

ITALY

Moderate enforcement

2.6% of global exports

Investigations and cases

In the period 2016-2019, Italy opened 23 investigations, commenced 9 cases and concluded four cases with sanctions.

In the long-running case concerning alleged bribery of Algerian officials by **Eni's** subsidiary **Saipem**, the Court of Appeal of Milan acquitted the company and its top executive in January 2020, both having been found guilty of international corruption by a lower court in 2018.¹ The lower court had acquitted state-owned Eni and its ex-CEO. In April 2020, Eni entered into an agreement with the US Securities and Exchange Commission, whereby it agreed to pay US\$24.5 million in disgorgement and prejudgment interest, for allegedly paying €198 million (US\$226 million) to Algerian government officials in order to obtain contracts with the Algerian state-owned oil company between 2007 and 2010.² Investigations in this case have been reopened in Algeria.³ Saipem is also under investigation by the *Lava Jato* Taskforce and the Comptroller General in Brazil. One of the company's alleged intermediaries in Brazil pleaded

guilty to paying bribes to Petrobras officials to help secure contracts to install submarine pipelines in 2011.⁴

In 2019, the trial moved forward in the Court of Milan of bribery allegations against Eni and Dutch oil giant **Shell**, and some of their top executives, in connection with a Nigerian oil deal in 2011. The trial opened in Milan in 2018 following an indictment in 2017.⁵ The case centres on the alleged payment of US\$1.1 billion to the Nigerian government in exchange for the licence to operate in oil fields in the Gulf of Guinea. Global Witness has uncovered evidence which appears to indicate that the deal was unprecedented in that it gave away Nigeria's rights to its share of the oil produced.⁶ Proceedings in this case are not limited to the Court of Milan. In March 2019, Shell issued a statement saying that Dutch prosecutors were preparing to prosecute Shell in the Netherlands in relation to the 2011 oil deal in Nigeria.⁷

In October 2019, the Milan Prosecution Office charged the Luxembourg-registered financial holding company **San Faustin** with foreign bribery, together with two board members, Gianfelice Rocca and Paulo Rocca, and the president of the company, Roberto Bonatti.⁸ Through **Techint**, San Faustin controls pipe-manufacturer **Tenaris SA**, and through Tenaris, controls **Confab Industrial S.A.** (or **TenarisConfab**) a Brazilian company.⁹ According to the charges, €6.6 million (US\$7.5 million) in bribes were paid to a director of Petrobras through San Faustin bank accounts in order to secure contracts for Confab. The bribes were allegedly agreed as a

¹ <https://www.reuters.com/article/saipem-algeria-corruption/update-1-italian-appeals-court-acquits-saipem-eni-in-algerian-graft-case-idUSL8N29K4ZN>

² <https://www.sec.gov/enforce/34-88679-s>; The US order said that Sapiem was controlled by Eni and that its books and records were consolidated into Eni's during the relevant period.

³ <https://www.echoroukonline.com/paradoxes-debates-in-sonatrach-eni-saipem-corruption-case/>

⁴ <http://g1.globo.com/pr/parana/noticia/2015/07/mpf-oferece-nova-denuncia-contra-duque-e-outras-quatro-pessoas.html>; <https://politica.estadao.com.br/blogs/fausto-macedo/cgu-investiga-empresa-italiana-envolvida-em-irregularidades-com-a-petrobras/>

⁵ <https://www.ft.com/content/d0fac854-726e-11e9-bf5c-6eeb837566c5>; <https://www.bloomberg.com/news/articles/2020-01-29/witness-in-shell-trial-fails-to-back-nigerian-bribe-charges>

⁶ <https://www.globalwitness.org/en/press-releases/new-analysis-shows-shell-and-eni-used-nigerias-share-of-oil-to-fund-alleged-billion-dollar-bribery-scheme/>

