Groupe d'Etats contre la corruption
Group of States against corruption

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

DIRECTORATE GENERAL OF HUMAN RIGHTS AND LEGAL AFFAIRS
DIRECTORATE OF MONITORING

Strasbourg, 27 May 2011

Public
Greco RC-I/II (2011) 1E

Joint First and Second Round Evaluation

Compliance Report on Italy

Adopted by GRECO
at its 51st Plenary Meeting
(Strasbourg, 23-27 May 2011)

Secrétariat du GRECO
Conseil de l'Europe
F-67075 Strasbourg Cedex

www.coe.int/greco
☎ +33 3 88 41 20 00

GRECO Secretariat
Council of Europe
Fax +33 3 88 41 39 55

I. INTRODUCTION

1. GRECO adopted the Joint First and Second Round Evaluation Report on Italy at its 43rd Plenary Meeting (Strasbourg, 29 June – 2 July 2009). This report (Greco Eval I-II Rep (2008) 2E) was made public by GRECO on 16 October 2009.

2. In accordance with Rule 30.2 of GRECO's Rules of Procedure, the authorities of Italy submitted their Situation Report (RS-Report) on the measures taken to implement the recommendations on 31 January 2011.

3. At its 40th Plenary Meeting (1-5 December 2008), GRECO selected, in accordance with Rule 31.1 of its Rules of Procedure, Switzerland and Ukraine to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr. Olivier GONIN on behalf of Switzerland and Ms Olena SMIRNOVA on behalf of Ukraine. The Rapporteurs were assisted by the GRECO Secretariat in drafting the Compliance Report (RC-Report).

4. The objective of the RC-Report is to assess the measures taken by the authorities of Italy to comply with the recommendations contained in the Joint First and Second Round Evaluation Report.

II. ANALYSIS

5. It was recalled that GRECO in its Joint First and Second Round Evaluation Report addressed 22 recommendations to Italy. Compliance with these recommendations is dealt with below.

6. The authorities of Italy explain that, following adoption of the Joint Evaluation Report on Italy, the Ministry of Justice set up an *ad hoc* Committee to follow-up and coordinate the necessary action to implement GRECO's recommendations. The committee was composed of representatives from the following institutions: Ministry for the Simplification of Rules and Regulations (*Ministero per semplificazione normativa*), Revenue Agency – Audit and Security Central Directorate (*Agenzia delle entrate, Direzione Centrale Audit e Sicurezza*), Ministry of the Interior – Police Coordination Department (*Ministero dell'interno, Coordinamento delle forze di polizia*), National Anti-Mafia Investigation Bureau (*Direzione Investigativa Antimafia*), Antitrust Authority (*Autorità garante della concorrenza e del mercato*), Ministry for Public Administration (*Ministero pubblica amministrazione*), Bank of Italy – Financial Intelligence Unit (*Banca d'Italia, UIF*). The committee held eight plenary sessions; the last meeting took place on 11 January 2011.

Recommendations i and x.

7. *GRECO recommended that the Anticorruption and Transparency Service (SAeT) or other competent authority, with the involvement of civil society, develop and publicly articulate an anticorruption policy that takes into consideration the prevention, detection, investigation and prosecution of corruption, and provides for monitoring and assessment of its effectiveness.*

8. *GRECO recommended that an entity, whether it is the Anticorruption 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.*

9. The authorities of Italy report that, following ratification of the United Nations Convention against Corruption (UNCAC) through Law 116 of 3 August 2009, the Department for Public Administration (DPA) – within which the Anticorruption and Transparency Service (SAeT) operates – has been designated as the National Anticorruption Authority in the framework of Article 6 of the UNCAC. The DPA is responsible for coordinating anticorruption policy (via a so-called hub and spoke methodology), establishing and promoting effective practices aimed at the prevention of corruption, periodically evaluating legislation and administrative practice to address malpractice instances, and for collaborating with other anticorruption structures and with relevant international and regional organisations in the anticorruption arena. A budget of 2 million EUR has been allocated to the DPA for the fight against corruption in 2011.

10. In addition, on 1 March 2010, the Council of Ministers approved the Anticorruption Bill (AS 2156). The Bill proposes the following features:
    - National Anticorruption Plan, which is to be drawn up and coordinated by the DPA on the basis of the individual action plan prepared by each administration;
    - National Anticorruption Network, which consists of entities designated in each public administration as responsible for monitoring anticorruption measures and developing targeted training;
    - Observatory of corruption phenomena, which is to carry out research in this domain and to report on an annual basis to Government, Parliament and international bodies;
    - Transparency, Simplification and Cost Reduction Policy, particularly with respect to public procurement processes.

11. In the meantime, the reform process of public administration, so-called Brunetta reform, which was launched in 2008, has continued. In particular, on 27 October 2009, the Government adopted Legislative Decree 150 (the Reform Decree), implementing the Brunetta reform in the field of regulation of public employment and efficiency and transparency of public administration. The reform is aimed at ensuring accountability of public administration vis-à-vis citizens, increasing efficiency and effectiveness of the public sector, promoting a culture of integrity and legality within public administration, fostering citizen/business engagement in assessing public sector performance and formulating solutions (customer satisfaction initiatives, e.g. Show your Face Initiative, Civic Evaluation, etc.), further developing digital services (e-government, e-procurement initiatives, e.g. Easy Life Project, Green Procurement), and cutting red tape (numerous legislative and practical measures to reduce administrative burdens and shorten timeframes in licensing and permit procedures, etc.). The link between transparency and anticorruption is made in the Reform Decree, notably, through the adoption of multi-annual transparency plans which are to be prepared by each administration by 2011.

12. GRECO acknowledges the efforts displayed by the authorities to strengthen the transparency, accountability and efficiency of public administration; as well as to actively involve citizens in the reform process. GRECO further notes that an Anticorruption National Authority has now been appointed following ratification of the UNCAC: the Department for Public Administration (DPA) is entrusted with the coordination and assessment of anticorruption policy, such responsibilities are to be carried out in the context of a so-called "hub and spoke" methodology by which each public administration is to develop multiannual transparency plans by 2011. Significant resources have been allocated to the DPA for the fight against corruption in 2011. The development of an anticorruption law is also a positive step, which needs to be pursued with determination as a clear sign of the authorities' commitment in this area. In this connection, the Anticorruption Bill was approved by the Government in March 2010; more than a year has now elapsed and the draft law

has not yet been adopted[1]. It is essential for the credibility of the system that this legislative initiative is promptly put into effect. The Bill envisages, *inter alia*, the preparation of a National Anticorruption Plan by the DPA and the establishment of a National Anticorruption Network with monitoring responsibilities.

13. GRECO considers that the organisational framework to articulate an anticorruption policy in Italy, as well as to systematically evaluate the effectiveness of general administrative systems designed to help prevent and detect corruption, has the potential to meet the objectives pursued by recommendations i and x. However, more remains to be done in this area. As stressed above, the Anticorruption Bill is yet to be adopted. The proposed concrete initiatives the Bill contains are to be efficiently implemented thereafter. The relevant multiannual transparency plans, which are to be prepared by each administration, are yet to be finalised, tested and assessed to determine whether further change is needed to strengthen the effectiveness of anticorruption policy in Italy. GRECO looks forward to receiving updates on relevant developments in the context of the follow-up to this report.

14. GRECO concludes that recommendations i and x have been partly implemented.

Recommendation ii.

