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Group of States against corruption

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Joint First and Second Evaluation Round

Evaluation Report on Italy

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INTRODUCTION

1. Italy joined GRECO on 30 June 2007, i.e. after the close of GRECO's First and Second Evaluation Rounds. Consequently, Italy was submitted to a joint evaluation procedure covering the themes of both the First and Second Evaluation Rounds (see paragraph 3 below). The GRECO Evaluation Team (hereafter referred to as the "GET") was composed of Mr Alastair BROWN, Advocate Depute, Advocate Deputes' Chambers, Crown Office (United Kingdom), Mr Silvio CAMILLERI, Attorney General, Attorney General's Office (Malta), Mrs Jane LEY, Deputy Director, US Office of Government Ethics (United States of America) and Mr Vjekoslav VUKOVIC, Advisor to the Minister of Security, Council of Ministers, Ministry of Security (Bosnia and Herzegovina). The GET was supported by Mr Wolfgang RAU, Executive Secretary of GRECO and Mrs Laura SANZ-LEVIA of the GRECO Secretariat. The team visited Italy from 13 to 17 October 2008. Before the visit the GET experts were provided with replies to the Evaluation questionnaires (Greco Eval I-II (2008) 3E Eval I – Part 1 and Greco Eval I-II (2008) 3E Eval II – Part 2), copies of relevant legislation and other documentation.

2. The GET met with judges, prosecutors and police officers from *Guardia di Finanza*, *Arma dei Carabinieri* and *Polizia di Stato*. Moreover, the GET met with representations from the following institutions: Ministry of Justice, Presidency of the Council of Ministers, Ministry for Public Administration and Innovation, Ministry of Economy and Finance, Financial Intelligence Unit, Ministry of Infrastructure and Transport, National Council for Economy and Work, Authority for the Supervision of Public Contracts for Works, Services and Supplies, Parliament (Immunity Committees of the Senate and the House of Deputies), Commission on Access to Administrative Documents, *Difensore Civico* (Rome), Revenue Agency and Court of Audit. Finally, the GET met with members of the following non-governmental institutions: Transparency International, the Confederation of the Italian Industry (*Confindustria*), Chamber of Commerce, lawyers, notaries, private accountants and auditors, trade unions, academics and journalists.

3. In accordance with Article 10.3 of its Statute, GRECO had decided that:

   - the First Evaluation Round would deal with the following themes:

     - **Independence, specialisation and means available to national bodies engaged in the prevention and fight against corruption**[1]**:** Guiding Principle 3 (hereafter "GPC 3": authorities in charge of preventing, investigating, prosecuting and adjudicating corruption offences: legal status, powers, means for gathering evidence, independence and autonomy); Guiding Principle 7 (hereafter "GPC 7": specialised persons or bodies dealing with corruption, means at their disposal);
     - **Extent and scope of immunities**[2]**:** Guiding Principle 6 (hereafter "GPC 6": immunities from investigation, prosecution or adjudication of corruption); and

   - the Second Evaluation Round would deal with the following themes:

     - **Proceeds of corruption**[3]: Guiding Principles 4 (seizure and confiscation of proceeds of corruption) and 19 (connections between corruption and money laundering/organised crime), together, for members having ratified the Criminal Law

[1] Themes I and II of the First Evaluation Round
[2] Theme III of the First Evaluation Round
[3] Theme I of the Second Evaluation Round

Convention on Corruption (ETS No. 173), with articles 19.3, 13 and 23 of the Convention;

- **Public administration and corruption**[4]: Guiding Principles 9 (public administration) and 10 (public officials);
- **Legal persons and corruption**[5]: Guiding Principles 5 (legal persons) and 8 (fiscal legislation), together, for members having ratified the Criminal Law Convention on Corruption (ETS No. 173), with articles 14, 18 and 19.2 of the Convention.

Italy has signed the Council of Europe's Criminal Law Convention on Corruption (ETS No. 173) and the Civil Law Convention on Corruption (ETS No. 174). However, none of these instruments has been ratified as yet.

4. This report was prepared on the basis of the replies to the questionnaires and the information provided during the on-site visit. The main objective of the report is to assess the effectiveness of measures adopted by the Italian authorities in order to comply with the requirements deriving from the provisions indicated in paragraph 3. The reports presents – for each theme – a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to Italy in order to improve its level of compliance with the provisions under consideration.

I. OVERVIEW OF ANTI-CORRUPTION POLICY IN ITALY

a. Description of the situation

Perception of corruption

5. According to a 2007 study on the phenomenon of corruption in Italy, which was carried out by the High Commissioner against Corruption, corruption in public administration is widely diffused and favoured by some specific features of the Italian administrative system, such as a recruitment and promotion scheme that suffers from a certain obscurity and inefficiency. The High Commissioner study also refers to other research pointing out that, in Italy, corruption is deeply rooted in different areas of public administration, in civil society, as well as in the private sector: the payment of bribes appears to be common practice to obtain licenses and permits, public contracts, financial deals, to facilitate the passing of University exams, to practice medicine, to conclude agreements in the soccer world, etc[6].

6. Another study of the High Commissioner against Corruption, issued in June 2006, recognises that there are sufficient grounds to believe that connections exist between corruption and organised crime, in particular, at local level and in the Southern regions of Italy (*Mezzogiorno* area). Likewise some areas of public administration are more affected than others, especially those where local officials' influence on decisions of an economic nature is relatively high. The study highlights some areas of public administration where the risk is particularly prominent, notably, urban planning, environment (as illustrated for example, in waste management processes particularly in the area of Naples), public procurement (domestic and EU cohesion and structural funds), health sector, judiciary (a 65% increase in reported corruption cases within the judiciary was recorded between 2005 and 2006), etc[7].

[4] Theme II of the Second Evaluation Round
[5] Theme III of the Second Evaluation Round
[6] Il Fenomeno della Corruzione in Italia. 1° Mappa dell'Alto Commissario Anticorruzione. December 2007.
[7] Studio su i Pericoli di Condizionamento della Pubblica Amministrazione da parte della Criminalità Organizzata. June 2006.

7. In the Transparency International index 2008, Italy ranked 55 out of 180 countries (and 26 among 31 European countries), with a score of 4.8 out of 10 (compared to 5.2 out of 10 in the 2007 index)[8]. A Chapter of Transparency International exists in Italy since 1996.

Major anti-corruption initiatives

8. Italy does not have a specifically coordinated anti-corruption programme. However, the authorities have referred to a series of measures which are thought to have had a significant impact in this area, such as the introduction of administrative liability of legal entities (including both sanctions for offences committed by companies, as well as incentives to set in place corruption prevention/ethical self-regulatory schemes), the establishment of a specialised anti-corruption service, etc.

9. In particular, the High Commissioner against Corruption was created in 2003 and started to operate in 2004. The High Commissioner was entrusted to carry out a three-fold task: (1) regular review of legal instruments and administrative practices in the prevention and fight against corruption; (2) identification of critical areas; (3) assessment of the degree of vulnerability of public administration to corruption and associated criminal behaviour. The High Commissioner was furthermore empowered to carry out fact finding administrative investigations (*ex-officio* or upon request of a public administration body), develop analyses and studies on the problem of corruption, and monitor contractual and expenditure procedures with a view to preventing misuse of public money. In June 2008, as part of a stated Government plan to rationalise public expenditure and reorganise administrative structures, the High Commissioner against Corruption was abolished with effect of 25 August 2008[9]. Pursuant to a Decree of the Prime Minister, the functions of the High Commissioner against Corruption were, on 2 October 2008, transferred to the Anti-corruption and Transparency Service (SAeT) within the Ministry for Public Administration and Innovation – Department of Public Administration (under the auspices of the Presidency of the Council of Ministers).

Criminal legislation

10. Italy has signed, though not yet ratified, the Council of Europe's Criminal and Civil Law Conventions on Corruption (ETS 173 and 174, respectively). Italy is a party to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Italy has not ratified as yet the United Nations Convention against Corruption[10].

11. Bribery of a public official or a person in charge of a public service is criminalised pursuant to Articles 321 and 322 (active bribery) and Articles 318 and 319 (passive bribery) of the Penal Code. Punishment for active and passive bribery ranges from 6 months to 3 years (lawful acts) and from 2 to 5 years (unlawful acts: omission or delaying of acts relating to office or acts in breach of official duties), respectively. In both cases, the applicable sanctions can be reduced by one third if the offer or promise of the undue advantage is not accepted. The penalty for passive bribery in connection with unlawful acts is to be increased if corruption occurs in the exercise of

[8] Transparency International 2008 Corruption Perceptions Index. Regional Highlights: EU and Western Europe.
[9] Article 68(6) of Legislative Decree No. 112 of 25 June 2008 abolished the High Commissioner against Corruption, the High Commissioner against Counterfeiting and Piracy and the Commission for the Placement of Personnel Dependant of Military Bodies of the NATO.
[10] The authorities indicated that a Chamber of Parliament has approved a law for ratification of the United Nations Convention against Corruption.

judicial functions (Article 319-ter, Penal Code) or if bribery results in the award of civil services, wages, pensions or contracts with public administration (Article 319-bis, Penal Code). Concerning the relevant statute of limitation for this type of offences, the system was reviewed in 2005 with the result that the limitation period for certain corruption offences increased, while that for others decreased. Thus, the limitation period for the offence of passive bribery for acts of office was increased from 5 to 6 years, while that for aggravated passive bribery in connection with judicial acts was increased from 15 to 20 years. On the other hand, the limitation period for the offence of passive bribery in relation to acts contrary to official duties has been decreased from 10 years to 5 years, while that for non-aggravated passive bribery in connection with judicial acts has been decreased from 10 to 8 years.

12. In addition, Italian legislation criminalises the offence of "*concussione*", i.e. cases where a public official abuses his/her functions or power to oblige or induce the individual to unduly give or promise money or other assets to him/herself or a third party. This offence is punished with imprisonment of the public official from 4 to 12 years (Article 317, Penal Code). When instances of "*concussione"* occur, the individual who has been subject to extortion is considered a victim. The limitation period for this offence has been decreased from 15 years to 12 years.

13. Bribery in the private sector is provided for by Article 2635 of the Civil Code (as amended by Legislative Decree 61/2002), which can punish – with imprisonment of up to three years – managers, general directors, directors in charge of the drafting of balance sheets, auditors and liquidators who, upon receiving or accepting the promise of any advantage, act or refrain from acting in breach of their duties, provided that damage is caused to the legal person. The same punishment is applicable to those who give or promise the advantage to the above-mentioned persons. The punishment is doubled when it comes to a listed company. The offence is not punishable *ex officio*, but on complaint of the victim[11].

14. Trading in influence is not criminalised in Italy[12].

15. Criminalisation of money laundering is provided for in Articles 648-bis and 648-ter of the Penal Code (for details, see paragraph 78).

16. Italian law provides for administrative liability of legal persons, which was introduced for public bribery offences in 2001 (Legislative Decree No. 231/2001) and money laundering in 2006 (Law 146/2006 and Article 25-octies of Legislative Decree No. 231/2007), respectively - for further details, see paragraphs 164 to 171. According to Article 4 of Legislative Decree No. 231/2001, legal persons can be held responsible for corruption offences committed abroad provided that (i) their main registered office is on Italian soil; (ii) Italy can exercise its criminal jurisdiction on the offence committed abroad; (iii) the State in which territory the offence was committed is not already prosecuting/adjudicating the said offence.

17. The rules of Italian criminal jurisdiction are laid down in Articles 6 to 10 of the Penal Code. In general, they include jurisdiction over acts committed, in whole or in part, within the territory of Italy and acts committed abroad by Italian nationals (a) when the offence carries a penalty of at least three years' imprisonment; (b) in all other cases, at the discretion of the Minister of Justice

[11] After the on-site visit, the authorities referred to other provisions dealing with bribery in the private sector, e.g. Articles 170 to 172 of Royal Decree 1265/1934 (offences of "*comparaggio*" or improper payments to doctors), Article 356 of the Penal Code (public procurement fraud), Article 233 of the Bankruptcy Law, Article 1 of Law 401/1989 (fraud in sport).

[12] After the on-site visit, the authorities referred to the offence of "*millantato credito*" provided by Article 346 of the Penal Code. The authorities indicated that such an offence would cover instances of passive trading in influence.

or upon application or complaint of the victim. Special jurisdiction rules apply to offences against public administration. In particular, by virtue of Article 7(4) of the Penal Code, Italy has jurisdiction over a citizen or a foreigner for offences committed by public officials abusing their powers or in breach of their duties; this provision applies regardless of whether the offence was committed partly or entirely abroad. Dual criminality is not a requirement for establishing jurisdiction over an offence that takes place abroad. As far as extradition is concerned, pursuant to Article 13(4) of the Penal Code, it is only possible to extradite an Italian citizen if provided by an international treaty, whether of bilateral or multilateral nature (e.g. European Convention on Extradition, ETS 024).

18. Participation in organised crime is both an aggravating circumstance, when dealing with mafia-type organisations (Article 7(1) of Legislative Decree 152/1991), and a separate conspiracy offence under Articles 416 and 416-bis of the Penal Code. Participation in a criminal organisation can be punished with 3 to 7 years' imprisonment. A criminal organisation is defined as a stable association made up of three or more people (fully aware of their participation) in order to implement a prolonged criminal scheme, distributing the criminal activities of the organisation among the different associates; the elements of continuity of criminal activities, minimum structural organisation and awareness of the individuals who are part of the association are therefore required[13]. The punishment is more severe when the criminal organisation is of a mafia type (the definition of "mafia" is contained in Article 416-bis of the Penal Code); in such cases, the penalty may reach up to 12 years' imprisonment (if the perpetrator has a leading or founding role in the organisation).

19. The statistics below reflect the number of convictions for corruption-related offences during the period 1996-2006[14]:

Bribery public sector

Year	No. convictions
1996	1159
1997	991
1998	1002
1999	584
2000	988
2001	345
2002	495
2003	272
2004	239
2005	342
2006	186

Embezzlement

Year	No. convictions
1996	608
1997	508
1998	470
1999	447
2000	547
2001	417
2002	389
2003	484
2004	325
2005	332
2006	210

Abuse of office

Year	No. convictions
1996	1305
1997	920
1998	839
1999	470
2000	336
2001	166
2002	113
2003	229
2004	115
2005	96
2006	45

Concussione

Year	No. convictions
1996	555
1997	271
1998	329
1999	225
2000	291
2001	195
2002	194
2003	159
2004	195
2005	112
2006	53

b. Analysis

20. Despite the clear commitment of judges and prosecutors to deal effectively with instances of corruption, there was a widely shared perception among the GET's interlocutors (both from civil society and governmental bodies) that corruption in Italy is a pervasive and systemic phenomenon which affects society as a whole. This perception is echoed in a number of scientific

[13] Cass. Sezz.I, 22 September 2006, D'Attis ; Cass. Sez.V, 24 September 1998, Bugio et al.; Cass. Sezz.I, 31 May 1995, Barchiesi et al.

[14] Il Fenomeno della Corruzione in Italia. 1º Mappa dell'Alto Commissario Anticorruzione. December 2007.

studies, which analyse *inter alia* empirical data concerning the number of cases and their distribution (per sector of activity and per region), as well as trends concerning corruption. The information gathered by this research suggests that corruption is not confined to a single area of activity or territory; in Italy, numerous sectors are affected by the problem. Italy has seen a significant number of corruption cases concerning prominent political figures, high officials and business leaders. That said, a number of initiatives have been taken in the last decades to curb this phenomenon. In fact, after the post-industrial boom in the 60s and the 70s, Italy went through a period of economic expansion which bred malpractices in the conduct of private and public affairs, power struggles and political corruption. The system collapsed at the beginning of the 90s, following the well known Bribesville scandal (*Tangentopoli*) and the Clean Hands (*Mani Pulite*) anti-corruption investigations led by a number of determined and committed judges and prosecutors. This was the turning point for noticeable changes in the anti-corruption arena: it represented the awakening of civil society – no longer willing to accept the social and economic costs of corruption – which backed the official initiatives in search of legality and transparency in public affairs.

21. A considerable arsenal of legislation has been passed (especially in the 90s) to set in place a repressive framework for corruption, including the criminalisation of new forms of crime involving public officials (Laws 86/1990 and 181/1992 on amendments to the Penal Code concerning offences against public administration), the introduction of corporate liability also applicable to corruption offences, a special confiscation regime for bribery offences, a system of professional bans for convicted persons bidding in public tenders, etc.; moreover, regulations were toughened whenever offences were committed in connection with organised crime (mafia-type crimes). The statistics provided by the Italian authorities concerning convictions for corruption-related offences (see paragraph 19), illustrate the momentum gained in the 90s when numerous anticorruption investigations were conducted and offences effectively punished; they also point at a very sharp decrease in the number of convictions in the current decade. The interpretation of these statistics is a matter of debate, but the GET heard that some concern has arisen in the last years as to emerging challenges in the fight against corruption, including new and more complex techniques of criminals to circumvent existing legislation, prosecutions being repeatedly time barred, etc. In this context, while the repressive legislation in place (and the very hard work of magistrates to apply it) may have had a decisive effect at the time of its adoption, it would appear that more elaborate long-term solutions and arrangements are needed at present, including by better developing anticorruption preventive mechanisms.

22. On the preventive side, the measures introduced have been, in the GET's opinion, more timid; more needs to be done to effectively launch an overarching anticorruption programme. This requires a long term approach and sustained political commitment; combating corruption has to become a matter of culture and not only rules. The authorities, in their responses to the Evaluation questionnaires, referred to the creation of the High Commissioner in 2003 as a key achievement in the preventive area. The High Commissioner was abolished during the summer of 2008, and its tasks were transferred to the newly created Anti-corruption and Transparency Service (SAeT) within the Ministry of Public Administration and Innovation. This latter Ministry had fixed as its main priority the development of a so-called "Transparency Initiative". The GET notes that the "Transparency Initiative" has so far focused on efficiency of the public sector, and more particularly, on the problems of low productivity, absenteeism and quality of service. While these are areas that merit attention, it would be useful to devote additional thinking to the development of integrity/anti-corruption models within public administration (for specific recommendations in this area, see under Theme V, paragraphs 141 to 156). For this reason, the GET is hopeful, that the SAeT will be able not only to act as a coordinating institution of the various anti-corruption

activities of public authorities, but also to push forward a coordinated, coherent and effective anticorruption policy, and that such a policy will find the primordial position it undoubtedly deserves in the ongoing reform to enhance the integrity and transparency of public service.

23. The GET further acknowledges the involvement and commitment of the private sector in the fight against corruption; this involvement is self-critical and concrete. The GET was particularly pleased to note the initiatives of, for example, the Confederation of the Italian Industry (*Confindustria*) and the Chambers of Commerce – with whom the GET met during the on-site visit – including *inter alia* the promotion of integrity codes and internal monitoring machinery by Italian firms, the pursuing of policies threatening to expel members who pay protection money to the mafia (so-called *pizzo*), the development of training programmes and information materials concerning corruption risks and ways to prevent them, etc. These attempts to clean up commercial transactions need to be supported and encouraged; mutual feedback and experience exchange mechanisms are to be strengthened between the public and the private sector so that their activities are reinforced and their achievements conveyed to the general public. In this connection, the GET wishes to emphasise that in a generalised environment of public distrust and scepticism inertia as to the effectiveness of the fight against corruption, it is crucial that citizens are made aware of the measures taken and the results obtained; similarly, anti-corruption policies will only be effective if public officials at all levels are involved in the process and receive precise information about the relevant anticorruption mechanisms introduced. The GET recommends **that the Anti-corruption and Transparency Service (SAeT) or other competent authority, with the involvement of civil society, develop and publicly articulate an anti-corruption policy that takes into consideration the prevention, detection, investigation and prosecution of corruption, and provides for monitoring and assessment of its effectiveness.**

24. Italy has signed, but not ratified the Council of Europe Criminal Law Convention on Corruption (ETS 173; hereinafter "the Convention"). The GET was informed that the legislation to enable Italy to ratify this instrument is presently before Parliament, but its interlocutors could not give any indication of when the process is likely to be completed. Since Italy has both signed the Convention and introduced legislation to make ratification possible, the only real question about ratification by Italy is its timescale. Whilst refraining, under the circumstances, from making any recommendation, the GET encourages Italy to complete as soon as possible the legislative process which it has begun, so that the Convention can be ratified in early course.