⁷ <https://www.occrp.org/en/daily/9304-shell-to-face-charges-in-the-netherlands-for-nigerian-oil-deal>; <https://www.wsj.com/articles/shell-says-netherlands-plans-criminal-charges-over-nigeria-deal-11551446028>

⁸ <https://www.reuters.com/article/techint-brazil-corruption/italian-prosecutors-ask-for-techint-owners-to-stand-trial-in-brazil-graft-case-sources-idUSL5N26O599>; <https://ir.tenaris.com/board-directors/roberto-bonatti>

⁹ <https://www.reuters.com/article/techint-brazil-corruption/update-1-techint-owners-ordered-to-stand-trial-in-brazil-graft-case-idUSL8N2AD54S>; <https://brazilenergyinsight.com/2020/02/27/investigation-on-corruption-may-force-petrobras-to-take-out-techint-tenaris-from-the-favored-vendor-registration/>; <https://www.steelorbis.com/steel-news/latest-news/brazilian-prosecutors-accuse-techinttenaris-executives-of-corruption-1149341.htm>

percentage (0.5 per cent) of the value of contracts awarded to Confab. During the investigation, requests for mutual legal assistance (MLA) were sent by Italian authorities to countries including Argentina, Brazil, the Netherlands, Panama, Switzerland and the United States. The Brazilian *Lava Jato* Taskforce is investigating **Techint Engenharia e Construção SA** and Confab on allegations of bribery, money laundering and cartel formation.¹⁰ In Argentina, employees of Techint, which is partially Argentinian, were snared in the *cuadernos* (notebooks) probe. Two directors of the company confessed to paying bribes to speed up compensation payments for the nationalisation of **Sidor**, a Techint-controlled steel-making plant, by the Venezuelan government in 2008.¹¹ The CEO Paolo Rocca was charged in the case in 2018, but the charges were dismissed on appeal in 2019.¹²

In 2019, the Prosecution Office of Milan filed an indictment for bribery of foreign public officials against eight natural persons and two legal persons, **Microelettrica Scientifica S.p.A.** and **Mak Mart Italy S.r.l.**. The charges concerned alleged bribery of the Russian company JSC Metrovagonmash, controlled by the state-owned company JSC Russian Railways, to win supply contracts in the context of construction works for the Moscow underground. The bribes were allegedly paid through three intermediaries, a German citizen, a Finnish citizen and a Russian citizen resident in Panama.¹³ A case against the company **Pilosio** was brought by the Prosecution Office of Udine in 2018 and concluded with sanctions in 2019 concerning alleged bribery in Algeria in connection with the award of a tender by

the company Inerga, controlled by the state-owned Sonelgaz.¹⁴

In addition, with regard to the “Russiagate case”, Italian prosecutors said in July 2019 that they were investigating allegations of illegal Russian funding of the League political party.¹⁵ The investigation was triggered by media reports about a meeting that allegedly took place between three Russians and three Italians, including one of the League party leader’s close aides, where they allegedly discussed a secret oil deal.¹⁶ According to a transcript of an audio recording of the meeting published later by Buzzfeed, a Russian oil company was to sell fuel to Italian energy company Eni at a discount through intermediaries.¹⁷ The discount, worth around US\$65 million by Buzzfeed’s calculation, would be secretly channelled to the League, while the unidentified Russians apparently stood to make millions of dollars for themselves, the website reports.

In other jurisdictions, Italian construction company **CMC di Ravenna** faces charges in a multi-million-dollar corruption scandal in Kenya.¹⁸ In the United States, in 2020, the Securities and Exchange Commission settled a major corruption case with the Italian oil company **Eni**, based on allegations that it bribed Algerian politicians through a middleman who controlled a constellation of shell companies.¹⁹

Recent developments

¹⁰ <http://www.mpf.mp.br/pr/sala-de-imprensa/noticias-pr/executivos-ligados-ao-grupo-techint-sao-investigados-pela-lava-jato-por-participacao-no-cartel-de-empreiteiras>; <https://www.reuters.com/article/us-brazil-corruption/brazil-police-target-techint-in-car-wash-graft-probe-idUSKBN1X21JU>