15. *GRECO recommended 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.*

16. The authorities of Italy report some developments in this field, starting with ratification of the United Nations Convention against Corruption (UNCAC) which took place in 2009 (Law 116 of 3 August 2009). Amendments to the Criminal Code and the Criminal Procedure Code have followed thereafter (published in Official Journal n. 188, 14 August 2009).

17. With respect to Council of Europe instruments in the anticorruption area, the Senate has approved the Bill on Ratification and Implementation of the Civil Law Convention on Corruption (ETS 174); it has, since 19 October 2009, been undergoing consultation by the Chamber of Deputies. There is more than one parliamentary initiative concerning ratification of the Criminal Law Convention on Corruption (ETS 173), the latest of which was tabled on 4 May 2010 and is currently undergoing review by the Joint Committees of Justice and Foreign Affairs of the Senate.

18. With particular reference to the implementation of recommendation ii, the authorities consider that most of corruption-related provisions are already included in the Criminal Code (with the exception of bribery in the private sector and accounting offences which are contained in the Civil Code), which makes it, in principle, not too complicated for practitioners and courts to be fully acquainted with the content of the relevant corruption offences. Moreover, the authorities report on numerous training activities organised by the High Judicial Council (CSM) to train judges and prosecutors on the existing corruption-related provisions, including by testing practical cases[2].

[1] The Anticorruption Bill has been discussed by the Senate on five occasions in April and May 2011. The authorities expressed their hope that it would be adopted (together with a decision to accede to the relevant Council of Europe instruments in the fight against corruption) in the last quarter of 2011.

[2] Samples of training modules and profile of attendees (judges and prosecutors from all over Italy) were provided by the authorities. The training developed addressed, *inter alia*, existing corruption-related provisions at national level, as well as comparative law (EU, international anticorruption standards), mutual legal assistance, corporate liability, economic and financial investigations and cooperation mechanisms with other law enforcement bodies, special investigative techniques, seizure and confiscation, etc.

Targeted training has also been organised by the Italian School of Public Administration and the School of Economics and Finance for tax officials, police officers, and other public officials.

19. GRECO takes note of the reiterated intention of the authorities to accede to the Council of Europe Civil Law Convention on Corruption (ETS 174) and the Criminal Law Convention on Corruption (ETS 173). GRECO is hopeful that these instruments will be promptly ratified; such a move would no doubt send a clear signal to the public and the international community as to the commitment of the authorities to combat corruption.

20. More particularly, concerning the concrete implementation of recommendation ii, GRECO recalls that, in the Joint First and Second Round Evaluation Report (paragraph 26), it noted that there were conflicting views among practitioners and courts concerning practicability of corruption-related provisions. While some were of the opinion that there was a confusingly large number of legislative texts dealing with corruption offences (Criminal Code, Civil Code, commercial and fiscal law, etc) and expressed a wish to streamline dispersed provisions into a single legal source, others did not perceive any problem in this area. GRECO further recognised that the organisation of legislation is a matter which is exclusively for the Italian authorities, and therefore, only recommended to review the current state of affairs. GRECO notes that the authorities have reportedly looked into the issue and, rather than streamlining corruption-related provisions into a single legal source, they have opted for pursuing (initial and ongoing) training and education of judges and prosecutors in this area; a vast number of training activities have taken place since the adoption of the Joint First and Second Round Evaluation Report to that effect.

21. GRECO accepts the solution provided by the Italian authorities to better tackle the concerns giving rise to recommendation ii; GRECO will have the opportunity to discuss again the effective practicability of corruption incriminations among courts and practitioners in the course of the Third Round Evaluation of Italy.

22. GRECO concludes that recommendation ii has been dealt with in a satisfactory manner.

Recommendation iii.

23. *GRECO recommended 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.*

24. The authorities report on several training courses developed, at local and central level, and well attended by the three different police forces[3], concerning criminal law and procedure (including on corruption and money laundering offences), as well as professional deontology. The authorities further clarify that corruption-related matters are dealt with in both initial and in-service training modules. In general, the content of the relevant training provided to the different police forces is largely homogeneous and has a multifaceted nature. Anticorruption training involves four different approaches: (1) value-based approach (seminars on codes of conduct and professional ethics); (2) relational approach (guidelines on the interpersonal conduct that police officers are expected to follow in their contacts with colleagues and the wider public); (3) managerial approach (responsibility and efficient handling of public resources); and (4) knowledge approach

[3] The figures provided by the authorities show that, since 2008, over 7,000 officials from the *Guardia di Finanza*, 4,450 from the *Carabinieri*, and 4,281 from the *Polizia di Stato* have attended training sessions on criminal law and procedure and integrity in public service. The officials involved in the training hold different ranks (e.g. officers, inspectors and superintendents).

(knowledge of the applicable legislative corruption-related provisions under the criminal, procedural, and administrative/disciplinary systems). Further developments are expected to occur in this area following a structural reorganisation of the courses (a decision to reorganise the training provided to police forces was taken in November 2010; new teaching methodologies started being tested in December 2010).

25. GRECO reiterates its concern that the content of the available anticorruption training appears to be quite general in nature. It is recalled that GRECO remained dubious in the Joint First and Second Round as to the level of specialisation of police officers in corruption cases and the argument presented by the authorities that, in Italy, every police officer is specialised in corruption investigations. The aforementioned misgivings still remain valid. More needs to be done to ensure specialised training on corruption and financial crimes related to corruption, where officers from the different police forces (*Carabinieri*, *Polizia* and *Guardia di Finanza)* would be in a position to better share their common knowledge, understanding and experience on how to deal with this type of offence.

26. GRECO concludes that recommendation iii has been partly implemented.

Recommendation iv.

27. *GRECO recommended 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.*

28. The authorities of Italy highlight the leading role that the public prosecutor plays in the investigation of criminal offences: prosecutors direct the relevant investigations and have recourse to the judicial police to this effect. There are three different police forces in the country, i.e. the *Carabinieri*, *Polizia* and *Guardia di Finanza*, who share responsibility for investigating corruption offences under the general leadership and coordinating role of the prosecutor responsible. The *Guardia di Finanza* is a privileged partner in this field.

29. It is in this particular context that the Italian authorities have considered the possibility of developing a horizontal support mechanism similar to that existing in the fight against organised crime through the National Anti-Mafia Investigation Bureau (DIA). However, it was thought that such a possibility would not be of sufficient added value to the present system since corruption offences generally lack the elements of "organisational and criminal unity" which are the underlying reasons for having set up a horizontal structure with respect to mafia-type crimes. Corruption offences, far from being as a rule the expression of a single criminal plan developed by one organisation, are said to represent rather individual criminal episodes, each of which is aimed at a different criminal interest. In the case of corruption offences which seem related to an organised group, these would be dealt with by the relevant District Anti-Mafia Prosecuting Office, in accordance with Article 7 of Decree Law 152/91. As to the day-to-day coordination and knowledge exchange between the competent bodies involved in the investigation of corruption offences, the authorities indicate that the prosecuting offices attached to the biggest courts in the country (Rome, Milan, Turin, Palermo, Genoa, Bologna, Florence, Bari and Catania), and also to the courts attached to the main town of the province, have set up divisions specialised in offences against public administration; coordination mechanisms have been developed to optimise investigation tools and protocols. In particular, a centralised database is in place (*Sistema di Investigazione*, so-called SdI) in order to allow for direct (and real time) access by law

enforcement bodies across the national territory to information concerning ongoing investigations (e.g. information on a person under suspicion or under observation, including details on previous convictions, involvement in mafia-type organisations, property, etc.). The issue of mechanisms of cooperation and coordination of the responsible bodies involved in the investigation of corruption offences is part of the training curriculum developed by the High Judicial Council (CSM) for judges and prosecutors (see paragraph 18 and footnote 2).