25. The GET came across a number of details with respect to the incrimination of corruption offences provided for in the Penal Code that need to be adjusted in order to ensure full compliance of Italian legislation with the Convention. For example, trading in influence is not criminalised. With respect to bribery in the private sector, conflicting views were expressed during the on-site visit (as well as in the initial responses to the Evaluation questionnaires delivered by the Italian authorities) as to whether this offence was indeed criminalised by Italian legislation. When reading the key provision referred to in this area, i.e. Article 2635 of the Civil Code on breach of trust, the GET noted some important shortcomings, for example, this provision only refers to a limited number of persons (managerial positions, but not any other worker or employee of the company) and its scope is limited to those bribery cases causing damage to the company. The GET wishes to emphasise that criminalising all forms of corruption in accordance with international standards would send a clear signal to the public and the international community that corruption is unacceptable in Italy. The GET recalls that the transposition and implementation of the Convention is examined in depth in GRECO's Third Evaluation Round to which Italy will be

submitted at a later stage. For this reason, and in line with standing practice, GRECO refrains from issuing recommendations on this matter at this stage.

26. The GET further notes that some of the interlocutors met during the on-site visit said that Italian anti-corruption law suffers from a confusingly large number of legislative texts (corruption-related provisions are dispersed in the Penal Code, the Civil Code, commercial and fiscal law, etc.) and expressed a wish for streamlining of these into a single legal source. Others did not perceive any problem in this area. Whilst recognising that the organisation of its legislation is a matter which is exclusively for the Italian Government, having regard for the fact that Italy has signed the Criminal Law Convention on Corruption (ETS 173) and is in the process of legislating to permit accession to the Convention, the GET recommends **that the existing and new legislation which is to ensure that Italian law satisfies the requirements of the Criminal Law Convention on Corruption (ETS 173) be reviewed to ensure that it is sufficiently practicable for practitioners and courts to navigate and use.**

II. INDEPENDENCE, SPECIALISATION AND MEANS AVAILABLE TO NATIONAL BODIES ENGAGED IN THE PREVENTION AND FIGHT AGAINST CORRUPTION

a. Description of the situation

Law Enforcement bodies fighting corruption

Police

27. The police is responsible for maintaining public order and security and has both preventive and investigative responsibilities. There are a number of police forces in Italy entrusted with the investigation of corruption offences, including in particular:
    - *Arma dei Carabinieri* (under the Ministry of Defence) is a military organised police force with an overall competence on law enforcement activities throughout the national territory; it functions as a law enforcement body and an armed force.
    - *Polizia di Stato* (under the Ministry of the Interior) mainly performs its public security activities in major metropolitan areas. At central level, it is structured in several Directorates specialising in different criminal areas, including *inter alia* organised crime (Central Anticrime Directorate), terrorism (Central Directorate for the Anti-Terrorism Police) and anti-mafia (Anti-Mafia Investigations Directorate).
    - *Guardia di Finanza* (under the Ministry of Economy and Finance) fulfils two types of responsibilities: (a) primary tasks comprising the prevention, investigation and reporting of economic and financial crimes; (b) shared responsibilities with the *Arma dei Carabinieri* and the *Polizia di Stato* to maintain public order and ensure the political/military defence at the borders. A special mechanism to report bribery suspicions to the *Guardia di Finanza* has been put in place nationwide, it consists of a hotline "117" and a Public Relations Office to which citizens can transmit their suspicions; the information gathered through these two channels is immediately forwarded to the *Guardia di Finanza* Headquarters.

28. All three types of police have developed their own internal control mechanisms and ethical codes.

29. As soon as any of the aforementioned police forces receives information on the commission of a criminal offence, it is required to report that information to the prosecutor having territorial jurisdiction for the matter at stake.

30. The competent prosecutor may choose which police force to use for the investigation. To this effect, special judicial police sections are set up in each Public Prosecution Office (PPO). The police officer belonging to these sections can only be removed from office following the assent of the responsible Chief Prosecutor.

Magistracy: public prosecutors and judges

31. In Italy, the principle of unity of the judiciary applies, which means that judges and public prosecutors form part of the same single body of officials, i.e. magistrates (*magistrati*), with a common career structure. The judiciary is subdivided geographically on an administrative basis. Competence is based on territory (public prosecutors/judges are responsible for prosecuting/adjudicating crimes connected to the region in which they exercise their functions).

32. Magistrates (judges and prosecutors) are subject to the principles of independence and security of tenure, as enshrined in the Constitution (Articles 104 and 107, respectively); further rules concerning the necessary independence and impartiality of the judiciary are contained *inter alia* in Laws 12/1941, 511/1946 and 195/1958, as amended. In particular, the Constitution aims at assuring the independence of the judiciary from the executive by entrusting an independent, self-governing judicial body, i.e. the High Judicial Council (*Consiglio Superiore della Magistratura*)[15], with the exclusive competence to appoint, assign, move, promote and discipline magistrates (Article 105, Constitution). Magistrates are selected through national competitive examinations; previous professional experience is not required to sit the exam. Promotions are granted according to criteria that combine seniority and merit.

33. There are certain limitations for magistrates engaging in extra-judicial activities (e.g. restrictions in performing arbitration tasks, accepting private employment, etc). The High Judicial Council is to give permission for any ancillary activity in which a magistrate intends to engage; 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. Law 127/1997 requires magistrates to disclose their income and assets to the High Judicial Council.

34. Disciplinary powers rest with the Disciplinary Division of the High Judicial Council. The Constitution also vests the Minister of Justice with the authority to initiate disciplinary proceedings against magistrates, as necessary (Article 107, Constitution). However, the relevant inquiries cannot be carried out by the Minister, as they fall within the competence of the Prosecutor General at the Court of Cassation. Moreover, the prosecutorial function in disciplinary matters is reserved for the magistrates of the General Procuracy. Disciplinary breaches and corresponding sanctions are regulated exhaustively in Legislative Decree 109/2006, as amended. Appeals to the final decision taken by the High Judicial Council are possible before the Division for Civil Matters of the Court of Cassation.

35. Initial and in-service/continuous training is organised by the High Judicial Council. The training courses vary in length (from 3 to 10 days) and the speakers include academics, lawyers, magistrates, public officials and officials from international organisations. The aim of the training is to provide magistrates with updates on legislative amendments, doctrinal debates, etc. In particular, seminars targeting a total of 100 magistrates have been held in relation to the topic of

[15] Composition of the High Judicial Council: Two thirds of its members are magistrates elected by other colleagues (through judicial association), one third of its members are elected by Parliament among law professors and lawyers with at least 15 years' professional experience. The Constitution further provides that the High Judicial Council be presided by the President of the Republic, the Supreme Court of Cassation and the General Prosecutor of Cassation.

corruption (criminalisation of corruption, special investigative techniques, international cooperation, etc). A Superior School of the Judiciary, entrusted with the development of training sessions, was set up by Legislative Decree 26/2006; however, it is not yet operational.

36. The National Association of Magistrates has developed a Code of Conduct; the ethical provisions included in this code are not legally binding.

Public prosecutors

37. Prosecutors are responsible for directing the police in the conduct of investigations (Article 109, Constitution; Articles 56 and 327 Criminal Procedure Code). The national criminal system is based on the principle of mandatory prosecution (Article 112, Constitution).

38. The Public Prosecutor's Office (PPO) is headed by the Prosecutor General; public prosecutors are appointed to the different court levels, i.e. first instance, appeal and Court of Cassation. At first instance and appeal levels, PPOs are further divided into local offices which are led by a Chief Prosecutor and subdivided into working groups. Larger PPOs are encouraged to establish specialised working groups dealing with specific offences, for example, specialisation has now been developed in a number of PPOs – namely those located in the district capitals – with respect to offences against public administration (42 out of 49 offices have established specialised groups); prosecutors at smaller PPOs are also advised to specialise in given offences (20 out of 116 offices have specialised groups concerning offences against public administration). It is possible to appoint specialised expertise in cases of complex financial investigations (Article 359 of the Criminal Procedure Code); this is indeed a regular practice in Italy with respect to the pursuit of corruption offences. Moreover, the High Judicial Council had advised prosecutors to take further initiatives to provide for a more efficient investigation of corruption, including by treating these offences with priority.

39. The activity of the different PPOs throughout the national territory is coordinated on the basis of Article 371 of the Criminal Procedure Code, which establishes the obligation for law enforcement authorities to cooperate, exchange information, set up joint investigative teams, as necessary. While a horizontal coordination unit operates with respect to organised crime (i.e. the State Anti-Mafia Division at the Court of Cassation coordinates the investigations carried out by the relevant District Anti-Mafia Divisions), there is no equivalent coordination structure for corruption offences.

40. Within a PPO, cases are assigned to prosecutors on a random basis. Although there is a certain administrative hierarchy within the PPO, prosecutors enjoy full professional independence and autonomy in the cases to which they have been assigned.

Courts

41. The Courts which exercise jurisdiction in criminal matters in Italy are the following:
    - the courts of first instance (a total of 136)
    - the courts of appeal (a total of 29) hear appeals to decisions of the courts of first instance.
    - the Court of Cassation ensures the observation and the correct interpretation of the law (decides on points of law and not on merit of the relevant case).In addition, it resolves disputes as to which lower court (i.e. criminal, civil, administrative, military) has jurisdiction to hear a given case.

42. Justice is administered by judges who operate in the courts located throughout the national territory. The High Judicial Council instructs the Heads of the offices on the composition of the offices within the district and on how the judges should be assigned to them. By virtue of Law 12/1941 on the Judiciary (as amended), cases must be assigned to individual judges or a panel of judges on the basis of objective, predetermined criteria approved by the High Judicial Council. Furthermore, according to Article 107 of the Constitution, judges and investigating judges (so-called G.I.P.) cannot be dismissed, transferred or removed from a given case without their consent and only under the circumstances established by law (e.g. conflicts of interest); such a decision can only be taken by the High Judicial Council.

Investigation of corruption: special investigative techniques, banking secrecy and witness protection

Special investigative techniques

43. When carrying out investigations into corruption-related offences, law enforcement authorities may resort to a broad range of special investigative means including, wiretapping, interception of e-mail and faxes, bugging, video surveillance, monitoring and freezing of bank accounts. The use of undercover agents is possible, *inter alia*, in relation to money laundering offences[16]. As a general rule, a court order is necessary to allow the use of special investigative techniques; however, in urgent cases, the public prosecutor is entitled to issue a provisional order for such measures which is to be confirmed by the competent judge in the following 48 hours.

Confidentiality and banking secrecy

44. Article 329 of the Criminal Procedure Code provides for the confidentiality of criminal proceedings; derogations to this general principle may occur, if strictly necessary to facilitate these enquiries, but must always be justified through a motivated act by the prosecutor responsible. Article 114 of the Criminal Procedure Code lays down provisions banning the publication of acts and images until preliminary enquiries or hearings are concluded; it further warrants specific protection of personal data and images of minors involved in the trial in question.

45. Professional secrecy cannot be invoked in criminal proceedings, except by specific individuals listed in the Criminal Procedure Code: these include lawyers, technical consultants, notaries and accountants to the extent of the acts related to their professional activity. These categories of officials are nevertheless legally bound not only to disclose information, but also to report suspicions of potential money laundering instances (unless if acquired from one of the clients they represent in judicial proceedings).[17]

46. Banking secrecy is not provided for in Italian legislation. Moreover, Articles 248 and 255 of the Criminal Procedure Code provide for access to banking data by law enforcement authorities (possibility to examine and seize/freeze bank accounts, titles/documents and operations). Anonymous bank accounts are forbidden in Italy, banks are under a strict obligation to know the identity of their clients.

[16] Under Article 9 of Law No. 146/2006 the use of undercover agents is possible in relation to the following offences: money laundering, offences against the person (e.g. slavery, child prostitution and pornography, trafficking of human beings, etc.), offences involving explosives, weapons and ammunition, smuggling of immigrants, drug offences and exploitation/solicitation of prostitution.

[17] Legislative Decree 56/2004 and Ministerial Decrees 141, 142 and 143 of 3 February 2006.

Witness protection

47. Witness protection measures are laid out in Law 82/1991, as amended by Law 45/2001. They include a variety of mechanisms to protect not only witnesses, but also their family members. These protective measures include *inter alia* physical protection, temporary placement in a safe location or permanent relocation, concealment or change of identity, preservation of job, provision of financial or social support, medical and psychological assistance, etc.; the aforementioned measures are applicable to corruption offences. The decision to admit an individual into the witness protection programme is taken by the Central Commission for the Development and Implementation of Protection Programmes, upon proposal by the prosecutor responsible for the criminal case. The main criterion for granting protection measures is that the witness, or his/her close relatives, are under serious threat due to their testimony. The Central Witness Protection Service (*Servizio Centrale di Protezione*), within the Criminal Police Central Directorate of the *Polizia di Stato*, is responsible for implementing witness protection programmes.

48. Statements made before the judicial police or prosecutors legal authorities during the pre-trial stage can be used as evidence in court if presence of the witness in court has become impossible due to unforeseen circumstances (Article 512, Criminal Procedure Code), or, provided that certain conditions are met, when the witness resides abroad (Article 512-bis, Criminal Procedure Code). Moreover, during the pre-trial stage, it is possible, under the circumstances set forth in Article 392 of the Criminal Procedure Code (e.g. sickness, minors), to interview the witness outside the court (so-called "*incidente probatorio"*). Evidence given during preliminary investigations can be recorded using audiovisual equipment (Articles 134, 139 and 141-bis, Criminal Procedure Code). Furthermore, it is mandatory to record the interview of a person who is held in custody or imprisoned, if the interview in question is not carried out in the framework of a judicial hearing (Article 141-bis, Criminal Procedure Code). The use of anonymous witnesses is not possible in Italy.

49. There are no privileges or admissible arrangements granted to a person being investigated for corruption-related offences.

b. Analysis

50. The information gathered by the GET during the visit, did not suggest that those in charge of the prevention, investigation, prosecution and adjudication of corruption suffered from undue political or any other interference in dealing with corruption. Both judges and prosecutors are part of the same profession, i.e. magistrates (*magistrati*), they can move freely between these roles and enjoy the same degree of autonomy from the Government. Judicial independence is enshrined in the Constitution, which further provides that all decisions concerning magistrates (judges and prosecutors) from recruitment to retirement (including appointment, promotion, disciplinary measures, etc.) are to be dealt with by the High Judicial Council, which is an independent body, composed primarily of magistrates elected by their colleagues. The GET was informed of a common practice of seconding magistrates to the Ministry of Justice in order to better benefit from their technical and practical expertise in their areas of competence (at the time of the GET's visit, there were 60 full-time magistrates seconded to the Ministry of Justice). The GET was told that, even when seconded to serve at the Ministry of Justice, the magistrates remain under the full authority of the High Judicial Council regarding matters of discipline, promotions and future destinations or role assignments as magistrates. Further measures are in place to promote integrity within the judiciary through the development of a Code of Conduct and the carrying-out of seminars on deontological principles. Finally, there are certain limitations on magistrates from

engaging in extra-judicial activities, for instance, magistrates cannot act as arbitrators (this limitation applies to ordinary magistrates, but not to those in the administrative courts). Some debate is taking place in Italy regarding the need to further regulate/limit the current possibility for magistrates to be active in party politics and to return to their judicial activities at the end of their mandate as party representatives (with the repercussion that such a return has for the image of the independence of the judiciary).

51. Experience has been developed in Italy with regard to the investigation of corruption offences; the magistrates' activity was particularly prolific during the 90s (for details, see statistics in paragraph 19). In this context, the law enforcement interlocutors met during the on-site visit stressed the importance of certain tools at their disposal, e.g. special investigative techniques, cooperative witnesses, full access to bank accounts, to unveil instances of corruption. The GET was informed of plans underway to amend the rules concerning special investigative techniques (to limit their use, duration in time and cost to the public budget, as well as to better prevent leaks of information during investigative phases); the GET was, nevertheless, informed that the proposed amendments would still allow for the application of these techniques to corruption offences.

52. As to the concrete conduct of corruption investigations, the prosecutor issues instructions to the police regarding the actions that need to be taken and controls and supervises the police activity. The prosecutor is to decide which police force (*Carabinieri*, *Polizia* or *Guardia di Finanza*) is to assist in the investigation. Although the number of specialist units in prosecutors' offices dealing with offences against public administration (including corruption) is growing, the same does not apply to police forces. The GET learned of one unit of the *Guardia di Finanza* which deals specifically with offences against public administration, but it was staffed with only 20 to 30 officers and requires drawing on the assistance of police officers in general. The GET was told that all police forces fight against corruption, and all police officers are trained in dealing with corruption cases, because corruption is seen as a widespread crime. In fact, the police told the GET that corruption is pervasive in Italy and that all officers have to deal with it. The GET is not persuaded by the argument advanced by some of its interlocutors that every police officer is specialised in corruption cases. That deprives the concept of specialisation of its distinctive content. If everyone is a specialist, no-one is a specialist. In the GET's view, more could certainly be done to enhance the specialisation in this area, in particular through the provision of targeted training. Therefore, the GET recommends **to establish a comprehensive specialised training programme for police officers in order to share common knowledge and understanding on how to deal with corruption and financial crimes related to corruption.**

53. More generally, the GET notes that while many efforts have been deployed in articulating a coordinated fight against organised crime, in particular, mafia-type crime, less attention has been paid to strengthening specialisation and better coordinating knowledge exchange in the field of corruption. In this connection, the GET was repeatedly referred to the successful role played by the anti-mafia horizontal structures at law enforcement level, i.e. the State Anti-Mafia Bureau (DNA), under the ambit of the General Prosecutor at the Court of Cassation, as well as the National Anti-Mafia Investigation Bureau (DIA), and their district units. The GET was informed that the *rationae* behind the development of anti-mafia horizontal investigation structures was that, given the magnitude of the problem, it was necessary to adopt a broader and more flexible approach to combating organised crime, which goes beyond the principle of territorial competence and the carrying-out of separate/isolated investigations throughout the country. The establishment of specialised horizontal units was felt necessary to give a stronger impetus to and improve co-ordination regarding organised crime investigations, as well as to analyse the *modus operandi*, connections, goals and typical activities of criminal organisations. While there is a

general provision in the Criminal Procedure Code (Article 371) requiring the linking-up/coordination of the different prosecutors' offices when investigating a crime, the GET is of the opinion that the positive practical experience gathered in the fight against mafia-type offences could be replicated to better steer the fight against corruption. A horizontal/coordinating anti-corruption mechanism could prove to be a useful complement to the existing system. Such a mechanism could, for example, gather pertinent information on the particularities of investigating corruption offences and provide valuable input to the various agencies involved. Furthermore, it could process and facilitate the sharing of data on corruption offences on a permanent basis, as well as organise consultation and training of law enforcement staff concerned. The GET recommends **to (i) further enhance the coordination and knowledge exchange between various law enforcement agencies involved in investigations of corruption throughout the Italian territory, including (ii) by considering the advisability (and legal possibility) of developing a horizontal support mechanism to assist law enforcement agencies in investigating corruption.**

54. The GET was gravely concerned to learn, from almost all of its interlocutors, that a disquieting proportion of all prosecutions for corruption fail because of the expiry of the relevant time limit specified in the statute of limitations. Statistics concerning this matter were not available; however, it seemed clear that, in any given case, there was a high chance of the limitation period expiring before the trial could be concluded, even if the evidence was strong. This is a significant shortcoming which clearly undermines the efficiency and credibility of criminal law as an indispensable instrument in the fight against corruption. Moreover, sanctions lose much of their dissuasive character where justice is so seriously delayed that the accused person has a very good chance of avoiding them altogether as a result of expiry of the limitation period. Measures which depend on conviction, such as confiscation, become largely theoretical if a significant number of cases never reach the conviction stage. Innovative and useful measures such as preventative seizure are undermined where they must be undone as a result of the termination of the related prosecution upon expiry of the limitation period.

55. Various explanations were advanced to the GET for this state of affairs. Some pointed to the operation of the principle of mandatory prosecution (Article 112, Constitution) which, in Italy, means that all reports of crime not manifestly ill-founded must result in criminal proceedings. This inevitably leads to a very large number of prosecutions and some interlocutors highlighted that the numbers of magistrates and support staff are inadequate for the caseload. Other interlocutors referred to the fact that, while the Italian criminal justice system seeks to operate an accusatorial procedure within inquisitorial structures, a number of the features of accusatorial systems which contribute to more expeditious proceedings are absent from the Italian system (e.g. prosecutor's discretion to decide whether a case is to be pursued, limited use of interlocutory appeals, etc.). The mandatory prosecution principle was also said to explain the fact that corruption cases in Italy can involve up to 100 accused persons in a single trial. Others indicated that time limits have been reduced and others pointed out that the time limits apply to the totality of the proceedings in the case, so that all stages, up to and including proceedings in the Court of Cassation, must be completed within the prescribed time limit. The GET learned that appeals may be pursued through all three instances at all stages of the process, including against interlocutory decisions. As a result, the Court of Cassation has to deal with 50,000 cases each year. Regarding many of the corruption cases concerned, the GET was told that the only course which the Court of Cassation can take is to declare that the case can no longer be tried because the time limit has expired. That time limit will have been at least 6 years and may have been much longer. These lengthy delays for concluding corruption cases clearly represent a most serious problem, especially when the conclusion is that the case must be dismissed on limitation period grounds

rather than in terms of a decision on its merits. The GET was told repeatedly that the current guarantees of the system are being diverted from their initial purpose since they allow accused persons with skilful lawyers to use delaying tactics to drag proceedings out until the time limit expires.

