the implementation timeframe and the OGP values promoted.

As a recognition of the validity of these commitments at national and international level, on March 2017 Italy was elected as a member of the OGP Steering Committee together with Canada, South Africa and South Korea. The newly elected members will join the other members of the executive body,

chaired by France, over the next three years.

38. Paragraph 2 of article 13

2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.

Is your country in compliance with this provision?

(Y) Yes

See under paragraph 1

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

See under paragraph 1

39. Technical Assistance

The following questions on technical assistance relate to the article under review in its entirety.

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:

(NO) No assistance would be required

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

14. Measures to prevent money-laundering

40. Subparagraph 1 (a) of article 14

1. Each State Party shall:

(a) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transactions;

Is your country in compliance with this provision?

(Y) Yes

As lately confirmed by the FATF in its 2016 Mutual Evaluation, Italy has a mature and sophisticated AML regime, and a well-developed legal and institutional framework, set forth in the Legislative Decree 231/2007, better known as the "Italian AML Law". . Italy recently criminalized self-laundering as well (article 648 ter 1 of CC - law of December 15, 2014, entered into force on January 1, 2015). Directive (EU) 2015/849 of 20 May 2015 - on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing - has been enacted by means of national Legislative Decree (primary law) n. 90/2017 of 25 May 2017, which entered into force as from 04 of July 2017. In parallel, L.D. n. 90/2017 amended our national AML Law (L.D. 231/2007), in accordance with the leading criteria set forth by a preliminary Act (primary law/enabling Act) approved by the Parliament on September 2016 (Law n. 170/2016).

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Italy is developing concretely a AML/CFT national policy informed by its 2014 national risk assessment ("NRA"). A great variety of information come from solid grounds such as: the activities of reporting entities, the indicators and typologies developed by the FIU, the trends and information provided by the judiciary and LEAs, and reports issued by academics and regional and international organizations. The NRA analyses ML/TF threats and vulnerabilities at the national level on the basis of an agreed upon methodology, that covers mostly the range of issues addressed in the FATF guidance on conducting national ML/TF risk assessments.

The main ministries, agencies, and authorities responsible for AML/CFT are:

Ministry of Finance and Economy (MEF)-is responsible for policies to prevent the use of the financial system and of the economy for the purpose of ML/TF. It houses and chairs the Financial Security Committee (FSC), which comprises key competent authorities and is tasked with coordinating action for the prevention of the use of the financial system and of the economy for ML/TF purposes, and the financing of proliferation of weapons of mass destruction (PF). The MEF also has the power to levy AML/CFT administrative sanctions. **Interior Ministry**-is responsible for the public order and general security policies. It coordinates the five national police forces to this effect. Preventive activities against ML and TF by the *Polizia di Stato* are conducted under the authority of the ministry.

Ministry of Justice-deals with the organisation of justice/courts and some administrative tasks such as the management of notarial archives and of the judicial records register, monitoring of chartered professions. It also plays a role in international cooperation. The Legislative Office carries out studies and develops proposals for legislative action.

Bank of Italy (BoI)-is responsible for the supervision of banks, e-money institutions, payment institutions, Bancoposta, financial intermediaries, and *Cassa Depositi e Prestiti SPA*. The BoI also undertakes the supervision of investment firms, asset management companies and *Società di Investimento a Capitale Variabile* (SICAV) jointly with CONSOB. Under the SSM, the ECB is responsible for the supervision of significant banks, i.e. the 13 largest banking groups in Italy. The BoI is responsible for the prudential supervision of the remaining banks and the AML/CFT supervision of all banks.

National Commission for Companies and the Stock Exchange (CONSOB)-is the public authority responsible for regulating the Italian financial markets. Its activity is aimed at the protection of the investing public. The CONSOB is the competent authority for ensuring (i) transparency and correct behaviour by financial market participants; (ii) disclosure of complete and accurate information to the investing public by listed companies; (iii) accuracy of the facts represented in prospectuses related to offerings of transferable securities to the investing public; and (iv) compliance with regulations by auditors entered in the Special Register. It also investigates potential infringements of insider dealing and market manipulation law.

Institute for Insurance Supervision (IVASS)-is the supervisor of insurance and reinsurance undertakings as well as all the other bodies subject to the regulations on private insurance, insurance agents and brokers included. It is responsible for ensuring the stability of the insurance market and undertakings, as well as the solvency and efficiency of market participants in the interests of policyholders and consumers.

Unità di Informazione Finanziaria-Financial information unit (UIF-FIU)-is an administrative FIU established within BoI. It has been operational since 2008 (in continuity with the functions performed from 1997 by the former FIU, the Ufficio Italiano dei Cambi) and acts as the national structure in charge of receiving information on suspected money laundering, terrorist financing or associated predicate offences, analysing it and disseminating the results of that analysis to the competent authorities. The UIF performs its functions in complete operational autonomy and independence. For a detailed description of institutional features and functions of the UIF please also refer to answers to questions under art. 58

Guardia di Finanza (GdF)-is a body with military status placed under the direct authority of the MEF. It is responsible for dealing with financial crime, corruption, tax evasion and avoidance, as well as smuggling. It also has AML/CFT supervisory responsibilities regarding *bureaux de change*, payment institutions' agents and DNFBPs.

Carabinieri-is a military corps with police duties which also serves as the Italian military police. Its Specialised Operational Group (R.O.S.) was created to coordinate investigations into organised crime, and it is the main investigative arm of the *Carabinieri* which deals with organised crime and terrorism, both at national and international levels.

Anti-Mafia Investigation Department (DIA)-is entrusted in particular with fighting specific Mafia-type organisations. It is a special inter-force investigative body staffed with personnel from the State Police, *Carabinieri* and GdF with experience in financial investigations and organised crime investigations. The DIA is vested with special investigative powers to fight organised crime.

The National Antimafia and Counter-Terrorism Directorate (DNA) -is the judicial coordinating body which enforces the anti-mafia legislation and now also the counter of terrorism. It comprises the National Anti-Mafia and Counterterrorism Prosecutor (*Procuratore Nazionale Antimafia e Antiterrorismo*), 2 deputy prosecutors and 20 prosecutors assistant. The DNA has at its disposal the DIA and the special police offices and gives directives to regulate their use for investigative purposes.

Other agencies that play a role in AML/CFT include the **National Anti-Corruption Agency (ANAC)**, **Ministry of Foreign Affairs and International Cooperation**, **Inland Revenue Agency (Agenzia delle Entrate)**, **Customs Agency**, **Ministry of Economic Development (MISE)**, and the **Ministry of Labor**.

Comitato di Sicurezza Finanziaria - Financial Security Committee (CSF- FSC), under the auspices of the MEF, is the key vehicle for the coordination of national AML/CFT

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

IMF conducted the on-site visit in Italy in 14th-30th January 2015 in order to analyze the level of compliance with FATF 40 Recommendations and the level of effectiveness of Italy's AML/CFT system and provides recommendations on how the system could be strengthened.

In February 2016 Mutual Evaluation Report (MER) about Italy's AML/CFT was published. The previous MER was conducted in 2005.

MER February 2016:

<http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Italy-2016.pdf>

In this document you can find in Annexes III, IV, V some charts that show the seizure and confiscation related to anti-mafia measures and to GdF investigations. At page 39, you can find some charts including the number of STRs between 2009-2014 and at page 42 other statistical information.

From pages 20-24 and page 33 of the "Annual Report to Parliament about 2015 Italy AML/CFT"

you can find the number of STRs between 2011-2015 (FIU source)

http://www.dt.tesoro.it/export/sites/sitodt/modules/documenti_it/news/news/RELAZIONE_2015.pdf

From pages 50 to 61 of MER, you can find many charts with information about investigations, prosecutions, convictions and pages of 45; pages 56-57; pages 71; 73 "Annual Report to Parliament about 2015 Italy AML/CFT".

The main proceeds-generating crimes are (i) tax and excise evasion (around 75% of total proceeds); (ii) drug trafficking and loan sharking (around 15% of the total); and (iii) corruption, fraud, counterfeiting, environmental crime, robbery, smuggling extortion, and illegal gambling (around 10% of the total). Categories of crime (ii) and (iii) are most closely associated with the activities of organised crime, a historically pervasive problem in Italy.

ECB is responsible for the **supervision** of significant banks, which in effect are the 13 largest banking groups in Italy.

The **BoI (Bank of Italy)** is fully responsible for the prudential supervision of the remaining banks and the AML/CFT supervision of all banks as well as prudential and AML/CFT supervision of e-money institutions, payment institutions (PIs), Poste Italiane SPA, financial intermediaries, and Cassa Depositi e Prestiti SPA.

The BoI also undertakes the prudential as well as AML/CFT supervision of investment firms, asset management companies, stock brokers and Società di Investimento a Capitale Variabile (SICAV) whereas the **CONSOB** is responsible for market conduct supervision and also undertakes some AML/CFT supervisory activities with respect to capital market

licensees, on behalf of the BoI.

IVASS is responsible for the supervision of insurance entities while the **GdF** is responsible for the supervision of trust companies and bureaux de change.

The BoI can also delegate GdF (**Guardia di Finanza**) to carry out inspections at PIs (including the Italian branches of EU PIs), and non-bank financial intermediaries.

OAM is responsible for the supervision of loan brokers and finance agents and AML/CFT concrete monitoring of these entities rests with the GdF.

GdF is responsible for the AML/CFT supervision of a wide range of DNFBPs including:

(i) lawyers; (ii) accountants; (iii) notaries; (iv) casinos; (v) specified categories of persons engaged in manufacture, intermediation, and commerce including exporting and importing precious objects; (vi) trust and company service providers; and (vii) real estate agents. It shares responsibility for the supervision of chartered accountants, notaries, and lawyers with their respective professional associations. It is also the supervisor of a number of DNFBP sectors that fall outside of the scope of the standard.

CONSOB is responsible for the AML/CFT supervision of auditing firms PIE auditors.

The UIF is responsible for verifying compliance of all obliged entities with regard to the reporting of suspicious transactions. Off site and on sites controls are performed in this respect and the UIF is also empowered to acquire additional data and information from all reporting entities. The GdF's role as the primary supervisor of DNFBPs is integrated by professional associations which, under the provisions of the AML Law, have a responsibility to foster and verify their members' compliance with the law.

The AML Law gives all supervisory authorities the power to undertake off-site and on-site inspections of supervised persons (i.e. you can find some charts in pages 96-97). The law also sets out a range of sanctions that can be imposed by supervisors on covered persons for breaches of its requirements.

In 2016 the UIF received 101.065 reports, an increase of about 22,6 per cent more than in 2015 (see Table).

Reports received

	2011	2012	2013	2014	2015
Number of reports	49,075	67,047	64,601	71,758	82,428
<i>Percentage change year on year</i>	<i>31.5</i>	<i>36.6</i>	<i>-3.6</i>	<i>11.1</i>	<i>14.9</i>

This results confirm the increase in the number of reports received, highlighting a growing awareness of the role of active cooperation within the system for the prevention of money laundering and financing of terrorism, including in categories that were less aware in the past, such as professionals and non-financial operators.

Effective active cooperation benefits not only from timely communication but also from the quality and completeness of information. In order to improve the system, the UIF has been working on several fronts: since 2012 it has held meetings with the main reporting entities to discuss common irregularities and inefficiencies in reporting, and offers constant support in using the Infostat-UIF portal and filing reports. The main reporting entities from the 'Bank and Poste Italiane SpA' category have been monitored since 2014 in order to promote self-assessments (through comparisons with others in their reporting category) and to set up

initiatives to improve organizational safeguards and business processes. From 2015 bilateral contacts have been established with new reporting entities to refine techniques for assessing suspicious activity and thereby achieve more complete and effective reporting.

In 2016 the Unit analysed and transmitted 103.995 STRs to investigative bodies, an increase of about 22,9 per cent over 2015.

analysed by the UIF

	2011	2012	2013	2014	2015	2016
	30,596	60,078	92,415	75,857	84,627	103,995
<i>change on previous year</i>	<i>13.5%</i>	<i>96.4%</i>	<i>53.8%</i>	<i>-17.9%</i>	<i>11.6%</i>	<i>22,9%</i>

For more detailed information about the STRs process and the methodology used for the financial analysis see responses to questions under art. 58

41. Subparagraph 1 (b) of article 14

1. Each State Party shall:

...

(b) Without prejudice to article 46 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

Is your country in compliance with this provision?

(Y) Yes

Italy has designated the **Financial Security Committee (FSC)**, under the auspices of the MEF, as the key mechanism responsible for national AML/CFT policies. The FSC is chaired by the Director General of the Treasury Department and includes representatives of competent authorities.

Annual Report to Parliament on AML/CFT national activities.

UIF, financial sector supervisory authorities, competent authorities, GdF, DIA, Customs Agency are required to provide, by March 30 of each year, statistics and information on their respective activities over the previous calendar year as part of their supervisory and control functions. The comprehensive Report is sent from Ministry to the Parliament each year and it is published.

Detailed rules for the exchange of information and collaboration among the concerned agencies are established under article 12 of the “new AML Law”. These agencies are required to cooperate and coordinate, and Memoranda of Understanding (MOUs) are usually signed between them. The UIF signed MOUs with all the supervisory authorities. As regards the international cooperation (art.13), the UIF is empowered to exchange information and cooperate with analogous authorities of other states in relation to money laundering, associated predicate offences and terrorist financing. STR information is of course included in this scope and the range of information that UIF is able to provide to its foreign counterparts is as broad as that available for its domestic analytical purposes(see also responses provided under art. 58).

UIF exchanges information rapidly through the dedicated channels used by FIUs globally for their cooperation (namely, the Egmont Secure Web and the regional FIU.NET network). UIF’s capacity to cooperate includes both spontaneous and upon request exchanges and, based on art. 13, paragraph 1, of the new Italian AML law, is only subject to reciprocity and appropriate confidentiality safeguards by the counterparts.

UIF can co-operate freely with foreign counterparts, without any need for bilateral or multilateral agreements. At the same time, UIF can negotiate and sign directly (that is, with no need for third parties’ authorisations) memoranda of understanding with any foreign counterparts that need them to be able to co-operate. UIF has so far entered into 24 MoUs with a broad range of foreign counterparts. It is UIF’s policy to maintain and foster agreements with the widest range of foreign FIUs, regardless of their nature. For a more detailed description, see responses provided under art. 58.

The FSC is responsible for countering the activities performed by countries threatening international peace and security, as well as fund-freezing measures established by the United Nations and the European Union (article 3.1 of the Legislative Decree (LD) 109/2007 as amended by L.D. 90/2017), which allow it to ensure coordination in

proliferation financing (PF) matters (namely related to Iran and North Korea). In this event, the representatives from the MISE, and the Customs Agency join the FSC meeting (article 3.3 of the LD 109/2007 as amended by L.D. 90/2017). Members from other agencies, including intelligence services, can also be invited by the FSC Chair.

Italy demonstrates many characteristics of an effective system. Italy has a strong framework for cooperation and provides constructive and timely assistance when requested by other countries. Competent authorities notably provide information, including evidence, financial intelligence, supervisory information related to ML, TF, or associated predicate offenses, and assist with requests to locate and extradite criminals as well as to identify, freeze, seize and confiscate assets. Italy seeks on a regular basis and generally in a successful way, international cooperation from other countries to pursue criminals and their assets.

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

About the Italy's FIU (UIF), see answer to question 2 related to article 14 subparagraph 1 (a).

There are good communication channels and exchanges of information between the FIU and other competent authorities. Cooperation among regulators and supervisors is governed by a series of **MOUs** and appears to work well.