30. GRECO takes note of the additional clarifications provided by the authorities as to the organisational set-up to facilitate information exchange in and coordination of corruption-related investigations. In this particular context, GRECO notes that the authorities, after reportedly paying due attention to recommendation iv(ii), do not consider that the establishment of a specific horizontal support mechanism to assist law enforcement agencies in investigating corruption (similar to the one already in place for mafia-type offences) is needed at present. GRECO further notes the explanation given by the authorities as to the possibility to resorting to a horizontal support mechanism, i.e. the National Anti-Mafia Investigation Bureau (DIA), when an organised crime component is involved in the commission of the offence. Given the additional explanations provided as to the means and tools to better coordinate the action of and information exchange between the various law enforcement agencies involved in investigations of corruption throughout the Italian territory (e.g. specialised prosecutors' offices dealing with economic crime and offences against public administration, development of centralised databases, training activities), GRECO considers that the concerns raised in recommendation iv have been taken on board by the authorities.

31. GRECO concludes that recommendation iv has been dealt with in a satisfactory manner.

Recommendation v.

32. *GRECO recommended that 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.*

33. The authorities of Italy report that the ad-hoc Committee of the Ministry of Justice responsible for overseeing implementation of GRECO recommendations has conducted an analysis of the rate of limitation period-related attrition in corruption cases during the period 2005 – 2010. The analysis involved the most representative Public Prosecutor's Offices in the North (Milano, Turin and Venice), Centre (Rome and Florence) and South (Bari, Naples and Palermo) of Italy. The collected data shows a slight increase in the investigation of corruption offences (1,5% more in 2010 as compared to 2009 figures) and a decrease in the ratio of time-barred cases which comes under 3% and represents what is allegedly considered to be a standard ratio in the Italian system, where the principle of mandatory prosecution leads to a very large number of prosecutions because all reported offences not manifestly unfounded must result in criminal proceedings.

Proceedings concerning corruption offences: Articles 317, 318, 319, 319 ter, 320, 321, 322 and 322 bis Criminal Code (CC) and Article 2635 Civil Code. Consolidated figures as submitted by Public Prosecutor's Offices of Milan, Turin, Venice, Rome, Florence, Bari, Naples and Palermo.

Year	Art. 317	Art. 318	Art. 319	Art. 319 ter	Art. 320	Art. 321	Art. 322	Art. 322 bis	Art. 2635
2005	114	17	219	14	12	103	68	2	8
2006	121	28	265	20	14	176	99	4	2
2007	131	19	221	23	16	147	111	10	6
2008	128	24	226	23	14	125	119	24	5
2009	141	26	257	15	14	126	125	9	4
2010	144	17	236	14	16	106	129	6	1

Cases dismissed on limitation period grounds: Articles 317, 318, 319, 319 ter, 320, 321, 322 and 322 bis Criminal Code (CC) and Article 2635 Civil Code. Consolidated figures as submitted by Public Prosecutor's Offices of Milan, Turin, Venice, Rome, Florence, Bari, Naples and Palermo.

Year	Art. 317	Art. 318	Art. 319	Art. 319 ter	Art. 320	Art. 321	Art. 322	Art. 322 bis	Art. 2635
2005	11	1	3	0	0	2	1	0	0
2006	7	3	21	1	0	11	6	0	0
2007	2	2	7	0	1	4	3	0	0
2008	1	0	6	0	0	3	3	0	0
2009	3	0	7	0	1	4	5	0	0
2010	1	2	10	1	1	6	2	0	0

34. The authorities further refer to a study undertaken by Transparency International (financed by the European Commission) on statute of limitations in 11 selected European countries, including Italy. The authorities indicate that the situation in Italy does not differ much from that of other European countries analysed in the aforementioned study.

35. Finally, the authorities report on a new Bill on "Provisions on Judicial Expenses, Revenue Damages, Statute of Limitations and Duration of the Proceedings" (so-called "*Processo/Prescrizione Breve*"), which was adopted by the Chamber of Deputies on 12 April 2011, and is to be approved by the Senate. The aforementioned Bill introduces two main novelties: (i) as regards the reasonable duration of proceedings, there is an obligation for the head of the competent judicial office to notify the Ministry of Justice and the High Judicial Council when the proceedings are not completed within the limitation period prescribed by law; (ii) as regards the absolute statute of limitations, this period is reduced when the time limitation is interrupted. The bottom line is that the time limitation stays the same except when it is discontinued as follows: (i) in case of offenders without prior convictions, the time limit goes from one fourth to one sixth of the limitation period; (ii) in case of recidivism, it goes from one third to one fourth; (iii) in case of aggravated recidivism, it stays at one half; (iv) in case of reiterated recidivism, it goes from one half to two thirds. The shortening of the statute of limitations is not applicable to the so-called "serious social alarm" offences, e.g. terrorism or mafia activity.

36. GRECO takes note of the information provided by the authorities, including the figures detailing the number of corruption cases being dropped due to expiry of the statute of limitations. GRECO considers that the analysis undertaken by the authorities in this area falls short of the requirements of recommendation v: the action of the authorities has mainly consisted in the gathering of information. An in-depth analysis of the issue, putting it into a broader perspective –

which is the length of criminal proceedings in Italy and the allegedly high percentage of time-barred cases – is lacking. Moreover, no steps have been taken to inform the general public on the outcome of the analysis undertaken by the authorities and how (and if) it addresses the issues raised in recommendation v and the several misgivings expressed in the Joint First and Second Round Evaluation Report (paragraphs 54 to 57). GRECO recalls that there was a widespread perception among the general public that a disquieting proportion of corruption prosecutions failed because of the expiry of the relevant time limit specified in the statute of limitations.

37. GRECO further notes that the study of Transparency International mentioned in paragraph 34 specifically refers to the statute of limitations regime in Italy as constituting a serious problem[4].

38. GRECO takes the view that the authorities' analysis/ TI study, referred to above, can, if taken together, constitute a starting point (as recognised by part (i) of recommendation v), which should prompt the authorities to undertake further action in this area (in line with parts (ii) and (iii) of recommendation v).

39. With respect to the recent Bill on "Provisions on Judicial Expenses, Revenue Damages, Statute of Limitations and Duration of the Proceedings", GRECO can only express certain misgivings at this preliminary stage, since the aforementioned draft has yet to be formally adopted. In particular, GRECO reiterates the concern specifically raised in the Joint First and Second Evaluation Round as to the detrimental effect that the shortening of time limits may have already entailed in practice (paragraphs 54 and 55)[5]; consequently, GRECO remains cautious as to the anticipated (limited)[6] positive effect that this legislative measure can have in ongoing or future cases, when compared to possible risks for prosecution of corruption to fail because of the expiry of the relevant time limit. GRECO further notes that this legislative initiative by the Government has prompted much controversy in Italy, with some sectors of society being extremely critical as to the use of such a measure to scrap ongoing cases (including corruption-related ones). GRECO again stresses that for an effective fight against corruption, it is key that the public at large believes in the measures taken, and the results achieved, by the authorities to tackle this phenomenon.