56. From the description of the range of measures applied by Italy in corruption cases, it would appear that, in practice (but not necessarily in a conscious or deliberate way), the Italian legal system is in fact resorting to a range of strategies (many involving the administrative and civil justice systems) to make up for the problems encountered in its criminal justice system. For example, the GET was told that the Court of Auditors could achieve its aims in dealing with bribes given to those working in public administration much more readily than the criminal courts and can secure much larger financial recovery. One disadvantage of this reliance on other remedies and procedures is that the dissuasive penalty of imprisonment, which will often be the only proportionate response to corruption, is not available following an administrative or civil procedure. Moreover, the obligations which Italy intends to accept under the Council of Europe Criminal Law Convention on Corruption (ETS 173) contemplate action in the criminal law sphere. In another example, it was stressed to the GET that, in practice, prosecutors prioritise the minority of corruption cases which are very important so that they do not suffer limitation period-related attrition. This is understandable, but, in a system in which only a minority of corruption cases are likely to reach a conclusion on their merits, to prioritise some cases is to leave the others to wither on the vine and achieve by that lingering method what prosecutors elsewhere achieve by more decisive action. The existence of these cases in the system must consume resources, which, since the cases have no realistic prospect of making progress, are essentially wasted. Still more significant is the fact that, for the ordinary citizen, it is relatively low level corruption which has the most noticeable effect on life and helps to foster an atmosphere in which people accept corruption as a fact of life and feel helpless to do anything about it. If choices absolutely have to be made, then the GET can see why the higher profile, higher value cases have to receive attention. However, condemning lesser cases to a lingering death may be too high a price to pay. As for penalties, it appears that, in practice, preventative seizure which lasts for many years will amount to a penalty in itself, and sometimes the only penalty, even though property ultimately has to be returned.

57. In the GET's view the problems highlighted in the preceding paragraphs 54 to 56 are pressing. The GET further notes that the Committee of Ministers of the Council of Europe is monitoring the problem of excessive length of judicial proceedings, as well as the action taken by the Italian authorities to solve this problem. The GET draws attention to the latest Interim Resolution of the Committee of Ministers[18], which points at a substantial backlog in the civil (5.5 million pending cases), criminal (3.2 million pending cases) and administrative (640,000 pending cases at first instance and 21,000 pending cases at appeal) fields, and takes note on the steps taken by the authorities to address this backlog. In so far as the investigation and adjudication of corruption offences may be severely hampered by the problems reflected above, the GET recommends, **in order to ensure that cases are decided on their merits within a reasonable time, to (i) undertake a study of the rate of limitation period-related attrition in corruption cases to determine the scale and reasons for any problem which may be identified as a result; (ii) adopt a specific plan to address and solve, within a specified timescale, any such problem or problems identified by the study; (iii) make the results of this exercise publicly available.**

[18] Interim Resolution CM/ResDH(2009)42.

III. EXTENT AND SCOPE OF IMMUNITIES

a. Description of the situation

58. There are two sorts of immunity in Italian law:

- non-liability (freedom of speech or "*insindacabilità*") of members of parliament and members of regional assemblies for votes and opinions they express in the course of their duties (Articles 68 and 122(4), Constitution), the President of the Republic for acts exercised while in office (Article 90, Constitution), the president and judges of the Constitutional Court (Law 1/1948), and members of the High Judicial Council (*Consiglio Superiore della Magistratura*, Law 195/1958).

- inviolability ("*improcedibilità*") of members of parliament protecting them, during their mandate, from arrest (except in the case of *flagrante delicto*), interception of their communications and seizure of their correspondence. Inviolability can only be claimed in connection with the performance of official duties[19]. In this context, proceedings against a parliamentarian on account of an offence may be carried out without the consent of the Parliament; however, consent by the corresponding Chamber of Parliament is needed to arrest parliamentarians (except in the case of *flagrante delicto*), to intercept their conversations or communications or seize their personal correspondence (Article 68(2) and (3) of the Constitution, as amended by Constitutional Law 9/1993). The relevant procedure for lifting parliamentary immunity is detailed under the corresponding internal rules of the Chamber of Deputies and the Senate: the immunity of a parliamentarian may be lifted by the relevant Chamber of Parliament (*Giunta delle autorizzazioni* in the Chamber of Deputies and *Giunta per le immunità* in the Senate, respectively) within 30 days following the application of the responsible judge.

  Pursuant to Article 3 of Law 1/1948, immunity from arrest (other than in *flagrante delicto*) may also be granted to judges of the Constitutional Court. The Constitutional Court is the competent body for deciding on such immunity. The relevant procedure for lifting immunity is provided for by Article 15 of a Constitutional Court Regulation dated 20 January 1966. Upon receiving the immunity request, the president of the Constitutional Court appoints an *ad-hoc* commission, made up of three judges, which is to decide on the request within 30 days. The defendant is entitled to submit to the aforementioned commission a written statement on the details of the case and is entitled to be heard, if s/he so requires.

59. According to article 96 of the Constitution, for offences committed in the exercise of their functions, the Prime Minister and other Ministers are subject to ordinary jurisdiction provided there is the authorisation of the appropriate Chamber of Parliament according to the rules laid down by Constitutional Law No. 1 of 16 January 1989. Reports concerning offences falling under article 96 of the Constitution are submitted to the public prosecutor of the competent court who will, without prior further investigation, refer the record to a special tribunal, known as the Tribunal for Ministers, which is composed of three magistrates and three supplementary magistrates chosen by lot from among all qualified magistrates. The Tribunal for Ministers, within the term of 90 days from receipt of the record, will undertake preliminary investigations and hear the public

[19] A functional link is required between the conduct carried out by the offender and his/her activities or duties (Cass., 15 June 2007, No. 35523, Bossi).

prosecutor and shall refer the record, together with a reasoned opinion, to the Prosecutor General who is then to transmit it to the competent Parliamentary Chamber which will decide on whether to give its authorisation for the taking of proceedings against the Minister in question.

60. The granting of immunities (both non-liability and inviolability) is subject to judicial review by the Constitutional Court. Under Article 134(2) of the Constitution, the judicial authority in charge of the case can challenge the decision taken by the Parliament or by the competent organ (in so far as other bodies are concerned) before the Constitutional Court. Such proceedings, known as "conflict relating to the attribution of powers among State branches" (*conflitto di attribuzione tra i poteri dello Stato*) is regulated by Articles 37 and 38 of Law 20/1962. The Constitutional Court is empowered to decide whether or not the granting of the immunity in a given case was well-grounded and whether or not the *rationae* of the decision on immunity was consistent with such grounds. As a result, the Constitutional Court can repeal the granting of the immunity. The Constitutional Court has developed case-law concerning the conditions and requirements that are to be met for granting immunity[20]. In this connection, the Constitutional Court has repeatedly stressed that "the safeguards and guarantees provided for by Article 68 of the Constitution (immunity) aim at protecting the parliamentary institutions as a whole, and not at creating personal privileges for senators or deputies". Therefore, more than once, the Constitutional Court has repealed the immunity granted by Parliament[21].

61. In July 2008, the Parliament adopted Law 124/2008 allowing for the suspension of criminal proceedings in relation to the Italian President, the Prime Minister and the Speakers of both Chambers of Parliament during their term in office. Suspension applies also to criminal proceedings for facts prior to taking up office or functions. The statute of limitations of the offences concerned is in such cases suspended according to the rules laid out in Article 159 of the Penal Code. The suspension of the criminal proceedings is not renewable, except in the case of a new appointment in the course of the same legislature, nor may be it applied in a subsequent appointment to different office or functions. The suspension of the proceedings does not preclude the judge from receiving in evidence in appropriate circumstances the deposition of certain persons or the taking of certain procedural steps which cannot be postponed. Suspension can be renounced by the high official concerned. The issue of constitutionality of Law 124/2008 has been raised before the Constitutional Court, and this decision is still pending[22].

62. There are no overall figures available on the number of proceedings against persons enjoying immunity or the number of occurrences where it was lifted for alleged involvement in corruption-related offences.

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[20] See *inter alia* the following judgements of the Constitutional Court: No. 420 of 4 November 2008; No. 97 of 11 April 2008; No. 388 of 23 November 2007; No. 152 of 4 May 2007; No. 96 of 21 March 2007; No. 65 of 9 March 2007.

[21] See *inter alia* the following judgements of the Constitutional Court: No. 410 of 18 November 2008 (immunity granted by the House of Deputies); No. 330 of 8 July 2008 (immunity granted by the Senate); No. 279 of 10 June 2008 (immunity invoked by the Regional council); No. 171 of 15 April 2008 (immunity granted by the House of Deputies); No. 135 of 15 April 2008 (immunity granted by the Senate); No. 134 of 1 April 2008 (immunity granted by the House of Deputies); No. 97 of 11 February 2008 (immunity granted by the House of Deputies); No. 28 of 11 December 2007 (immunity granted by the House of Deputies).

[22] The Constitutional Court declared unconstitutional, on 16 April 2004, the procedural immunity set forth in Law 140/2003, which provided for immunity from prosecution for five key office-holders: the President of the Republic, the Speaker of the Senate, the Speaker of the Chamber of Deputies, the Prime Minister and the President of the Constitutional Court. This immunity applied to all crimes - even those committed before their term of office - and lasted until they left office. The authorities reported that when drafting Law 124/2008 the judgment of the Constitutional Court was closely followed.

b. Analysis

63. Parliamentarians enjoy immunity against judicial proceedings relating to opinions expressed or votes cast in the exercise of their functions (non-liability). Without the authorisation of the relevant Chamber (of Deputies or of the Senate) in a given case, they also benefit from immunities from personal arrest or deprivation of personal liberty, searches of their person or homes, interception of their conversations or communications and seizure of their correspondence (inviolability). However, no authorisation is needed to start a preliminary investigation. The GET was informed that the home of a parliamentarian who is suspected of corruption cannot be searched, nor can his or her communications be intercepted, without the authorisation of the Chamber of which he or she is a member, on the motion of the relevant Immunity Committee. The GET was told that this system was adopted in 1993 as a substantial modification of the complete immunity which was previously enjoyed by parliamentarians and that it seeks to protect the parliamentary function and correspondence. During the on-site visit, the GET heard that the requirement for prior authorisation is an important constraint on the investigation of some cases of corruption and that it can impede not only the investigation of crimes suspected to have been committed by parliamentarians, but also the investigation of crimes suspected to have been committed by other people who have associations with parliamentarians. The GET was told that prosecutors do not consider it useful to make such applications because to do so would disclose the existence of an investigation and prejudice the outcome and also because such applications are invariably refused. The GET was also told that this issue arises on a small number of occasions - the figure quoted was "less than 10" in each five-year term in the House of Deputies and less than that in the Senate.

64. The recent Law 124/2008 allows for the suspension of criminal proceedings and investigations, for acts committed before or while in office, in relation to the Italian President, the Prime Minister and the Speakers of both Chambers of Parliament during their term in office and until the expiry of their mandate; they can, however, be called by the court to testify as a witness. They may be prematurely removed from office only for gross violations of the Constitution or in the event of high treason in accordance with the impeachment procedure laid down in Article 90 of the Constitution. Law 124/2008 bars the lapse of time set for statutory limitation until the end of the immunity period. Suspension can be renounced by the high official concerned. At the start, the GET recalls that Guiding Principle 6 refers to the need to limit immunity from investigation, prosecution or adjudication of corruption offences to the degree necessary in a democratic society; in this connection, the GET has serious misgivings about the recent move to extend the immunities regime, since the suspension of criminal proceedings referred to above constitutes procedural immunity for the persons occupying the offices in question, although provisional in nature, which deviates from the basic principle of equality before the law. The authorities have, nevertheless, claimed that this move was necessary to guarantee a serene performance of public office[23]. Leaving aside the necessity of such a reform (as argued by the authorities), the GET has identified a number of shortcomings in Law 124/2008. In particular, it would appear that immunity is absolute and cannot be lifted in virtually any case, with the sole exception of renunciation of suspension by the official concerned. Moreover, the Law does not refer to cases where resorting to immunity would not be possible under any circumstance, e.g. offences exceeding a certain level of gravity (including corruption-related offences), arrest in situations of *flagrante delicto*. Finally, immunity is not limited to activities strictly connected to the performance of the official

[23] The authorities indicate that the Constitutional Court, in its judgment No 24 of 20th January 2004, recognised *inter alia* that the need to avoid interference in the exercise of the highest Italian officials' functions is a value that is worth preserving under the principles laid down by the Italian Constitution. In particular, the Court acknowledged that an ongoing criminal proceeding relevant to any of the five key-office holders could affect the performance of his/her duties.

duties; it also covers ongoing proceedings for acts committed prior to taking up such duties. In the GET's view, the extent of the immunities enjoyed by their beneficiaries and the legal gaps identified can only be seen as obstacles for the investigation, prosecution and adjudication of corruption-related offences which tends to erode public trust in the integrity of the Government. The GET notes that the enactment of Law 124/2008 is a matter of controversy, which has triggered bitter debates in Italy. In this connection, the question of the unconstitutionality of Law 124/2008 has emerged and the Constitutional Court is expected to issue a decision on the matter in October 2009. The GET recommends **that provision be made in Law 124/2008 allowing for the lifting of the suspension of criminal proceedings in order to ensure that such suspension does not constitute an obstacle to the effective prosecution of corruption, for example with respect to serious crimes of corruption, in cases of *flagrante delicto*, or when proceedings have reached an advanced stage of maturity.** The GET understands that the decision to be rendered by the Constitutional Court in this area will have an impact on implementation of this recommendation.

IV. PROCEEDS OF CORRUPTION

a. Description of the situation

Confiscation and other deprivation of instrumentalities and proceeds of crime

65. Italian law provides for a confiscation framework which is based on a threefold approach:
    (1) a traditional conviction based confiscation of assets derived from the offence (Article 240 PC);
    (2) a system of confiscation based on alleviation of the burden of proof for convicted persons who cannot justify the origin of their assets (Article 12(6) of Law 356/92);
    (3) a preventive system of confiscation of assets in the possession of persons belonging to mafia-type organisations (Law 1423/56 and Law 575/65).

66. Article 240 PC 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. Confiscation is considered by Italian national law as a security measure (which is aimed at preventing further offences and not at punishing the offence committed). In general, it has a discretionary nature and can be decided by a court upon conviction of the perpetrator. Confiscation is, nevertheless, mandatory in a number of cases. In particular, confiscation is mandatory when the assets are the "price" or the profit of a public active/passive bribery or a fraud offence (Articles 322ter and 335-bis PC), or when the offence committed has a nexus 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. In addition, pursuant to Law 1423/56 and Law 575/65, the seizure and confiscation of assets in the possession of persons suspected of belonging to a mafia-type organisation can be ordered independently of a conviction or a criminal investigation, but on the basis of the mere threat that the person or the assets in question may pose to public security when the value of the assets is not commensurate with the income or the economic activity of the person. The measure may be reversed if evidence is brought that the assets have a licit origin.

67. Confiscation is applicable to proceeds and instrumentalities of a criminal offence. There is no definition of the term "proceeds", but the authorities indicate that, in practice, it is generally

understood in a broad sense to cover both direct and indirect proceeds. Expenditures for gaining criminal proceeds are not deductible. Value confiscation of corruption proceeds is possible pursuant to and to the extent provided by Article 322-ter PC; value confiscation is also specifically provided for offences with a transnational organised crime component (Article 11, Law 146/2006).

68. Confiscation cannot be ordered if the assets belong to *bona fides* third parties, provided that they are not involved in the commission of the offence. Under the Italian case-law, as developed by the Court of Cassation, third parties are not deemed to be involved in the commission of the offence when they are in *bona fides*. The burden of proof of the *bona fides* lays on the third party who must prove beyond any reasonable doubt that s/he was not aware of the illicit origin of the asset owned[24]. Moreover, as far as corruption offences are concerned, Article 322-ter PC 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.

69. A certain reversal of the burden of proof exists with respect to certain offences, i.e. drug offences, organised crime, money laundering. In particular, when a person is convicted of any of these offences, the confiscation of money, properties or other assets held by the person is mandatory if the offender cannot explain the source of these assets and the assets are not commensurate with his/her income or economic activity. In this case, it is not necessary to prove that the assets are derived, directly or indirectly from an offence; assets indirectly derived from such illicit proceeds or even other kind of assets (except when they belong to third parties) can be confiscated if the convicted person cannot justify their origin (Article 12(6), Law 356/92).

70. It is possible to satisfy the claims corresponding to the damage caused to an individual who has exercised his/her civil rights in due time; this is indeed one of the purposes of preventive seizure (see below under paragraph 71 providing details on preventive seizure).

Interim measures

71. Seizure as an interim security measure is provided for in 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).

72. Pursuant to Article 61 of Law 133/2008, as well as Article 2 of Legislative Decree 143/2008, the Justice Single Fund (*Fondo Unico Giustizia*) is in charge of monies or other financial/credit titles seized and confiscated. This institution was created, in particular, with the aim of collecting all incomes from fines, etc. in order to redistribute them to priority objectives in the functioning of justice. The management of other seized/confiscated movable/immovable assets is entrusted to the Italian Public Property Agency (*Agenzia del Demanio*), according to Article 65(1) of Legislative Decree 300/1999.

[24] Cass. 4 November 2008, Castellano; Cass. 20 May 2008, Torre; Cass. 21 November 2007, Upgrade s.r.l.: Cass. 8 July 2004, Sulika.

73. The use of seizure is considered within the framework of the criminal investigation of the particular crime. The authorities may initiate specific investigations aimed at identifying, tracing and freezing the proceeds of crime and are entitled to request data on the suspect from different bodies, e.g. tax authorities, banks, etc. The competent judge is entitled to order the seizure of documents, titles, 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).

Statistics

74. Although data on the number of corruption offences are being collated at national level (see paragraph 19), there are, however, no specific figures available concerning the use of interim measures and confiscation.

Mutual legal assistance: interim measures and confiscation

75. Judicial cooperation on interim measures and confiscation is subject to the same rules and machinery as mutual assistance in criminal matters in general; thus, it is based on international[25] and bilateral treaties[26]. In the absence of an applicable treaty or convention, Italy exercises its discretion to render assistance on the basis of reciprocity with the requesting State (Article 723 CPC).

76. Incoming requests are forwarded by the Ministry of Justice to the Prosecutor General of the relevant district Court of Appeal having territorial jurisdiction over the execution of the requested action (Articles 737 and 737-bis CPC). Outgoing requests are made by judicial authorities (including public prosecutors) to the Ministry of Justice, which then forwards them through diplomatic channels (unless the relevant treaty provides differently). There are a total of 40 persons (five of them are magistrates) working in the International Cooperation Department of the Ministry of Justice, which deals with judicial assistance, the European arrest warrant, extradition requests and implementation of bilateral agreements. Italy has ratified the Convention for the Application of the Schengen Agreement, including provisions relating to rogatory letters for search and seizure powers. This instrument has created a direct communication channel between the judicial authorities of Italy and other Schengen Member States providing an acceleration of interstate communication. Italy has not yet ratified the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union.

[25] Italy has ratified in domestic law the 1959 European Convention on Mutual Assistance in Criminal Matters (ETS 30) and its Additional Protocol (ETS 99), the 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (ETS 141) and the 1990 Convention Applying the Schengen Agreement.

[26] Italy has concluded bilateral agreements with Australia, Austria, Bolivia, Canada, Costa Rica, Germany, Japan, Lebanon, Morocco, Peru, San Marino, Switzerland, Tunisia, USA, Venezuela. All of these agreements allow the undertaking of judicial as well as police cooperation in the field of corruption. Notably, the bilateral agreement signed with Switzerland in 2001 allows the setting-up of joint investigative teams (Article xxi), as well as the return of the proceeds of crime with a view to their confiscation (Article viii).

77. The GET was provided with statistics covering the period 2000-2005 which illustrate the extensive experience developed by Italy with respect to mutual legal assistance in relation to corruption cases (398 outgoing and 211 incoming letters rogatory, respectively).

Money Laundering

78. Money laundering has been criminalised as a separate offence in Articles 648-bis PC prohibiting the substitution and transfer of money, goods or assets obtained through intentional criminal offences and the concealment of their origin, and Article 648-ter PC prohibiting the use of money, goods or assets obtained by means of criminal offences in economic and financial activities. It is punishable by 4 to 12 years imprisonment and fines ranging up to 15,493 EUR. The offence of money laundering follows an "all crime" approach: any intentional criminal offence can be a predicate offence to money laundering. The most frequent corruption-related predicate offence to money laundering is bribery of public officials in connection with public procurement processes and tax fraud. Self-laundering (i.e. laundering by persons who commit the predicate offence) is not criminalised in Italy.

