

QUESTIONNAIRE

Country self-assessment report on implementation and enforcement of G20 commitments on foreign bribery

G20 countries are invited to complete the questionnaire, below, on the implementation and enforcement of G20 commitments on foreign bribery.

Part I questions are drafted directly from the principles outlined in the G20 Guiding Principles on Enforcement of the Foreign Bribery Offence endorsed by G20 Leaders in St. Petersburg, and its background note on Enforcement of Foreign Bribery Offences. Part II questions are drafted from the G20 Anti-Corruption Action Plan and the St. Petersburg Leaders' Declaration.

Responses to this questionnaire could be compiled into a summary on the "state of play" in G20 countries on steps taken to date to implement the aforementioned commitments, as well as plans for future actions in this area.

I. Implementation of the Guiding Principles on Enforcement of the Foreign Bribery Offence in G20 Countries

Note 1: This section of the questionnaire is drafted from the principles outlined in the G20 Guiding Principles on Enforcement of the Foreign Bribery Offence and the background note on Enforcement of Foreign Bribery Offences.

A. A robust legislative framework

In your jurisdiction:

1. Is there a clear and explicit foreign bribery offence that covers the key elements of the internationally agreed definition for foreign bribery, including offering, promising or giving of a bribe, bribery through intermediaries, and bribes paid to third party beneficiaries?

- If your jurisdiction *criminalises foreign bribery*, please provide references to the relevant provisions and/or the full text, if possible.
- If your jurisdiction *does not have a foreign bribery offence*:
 - Please note whether an offence has been "drafted", "submitted for government review", or "adopted but not yet entered into force".
 - Please provide a timeline for the entry into force of draft legislation, where applicable.

Response: Yes

Article 322bis, Italian Criminal Code: bribery of foreign officials

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

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

to contracted officials and agents in accordance to either Staff Regulations applying to officials of the

*European Communities or to the provisions applying to agents of the European Communities;
to any person seconded to the European Communities by the Member States or by any public or private body, who carries out functions corresponding to those performed by the officials or agents of the European Communities;*

*to members and servants of bodies created on the basis of Treaties establishing European Communities;
to those who, within other Member States of the European Union, carry out functions or activities corresponding to those performed by public officials or persons in charge of a public service.*

The provisions set forth in article 319 quater second paragraph, 321 and 322, first and second paragraphs, shall also apply whereas the money or other benefits are given, offered or promised:

to persons who are referred to in the first paragraph of this article;

to persons carrying out functions or activities corresponding to those performed by public officials and persons in charge of a public service in other foreign States or public international organisations, whereas the offence was committed in order to obtain an undue advantage to their benefit or to the benefit of a third party in international business transaction or . in order to obtain or maintain an economic and financial activity.

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

Among the provisions referred to in art. 322bis, the main provisions of reference for foreign bribery are art. 319 and art. 321 Criminal Code, which incriminate active and passive corruption relating to an act in breach of official duties.

Article 319, Criminal Code: passive bribery (performance of acts in breach of official duties)

The public official who, to omit or delay, or having omitted or delayed a duty of his/her office, or rather to perform or having performed an act contrary to the duties of his/her office, for him/herself or others, receives money or other benefit, or accepts the promise of it, shall be punished with imprisonment from four to eight years.

Article 321, Criminal Code: active bribery

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

Note 2: For questions 2 through 11, jurisdictions without a foreign bribery offence should include updates on plans to address the following issues in efforts to establish the criminalisation of foreign bribery and a framework for enforcing this offence.

2. What is the statute of limitations for investigating and prosecuting foreign bribery? Please indicate the criteria for suspension, interruption or extension of the statute of limitations?

Response:

In accordance to art. 157 Criminal Code, the time limitation “is equivalent to the maximum term of imprisonment provided for the offence” and cannot be less than 6 years. The Law n. 251, 5 December 2005 amended art. 99 of the Criminal Code, by introducing new rules that provide for different sanctions, depending on the criminal record of the accused person. Therefore, in case of first time offenders (*incensurato*) and recidivism (*recidiva semplice*), the time limitation period can be suspended or interrupted and it is increased by one fourth. In case of aggravated recidivism (*recidiva aggravata*) the period is increased by one half; in case of reiterated recidivism (*recidiva reiterata*) by two thirds; in case of habitual offender (*delinquenti abituali*) the period is doubled.