The FIU receives a wide range of STRs from reporting entities and other information, and can access a wide range of administrative and financial information. It also receives aggregated data from FIs. The number of aggregate reports is high due to the requirement of financial intermediaries to submit, on a monthly basis, aggregated data on their activities. The FIU conducts a targeted analysis of this data in order to detect possible ML/TF anomalies in specific geographical areas.

The FIU receives the STRs through an electronic platform ("RADAR") dedicated to the collection, storage, and management of reports. The system notably identifies instances where a particular natural or legal person has been previously reported. The FIU can and does also request additional information from reporting entities. Most of the additional requests are directed to banks but in few instances other reporting entities were also asked to provide additional information. In addition to STRs, the FIU can obtain information from the customs database which contains the cross border currency and bearer negotiable instruments declarations collected from travellers and gold transactions.

The FIU and other competent authorities cooperate and exchange information and financial intelligence on a regular basis.

Pursuant to the new legal framework (Leg. Decree n. 90/2017), the National Anti-Mafia and Counter-Terrorism Directorate - in exercising its powers and performing the functions of coordinating investigations and providing an investigative impulse conferred on it by current legislation - promptly receives from the FIU, through the Special Monetary Police Unit of the Guardia di Finanza, or, as far as it regards reports on organised crime, through the Anti-Mafia Investigation Department, the data relating to reports of suspicious transactions and relating to the personal data of persons reported or connected, necessary for the verification of their possible relevance to ongoing judicial proceedings, and may request any other information and analysis that it considers of interest, also for the purpose of the power of impulse attributed to the National Prosecutor. To this end, the National Anti-Mafia and Counter-Terrorism Directorate signs dedicated technical memoranda of understanding with the FIU, the Guardia di Finanza and the Anti-Mafia

Investigation Department, aimed at establishing methods and timing of the exchange of information referred to in this letter, ensuring the adoption of all appropriate measures to protect the anonymous processing of personal data, necessary for the verification of their possible relevance to ongoing judicial proceedings and the privacy of the reporting entity's identification.

The DNA also provides the Financial Security Committee, in accordance with investigative secrecy, with the data in its possession which are relevant to the preparation of the national analysis of the risks of money laundering and terrorist financing and its own evaluations of the results of anti-money laundering and terrorist financing activities for the purpose of drawing up the report containing the evaluation of money laundering and terrorist financing prevention activities.

With these new AML law a strategy to analyze Financial Intelligence Unit transaction reports has been confirmed, performed by a working group specially set up which, by enriching the information provided in the Financial Intelligence Unit reports with those obtained from the National Anti-mafia and Counterterrorism Directorate Database (SIDNA) and other available databases, allows to select the reports that could be used in legal proceedings (which are sent to the competent District Anti-mafia Prosecution Offices as an impulse to investigations) or can be further developed (by engaging the Anti-mafia Investigations Directorate (DIA) Centers or the territorial Commands of the Financial Police).

From 2015 to 2017, the National Anti-Mafia and Counterterrorism Prosecutor exercised its powers and the functions of coordinating investigations by sending to the competent District Anti-mafia Prosecution Offices 26 investigative impulse acts.

The GdF and DIA receive the STRs from the FIU that lead to investigations in ML, associated predicate offenses and TF. The UIF and the GdF-NSPV and DIA use secure channels for exchanging information, and protect the confidentiality of information exchanged or used.

As regards the ability of the FIU to exchange information at international level, the outcomes of the recent FATF Mutual Evaluation of the Italian AML/CFT system show that **the UIF is effective in seeking and providing information in a timely and effective manner from/to other FIUs spontaneously and upon request. It can access and provide administrative, law enforcement and financial information based on requests from foreign FIUs or non-counterparts.** The UIF's ability to cooperate is not conditioned by the indication of the predicate crime by the foreign counterpart. The responses are always provided on timely basis, using secured channels, and in line with Egmont principles.

Since 2013, the UIF is using several techniques to enhance the exchange of information with some European counterparts through the **FIU.NET**. In addition to the mechanism of "known/unknown" automatic exchange of information, the UIF is making the use of bilateral and multilateral data-matching tools to search for positive hits between massive datasets. It also exchanges information with non-counterparts.

As regards the international cooperation, the UIF sends requests for information to FIUs in other countries for the purpose of analyzing suspicious transactions, where subjective or objective connections with other countries come to light. Requests usually aim at tracing the origin or use of funds transferred from or to other jurisdictions, identifying movable or immovable assets abroad and clarifying the beneficial ownership of companies or entities established in other countries.

The number of requests sent by the UIF has increased considerably in the last five years (see table).

Requests sent to foreign FIUs					
	2012	2013	2014	2015	2016
Requests to obtain info on behalf of the Judicial Authority	137	124	146	217	204
For the UIF ⁷ financial analysis	80	56	242	323	340
Total	217	180	388	540	544

The UIF has taken steps to make processes more efficient and collaboration more effective. It has simplified the working process and the procedures for formulating information requests by creating a structured digital form that analysts can use for the direct transmission of the requests via international electronic channels. Improvements in the structure of requests make it easier to share cases with foreign counterparts, shorten response times and make the responses more focused. In some cases, swift data exchange actually provided the UIF with information that served to suspend suspicious transactions. The information acquired from foreign FIUs, which is used with their consent and to the extent they permit, often serves to cooperate more effectively with judicial authorities. It helps in finding evidence to orient investigation, activating precautionary measures and drawing up specific rogatory requests for information from foreign authorities. During the year, 204 requests were sent to foreign FIUs to obtain information on behalf of Italian judicial authorities.

In 2016 there was a considerable rise both in the requests for cooperation and in spontaneous communications from foreign FIUs, consolidating the growth trend recorded in the last few years.

Requests/spontaneous information received from foreign FIUs					
	2012	2013	2014	2015	2016
Egmont Secure Web Requests/spontaneous info	429	519	486	695	723
Exchanges on ISIL	383	536			
FIU.NET Requests/spontaneous info	294	274	453	518	580
<i>Cross-border reports</i>	557	1.475			
Total	723	793	939	2.153	3.314

The requests received by the FIU are subjected to preliminary analysis to assess the characteristics of the case and determine whether it is of direct interest to the Unit. When requests refer to information as yet unavailable, e.g. data on accounts or financial relationships or the origin or use of funds, the FIU takes steps to obtain such information from obliged entities, from external sources (e.g. the Revenue Agency's registry of accounts and deposits), or from investigative authorities such as the Special Foreign Exchange Unit and the Bureau of Anti-mafia Investigations.

As with requests for information, responses are also drawn up using structured electronic forms, which are modified from time to time according to the information needs of others and the characteristics of the case.

Flexibility in cooperation, ability to prioritize and conformity of responses to the needs of other FIUs have all improved, also enlarging the range of databases that the UIF can use to fine-tune its responses to requests.

To the increase in quantity has corresponded an improvement in quality of the exchanges, in terms of effective contribution to analytical activities, and a broader articulation of

forms and modalities for seeking or providing FIU-to-FIU cooperation.

The use of the structured EU network (FIU.NET) has been increasing constantly; this allows for speed and efficiency.

STRs that have a cross border dimension are frequently forwarded by FIUs on a spontaneous basis; this has now become a mandatory requirement under the fourth EU AML/CFT Directive.

Bulk data matching has also become a common practice, thanks to the advanced functionalities offered by FIU.NET.

Besides traditional bilateral exchanges, multilateral information sharing is increasingly used, which allows to develop a broader information basis, conducive to more preventive intelligence.

See chart about information exchange (Egmont / FIU.NET) pages 17-18 of “Annual Report to Parliament about 2015 Italy AML/CFT”.

UIF is a member of the Egmont Group (see response under art. 58) and, at the European level, it is a member of the EU’s FIUs Platform. In such role, it is also member of the Advisory Group delegated by the EU’s FIUs Platform to provide guidance, advices and opinion to the Europol, that is the European institution in charge of the management of the FIU.NET infrastructure.

For a detailed description of institutional features, functions and cooperation of the UIF at national and international level please also refer to answers provided to questions under art. 58.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Figures on investigations, prosecutions, convictions are contained from page 50 to 61 of Italy MER 2016, and also in the Annexes.

42. Paragraph 2 of article 14

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Italy has established a **declaration system for incoming/outcoming cross-border transportation of currency or bearer negotiable instruments (BNI) that applies to both inter- and intra-European transfers equal to or above EUR 10 000**. This system is provided for by the DL 195/2008. Italy is one of the few EU Member States (together with France, Spain and Germany) which has implemented a declaration obligation for intra-European movements of currency/BNI.

Natural persons entering and leaving Italy are obligated to declare to Italian customs whether they are carrying cash/bearer negotiable instruments. There are also declaration requirements **for mail and cargo**. Provisions allow for different modalities of declaring cross-border currency, **in writing or electronically**.

The FIU can obtain information from the customs database which contains the cross border currency and bearer negotiable instruments declarations collected from travellers and gold transactions.

Italy has established procedures for seizure of cash or bearer-negotiable instruments where there is a suspicion of ML/TF or predicate offense; or where there is a false declaration of false disclosure. In the case of false declarations, both **Customs and GdF can seize cash/BNI** on the basis of article 6 LD 195/2008. With respect to when the cash/BNI is suspected to be linked to ML/TF or any predicate offence, authorities can seize the total amount pursuant to article 321 of the CPC.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

In instances where currency/BNI are not properly declared, the authorities seize amounts equal to 30 or 50% of the amounts transferred over EUR 10 000, depending on the value of the undeclared amounts.

The percentage applied is (i) 30% of the amount transferred or attempted to be transferred exceeding the EUR 10 000 threshold, whereby such surplus does not exceed EUR 10 000; and (ii) 50% of the amount transferred or attempted to be transferred exceeding the EUR 10 000 threshold, whereby such surplus exceeds EUR 10 000. Persons who fail to comply with the declaration obligations are either subject to an immediate plea, or to an investigation that results in a seizure, as indicated in the table at page of 65, Italy's Mer 2016.

For figures see charts 74-83 of “Annual Report 2016 to Parliament”

43. Paragraph 3 of article 14

3. States Parties shall consider implementing appropriate and feasible measures to require financial institutions, including money remitters:

- (a) To include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;
- (b) To maintain such information throughout the payment chain; and
- (c) To apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The EU Regulation (847/2015/EU) contains detailed provisions requiring that, in the case of cross-border transfers, the ordering financial institution should obtain information not only on the originator, but also on the beneficiary, and specifically, the name and account number used to process the transfer (or a unique reference number where no account exists). Transfers between EU Member States are not considered to be cross-border under the Regulation, but equivalent to the domestic ones.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

44. Paragraph 4 of article 14

4. In establishing a domestic regulatory regime and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The AML/CFT standards which Italy does apply are the FATF 2012 standards. The overall compliance was evaluated as an effective one in 2015. The details are in FATF report, as it can be found in previous answers. Furthermore, the international legal framework more stringent for Italy in these issues is represented by the IV AMLD EU Directive, which, as mentioned above, has been recently transposed by L.D. (90/2017).

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

CDD (customer due diligence) guidelines have been developed for **notaries** by their national association in conjunction with the authorities: work has begun on developing similar ones for accountants. It has developed for notaries a handbook which provides guidance with respect to the process of analyzing suspicious transactions and filing a report with the UIF.

Association of PIE (PUBLIC INTEREST ENTERPRISE) Auditors Developed a paper for its membership summarizes AML/CFT duties applicable firms.

Associazione Studi Legali Associati (ASLA) An ASLA working group has drafted guidelines for its members. The guideline been shared with the National Bar Council MEF.

Real Estate Association Arranges AML/CFT training for its conjunction with the GdF and the DIA.

Association of Accountants Developed AML/CFT Guidelines for in 2008 and updated them in 2011.

Association of Fiduciaries Issued AML/CFT guidelines to members. Provides members with updates on sanction Conducts on-going training programs include AML/CFT component. Conducts training event undertaken in conjunction BoI and GdF.

*The BoI (Bank of Italy) has also issued operating **guidelines regarding NPOs** in July 2003, which require all financial intermediaries to pay special attention to the quality of associates, the beneficiaries and country of destination of donations, as well as to possible inconsistencies between transactions and the subjective profile of the client. It also recalls the obligation to immediately declare all suspicious transactions to the UIF.*

45. Paragraph 5 of article 14

5. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

See answer to **Article 14, subparagraph 1 (b)**

In order to promote cooperation in fighting organized crime and money laundering, in full compliance with the national legal framework, international obligations and national regulations, the National Anti-Mafia and Counterterrorism Directorate has signed, among others:

- a **memorandum of understanding** with the **Public Prosecutor's Offices in Serbia, Montenegro, Slovenia, Croatia, Bosnia and Herzegovina - Srpska - Macedonia - Albania - Bulgaria - Hungary** and with the National Anti-corruption Directorate of Romania, all providing forms of mutual assistance and exchange of information (26.05.2016);
- **memorandum of cooperation** with the **Albanian National Public Prosecutor's Office** concerning cooperation in fighting organized crime, related crimes and money laundering, providing the exchange of information and documents (05.11.2014);
- **memorandum** concerning cooperation and mutual legal assistance with the Public Prosecutor's Office of the Arab Republic of Egypt in the fight against organized crime in all its forms, including money laundering, providing the exchange of information related to investigations, assistance in international rogatory letters and other forms of assistance and information (15.04.2015).

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Italy has a sound legal framework for international cooperation as well as a network of bilateral and multilateral agreements to accelerate cooperation. The authorities undertake a range of activities on behalf of other countries for AML/CFT purposes.

Supervisory authorities (BoI, IVASS, and CONSOB) as well as the UIF cooperate frequently and effectively with their respective counterparts.

Several case examples provided demonstrated criminal connections between several countries and highlight that the UIF, LEAs, and prosecutors are proactive in seeking the cooperation of their foreign counterparts for the purposes of their analysis, investigations

and prosecutions. In a number of instances, the cooperation sought resulted in the exchange of information on the identity and whereabouts of the beneficial owners of legal persons incorporated abroad and/or in Italy as well as of foreign legal arrangements. This has also resulted in assets being identified abroad and repatriated to Italy.

Basic information on legal persons incorporated in Italy can be accessed online, and for these instances, foreign authorities can obtain information without having recourse to the Italian authorities. Additional information including beneficial ownership information may be requested, either between competent authorities such as the UIF and the law enforcement agencies, or through the international cooperation channels.

The timeliness of the authorities' access to beneficial ownership information varied between a few minutes to a few days depending on the complexity of the case and of the corporate vehicle involved, and is generally deemed **adequate**.

The feedback provided by countries with respect to their experience in international cooperation with Italy highlights no particular challenges or concerns with respect to the exchange of information concerning Italian legal persons. It is nevertheless likely that the timeliness challenge that the authorities face in domestic proceedings also arises in the response to foreign requests.

The authorities established that they make effective use of international cooperation in the context of the fight against organised crime. From 2014 to 2016, the DNA processed more than 50 mutual legal assistance requests related to ML offense.

Regarding GDF, from 2013 to 2015, 957 requests (including Europol, Interpol, and mutual legal assistance requests) have been processed (361 active and 596 passive).

LEAs regularly exchange information with their foreign counterparts. Cooperation is developed through police channels (Europol, Interpol, and also through bilateral agreements). Italian police forces exchange information and carry out investigations on behalf of foreign requesting counterparts-on the basis of a request of judicial assistance-in the same manner as they would carry out investigations at a domestic level. The International Police Cooperation Service within the Criminal Police Central Directorate in the MoI ensures information exchanges through Interpol, Europol and SIRENE channels and acts also as Assets Recovery Office (ARO) in Italy. At the police level, the activities that do not require formal judicial authorisation and are conducted on the basis of bilateral agreements.

