



January 2019

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The So-Called “Bribe Destroyer” Law on Corruption Adopted in Italy

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With the publication of Law No. 3 of January 9, 2019 (“Law 9/19” or the “Law”),¹ Italy introduced some additional provisions aimed at fighting public sector corruption and increasing transparency requirements for private and corporate contributions to political parties and foundations.

The so-called “bribe destroyer” law has been publicized by the government as a revolution in the fight against corruption while it has been highly criticized by legal experts because of its alleged unconstitutionality.

The Law amends provisions of the Italian Criminal Code, of the Italian Civil Code, of Legislative Decree No. 146 of March 16, 2006 on the Execution of UN Conventions and Protocols against Transnational Organized Crime, and of Legislative Decree No. 231 of June 8, 2001 on the Quasi-Criminal Liability of Legal Persons, Companies and Associations. The Law touches three different themes: fight against corruption, especially of public administration; reformation of statute of limitations; and more clarity on the funding of political parties and political movements.

New Powers to the Investigative Authorities

A first set of measures is aimed at providing the investigative authorities with additional powers to investigate crimes against the public administration, including corruption.

Public prosecutors investigating bribery crimes will be permitted to use agents “under cover” to work on corruption investigations. In addition, wiretapping, as well as the use of Trojans, will be now permissible in investigating these crimes.

Increased Sanctions for Individuals

A second set of measures increases penalties to be applied in corruption cases and reduces the chance of application of benefits to the convicts.

The increase also regards ancillary penalties to be applied to individuals convicted for corruption: anyone sentenced to more than two years in prison will be permanently debarred from contracting with the public administration or holding public office.

The rehabilitation does not affect perpetual accessory penalties: after at least seven years from the rehabilitation, the perpetual accessory penalty expires if the offender gives “constant and effective proof of good behavior”.

The ban on contracting with the public administration is now also provided as an interdictory measure, applied to the accused before sentencing.



The Law also modifies the main penalties for cases of “improper” bribery in the exercise of a public official’s functions, and for cases of embezzlement.

Important changes are made with regards to undue influence trading that will now include situations in which a potential intermediary claims to be able to exercise undue influence on a public official.

Increased Sanctions for Companies

Law 9/19 also increased some of the sanctions on companies provided under Legislative Decree 231 of 2001 in case of crimes against the public administration. Sanctions for legal entities convicted of influence trading have been increased, with a fine of up to 200 quotas.

In addition, disqualifying sanctions for companies convicted of bribery have been significantly increased: four to seven years in cases where the crime was committed by top managers and two to four years in cases of crimes committed by employees. As anticipated, in cases of cooperation the disqualifying sanctions can be significantly reduced.

Private-to-Private Bribery

With regards to private-to-private bribery, in particular as to the crimes of corruption between individuals (art. 2635 Civil Code) and inducement to bribery (art. 2635-bis Civil Code), in order to prosecute directors, general managers, and executives entrusted with the preparation of a company’s accounting document, the offended party’s official request/claim will no longer be necessary.

Cooperation

The Law tries to promote cooperation against corruption, introducing a non-punishment clause for any offender who, before being aware of any investigation against him/her and, in any case, within four months from the fact, voluntarily discloses information useful to the investigation that leads to evidence of the crime and to identifying other offenders involved.

In the case of companies, active cooperation will lead to less severe disqualifying sanctions: if the company actively collaborated during the investigation to secure evidence of the crime, or to identify other offenders involved, or to ensure seizure of the profits, and has eliminated the organizational deficiencies that led to the crime through the adoption and implementation of an organizational model, the disqualifying sanctions will have a maximum duration of two years.

Statute of Limitations

The most controversial part of Law 9/19 is the reform of the statute of limitations. The date of entry into force of this provision is postponed to January 1, 2020.

According to the new provisions, after the decision of the judge of first instance, the limitation period will be tolled until the final decision, regardless whether the defendant was convicted or acquitted by the first instance sentence.

The regime of limitations is also modified as to continuing offences.

A New Definition of Foreign Public Official

The definition of foreign public official has been extended. Already included are individuals that, within the Member States of the EU, perform functions or activities analogous to the ones performed by Italian public officials or are in charge of a public service. The new definition also includes individuals that perform such functions and activities within a public international



organization, as well as members of international parliamentary assemblies, members of international or supranational organizations, and officers and judges of international courts.

Extra-Territoriality

Also modified is the discipline for crimes against the public administration committed abroad, by Italian citizens or by foreign citizens. In these situations, the Law provides a group of offences against the public administration—such as, *inter alia*, bribery of a person in charge of a public service, undue trading in influence, extortion by a public official, bribery for the exercise of a public function—for the prosecution of which the request by the offended party or by the Minister of Justice is no longer required.

These amendments are also applicable to companies, since Legislative Decree 231/2001 recalls the said provisions when referring to the responsibility of entities established in Italy, for offences committed abroad.

Transparency of Political Parties and Movements

The last part of the Law is meant to ensure transparency of political parties, movements, and foundations. According to these provisions, parties, lists, and candidates must note, in the dedicated registry, any financial contribution received along with certain information to describe the contribution; such information will be also published on the website of the party. The Law requires on the same website the publication of other data referring to the candidates, such as the CV and the certificate of previous convictions. Moreover, within one month from the contribution, the legal representatives of the party shall communicate to the Chamber of the Parliament (*Camera dei Deputati*) the list of contributors.

Within a year from the publication of Law 9/19, all the norms concerning contributions to candidates, parties, and political movements will be published in a Legislative Decree introducing a specific compilation.



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¹ Published in the Italian Official Journal on January 16, 2019.