Recidivism is when an individual commits an offence after the judgment of conviction, in respect of another prior offence, becomes final (see art. 99 Criminal Code)

The main provisions of reference for foreign bribery are art. 319 and art. 321 of the Criminal Code, which incriminate corruption relating to an act in breach of official duties.

Since art. 319 Criminal Code provides a sanction of imprisonment «for between four and eight years», the base time limitation for foreign bribery is now 8 years. In case of first time offenders and recidivism this period is increased to 10 years (8 years plus one fourth). In case of aggravated recidivism, the period would be 12 years; in case of repeated recidivism the period is 13 years and 4 months and in case of habitual offender the period is 16 years.

3. Please describe the form of jurisdiction available over the foreign bribery offence (i.e. territorial or nationality jurisdiction).

Response:

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

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

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

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

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

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

the Italian Constitution, such report will unavoidably bring to the opening of a criminal investigation by the public prosecutor (see also below).

4. Please indicate whether your jurisdiction has a corporate liability regime for the offence of foreign bribery.

If your jurisdiction does not have a corporate liability regime for the offence of foreign bribery, please provide a timeline for implementation of corporate liability.

Response:

Our jurisdiction has a corporate liability regime for the offence of foreign bribery provided by art. 25 paragraph 4 of Legislative Decree 231/2001.

Legislative Decree 231/2001 imposes liability on legal persons for offences committed by two categories of principal offenders: natural persons in senior positions and natural persons subject to their management or supervision. Individuals in senior positions are further described under article 5(1) of Legislative Decree 231/2001. Liability under Legislative Decree 231/2001 also depends on whether the offence was committed in the interest and to the advantage of the legal person. Pursuant to article 5, a legal person is not liable if the principal offender acted in the interest of him/herself or a third party (“at their exclusive advantage or at the advantage of a third party”).

Legislative Decree 231/2001 provides a defense from liability for a legal person that has put in place an organizational model aimed at preventing an offence that has nevertheless occurred.

A company is not liable for an offence committed by a person holding a managing position (which encompasses a broader range of persons than persons with the highest level of managerial authority), or persons who are under their direction or supervision, if it proves that before the offence was committed (i) the body’s management had adopted and effectively implemented an appropriate organizational and management model to prevent offences of the kind that occurred; (ii) the body had set up an autonomous organ to supervise, enforce and update the model; (iii) the autonomous organ had sufficiently supervised the operation of the model; and (iv) the natural perpetrator committed the offence by fraudulently evading the operation of the model. Article 6(2) outlines the essential elements of an acceptable organizational model.

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5(a) Please describe the sanctions and confiscation measures available for natural and legal persons for the crime of foreign bribery.

5(b) Please provide the number of criminal, administrative, and civil cases of foreign bribery that have resulted in a final disposition, and indicate (i) how many of these cases have resulted in a criminal conviction or acquittal, or similar findings under an administrative or civil procedure, and (ii) the number of natural and legal persons who have been convicted or otherwise sanctioned.

Where possible, please provide references to the relevant provisions and/or the full text, if possible.

Response:

5(a): Whoever gives or promises money or other benefits to a foreign public official or person in charge of a public service shall be punished with imprisonment from four to eight years and the price and the profit will be confiscated.



For legal persons, the amount of a fine that may be imposed for foreign bribery depends on the nature and seriousness of the offence and is determined by a certain number of “quotas.” Provided by art 25 paragraph 1,2,3 LD 231/2001 Under articles 10 and 11 of LD 231/2001, the amount of a “quota” is based on the economic and pecuniary conditions of the legal person concerned and varies from EUR 258 to 1549.

5(b): The attached table shows that – since the date of entry into force of the OECD Convention on foreign bribery – 8 natural persons and 2 legal persons have been convicted for foreign bribery, while 2 natural persons have been acquitted. These figures do not include 2 convictions (1 legal person and 1 natural person), which were not final.

Moreover, the figures in the table do not include 2 convictions with sanctions (1 natural person and 1 legal person) and 5 acquittals (2 natural persons and 3 legal persons), following prosecutions related to violations of the U.N. Oil-for-Food Program.



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B. Effective detection and domestic coordination

In your jurisdiction:

6. What steps have been taken to engage with relevant agencies, such as overseas missions, broader tax administrations, trade promotion, public procurement and export credit agencies, as well as with the private sector, on issues related to implementation and enforcement of the foreign bribery offence? Where possible, please cite specific examples.