40. GRECO regrets that the authorities are not taking more resolute steps in this field, which is largely acknowledged as a major shortcoming of the criminal system in Italy, affecting not only corruption cases. In this context, GRECO refers to Interim Resolution of the Committee of Ministers of the Council of Europe (CM/ResDH(2010)224) pointing at the excessive length of civil, criminal and administrative proceedings in Italy and recognising that this is a structural problem which is yet to be solved. GRECO considers that determined steps are needed to address the problem effectively. GRECO concedes that this is part of a broader reflexion process concerning the excessive length of judicial proceedings, the backlog of courts and expiry of limitation periods, which is not only limited to corruption offences. The issue of statute of limitations will be further explored in the context of the Third Round Evaluation of Italy.

41. <u>GRECO concludes that recommendation v has been partly implemented.</u>

---

[4]Timed Out: Statutes of Limitation and Prosecuting Corruption in EU Countries. Transparency International, November 2010. http://www.transparency.ee/cm/files/statutes_of_limitation_web.pdf

[5] It is recalled that the statute of limitations was already shortened by Law 251 of 5 December 2005.

[6] It has been argued that the proceedings affected by the Bill on "Provisions on Judicial Expenses, Revenue Damages, Statute of Limitations and Duration of the Proceedings" represent only a minimal proportion (0.2%) of the total number of pending criminal cases.

Recommendation vi.

42. *GRECO recommended 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.*

43. The authorities of Italy indicate that Law 124/2008 was declared unconstitutional on 19 October 2009. In particular, the authorities explain that the question of unconstitutionality of Law 124/2008 was raised by the Court of Milan (and joined by an investigating judge at the Criminal Court of Rome) in the course of ongoing criminal proceedings. With its judgement 262/2009, the Constitutional Court declared unconstitutional Article 1 of Law 124/2008 (the only article of which the law was composed), which provided for the suspension of criminal proceedings and investigations 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. The Constitutional Court argued that the aforementioned provision violates, *inter alia*, the principle of equality before the law enshrined by the Italian Constitution. The decision of the Constitutional Court repealed Law 124/2008 with retroactive effect.

44. GRECO welcomes that Law 124/2008, dealing with the procedural immunity of 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, has now been repealed pursuant to the declaration of unconstitutionality issued by the Constitutional Court. In this respect, GRECO notes that the question of procedural immunity is a particularly sensitive topic, which has triggered (and continues to trigger) bitter debates in Italy. For example, Law 51 of 7 April 2010 (issued after the adoption of the Joint First and Second Round Evaluation Report, and therefore not analysed at that time) gave the possibility to Cabinet officials (i.e. the President of the Council of Ministers and Ministers themselves) to invoke "legitimate impediment" for not appearing in court, and thereby request the postponement of criminal proceedings against them that were underway or due to be started within 18 months of the Law's date of enactment, on the grounds that such appearance would interfere with the exercise of public office. Some provisions of this Law were declared unconstitutional on 13 January 2011. In particular, pursuant to the decision of the Constitutional Court, it is now in the hands of the responsible judges to have the final say as to the decision to grant the postponement of criminal proceedings to that Cabinet official who so requests on the basis of "legitimate impediment". GRECO must reiterate its firm stand in this regard: in line with Guiding Principle 6, it must be ensured that laws and rules on immunity (or amounting *de facto* to an extension of the immunity regime) are as limited as possible to the extent necessary in a democratic society, and do not, in any event, generate an unacceptable obstacle to the effective prosecution of corruption. Any move deviating from the above mentioned principle is highly regrettable.

45. GRECO concludes that, pursuant to the declaration of unconstitutionality of Law 124/2008, the specific concerns raised in recommendation vi in relation to that Law are no longer prevalent. In that sense, recommendation vi has been dealt with in a satisfactory manner.

Recommendation vii.

46. *GRECO recommended that the introduction of in rem confiscation be considered in order to better facilitate the attachment of corruption proceeds.*

47. The authorities of Italy submit that the *ad hoc* Committee, established under the aegis of the Ministry of Justice to coordinate the implementation of GRECO recommendations, has examined the possibility to introduce in rem confiscation in the Italian legal system. The authorities have reassessed the different types of confiscation provided by legislation, notably (1) confiscation as a security measure (Article 240, Criminal Code), including extended confiscation, based on a certain reversal of the burden of proof for convicted persons who cannot justify the origin of their assets ("*confisca allargata*" as laid out in Article 12(6) of Legislative Decree 306 of 8 June 1992); and (2) confiscation as a preventive measure for criminal assets in the possession of persons belonging to mafia-type organisations (Law 575/1965, as amended). The latter type of confiscation amounts indeed to in rem confiscation: it can be ordered without a conviction, on the basis of the mere threat that the person or 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 suspect. As to the possibility to provide for in rem confiscation with respect to the first type of confiscation described above (i.e. confiscation as a security measure), such a possibility existed in the past, but was declared unconstitutional in 1994 on the basis of the principle of presumption of innocence and thereby repealed. Consequently, while recognising the potential advantages of the introduction of in rem confiscation also with respect to confiscation as a security measure (for example, in cases where individuals cannot be convicted of corruption offences because they died before the proceedings were instituted, the offence is extinguished, or for any other reason that may prevent proceedings from being concluded), the authorities are of the opinion that such a system would not be in line with the presumption of innocence enshrined in Article 27 of the Constitution, whereby a defendant is not considered guilty of an offence until his/her conviction becomes final.

48. GRECO acknowledges that consideration has been paid to this recommendation. GRECO notes that in rem confiscation is possible with respect to mafia-type organisations under certain circumstances (i.e. confiscation as a preventive measure); this possibility was acknowledged in the Joint First and Second Round Evaluation Report (paragraph 84) and was thought to be a valuable device which could also be of beneficial use in other cases – i.e. confiscation as a security measure and confiscation as a preventive measure for corruption offences not having a mafia-type component – where it was not possible to secure a conviction for formal or procedural reasons. The authorities appear to share the view of GRECO concerning the potential added value of in rem confiscation in the aforementioned instances, but, on the basis of past experience (past pronouncements of the Constitutional Court on this point), the authorities are also concerned that the introduction of in rem confiscation as a security measure would run counter to the principle of presumption of innocence enshrined in the Constitution.

49. GRECO accepts the explanations provided by the authorities and concludes that recommendation vii has been dealt with in a satisfactory manner.

Recommendation viii.

50. *GRECO recommended 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.*

51. The authorities of Italy report that the Ministry of Justice has developed a database system (SIPPI – Sistema Informativo Prefetture e Procure dell'Italia) in order to collect comprehensive information concerning seizure and confiscation orders throughout the country. Significant personnel and technical costs have been incurred in the concrete implementation of this system which has been fully operational since January 2011. It facilitates and accelerates the acquisition of the data contained in the files handled by judicial offices allowing for more flexible searches on seized and confiscated assets.

52. GRECO welcomes the development of a database to collect information concerning seizure and confiscation orders in the national territory; this addresses the concerns raised in the Joint First and Second Round Evaluation Report (paragraph 85) as to the lack of comprehensive statistical data regarding the number of cases and the value of confiscated/forfeited property related to corruption throughout Italy, which led to recommendation viii. The database has just started to be fully operational, and therefore, it may be premature to assess its appropriateness to achieve the final goal of the recommendation, i.e. that the development of this tool assists in reviewing the effectiveness of the activity of law enforcement authorities, in order to assess if any recurrent problems are encountered in practice (e.g. with respect to property transferred to third parties, difficulties in proving the illicit origin of assets, etc.) and thereby to identify areas where further improvements to the current seizure/confiscation regime may be needed. GRECO encourages the authorities to pursue their efforts in this area and looks forward to receiving updated information as to possible improvements that may occur in this respect as experience with the database evolves.