FIU cooperation: The UIF is effective in seeking and providing information in a timely and effective manner from/to other FIUs spontaneously and upon request. It can access and provide administrative, law enforcement and financial information based on requests from foreign FIUs or non-counterparts. The UIF's ability to cooperate is not conditioned by the indication of the predicate crime by the foreign counterpart. The responses are always provided on timely basis, using secured channels, and in line with Egmont principles.

See also responses provided to questions under art. 14, subparagraph 1 (b) and art. 58

Both IVASS and the BoI have established mechanisms for international cooperation with respect to FIs; with respect to DNFBBs, only the CONSOB has similar mechanism.

Cooperation with EU supervisors of FIs does not require the use of an MOU, while cooperation with non- EU supervisors takes place on the basis of bilateral MOUs.

Cooperation with non-EU supervisors requires that (i) there be no impediment to the sharing of information between supervisors and between the parent institution and its foreign subsidiaries, (ii) there should be equivalent confidentiality requirements, (iii) the Italian supervisor should be able to undertake inspections of Italian branches and subsidiaries in the host country, and (iv) the non-EU country should have an adequate AML/CFT framework.

Both supervisors often cooperate with foreign counterparts in the process of conducting fit and proper assessments.

The BoI and IVASS provide information on an on-going basis in response to requests received from other supervisory authorities. IVASS has provided information requested by the Hungarian authorities to assist them in the conducting fit and proper assessment.

The BoI has also cooperated with U.S. regulators to assist them in taking supervisory action against a subsidiary of an Italian institution operating in the United States. In 2014, the BoI alerted the authorities in the United Kingdom about the activities of agents of a U.K.-based entity that were of a concern with respect to ML/TF risks. The BoI usually responds to requests for assistance within one to three weeks. IVASS usually responds within one month.

With respect to the supervision of DNFBPs, the CONSOB has established mechanisms for international cooperation, but the GdF has not.

46. Technical Assistance

The following questions on technical assistance relate to the article under review in its entirety.

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:

(NO) No assistance would be required

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

V. Asset recovery

51. General provision

225. Article 51

1. The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention, including identifying both any legal authorities/procedures for accepting requests for asset recovery and assessing that these requests are reasonably substantiated and supplemented as well as any time frame established under domestic laws and procedures for their execution, taking into account requests received from countries with similar or different legal systems and any challenges faced in this context.

Art. 5. of Law 3 August 2009, n. 116, ratifying and implementing UNCAC has provided the legal basis for the full implementation of Title V of the Convention, in particular through the insertion of new art. 740-bis and 740-ter of the Criminal Procedural Code.

Article 740-bis of the code of criminal procedure. (Transfer to a foreign State of confiscated properties)

1. In the cases provided for by international agreements in force in the State, properties confiscated with a final judgment or another irrevocable order shall be transferred to the foreign State where the confiscation order was issued or adopted.

2. The transfer under paragraph 1 shall be ordered when the following requirements are met:

- a) The foreign State made an explicit request;
- b) The judgment or the order under paragraph 1, were recognized in the State under Articles 731, 733 and 743.

Article 740-ter of the Code of Criminal Procedure (Transfer order)

1. The Court of Appeal, when recognizing a foreign judgment or a confiscation order, shall order that confiscated properties under Article 740-bis be transferred.

2. A copy of this order shall be immediately sent to the Minister of Justice, who shall agree on the transfer procedure with the requesting State.

226. Technical Assistance

The following questions on technical assistance relate to the article under review in its entirety.

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:

(NO) No assistance would be required

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

52. Prevention and detection of transfers of proceeds of crime

227. Paragraph 1 of article 52

1. Without prejudice to article 14 of this Convention, each State Party shall take such measures as may be necessary, in accordance with its domestic law, to require financial institutions within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Financial intermediaries and the other entities engaged in financial activities shall generally comply with the *Customer Due Diligence* (“*CDD*”) requirements (including the identification and verification of the beneficial owner/s) in connection with relationships and transactions related to the performance of their institutional or professional activity.

As to art. 17 of the new AML, **CDD** obligations apply in the following cases:

- (a) When establishing a business relationship or when engaged by customers to perform a professional service;
- (b) When carrying out occasional transactions engaged by the customer, involving the transmission or transfer of means of payment amounting to EUR 15,000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be related or split, and/or when carrying out transfer of funds, as defined in Article 3(1)(9) of Regulation (EU) No. 2015/847 of the European Parliament and of the Council, amounting to more than EUR 1,000;
- (c) In connection to gaming operators referred to in Article 3(6), when performing gaming operations, also in accordance with the provisions laid down under Title IV of this Decree.

- **Obligated entities shall, in any case, comply with CDD and BO identification and verification requirements:**

- (a) Where there is a suspicion of money laundering or terrorist financing, regardless of any applicable derogation, exemption or threshold;
- (b) Where there are doubts about the truthfulness or adequacy of the previously obtained customer identification data.

In general, CDD requirements apply to a very broad range of obliged entities: financial intermediaries, professionals, external auditors and other persons subject to authorization regime.

Pursuant to Article 18 of the new AML Law, CDD measures shall consist of the following activities:

- identifying the customer and verifying the customer’s identity on the basis of documents, data or information obtained from a reliable and independent source;

- identifying, where applicable, the beneficial owner and verifying his identity;
- obtaining information on the purpose and intended nature of the business relationship or professional service;
- conducting ongoing monitoring of the business relationship with the customer or professional service.
- in the presence of high risk of money laundering and terrorist financing, obliged entities shall apply the procedure for acquisition and evaluation of such information also in the event of occasional professional services or transactions (art. 18.1 c).

In the context of the new AML Law (in force as from 04 of July 2017), **Risk Based Approach** (“RBA”) is borne out as a general principle which applies to both the AML/CTF national strategies and in parallel to any decision making processes adopted by each obliged entity. .

In art. 17.3 of the new AML Law, RBA could be referred, particularly, to all CDD procedures which can be divided into ordinary, simplified and enhanced and are to be calibrated to the risk associated with the type of customer, business relationship, professional service, operation, product or transaction. In principle, CDD, as inspired by the RBA, is conceived as not to discourage or prohibit financial institutions from doing business with any legitimate customer.

Art. 17.3: *“Obligated entities shall undertake Customer Due Diligence (CDD) measures commensurate with the risk of money laundering and terrorist financing and demonstrate to the authorities referred to in Article 21(2)(a) and to self-regulating bodies the measures adopted are adequate to the risk identified. In calibrating the extent of the measure(s) adopted, obliged entities shall take into account, at least, the following general criteria:*

(a) With reference to the customer:

1) Legal form;

2) Main activity;

3) Behaviour at the time the transaction is carried out or the business relationship established or the professional service performed;

4) Geographical area in which the residence or registered office of the customer or counterparty is located;

b) With reference to the transaction, business relationship or professional service:

1) Type of transaction, business relationship or professional service;

2) Terms and conditions for performing the transaction, business relationship or professional service;

3) Amount;

4) Frequency and volume of the transactions and duration of the business relationship or professional service;

5) Reasonableness of the transaction, business relationship or professional service in relation to customer’s activity and economic resources;

6) Geographical area of destination of the product, object of the transaction or business relationship or professional service”.

In the presence of low risk of money laundering or terrorist financing, obliged entities may

apply Simplified Due Diligence (SDD) measures with regard to the extent and frequency of CDD requirements.

Likewise, in accordance with a RBA approach, when there is a greater risk of money laundering or terrorist financing *Enhanced Customer Due Diligence* (“EDD”) measures shall apply.

As to the new art. 24.5 of the new AML Law, obliged entities shall always apply Enhanced Due Diligence (EDD) measures in the case of:

- Customers located in high-risk third countries identified by the European Commission;
- Cross-border correspondent banking relationships with a correspondent credit or financial institution in a third country;
- Business relationships, professional services or transactions/operations with customers and their beneficial owners who are Politically Exposed Persons (“PEPs”).

As regards “EDD” on “PEPS”, in case of continuous relationships or professional services with politically exposed persons resident in another *EU country or a non-EU country*, institutions must establish adequate risk-based procedures to determine whether the customer is a politically exposed person; obtain the authorization of the general manager before establishing a continuous relationship with such customers; take all necessary measures to establish the source of wealth and source of funds that are involved in the continuous relationship or the transaction; conduct enhanced ongoing monitoring of the continuous relationship or professional service. (Legislative Decree no. 231/2007, art. 24.5).

In the spirit of a risk-based approach, we do not deem domestic/national PEPS as a lower risk category than foreign PEPS; as a consequence, the same regime applies to both domestic and foreign PEPS. **In accordance with FATF Rec. 12**, our secondary legislation points out that: *obliged entities shall establish procedures for verifying whether customers or beneficial owners resident in Italy are domestic PEPS*. If the business with such persons entails a high risk of money laundering or terrorist financing, obliged entities shall apply ECDD, including for direct family members and persons with whom they are known to have close links.

With regard to the BO identification, CDD, set forth in the Italian AML Law (L.D. 231/2007), enables reporting entities into the identification of their customers, the verification of their identity, including identification and verification of all the persons involved in financial transactions: not only the customer, but also the executor, and either the beneficial owner if any. The verification is made on the basis of documents, data or information obtained from a reliable independent source.

Article 20 indicates certain Criteria for identification of beneficial ownership of customers other than natural persons. In particular, the **Beneficial Owner (BO)** of a customer other than a natural person shall coincide with the natural person(s) to whom the direct or indirect ownership and control of the entity is ascribable.

Whereby scrutinising the ownership does not enable ultimately identifying the natural person(s) who directly or indirectly own the entity, the Beneficial Owner shall coincide with the physical person(s) who ultimately control(s) it, in light of:

- (a) control over the majority of votes exercisable at ordinary shareholders' meeting;

(b) control over sufficient votes to exercise dominant influence at ordinary shareholders' meetings;

(c) existence of specific contractual constraints that enable exercising dominant influence.

Whereby the application of the above criteria does not enable identifying the beneficial owners univocally, the beneficial owner shall coincide with the natural person or natural persons entitled with administration and management powers over the company.

Whereby the customer is a private legal entity as per Presidential Decree No. 361 dated 10 February 2000, the following subjects are cumulatively identified as BOs:

(a) The founders, whereby alive;

(b) The beneficiaries when identified or easily identifiable;

(c) (c) The persons entitled with administration and management functions.

Based on the monitoring and screening CDD measures, quality information on potential ML/TF cases is detected and reported through STRs to the UIF. See data and considerations under art. 14 and art 58.

Since many years, the “red flag” indicators issued by UIF to facilitate the detection and disclosure of money laundering and terrorist financing suspicions focus specifically on anomalies related to the misuse of beneficial ownership of companies and trusts and the lack of transparency in this context. Such misuse, and the relevant indicators, are particularly addressing cases of international tax fraud, invoicing fraud, fraudulent mechanisms such as “carousels” and “paper mills” and also possible corruption cases.

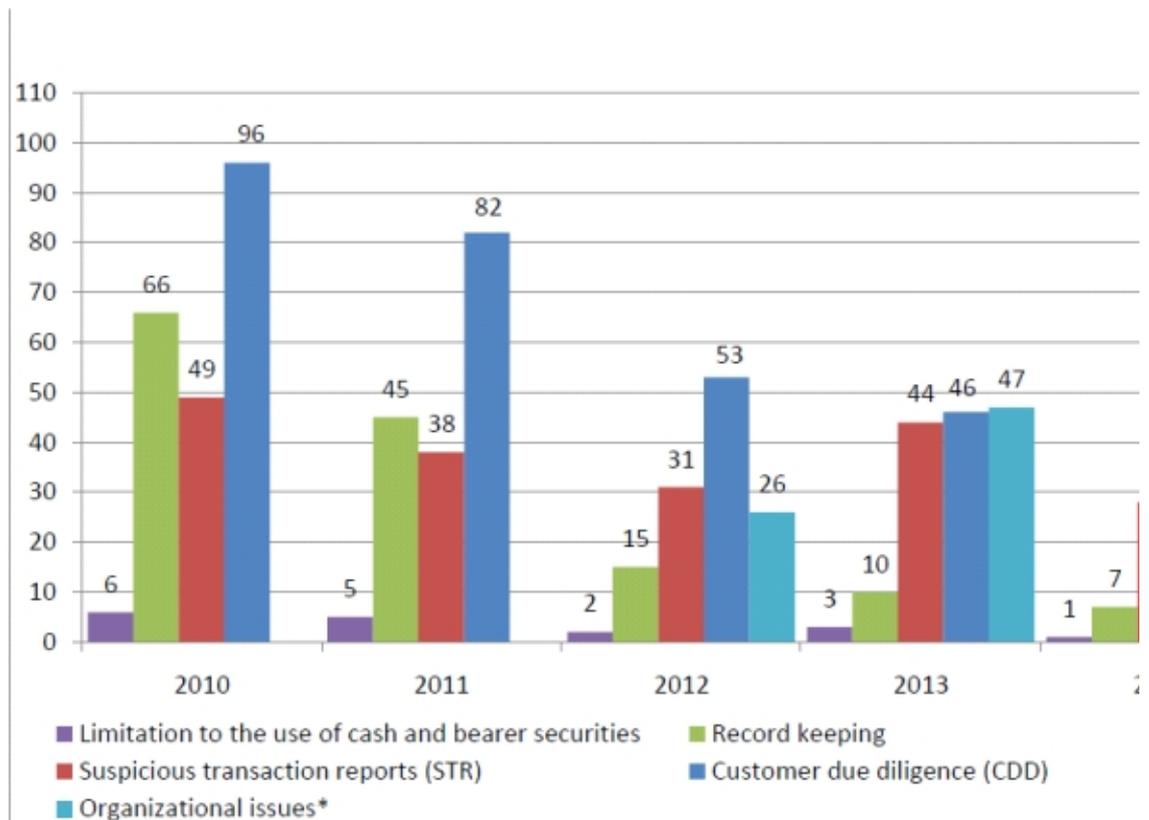
As regards UIF’s powers to obtain information on the BO, useful for performing its financial analysis, please consider that companies information can be obtained and shared by UIF through a variety of sources, which can be accessed in conjunction or as alternatives and which are all within the remit of UIF’s capacity to collect and share information with foreign counterparts. More particularly the Italian Business Register, which can be publicly accessed, keeps information on companies incorporated in Italy that range from the date of incorporation to the types of businesses and activities performed; comprehensive data on shareholders is also available, be they legal entities or natural persons; in the former case, it is possible to trace back the chain of participation and look through the capital structure of each interposed entity by retrieving information on the relevant shareholders. When information from the Business Register is not available or not sufficient (for example, in cases of chains of participation involving companies or entities incorporated in a foreign jurisdiction which does not file data to the participated company or to the Business Register), UIF applies its powers to acquire basic or beneficial ownership information elsewhere, making enquiries on behalf of its requesting foreign counterparts (in line with normal practice in UIF’s international cooperation). Furthermore, UIF can search information on companies and beneficial ownership into other external databases like, for example, the central database of bank accounts and the tax database.

In parallel, all the above obligations are supplemented and strengthened by the **general obligation on customers** to provide all the necessary and updated information in their possession to enable FIs to comply with their CDD obligations (article 22 of the “new AML Law”).

In order to avoid repeating the customer due diligence procedures, institutions and persons obliged under AML Law may rely on **third parties** to satisfy the customer due diligence requirements on condition that the ultimate responsibility for satisfying such requirement shall rest with the institutions and persons resorting to and relying on third parties.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

It is clear from the BoI data (see table on “AML Deficiencies by Type” below) that the number of occasions in which CDD deficiencies are being identified during inspections across the financial sector is declining.