79. The *Unità di Informazione Finanziaria*, set up within the Bank of Italy and member of the Committee of Financial Security of the Ministry of Economy and Finance, is since January 2008[27] the Financial Intelligence Unit (FIU) which gathers and analyses suspicious transaction reports (STRs) and subsequently informs both the Anti-Mafia Investigation Department (competent for suspicions of money laundering in connection with mafia operations) and the special foreign exchange of the financial Police (the so-called *NSPV* unit within the *Guardia di Finanza*). Also at the request of the aforementioned law enforcement bodies, the FIU may suspend a suspicious transaction for up to five working days. The FIU does not have direct access to law enforcement databases; indirect access (through the Anti-Mafia Investigation Department and the NSPV unit within the *Guardia di Finanza*) is provided for to allow the FIU to exchange information with its foreign counterparts. Legislative Decree No. 231/2007 provides for channels to enhance cooperation and information exchange between law enforcement bodies and the FIU. Likewise, arrangements are being taken to enable direct access to the national centralised database on bank and financial operations with the tax register. The FIU is staffed by approximately 94 persons (45 of them are financial analysts). The internal structure of the FIU is laid out in the Regulation of 21 December 2007, issued by the Bank of Italy.

80. The obligation to report suspected money laundering transactions is imposed on financial institutions (e.g. banks, investment firms, insurance companies), public administrations, non-financial companies (e.g. gold and valuable dealers and importers, auction houses, art galleries, antique dealers) and other professionals (accountants, auditors, notaries and legal advisors)[28]. The latter categories of professionals are exempted from their reporting obligation with regard to the information acquired from one of the clients they represent in judicial proceedings. Sanctions for failures to comply with reporting obligations consist of fines in a percentage ranging from 1 to 40% of the total amount of the non-reported transaction. The Ministry of Economy and Finance is responsible for imposing administrative fines for *inter alia* failures to comply with reporting obligations: in 2007, there were a total of 23 administrative proceedings dealing with violations to the obligation to report STRs. Every transaction which gives rise to the belief that the money, assets or benefits involved might derive from an intentional crime must be reported to the

[27] The *Unità di Informazione Finanziaria* has replaced the former Italian Exchange Office (*Ufficio Italiano dei Cambi*,) as the responsible body to perform anti-money laundering tasks.
[28] Legislative Decree 56/2004 and Ministerial Decrees 141, 142 and 143 of 3 February 2006.

manager of a branch or office of the relevant reporting entity who is then to transmit the STR to the FIU, without delay, and if possible, before executing the transaction in question.

Administrative sanctions imposed by the Ministry of Economy and Finance (2007 data)

Infringement Typology	No. administrative proceedings
Transfer of cash and bearer bonds	1,089
Cheques lacking of the "non-negotiable" clause and/or beneficiary name	486
Obligation to lower the balance of bearer passbooks to 12,500 EUR	7
Violation of the obligation of reporting suspicious transactions	23
Non-communication to the Ministry of Economy and Finance of infringements of the obligations listed in Article 1 of Law 197/1991	71
Total amount of sanctioning decrees	1,106
Acquittal decrees	173
Dismissal decrees	342
Total proceedings issued	**1,676**
Total fines imposed (EUR)	**16, 384,000**

81. To assist the reporting institutions in meeting their anti-money laundering obligations, guidelines have been issued including *inter alia* examples of contents of STRs, procedures for identifying suspicious transactions, warning advice concerning financial operations with clients operating in countries listed on the FATF black list, anomaly indicators (including particular case studies), etc. In order to better meet their reporting obligations, the banking sector has developed specific software (i.e. GIANOS) assisting with the identification of and follow up to anomalous transactions. Moreover, financial institutions are required to keep a single, computerised, standardised database (*Archivio Unico Informatico*) where all transactions over 12,500 EUR are recorded.

82. The number of STRs received by the FIU per year has significantly increased in the last four years: from 6,813 in 2004 to 14,602 in 2008; most STRs were forwarded to the competent law enforcement bodies for their subsequent investigation (by way of example, out of the 14,602 STRs received in 2008, 1,002 STRs were considered unfounded). Banks and the Italian Post (*Poste Italiane SPA*) are the main reporting institution (78.5% and 11.5%, respectively, of the total number of STRs received in 2008), followed by other financial institutions (8.7%) and insurance companies (1%). In 2006 and 2007, the number of STRs filed by accountants, auditors and other legal professionals gradually increased, but decreased again in 2008.

Table 1: Number of Suspicious Transaction Reports received in the last four years

Year	Credit & Financial Institutions	DNFBPs	Terrorism Financing	Global amount
2004	6.519	-	294	6.813
2005	8.579	-	478	9.057
2006	9.602	237	483	10.322
2007	11.994	216	335	12.545
(I°six-month period) 2008	6.664	54	146	6.864

Table 2: Suspicious Transaction Reports sent by the FIU to the law enforcement counterparts

Year	Money Laundering	Terrorism Financing	Global Amount
2004	6.796	333	7.129
2005	7.283	460	7.743
2006	11.099	473	11.572
2007	11.513	211	11.724
(I°six month period 2008)	5.823	132	5.955

Table 3: Suspicious Transactions Reports with judicial follow up

Year (*)	Judicial follow up	% on the overall amount of STRs received
2004	321	4,7
2005	341	3,8
2006	244	2,4
2007	217	1,7
(I°six month period) 2008	56	0,8
(*) Year of STR transmission to the FIU from reporting entities		

Table 4: Suspicious Transaction Reports set aside by the FIU as unfounded

Year (*)	Global amount	% on the overall amount received
2004	108	1,6
2005	154	1,7
2006	1.722	16,7
2007	941	7,5
2008	300	4,4
(*) Year of STR transmission to the FIU from reporting entities		

b. Analysis

83. Generally, confiscation of proceeds and instrumentalities of crime is a discretionary security measure, which can be used with regard to any offence where such objects exist (Article 240 PC). However, confiscation with regard to corruption offences (with the exception of trading in influence which is not criminalised in Italy) has a mandatory nature. In particular, Article 322-ter and 335-bis PC allow for a more flexible confiscation scheme applicable to bribery offences concerning the public sector: confiscation is mandatory and value confiscation of the proceeds of crime is possible. With respect to bribery in the private sector, mandatory confiscation (including in value) is provided for by Article 2641 of the Civil Code. Concerning money laundering, mandatory confiscation (including in value) is provided for by Article 648-ter PC. The GET was informed that confiscation of proceeds of crime covers everything that the offender has gained from the offence or objects purchased for such gain, as well as the expenses saved as a result of the commission of the offence. Although the Penal Code does not specifically refer to indirect proceeds of crime, these are accepted as covered, as are situations where illicit proceeds have been intermingled with legitimate assets. Property (or the value thereof subject to confiscation) may be exacted from a third party, if s/he was not acting *bona fides*. The burden of proof lays on the third party who is to prove beyond any reasonable doubt that s/he was not aware of the illicit origin of the asset owned. Moreover, a certain apportionment of the burden of proof is possible in relation to some offences (e.g. drug offences, money-laundering) or when the

offender is part of a criminal organisation (organised crime, mafia-type organisations). In such cases, the burden is on the offender to prove that the assets have a licit origin. During the on-site visit, a number of practitioners highlighted the importance that the latter measure has acquired to assist the court in identifying criminal proceeds liable to confiscation.

84. Confiscation can only be applied to assets belonging to convicted persons. The only exception being those cases where attachment *in rem* is possible on the basis of the mere threat that the person or the assets in question may pose to public security (i.e. Article 240(2) PC, and pursuant to the provisions of Law 1423/56 and Law 575/65 on mafia-type crimes). The GET is of the opinion that a conviction-based confiscation may lead to unacceptable situations where the offender is allowed to continue to benefit from the proceeds of corruption because it has not been possible to secure a conviction for formal or procedural reasons. This is particularly relevant in the case of Italy, where, as explained before, a risk has been reported that cases may not end up with a conviction due to the expiry of the applicable time limit specified in the statute of limitations. The GET recommends **that the introduction of *in rem* confiscation be considered in order to better facilitate the attachment of corruption proceeds.**

85. Concerning seizure and freezing of proceeds of crime, the GET is satisfied that the Italian authorities have sufficient legal means to seize and freeze proceeds in the early stages of the criminal investigation. The GET found no limitations concerning the powers to use seizure and freezing of instrumentalities and proceeds of crime and the discussions with practitioners did not suggest any particular problems in this connection. That said, and notwithstanding the opinions heard by the GET during the on-site visit which highlighted the practical use of confiscation/seizure for corruption offences, the lack of comprehensive statistical data, especially regarding the number of cases and the value of confiscated/forfeited property related to corruption throughout Italy, makes it difficult to obtain an accurate idea of the effectiveness of the existing legislation and the efforts made in practice by law enforcement agencies to seize/forfeit assets obtained unlawfully as a result of corruption. It would no doubt be beneficial if the Italian authorities would examine in some detail the work practices of the enforcement authorities in order to assess recurrent problems/obstacles encountered in practice (for example, with respect to property transferred to third parties, difficulties in proving the illicit origin of assets, etc.) and thereby identify areas where further improvements to the current seizure/confiscation framework may be needed. Such an assessment would require quantitative data on seizures and confiscation, something that is currently lacking, including in the context of international mutual legal assistance. For this reason, the GET recommends **to put in place appropriate measures to allow the evaluation of the effectiveness, in practice, of the activity of the enforcement authorities concerning the proceeds of corruption, in particular in so far as the application of provisional measures and subsequent confiscation orders are concerned, including in the context of international cooperation.**

86. The money laundering offence in Italy is broadly defined following an all-crime approach. The authorities indicated that, in this connection, all corruption offences, as provided for in Italian legislation, can be predicate offences to money laundering, including bribery in the public and private sectors (trading in influence is not criminalised in Italy). The money laundering offences do not cover laundering by persons who commit the predicate offence (self-laundering); they only cover laundering by other persons who subsequently come into possession of the proceeds. The authorities indicated that while Legislative Decree No. 231/2007 includes, in Article 2, all instances of self-laundering, this provision is restricted to the scope of the measures provided for in this Decree. The authorities explained during the on-site visit that legislative amendments to the Penal Code had been proposed to remedy this shortcoming in the system and to satisfy the

recommendations issued in this respect by other international fora (i.e. OECD and FATF). The GET welcomes this position.

87. The existing anti-money laundering regime provides for a central FIU in Italy, which receives, analyses and sends STRs to the competent authorities. Non-reporting is subject to administrative fines, which can be imposed by the Ministry of Economy and Finance; however, the corresponding sanctioning action in this field remains limited. The GET learned that there can be significant delays - which can vary from a few days up to a month - in the submission to the FIU of reports on grounds for suspicion of money laundering. That is so even though Legislative Decree No. 231/2007 was introduced in order to enable Italy to implement Directive 2005/60/EC of the European Parliament and of the Council on the Prevention of the Use of the Financial System for the Purpose of Money Laundering and Terrorist Financing, Article 22 of which insists that such reports should be made "promptly". The GET considers that, in a corruption case, delays of up to a month in reporting grounds for suspicion risk losing opportunities to gather evidence and to trace, freeze and seize the proceeds and instrumentalities of corruption. Moreover, with such apparent long delays the distinction between non-reporting and delayed reporting becomes blurred and could considerably reduce the effectiveness of the sanctions for non-reporting. It should also be borne in mind that the FIU will need time to undertake a full analysis of information (although STRs submitted to the FIU are immediately screened as soon as they are received, the authorities indicated that the full analytical process that follows may take a few months[29]) and that there is then the need for a second analysis once the information is received by the law enforcement agencies to take account of information which they alone possess. Furthermore, the FIU appears to receive little or no feedback from law enforcement about the outcomes of analyses which they make and pass on, relying instead on newspaper reports to find out what has happened to contributions they have made. This seems to be symptomatic of a general difficulty with communication. Interlocutors from the police forces claimed no knowledge of the outcomes in court of investigations which they had made and expressed little interest in those outcomes. That absence of feedback seems to the GET to be likely to inhibit improvement in the performance of the agencies affected. The GET recommends **that (i) the importance of feedback on suspicious transaction reports and co-operation in this area, and the benefits which they can generate, be emphasised to the staff of agencies with responsibilities for aspects of the fight against corruption; (ii) steps be taken to make it clear to those who have obligations to report suspicious transactions that delayed reporting and non-reporting are not acceptable, including by resorting to sanction measures, as appropriate.**

V. PUBLIC ADMINISTRATION AND CORRUPTION

a. Description of the situation

Definitions and legal framework

88. Legislative Decree 165/2001 on General Rules Governing the Work of Public Officials lays out an extensive definition of public administration: "*any State administration including schools and institutions of any type and level and educational institutions, autonomously regulated State enterprises and administrations, Regions, Provinces, Municipalities, consortiums of municipalities in mountain areas, as well as their consortiums and associations, University institutions, autonomous institutions for council housing, Chambers of Commerce, Industry, Agriculture and*

[29] The authorities indicated after the on-site visit that an internal system of prioritisation of STRs is being developed to improve the analytical process.

Crafts and their associations, any national, regional and local non-economic public body, Public Health Service's administrations, enterprises and bodies, the Agency representing public administrations in negotiations (ARAN) and the Agencies set out in Legislative Decree No. 300 of 30th July 1999" (e.g. fiscal agency, customs agency, etc) fall into the category of public administration. It is generally accepted that this definition is to be understood in its broadest scope: the afore-mentioned list of institutions not being exhaustive and the concept of public administration being subject to further jurisprudential interpretation. In particular, the authorities indicate that the notion of public administration comprises any entity, even if of a private nature, discharging public functions such as State-controlled companies. According to the Annual Report to Parliament on the State of Public Administration, of 31 December 2006, there were a total of 3,420,729 persons working in the Italian public service (3,081,685 with an indefinite-term contract and 338,864 with a fixed-term contract, respectively). Italian public administration differentiates between senior public officials with leadership/managerial positions (*dirigenti*) and other public officials (*dipendenti*). In addition, the use of consultants for public administration related tasks was common practice until very recently; one of the objectives of the current Government is to limit the use of this type of contracts[30]. In this connection, the Ministry for Public Administration and Innovation posted, on its website, a list of consultants (and their consultancy fees) who had been hired in 2006 to carry out projects/activities for public administration; these amounted to a total of 263,089 consultants.

89. The Constitution establishes the values and principles on which public administration activity is to be based, including efficiency, loyalty, impartiality, as well as direct liability of public officials. Apart from the Constitution, the main provisions regulating the competence, organisation and activities of public officials are contained in the Civil Code, Legislative Decree 165/2001 on General Rules Governing the Work of Public Officials, Law 300/1970 on the Worker's Statute and the relevant collective labour agreements.

90. A public administration reform, aimed at *inter alia* promoting good governance, enhancing efficiency and accountability of Government as well as improving participation and empowerment of citizens in the conduct of public affairs, started in the early 1990s[31] and is ongoing. In May 2008, the Government issued Guidelines on the Reform of Public Administration emphasising the need to introduce private sector efficiency models within public service, including by enhancing transparency and accountability, by promoting mobility, by developing e-administration (through interoperability of databases, one-stop-shop systems, call centres and help lines, provision of electronic information, etc.) and by simplifying and speeding up disciplinary proceedings in cases of misconduct[32].

Anti-corruption policy

91. As already indicated in the first part of the report, Italy does not have a coordinated anti-corruption programme. No methodology is currently in place to estimate the efficiency of anti-corruption measures specifically targeting public administration.

[30] This objective has been enshrined in Article 46 of Law 133/2008 of 6 August 2008, as well as Article 3(7)n of Law 15/2009 of 4 March 2009.
[31] Law 241/1990 of 7 August 1990.
[32] The authorities added, after the on-site visit, a document, issued in December 2008, reflecting on the key points of the public administration reform, i.e. so-called Thirty-four Points of the Brunetta Reform of Public Administration (I 34 Punti della Riforma Brunetta della Pubblica Amministrazione).

92. A specialised anti-corruption body, i.e. the High Commissioner against Corruption, started to operate in 2004, but ceased to exist in August 2008 (for details, see paragraph 9); its tasks were transferred to the Anti-corruption and Transparency Service (SAeT) within the Ministry for Public Administration and Innovation. The stated reason for the abolishment of the High Commissioner and the subsequent transfer of its tasks to the SAeT was that it was done for cost-saving reasons. The SAeT has now a staff of 17 persons (as compared to the 57 employees of the High Commissioner), and is starting to agree Memoranda of Understanding with other bodies entrusted with key responsibilities in the fight against corruption[33]. The GET was provided during the on-site visit with a general presentation of the SAeT, comprising an organigramme and a list of tasks and outputs, including short-term deadlines. In February 2009 after the visit of the GET, the SAeT submitted its First Report to Parliament (the SAeT is to submit quarterly reports to Parliament on its activities and plans). The Report identifies a number of areas and tasks underscoring the guidance and coordination function, with respect to the development of targeted anti-corruption and transparency policies by the different public administrations, which the SAeT is to play in the future (based on a methodology of hub and spoke). It is planned that the SAeT will elaborate, on an annual basis, a general anticorruption strategy, which is to take stock of best practices undertaken at sectorial level.

Transparency

93. Access to administrative documents is mainly regulated by Law 241/1990 and Presidential Decree 184/2006, which apply to administrative State bodies, including special and autonomous bodies, public entities and the providers of public services. This legislation is also applicable at local level; local entities are nevertheless entitled to develop further rules and practical implementation measures to effectively articulate the right to information, as necessary. Access to information is only available to those who have a legitimate legal interest in the relevant administrative procedure. Following an amendment of Law 241/1990 in 2005[34], the notion of legitimate legal interest can extend more broadly to cover persons/bodies representing the interests of a sector of society, so called "*interessi diffusi*", so long as they have a direct, concrete and actual interest in the matter about which the documents are sought. Requests for access to documents must be motivated; they are to be addressed (in writing or orally) to the administrative body that produced the document or that is in possession thereof. Law 267/2000 on Local Authorities (TUEL) allows for some innovative features with regard to access, by citizens and local counsellors, to administrative documents held by local authorities; in particular, the elements of proving a legal interest and motivating the request are not required (Article 10, Law 267/2000).

94. Requested information is to be provided within 30 days at the latest. Article 24 of Law 241/1990 provides a list of exceptions to the general rule on access to information, which includes situations in which disclosure of the requested information would have detrimental effects on international relations, security interests, monetary and economic policy, public order or if the disclosure of information may impinge on the right to privacy of third parties; denials of information requests need to be motivated by the relevant public administration body. Access to administrative documents is free of charge; only photocopy or postage costs are applicable. Public administrative bodies are to designate information officers. In addition, each administrative body is to keep a database of information requests, which are linked to a national database. Law 241/1990 does not establish a monitoring mechanism concerning the effective implementation of its provisions.

[33] Memoranda of Understanding have been signed, *inter alia*, with the Court of Audit, the National Council for Labour and Economy (CNEL), Transparency International Italy and the United Nations Development Programme (UNDP).
[34] Law 15/2005 amending Law 241/1990.

95. The Commission on Access to Administrative Documents, which was established in 1991 and operates under the auspices of the Prime Minister, is entrusted with certain responsibilities concerning implementation of the access to information legislation[35]. In particular, it issues reports on an annual basis and opinions on the number and type of citizens' complaints for refusals to access administrative information; it has the right to propose legislation, as necessary, to effectively enable access to administrative information. It is also tasked with operating and analysing the national database of information requests.

96. In cases in which applications to access information have been refused, the applicant has the right to lodge an appeal (i) with the competent regional administrative court. The decision of the court can be appealed to the Council of State; (ii) with the Commission on Access to Administrative Documents or the relevant local/provincial/regional Ombudsperson ("*difensore civico*"). The legislation establishes a deadline to conclude appeals (by the relevant regional administrative court, the Council of State and the Commission on Access to Administrative Documents, as applicable), i.e. within 30 days from the date in which the appeal was lodged. The possibility to lodge a complaint with the Commission on Access to Administrative Documents was introduced by Decree 184/2006. The Commission is competent to review denials of access to information of central and peripheral State administrations, national public entities and other providers of public services. The Commission has no competence concerning the refusals to provide administrative information by local authorities, for which the Ombudsperson is competent. Although the Commission is entitled to issue a decision on the legitimacy of the denial by a public administration body, it is not specifically provided with legal powers to compel the relevant administrative body to effectively disclose the information requested by the individual. The 2007 General Activity Report of the Commission specifically refers to this problem.

97. Law 150/2000 launches a communication strategy for public administration through the active provision of information to citizens (e.g. on legal acts, on the activity and functioning of public administrations, etc.). It also requires the government departments and public entities to identify the members of their staff who have responsibility for providing information and communicating it, and to give them specific training for this purpose. A so-called "Transparency Operation" was launched in 2008 to open up the functioning of public administration to citizens. The Ministry for Public Administration and Innovation was the first to undertake concrete steps by providing on its website details on the functioning of public service, including contact data of officials and areas of responsibility, statistics on absenteeism and performance (based on personnel appraisals), salary scales of managerial positions, etc. The overall aim of this initiative is not only to enhance transparency, but also to increase efficiency in public administration.