53. GRECO concludes that recommendation viii has been partly implemented.

Recommendation ix.

54. *GRECO recommended 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.*

55. The authorities of Italy explain that feedback and co-operation mechanisms between the agencies with responsibilities for the fight against money laundering have been further developed, including through memoranda of understanding between supervisory authorities (Financial Intelligence Unit – FIU, Supervisory Authority for the Insurance Industry – ISVAP and the Italian Stock Exchange Commission – CONSOB). Contacts between the FIU and the relevant investigative bodies, i.e. the National Anti-Mafia Investigation Bureau – DIA and the financial police – NSPV, have been intensified: in 2008 and 2009 more than 50% of the STRs transmitted by the FIU were investigated by DIA and NSPV; a total of 118 requests for documentation and cooperation were received by the FIU from judicial authorities in 2010 (94 requests in 2009 and

53 in 2008, respectively). Memoranda of understanding have been signed by the FIU, DIA and NSPV to allow for swifter information exchange (for both preventive and repressive purposes), including through electronic means.

56. With respect to delayed and non-reporting of suspicious transactions (STRs), the authorities stress that Legislative Decree 231/2007 establishes the obligation to report without delay. Any unjustified delay in submitting STRs is treated as failure to report. Fines in a percentage ranging from 1 to 40% of the total amount of the non-reported transaction may apply. In 2010, the FIU has initiated 23 administrative proceedings dealing with violations to the obligation to report suspicious transactions (there were 16 in 2009 and 28 in 2008, respectively). In 2009, sanctions were imposed in 34 cases; the total amount of the imposed administrative fine was 5,961,201 EUR. Finally, in order to improve the quality and the timeliness of STRs, a new electronic system for reporting suspicious transactions has been developed; it was presented to reporting entities in November 2010 and entered into force in May 2011.

57. GRECO notes that, with respect to the first part of the recommendation, cooperation and information exchange between law enforcement bodies and the FIU have been enhanced through the establishment of memoranda of understanding and the development of practical arrangements to share data in a swifter manner. With respect to the second part of the recommendation, GRECO accepts the explanations provided by the authorities as to the legislative provisions concerning instances of delayed and non-reporting, as well as the sanctions which are being applied accordingly. GRECO further welcomes the initiative taken by the authorities to ensure prompter transmission of STRs through an electronic system, which should assist in addressing the delays criticised in the Joint First and Second Round Evaluation Report (paragraph 87).

58. GRECO concludes that recommendation ix has been implemented satisfactorily.

Recommendation xi.

59. *GRECO recommended 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.*

60. The authorities of Italy highlight the importance attached in the Brunetta reform to transparency of public administration and the numerous activities to open up administrative proceedings and files to allow for easier, meaningful and swifter consultation by the general public, including through e-government initiatives and the so-called Public Network System. With respect to access to information held by local authorities, this is regulated by law. With respect to the requirement of motivation when requesting public documentation not published, this is a matter subject to political assessment which is ultimately to be addressed through legislative amendments, if necessary; so far, the requirement of motivation is no longer applicable with respect to information on environmental and landscape matters, as well as with respect to administrative

information held by local authorities. In connection with providing the Commission on Access to Administrative Documents with the authority, after a hearing, to order an administrative body to provide access to requested information, the Commission has repeatedly asked the Government and the Parliament to allow for such a mechanism, but this request has not been met as yet. That said, the Commission has been vested with decisional powers and this has reportedly led to an increasingly growing number of citizens' complaints being solved by the Commission directly, without having to have recourse to the administrative courts (unless the public administration at stake does not comply with the Commission's decision to grant access to documents).

61. GRECO acknowledges the activities performed to improve transparency of administrative information and to facilitate public access to such information through, *inter alia*, greater use of website resources and other means. These measures were already underway, and acknowledged, at the time of adoption of the Joint First and Second Round Evaluation Report; the authorities should undoubtedly be praised for the activities taken in the last couple of years to pursue their efforts in this area. That said, recommendation xi aimed at tackling some particular weaknesses identified with respect to the implementation of Law 241/1990 on Access to Administrative Documents (as detailed in paragraphs 143 and 144 of the Joint First and Second Round Evaluation Report). GRECO notes with regret that no steps have been taken, or are even planned, to perform any of the concrete actions called for in recommendation xi.

62. GRECO concludes that recommendation xi has not been implemented.

Recommendation xii.

63. *GRECO recommended 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.*

64. The authorities of Italy report on a comprehensive reform of the administrative procedure leading to the adoption of Legislative Decree 104 of 2 July 2010 (new Administrative Procedure Code), which entered into force on 16 September 2010. The Decree introduces measures to tackle the backlog of administrative courts. It aims at ensuring the principles of reasonable time of the process, concentration and effectiveness. It reportedly provides claimants with new protection tools (concise procedure with effective safeguards, reasonable length of trial, cross-examination, extension of the range of acceptable evidence, etc.). One of its most relevant novelties is said to be the introduction of a so-called "preventive procedure", i.e. suspension of the effects of the contested administrative measure waiting for the final decision, expedited timeframes of this process (the contestant can obtain a preventive decision within a month; likewise, a decision on the merits of the case can be obtained within the same time limit of a month once the simplified decision is adopted). Concerning administrative procedures relating to public procurement, the Decree provides for accelerated timeframes, as well as the inclusion of a mandatory standstill period which occurs between the purchaser's decision to award a contract and the actual awarding of the contract so that aggrieved purchasers may seek redress before entering into contract. With specific reference to the appeal phase, measures have been put in place to prevent delays in the length of the proceedings before coming to a final decision, e.g. statutory deadlines and means of appeal, prohibition of commencement of requests, exceptions, new evidence and new arguments on judicial documents not contested at the outset.

65. The authorities further add that they have considered the introduction of an alternate dispute resolution system and that this is still a possibility, once the reform of the administrative

procedure is further tested (as noted above, the reform was launched in July 2010, and therefore, time is needed to assess which additional measures may be needed in this field) and in the light of the experience gained with the recent introduction of mediation in civil and commercial matters.

66. GRECO takes note of the reform undertaken to improve the functioning of administrative justice, including by providing for shorter deadlines to ensure the timeliness of the relevant procedures. With respect to the backlog of administrative appeals, GRECO notes that alternate dispute resolution is not available under Legislative Decree 104/2010; however, certain novelties have been introduced to tackle the problem, for example, by excluding the possibility of presenting new evidence/new arguments on appeal, which had not been adduced during the first degree. GRECO acknowledges the reported developments in this field and is hopeful that the new legislative measures adopted will soon lead to concrete results in addressing what is generally acknowledged as a key challenge in Italy[7]. GRECO further notes that the authorities do not exclude the introduction of an alternate dispute resolution system in administrative proceedings in the light of the experience gained with mediation in civil and commercial matters. The authorities may wish to keep GRECO informed of any new development in this respect.

67. GRECO concludes that recommendation xii has been dealt with in a satisfactory manner.

Recommendation xiii.