As the next table also indicates, the pattern of those deficiencies remains fairly consistent, with cases of *incorrect or incomplete CDD* averaging 44% of the total from 2012 to 2014. However, these data should be treated with some care, as the recorded deficiencies relate to both isolated failures within an institution, and failures that have more systemic implications for an institution. Therefore, it is not possible to draw any firm conclusions about the true depth of the weaknesses, although the regulators were of the opinion that the overall quality of the banks’ CDD procedures has been improving in the last two years. A particular challenge has been in trying to complete the CDD procedures for clients that were on the books prior to the introduction of the AML Law.



228. Subparagraph 2 (a) of article 52

2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

(a) Issue advisories regarding the types of natural or legal person to whose accounts financial institutions within its jurisdiction will be expected to apply enhanced scrutiny, the types of accounts and transactions to which to pay particular attention and appropriate account-opening, maintenance and record-keeping measures to take concerning such accounts; and

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

As already noted, in accordance with a RBA approach when there is a greater risk of money laundering or terrorist financing *Enhanced Customer Due Diligence* (“EDD”) measures shall apply.

As to the new art. 24.5 of the new AML Law, obliged entities shall always apply *Enhanced Due Diligence* (EDD) measures in the case of:

- Customers located in high-risk third countries identified by the European Commission;
- Cross-border correspondent banking relationships with a correspondent credit or financial institution in a third country;
- Business relationships, professional services or transactions/operations with customers and their beneficial owners who are Politically Exposed Persons (“PEPs”).

As to art. 31, obliged entities are required to retain for a period of ten years the documents and record the information acquired in satisfying the Customer Due Diligence (CDD) requirements for use in any investigation into possible money laundering or terrorist financing conducted by the FIU or other competent authorities.

To what extent the domestic legal requirements are inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering?

Given the cross-border dimension of ML/TF phenomena, Italy has adopted, but also inspired, the indications of the major international fora. Italy has proactively participated to the harmonization of AML legal framework at supranational level (both international and European). That contributes to prevent criminals from taking advantage of gaps emerging from differences over each country regulation.

At supranational level, the leading role played by the Financial Action Task Force (FATF) has been recognized as fundamental in furtherance of this goal.

The primary law is quite comprehensive in its requirements relating to the preventive measures.

Regulations and secondary legislation, such that adopted by **BoI, CONSOB, and IVASS**, have implemented core obligations of the primary law, and , on the other side, did take into account, in a timely fashion, many of the points of detail added in the course of the 2012 revision to the FATF standards, in this sense anticipating, without contravening, primary legislation. **They also provide extensive narrative and guidance that is, itself, enforceable.**

As from 04 of July 2017, L.D. n. 90/2017 amending our national AML Law (L.D. 231/2007), in compliance with EU Directive 2015/849 of 20 May 2015, entered into force.**3. Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.**

***Guidance:** Such examples may include jurisprudence, reports, studies, statistics or any other relevant information which illustrates the measures your country has taken to effectively implement this provision. You may wish to describe to what extent the measures are inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering. Information sought may, in particular, include advisories, or similar documents, issued by the competent authorities of your country (such as the Central Bank or monetary/financial supervisory authority, Financial Intelligence Unit, the Banking Supervisory Authority, professional supervisory bodies, etc.).*

From a practical point of view, domestic Regulation, which represents a sort of guidance for the fulfillment of AML law obligations, develops the concept of *enhanced due diligence* which consists in the adoption of measures marked by greater depth, scope and frequency. For example, additional information may be acquired (such as data on family members, cohabitants, companies and persons having business dealings with the customer); additional information may be acquired on the executor and the beneficial owner; for occasional transactions, information may be collected on their nature and purpose.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

From a practical point of view, domestic Regulation, which represents a sort of guidance for the fulfillment of AML law obligations, develops the concept of *enhanced due diligence* which consists in the adoption of measures marked by greater depth, scope and frequency. For example, additional information may be acquired (such as data on family members, cohabitants, companies and persons having business dealings with the customer); additional information may be acquired on the executor and the beneficial owner; for occasional transactions, information may be collected on their nature and purpose.

229. Subparagraph 2 (b) of article 52

2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

...

(b) Where appropriate, notify financial institutions within its jurisdiction, at the request of another State Party or on its own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

As to art.1 of the new AML Law, PEPs refers to the following natural persons who are or have been entrusted with a prominent public function as:

1.1 Italy's Presidents of the Republic, Presidents of the Council of Ministers, Ministers, Deputy Ministers and Undersecretaries (i.e. heads of State, heads of government, ministers and deputy or assistant ministers), Region President, Regional Councilors (*assessori regionali*), Mayors of provincial capitals or metropolitan cities, Mayors of urban centres with not less than 15,000 inhabitants, and analogous positions held in foreign States;

1.2 Members of the Chamber of Deputies, Senators, Members of the European Parliament, Regional Councilors and analogous positions held in foreign States;

1.3 Members of the central governing bodies of political parties;

1.4 Judges of the Constitutional Court, magistrates of the Court of Cassation or of the Court of Auditors, State Councilors and other members of the Administrative Council of Sicily Region, and analogous positions held in foreign States;

1.5 Members of the governing bodies of central banks and independent authorities;

1.6. Ambassadors, chargés d'affaires and equivalent officers in foreign States, high-ranking officers in the armed forces or analogous positions held in foreign States;

1.7 Members of the administrative, management or supervisory bodies of enterprises, and related subsidiaries, owned also indirectly, by the Italian State or a foreign State, or owned, whether wholly or prevalently, by Regions, provincial capital cities and metropolitan cities and municipalities with not less than 15,000 inhabitants;

1.8 Director General of Italy's National Health System Agencies (*ASL*) and hospital centres, university hospital centres, and other National Health Service entities;

1.9 Director, deputy director and member of the management body or person performing equivalent functions within international organisations;

The concept of PEPs is to be extended to the "Family members of Politically Exposed Persons" which means:

2.1 The spouse, or a person considered to be equivalent to a spouse, of a Politically Exposed Person;

2.2 The children and their spouses, or persons considered to be equivalent to a spouse, of a Politically Exposed Person;

2.3 The parents of a Politically Exposed Person.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

With regard to transactions, business relationships or professional services with Politically Exposed Persons (PEPs) resident in another EU Country or a non-EU Country, institutions and persons subject to this Decree are required to:

- a) establish adequate risk-based procedures to determine whether the customer is a politically exposed person;
- b) obtain the authorization of the general manager, his/her delegate or a person performing an equivalent function before establishing a business relationship with such customers;
- c) take all necessary measures to establish the source of wealth and source of funds that are involved in the business relationship or the transaction;
- d) conduct enhanced ongoing monitoring of the business relationship or professional service.

230. Paragraph 3 of article 52

3. In the context of paragraph 2 (a) of this article, each State Party shall implement measures to ensure that its financial institutions maintain adequate records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

From AML/CFT point of view, Italy has been rated compliant in the 2016 MER conducted by the FATF against the record-keeping standard (**Recommendation 11**). In this respect, article 31 on retention obligations of the new AML Law states that:

Obligated entities shall retain data and information useful for preventing, detecting or ascertaining any money laundering or terrorist financing activity and enabling the performance of analyses carried out, within their respective competence, by Italy's Financial Information Unit (also known as UIF - Unità di Informazione Finanziaria) or other relevant authority (art.31.1).

Obligated entities shall retain copy of the documents obtained in fulfilling Customer Due Diligence (CDD) requirements and the original or copy, having evidentiary effect as per current legislation in force, of accounts and records relating to the transactions executed. The documents retained shall enable univocally reconstructing at least the following elements (art.31.2):

- The date when the business relationship is established or the professional service mandate is conferred;
 - Identification data of the customer, the beneficial owner, and the executor, and information on the purpose and nature of the business relationship or the professional service;
 - The transaction date, amount and reason;
 - The means of payment used.
- Obligated entities may use an autonomous service centre for retention of documents, data and information, without prejudice to obliged entities' responsibilities and provided the latter have direct and immediate access to the retention system (art. 32.3).

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Among the measures undertaken, our legislation and regulation are hitherto one of the few in the world to envisage the obligation on F.I. to set up a "single electronic archive," set up in such a way as to ensure clarity, completeness and accessibility of the data. The article goes on to provide some degree of flexibility as to how the archive may be structured,

while the BoI *Regulations on recordkeeping* provide further, extensive obligations with respect to the format and structure of the data storage systems.

For the keeping and management of the single electronic archive by the addressees, it is possible to avail of an independent service centre, provided that they are guaranteed direct and immediate access to the archive and without prejudice to the responsibilities provided for by law.

It is also allowed to avail of the archive managed by another obliged entity provided that the logical unity of the archive, and its separation from any other archives kept by the same person be ensured.

231. Paragraph 4 of article 52

4. With the aim of preventing and detecting transfers of proceeds of offences established in accordance with this Convention, each State Party shall implement appropriate and effective measures to prevent, with the help of its regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. Moreover, States Parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

In accordance with FATF standards, Article 25(3) of **the AML Law prohibits the opening of correspondent accounts, directly or indirectly, with shell banks**. However, there is no explicit obligation on financial institutions to satisfy themselves that their correspondent institutions do not permit their accounts to be used by shell banks.

The Italy Financial Sector Assessment Program (FSAP) update conducted by the IMF in January 2013 found that on the basis of arrangements in place in Italy the BoI does not allow the establishment of shell banks in Italy and does not allow Italian banks to set up shell banks abroad.

234. Technical Assistance

The following questions on technical assistance relate to the article under review in its entirety.

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:

(NO) No assistance would be required

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

53. Measures for direct recovery of property

235. Subparagraph (a) of article 53

Each State Party shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention;

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

In order to implement this rule it was not necessary to modify domestic system.

In particular:

- Subparagraph a) another State Party may initiate civil action in Italian courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with the Convention. No procedure is provided for to legitimize a foreign State. A State recognized by Italy under international law is already legitimized, in the abstract, to appear in court.

Article 75 of the Code of Civil Procedure

The persons having free exercise of the rights plead in court shall be enabled to enter an appearance.

The persons who have not free exercise of the rights cannot appear in court if they are not represented, assisted or authorized in compliance with the rules regulating their capacity.

Legal persons appear in court through their representatives under the law or statute.

Associations and committees, that are not legal persons, appear in court through the persons indicated in Articles 36 et seq. of the Civil Code.

- Subparagraph b) The foreign States victims of offences or prejudiced by the offence can file a civil action in a criminal trial in view of obtaining compensation for damage or restitution in pristinum, if it is possible;

- subparagraph c) if property is owned by a foreign State, the judge can order that it be returned;

There follow the relevant provisions:

Article 74 of the Code of Criminal Procedure:

Civil action for restitution and for compensation for damage mentioned in Article 185 of the Criminal Code can be carried out during the criminal trial by the persons prejudiced by the offence or by his universal successors against the defendant and those bearing civil liability.

Article 75 of the Code of Criminal Procedure:

1. The civil action initiated before the civil judge can be transferred to the criminal trial so long as any judgment on the merits has not been rendered and so long as the judgment has not become final before the civil court. The exercise of this prerogative entails discontinuance of action; the criminal judge will also decide on the costs of civil trial.
2. Civil action shall continue before the civil judge if it is not transferred to criminal trial or if it was initiated when filing of civil action in the criminal proceeding is no longer admitted.
3. If the action is filed before a civil court against the defendant after the filing of a civil action in the criminal trial or after the first instance criminal judgment, the civil trial is suspended until an unappealable criminal judgment is rendered subject to the exceptions provided for by the law.

Article 76 of the Code of Criminal Procedure

1. Civil action in a criminal trial is carried out also through a special counsel, by means of filing the civil action.
2. The filing of a civil action has its own effects at any stage of degree of the trial.

Article 78 of the Code of Criminal Procedure

1. The statement bringing a civil action is lodged with the prosecuting Judge's Clerk's Office or presented at the hearing and must contain, under penalty of inadmissibility:
 - a) the identity of the natural person or the name of the association or body filing a civil action and the identity of his legal representative;
 - b) the personal details of defendant against whom civil action was initiated or other personal indications that can be used to identify him;
 - c) the name and surname of the defense counsel and the indication of the power of attorney;
 - d) the statement of the reasons put at the basis of the request;
 - e) the signature of the defense counsel.

If the civil action is submitted outside the hearing, the statement must be served, by the civil party, to the other parties and takes effect for each of them as of the day of execution of service.

3. If the power of attorney is not appended in the end or in the margin of the statement bringing civil action, it is conferred in the other forms provided for by Article 100, paragraphs 1 and 2 and it is filed with Clerk's office or presented at the hearing together with the statement of filing a civil action.

Article 79

1. The filing of a civil action in a criminal proceeding can take place at the preliminary hearing and then until the accomplishment of the fulfilments provided for by Article 484.
2. The time limit provided for by paragraph 1 is established under penalty of expiration.
3. If the filing of a civil action takes place after the time limit provided for by Article 468 paragraph 1, the civil party cannot make use of the possibility to submitting the list of witnesses, experts or technical consultants.

In any case it must be pointed out that filing a civil action in a criminal trial is aimed at restitution and compensation for damage, both material and non-material.

Under Article 538 of the Code of Criminal Procedure, at the end of the trial, the Judge, with the conviction judgment shall decide on the request for restitution and compensation for damages, submitted under Articles 74 et seqq. The requirements of the decision on the issues under consideration are therefore the filing of a civil action, the establishment of the defendant's responsibility and therefore the type of conviction imposed by the criminal judgment. This last requirement is nonetheless indefectible for the first degree decisions

since for subsequent judgments the rule provided for by Article 578 of the Code of Criminal Procedure shall be applied, which dictates that the Appeal or Cassation judge shall decide also for the appeals to the effects of the decisions and the counts of the judgment concerning civil interests even when the offence is declared extinguished as a result of an amnesty or statute of limitation.

Article 538 of the Code of Criminal Procedure

1. When rendering a conviction judgment, the judge shall decide on the request for restitution and compensation for damages submitted under Articles 74 et seqq.
2. If the defendant is convicted to pay damages, the judge shall also assess them except for the cases where jurisdiction of another judge is provided for.
3. If the civilly liable person was summoned or appeared at the trial the conviction to restitution and compensation for damages shall be rendered also against him/her jointly and severally if his/her responsibility is established.

Article 578 of the Code of Criminal Procedure

When the defendant is convicted, also with a general decision, to restitution or compensation for the damages caused by the offence in favour of the civil party, the appeal judge or the Court of Cassation when declaring the offence extinguished as a result of an amnesty or statute of limitations, shall decide on the appeal only with respect to the part of the judgment concerning civil interests.

236. Subparagraph (b) of article 53

Each State Party shall, in accordance with its domestic law:

...

(b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

See under subparagraph a)

237. Subparagraph (c) of article 53

Each State Party shall, in accordance with its domestic law:

...

(c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

See under subparagraph a)

238. Technical Assistance

The following questions on technical assistance relate to the article under review in its entirety.

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:

(NO) No assistance would be required

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

54. Mechanisms for recovery of property through international cooperation in confiscation

239. Subparagraph 1 (a) of article 54

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party;

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

In order to implement this provision it is not necessary to introduce new adapting rules in the system.