Response:

Following the directive of the Ministry of Foreign affairs n. 4/2011, Embassies and Consulates are obliged to systematically report to the Ministry of Foreign Affairs, to the Ministry of Justice and to the Public Prosecutor in Rome every single criminal case involving Italian natural or legal persons (including cases of international bribery). Due to the principle of mandatory prosecution provided for by the Italian Constitution, such report will unavoidably bring to the opening of a criminal investigation by the public prosecutor (see also above). Italian Missions abroad are also systematically consulted on each single piece of information relating to a fact of international bribery involving an Italian person reported by the media or by any other official or unofficial source (i.e. the OECD compilation of reported cases of international bribery).

7(a) Are appropriate reporting channels available for whistleblowers in both the private and public sectors?

7(b) Are appropriate protections available for whistleblowers in both the private and public sectors?

Where possible, specific reference should be made to implementation of the G20 Study on Whistleblower Protection



*Frameworks, Compendium of Best Practices and Guiding Principles for Legislation.*¹

Response:

With the Anti-Corruption Law – Law n. 190/2012, the Italian legislator for the first time has introduced an homogeneous protection for the whistleblower. Before the changes introduced by the Anti-Corruption Law, if, on one side, the subject in question was obliged (ex art. 361 of the Italian penal code) to report to the judicial authority or to the hierarchical superior a crime of which he had had news in the exercise or due to his functions, on the other, he had no protection in case of possible retaliations following his report, except for the hypothesis of illegal dismissal as governed by the art. 18 of the Statute of workers.

This imbalance has been reduced, even if only inside the public administrations, with the introduction of the art. 54-bis in the Legislative Decree n. 165/2001 according to what provided for by the paragraph 51 of the Law n. 190. Out of the cases of responsibility for calumny or defamation, the whistleblower protection has been extended to cover other typologies of retaliations following the report of the alleged misconduct: demotion, mobbing, transfer and discriminations or similar and the decision about the possible remedies had been left to the discretion of the judge.

However some critical elements that put in discussion the effectiveness of the protection granted arise. If, on one side, the guarantee of anonymity (albeit partial) ensured to stimulate the action of the potential “informer” has been introduced, on the other, still at comma 54-bis is written that the secret on the identity of the informer can be revealed when “it is absolutely essential for the defense of the accused” that is, in the majority of cases, in conformity with the legitimate right to defense. Moreover, the prevision of an autonomous type of offence for those who contravene the provisions of art. 54-bis is missing, with the consequence of the giving out of the preventive function of the possible sanction. Regarding this last point, in fact, it is only provided that “the adoption of discriminatory measures is reported to the Department of Public Administration, to adopt the measures of competence”.

Under these premises, to guarantee more protection to the whistleblower it is necessary for administrations to consider adequate mechanisms in their Three-years Plans for the Prevention of Corruption (PTPC). Public administrations are, in fact, required to adopt the necessary practical devices so that the protection of the employee that reports the alleged misconduct could be effective and the adoption of the indispensable initiatives is an intervention to be implemented on the basis of the indications coming from the National Anti-Corruption Plan (PNA) predisposed by the Department of Public Administration and approved by the National Anti-Corruption Authority. The first PNA was approved in September 2013.

The PNA provides all the measures that the public administrations should take in their Three-year Plans for the Prevention of Corruption in 2014:

- provide different channels for receiving reports;
- provide reserved codes for the identification of the complainant;
- prepare models for receiving reports;
- establish duties of confidentiality for all those who receive or become aware of the report.

To this end the PNA recommends the creation of a computerized system for reporting and provides that the protection of complainants will also be supported by effective awareness, communication and training through the website of each public administration.

As recommended by the Working Group on Bribery of the OECD, the National Plan provides that the protection must be designed to also protect employees who report suspected cases of foreign bribery referred to in art. 322 bis of the Criminal Code.

C. Effective investigation and prosecution

¹ Available online here: <http://www.oecd.org/corruption/48972967.pdf>

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In your jurisdiction:

8(a) Please describe the investigative powers granted to law enforcement authorities to proactively and effectively investigate and prosecute foreign bribery.

8(b) Please describe the specialized training on detecting, investigating and prosecuting foreign bribery provided and/or planned to be provided to law enforcement authorities.

Response:

8(a)

The national legal framework on corruption (corruption - domestic and foreign - is included in the Criminal Code) gives the chance to Law Enforcement Agencies and Judicial authorities to use many investigative tools, such as wire tapping, financial investigation, shadowing, etc.