68. *GRECO recommended 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.*

69. The authorities of Italy report that, in the context of the Brunetta reform (see also paragraph 11 for details), priority has been given to sound management of public resources through greater efficiency and productivity of public administration. A number of mechanisms have been put in place to this effect, e.g. performance assessments, full disclosure of data and figures concerning public administration (information on proceedings, tenders, assignments for consultants and freelancers, information on remunerated assignments to civil servants, salary scales, leaves of absence, etc.). With particular reference to audit arrangements, there are two types of control, i.e. internal and external. Internal audit is primarily entrusted to a Commission for the Evaluation, Transparency and Integrity in Public Administration (CIVIT) and the Revenue Agency, through its Central Directorate for Auditing and Security. The latter carries out periodic and random checks; the methodology used involves three main pillars: (a) risk-assessment, (b) compliance audit, and (c) performance audit. External audit is performed by the Court of Audit which is responsible for monitoring and appraising costs, performance and results of the public administration's operation. The Court of Audit may also use the findings of internal audits in the performance of its own external audits. Moreover, as an external auditor, the Court is to assess the adequacy and effectiveness of internal controls. Finally, the authorities stress that the Brunetta reform attaches great importance to a citizen-centred type of control, including by measuring customer satisfaction.

70. GRECO acknowledges the emphasis placed by the authorities, in the context of the ongoing reform of public administration, on the efficient and the sound management of public resources. GRECO takes note of the additional developments reported to reinforce internal control and accountability, e.g. through periodic and random checks carried out by the CIVIT and the

[7] See also Interim Resolution of the Committee of Ministers of the Council of Europe (CM/ResDH(2010)224) pointing at the excessive length of civil, criminal and administrative proceedings in Italy.

Revenue Agency, strengthened efficiency controls performed within public administration itself, as well as through external mechanisms (through the role of the Court of Audit, customer satisfaction measurements, etc.). GRECO takes the view that the acts performed by the authorities in this respect have the potential to globally address the concerns raised in the Joint First and Second Round Evaluation Report on Italy, which triggered recommendation xiii, notably, the need to ensure a systematised oversight of public administration.

71. Therefore, GRECO concludes that recommendation xiii has been dealt with in a satisfactory manner.

Recommendation xiv.

72. *GRECO recommended 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.*

73. The authorities of Italy reiterate the emphasis that the Brunetta reform places upon integrity, accountability and legality of public administration. Italy has opted for a collective bargaining system by which legal provisions on employment conditions are implemented through collective agreements. Codes of Conduct, including provisions on conflicts of interest, are appended to the relevant collective agreements; they are all largely uniform in their contents, including insofar as disciplinary action is concerned. The principle of consistency and enforceability of ethical standards and disciplinary action in case of misconduct is enunciated in Decree 150 of 27 October 2009 (Article 68), which also restricts the possibilities for collective bargaining in this area. Concerning ethical standards for managers, these are included in the 2006-2009 collective labour agreement for executive personnel. The authorities add that the Brunetta reform has increased the level of responsibility of managers; they can be subject to, *inter alia*, economic sanctions in case of failure to comply with their obligations, in particular, with regard to management and supervision of human resources (e.g. conduct, productivity, absenteeism of subordinates). Consultants are assimilated, when signing a contract with public administration for the development of public services, to public officials in so far as the applicability of deontological and conflicts of interest provisions is concerned. In case of infringement of ethical provisions, sanctions can apply, as stipulated in the contract signed with the relevant administration; the applicable penalty may well entail termination of the contract.

74. The authorities further state that steps have been taken to streamline disciplinary proceedings. In particular, Decree 150 of 27 October 2009 (Article 69) provides for a system of discipline in cases of malpractice in public administration, independently of a final criminal conviction. The following tables show some of the results obtained by the Inspectorate of Public Administration in this area to date:

Administrations	Disciplinary proceedings Jan/June 2010	PROCEEDING INITIATED AND SUSPENDED FOR JUDICIAL PROCEEDING				PENALTIES INFLICTED			
		Suspended for the beginning of a judicial proceeding	Average n° days between start and suspension	Concluded	Average duration (days) of proceeding	Minor penalties	Suspended from work	Dismissed	Cases dismissed/ acquitted
Ministries & Agencies	355	80	3,9	258	88,6	123	47	14	74
Various public bodies	174	11	49	156	32,5	87	38	18	13
Provinces	16	0	42	16	65	12	3	1	0
Municipalities	115	12	5,8	102	38,4	59	15	4	24
ASLs & Hospitals	316	12	32,3	297	41,4	121	98	12	66
Universities	51	0	0	50	71,2	16	27	1	6
Schools	0	0	0	0	0	0	0	0	0
Total	1027	115	19	879	48,2	418	228	50	183

Administrations	Percentage of proceedings initiated & suspended	Percentage of proceedings initiated & concluded	Severe penalties inflicted (suspension from work/dismissal)
Ministries & Agencies	23%	73%	24%
Various public bodies	6%	90%	36%
Provinces	0%	100%	25%
Municipalities	10%	89%	19%
ASLs & Hospitals	4%	94%	37%
Universities	0%	98%	56%
Schools	0%	0%	0%
Total	**11%**	**86%**	**32%**

* *As for information provided by the respective administrations, as of 29 September 2010, 33 disciplinary proceedings were ongoing.*

75. As for training activities, the authorities highlight that a training programme, entitled "Towards a Culture of Integrity in Public Administration", with a budget amounting to 12.8 million EUR[8], is

[8] About 3.2 million EUR has already been spent since 2008, while the remaining 9.6 million EUR refers to activities to be performed by 2012.

being developed by the Italian School of Public Administration and Formez (the in-house firm of the Civil Service Department). This programme deals, *inter alia*, with seminars concerning integrity and transparency of public administration; it aims at bringing together citizens, students and public administration institutions (officials) in an effort to build a shared culture of integrity (http://integrita.sspa.it/). From May 2010 to May 2011, the Italian School of Public Administration has trained over 1,270 officials on ethics, transparency and the prevention of malpractice in daily work.

76. GRECO takes the view that good progress has been made by the authorities to meet the different components of recommendation xiv. Ethical standards have been spelled out for managers and greater responsibility has been entrusted to these categories of persons to further promote a culture of integrity within public administration. Likewise, the authorities confirm that consultants/freelancers exercising public administration functions are bound by the same ethical standards as public officials themselves. With respect to the observance of codes of conduct and the commencement of disciplinary proceedings in the event of malpractice, GRECO welcomes the efforts undertaken by the authorities to streamline disciplinary action and to restrict the possibilities for collective bargaining in this area, with a view to better ensuring consistency and enforceability of deontological/disciplinary provisions, as per the provisions of Decree 150 of 27 October 2009. Finally, regarding training, GRECO is pleased to note that significant resources have been allocated to this effect. GRECO acknowledges the multidisciplinary training developed so far to enhance integrity and transparency of public administration. GRECO is trustful that efforts will be pursued in this area, in particular, by ensuring not only ongoing training of public officials, but also by further developing concrete guidance and counselling tools/mechanisms concerning the application of ethical obligations.

77. GRECO concludes that recommendation xiv has been implemented satisfactorily.

Recommendation xv.

78. *GRECO recommended 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).*

79. The authorities of Italy indicate that a specific code of conduct for members of Government has not been issued. The authorities further claim that the Code of Conduct of public officials (Decree of 28 November 2000) applies to members of Government, including the relevant provisions concerning gifts (Article 3). Law 215/2004 regulates conflicts of interest of members of Government.