In particular the possibility to implement the provision of Articles 54 stems from the rules of Article 2 of Law n. 116 of 3 August 2009 authorizing the ratification of the Convention, according to which “Full and complete execution of the Convention under Article 1, hereinafter called “Convention”, starting from the date of its entry into force, in compliance with the provisions of Article 68 of this same Convention and the provisions already existing in the Italian system, in particular:

Subparagraph a) in the code of criminal procedure confiscation as object of a request of judicial cooperation is regulated in Title 9 on the recognition of foreign judgments and execution abroad of Italian judgments.

Under Article 738 of the code of criminal procedure confiscation shall be executed according to Italian law.

Article 738 of the Code of Criminal Procedure:

In the cases of recognition for the purposes of the execution of a foreign judgment, the penalties and confiscation resulting from recognition shall be executed according to Italian law (...)

240. Subparagraph 1 (b) of article 54

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

...

(b) Take such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law; and

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Lett. b) 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.

241. Subparagraph 1 (c) of article 54

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

...

(c) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Lett. c) preventive confiscation shall be applicable, after the very recent legislative amendemnts all the provisions of the Legislative 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), also with regard to the offences provided for the present Convention.

Article 18 (Application of prevention meausurs on properties. Death of the proposed person) provides that:

1. Precautionary measures against persons and properties may be requested and applied separately and with regard to the measures against properties, regardless the social danger of the person proposed for their application when precautionary measure is requested.

2. Precautionary mesures on properties may be ordered also in case of death of the person proposed for their application. In this case the proceeding shall continue against his/her heirs or in any case against his/her successors in title.

3. The proceeding imposing precautionary measures on properties can be initiated also in case of death of the person against whom confiscation could be ordered; in this case the request for applying the preventive measure can be proposed against his/her universal or special successors in title within the time limit of five years from the death.

4. The proceeding imposing precautionary measures on properties can be initiaed and continued also in the case of absence, residence or abod abroad of the person againt whom the preventive measure could be applied, upon a proposal by the persons under Article 17 having territorial jurisdiction on the place of latest abode of the person concerned with regard to the properties for which there are grounds to believe that they are the result of illicit activities or constitute their reuse.

242. Subparagraph 2 (a) of article 54

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article;

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

§ 2 subparagraphs a) and b) Article 737 bis of the Code of Criminal Procedure provides that for the cases covered by international agreements, the Minister of Justice shall decide to entertain a request of a foreign authority to carry out investigations on properties which can become object of a subsequent request for execution of a confiscation, or to seize them.

To this end the Minister of Justice shall forward the requests, and its annexed documents, to the Prosecutor General attached to the Court of Appeal having jurisdiction for recognizing the foreign judgment in view of the subsequent execution of confiscation. The Prosecutor General shall submit the request to the Court of Appeal who shall decide with an order in compliance with Article 724 .

The execution of the request for investigation or seizure shall be refused:

- (a) If the requested acts are contrary to principles of the State's legal system or are against the law or if these acts would not be allowed if they were prosecuted in the State;
- (b) If there are reasons to believe that the conditions are not met for the subsequent execution of the confiscation (Article 737 bis, paragraph 3).

In the cases of request for seizure the provisions of Article 737, paragraphs 2 and 3 of the Code of Criminal Procedure shall apply:

Paragraph 2: if the Court does not grant the request, an appeal to the Court of Cassation can be lodged by the Prosecutor General. An appeal to the Court of Cassation shall be lodged against the seizure for violation of the law by the person concerned. The appeal has not suspensive effect.

Paragraph 3: the provisions regulating the execution of preventive seizure (Article 737, paragraphs 2 and 3 of the Code of Criminal Procedure) shall apply, in that they are enforceable.

The seizure ordered under the present article shall lose its effectiveness and the Court of Appeal shall order that the seized properties be returned to those who are entitled to if within two years from the moment when it was executed, the foreign State does not require the execution of confiscation. The time limit can be postponed several times for a maximum period of two years;

The Court of Appeal who ordered seizure shall decide on the request.

The Italian legal system - the criminal code and special laws - provides different types of seizure and confiscation that are different in nature: a security measure and a preventative measure.

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, as mentioned above, 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.

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.

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 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.

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 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.

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 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».

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

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**).

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».

Following a very recent legislative amendment the provisions of the 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), are currently applicable also against persons under investigation for the offences object of the present Convention and therefore non-conviction based measures affecting persons and properties can be adopted.

243. Subparagraph 2 (b) of article 54

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

...

(b) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a request that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article; and

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

See above, under subparagraph a)

244. Subparagraph 2 (c) of article 54

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

...

(c) Consider taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

See above. In the cases where Italian jurisdiction is applicable also when the offence was fully committed abroad, the Judicial Authority can adopt the above seizure and confiscation measures.

245. Technical Assistance

The following questions on technical assistance relate to the article under review in its entirety.

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:

(NO) No assistance would be required

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

55. International cooperation for purposes of confiscation

246. Paragraph 1 of article 55

1. A State Party that has received a request from another State Party having jurisdiction over an offence established in accordance with this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with articles 31, paragraph 1, and 54, paragraph 1 (a), of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, situated in the territory of the requested State Party.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

In order to implement this provision it was not necessary to introduce adapting rules in the system.

In particular the possibility to implement the provisions of Article 54 stems from from the rules of Article 2 of Law n. 116 of 3 August 2009 authorizing the ratification of the Convention, according to which “Full and complete execution of the Convention under Article 1, hereinafter called “Convention”, starting from the date of its entry into force, in compliance with the provisions of Article 68 of this same Convention and the provisions already existing in the Italian system and in particular those indicated in Article 54 with regard to the applicable types of seizure measures mentioned in Article 54.

ARO answer

Italy has established an effective legal regime in the fight against organized crime, including the introduction of preventive measures on assets (i.e. seizure and confiscation), the main purpose of which is to recover illicitly gained assets.

The Italian LEAs have established a single point of contact (spoc) for asset tracing and identification when cross-border investigations are requested by law enforcement services.

The police cooperation is ensured through Interpol. The exchange of information for asset recovery purposes is also assured through the Camden Asset Recovery Inter-Agency Network (CARIN) which is the preferred channel within the members of the group. The CARIN is

becoming more and more active, providing an effective cooperation also in real operational cases.

Based on a EU Council Decision, the Chief of the Italian Police designated the International Police Cooperation Service, which acts as spoc for the LEAs, as the Italian Asset Recovery Office (ARO).

Within said Office, a working group was created for receiving all the requests concerning this topic worldwide, regardless the police channel used.

The National Office is charged with the facilitation of the tracing and identification of proceeds from, or other property related to, crime that may become liable to seizure or confiscation by the Judicial authorities and for this purpose it cooperates with the other counterparts through the exchange of information and best practices, both on request and spontaneously.

At European level, the National Office responds to the request under the time limit fixed by the Council Framework Decision 2006/960/JHA, dated 18 December 2006, on simplifying the exchange of information and intelligence between EU countries' law enforcement authorities (so called "Swedish initiative" implemented into Italian legislation by the Legislative Decree No. 54 dated 23 April 2015), using the connections to the available databases at the International Police Cooperation Service.

All 28 EU Member States set up their National Office respectively, adhering to the will of the Community Legislator aimed at establishing an "international cooperation channel" for police and judicial authorities, able to expedite procedures as well as to promote and facilitate the activities of:

- Cooperation between the offices in charge of the execution of an order of freezing, seizure or confiscation of proceeds of crime and other related property issued by the judicial authorities in the course of criminal or, as far as possible under the national law of the Member State concerned, civil proceedings;
- Exchange of information on request, for the purposes of the tracing and identification of proceeds of crime and other crime-related assets;
- Exchange of information spontaneously for the purposes of the tracing and identification of proceeds of crime and other crime-related assets;;
- Exchange of best practices both on request and spontaneously.

The Italian ARO directly accesses to several databases including those concerning lands and buildings, the tax returns of natural and legal persons, pension system, register of undertaking, register of vehicles as well as the police databases.

In case further and thorough investigations on the territory or at

public and private bodies are required, the National Office requests closer examinations of the relevant National Police Forces which are involved based on the type of crime committed by the person under investigation or previous investigations carried out by them.

With regard to seizure and confiscation, the Ministry of the Interior collects the statistical data resulting from the monitoring made by the Crime Analysis Service concerning the measures executed by the National Police, *Carabinieri* Force, *Guardia di Finanza* Service and Anti-mafia Investigations Directorate, as well as the asset-related preventive measures and the coercive measures involving the transfer of assets, according to Art.12 *sexies* of Law by Decree No. 306/1992, converted into Law No. 356/1992 (so called “extended confiscation”). Said data refer only to the operations which have been communicated by the major Italian Police Forces. These data are partial since they refer only to the coercive measures involving the transfer of assets, according to the Anti-Mafia Code. The data refer to all crimes for which these coercive measures were issued; no details about the measures issued further to investigations on specific offences and/or corruption can be extrapolated.

247. Paragraph 2 of article 55

2. Following a request made by another State Party having jurisdiction over an offence established in accordance with this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

§ 2: See Article 54, Article 737 bis of the Code of Criminal Procedure.

56. Special cooperation

256. Article 56

Without prejudice to its domestic law, each State Party shall endeavour to take measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on proceeds of offences established in accordance with this Convention to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this chapter of the Convention.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

It was not necessary to introduce legislative amendments in the domestic system to implement the present provision. The possibility for the prosecuting judicial authorities to send information on the proceeds of the offences provided for by the Convention with due regard to the need to avoid prejudices to investigations stems directly from Article 56 of the Convention which has been fully implemented based on Article 2 of Law 116/2009 authorizing its ratification.

257. Technical Assistance

The following questions on technical assistance relate to the article under review in its entirety.

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:

(NO) No assistance would be required

57. Return and disposal of assets

258. Paragraph 1 of article 57

1. Property confiscated by a State Party pursuant to article 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Article 5 of the Law authorizing ratification of the Convention, law 116 of 3 August 2009, introduced two new articles in Book XI Title IV, Chapter I of the Code of Criminal Procedure:

Three fundamental principles are at the basis of the new regulation of transfer to a foreign State; first of all transfer cannot be carried out without prior recognition of the foreign judgment or decision ordering confiscation of the properties under Article 31 of the Convention.

Secondarily transfer cannot be carried out without the relevant express request by the foreign State, under Article 740-bis, paragraph 2, subparagraph b) of the Code of Criminal Procedure. Last but not least, transfer shall be ordered at the same time of recognition of the foreign judgment or decision ordering confiscation (Article 740-ter, paragraph 1 of the Code of Criminal Procedure). Article 740-ter, paragraph 1, combined with 740-bis, paragraph 2, subparagraph b) of the Code of Criminal Procedure reveal that a foreign State will have to request transfer of the properties provided for by Article 31 of the Convention at the same time of the request for recognition of the confiscation judgment or decision of these same properties.

Article 740-bis of the code of criminal procedure. (Transfer to a foreign State of confiscated properties)

1. In the cases provided for by international agreements in force in the State, properties confiscated with a final judgment or another irrevocable order shall be transferred to the foreign State where the confiscation order was issued or adopted.

2. The transfer under paragraph 1 shall be ordered when the following requirements are met:

a) The foreign State made an explicit request;

b) The judgment or the order under paragraph 1, were recognized in the State under Articles 731, 733 and 743.

Article 740-ter of the Code of Criminal Procedure (Transfer order)

1. The Court of Appeal, when recognizing a foreign judgment or a confiscation order, shall order that confiscated properties under Article 740-bis be transferred.

2. A copy of this order shall be immediately sent to the Minister of Justice, who shall agree

on the transfer procedure with the requesting State.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

ARO answer

1. Case concerning PIZZOLATO Henrique, born on 9.9.1952 in Brazil. He was arrested in Maranello on 12 Feb. 2015 by Officers of the local Carabinieri Station upon an international arrest warrant issued by the Federal Supreme Court of Brazil for crimes of handling of stolen goods and corruption. He was extradited on 22.10.2015 <https://en.wikipedia.org/wiki/Henrique_Pizzolato>. The Court of Appeal in Bologna ordered the return to Brazil of the total amounts seized to Pizzolato which were deposited on an Italian current account.
2. Case concerning the return to Tunisia of the yacht of Ben Ali's family. On 23.01.2011 NCB in Tunis launched a search at international level for the provisional arrest with a view to extradition of Ben Ali Zine El-Abidine, former President of the Tunisian Republic and his closest entourage, for power abuse, financial crimes and handling of stolen goods. Subsequently, Interpol set up a dedicated task force to draw up a list of people holding assets stolen from the Republic of Tunisia in order to freeze them in compliance with the International Rogatory Letters issued by the authorities of that country. In May 2011, further to the tracing of a vessel having a value of about one million Euros in Italy, the Tunisian Judicial Authority issued a Rogatory Letter asking the Court of Appeal in Rome to seize the assets owned by the former head of the North African State, Zine El Abidine Ben Ali' and his family. The Court of Appeal of Rome (IV Penal Section) ordered its seizure, under a Convention signed in 1967 between Italy and the Maghrebi country. Subsequently, the Tunisian Magistrates forwarded an integration to the Rogatory Letter to the Italian Ministry of Justice in order to obtain the return of the yacht, as an international courtesy, also in virtue of a ruling issued by the Court of First Instance in Monastir (Tunisia). After some repair works, the vessel was entrusted to a delegate from the Tunisian Government and in April 2013 it was returned to Tunisia. Within their own jurisdiction, the Judicial Authority, the Guardia di Finanza Service, the International Police Cooperation Service, and the Ministry of the Foreign Affairs acting as focal point for Italy of the coordination Group established for implementing G8 commitments (Annex 2) were involved. <<http://www.repubblica.it/ultimora/24ore/Tunisia-restituito-yachtfamiglia-ex-presidente-Ben-Ali/news-dettaglio/4329745>>

265. Technical Assistance

The following questions on technical assistance relate to the article under review in its entirety.

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:

(NO) No assistance would be required

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

58. Financial intelligence unit

266. Article 58

States Parties shall cooperate with one another for the purpose of preventing and combating the transfer of proceeds of offences established in accordance with this Convention and of promoting ways and means of recovering such proceeds and, to that end, shall consider establishing a financial intelligence unit to be responsible for receiving, analysing and disseminating to the competent authorities reports of suspicious financial transactions.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

1. The Financial Intelligence Unit (FIU) for Italy

Established within Bank of Italy and operational since 1 January 2008, UIF is Italy's Financial Intelligence Unit, thus being defined as the national structure in charge of receiving information from persons obliged to provide it on suspected money-laundering or terrorist financing, requesting it from same, analysing it and transmitting it to the competent authorities" (See Art. 6 of Leg. Decree n. 231/2007, as amended by the Leg. Decree n. 90/2017, implementing in Italy the Fourth AML/CFT European Directive).

With the establishment of UIF within Bank of Italy, the legislator confirmed the choice made since 1997 for an FIU of administrative nature, in continuity with the FIU functions assigned to the former Italian FIU, the Ufficio Italiano dei Cambi, which was suppressed pursuant to the same Leg. Decree n. 231/2007. Therefore Italy's AML-CFT framework is based on a clear distinction between financial analyses and investigations: UIF is the competent authority to receive, analyse and disseminate the results of the financial analysis on STRs, while NSPV of GDF and DIA are the law enforcement authorities entitled to carry out investigations.

Pursuant to Art. 6, para. 1 of the said Leg. Decree, UIF is autonomous and operationally independent from Bank of Italy. UIF's autonomy from external influences can benefit from Bank of Italy's considerable independence and autonomy, according to the rules of the ESCB and those governing national and European banking supervision.