In a nutshell:

FINANCIAL INVESTIGATIONS

This investigative technique can be used both during a criminal investigation (e.g. investigation for corruption offences) and during tax audits led towards companies or people in order to identify transactions and trace bank transfers and seize assets (not necessarily only after a judicial order has been issued) or other goods through which crimes have been committed (or that represent the proceeds of crime). Money and documents can be seized with the aim of proving the charges and/or safeguarding money from diversion.

ASSETS FORFEITURE (SEIZURES ANO CONFISCATION)

According to the penal procedure code, articles n. 321, 253 and 354, law enforcement agencies and the court can seize money, equipment and other instrumentalities used in or destined for corruption phenomena.

Seizures are functional to confiscation (after the verdict has been issued). In fact, according to the penal code (article n. 322 ter) and under the provision of Legislative Decree n. 231/01, article n. 19 (for companies and legal entities), confiscation is the mandatory measure for those who have committed such kind of crimes.

Moreover, it must highlighted that (according to the penal code, article n. 322 ter and under the provision of the Legislative Decree n. 231/01) if the proceeds of crime have been intermingled or converted, it is possible to ask for and obtain the confiscation of different values and goods up to the amount of the proceeds gained (so called "confiscation for equivalent"). In order to detect, trace and recover goods and money, financial investigations play a pivotal role.

Furthermore, if the proceeds of crime have been invested by "third" people who know about the illicit origin of the goods/money, they can be investigated and convicted for money laundering.

Finally, beyond the current regulations on seizure and confiscation, according to Law Decree n. 306/92, article 12 series, (O.C. groups legislation) after a conviction has been sentenced, incomes that do not fit with perpetrator's lifestyle must be confiscated (mandatory measure). In the frame of time between investigation, trial and conviction,

LEA 's could seize those incomes. *In order to avoid the confiscation, perpetrator must demonstrate the lawful origin of his undeclared incomes.*

SPECIAL INVESTIGATIVE MEASURES

In combating corruption, LEA 's cannot set up special operations such as under cover operations and controlled deliveries (such forecast is set up for other crimes, like drug and weapons trafficking, money laundering, THB)

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8(b)

- About the Italian police forces personnel

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

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

In addition to the training organized by the police forces it is worth highlighting the activity carried out by the European Police Academy CEPOL, which organized courses in Rome on money laundering with the participation of trainers/experts of the Bank of Italy, the Ministry of Treasury and the academic world.

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

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

About training of prosecutors and judges

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

In 2013, in the framework of the continuous training program for judges and prosecutors, the SSM organized the course nr. P13045 devoted to the subject of the investigations in the field of corruption one entire working group was devoted to the subject of international bribery.

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

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

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

9(a) Please describe the procedures in place for ensuring prompt and effective handling of outgoing and incoming mutual legal assistance requests in relation to foreign bribery cases.

9(b) Please describe how informal assistance is encouraged, in conformity with your jurisdiction's legal system.

Where possible, specific reference should be made to implementation of the G20 High-Level Principles on Mutual Legal Assistance.²

Response:

9(a) Standard procedures of mutual legal assistance apply.

9(b) Apart from the informal cooperation among police authorities, Italy is also member of various network and bodies active in the field of mutual legal assistance, such as the European Judicial Network in Criminal matters (EJN), Eurojust, etc. where these informal exchanges can take place at the judicial level.

II. Implementation of Foreign Bribery Provisions in the 2012-2013 G20 Anti-Corruption Action and the St Petersburg Declaration

Note 3: This section of the questionnaire is drafted from the 2012-2013 G20 Anti-Corruption Action Plan and the St. Petersburg Leaders' Declaration. It also seeks updates from G20 countries on next steps for fighting foreign bribery.

10. Please specify next steps for continuing "efforts to adopt and enforce laws and other measures against foreign bribery".³

Response:

11. Please specify next steps for engagement with the OECD Working Group on Bribery with a view to explore possible adherence to the OECD Anti-bribery Convention as appropriate.

Specifically and where applicable, please indicate any plans to:

- Attend meetings of the WGB in 2014;
- Co-organize or attend meetings on foreign bribery; and/or
- Engage in technical assistance activities on the issue of implementation and enforcement of the foreign bribery offence;
- Open discussion for Membership in the WGB, with a view to acceding to the OECD Anti-Bribery Convention.

Response:

² Available online here: <http://www.oecd.org/g20/topics/anti-corruption/High-Level-Principles-on-Mutual-Legal-Assistance.pdf>

³ G20 Anti-Corruption Action Plan 2013 – 2014, Point 2.