98. Furthermore, the Ministry for Public Administration and Innovation is tasked among other things with the definition of an e-government strategy. An E-Government Strategy for the period 2009-2012 was issued in January 2009; the National Centre for Information Technologies in Public Administration (CNIPA) has key responsibilities in this area. In addition to the E-Government Strategy developed at national level, regional administrations have adopted over recent years a regional information society strategy, generally coupled with territorial action plans for e-government. Regional Competence Centres for E-Government (a total of 21) have been established to support regional and local governments in their efforts to *inter alia* implement e-government and upgrade their IT systems.

[35] The Commission is composed of representatives of the Government, four members of Parliament and three representatives of the judiciary (ordinary, administrative and accounting courts); it is chaired by the Secretary of State for the Presidency of the Council of Ministers.

Control of public administration

Rights of appeal of administrative decisions

99. Administrative decisions may be challenged via administrative or judicial proceedings. A government action is subject to administrative review if the action is of a nature that equates to declaration of intent by a public body; this does not include non-binding opinions or advice. In particular, decisions by the public administration can be challenged before (i) the hierarchically superior administrative body (for legal sufficiency and accuracy); (ii) a higher authority, which although not higher in rank than the authority that has delivered the decision, has general supervisory/monitoring powers (so-called "improper hierarchical appeal", which is explicitly provided for by law in certain cases and allows only for a review of legal sufficiency); (iii) the decision making authority itself (the so-called "opposition procedure", which is applicable in instances explicitly provided for by law and allows for both a review of legal sufficiency and accuracy).

100. Judicial review (legal sufficiency and accuracy) of administrative disputes is dealt with by the relevant regional administrative court. It is possible to challenge the judicial decision before the Council of State within 60 days of the administrative court judgment (if leave to appeal is granted).

101. Finally, an extraordinary appeal to the President of the Republic, only for purposes of legal sufficiency, is a general remedy provided by law and constitutes an alternative mechanism to appeals in court. It may be brought against final administrative decisions issued by any kind of public authority.

Ombudsperson

102. The institution of Ombudsperson does not exist at national level, but it does exist at local/provincial/regional levels (*difensore civico*). They are independent institutions designated by the corresponding local/provincial/regional councils; they can initiate investigations *ex officio* or upon individual complaints (for example, the *Difensore Civico* of Rome, with whom the GET met during the on-site visit, deals with an average of 13,000 cases per year). Their tasks generally refer to the control of administrative acts, complaints relating to public access to administrative documents, participation in preparatory works of legislation, etc.

Audit

- Internal audit

103. The Department of Public Administration commissioned a study on the internal control systems set in place by the different public bodies[36]. The study revealed that not all public bodies had developed an internal control system, and that the typologies of control mechanisms varied greatly[37].

[36] The study was developed by CISPA (Centro interdipartimentale per l'innovazione nella pubblica amministrazione) of the University of Rome Tor Vergata.

[37] The First Report of the Anti-corruption and Transparency Service (SAeT), which was submitted to Parliament in February 2009, reflects on this situation and establishes as one of the tasks of the SAeT the development of guidelines on internal auditing to prevent instances of corruption and fraud.

104. The Ministry of Economy and Finance is responsible for reviewing the transparency and accountability of public moneys. These objectives are secured by several instruments, such as monthly, quarterly and annual bulletins published on the Ministry's internet site (www.rgs.tesoro.it).

- External audit: Court of Audit

105. The Court of Audit is an autonomous and independent body, which is responsible for safeguarding public finance and guaranteeing respect for jurisdictional order (Article 100, Constitution). It pursues these two aims through its threefold auditing, jurisdictional and advisory powers:

(i) The Court of Audit is empowered to carry out *a priori* audit of the legality of Government acts, as well as *a posteriori* audit of the State Budget's management. It also participates, under the conditions set in law, in the supervision of the financial administration of those bodies funded by the State. The regional sections of the Court of Audit are in charge of monitoring and auditing the use of public funds by public sector bodies in the regions.

(ii) As far as judicial tasks are concerned, these relate to the administrative and accounting responsibility of public officials, pension and accounting matters. The Court of Audit is competent to prosecute and convict public officials who have caused financial damage to public administration through fraudulent or faulty conduct; the action of the Court of Audit is independent from the criminal proceedings conducted against the public official in question and is not linked to the outcome of such proceedings (as administrative responsibility may be found in cases where no criminal responsibility is attributed).

(iii) Finally, the Court of Audit is vested with an advisory role: it gives opinions on regulatory governmental proposals concerning the management of State property and accounting activity.

106. Although the Court of Audit is not entrusted with a specific role in the fight against corruption, it contributes *de facto* to this objective through its auditing and judicial tasks. From 1996 to 2006, the Court of Audit issued a total of 17,576 sentences (6,620 convictions), in first instance. Generally, the judicial proceedings of the Court of Audit last around 1 year and 9 months in first instance, and 2 years and 5 months in appeal. In 2008, the Court of Audit recovered a total of 69,013,083 EUR for damages caused to the Italian State through corruption in public administration; a total of 185 judgments were issued against public officials for financial damages to public administration through fraudulent or faulty conduct[38].

Recruitment, career and preventive measures

107. Article 97 of the Constitution lays down the basic principles of access to the public service, which is based on open competition. Public officials are required to complete a self-declaration referring to the absence of criminal convictions prior to taking up their duties; a verification of the self-declaration provided by the applicant takes place during the recruitment process. The promotion system is based on a combination of length of service and merit.

108. Recruitment methods differ for those persons carrying out managerial tasks in the public sector (managers or *dirigenti*). Managers are regulated by Title II, Chapter II, Articles 15 and 29 of Legislative Decree 165/2001, as amended by Law 145/2002; their contracts are limited in time (generally, from 2 to 7 years, renewable). In particular, managers are recruited through (1) competitive internal examinations (for public officials with a University degree and at least five

[38] Opening ceremony of the 2009 Financial Year. Opening speech of the Prosecutor General on 11 February 2009.

years of experience); (2) following attendance to a 15-month course organised by the National School for Public Administration and the subsequent taking of an exam; (3) through direct appointment of the administration concerned for persons who have relevant managerial experience in connection with the post in question (in the latter case, the duration of the contract is limited to a maximum of 3 to 5 years)[39].

109. A number of anti-corruption preventive measures have been introduced at sectorial level. For example, the Revenue Agency carries out random and periodic internal checks of its staff, develops risk management tools, and conducts training on ethical principles; it also requires personnel at management level to file financial declarations on an annual basis and to complete statements on the absence of incompatibilities in relation to their functions. The Italian Public Property Agency (*Agenzia del Demanio*) introduced in early 2008 an organisational model (see also paragraph 169) including anti-corruption measures and ethical principles, coupled with systematic training, to guide the conduct of its employees.

Training

110. Pursuant to Article 54(7) of Legislative Decree 165/2001, public administrations are to organise training of their staff on ethical principles; to this end, some seminars have been organised in practice (especially for those officials in managerial/executive positions). The National School for Public Administration is a training centre for public officials; it performs both initial and continuous training activities; it has recently developed a pilot training session for senior officials, including practical cases dealing with ethical behaviour and anti-corruption measures in public administration. Likewise, the School of Economics and Finance (*Scuola Superiore dell'Economia e delle Finanze*), a training body of the Ministry for Economy and Finance, has conducted several training modules on ethics in public service for those officials working in areas exposed to corruption risks.

Codes of conduct/ethics

111. An aspirational Code of Conduct for Public Officials was adopted in mid-April 2001; an internal circular summarising its contents was issued in July 2001 to bring attention to public officials of the applicable ethical obligations[40]. The Code of Conduct contains general principles governing public service (e.g. obligations of loyalty, impartiality, efficiency and diligence), as well as specific provisions concerning gifts (Article 3) and other conflict of interest safeguards (Articles 5 to 7). It does not include any specification concerning its monitoring or the associated sanctions for infringements of its provisions. However, pursuant to Article 54 of Legislative Decree 165/2001, the responsible managers within each public body are responsible for overseeing implementation of ethical/behavioural rules; they are also responsible for organising related training sessions, as necessary. According to Article 55 of Legislative Decree 165/2001, the definition of the different type of infringements to ethical principles, as well as their corresponding sanctions, are to be developed through collective labour agreements.

[39] Pursuant to Article 19 of Legislative Decree 165/2001, as amended by Law 145/2002, public administrations may decide to grant a managerial contract to (a) managers in other administrations (different from the one recruiting); (b) persons with some specific and recognised professional qualification, with at least five years' managerial experience in either the public or the private sector; (c) persons who have acquired a particular professional specialisation (this specialisation is to be justified on the basis of university/doctoral degrees, scientific publications or other work experience where managerial capacities were required); and finally, (d) persons coming from the research or university sectors, magistrates or State-attorneys and prosecutors.

[40] Circular No. 2198 of 12 July 2001.

112. A Directive of the Ministry for Public Administration and Innovation, which was issued on 6 December 2007, reiterates the role that managers (*dirigenti*) are to play in guaranteeing the correct functioning of public administration, including by overseeing compliance with the provisions in the Code of Conduct and by assuring that disciplinary sanctions are applied, as adequate (this Directive focuses, in particular, on the responsibility of managers to ensure that efficiency is achieved through, *inter alia*, the reduction of absenteeism of public officials).

113. The Code of Conduct for Public Officials is systematically annexed to the relevant collective labour agreements of public bodies and is handed to public officials upon recruitment.

114. The Code of Conduct for Public Officials does not apply to members of the military/police, who are subject to their respective codes of discipline; similarly, judges and prosecutors are bound by their own codes of conduct. Moreover, some institutions are developing their own codes of conduct, on the basis of the Code of Conduct for Public Officials, to tailor ethical norms to the specific situation/risks/vulnerability to corruption that may emerge in the performance of their functions. For example, the Ministry of Economy and Finance is currently drafting a code of conduct comprising practical examples on incompatibilities and detailing the applicable sanctions in cases of infringement. Likewise, the *Agenzia del Demanio* has adopted its own code of conduct, which applies not only to its employees, but also to members of its management board, freelancers, consultants and suppliers.

Conflicts of interest

115. In Italy, the applicable rules on conflicts of interest differ depending on the categories of officials concerned. With respect to elected officials (parliamentarians and members of Government), Law 441/1982 defines a system of disclosure of their finances (declaration of income and assets). Pursuant to Law 127/1997, these rules are also extended to magistrates and managers in public administration (*dirigenti*). Members of Government are additionally subject to detailed conflicts of interest rules, which are laid out in Law 215/2004. Finally, public officials are subject to the incompatibility provisions established by Legislative Decree 165/2001 and are to be guided in their conduct by those provisions in the Code of Conduct. The applicable rules on conflicts of interest to the different categories of holders of public office are described in detail here below.

Elected officials, magistrates, managers of public administration: Law 441/1982

116. Law 441/1982 requires the disclosure of assets of a number of elected officials, i.e. senators and deputies, Prime Minister, Ministers, Junior Ministers, as well as regional, provincial and local (if municipality has over 50,000 inhabitants) counsellors (Article 1, Law 441/1982). These requirements are also applicable to Presidents, vice-presidents, managing directors and general directors who have been politically appointed or who work for majority State-owned (or regional/local-owned) companies (Article 12, Law 441/1982). Finally, Law 127/1997 (Article 17) extends the obligation to disclose financial interests to magistrates (administrative, accounting and military magistrates) and managers of public administration (*dirigenti*).

117. The information on assets, sources and level of income is to be disclosed on an annual basis and when joining or leaving public service. The obligation to disclose income not only applies to elected officials, but also to non-separated spouses and live-in children, if they give their consent. Financial declarations are published in official bulletins and the bulletins are available on request to registered voters (Articles 8 and 9, Law 441/1982).

Members of Government

118. Additional rules to prevent situations of conflicts of interest with respect to members of Government have been introduced by Law 215/2004 on Rules concerning Resolution of Conflicts of Interest (so-called *Frattini Law*). Article 1 identifies the categories of officials covered by the law, i.e. "persons holding Government office", including the Prime Minister, Ministers, Deputy Ministers and Special Government Commissioners, and thus obliges these officials to devote themselves solely to the public interest while refraining from taking measures and participating in decisions where a conflict of interest may potentially occur.

119. Article 2 of Law 215/2004 disqualifies persons holding government office from holding specific types of office or occupying specific kinds of posts, including in profit-making companies or other business undertakings; performing a professional activity of any kind or any work in a self-employed capacity, in an area connected with the government office in question; occupying posts, holding office or performing managerial tasks or other duties in professional societies or associations; and performing any type of public or private sector job. Law 215/2004 does not include ownership as such of a company among the cases of conflicts of interest: Government officials are barred from holding management or operational roles in private companies, but not from owning them.

120. There is a conflict of interest when the action (introduction of a measure, or the act of proposing a measure) or omission (failure to take a measure that should have been taken) of the holder of public office results in a specific, preferential effect on the assets of the office holder or of his/her spouse or relatives up to the second degree of kinship, or of companies or other undertakings controlled by them, to the detriment of public interest.

121. Pursuant to Article 5 of Law 215/2004, within 30 days of taking up public duties, members of Government are required to notify the Italian Competition Authority (*Autorità garante della concorrenza e del mercato*) of instances of incompatibilities in existence on the date of taking up office. Moreover, financial declarations (including details on company shares) of Members of Government, as well as their spouses or relatives up to the second degree of kinship, are to be filed with the aforementioned authority 90 days after taking the post. Members of Government are to notify the Italian Communication Authority whenever the instances of conflicts of interest relate to economic activities in the communications area.

122. The Italian Competition Authority is the responsible body for verifying the existence of incompatibilities and conflicts of interest. In cases of non-compliance with the law, the Competition Authority may ask for: the removal or disqualification from the office or position by the competent body; the suspension of the public or private employment relationship; the suspension or registration in professional roles and registers; and/or the imposition of a fine on the private company (proportionate to the pecuniary advantage actually obtained by the company and the seriousness of the violation). If the conflict of interest involves a communication company headed by the holder of public office (or family member) the Italian Communications Regulatory Authority can also, under certain circumstances, impose a fine on the company. Every 6 months, both Authorities must submit to Parliament a report on the progress of the monitoring and supervisory activities performed in this area.

Public officials

123. Public officials are expected to maintain their position of independence by avoiding making decisions or carrying out activities related to his/her duties in situations of real or apparent conflicts of interest (Article 2, Code of Conduct). The public official is further to refrain from entering into contracts, participating in decisions or activities that may affect his/her own interests or those of relatives or cohabitants, if his/her participation in the adoption of a decision or activity may generate a lack of faith in the independence and impartiality of public administration (Articles 6 and 12, Code of Conduct). Further restrictions apply to ancillary employment, which is to be authorised by the respective administration on a case-by-case basis (Article 7, Code of Conduct). Moreover, the Code of Conduct prohibits public officials from engaging in any sort of collaboration/cooperation assignment with individuals or organisations which have held an economic interest connected to the functions of the relevant public official in the two preceding years (Article 7(2), Code of Conduct). Additional incompatibility provisions are laid out in Article 53 of Legislative Decree 165/2001 (and supplemented by Circular 6/97 in so far incompatibilities of persons working on a part-time basis are concerned).

124. The Code of Conduct contains specific provisions concerning financial interest declarations. In particular, public officials are expected to inform, in writing, his/her manager of any remunerated ancillary activity performed in the last five years (Article 5(1), Code of Conduct). Managers are also to inform, prior to taking up their duties, if they own company shares or hold other financial interests which may entail a conflict of interest. In addition, managers are expected to provide specific information on his/her assets or fiscal situation upon a justified request from the competent human resources services (Article 5(2), Code of Conduct). As described in paragraphs 116 and 117, Law 127/1997 extended the register of income and assets to public managers, including local government managers.

125. Detection and investigation of conflicts of interest of public officials is the responsibility of their respective hierarchies. In addition, Law 133/2008 entrusted the Department of Public Administration, within the Ministry for Public Administration and Innovation (under the auspices of the Presidency of the Council of Ministers), with specific monitoring functions with respect to the incompatibility framework laid out in Article 53 of Legislative Decree 165/2001.

Gifts

126. The Code of Conduct (Article 3) prohibits public officials from accepting gifts except with the exception of those of customary use of a moderate value.

127. With respect to members of Government, there are no specific rules on gifts with the exception of those established by Decree of the Council of Ministers of 20 December 2007 in relation to protocol gifts. The maximum value of an individual acceptable gift that can be received by the President of the Council of Ministers, Ministers and other members of Government and their spouses is fixed at 300 EUR.

Pantouflage

128. Article 25 of Law 724/1994 bans those persons who have left public office from engaging in consultancy contracts with the administration in which s/he was employed in the last 5 years. This rule only applies to employees whose termination of service is voluntary as they attained the level of pension contributions allowing for early retirement on account of seniority.

129. Law 145/2002 regulates the movement of managers (*dirigenti*) from the public to the private sector. The underlying principle of this law is that such moves are to be encouraged since they allow for a positive exchange of experiences and interaction between the public and the private sector. In this context, managers may take leave from public office, without pay, to carry out activities in the public sector (e.g. in other administrative bodies, in international organisations) or in private entities. Leave to carry out activities for private entities cannot exceed a maximum period of 5 years. Leave may not be granted if, in the two preceding years, the manager concerned has been involved in oversight functions or has issued contracts or authorisations in relation to the private entity for which the manager intends to work. Likewise, leave is not possible in those situations where the move by the manager sets at risk the necessary impartiality of public administration.

130. Members of Government are banned, for 12 months after leaving office, from working for public bodies, working in the private sector, doing professional jobs in fields related to their role in the Government (Article 2(4), Law 215/2004). This rule does not apply to Members of Parliament.

Rotation

131. There are no provisions establishing a system of regular, periodic rotation of staff employed within areas of the public administration considered vulnerable to corruption. However, rotation in certain positions occurs in practice (e.g. officials of the Revenue Agency, customs).

Reporting corruption

132. Under Article 331 of the Criminal Procedure Code, public officials are subject to a specific obligation to report, without delay, on criminal offences of which they become aware in the course of their duties. Failures to report result in fines ranging from 30 to 516 EUR (Article 361, Penal Code).

133. There are no legal measures in place to ensure the confidentiality and protection of public officials reporting corruption (whistleblowers).

Disciplinary proceedings

134. Pursuant to Article 55 of Legislative Decree 165/2001, disciplinary infringements and sanctions are defined through the relevant collective agreements. These agreements include a so-called Disciplinary Code, which specifies the types of infringement and their associated sanction. Not all possible infringements are spelled out; however, it is established that the lack of such specification does not preclude the imposition of a sanction. It is accepted than whenever the relevant infringement of contractual provisions relates to notions such as “conduct which is not in line with correct behaviour”, or “particularly serious misdeed” or “conduct causing damage to the administration or third parties”, the Code of Conduct (in its entirety) must apply, to give substance to the relevant provisions and to enforce the corresponding disciplinary sanctions. The applicable disciplinary codes are to be made easily accessible to public officials and widely publicised, in particular, through its posting in the workplace.

135. Disciplinary measures may entail verbal reprimands, written reprimands, fines from 1 to 4 hours of pay, suspension from service for up to 10 days, suspension from service from 11 days to 6

months, dismissal with notice, and dismissal without notice. The level of the sanction imposed for a given offence is to be increased in cases of recidivism.

136. Within each public administration, a special office is in charge of receiving reports and instituting procedures for the application of disciplinary measures. Each manager reports to this office in case of disciplinary infringements committed by the staff assigned to his/her direction. In case of controversy, the public servant can start legal proceedings with a single arbitrator, who is chosen by the public official and the administration together. The arbitrator must have special qualifications and professional experience. The procedure does not preclude bringing a successful legal action at a later stage In order to provide reasonable timeframes for disciplinary proceedings, no more than 20 days can elapse since the public official receives the notice concerning a disciplinary case, and, once the public official concerned responds to such notice, the disciplinary proceedings are to be concluded in the following 120 days (with the exception of those disciplinary proceedings which are suspended due to the initiation of a criminal proceeding, for further details see paragraph 138). The Inspectorate for Public Service (*Ispettorato per la Funzione Pubblica*) is responsible for monitoring the application of disciplinary measures (Article 60, Legislative Decree 165/2001).