1.1. Model and organizational features

The administrative model was adopted for the UIF in order to keep the task of financial analysis separate from the investigations, emphasizing the independent role of prevention and the FIU's function as a 'buffer' designed to preserve a sound economic and financial system. The legal status of the FIU, which is not a separate entity, stems from its institutional function as a center for collecting, coordinating and channeling data and information of significant public interest.

The structure and operation of the FIU are governed by a Regulation of the

Governor of the Bank of Italy, first issued on 21 December 2007 and renewed after the unit was reorganised on 18 July 2014 (G.U. No. 250, 27 October 2014). The Director is appointed through a measure approved by the Directorate of the Bank of Italy, upon proposal of the Governor, among persons meeting suitable standards of integrity, experience and knowledge of the financial system. The Director has full authority and liability over the Unit, while the Bank of Italy provides financial resources, as well as premises, equipment, personnel and technical resources. A committee of Experts, composed of the Director and four members nominated by the Ministry of the Economy and Finance after consulting the Governor of the Bank of Italy, acts in an advisory capacity (Article 6. para. 3, Legislative Decree 231/2007).

1.2. UIF's core functions

Pursuant to Art. 6, para. 4, lett. b), UIF shall exercise the key functions of receiving and analysing STRs received under art. 35 of Leg. Decree n. 231/2007, as amended by the a.m. Leg-Decree n. 90/2017, and of disseminating the results of its analyses.

- a) **Receiving:** According to the mentioned Art. 6, UIF shall receive suspicious transactions reported by all obliged entities (financial intermediaries, non-financial operators and professionals). All reporting entities are under the obligation to report STRs to UIF pursuant to Art. 35 of Leg. Decree n. 231/2007. Also in order to improve the quality of the information received from reporting entities, UIF issues Instructions on the contents of STRs under Art. 6, para. 4, lett. d). The first set of Instructions were issued by the UIF on 4 May 2011. UIF shall examine any other fact that could be related to money-laundering or terrorist financing. To this end, UIF shall collect additional data from reporting parties, including by means of inspections, cooperate with foreign FIUs and, within Italy, exchange information and cooperate with financial supervisory authorities, judicial authorities, law enforcement bodies and other competent authorities.

In addition to the STRs, the UIF periodically receives data and information identified on the basis of objective criteria, related to operations considered to be at risk of money laundering or terrorist financing. These data and information are used for the financial analysis of suspicious transactions or for the analysis of specific phenomena and typologies.

Moreover, apart from the above mentioned flows of information, UIF shall receive:

- o aggregated data under Art. 33 of Leg. Decree n. 231/2007;
- o declarations of transactions and operations amounting to EUR 12,500 or more relating to investments in gold and transactions in gold material mainly for industrial use (See Art. 1, para. 2 of Law n. 7/2000).

All the above mentioned information is handled and integrated through computerised procedures.

- b) **Analysing:** UIF is entitled to perform financial analysis and use all its powers of collection of relevant information. It should be noted that financial analysis concerns not only STRs but also unreported suspicious transactions of which UIF becomes aware on the basis of information contained in its database or sent by Law Enforcement Agencies, supervisory authorities of the financial sector or professional associations and reports from foreign FIUs (Art. 40, para.1, lett. a) of Leg. Decree n. 231/2007). In this respect, UIF performs both operational and strategic analysis, this latter aimed at

identifying trends and typologies, also contributing to the national risk assessment developed within the Financial Security Committee. In order to perform its analysis functions, UIF has access to a wide set of sources pursuant to Leg. Decree n. 231/2007. UIF, pursuant to Art. 6, para. 4, lett.c) of Leg. Decree n. 231/2007, has the power to suspend transactions suspected of involving money laundering or terrorist financing for up to five working days.

- c) **Disseminating:** after the said analyses, UIF shall transmit STRs together with a technical report without delay, including on the basis of memoranda of understanding, to the DIA and the NSPV of Guardia di Finanza, which shall inform the National Antimafia Prosecutor, whenever it relates to organised crime (Art. 40, para. 1, lett. d) of Leg. Decree n. 231/2007. UIF also cooperates with the Judicial Authority under Art. 13 of Leg. Decree n. 231/2007 and provide the information requested under Art. 256 of the penal procedural code, thus disseminating STRs, technical reports, as well as information from other FIUs in compliance with the international principles governing FIUs exchange of information. The information referring to STRs shall be provided in compliance with the standard of security and confidentiality established by the same Leg. Decree n. 231/2007. The results of strategic analysis are mainly disseminated through the Annual Report, six month review, pattern of anomalies, trainings and provided for within the National Risk Assessment.

In addition, UIF performs the following functions:

Analyses and Studies

- § Performs analyses and studies of financial flows with a view to detecting and preventing money-laundering or terrorist financing (Art. 6, para. 4, lett. b);
- § conducts analyses and studies of individual anomalies relating to possible criminal activities of this kind, specific sectors of the economy considered to be at risk, categories of payment instruments and specific local economies (Art. 6, para. 7, lett. a), on the basis of the aggregate data transmitted on a monthly basis by banks and other intermediaries, with a view to detecting possible instances of money laundering or terrorist financing within certain geographical areas (Art. 33 of Leg. Decree n. 231/2007);

Regulatory functions

- § issues Instructions on the content of STRs under Art. 6, para. 4, lett. d);
- § issues and updates anomaly indicators, to help obliged entities in detecting and reporting suspicious transactions (Art. 6, para. 4, lett. c);
- § elaborates models and patterns of anomalous conduct with reference to specific lines of business or phenomena relating to possible money-laundering or terrorist financing, and issuing instructions on data and information required in suspicious transaction reports (Art. 7, lett. b).

Controls

- § carries out controls, including inspections, and initiating sanction procedures in matters within its sphere of competence (Art. 6, para. 4, lett. f) and g) of Leg. Decree n. 231/2007).

Cooperation and international activities

- § takes active part in the competent AML CFT international organisations and bodies (FATF; Egmont Group, FIUnet) with its own representatives;

§ is part of the Financial Security Committee at MEF with its own member; and being involved in the National Risk Assessment.

Moreover, UIF is entitled to receive notice of freezes adopted in respect of individuals and entities designated by EU Regulations or by relevant decrees issued by the Ministry of Economy and Finance (Art. 7, para. 1 of Leg. Decree n. 109/2007, as amended by the Leg. Decree n. 90/2017, implementing in Italy the Fourth AML/CFT European Directive)

1.3. The suspicious transactions reports

The Legislative Decree 231/2007, requires a broad range of subjects, namely: - financial intermediaries and other persons engaging in financial activity, - professionals, - auditors, - and a series of persons engaged in other (non-financial) activities to send the FIU a suspicious transaction report “whenever they know, suspect or have reason to suspect that money-laundering or terrorist financing is being or has been carried out or attempted.” Since 2008, for financial intermediaries the reporting requirement has also extended to suspicion of financing of programs of weapons of mass destruction.

The suspicion may arise from the characteristics, size, or nature of the transaction or from any other circumstances that come to the reporting institution’s attention by reason of its functions, and taking account of the economic capacity or business activity of the persons carrying out the transaction.

The suspicion must be grounded in a comprehensive assessment of all elements -objective and subjective - of the transactions that are known to the reporting institution, acquired in the course of the customer’s activity or as the result of conferral of an assignment.

To facilitate the detection of suspicious transactions, the Decree provides for several operational tools: anomaly indicators and models and patterns representing anomalous conduct, devised and issued by the UIF.

1.4. Active cooperation

The number of suspicious transaction reports has continued to increase markedly: in 2016 the UIF received a total of 101.065 reports, 22,6% more than in 2015 (see tables contained in the responses to questions under art. 14).

Reports received

		2011 Number of reports 49,075		Percentage change 31.5	
<i>year on year</i>					
2012	2013	2014 67,047	64,601	71,758 36.6	-3.6
11.1					
2015	2016 82,428	101.065 14.9	22,6		

The increase in the number of reports submitted to the UIF shows that the prevention system is consistently enhancing its capacity to intercept suspicious

transactions involving an increasingly broad array of operators from different categories. The more widespread participation in the system registered in recent years is proof of growing awareness of the risks of becoming involved in money laundering and of the need to take precautions against it.

In particular, the reports filed by financial intermediaries increased from 74.579 in 2015 to 89.669 in 2016. Those sent by professionals increased from almost 6.000 in 2015 to almost 9.000 in 2016, in part owing to tax regularization schemes that have built an important bridge with categories (especially lawyers) which up to now have not been very collaborative. Reports from non-financial operators also increased (by more than 60 per cent), especially those from providers of gaming and betting services.

The large number of reports must go hand in hand with the constant fine-tuning of their quality. Significant progress has also been made on this front. The UIF maintains an intensive schedule of meetings with the largest reporting entities or with those that present particular problems. In order to enhance the ability of obliged entities to identify behavioral patterns that may indicate money laundering, in 2015 and in 2016 the Unit launched the publication of collections of cases of interest that emerged in the course of financial analyses, with a simple illustration of their structural and functional aspects

1.5. Operational analysis

Despite the increase in the number of reports and contacts with reporting entities, the Unit succeeded in handling the larger volume of information received. Thanks to constant attention to the improvement of processes and technology, 103.995 suspicious transaction reports were analyzed in 2016 and sent to law enforcement agencies, representing an increase of 22,9 per cent compared with 2015 and a further reduction of the number of open cases, which fell to levels close to the average monthly inflow of reports.

Reports analysed by the UIF

		2011	Number	30,596
			<i>Percentage change on previous</i>	<i>13.5%</i>
2012	2013	60,078	92,415	
<i>96.4%</i>	<i>53.8%</i>			
2014	2015	75,857	84,627	
<i>-17.9%</i>	<i>11.6%</i>			
2016		103,995		
<i>22,9%</i>				

The operational analysis consists of information gathering to gain a better understanding of the content of the original transaction, identify persons and objective connections, reconstruct the financial flows underlying the operations, and thereby identify transactions and situations linked to money laundering or the financing of terrorism, augmenting the body of information available. It is a process of transformation in which the data obtained from the suspicious transaction reports are processed through automated systems, enriched by cross-checking archives and open sources, and classified according

to risk and transaction type in order to identify those that are most significant and warrant being disseminated as effectively as possible for subsequent investigative developments. This process follows the risk-based approach defined in the international standards and allows for intelligence efforts to be adapted to take into account the risks and vulnerabilities identified in the course of risk assessments and the results of strategic analyses.

The analysis of suspicious transaction reports is central to the Unit's financial intelligence activities and is instrumental in extracting from the reports the investigative elements to be forwarded to the authorities responsible for investigating cases of money laundering, predicate offences and the financing of terrorism.

The UIF is constantly working to improve its assessment processes and its data sources, strengthening the selectivity and effectiveness of its institutional activities and the sharing of its results with investigative bodies.

The wealth of knowledge that comes from the selection and financial analysis of STRs also allows the UIF to classify suspicious transactions and to identify and define types and patterns of abnormal behaviour to be shared with the obliged entities.

In accordance with international standards, the financial analysis process is divided into a series of activities designed to identify those STRs deemed to be well-founded and warranting further investigation, to assess the actual degree of risk involved and to decide how they should be handled by drawing upon a variety of information sources.

The analysis process uses the RADAR information technology system to gather and manage reports and to perform the first phase of data enrichment. The recurrence of suspicious behaviour (even among different operators) or cross-checks with other transactions serve as grounds for the suspicion that gave rise to the report.

The RADAR system classifies the reports, identifying those deemed to be of highest risk and therefore to be given priority treatment, on the basis of an automatic rating assigned to each report which partly relies on the level of risk indicated by the reporting entity.

Proper risk assessment in the various phases of the STR appraisal process is important for the financial analysis and in the subsequent investigative phases. The assessments synthesize a number of factors.

One of the most important factors is the obliged entities' own evaluation of the risk of money laundering or terrorist financing associated with the reported transaction, expressed on a 5-point scale.

The risk level assigned by the reporting entity helps to determine the automatic rating assigned by the RADAR system to each STR.

The automatic rating, expressed on a scale of 1 to 5 calculated with a structured algorithm that uses mainly qualitative variables, is an initial analysis of the reported transaction's risk level, which, incorporating internal and external factors, may differ from the risk profile assigned by the reporting entity. However, its accuracy also depends on the correct and thorough compilation of the STR by the reporting entity.

Though sophisticated, the automatic rating system is obviously unable to

adequately capture qualitative risk factors that can be detected in a financial analysis. The automatic rating can be confirmed or modified throughout the various phases of the process and the transaction's final rating is then transmitted to the investigative bodies.

The UIF is also working on improving its tools and methodologies (including econometric techniques) in order to provide guidance which, together with the ratings mechanisms detailed above, makes the processing of reports more efficient.

The financial analysis process begins with a first-level analysis to assess the actual level of risk of each STR and to determine the most appropriate treatment.

Based on the information received through automatic data enrichment and from other sources, the UIF determines whether the suspicion of money laundering appears to be founded and whether further investigation is needed.

When certain conditions are satisfied (the description of the transaction and the reasons for the suspicions are exhaustive, the suspicion relates to a phenomenon that is already known, further investigation is not possible, the opportunity to share information with the investigative bodies more rapidly) the STR can be accompanied by a simplified report, thereby reducing processing times.

If further analysis is needed to retrace the movement of the suspicious funds, the STR undergoes second-level analysis, which produces a detailed report on the findings of the additional analysis.

In this phase, a multitude of options and tools for in-depth analysis are available. In addition to contacting the reporting institution and other obliged entities to obtain additional information, the analyst may also consult the national database of financial account holders in order to identify the banks with which the reported persons maintain accounts, access the national tax database and involve foreign FIUs if the transaction involves cross-border connections or if notable recurrences emerge from FIU.NET's periodic multilateral matching function ('Ma3tch').

The Unit's data warehouse has made it possible to use most of the information accessible to the UIF, both internal and external, on an integrated basis. The data warehouse also facilitates the processing of massive quantities of information and therefore supports the identification and analysis of phenomena of interest and be used in support of the entire range of the UIF's official duties (management, inspections, strategic analysis, determination of patterns and models of conduct, and information exchange with judicial authorities, foreign FIUs and sectorial supervisory authorities). Data integration creates an environment that allows the utilization of vaster and, overall, more comprehensive and cogent information. The data warehouse also offers visual analysis tools inspired by social network models (link analysis or social network analysis).

The UIF's operational analysis of suspicious transaction reports makes it possible to identify 'profile characteristics,' which are constantly monitored and updated. These are recurring elements that are important for assessing the threats posed by money laundering and terrorist financing such as the improper use of certain financial instruments and payment methods, the geographic location of transactions, the economic sectors at

greatest risk, the precise subjective profiles of persons and entities reported and the complex and opaque company structures designed to disguise beneficial ownership.

Using these profile characteristics, it is possible to reconstruct the typologies that define at-risk operational patterns and behaviour profiles. The UIF uses the typologies to classify STRs and to provide updated information to obliged entities to help them detect suspicious transactions. In the spirit of active collaboration, the UIF publishes its results as *Casistiche di riciclaggio* in the *Quaderni dell'Antiriciclaggio* series.

1.6. Strategic analysis

UIF has a greatly diversified number of data sources (both internal and external) available for performing strategic analysis and studies. In addition, UIF may also require intermediaries to provide ad hoc data in connection with specific analyses. The analyses conducted by UIF allows the identification of significant cases, trends and typologies, also related to FT issues. Typologies are based on financial analysis and lead to identifying improper financial conducts.

