



MINISTRY OF FOREIGN AFFAIRS AND INTERNATIONAL COOPERATION
Inter-ministerial Committee for Human Rights

***ITALY'S REMARKS, FOLLOWING UN HUMAN RIGHTS COUNCIL
RESOLUTION 41/9***

October 18, 2019

ITALY'S REMARKS

Further to your query, Italian Authorities are in a position to provide the following remarks:

1. The Basic Law of Italy is a rigid Constitution, which determines the political framework for action and organization of the State, meaning, inter alia, that the principle of equality, laid down in Article 3¹ guides State's actions.

Act No.3/2019: a revolution in the fight against corruption

In January 2019, the Italian anticorruption legal framework was "further integrated": After having introduced the protection of whistleblowers, both in the public and the private sectors (Act No. 179/2017), Act No. 3/2019 on "Measures to fight offenses against the public administration as well as on the statute of limitation for Italian criminal law" was passed.

Specifically, Act No.3/2019, the so-called "Bribe Destroyer" (*Spazzacorrotti*) Law, establishes additional provisions to fight public sector corruption and to increase transparency requirements in the private sector. This Act introduces heavier penalties for some offenses against the public administration; enforces the entire anticorruption legal framework, in line with the most relevant multilateral Conventions (e.g. The Convention on Criminal and Civil Law of the Council of Europe-GRECO), and OECD.

From a criminal law standpoint, this Act introduces, *inter alia*, new powers for investigative authorities (use of special investigative techniques, including undercover agents, a larger use of wiretapping), increased sanctions for both physical and legal persons (including a permanent ban from holding public office or doing business with public administration); further adjustments to the offences of private bribery and trading in influence; a broader definition of foreign public official; new counting of statute of limitations (stop to prescription after a first-instance conviction as of 2020); and rehabilitation, leniency scheme for those who first denounce corruption; extra-territoriality, etc..

It is worth recalling than in the last Report on the Fourth Evaluation Round of Italy on Corruption Prevention with regard to members of Parliament, Judges and Prosecutors, adopted during the Plenary of December 2018, the Group of State against Corruption at the Council of Europe (GRECO), assessed very positively the compliance of Italy with regard to **Recommendation VIII**.

¹ Art. 3: All citizens have equal social dignity and are equal before the law, without any distinction with regard to sex, race, language, religion, political opinion, personal and social conditions. It is the duty of the Republic to remove those obstacles of an economic or social nature, which constrain the freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the political, economic and social organization of the country.

This new Law:

a) Increases sanctions for corruption pursuant to Section 318 of the Penal Code. The minimum penalty will increase from one to three years of imprisonment, and the maximum penalty will increase from six to eight years;

b) Introduces a life-long ban in dealing with public administrations and a life-long disqualification from holding public office for individuals sentenced for corruption-related offenses.

An exception refers to imprisonment sentences not exceeding two years or where an attenuating circumstance provided for by Section 323-bis of the Penal Code applies (in which case, the duration of the above-mentioned penalties is temporary). It is worthy to underline that the debarment from contracting with the public administration can now be applied, as a precautionary measure, also before the sentencing;

c) Amends the rules on the statute of limitations. The new law provides that the statute of limitations is suspended from the judgment of first instance (regardless of whether a conviction or an acquittal) until the final judgment becomes enforceable. It should be noted that this amendment will enter into force on January 31, 2020. Therefore, the new statute of limitations rule will not apply to offences committed before that date;

d) Extends the prohibition of dealing with public administrations to the offenses of embezzlement, corruption in judicial proceedings, and trafficking in illegal influence (influence peddling), as amended by Law 3/2019. The new Law expands existing offenses related to corruption activities to include those who, by exploiting or boasting previous or alleged relationship with a public official, improperly give or promise money or benefits in return for the illicit intervention of the official, or who provide or promise to provide a remuneration in return for the exercise of the official's functions or powers;

e) Amends Arts. 9 and 10 of the Penal Code, by removing the requirement of a Ministry of Justice's request or victim's complaint in order to prosecute certain offenses against the public administration committed abroad by an Italian citizen or by a foreign citizen against the Italian State or an Italian citizen; this amendment has a corresponding implication for the corporate liability sector, as these provisions are referred to in Article 4 of Legislative Decree 231 (responsibility of the entity established in Italy for offenses committed abroad);

f) This Law also amends the Italian Civil Code, by introducing the possibility of prosecuting *ex officio* private-to-private corruption (Section 2635 of the Civil Code) and incitement of private-to-private corruption (Section 2635-bis of the Civil Code);

g) Introduces reductions in penalties and a special exemption from liability in cases of voluntary self-disclosure. Making room also for mitigating circumstances in case of, prior to the sentencing of first instance in corruption-related cases, taking steps to ameliorate the effects of the offense. These measures include efforts to prevent the criminal activity from being carried out further, keeping evidence of the offense, taking measures for the identification of the perpetrators or for the sequestration of the amounts or other benefits already transferred, eliminating organizational deficiencies that facilitated the offense, and implementing organizational changes to prevent future offenses;

h) The access to the penitentiary benefits of the suspension of imprisonment pursuant to Article 656, para.5, of the criminal procedural code and the admission to alternative measures are not allowed in the event of conviction for corruption. This Law significantly amended Legislative Decree 231/2001 with respect to corporate liability.