137. The table below shows statistical data provided by the Inspectorate for Public Service concerning disciplinary breaches for the period mid-December 2007 – mid-August 2008:

Administration	***1**	**2**	**3**	**4**	**5**	**6**	**7**
Ministries/Agencies	348	91	130	69	28	12	21
State bodies	85	6	50	26	7	2	15
Regions	2	0	0	0	0	0	0
Provinces	9	0	6	2	3	0	1
Municipalities	118	14	55	25	24	1	5
Tax committees	2	0	0	0	0	0	0
Local health units/ hospitals	300	24	127	76	28	6	17
Universities	40	6	11	4	6	0	1
Schools	8	0	7	7	0	0	0
TOTAL	**912**	**141**	**386**	**209**	**96**	**21**	**60**

Legend (The sanctions imposed in columns 4,5,6 and 7 do not correspond to the proceedings referred to in columns 1,2 and 3)

1. Proceedings ongoing
2. Proceedings suspended pending court action
3. Proceedings which have been completed
4. Minor sanctions inflicted (conservative sanctions)
5. Suspension from work
6. Dismissals
7. Closing of the case/acquittal

138. Law 97/2001 specifically regulates the relationship between disciplinary and criminal proceedings. Disciplinary proceedings are suspended until criminal proceedings are concluded[41]. Time limits are established to ensure that the disciplinary decision follows the criminal conviction, i.e. disciplinary proceedings are to be re-started in the next 90 days following a final judgment of conviction for a corruption-related offence (180 days in all other cases) and they are to be concluded in a maximum period of 120 days. In the case of certain offences (including corruption-related offences), if the public official is found guilty, the disciplinary decision must be dismissal from public office; pending final criminal judgement, the public official concerned may be

[41] Since the visit of the GET, legislation designed in part to streamline disciplinary procedures and to require prompt reporting of criminal judgments to the concerned administration has been drafted by the Ministry for Public Administration and Innovation and is now under review (i.e. Draft Legislative Decree implementing the Law of 4 March 2009 No. 15 regarding the Optimisation of Civil Service Productivity and Efficiency and Transparency in Public Administration; the draft is expected to be adopted during the second half of 2009).

suspended from his/her post. Finally, Article 129 of the implementing provisions of the Code of Criminal Procedure requires prosecutors to inform the corresponding public administration body and the Court of Audit (if damage is done to the State) concerning criminal investigations involving public officials[42].

Public Procurement, permits and other administrative procedures and authorisations

139. Several laws were adopted in the 1990's with a view to enhancing transparency and efficiency of public procurement processes (notably, in the field of public works) and aligning domestic practice with the relevant EU *acquis* in this area. It is generally recognised that public procurement is to be governed by the principles of transparency, equal treatment and non-discrimination, fair and open competition, proportionality and mutual recognition. Detailed rules are laid out in Legislative Decree 163/2006 to reinforce the transparency of public procurement, including the obligation to publish tenders, the definition of criteria for selecting a tender procedure, the requirement to lay down detailed specifications and award criteria, and limits on increasing the value of contracts without a new tender. Centralised purchasing bodies have been established and information exchange mechanisms have been developed between the different authorities with control powers over public procurement process, including alert protocols concerning potential corruption instances (for example, the abolished High Commissioner against Corruption had signed different memoranda of understanding to this end with the Court of Audit and the Ministry of Infrastructure and Transport). Access to information has been facilitated by the development of e-procurement mechanisms. Finally, each public entity is to establish its own tender evaluation commission and tender procedure officer(s).

140. Likewise a simplification of administrative procedures has taken place in recent years: permits by government agencies have been substituted by self-declarations, the number of phases of administrative procedures has been reduced by eliminating a number of advisory bodies, a fixed-term for ending procedures has been established ("sunset" clauses), introduction of the principle of consent equals silence when public administration delays its action, establishment of one-stop shops (replacing the previous 43 authorisations), development of on-line services, etc.

b. Analysis

141. With regard to the need to ensure that the organisation and functioning of the public administration take into account the fight against of corruption, the GET has already noted in paragraph 22 that there is no articulated strategy/policy that addresses prevention, detection, investigation and prosecution of corruption, nor was there at the time of the visit of the GET, a fully functioning body to help develop and guide that strategy or policy. While Italy had previously the office of the High Commissioner Against Corruption, which potentially could have helped

[42] Article 129 of the implementing provisions of the Code of Criminal Procedure: Information on criminal proceedings
1. Where criminal proceedings are brought against an employee of the State or other public body, the prosecution shall inform the authority to which the employee is answerable, giving notice of the charge. When the case involves staff belonging to departments dealing with information pertaining to military or democratic security, it shall also inform the parliamentary committee responsible for information services and state security and secrecy.
2. Where criminal proceedings are brought against a member of the Catholic clergy or religious orders, the information shall be sent to the head of the diocese to which the accused belongs.
3. Where criminal proceedings are brought in respect of an offence prejudicing the Treasury, the prosecution shall inform the State Counsel General attached to the Court of Auditors, giving notice of the charge.
4.bis. The prosecution shall send the information comprising the designation of the statutory provisions allegedly infringed even where any of the individuals referred to in paragraphs 1 and 2 above has been arrested or detained or is in protective custody.

develop such an integrated policy, that organisation was abolished in June 2008, with an effective date of August of the same year; a successor entity tasked with carrying out all of the functions of the High Commissioner was not identified by the Government until early October, just prior to the visit of the GET. Rather than an independent organisation, the successor organisation, i.e. the Anti-corruption and Transparency Service (SAeT) was established within the Ministry for Public Administration and Innovation. Because the SAeT had just been constituted, the GET had no opportunity to evaluate the effectiveness of this organisation or whether it intended to pursue problematic areas already identified by the High Commissioner such as those in the health sector. The GET noted, however, that the staff of the SAeT and its budget were substantially smaller than that of the High Commissioner, some of which would be expected with the elimination of redundant administrative support. Further, the representative makeup of the staff or governing body was different, potentially signalling a change in emphasis. For example, the *Guardia di Finanza* (in particular, a special unit of the *Guardia di Finanza* dealing with offences against public administration) which had a close working relationship with the High Commissioner was not represented, but two of the five leading positions were now held by officers of the *Carabinieri* (the armed police force)[43]. While the information provided to the GET may have been a very brief and quickly-constructed summary of the make-up and expected activities of the SAeT, that information seemed to indicate the potential for an initial emphasis on investigation and monitoring and less attention to identifying opportunities to enhance the transparency and effectiveness of public administration in areas critical to the prevention of corruption. Certainly the SAeT's activities overtime will make the actual focus of its work more clear. In the meantime, the GET recommends **that an entity, whether it is the Anti-corruption and Transparency Service (SAeT) or otherwise, be given the authority and the resources to systematically evaluate the effectiveness of general administrative systems designed to help prevent and detect corruption, to make those evaluations public, and to make recommendations for change based on those evaluations.**

142. The GET was provided with a copy of a fairly sweeping set of guidelines for the reform of public administration, issued in May 2008 by the Minister for Public Administration and Innovation. The guidelines set forth the Ministry's view of what needs to be accomplished; the Ministry had not yet refined the guidelines into a specific action plan with tasks and proposed deadlines. Since the visit of the GET, some developments have occurred in this area, notably, through the adoption of Law 15/2009 authorising the Government to develop rules, in part, on the productivity, efficiency and transparency of Public Administration. The GET is hopeful that some of the recommendations which follow can be easily included in the steps intended to be taken in implementing this Law.

143. With regard to the level of transparency of administrative actions that would properly support effective anti-corruption initiatives, Italy does have a law that provides some rights of access to administrative documents (Law 241/1990). No information was furnished to the GET with regard to a general law providing open access for citizens to meetings/discussions/administrative hearings. The law on access to documents contains a fairly encompassing definition of what types of documents it covers, as well as at the central level, the administrative bodies subject to the law. Local administrations are required to conform their own regulations on access to administrative documents to this law although there appears to be no authority that has oversight over local authorities' implementation of this requirement (the Commission on Access to Administrative Documents can, however, play an advisory role with respect to questions raised by local authorities). The law also requires each public body to publish all information concerning its organisation, functioning and purpose; the GET assumes much of this information is or will shortly

[43] The authorities indicated after the on-site visit that the number of officers of the Carabinieri on the SAeT staff is now one.

be found on each body's website, given the various e-government initiatives Italy is pursuing. The law specifies certain categories of information that are not available pursuant to its provisions (but may be available under other laws). Procedures for denying access to specific additional categories of information and for obtaining access to the rest have reportedly been published by the relevant public administrations and the Government in accordance with the obligation laid down in Article 24(2) of Law 241/1990.

144. To access documentary information not published, a request can be made either orally or in writing. The request, however, must be motivated; an individual requestor must show he or she has a personal interest that is at stake in the matter. If an organisation makes a request on behalf of a group, the organisation must still show a direct, concrete and actual interest in the matter about which the documents are requested. Requirements to access administrative information held by local authorities pursuant to the provisions of Law 267/2000 on Local Authorities are not as stringent. Even though the authorities indicated that the notion of legitimate legal interest is commonly understood in broad terms, the GET learned that the most common reason for denying access to information was that requestors did not have grounds or the required interest in the information. This type of limitation is particularly troublesome when viewed from the perspective of the public's role in helping prevent and detect corruption. For example, officials with whom the GET met confirmed that there is very little opportunity for the press, a citizen or an NGO to obtain information (other than potentially in environmental matters) about a series of decisions that might disclose a pattern or practice of misconduct or abuse in public decision-making. No one person or group would have the requisite personal interest in each of the specific matters which, when viewed together, would show a pattern or practice. Further, the access to information law requires that a denial of information must be motivated, but also states that a failure to respond within the time limits is to be considered a denial. The GET understood that many requests went unanswered by the deadline. Appeals of a denial can go to the administrative courts, to the local/provincial/regional Ombudsperson (*Difensore Civico*), or the Commission on Access to Information, but the latter two bodies only have the power to suggest, not order, the administrative body which denied the request to provide the information if either finds that denial was not proper. An appeal from a decision of the Commission, or the relevant *Difensore Civico*, may also be made to the administrative courts. Despite the 30-day statutory deadline to decide on appeals, the backlog in administrative appeals in the courts for matters not covered by special expedited procedures results in the situation where the actual time for decision can be lengthy and the opportunities for the information sought to be compromised enhanced[44]. The GET recommends **that with regard to access to information: (i) an evaluation be conducted and appropriate steps taken to ensure that local administrations are adhering to the requirements for access to the information under their control; (ii) that an evaluation of the law be conducted to determine whether the requirement of motivation is improperly limiting the ability of the public to judge administrative functions where knowledge of a pattern or practice of individual decisions would provide substantial information with regard to possible corruption and to make that evaluation and any recommendations public, and (iii) that, in order to avoid an appeal to the backlogged administrative courts, consideration be given to providing the Commission on Access to Information with the authority, after a hearing, to order an administrative body to provide access to requested information.**

145. Italy does not have a general law on administrative procedures, although the GET understands that Law 241/1990 does have provisions on administrative proceedings. Article 24 of the

[44] The Commission on Access to Administrative Documents indicated, after the on-site visit, that to date it had met the 30-day deadline for all appeals lodged before it.

Constitution does provide for the right to appeal any administrative decision to the courts. While one overarching administrative procedures law is not a necessity, the systematic requirements of certain fundamental principles of administrative decision-making are important in helping prevent and/or detect corruption. These include, but are not limited to the transparency and timeliness of the procedures, clearly articulated standards and the right to an appeal. With or without those general standards, a timely and effective response to an appeal either within the administrative hierarchy or from the courts is a critical part of the proper functioning of public administration. Otherwise, those with the means to afford to wait through a lengthy appeal process or to use delay as a tactic will be able to use the appeal system in a manner that can actually thwart anticorruption efforts. The GET is aware that the Committee of Ministers of the Council of Europe is monitoring the excessive length of Italian judicial proceedings at the criminal, civil and administrative levels and that Italy has taken a number of steps to address those delays[45]. Specifically within the context of administrative appeals, one such step was to introduce expediting procedures for appeals arising out of public procurements for public works and services, regulation of independent authorities and expropriation. The GET heard, particularly in the context of appeals from public procurement decisions, that the expedited procedures had shortened the length of those proceedings to less than one year. The GET also heard that for other types of matters, administrative judges, recognising the backlogs, would occasionally try to informally facilitate a resolution between the parties and believes there is merit in considering whether to make this a more open and standardised process. The GET recommends **that, when continuing to take steps to address the length of proceedings and the backlog of administrative appeals, the authorities specifically consider the formal institution of alternatives to an appeal to the courts, such as alternate dispute resolution.**

146. The GET found that systematised oversight of public administration was mixed. From all indications, the independent Court of Audit does provide high quality external audit services and is successful at reclaiming monetary losses to the government. Internal audit capabilities are only found in some, but not all, administrative bodies. The GET recommends **that as part of overall public administration reform, all bodies of public administration have access to internal audit resources either directly or on a shared basis.**

147. With regard to the rights of public officials, the GET is aware that Italy has laws that provide for the competitive, merit-based hiring of new officials. The GET is also aware that a practice of hiring "consultants" not subject to these same procedures had arisen (and that part of the ongoing administrative reform is to require administrative bodies to publicise these consultancies and the money being paid to the individual consultants). In balancing the needs for information on a variety of subjects during the visit, the GET did not pursue additional information with regard to the implementation of merit hiring laws or the hiring of consultants. While other public sources have indicated that there are occasions where there is political interference or there are examinations that are not conducted properly, the GET received no information of a similar nature. None of the private organisations or press raised the issue. Importantly, however, the GET was made aware that once a public official is hired he or she can choose to join a labour organisation. Labour organisations wield substantial power in public employment in Italy; the practical rights of officials are tied closely to those agreements. The types of misconduct that are subject to discipline are negotiated by agreement which has the potential to create inconsistencies across the public service with regard to the reasons for and the severity of discipline.

[45] Interim Resolution CM/ResDH(2009)42.

148. With regard to the duties of public officials, including those holding government office in general, the GET found that while there are a number of laws dealing with the conduct of officials and most public officials are subject to at least an aspirational code of conduct, ultimately, it is the Penal Code and criminal proceedings that are relied on to address the misconduct of officials. Reliance on penal proceedings and a finding of guilt leaves a substantial range of misconduct that would more effectively be addressed by discipline administered in a timely fashion rather than waiting until the conduct is sufficiently egregious to trigger a criminal investigation and the lengthy process that entails. A report from the Court of Audit indicates that once a criminal process begins, the length of time it takes may leave an official who has committed very serious offences in his or her post until retirement[46].

149. More specifically, a Code of Conduct for most public officials was adopted in mid-April 2001. The provisions of this Code provide fairly sound aspirational standards for a broad range of conduct. There is, however, no administrative body or bodies responsible for evaluating the application of the Code, for providing training and counselling with regard to the interpretation of its provisions, or for assuring that the Code is interpreted or applied consistently across public administration. For example, the gifts provision, which in any code is very important in helping set the barriers to even an appearance of a bribe, prohibits the solicitation or acceptance of gifts "except those of customary use having a moderate value." None of the individuals with whom the GET spoke could provide examples of additional guidance through circulars or other means that would give a public official or the public some sense of what "customary use" or "moderate value" means[47]. Leaving this decision to each individual official's discretion or that of their managers undoubtedly leads to a wide disparity of application in practice and some confusion.

150. As broad in scope as the Code of Conduct is, it is only aspirational; it is not, standing alone, enforceable. A copy is to be appended to each of the various labour agreements applicable to public officials. Enforcement of individual provisions is to be accomplished only by following the disciplinary code and procedures provided in the applicable labour agreement. Each agreement, however, establishes which individual provisions of the Code will be subject to discipline. Not every provision needs to be covered and if misconduct might also violate a provision of the Penal Code, discipline must wait to be imposed until criminal proceedings have resulted in a final decision of conviction[48]. Further, this Code is purely aspirational for public managers as they are not subject to discipline based on its provisions and the Code does not apply to consultants. Given the length of court proceedings, the opportunities to extend the proceedings until the statute of limitations has expired, and the lack of systematic reporting of convictions to the employing body, the GET understood that discipline was rarely imposed on public officials for violations of provisions of the Code. No matter how well written a Code may be, lack of real consequences for a violation of its provisions has to engender an unhealthy level of internal as

[46] Relazione sulla gestione dei procedimenti disciplinari da parte delle Amministrazioni dello Stato approvata con delibera No. 1/06/G. Court of Audit, 8 May 2006. The report provides an extensive description and analysis of the key problems concerning the relationship between disciplinary and criminal proceedings.

[47] The authorities indicated, after the on-site visit, that the Department of Public Administration had issued several explanatory circulars to ensure that the Code of Conduct is interpreted and applied in a uniform manner; the GET was nevertheless not provided with a substantiating example in this respect. Likewise, the authorities added that a policy of zero tolerance to gifts (i.e. public officials cannot seek or accept, in any capacity, fees, gifts or other benefits in connection with work performance) is enshrined in the relevant collective agreements. The fact that this gift standard is actually different than that in the Code of Conduct (cannot accept gifts "from whoever has obtained or, in any case, may have obtained benefits from official-related decisions or activities") raises its own separate issues, but certainly supports the real possibility of confusion both on the part of public officials and the public.

[48] The authorities indicated that certain collective agreements (e.g. for tax authorities) already contain provisions allowing for the imposition of disciplinary sanctions (prior to a criminal conviction) in certain circumstances, for example, if the official is caught in *flagrante delicto*. See also footnote 41 for recent developments in this area.

well as public cynicism and lack of trust. An effective system of timely discipline for misconduct, regardless of whether it might also trigger a criminal charge, is a fundamental element of meeting Guiding Principle 10. Consequently, the GET recommends **that (i) consistent and enforceable ethical standards be required for all officials within the public administration (including managers and consultants) at all levels of government; (ii) steps be taken to provide for a system of timely discipline for violating these standards without regard to a final criminal conviction; and (iii) all individuals subject to these standards be provided with sources of training, guidance and counselling concerning their application.**

151. In addition, the GET found that while the general Code of Conduct existed for public officials, and separate codes existed for the judiciary and tax/military/law enforcement bodies, there was no code of conduct applicable to the members of the Government or the members of the Parliament. The conduct of the most senior leaders within any level of government sets the tone for the rest of the public administration and most easily enhances or undermines the public's trust. Members of Parliament and members of the Government are subject to some restrictions on incompatibilities and the receipt of gifts of protocol (but not other gifts) and most (plus certain family members) have to file a personal financial disclosure report that is available for review by citizens on the voting register. However, the conduct of these officials is basically enforced only by the application of the criminal laws. It is difficult to conclude that controlling these officials' conduct primarily by a possible successful criminal prosecution is an appropriate or effective method of combating corruption; the four most senior of these officials may not be prosecuted during their term of office (for details, see paragraph 64), and for all of these senior officials there are procedural hurdles to the use of special investigative techniques (the practical equivalent of prior notice to the target of the wiretap) and searches (prior permission of Parliament), thus substantially limiting the practical use of these techniques to gather evidence of public corruption (see paragraph 63). This is particularly of concern in the case of members of the Government who, while elected, carry out substantial executive (public administration) functions. Therefore, the GET recommends **that a publicly announced, professionally embraced, and if possible, an enforceable code of conduct be issued for members of Government, and that such code of conduct include reasonable restrictions on the acceptance of gifts (other than those related to protocol).** The GET is hopeful that members of Parliament also give serious consideration to similar steps as a public signal of their commitment to high integrity.

152. With regard to restrictions on conflicts of interest and the disclosure of financial assets, liabilities and outside activities, there are very disparate systems within the Government and public administration. Italy has had a financial disclosure system since 1982 for its elected officials and some other senior Government officials (Law 441/1982). That system requires individuals (and certain family members) to file a statement of assets and shareholdings and a copy of their tax returns. The financial statement and a recap of the tax return are published in a bulletin accessible to citizens eligible to vote. Oversight authority was provided primarily to the Senate and the Chamber of Deputies. Subsequent to 1982, the law was amended to include additional officials within the executive (public administration) function; the GET could not obtain any response as to the body responsible for carrying out oversight and access to these reports. Fundamentally, Law 441/1982 controls conflicts of interest by the mere fact of public availability of the disclosure reports.

153. In 2004, Law 215/2004 was enacted to provide restrictions and to define incompatibilities and conflicts of interest; the law also required a separate financial reporting system. While Law 215/2004 covers some of the same individuals as Law 441/1982 (i.e. Ministers), it does not cover members of Parliament. The financial information required to be reported is also not the

same as Law 441/1982 and those covered by both laws file separate forms for each. The Competition Authority is entrusted with general oversight responsibilities for incompatibilities and conflicts of interest, while the Communications Authority is vested with residuary competence for conflicts of interest arising from holdings in or a relationship with the communications sector. The description in Law 215/2004 of what creates an incompatibility is reasonably clear; the conflict of interest standard is not. The latter is a recusal requirement for certain matters (but it is unclear for which matters). In any case, the law states that there is a conflict of interest when action or inaction in a matter by the holder of public office has a specific and preferential impact on his or her financial interest and there is a detriment to the public interest. The practical consequence of this type of restriction is that the public official can act (or consciously choose not to act) on matters in which he or she has a direct personal financial interest and if questions arise afterwards, the Competition Authority or the Communications Authority may have to decide if the action or inaction caused a detriment to the public interest. The Competition Authority can recommend specific penalties for incompatibilities, but there are no penalties in the law for conflicts of interest. Presumably real sanctions must come with some criminal prosecution for violation of another law. However, with regard to conflicts of interest, an undertaking with which the holder of public office has a specified business relationship who benefited from the official's act might be subject to monetary fines under Law 215/2004.