80. GRECO regrets that no steps have been taken to address recommendation xv and thereby adopt a publicly announced, professionally embraced, and (if possible) enforceable code of conduct for members of Government. As stressed by the Joint First and Second Round Evaluation Report (paragraph 151), the conduct of the most senior leaders within any level of government sets the tone for the rest of public administration and most easily enhances or undermines the public's trust. It is essential to make it unequivocally clear (to both the general public and the high officials concerned) that these officials fall under strict integrity standards. Against this background, GRECO notes that the authorities are now of the view that members of Government would be covered by the Code of Conduct of public officials. However, this information departs from the analysis of the Joint First and Second Round Evaluation Report, which stressed that there was no

code of conduct applicable to members of Government and members of Parliament, other than the application of criminal laws, and the rules contained in Decree of the Council of Ministers of 20 December 2007 concerning protocol gifts, as well as in Law 215/2004 regarding conflicts of interest.

81. With respect to members of Parliament, GRECO refrained from issuing a formal recommendation (since this matter is outside the scope of the Joint First and Second Round Evaluations), but was hopeful that parliamentarians would give serious consideration to the elaboration of a code of conduct as a public signal of their commitment to high integrity. This issue will be examined in the course of the Fourth Evaluation Round.

82. GRECO takes note of the information provided and concludes that recommendation xv has not been implemented.

Recommendation xvi.

83. *GRECO recommended 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.*

84. The authorities of Italy state that with respect to rules on conflicts of interest of public officials (including executive/managerial posts, i.e. so-called "*dirigenti*"), these are included in the codes of conduct and discipline attached to the relevant collective agreements. Consultants are assimilated, when signing a contract with public administration for the development of public services, to public officials in so far as the applicability of deontological and conflicts of interest provisions is concerned. Additional rules on conflicts of interest are contained in Legislative Decree 150/2009 (Article 52, as developed by Circulars 1 and 11 of 2010 and Directive 2/2010) with particular reference to managers who have held office, or performed consultancy tasks, in political parties or trade union organisations. Further rules to prevent conflicts of interest are expected to be adopted in the framework of the Anticorruption Bill. As previously indicated (see paragraph 73), Decree 150 of 27 October 2009 (Article 68) has restricted possibilities for collective bargaining in this area in order to ensure consistency and enforceability of the codes. As for advice/counselling on conflicts of interest, the Ministry for Public Administration and Innovation has issued circulars on implementation of the principles of transparency and sound administration.

85. The authorities add that, with respect to rules on conflicts of interest of holders of Government office, these are contained in Law 215/2004. The Italian Competition Authority is responsible for overseeing compliance with its provisions. Despite some difficulties in the establishment of the conflict of interest standard – which were also conveyed by the Italian Competition Authority to Parliament – very positive results have allegedly been recorded in this field since the entry into force of Law 215/2004: around 81% of incompatibility instances have been voluntarily removed by the relevant members of Government, 14% have been removed following a recommendation of the Italian Competition Authority, and 5% have been removed pursuant to formal infringement proceedings. Finally, the authorities stress that a financial disclosure system exists for holders of Government office; all persons have complied with their obligation to submit asset declaration forms.

86. GRECO takes note of the information provided. With respect to recommendation xvi(i), GRECO welcomes the fact that provision has been made in law to restrict the possibilities for collective bargaining concerning ethical and conflicts of interest rules of public officials (including managers and consultants) with a view to better ensuring consistency and enforceability of such norms. With particular reference to holders of Government office, nothing substantially new has been added. GRECO recalls its concern that, while the description in Law 215/2004 of what constitutes an incompatibility is reasonably clear, the conflict of interest standard is not (paragraph 153, Joint First and Second Round Evaluation Report). GRECO notes that the authorities admit this problem, but have not taken any concrete step to address it so far.

87. Concerning implementation of recommendation xvi(ii), GRECO is of the firm opinion that much more needs to be done. As already indicated in paragraph 76, key importance must be attached to the development of guidance and counselling tools/mechanisms concerning the application of ethical obligations, including on conflicts of interest. GRECO recalls that the Joint First and Second Round Evaluation Report reflected on the lack of a system to provide consistency in interpretation, training or guidance across the public service (paragraph 154). As recommendation xvi(ii) outlines, the use of the existing financial disclosure system, as a tool to help prevent and detect potential conflicts of interest, will certainly be of added value in this field. No action in this respect has been taken so far by the authorities.

88. GRECO concludes that recommendation xvi has been partly implemented.

Recommendation xvii.

89. *GRECO recommended 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.*

90. The authorities of Italy report that amendments to the Anticorruption Bill (see paragraph 10 for details) were proposed on 27 September 2010 to regulate pantouflage by proposing a "cooling-off period" of 3 years in which public officials, who have exercised authoritative or negotiation powers on behalf of public administration, must refrain from working for private bodies who are the recipients of the activity of public administration by virtue of those same powers. Any contract or work assignment agreed in violation of the aforementioned provisions is null and void, and the private bodies who have signed or agreed to such contract/work assignment shall not be awarded any contract with public administration in the three following years (amendment 2.0.1 to Article 35, paragraph 16-bis).

91. GRECO takes note of the proposed amendments to the Anticorruption Bill to address the issue of pantouflage; this is a step forward which needs to be effectively materialised in law. Furthermore, GRECO considers that the proposed amendments, if adopted, would still fall short of the objective pursued by recommendation xvii: they are very limited in scope and do not address the whole spectrum of conflicts of interest that can occur with the movement in and out of public service by individuals who carry out public administration functions. In addition, when regulating pantouflage, the authorities will also need to develop the necessary implementation arrangements giving effect to the relevant legal provisions on the matter, for example, with respect to prior approval and/or reporting mechanisms of intended or current post-service activities, penalties/enforcement, etc. Furthermore, it is important that any legal provisions which may be adopted in this area is accompanied with guidance to public officials on practical cases

involving the ethical dilemma which may appear in situations where they move into a similar, linked or even competing private entity, directly or shortly after leaving the public service.

92. GRECO notes that recommendation xvii called for appropriate provisions on pantouflage to be adopted and implemented, given the state of affairs described above, it is evident that none of the requirements of the recommendations has been met.

93. GRECO concludes that recommendation xvii has not been implemented.

Recommendation xviii.

94. *GRECO recommended that an adequate system of protection for those who, in good faith, report suspicions of corruption within public administration (whistleblowers) be instituted.*

95. The authorities of Italy indicate that an operational agreement was signed between Transparency International and the National Anticorruption Authority to undertake a study on the institution of whistle-blowing (this is part of an international study, which will also comprise a section on Italy). The study should look into the existing situation, its efficacy to protect whistleblowers, and further improvements needed. In addition, the so-called Anticorruption Bill (see paragraph 10 for details) is to include provisions on whistleblower protection; amendments to the Bill were proposed on 27 September 2010 to refer to the need to protect whistleblowers from retaliatory action (amendment 2.0.3 introducing Article 2-bis, which states that a civil servant who reports cases of illicit conduct, discovered in the performance of his/her duties, shall not suffer any form of discrimination).

96. GRECO takes note of the update provided. It takes the view that the action taken in this domain remains rather limited so far. A study on the state of play concerning whistleblower protection in Italy, including proposals for improving the system, as necessary, is yet to be completed. Moreover, GRECO considers that the proposed amendments to the Anticorruption Bill with respect to whistleblower protection, although representing a possible step forward in this area, would, if adopted, still fall short of the objective pursued by recommendation xviii. In particular, the legislative provisions enshrining the principle that whistleblowers are to be protected from retaliatory action, must be accompanied with a more comprehensive/detailed protection framework for civil servants reporting suspicions of corruption in good faith, including concrete provisions on how reporting can be done in practice (e.g. internal/external reporting lines, confidentiality assurances, degree of suspicion) and the relevant mechanisms to protect them from retributive action (e.g. authorities and systems for enforcing protection, forms of compensation).