It is worth noting that the UIF also performs its analysis by focusing on particular categories of threshold - based disclosures, which may be relevant for the detection of overall phenomena or trends in particular sectors, also concerning TF contexts. In particular, the UIF receives also:

- the aggregated anonymous data regarding all transactions whose amount exceeds 15.000 euros. The main categories of reporting entities include banks, Poste Italiane, fiduciary and asset management companies, securities firms and insurers;
- the declaration of transactions and operations amounting to €12,500 or more relating to investments in gold and transactions in gold material mainly for industrial use (See Art. 1, para. 2 of Law no. 7/2000);
- data regarding “*restitution transactions*”, when the subjects obligated to report cannot comply with CDD.

In keeping with international principles and Italian law, the UIF continued to develop activities designed not only to assess money laundering activities and trends, but also vulnerabilities in the economic and financial system and the risks associated with geographical areas, payment instruments and economic sectors.

In recent years new lines of quantitative research have been pursued, which use econometrics to pinpoint anomalies and emerging trends. Following a phase in which the main issues requiring attention were identified and the empirical models designed, last year we worked on their implementation and refinement.

The analyses are also used to update the national risk assessment the supranational one at European level. The model for territorial indicators of anomalies in cash transactions, identified as one of the critical aspects of the national system, has been completed and published in 2015.

To support the Unit's monitoring and intervention activities another model has been designed which helps to identify cases of inadequate active cooperation, taking account of banks' operations and of their distribution across the territory.

As part of the initiatives to prevent and combat terrorism, financial flows to Middle Eastern and North African countries were analysed on a trial basis; this examination revealed a series of transactions for considerable amounts necessitating specific research in light of the risks they presented.

1.7. National Cooperation

At a national level, the UIF has strengthened its relations with police forces, public prosecutors and other law enforcement authorities. The Italian national law requires that all the information in the possession of the FIU (as well as of the other public authorities involved in the AML/CFT apparatus), shall be covered by professional secrecy, including vis-à-vis the public administration (art. 12, para. 8, Leg. Decree n. 231/2007, as amended by the a.m. Leg. Decree n. 90/2017).

However, the UIF collaborates and shares information with competent authorities in order to prevent ML and TF. In particular, UIF:

- transmits the reports, including a technical report containing the information on the transactions provoking the suspicion of money laundering or terrorist financing, without delay, to the LEAs expressly indicated by law;
- cooperates and exchanges information with financial sector supervisory authorities, in order to facilitate the performance of their respective functions;
- exchanges information and cooperates with analogous authorities of other states that pursue the same purposes, subject to reciprocity also as regards confidentiality of information
- transmits information at disposal to the judicial authorities when the information requested is needed for investigations or proceedings involving violations subject to penal sanctions.

In addition, the UIF cooperates with the Ministry of Economy and Finance (MEF), providing technical support in the formulation of prevention policies, the drafting of legislation, the imposition of sanctions, and liaison with international bodies. It participates in the Financial Security Committee (FSC), instituted at the Ministry, within which all the authorities involved in the AML system are members.

The contribution of the FIU has become especially important in the National Risk Assessment, carried out in compliance with the recommendations of the FATF.

More in details, as concerns collaboration with the judicial authorities, it increased considerably: there is growing awareness of the opportunities afforded by the information contained in suspicious transaction reports and the Unit's analyses for the launch and conduct of investigations. The UIF has also intensified its interaction with Italy's national public prosecutors' offices. It cooperated on terrorism-related inquiries made by the Special Operations Group (ROS) of the Carabinieri with which the UIF has developed a very positive synergy. Another specific contribution was made to investigations into organized crime conducted by the Italian judiciary with the aid of the Central Operations Bureau (Servizio Centrale Operativo SCO) of the State Police.

More dialogue between the various actors and the sharing of know-how on methods and information delivers better

results and makes apparent the advantages of the system by facilitating its full deployment. In this context, the Unit frequently takes part in training initiatives for public prosecutors and courses held for police officers to share information on the tasks and instruments used in prevention activities.

UIF has an intensive and constructive exchange of information with the supervisory authorities (the supervisory directorates of the Bank of Italy, the Italian Stock Exchange Authority, “Consob”, the Insurance Supervisory Authority, “Ivass”) and collaborates with other Italian institution, also by signing specific memorandum of understandings in a view to enhancing an effective cooperation. In this regard, please refer to the following examples of agreements and forms of collaboration between UIF and other national Authorities.

In particular, on 30 July 2014 the Italian National Anticorruption Authority (ANAC) and the FIU signed a memorandum of understanding that provides, in the exercise of their official duties and without prejudice to their

respec

Pursuant to the memorandum, the FIU and the ANAC share the information they acquire from the international bodies in which they participate in order to inquire further into the links between corruption and money laundering and to identify possible synergies between their respective institutional activities. The ANAC cooperates with the FIU in identifying the types of activities or behaviors that may be indicative

The UIF continues to cooperate with ANAC to explore the links between the prevention of money laundering and corruption; in 2015 discussions were also held on the preparation of anomaly indicators for general government and the definition of the National Anti- Corruption Plan.

The FIU also signed a memorandum of understanding with the Customs and Monopolies Agency in 2013, according to which the Italian FIU has access to the Agency’s data on declarations of cash movements of at least €10,000. In return, the Unit has supplied the Agency with information pertaining to its analyses.

In 2014, the agreement between the FIU and the Italian Revenue Agency entered into full force. The new agreement, signed in 2013, allows the FIU, which was already authorized to access the agency’s registry of accounts and deposits, also to access the tax registry, as provided by law.

In March 2014 a memorandum of understanding was signed between the FIU and the municipality of Milan to define the principles and modalities for cooperation to ensure the most fruitful possible performance of their respective

It’s worth noting that in the previous legal framework, the offices of the public administration (also including the tax administrations) were included within the reporting entities. In the context of the new Italian legislation implementing the Fourth AML/CFT Directive (Leg. Decree n. 90/2017) the offices of the public administration are not included among the entities obliged to report suspicious transactions. However, the new legislation states that they just “communicate to the UIF data or information concerning possible suspicious transactions of which they have been aware in performing their institutional activity”.

According to the Mutual Evaluation Report of Italy published on February 2016, one of the priority action to be taken regards an improvement of the information sharing mechanisms between the UIF and the Italian law enforcement agencies.

On this regard, the recent transposition of the European AML/CFT legal framework (with the Leg. Decree n. 90/2017) set the basis for a more effective exchange of information between LEAs and UIF, extending the range of authorities to which financial analysis performed by the UIF may be disseminated.

In particular, new specific provisions has also intensified the cooperation between the UIF and the National Anti-Mafia and Counterterrorism Directorate (DNA) that receives from the FIU the data relating to reports of suspicious transactions and relating to the personal data of persons reported or connected and may request any other information and analysis that it considers of interest, also for the purpose of the power of impulse attributed to the National Prosecutor.

The DNA may request the FIU to analyze financial flows or analyses and studies on individual anomalies, relating to suspicions of use of the financial system for the purpose of money laundering or terrorist financing, on specific sectors of the economy considered to be at risk, on categories of payment instruments and on specific territorial economic realities.

Without prejudice to existing provisions on the protection of investigative secrecy, the DNA provides the FIU with timely feedback on the usefulness of the information received.

1.8. International Cooperation

Within the system of international and EU regulations on money laundering, the function of FIUs is to centralize the receipt and analysis of STRs and the exchange of information with FIUs in other countries. Cooperation with foreign FIUs is fundamental for the analysis of STRs, for identifying cross-border financial crimes and money laundering and for supplementing the information provided by the FIU to law enforcement and judicial authorities in support of criminal investigations and proceedings.

Within the framework of the FATF Recommendations, cooperation between FIUs is governed by the Egmont Group standards. At the European Level, the fourth AML Directive provides a comprehensive system for this cooperation, strengthening safeguards and available instruments.

In this regards, with a view to enhancing cooperation between FIUs, the Italian FIU is part of an extensive network of relationships and developed over the years rapid and secure electronic communication systems.

On the basis of art. 13 para. 1 of the Legislative Decree no. 231/2007, UIF is empowered to exchange information and cooperate with analogous authorities of other states in relation to money laundering, associated predicate offences and terrorist financing. STR information is of course included in this scope. The exchange is neither limited by professional secrecy nor by confidentiality restrictions. The legal basis is completed by EU legislation, namely the Council Decision of 17 October 2000 no. 2000/642/JHA (“Concerning arrangements for cooperation between financial intelligence units

of the Member States in respect of exchanging information”), which is directly applicable without any need for transposition.

UIF exchanges information through the dedicated channels used by FIUs globally for their cooperation (namely, the Egmont Secure Web and the regional FIU.NET network). UIF is a member of the Egmont Group and, at the European level, of the EU’s FIUs Platform. In such role, it is also member of the Advisory Group delegated by the EU’s FIUs Platform to provide guidance, advices and opinion to the Europol, that is the European institution in charge of the management of the FIU.NET infrastructure.

As regards the requests for information to foreign counterparts, UIF files such requests whenever this is needed in support of the analyses of suspicious cases. More particularly, information is requested, in relation to cases that have a cross-border nature, with the main purposes of:

- tracing flows of funds that are moved to or from foreign jurisdictions;
- detect and identify assets held in foreign countries (either within financial institutions or in other forms, e.g. real estate or companies);
- obtain and validate information on the identity of natural and legal persons that are known to hold assets or to receive/send money from/to other jurisdictions;
- facilitate appropriate contacts between the Italian law enforcement or judicial agencies with their foreign counterparts (particularly with a view to provide mutual legal assistance).

In order to make the “foreign FIUs” information channel a method in line with the requirements of the various analysis stages of the STRs, the UIF has recently differentiated the requests for information in two different categories.

The first category involves the submission of an automatic information request for the purpose of establishing whether or not all the foreign subjects cited in the Report are known to the FIU (known/unknown request); the eventual positive outcome, acquired when possible already in a preliminary analysis of the report, helps to delineate a first estimate of its significance; it is also a prerequisite to the submission of a motivated request from the report’s analyst, in order to acquire the information detained by the FIU and any other element deemed necessary for the investigation.

This type of requests are particularly simple and has proven to be a flexible and quick means to obtain useful inputs for the analytical process, especially as regards the possibility to pursue the case effectively through international exchanges. These requests are filed through a structured template which is standardized and easy to use by individual analysts.

The second type of request can be initiated by any analyst during the investigation of the STR, in the instance of additional elements of the foreign kind, pertaining to financial flows to/from abroad or the involvement, in the activity reported, of foreign individuals, entities and institutions. The analyst therefore develops a motivated request, representing all the elements at their disposal useful for the foreign FIU to have a complete enough representation for its reply.

Requests sent to foreign FIUs					
2012	2013	2014	2015	2016	
To answer to specific needs of	137	124	146	217	204 Public Prosecutors For internal financial

56 242 323 **340**

Total 217 180 388 540 544

The exchanges take place with all FIUs that are recognized as such: either belonging to the Egmont Group or not. In the latter case, UIF only needs to ascertain that the counterpart meets the definition of an “FIU” and is capable of ensuring adequate confidentiality in order to be able to engage in international cooperation. The range of counterparts to which cooperation is provided is therefore particularly broad.

The exchanges are particularly intense and numerous with FIUs from other Member States of the European Union; this is mainly due to the frequent need for cooperation on cases which have a cross-border nature within the EU Internal Market and taking advantage of the common legal framework and shared infrastructures for communication and exchange.

With reference to requests or spontaneous information received from foreign FIUs, the number of incoming requests has been constantly growing since the inception of UIF.

Requests/spontaneous information received from foreign FIUs					
2012	2013	2014	2015	2016	
Egmont	429	519	486	695	723 Exchanges concerni
Secure Web					
ISIL				383	536
FIU.NET					
	294	274	453	518	580 <i>border report</i>
	557	1.475			
	723	793	939	2.153	3.314

The range of information that UIF is able to provide to its foreign counterparts is as broad as that available for its domestic analytical purposes. UIF’s capacity to cooperate includes both spontaneous and upon request exchanges and, based on art. 13, paragraph 1, is only subject to reciprocity and appropriate confidentiality safeguards by the counterparts.

The legal basis for UIF to consent to its information being further used or disseminated by the foreign counterparts to which it is forwarded is provided by the Council Decision 2000/642/JHA. Art. 5, par. 3, establishes that “the transmitting Member State may not refuse its consent to such use unless it does so on the basis of restrictions under its national law”. Within this legal basis, not only UIF is able to (and does, in practice) grant consent to its foreign counterparts to further use and share the information provided for law enforcement and prosecutorial purposes; also, it can consider passing information on to foreign authorities which are not FIUs (“diagonal” cooperation). In such cases, in accordance with the FATF and Egmont standards, however, the diagonal exchange is done indirectly, that is the foreign FIU of the interested state is always appraised and the information is channeled through it, according to a specific Egmont operational guidance.

The cooperation that UIF can provide includes suspicions of money laundering, associated predicate offences and terrorist financing. Information can be provided regardless of the type and nature of the underlying predicate offence which the requesting counterpart may be dealing with. While the indication of the predicate offence in the request is not relevant, any possible difference in the range of predicate offences between the countries involved does not prevent UIF from providing information and, if need be, from consenting to its further use for intelligence or investigation by competent authorities in the requesting country.

While no restriction hinders UIF's capacity to share information, the legal basis ensures that cooperation can be provided effectively and informally, by using the most efficient channels and IT mechanisms available. In this respect, UIF can (and does) directly gather information from multiple domestic sources and transmit this information to its foreign counterparts via the ESW and the FIU.NET channels. This allows UIF to act efficiently upon any international cooperation need, while ensuring rapidity and confidentiality. This is particularly true as regards the intra-EU cooperation where, especially thanks to the FIU.NET functionalities, UIF can exploit the possibilities to share whole selected datasets as well as the opportunity to interact through quick "known/unknown" exchanges (that is, without the case description and the context).

Sharing entire datasets is particularly helpful in support of strategic analysis; known/unknown interactions allow to better and more efficiently target subsequent motivated requests. It is important to recall that, based on the existing legal basis, UIF can share information internationally in an informal manner, by directly using the ESW or the FIU.NET without any need for added formalities. To exploit these possibilities, UIF has evolved particularly efficient and streamlined internal processes allowing to enhance the rapidity and comprehensiveness of responses.

FIU.NET has enabled the development of innovative forms of international cooperation in Europe. These are explicitly recognized by the fourth AML Directive, which provides that FIUs must use the advanced methods of cooperation provided by FIU.NET and in particular data 'matching'.

FIU.NET also enables the completely confidential cross-checking of personal data so as to identify patterns that can be further examined by means of detailed information exchanges. If requests are made involving specific names, the 'Case Match' function can identify matches in the files of all participating FIUs. The 'Cross-Match' function can compare entire databases and find common names. The data made available for matching are encrypted using hashing mechanisms that guarantee absolute irreversibility and hence complete confidentiality. Matching is anonymous and only later is it traced to the underlying name. It is an extremely useful instrument for finding foreign connections with regard to persons whose foreign activities were not previously known.

The use of the ESW or the FIU.NET for the international communications concerning STR information ensures security and confidentiality. The access to and the use of such channels are strictly limited and regulated and appropriately secured by internal rules of procedure: only authorized personnel may have access to such gateways; in addition, dedicated IT tools are being developed to process and store the requests received and assist in the collection of the

requested information.

Based on the nature and type of the requests received and of the underlying cases, UIF prioritises the requests, taking account of the urgency of the case, the information needs, the links with Italy. If need be, appropriate contacts are entertained with the requesting counterparts to better understand the context, the type of assistance requested and the level of priority. Of course, UIF accepts the indications about the level of urgency and relevance as provided by the requesting counterparts, with no second-guessing. Based on its prioritization, UIF responds to requests in a timely manner, by making use of existing efficient procedures and internal processes.