154. With regard to incompatibilities, conflicts of interest and financial disclosure for most of the rest of public service, there are provisions within the Code of Conduct addressing each. Without going into the details of the financial disclosure and conflicts of interest provisions in the Code, it is of merit to note that the conflict of interest provision is reasonably comprehensive and covers even the appearance of a conflict. The difficulty with all of the provisions of this Code is that there is no guarantee that these provisions will be made a part of each labour agreement's disciplinary code and thus enforceable. Even as aspirational standards, there is no system in place to provide consistency in interpretation, training or guidance across the public service. And, again, this Code of conduct does not apply to everyone who carries out a function within the executive authority (see paragraph 150). While the judiciary has its own code of conduct and financial disclosure system, there appear to be similar weaknesses. The GET recommends **that (i) a clear and enforceable conflict of interest standard be adopted for every person who carries out a function in the public administration (including managers and consultants) at every level of government; and (ii) a financial disclosure system or systems applicable to those who are in positions within the public administration which present the most risk of conflicts of interest be instituted or adapted (as the case may be) to help prevent and detect potential conflicts of interest.** The GET is hopeful that the judiciary will also review their conflicts of interest restrictions for weaknesses and take any appropriate steps to address them.

155. The restrictions on post government activity for holders of Government office are found in the incompatibilities section of Law 215/2004. There is disclosure and oversight during service in those positions; following public service there is no disclosure, but the Competition Authority, if it detects that a former public official is engaging in a prohibited activity, can institute proceedings which can lead to the recommendation of a penalty. There is no clear standard that would apply to negotiating for that employment before leaving the position. There are no post government restrictions for other public officials related to service in the private sector, only to engaging in consultancy contracts with the administration where the individual was employed in the last five years prior to retirement (and this restriction only applies to those officials leaving public service because they have opted for early retirement). The GET recommends **that appropriate restrictions relating to the conflicts of interest that can occur with the movement in and**

out of public service by individuals who carry out executive (public administration) functions be adopted and implemented.

156. An important tool in the fight against corruption is the understood obligation of public officials to report corruption when they become aware of it in the course of their duties. While Italy has a provision of law which requires an official to report certain crimes, there are no standards or procedures in place to protect that official from reprisals for having made that report; it provides no "whistleblower" protection. There are provisions for witness protection for certain crimes, but that is clearly not the same as whistleblower protection. The GET recommends **that an adequate system of protection for those who, in good faith, report suspicions of corruption within public administration (whistleblowers) be instituted.**

VI. LEGAL PERSONS AND CORRUPTION

a. Description of the situation

157. Legal persons in Italy are differentiated on the basis of their profitable/non-profitable nature.

(i) Non-profitable legal persons may function under the form of an association or a foundation. Both of these are characterised by the fact that they may not pursue economic goals and are regulated by Book I of the Civil Code.

a) *Association* is a social formation or permanent collective organisation pursuing non-individual objectives and governed by a plurality of organs. Associations may be incorporated (*associazione riconosciuta*) or unincorporated (*associazione non riconosciuta*)[49]. Unincorporated associations are established through a private act which requires the drawing-up of a constitutive deed (*atto constitutivo*) and registration with a notary; the entity receives no public recognition and is exempt from registration with a public agency. Incorporated associations must have their constitutive deeds legally recognised by a public act; any modification of the association's charter must be approved by governmental authority.

b) *Foundation* is a private non-profit and autonomous organisation; its assets must be dedicated to a purpose of private or public utility established by the founder. The founder cannot receive any benefits from the foundation or have reverted the initial assets. Foundations are subject to strict Governmental control: the Government can inspect a foundation's activities to ascertain possible misconduct or ineffectiveness, and is entitled to review its annual financial and activities reports. In particular, the governmental authority may annul the foundation's resolutions if contrary to the law or to the foundation's constitutive deed; it may dismiss directors and substitute them with a so-called *"commissario straordinario"* (*extraordinary commissioner*) if they acted against the law or the foundation's constitutive deed. Furthermore, the authority may transform or wind up the foundation if its goals have been achieved or have become impossible to achieve.

(ii) Profitable legal persons are regulated by Book V of the Civil Code. The most widely used type of commercial entities are the limited liability companies, these are generally classified as follows:

a) *Joint-stock companies (società per azioni, S.p.A.)* are regulated in Articles 2325 to 2451 of the Civil Code. They may be founded by one or more shareholders. The minimum equity capital required is 120,000 EUR; at least 25% of the subscribed capital has to be paid on registration. The capital is divided into shares, which are embodied in stock certificates.

[49] Associations are not required to be registered. However, if they want to acquire legal status, receive grants or other benefits, they need to register.

Shareholders are not personally liable for the obligations of the company. A joint stock company must have a management and a supervisory board, and must convene a general shareholder's meeting. This form of company is mostly used by those entities having (or planning to have) access to equity capital markets.

b) *Limited liability companies (società a responsabilità limitata, S.r.l.)* are regulated in Articles 2472 to 2483 of the Civil Code. They are formed by a sole – or several – founders who invest their property and thereby participate in the previously agreed share capital. The minimum starting capital required is 10,000 EUR; the capital is divided into quotas, which are transferable. An S.r.l. provides for more flexibility and autonomy for the members in comparison with an S.p.A.; in particular, they have greater freedom to choose their internal organisation and decision-making procedures. It is not possible to appoint a corporation of the board of directors of a limited liability company.

c) *Partnerships limited by shares (società in accomandita per azioni, S.a.p.A.)* are regulated in Articles 2452 to 2471 of the Civil Code. They have two categories of members: general partners, who are liable jointly and severally liable without limitation for the partnership obligations; and special partners who are liable within the limit of subscribed capital. Creditors of the S.a.p.A cannot claim payments from the general partners until all remedies against the company have been exhausted. Participations are represented by shares. Rules concerning the shareholder meeting, as well as the management and supervisory boards of the S.p.A, are also applicable to the S.a.p.A.

Registration and transparency measures

158. The conditions governing the establishment and registration of legal persons differ depending on their profitable/non-profitable character and are specifically laid out in the Civil Code. It is generally accepted that, for a legal person to exist, it is necessary that its objectives be feasible and lawful, and that its assets be sufficient to achieve the envisaged goals. There are no nationality requirements for founders in any form of legal entity. Legal persons acquire personality following registration; from that moment, they may acquire rights and obligations.

159. Registration of profitable legal entities in the Register of Enterprises (*Registro delle Imprese*) is carried out by the competent local Chamber of Commerce where the company is based, under the supervision of a judge. The public notary, who certifies the company's deed of incorporation (*atto constitutivo*), is responsible for lodging the relevant application form for registration purposes; s/he carries out an in-depth *ex-ante* control of the registration information provided (including criminal records). The registration procedure that follows is basically formalistic; the authorities check the completeness, rather than the accuracy – which has been previously checked by a notary – of the required information which is submitted with each application (data on identity of entrepreneur and partners, company address, amount of registered and paid capital, activities of the company, tax number, identity of notary/legal representatives, other licenses – if necessary). If founders, partners, managers of legal persons fail to present accurate/complete information, they are subject to the administrative sanctions of Articles 2194, 2626 and 2634 of the Civil Code (fines from 51 to 516, and up to 1,040 EUR); these sanctions are also applicable to the notaries who are responsible for verifying the information that is to be registered. Companies are to submit their balance sheets on an annual basis, if they fail to do so for three consecutive years, they can be struck off the register. Time limits for company registration are not specifically defined by law, but the authorities indicate that registration takes place within a maximum of 25 days following the submission of all relevant documents. There are 1.8 million companies and 3.5 million one-person businesses registered, respectively.

160. According to Decree No. 361/2000, registration of non-profitable entities is carried out by the corresponding local (*prefettura*) or regional/provincial authority. A copy of the founding act and the statutes is handed over to the authority, which has to decide within 120 days of the registration application being submitted. The register contains information on *inter alia* articles of incorporation of associations or foundations, identification data on founders, administrators and liquidators. Foundations of social utility (ONLUS) must also be enrolled in a particular register (Article 5, paragraph 3, of Decree No. 460/1997), kept by the Ministry of Economy and Finance; this registration is necessary for obtaining the applicable fiscal rebates.

161. The information contained in the relevant registers of profitable/non-profitable entities is accessible to the public upon request[50]. In addition, the Register of Enterprises can be consulted via the Internet; details available online include *inter alia*: date of establishment, address of company, sector or activity, tax code, identity of managers, company's capital, etc. The authorities indicate that it is always possible to identify the natural person behind the legal person. Full details of the company's managers are listed in the register, including his/her name, date and place of birth, private address, date and duration of appointment. Moreover, bearer shares are, *de facto,* no longer possible in Italy, with the sole exception of saving shares issued in bearer form that represent less than 2% of the company's capital[51]. All companies are required to report changes, including those occurring in relation to ownership (changes in composition and identity of shareholders). Further controls for transparency and legality purposes are in place with respect to non-profitable entities following the creation, in 2000, of the ONLUS Agency, which oversees the activity of all different types of non-profitable entities and coordinates its inspection tasks with the Tax Revenue Agency.

162. The Civil Code does not regulate (whether to allow or to ban) situations where a legal entity becomes the administrative body/founder of another legal entity. Although the lack of provisions in this respect may, therefore, allow for such instances to occur, the authorities explained that this is very rare in praxis.

Limitations on exercising functions in legal persons

163. The courts may impose bans on holding executive functions in companies or other legal persons (Articles 32-bis and 35-bis of the Penal Code). Under Article 32-bis PC, this potential additional sanction applies whenever the person convicted is sentenced to a punishment of not less than 6 months' imprisonment, including, therefore, corruption-related offences. The offence must have been committed with abuse of power or violation of the duties inherent in the office, with the exception of accounting offences where additional sanctions may apply irrespective of whether abuse of power or violation of the duties inherent in the office occur (Articles 2621(5) and 2622(9) of the Civil Code).

[50] The relevant Chambers of Commerce, which are responsible *inter alia* for registration, receive an average of 20 million information requests from public authorities per year.

[51] Although the Civil Code allows the use of bearer shares (i.e. shares where no record of ownership is maintained by the issuing company) for joint-stock, as well as for limited partnership companies, ulterior by-laws have confined this possibility to saving shares (*azioni di risparmio*), which do not carry voting rights and which can only be issued by listed companies, up to a maximum of 50% of the company's capital. Even in the case of saving shares, it would be possible to identify the beneficiary owner, since all saving shares are dematerialised in Monte Titoli and can only be transferred by the relevant entry in the books kept by the authorised intermediaries (investment firms and banks) who, in turn, are required to identify the owner of the shares.

Liability of legal persons

164. Legislative Decree No. 231/2001 establishes administrative liability of legal persons for certain offences (Articles 24 and 25), including bribery in the public sector. Corporate administrative liability is also possible in connection with money laundering offences pursuant to Article 10(5) of Law 146/2006 and Article 25-octies of Legislative Decree No. 231/2007. Corporate liability is not provided for active bribery in the private sector. Corporate liability for trading in influence is not possible in Italy since this offence is not criminalised.

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

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

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

Sanctions

168. Legislative Decree No. 231/2001 (Article 9) foresees the following types of sanctions where a legal person is found administratively liable:
(i) fines ranging between 26,000 and 1,550,000 EUR (Article 25, Legislative Decree No. 231/2001). The amount of the fine is determined by the seriousness of the offence and the financial capacity of the legal person. Fines may be reduced if certain mitigating factors concur (Article 12, Legislative Decree No. 231/2001)[52]; nevertheless, regardless of the applicable mitigating factors, a fine cannot be reduced to less than 10,400 EUR;
(ii) disqualification from certain activities e.g. professional bans, suspension or revocation of authorisations, licenses or concessions instrumental to the commission of the offence, prohibition to contract with public administration, etc. If the court considers that none of the aforementioned temporary disqualifications/bans are adequate, it may prohibit the legal person from conducting business activities. The disqualification penalty may be waived if: (a) prior to the start of a trial, the legal entity implements an appropriate organisational model to prevent similar offences in the future; (b) fully compensates all victims; (c) takes effective steps to eliminate any consequences of the offence; and (d) surrenders any profits derived from the offence for confiscation (Article 17, Legislative Decree No. 231/2001);

[52] Article 12, Legislative Decree No. 231/2001: A fine is reduced by one-half and in any event no less than 10,329 EUR if the perpetrator committed the offence mainly in the interest of him/herself or a third party, and the legal entity has derived little or no advantage from the offence. A fine is reduced by between one-third and one-half if, before a trial against a legal entity commences, the entity compensates any victims, takes effective steps to eliminate the consequences of the offence, and implements an appropriate organisational model to prevent similar offences in the future. If the aforementioned conditions are both met, a fine is reduced by between one-half and two-thirds.

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

169. Liability may be waived if the so-called "defence of organisational models" is successfully invoked. In particular, pursuant to Article 6(1) of Legislative Decree No. 231/2001, a body is not liable for offences committed by persons in senior positions if it proves the following: (1) prior to the commission of the offence, the body's management had adopted and effectively implemented an appropriate organisational and management model to prevent offences of the kind that have occurred; (2) the entity had set up an autonomous organ to supervise, enforce and update the model; (3) the latter autonomous organ had sufficiently supervised the operation of the model; (4) the perpetrator committed the offence by fraudulently evading the operation of the model. Article 6(2) of Legislative Decree No. 231/2001 lays out general criteria on the necessary elements that an "acceptable" organisational model is to include (e.g. identification of activities which may give rise to offences, procedures through which the body makes and implements decisions relating to the offences to be prevented, procedures for managing financial resources to prevent offences from being committed, disciplinary system for non-compliance, etc.). Where an organisational model was not in place at the time an offence occurred, a company's sanction may be reduced if, in the time between the offence and the trial, "an organisational model in order to prevent offences such as the one which occurred has been adopted and made effective" (Article 12(2)b, Legislative Decree No. 231/2001). The main aim of the defence of organisational models is to provide an incentive for companies to set in place their own self-regulatory models for preventing and fighting corruption (e.g. in the form of corporate ethical codes). It is possible to confiscate the benefit of the offence even in those cases where the defence of organisational models is successfully pleaded (Article 6(5), Legislative Decree No. 231/2001).

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

171. The authorities have referred to three cases adjudicating corporate administrative liability. The sanctions imposed consisted of disqualification of the convicted companies from exercising their commercial activities for a period of one year (Case against Siemens AG, First Instance Court of Milan, 28 October 2004; Case against IVRI Holding s.p.a., First Instance Court of Milan, 20 September 2004), and a confiscation and a fine of 36,120 EUR (Case against Pacini Mario s.r.l., First Instance Court of Lucca, 26 October 2004).

Tax deductibility and fiscal authorities

172. Facilitation payments, bribes and other expenses related to corruption are not tax-deductible. In particular, Article 2(8) of Law No. 289/2002 specifically provides that costs or expenses incurred as a result of a criminal offence are not tax deductible. This provision applies to all types of income, regardless of whether the offence is committed by a natural or a legal person. Moreover, prior to the entry into force of the aforementioned provision, the Italian Court of Cassation had repeatedly confirmed the non-tax deductibility of illicit payments.

173. Tax authorities are subject to the obligation for public officials to report offences, of which they become aware in the course of performing their duties, to law enforcement authorities without delay (Article 331, Criminal Procedure Code). Failures to report result in fines ranging from 30 to 516 EUR (Article 361, Penal Code). Targeted training to detect bribes or other expenses linked to corruption offences is provided to tax inspectors on a regular basis; in addition, a wide range of anti-corruption preventive measures have been set in place by the Revenue Agency (for details see paragraph 109).

174. The police has direct access to tax records. Direct access to the fiscal database (*anagrafe tributaria*) can be granted to public administration bodies (including, but not limited, to law enforcement agents) investigating money laundering offences; Legislative Decree 212/1991 regulates the relevant practical aspects of such access. Finally, tax records may be disclosed to other public bodies, upon request, when such information is needed in the conduct of its institutional activities.

Accounting Rules

175. Accounting obligations of companies are mainly governed by the Civil Code (Articles 2214 to 2220, as well as Articles 2621 and 2622 on false accounting or *falso in bilancio*) and strongly connected to more recent fiscal legislation. In this context, legal persons that are subject to income tax are required to keep books and records of accounts, as well as to keep the originals of the relevant supporting evidence of the different commercial operations carried out (e.g. invoices), according to the legal provisions laid out in the Legislative Decree 174/200 on Income Tax and VAT (Article 13). Small companies whose annual turnover does not exceed 186,000 EUR (companies providing services) or 516,000 EUR (all other companies), respectively, are allowed to keep simplified annual accounts (Article 18)[53]. Accounting records (including invoices) are to be kept for a period of ten years (Article 2220, Civil Code).

176. Law 262/2005 amends Title XI of Book V of the Civil Code concerning sanctions on false accounting. In particular, the Civil Code punishes persons having a managerial or administrative function for the "*publication of untrue material acts*" or the omission of the required accounting information, which appreciably distorts the trading, balance sheet or financial situation of the company, with the intent to deceive shareholders, creditors or the public (*falso in bilancio*). The prescribed sanctions differ depending on whether the falsification of the accounts damages or not the interests of shareholders and creditors. For false accounting offences not causing damage to shareholders or creditors, the available sanction consists of imprisonment of up to 2 years; the offence is prosecutable *ex-officio*. False accounting causing damage to shareholders or creditors is punished with imprisonment from 6 months to 3 years. As a general rule the offence is only prosecutable upon the lodging of a complaint by the injured party, but in certain circumstances prosecution *ex officio* is possible (e.g. pursuant to Article 2622(2) of the Civil Code, prosecution *ex-officio* is admitted in so far as listed company is concerned). A waiver of liability exists if it is ascertained that the false statements of omissions distort the pre-tax financial results of the year by no more than 5% or distort the net assets by no more than 1% (so-called tolerance limits). Furthermore, penalties are precluded where false statements or omissions are the consequence of estimates that, when viewed individually, do not deviate by more than 10% from the correct valuation.

[53] Simplified accounts must in any case include VAT registers (invoices, fees, purchases), as well as records of depreciable assets.

177. Further sanctions are possible under taxation law. For example, Legislative Decree No. 74/2000 on Income Tax and VAT provides for imprisonment penalties for a maximum period of 6 years for fraudulent accounting offences which are performed with the deliberate purpose of tax evasion. For these offences to be prosecutable, two conditions are to concur: (1) the amount of tax avoided must be higher than 77,468 EUR; and (2) the amounts of assets not subject to taxation must be higher than 5%-10% of the total amount stated in the tax-return. Moreover, it is a necessary pre-condition for prosecution that the corresponding annual tax-return be submitted. In addition, criminal sanctions are specifically provided for cases of false accounting in connection with bankruptcy of a company (so-called documentary bankruptcy). Royal Decree No. 267/42 (Articles 216 and 217) lists sanctions consisting of imprisonment for between 3 and 10 years (intentional offences), or between 6 months and 2 years (negligent offences). Additional penalties comprise professional bans (e.g. disqualification from holding public office, carrying out commercial activities, exercising directing functions, etc.). The authorities refer to several adjudicated cases concerning "documentary bankruptcy"; these do not only deal with instances of incorrect, incomplete and irregular accounting[54]. Civil sanctions may also apply in respect to "documentary bankruptcy" (Article 2392, Civil Code)[55].

178. Finally, listed companies (banking and financial intermediaries) are subject to more onerous accounting rules (for example, with respect to transparency requirements, obligations to appoint an "accounting officer" and to engage independent external auditors, etc.) and sanctions. In particular, false accounting of listed companies, causing damage to shareholders or creditors, is punishable by imprisonment from 1 to 4 years and fines ranging from 516 to 25,823 EUR. The offence is prosecutable *ex-officio*.

Role of accountants, auditors and legal professionals

179. Listed companies, State-owned companies and insurance companies are subject to external audits; specific provisions to regulate the independence (including a rotation system, conflicts of interest rules, etc.) of external auditors has been introduced by Law 262/2005. An additional external control of the accuracy and completeness of the accounts of listed companies can be performed by the Italian Stock Exchange Commission (CONSOB) which is also to control the effective independence of the external auditors engaged by the relevant company. If there are suspicions that accounting irregularities may be associated with corrupt practices, CONSOB is under the general obligation to inform the competent prosecution service. Non-listed companies are not required to engage external auditors, regardless of their size or turnover.