97. GRECO concludes that recommendation xviii has not been implemented.

Recommendation xix.

98. *GRECO recommended that corporate liability be extended to cover offences of active bribery in the private sector.*

99. The authorities of Italy report that reform is expected in this field through the ratification of the Criminal Law Convention on Corruption (ETS 173), as well as implementation of the EU Framework Decision 2003/568/JHA of 22 July 2003 on Combating Corruption in the Private Sector.

100. GRECO regrets that no concrete steps have been taken to effectively extend corporate liability to offences of active bribery in the private sector and, therefore, concludes that recommendation xix has not been implemented.

Recommendation xx.

101. *GRECO recommended 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.*

102. The authorities of Italy report that specific action to implement recommendation xx will be considered in the framework of future ratification of the Criminal Law Convention on Corruption (ETS 173), as well as effective implementation of the EU Framework Decision 2003/568/JHA of 22 July 2003 on Combating Corruption in the Private Sector.

103. GRECO notes that the possibility of establishing bans on holding executive positions in 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, is yet to be considered. GRECO urges the authorities to pay due attention to this question, as recommended.

104. GRECO concludes that recommendation xx has not been implemented.

Recommendation xxi.

105. *GRECO recommended 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.*

106. The authorities of Italy refer again to Law 262/2005, which introduced an important reform insofar as corporate liability is concerned; in particular, by laying out a reworked incrimination of false accounting (and thereby amending Articles 2621 and 2622 of the Civil Code), entailing heavy administrative sanctions and bans on holding managerial positions in the private sector. The Italian Stock Exchange Commission (*Commissione Nazionale per la Società e la Borsa, CONSOB*) is responsible for imposing the aforementioned sanctions. The authorities consider that the experience acquired so far with the implementation of Law 262/2005 is still very limited; more time is still necessary to assess whether further legislative changes need to be introduced in this area.

107. GRECO regrets that no action has been taken to address recommendation xxi. Nothing new has been added in this field: Law 262/2005 was already taken into account in the Joint First and Second Round Evaluation Report (paragraph 176). However, a series of specific shortcomings, both in respect of accounting and auditing obligations of companies, were identified (paragraphs 190 and 191) and prompted recommendation xxi. In particular, GRECO had misgivings concerning the conditions/thresholds for liability, the determination of penalties and the scope of perpetrators of the offence of false accounting. GRECO also expressed criticism concerning the limited coverage of auditing requirements, which was circumscribed to listed companies, State-owned companies and insurance companies.

108. GRECO concludes that recommendation xxi has not been implemented.

Recommendation xxii.

109. *GRECO recommended 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.*

110. The authorities of Italy indicate that Legislative Decree 231/2007, in its Article 41(2)b) establishes the obligation to issue anomaly indicators aimed at assisting accountants, auditors and advisory/legal professionals in the identification of suspicious transactions. A Decree of the Ministry of Justice was adopted on 16 April 2010 to this effect, following a proposal of the Financial Intelligence Unit and in close consultation with the targeted professionals (i.e. auditors, external accountants and tax advisors, notaries and other independent legal professionals). The Decree contains money laundering indicators (Annex I, including anomaly indicators concerning customers, modalities of execution of professional activities, means of payment, modalities of establishment and management of companies, trusts and similar entities, transactions involving registered immovable/movable property, accounting and financial transactions), as well as specific guidance as to how to report suspicious transactions (Annex II). The Italian FIU has signed memoranda of understanding with professional associations to allow for swifter reporting of suspicious transactions. In 2010, there was an increase in the number of reports submitted by professionals and non-financial operators: from 173 in 2008 and 136 in 2009, respectively to 223 in 2010.

Reporting entities	***2007***	***2008***	***2009***	***2010***	***Total***
Notaries and National Council of Notaries	127	103	69	**66**	365
Book keepers and commercial experts	21	19	10	**23**	73
Accountants	37	17	28	**43**	125
Estate agents	10	13	3	**3**	29
Lawyers	8	6	3	**12**	29
Casino management companies	-	4	6	**34**	44
Auditors	4	3	7	**12**	26
Auditing firms	2	2	2	**6**	12
Other	-	-	9	**24**	33
Total	215	173	136	**223**	736

111. Moreover, the Bank of Italy developed new indicators for financial intermediaries on 27 August 2010. Likewise, the Bank of Italy issued in its website a new communication addressing companies operating in the field of lease finance.

112. GRECO welcomes the legislative and practical measures undertaken by the authorities to improve the situation regarding the reporting of suspicions of corruption and money laundering by accountants, auditors and advisory/legal professionals to the competent bodies. It would appear from the figures provided by the authorities that the reports from these categories of professionals are generally increasing in practice.

113. GRECO concludes that recommendation xxii has been implemented satisfactorily.

III. CONCLUSIONS

114. **In view of the above, GRECO concludes that Italy has implemented satisfactorily or dealt with in a satisfactory manner less than half of the 22 recommendations contained in the Joint First and Second Round Evaluation Report**. Recommendations ix, xiv and xxii have been implemented satisfactorily and recommendations ii, iv, vi, vii, xii and xiii have been dealt with in a satisfactory manner. Recommendations i, iii, v, viii, x and xvi have been partly implemented. Recommendations xi, xv, xvii, xviii, xix, xx and xxi have not been implemented.

115. GRECO notes that certain progress has been made to tackle some of the 22 recommendations issued to Italy, in particular, as regards the on-going reform of public administration, aimed at enhancing its transparency and efficiency, as well as the fight against money laundering. Steps have also been taken to pursue training on corruption detection and investigation, as well as to further develop centralised databases to facilitate knowledge sharing and information exchange between law enforcement officials. That said, GRECO finds that the current level of implementation leaves considerable room for improvement. Ratification of the United Nations Convention on Corruption (UNCAC) took place in 2009, but Italy has not yet acceded to any of the relevant Council of Europe instruments in the fight against corruption (i.e. the Criminal Law Convention on Corruption and its Additional Protocol, and the Civil Law Convention on Corruption). Future anticorruption measures are programmed, notably through a new anticorruption framework law which, if adopted, could facilitate more coordinated action in this field (through, *inter alia*, the development of a national anticorruption plan, a national anticorruption network and an observatory of corruption phenomena). In this connection, an Anticorruption Bill was approved by the Government in March 2010; however, a year has elapsed and the law has not yet been adopted. Moreover, GRECO regrets that certain areas have received no or insufficient attention so far, notably, with respect to, *inter alia*, the adoption of codes of conduct for members of Government, the prevention of conflicts of interest, the protection of whistleblowers, and the strengthening of anticorruption provisions in the private sector. More needs to be done to effectively convey to the public at large the message that no impunity is tolerated in the fight against corruption; such a message must be based on concrete and determined actions. Consequently, GRECO urges the authorities to persist in their efforts to make sure that the outstanding recommendations are dealt with in an expeditious manner.

116. GRECO invites the Head of the Italian delegation to submit additional information regarding the implementation of recommendations i, iii, v, viii, x, xi, xv, xvi, xvii, xviii, xix, xx and xxi by 30 November 2012.

117. GRECO invites the authorities of Italy to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.