This Law also provides for requirements to increase transparency in the political parties funding. From now on, donations with the annual value equivalent to 500 Euros or more will have to be fully disclosed. The rule applies to individuals, organization, foreign companies subject to tax obligations in Italy, elected/government representatives, treasurers of political parties, as well as foundations, associations and committees affiliated with political parties and movements.

This prohibits political parties and movements to receive money contributions, other benefits, services and/or different forms of support from governments or public bodies of foreign states, or from legal entities established in a foreign country. In case of a violation, penalties not lower than three times and no more than five times the values of the contributions, benefits or other forms of financial support received are envisaged.

Greco evaluation on Italy

It is worth recalling than in the last Report on the Fourth Evaluation Round of Italy on Corruption Prevention with regard to members of Parliament, Judges and prosecutors, adopted during the Plenary of December 2018, the Group of State against corruption at the Council of Europe, assessed very positively the compliance of Italy with regard to **Recommendation VIII** (quoted below).

Thanks to the results achieved in the Justice sector, with specific focus on the fight against corruption, the recommendation has been considered fully implemented and withdrawn.

Recommendation viii.

...43. GRECO recommended that (i) the authorities continue in their endeavours to ensure efficiency of the justice system through a prompt adoption of the planned reforms in civil and criminal matters, including the reform of the appeal system and of the statute of limitation; (ii) an analysis be carried out of the budgetary and staff situation in courts and prosecution offices, with a view to ensuring that the resources necessary are available and efficiently used across the judicial system.

...Bill No. 1189 (Decreto Spazza Corrotti than become law 3/19) in Its first part contains important amendments to both the Criminal Code and the Code of Criminal Procedure, aimed at strengthening the prevention, prosecution and punishment of corruption in the public and private sectors. For example, more severe penalties are proposed for the offence of bribery in the exercise of the official functions by increasing the minimum sentence of three years' imprisonment to up to eight years' imprisonment. Accessory sanctions have been significantly reinforced too (e.g. public employment and public contract bans). Likewise, with regards to the statute of limitations, it is proposed to stop the time-limit at the first-instance judgment. Several provisions have also reportedly been introduced to better approximate to the recommendations issued by GRECO in its Third Evaluation Round.

...GRECO can only welcome the evolving discussion regarding the recently tabled "Bribe Destroyer" Bill, which is reportedly aimed at further advancing the anticorruption struggle, also by addressing a number of lacunae in the criminalisation of corruption offences and the regulation of political financing – covered under GRECO's Third Evaluation Round. It would be premature for GRECO to assess the breadth and extent of the proposed changes, which still need to undergo parliamentary debate. GRECO looks forward to receiving further updates in this respect, including in connection with the on-going Third Round Compliance procedure on Italy. GRECO concludes that recommendation viii has been implemented satisfactorily.

Final summary:

- a) Amendments to the Criminal Code
- art. 158 and 159 CP: statute of limitations
- Art. 317-bis CP: life-long prohibition on dealing with public administrations
- Art. 318 CP: increased penalties for cases of "improper" bribery
- Art. 646 CP: increased penalties for embezzlement
- Art. 322-bis CP: the definition of foreign public official has been extended
- Art. 346-bis CP: important changes for undue trading in influence.
- Art. 322-bis CP (foreign public official)

Art. 323-ter non-punishment clause

b) Amendments to the Civil Code

Art. 2635 CC (corruption between individuals) and art. 2635-bis CC (inducement to bribery) were amended

c) Amendments to the Legislative Decree no. 146 of March 16, 2006

use of an undercover investigator for corruption offences

d) Amendments to the Penitentiary Law

sections 4-bis e 47 with relevant effects focused on the exclusion of access to the benefits of the suspension of imprisonment and admission to the alternative measures treatment.

e) Amendments to the Legislative Decree No. 231 of June 8, 2001 (Regulations governing the administrative liability of legal persons, companies and associations including those without legal status)

section 25 paragraph 1, increasing sanctions

section 25 paragraph 5, restraining measures for legal entities

section 25 paragraph 5-bis, benefit in case of cooperation.

Conclusion

Italian Authorities take this opportunity to further reiterate their firm willingness to continue full and extensive cooperation with UN Special Procedures and other human rights mechanisms.