180. Accountants, auditors and/or other advising professions are bound by the general reporting provisions, which are applicable to all private individuals, laid down in Article 333 of the Criminal Procedure Code. According to this article, private individuals "may" denounce their suspicions of criminal offences to law enforcement agencies; mandatory reporting for certain offences is to be further specified by law. Accountants, auditors and other advising professionals are nevertheless bound to report money laundering suspicions in accordance with anti-money laundering legislation (see paragraph 80 for details). The FIU provided detailed statistics concerning suspicious transaction reports filed by advisory professionals:

[54] Cass., Div. V, 9 June 2006 and Cass., Div. V, 15 March 2000.
[55] Cass., Div. I, 22 June 1990.

Reporting professions	*2006*	*2007*	*2008*	*Total*
Notaries	170	127	**103**	**400**
Accountants	15	21	**19**	**55**
Tax consultants	24	37	**17**	**78**
Real estate brokers	6	10	**13**	**29**
Lawyers	3	8	**6**	**17**
Gambling houses	0	0	**4**	**4**
Auditors	2	4	**3**	**9**
Financial brokers	0	1	**2**	**3**
Auditing companies	9	2	**2**	**13**
Others	8	5	**4**	**17**

b. Analysis

181. The system in place for the establishment and registration of legal persons in Italy is basically sound. In particular, the notion of legal persons, their various forms, their functioning, as well as the rules governing transactions with them, are adequately defined. There is a variety of legal persons provided for in legislation. Requirements for establishing legal persons depend on the form of the legal entity (notably, their commercial/non-commercial nature), but all of them are subject to registration. It is possible for foreign physical and legal persons to establish legal persons in Italy or join Italian companies. The GET welcomes the recent reforms that have been introduced in the field of legal persons, such as the restructuring of the licensing system (see paragraph 140), which have reduced both the number of authorisations required to obtain a license/permit and the range of authorities involved in issuing them, thereby providing for greater guarantees to reduce opportunities for corruption.

182. As far as the registration system and the relevant controls performed throughout the process are concerned, it is crucial that the information entered is correct and reliable. This is particularly significant with regard to the prevention of legal persons being used to shield inappropriate activities. In this connection, the interviews carried out by the GET with the competent institutions entrusted with registration responsibilities, helped to clarify the multi-tiered system of control and the division of tasks among notaries, Chambers of Commerce and courts. Firstly, the information to be submitted is checked and certified by notaries as to their correctness and conformity with legal requirements; secondly, if such information is correct and all legal requirements have been fulfilled, the legal person is registered by the competent local Chamber of Commerce where the company is based, under the supervision of a judge. From the interviews held, the GET gained the clear impression that much effort is deployed in this process to ensure that the information submitted by the applicant corresponds to the reality. Notaries check criminal records (including professional bans) of applicants (physical persons); they refer to the databases kept by Chambers of Commerce, and also to in-house data held by the National Notary Council (*Consiglio Nazionale del Notariato*), which contains information submitted by prosecutors in this respect. Administrative sanctions apply to both applicants and notaries for failures to submit complete/accurate information for registration purposes. The GET was also pleased to note that the registered data contains details concerning the identity of the persons behind the legal persons (founders and partners) and that such information is public. Moreover, information from the Register of Enterprises is available on the Internet.

183. Legislative Decree No. 231/2001 establishes administrative liability of legal persons. Corporate liability concerns only those offences listed under the law, including bribery in the public sector (Article 25 of Legislative Decree No. 231/2001) and money laundering (Article 10(5) of Law 146/2006 and Article 25-octies of Legislative Decree No. 231/2007). Trading in influence is not criminalised in Italy; ratification of the Criminal Law Convention on Corruption will certainly pave the way to extending corporate liability in this area. An important gap in the system is, nevertheless, the fact that corporate liability is not possible in respect of active bribery in the private sector. For this reason, the GET recommends **that corporate liability be extended to cover offences of active bribery in the private sector.**

184. Pursuant to the provisions of Legislative Decree No. 231/2001, legal persons (companies and associations) may be held liable for crimes committed, on their behalf or for their benefit, by any natural person, who has a leading position within the legal person, based on a power of representation of the legal person; or the authority to take decisions on behalf of the legal person; or the authority to exercise control within the legal person. Corporate liability would also apply in those cases where lack of supervision within the legal person makes it possible to commit the offence. Corporate liability does not exclude individual liability of the perpetrator. The sanctions (including security measures) available under Legislative Decree No. 231/2001 appear to be in line with the requirements established by Article 19(2) of the Criminal Law Convention on Corruption. A central register of companies found guilty of corruption in Italy has been in place since 2007.

185. While the courts may impose bans on holding executive positions in companies or other legal persons, this additional sanction is available only where the offence was committed in conjunction with abuse of power or violation of the duties inherent in the office concerned (the only exception to this rule being the one provided for accounting offences under Articles 2621(5) and 2622(9) of the Civil Code). The GET is of the view that this measure should not depend on such conditions since the commission of offences of corruption, whether committed in conjunction with abuse of power or not, and whether committed in violation of the duties involved in a given office or not, should be capable of disqualifying a person from occupying executive or managerial positions in legal persons in any case. The GET therefore recommends **to consider the possibility of establishing bans on holding executive positions on legal persons in all cases of conviction for serious corruption offences, independently of whether these offences were committed in conjunction with abuse of power or in violation of the duties inherent to a given office.**

186. The GET was told during the visit that the introduction of corporate liability by Legislative Decree No. 231/2001 represented a very innovative feature in the Italian system, which had traditionally applied the principle of "*societas delinquere non potest*", and that for this reason, numerous training seminars on this matter had been organised since the adoption of the Decree in order to facilitate the application in practice of the new legislative provisions. The GET discussed different aspects of corporate liability with the practitioners, as well as the representatives from the private sector, met during the on-site visit and, from the explanations provided, it appeared to the GET that a good level of knowledge was shared among those persons who are to apply (police, prosecutors, judges) and those who are to respect (companies) the law. The GET was positively impressed, in particular, by the proactive approach adopted by the Confederation of the Italian Industry (*Confindustria*), which has *inter alia* issued standard guidelines for the drafting of organisational models (i.e. codes of ethics and internal rules in order to prevent managers, executives, employees and external collaborators from committing economic crime) and which is compiling the jurisprudence developed to date in Italy concerning corporate liability.

187. The GET notes that the provisions on organisational models may operate, in principle, as a defence which could exonerate the legal person concerned. The authorities nevertheless stressed that this was not the objective pursued by the law (which rather aimed at setting in place a preventive framework for fighting instances of malpractice and corruption in the private sector), and that, *de facto*, courts were interpreting the defence of organisational models in a rather restrictive manner. The authorities further explained that the provisions on organisational models would operate, in practice, to mitigate the punishment, rather than to completely exonerate the legal person and that, in any case, individual liability of the physical offender would apply, as appropriate. The representatives of *Confindustria* informed the GET that, on the basis of the follow-up they are carrying out of court decisions, the defence of organisational models had never been accepted by the competent courts to waive liability. The launching of a reflection exercise, between the authorities and private sector representatives, on the interpretation and applicability of the provisions in Legislative Decree No. 231/2001 concerning organisational models was felt to be necessary among the different interlocutors met. In this connection, the GET notes that the "organisational model" defence is subject to a number of conditions in order to safeguard against potential abuse and the courts have taken a rather rigorous and strict approach to this defence.

188. Tax authorities play an important role in detecting and investigating administrative corruption; they have an obligation to report suspicions of corruption. For this purpose, they have themselves developed an arsenal of anti-corruption tools to secure internal discipline and control, which is coupled with training. Law enforcement agencies have access to tax records, and it emerged from the interviews held during the on-site visit that a good level of functional cooperation exists between tax authorities and other law enforcement bodies.

189. In Italy, accounting requirements vary depending on the size of the company; small companies are allowed to keep simplified accounts, including, in any case, a snapshot of their income and expenditure (as a minimum: invoices, fees, purchases and records of depreciable assets). The destruction of books, the using of false or incomplete information in accounting documents as well as unlawfully omitting to record payments are offences punishable under civil and fiscal law. The GET identified several important shortcomings in the system as compared to the standards under review. First, the GET was made aware that legislative amendments have occurred in this field resulting in a reclassification of certain accounting offences (from crimes to misdemeanours), and thus, less severe penalties and shorter statutes of limitations being applicable in this area[56]. The authorities brought to the attention of the GET other accounting offences with higher penalties (some of them considered to be criminal offences and not misdemeanours) under tax law; the GET notes, however, that these rules would only be applicable when they are performed with the deliberate purpose of tax evasion or in bankruptcy cases.

190. Moreover, the GET notes that infringements of the relevant Civil Code accounting provisions are only punishable in so far as certain conditions/thresholds are met: (1) the act/omission has to appreciably distort the trading, balance sheet or financial situation of the company; (2) a waiver of liability exists if (a) it ascertained that tolerance limits are not reached (pre-tax financial results of the year must not be distorted at more than 5%; net assets must not be distorted at more than 1%) or (b) deviation in total figures is not higher than 10% from the correct valuation. Further, different sanctions apply depending on whether the offence concerns listed or unlisted companies (listed companies are subject to more severe sanctions), and whether the offence causes

[56] The Court of Cassation has confirmed that the scope of Article 2621 of the Civil Code has been significantly reduced. For example, it does no longer cover false information or omission that does not appreciably distort the financial situation of a company (judgment No. 25887 of 16 June 2003).

damages to shareholders or creditors. The GET has serious concerns about this system, in particular, as regards the conditions for liability which depend on thresholds that, in the GET's opinion are rather high if taken in absolute terms, as well as where variations in the determination of penalties are concerned. With respect to the latter aspect, it is certainly problematic if liability for these offences depends on whether or not damage has been caused to the shareholders or creditors, taking into account that the offences may well conceal corrupt dealings which might prove eventually "beneficial" to the shareholders. Finally, the GET notes that the offences of false accounting (*falso in bilancio*) established by Articles 2621 and 2622 of the Civil Code circumscribe the scope of perpetrators to only cover certain persons having a managerial or administrative function in relation to a partnership.

191. With respect to auditing requirements, only listed companies, State-owned companies and insurance companies are subject to external audits; the necessary independence of the professionals performing such audits is specifically regulated by Law 262/2005. However, as a result of the limited coverage of the aforementioned law, commercial companies with a substantial turnover are not subject to auditing obligations. The GET believes that this particular situation is bound to reduce the chances of offences being uncovered since there is no external and independent supervision of the accounts prepared by the internal accountant (who would be an employee of the company).

192. In the GET's view the fairly heterogeneous accounting system, which has been analysed in paragraphs 189 to 191, falls short of the accounting requirements of the Criminal Law Convention on Corruption which aim at better assisting the detection of corruption offences. Consequently, the GET recommends **to review and strengthen the accounting requirements for all forms of company (whether listed or non-listed) and to ensure that the corresponding penalties are effective, proportionate and dissuasive.**

193. Concerning reporting obligations, notaries (in so far they act as public officials) are required to report to prosecutors on instances of corruption. During the period 2006-2008, notaries reported to the FIU a total of 400 STRs (see paragraph 180 for detailed statistics). Several initiatives had been taken/are ongoing to encourage reporting: for example, the National Notary Council (*Consiglio Nazionale del Notariato*) has developed interpretative circulars on money-laundering legislation, their website includes practical cases concerning money-laundering in order to ensure a uniform interpretation of reporting duties and to act on irregularities identified; a checklist has been developed to assist in identifying beneficial owners, etc. The GET was positively impressed with the constructive attitude of this category of professionals (which was also displayed during the on-site visit); the initiatives referred to above are commendable as they can only contribute to a more efficient fight against corruption in Italy.

194. Since there is no legal obligation for accountants, auditors and advisory/legal professionals to report suspicions of corruption (pursuant to Article 333 Criminal Procedure Code they "may" communicate their suspicions of criminal offences to law enforcement agencies), there is no possibility to punish unreported cases. Accountants, auditors and advisory/legal professionals are, nevertheless, bound to report money laundering suspicions in accordance with anti-money laundering legislation. That said, the statistical data provided by the FIU show a limited number of reports being submitted by these categories of professionals (see paragraph 180). While recognising that some steps have already been taken to tackle the aforementioned challenges with respect to the reporting of both corruption and money laundering (e.g. through the development of training sessions on anti-money laundering legislation, the introduction of codes of ethics), the GET takes the view that more could clearly be done in this area. Therefore, the

GET recommends **that the authorities explore, in consultation with the professional bodies of accountants, auditors and advisory/legal professionals, what further measures (including of a legal/regulatory nature) can be taken to improve the situation regarding the reporting of suspicions of corruption and money laundering to the competent bodies.**

CONCLUSIONS

195. Despite the clear commitment of judges and prosecutors to deal effectively with corruption instances, corruption is perceived in Italy as a pervasive and systemic phenomenon, with numerous areas of activity (in particular, urban planning, public procurement and the health sector) and territories being affected. While a considerable arsenal of legislation has been passed, especially in the 90s, to set in place a repressive framework for corruption (for example, by introducing far-reaching rules providing for the attachment of corruption proceeds, application of special investigative techniques, use of cooperative witnesses, full access to bank accounts, etc.), more needs to be done to articulate an effective preventive policy in this area. Yet to be launched is an overarching anticorruption programme which is coupled with adequate monitoring so that citizens are made aware of the measures taken and the concrete results achieved in the fight against corruption. This would require a long term approach and sustained political commitment; combating corruption has to become a matter of culture and not only rules.

196. The Italian criminal system suffers from an excessive length of judicial proceedings thus raising the potential for the expiration of the relevant time limit specified in the statutes of limitation. Lengthy delays for concluding corruption cases can clearly represent a most serious problem in the fight against corruption, especially when those delays result in cases being dismissed on limitation grounds rather than ending in decisions on the merits. It is essential that an assessment of the impact of this problem on the adjudication of corruption cases be undertaken and, need be, concrete measures be put in place to help ensure that cases reach a decision on the merits. Concerns also exist with respect to the immunities enjoyed by certain categories of holders of public office. It must be ensured that this state of affairs does not generate an unacceptable obstacle to the country's capacity to effectively prosecute corruption.

197. Likewise, while recognising some of the efforts undertaken to enhance efficiency and transparency of the Italian public service, there is still room for further improvement as regards transparency and ethics of public administration. Further measures are recommended with respect, for example, to access to official documents, internal auditing, enforceability of deontological provisions, prevention of conflicts of interest, movement of public officials to the private sector (pantouflage), and whistleblower protection. In addition, further implementation of corruption prevention policies requires extensive awareness-raising and the provision of appropriate information to the relevant authorities and to the public at large.

198. As far as the issue of legal persons and corruption is concerned, several key elements have been introduced to strengthen the system of registration of legal persons, to track convicted companies and to promote ethics in the private sector. These are all positive steps. The introduction of corporate liability is also commendable. It remains crucial to strengthen the accounting and auditing obligations for all forms of companies and to ensure that the corresponding sanctions are effective, proportionate and dissuasive.

199. In view of the above, GRECO addresses the following recommendations to Italy:

i. **that the Anti-corruption and Transparency Service (SAeT) or other competent authority, with the involvement of civil society, develop and publicly articulate an anti-corruption policy that takes into consideration the prevention, detection, investigation and prosecution of corruption, and provides for monitoring and assessment of its effectiveness** (paragraph 23);

ii. **that the existing and new legislation which is to ensure that Italian law satisfies the requirements of the Criminal Law Convention on Corruption (ETS 173) be reviewed to ensure that it is sufficiently practicable for practitioners and courts to navigate and use** (paragraph 26);

iii. **to establish a comprehensive specialised training programme for police officers in order to share common knowledge and understanding on how to deal with corruption and financial crimes related to corruption** (paragraph 52);

iv. **to (i) further enhance the coordination and knowledge exchange between various law enforcement agencies involved in investigations of corruption throughout the Italian territory, including (ii) by considering the advisability (and legal possibility) of developing a horizontal support mechanism to assist law enforcement agencies in investigating corruption** (paragraph 53);

v. **in order to ensure that cases are decided on their merits within a reasonable time, to (i) undertake a study of the rate of limitation period-related attrition in corruption cases to determine the scale and reasons for any problem which may be identified as a result; (ii) adopt a specific plan to address and solve, within a specified timescale, any such problem or problems identified by the study; (iii) make the results of this exercise publicly available** (paragraph 57);

vi. **that provision be made in Law 124/2008 allowing for the lifting of the suspension of criminal proceedings in order to ensure that such suspension does not constitute an obstacle to the effective prosecution of corruption, for example with respect to serious crimes of corruption, in cases of *flagrante delicto*, or when proceedings have reached an advanced stage of maturity** (paragraph 64);

vii. **that the introduction of *in rem* confiscation be considered in order to better facilitate the attachment of corruption proceeds** (paragraph 84);

viii. **to put in place appropriate measures to allow the evaluation of the effectiveness, in practice, of the activity of the enforcement authorities concerning the proceeds of corruption, in particular in so far as the application of provisional measures and subsequent confiscation orders are concerned, including in the context of international cooperation** (paragraph 85);

ix. **that (i) the importance of feedback on suspicious transaction reports and co-operation in this area, and the benefits which they can generate, be emphasised to the staff of agencies with responsibilities for aspects of the fight against corruption; (ii) steps be taken to make it clear to those who have obligations to report suspicious transactions that delayed reporting and non-reporting are not**

acceptable, including by resorting to sanction measures, as appropriate (paragraph 87);

x. **that an entity, whether it is the Anti-corruption and Transparency Service (SAeT) or otherwise, be given the authority and the resources to systematically evaluate the effectiveness of general administrative systems designed to help prevent and detect corruption, to make those evaluations public, and to make recommendations for change based on those evaluations** (paragraph 141);

xi. **that with regard to access to information: (i) an evaluation be conducted and appropriate steps taken to ensure that local administrations are adhering to the requirements for access to the information under their control; (ii) that an evaluation of the law be conducted to determine whether the requirement of motivation is improperly limiting the ability of the public to judge administrative functions where knowledge of a pattern or practice of individual decisions would provide substantial information with regard to possible corruption and to make that evaluation and any recommendations public, and (iii) that, in order to avoid an appeal to the backlogged administrative courts, consideration be given to providing the Commission on Access to Information with the authority, after a hearing, to order an administrative body to provide access to requested information** (paragraph 144);

xii. **that, when continuing to take steps to address the length of proceedings and the backlog of administrative appeals, the authorities specifically consider the formal institution of alternatives to an appeal to the courts, such as alternate dispute resolution** (paragraph 145);

xiii. **that as part of overall public administration reform, all bodies of public administration have access to internal audit resources either directly or on a shared basis** (paragraph 146);

xiv. **that (i) consistent and enforceable ethical standards be required for all officials within the public administration (including managers and consultants) at all levels of government; (ii) steps be taken to provide for a system of timely discipline for violating these standards without regard to a final criminal conviction; and (iii) all individuals subject to these standards be provided with sources of training, guidance and counselling concerning their application** (paragraph 150);

xv. **that a publicly announced, professionally embraced, and if possible, an enforceable code of conduct be issued for members of Government, and that such code of conduct include reasonable restrictions on the acceptance of gifts (other than those related to protocol)** (paragraph 151);

xvi. **that (i) a clear and enforceable conflict of interest standard be adopted for every person who carries out a function in the public administration (including managers and consultants) at every level of government; and (ii) a financial disclosure system or systems applicable to those who are in positions within the public administration which present the most risk of conflicts of interest be instituted or adapted (as the case may be) to help prevent and detect potential conflicts of interest** (paragraph 154);

xvii. **that appropriate restrictions relating to the conflicts of interest that can occur with the movement in and out of public service by individuals who carry out executive (public administration) functions be adopted and implemented** (paragraph 155);

xviii. **that an adequate system of protection for those who, in good faith, report suspicions of corruption within public administration (whistleblowers) be instituted** (paragraph 156);

xix. **that corporate liability be extended to cover offences of active bribery in the private sector** (paragraph 183);

xx. **to consider the possibility of establishing bans on holding executive positions on legal persons in all cases of conviction for serious corruption offences, independently of whether these offences were committed in conjunction with abuse of power or in violation of the duties inherent to a given office** (paragraph 185);

xxi. **to review and strengthen the accounting requirements for all forms of company (whether listed or non-listed) and to ensure that the corresponding penalties are effective, proportionate and dissuasive** (paragraph 192);

xxii. **that the authorities explore, in consultation with the professional bodies of accountants, auditors and advisory/legal professionals, what further measures (including of a legal/regulatory nature) can be taken to improve the situation regarding the reporting of suspicions of corruption and money laundering to the competent bodies** (paragraph 194).

200. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the Italian authorities to present a report on the implementation of the above-mentioned recommendations by 31 January 2011.

201. Finally, GRECO invites the Italian authorities to authorise publication of this report as soon as possible, translate it into the national language and publish this translation.