As regards the need for specific agreements or MoU for the international cooperation, it's worth noting that UIF can co-operate freely with foreign counterparts, without any need for bilateral or multilateral agreements. At the same time, UIF can negotiate and sign directly (that is, with no need for third parties' authorisations) memoranda of understanding with any foreign counterparts that need them to be able to co-operate. Article 13, par. 1, explicitly empowers UIF to "conclude memoranda of understanding" with foreign counterparts. MoUs are also envisaged by the Council Decision 2000/642/JHA (although currently this is not common practice within the EU due to the particularly high level of integration and cooperation among EU FIUs).

UIF has so far entered into 25 MoUs with a broad range of foreign counterparts. While MoUs that are not needed for the provision of cooperation are prioritized accordingly, it is UIF's policy to maintain and foster agreements with the widest range of foreign FIUs, regardless of their nature. It is also felt that the existing general FATF and EGMONT standards governing FIUs' cooperation, together with the provisions of UIF's domestic legislation, provide for an effective framework for the exchange of information with foreign counterparts which, therefore, is not in any way impeded by the absence of MoUs.

Based on the same legal basis that allows UIF to share information internationally, UIF provides feedback to foreign counterparts on the use and usefulness of the information received. This is particularly the case where such information is forwarded to law enforcement agencies and prosecutors (based, of course, on the prior consent) and then used either in the context of ongoing investigations or as a means to target, prepare and file international rogatory letters.

With most recurrent counterparts, information on the follow up to the exchanges and on the use of the information provided is also shared by means of dedicated contacts (e.g. workshops or conference calls) or meetings. In such circumstances, both individual cases and the overall status of the bilateral cooperation are routinely discussed.

In cases where the cooperation received is not satisfactory (either because the information provided is not relevant/complete or because of timeliness issues), this is also conveyed to foreign counterparts through "negative" forms of feedback, aimed at signaling cooperation shortcomings or outright failures.

By cooperating with its counterparts in other countries, the Italian FIU has identified anomalous practices of regulatory arbitrage with foreign countries to facilitate the obscurement of both financial flows

and the identities of the parties to the transaction. Some of the most common practices consist in: the use of foreign funds and investment instruments to conceal the funds belonging to persons and entities under investigation in Italy; using companies, trust companies and other foreign trust structures to move cash; establishing companies and performing operations in various countries so as to exploit gaps in the safeguards and controls and to prevent the identification of beneficial owners; anomalous use of foreign-issued prepaid cards to withdraw cash in Italy; and using foreign companies to provide online gambling services.

1.8.1. Innovative forms of cooperation among FIUs

It is important to keep in mind that international cooperation needs to be looked at as an overall process, besides the discrete phases or outcomes consisting in requests and final replies. In this perspective, each response is the result of an interactive dialogue which is started by initial requests, often continues through subsequent clarifications to better target the information needed and the conditions applicable, and then ends with a final response which is tailored to the analytical needs of the counterpart.

This implies that the number of exchanges significantly exceeds that of the requests/responses. It is often even difficult to draw clear-cut and precise distinctions between requests and spontaneous disclosures, as well as between replies and feedback. In fact, effective cooperation often entails that the request highlights cases which are relevant also for the requested FIU and thus bring themselves important information that needs to be evaluated.

In such cases, the reply goes beyond the mere provision of the requested feedback and aims to better describe the common case, identify further information needs and ultimately lay the basis for a proper joint analysis. Rather than simply exchanging information as a passive response to a unilateral request, FIUs often cooperate by sharing the use of that information and developing common intelligence.

This is the type of international cooperation specifically pursued by UIF and it is in this light that statistics and examples of information exchanges should also be looked at. This is especially the case again of the exchanges entertained with other EU counterparts, taking advantage of the advanced functionalities offered by FIU.NET, which allow for effective case-sharing and joint analyses.

Advanced forms of integration of information (rather than case-by-case exchanges on specific subjects) are taking shape through the matching functionalities featured by FIU.NET and the possibility to make entire datasets available for identification of hits and commonalities through cross-matching; the functionalities embedded in FIU.NET also facilitate multilateral exchanges.

It is also necessary to consider:

- the underlying dialogue, which underpins many exchanges and implies several subsequent interactions;
- the advanced forms of sharing of information which take place through massive matching exercises.

It is often discovered, in the course of bilateral exchanges in response to the

requests received, that the same subjects involved or the same underlying cases are also of interest to other FIUs or have been already touched on in previous exchanges with other counterparts. In such instances, UIF proposes to the counterpart that the exchange is “multilateralised” by networking with the additional interested FIUs. For this purpose, it is of course necessary that both the requesting and the requested FIUs provide their consent to share their information, which UIF regularly does without any restriction.

In recent years, in the context of the global response to terrorism and terrorist financing, the UIF is experiencing innovative methods of performing intelligence. In particular, UIF is actively pursuing new, broader means to develop intelligence to detect terrorist financing on a preventive basis. Efforts are directed towards enlarging the data sets available for running checks and identifying relevant matches or patterns, specifically in light of the intelligence received through international cooperation. UIF, in particular, has developed targeted initiatives to exploit this information and build intelligence upon it for the identification of terrorist financing networks.

Data on remittances and the subjects involved, obtained through multilateral exchanges with FIUs are regularly forwarded to competent law enforcement agencies; the feedback received show how sensible this data is to trigger or support intelligence and investigations. Bulk data-sets are obtained from financial institutions to conduct checks and find matches with the information received especially through international cooperation.

The findings obtained through these ad-hoc intelligence activities, concerning both individuals and financial transactions, are further disseminated to competent law enforcement agencies and prosecutors. Moreover, information is also fed back to partner FIUs, under the same multilateral mechanisms used for the initial exchange.

For more details and data on the international cooperation of the UIF see also responses to questions under art. 14.

1.9. Participation in international organizations

The FIU is an active participant in the work of international organizations engaged in preventing and combating money laundering and financing of terrorism, contributing in particular to the development and sharing of common rules and practices.

The FIU is a standing participant in the work of the FATF as part of the Italian delegation headed by the Ministry of Economy and Finance. In particular, the Unit is a member of a series of specialized working groups within the FAFT, that has taken several steps to introduce more effective instruments to combat preferential tax regimes and to strengthen cooperation at global level. Specific projects are currently being studied to ensure transparency and the exchange of information on the structures and beneficial ownership of entities and companies, to broaden FIUs’ access to information and to enhance their ability to cooperate at international level. Within the FATF, UIF also follows several work streams (for example on domestic inter-agency cooperation, terrorist financing typologies, correspondent banking) and is particularly active in the evaluation of member Countries. Since the inception of the fourth round

of evaluation in 2014, UIF representatives have taken part in the training for evaluators and UIF experts have participated in 4 assessments of FATF Members. In an international context where standards on FIUs are implemented unevenly across countries, with implications on FIUs' capacity and the quality of cooperation, the aim is to identify areas of weaknesses in selected countries and foster the adoption of appropriate remedies leveraging on the FATF mutual evaluation and follow-up mechanism.

UIF is also an active Member of the Egmont Group. In this context, it participates in a number of operational and policy activities including, for example: development of updated IT tools for the exchange of information; sharing of experiences on typologies of money laundering and terrorist financing; improvement of methods and forms of exchange of information; infringement procedures against FIUs that fail to provide adequate cooperation.

At the European level, UIF has proposed and promoted the formal recognition, in the fourth Anti-Money Laundering Directive, of the EU FIUs' Platform, active since 2006 as an informal working party. The Directive now sets out a detailed mandate for the Platform, including tasks related to the implementation of the EU provisions and the preparation of guidance in the area of FIUs' cooperation. UIF is an active member of the EU FIUs' Platform; it has directly participated in devising its initial Work Plan and has contributed to selected Projects. These are related for example to the definition of common criteria and methods for the automatic sharing of cross-border STRs and the release of the consent for further using the information exchanged. In particular, UIF has led a European project on "FIUs' powers and obstacles for obtaining and exchanging information", launched by the EU FIUs' Platform. The ECOFIN Council has encouraged FIUs to complete the exercise swiftly and has called on the Commission to follow on its conclusions through appropriate measures and initiatives. The Commission has indicated in its Action Plan against terrorism financing that it will develop the conclusions stemming from the FIUs' Mapping Exercise through dedicated measures in 2017. The Project has been completed in December 2016; the Report approved by the Platform highlights major problems affecting FIUs in all relevant areas and sets out a wide range of proposals to address such problems. These findings and proposals inform now the preparation of new provisions at the EU level to enhance the FIUs' role, the implementation of the EU AML/CFT rules by national regulators, FIUs' action domestically and in the Platform.

Based on the IOs of the EU Mapping Exercise, UIF contributes to a number of EU and international initiatives aimed at enhancing the roles and activities of FIUs and facilitating the cooperation among them.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

3.1. The

IMF's assessment of Italy's anti-money-laundering and counter-terrorist

In 2015 the IMF completed, on behalf of the Financial Action Task Force on Money Laundering (FATF), its detailed assessment report on Italy's system for combating and preventing money laundering and the financing of terrorism. The results were published in early 2016. The assessors found that Italy was aware of the gravity of the risks it faced and had proven capable of building and running a system characterized by: a robust legal and institutional framework; a good understanding of the

risks; a high degree of cooperation and coordination among authorities on policies for the prevention and repression of violations; a particularly effective system for reporting, analysing and verifying suspicious transactions; widespread and growing cooperation of a large number of operators; incisive investigative and judicial action.

The assessment also examined the profile and activities of the UIF, recognizing its independence and autonomy, ensured by legal safeguards and by its special position within the Bank of Italy, which guarantees that 'all the decisional process is developed within UIF, without any interference from the BoI or any other authorities.' It further acknowledged that, '*The UIF is a well-functioning financial intelligence unit. It produces good operational and high-quality strategic analyses that add value to the suspicious transaction reports (STRs)*'. The assessors also praised the UIF's organizational arrangements, in particular the use of a '*very advanced reporting system*' that '*allows a classification of STRs by risks*', and its structural arrangements, which were recently reviewed to counter new threats more effectively.

The IMF assessors' view of the entire anti-money-laundering system ranks Italy among the most virtuous of the member countries of FATF; it confirms the validity of Italy's legal and institutional framework and the effectiveness of the action taken by all members of the system; finally, it identifies some weak points and indicates the necessary countermeasures.

3.2. Risks and threats

In the last few years the phenomena of organized crime and financial criminal activity were compounded by the new risks stemming from the rise in international terrorism. These consist in countering the emergence of more sophisticated ways of financing terrorism, including those based on self-financing by local groups and on the support of organizations that control foreign territories and can use funds stemming from illegal trading in the resources stolen from occupied countries.

The strategies developed by the international bodies to combat terrorism emphasize the role of financial information and the importance of sharing it at national and international level. These strategies entail the handling of a huge volume of data and require considerable resources but can produce important results: the information exchanged between national FIUs, following the Paris terror attacks of 13 November, was useful to reconstruct the transit through Italy of one of the terrorists, thereby making a concrete contribution to the mapping of his network of relationships and to the police investigation.

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UIF continues to pay close attention to the threats identified in the national risk assessment carried out in 2014 in relation to organized crime, corruption, tax evasion and other financial crimes. Combating these phenomena, including with the use of financial resources, is an ongoing priority. The links between criminality and the economy have become increasingly close and systematic; it is often difficult to distinguish between illegal activities and those conducted in an apparently legitimate manner by businesses that have been infiltrated by crime.

The investigators' findings confirm the importance of reporting suspicious transactions in order to combat organized crime: adopting new working procedures, the Anti-Mafia Investigation Departmente

Corruption is among the most alarming and dangerous criminal phenomena to which Italy is exposed. The international community pays close attention to this issue and to the significant consequences it has for the competitiveness of our country, including in terms of our ability to attract foreign investment. The UIF's activities have

not been confined to highlighting symptoms of corruption and embezzlement of public funds in reported transactions but have also endeavored to identify patterns of

3.3. Statistics

The UIF publishes every six months statistical data on the reports received and concise accounts

267. Technical Assistance

The following questions on technical assistance relate to the article under review in its entirety.

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

No assistance would be required

Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:

(LA) Legislative assistance: please describe the type of assistance

According to the Mutual Evaluation Report of Italy published on February 2016, one of the priority action to be taken regards the circumstance that UIF should be authorized to access law enforcement information, and to disseminate analysis beyond DIA and GdF to other relevant LEAs and agencies, and more selective in its disseminations. The GdF and DIA should in turn provide better feedback to the UIF.

On this regard, it is worth noting that the recent transposition of the European AML/CFT legal framework (with the Leg. Decree n. 90/2017) set the occasion for an improvement of the information sharing mechanisms between the UIF and the Italian law enforcement agencies.

In particular, new specific provisions set the basis for a more effective exchange of information between LEAs and UIF, extending the range of authorities to which financial analysis performed by the UIF may be disseminated and providing a deeper access of the UIF to law enforcements information. Specific provisions refer to a wide range of feedback information to be provided to the UIF from the LEAs.

The new legal framework has also intensified the cooperation between the UIF and the National Anti-Mafia and Anti-Terrorism Directorate (DNAA) and, through it, with the District Anti-Mafia Prosecutors' Offices, opening new possibilities for sharing information and for operational exchanges.

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

No assistance is provided

59. Bilateral and multilateral agreements and arrangements

268. Article 59

States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this chapter of the Convention.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Italy is very active in enhancing the effectiveness of international police cooperation also through seeking and implementing agreements and bilateral memorandum of understanding among Law Enforcement Agencies; this is proved by having signed bilateral agreements with 106 countries.

DNA ANSWER:

As part of the efforts to combat corruption, in full compliance with the legal framework, with the international agreements and national regulations, the National Anti-mafia and counterterrorism Directorate has signed:

- an **administrative cooperation agreement** with the European Anti-fraud Office (OLAF) in the common attempt of protecting the financial interests of the European Union by fighting and preventing frauds, corruption and any other illegal activity to the detriment of the European Union's financial interests, strengthening a timely exchange of information and an effective cooperation in cases of alleged fraud, corruption and any other illegal activity, as well as serious facts concerning the exercise of professional activities by members and staff belonging to the Institutions, bodies and agencies of the European Union. On the basis of this information the Parties might identify further collaboration opportunities, including parallel investigations, in order to create effective synergies in fighting corruption and organized crime (23.01.2017)
- **Memorandum of understanding and cooperation** with the Attorney-general's office of the Russian Federation to fight crime, also in its organized forms (including corruption and economic and financial crimes) and to cooperate in matters of judicial assistance in criminal proceedings, providing the exchange of information, also concerning the judicial system and the laws of both States and international judicial cooperation experience (12.01.2017);

- together with the Italian Ministry of Justice, operational guidelines concerning mutual legal and extradition assistance with the Canadian Ministry of Justice, providing forms of direct communication with the Public prosecutor and the law enforcement agencies of the requesting Nation, exchange of information on the respective legal proceedings and substantial law systems;
- on the occasion of the “Managing complex data in organized crime and corruption cases” meeting held in Belgrade on 26 and 27 May 2016, a **memorandum of understanding** with the national Prosecutors’ Offices of Serbia, Montenegro, Slovenia, Croatia, Bosnia and Herzegovina, Srpska, Macedonia, Albania, Bulgaria, Hungary and with the national anti-corruption directorate of Romania, providing ways of mutual assistance and exchange of information concerning the fight against organized crime and corruption (26/05/2016).

269. Technical Assistance

The following questions on technical assistance relate to the article under review in its entirety.

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:

(NO) No assistance would be required

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.