¹¹ <https://www.batimes.com.ar/news/argentina/cuadernos-probe-charges-against-paolo-rocca-lifted.phtml>

¹² <https://www.bloomberg.com/news/articles/2018-11-27/tenaris-shares-plunge-after-billionaire-chairman-charged-on-case>; <https://www.batimes.com.ar/news/argentina/cuadernos-probe-charges-against-paolo-rocca-lifted.phtml>; <https://www.reuters.com/article/argentina-corruption/techint-ceo-charged-with-graft-in-notebooks-scandal-source-idUSL2N1Y21YM>

¹³ https://milano.corriere.it/notizie/cronaca/17_marzo_04/microelettrica-scientifica-buccinasco-tangenti-appalto-metro-mosca-78faa70e-00cf-11e7-b3e3-afa0190eaf5.shtml; Copy of indictment of the Prosecution Office of Milan N. 36535 /15 R.G.N.R. mod. 21

¹⁴ <https://www.echoroukonline.com/inerga-sonelgaz-is-accused-of-receiving-italian-bribes/>

¹⁵ <https://www.theguardian.com/world/2019/jul/11/matteo-salvinis-party-under-investigation-for-alleged-russian-oil-deal>; <https://www.bbc.com/news/world-europe-49004737>

¹⁶ <https://www.ilsole24ore.com/art/fondi-russia-lega-cosa-sappiamo-finora-caso-che-imbarazza-salvini-ACAmzeY>

¹⁷ <https://www.buzzfeednews.com/article/albertonardelli/salvini-russia-oil-deal-secret-recording>; <https://www.bbc.com/news/world-europe-49004737>; <https://www.nytimes.com/2019/07/10/world/europe/salvini-russia-audio.html>

¹⁸ <https://www.reuters.com/article/kenya-corruption/italys-cmc-di-ravenna-denies-any-wrongdoing-in-kenya-dams-scandal-idUSL8N24P21Y>

¹⁹ <https://www.sec.gov/enforce/34-88679-s>; <https://www.icij.org/investigations/panama-papers/oil-giant-eni-to-pay-millions-over-sham-contracts-in-panama-papers-bribery-case/>

In January 2019, new anti-corruption legislation, the Law 3/2019, entered into force, changing several aspects of the country's legislative framework. Crucially, it concerns the statute of limitations for corruption offences, which the OECD WGB had criticised over a period of 10 years.²⁰ According to the new law, the limitation period remains suspended from the delivery of a judgment by the court of first instance until the date of its enforceability (i.e. when it becomes final after the three levels of judgement). Especially relevant for cases of foreign bribery is that the statute of limitations is also suspended in cases of letters rogatory sent abroad, from the date of the decision ordering a letter until the requesting judicial authority receives the documentation (or six months after the date of ordering the letter).

Law 3/2019 also increased the minimum and maximum prison terms for several corruption-related offences, including foreign bribery.²¹ Other sanctions, such as prohibition from holding public office and a ban on entering contracts with public institutions, were also toughened,²² and the definition of "foreign public official" widened. The definition now includes individuals who perform functions and activities comparable to those performed by Italian public officials within a public international organisation, as well as to members of international parliamentary assemblies, members of international organisations, and officers and judges of international courts.²³

Transparency of enforcement information

No official criminal enforcement statistics are published, either by the Ministry of Justice or the courts or enforcement authorities. Statistics on MLA requests are also not available on the Ministry of Justice website.

The Supreme Court publishes on its website annual reports concerning the general approach to crimes against the public administration.²⁴ In October 2019, the Italian Anti-Corruption Authority, which also publishes annual reports, released a three-year report, "Corruption in Italy 2016-2019", assessing all the decisions issued by judicial authorities in corruption cases.²⁵

Court decisions in Italy are generally published in private databases requiring a subscription, costing, on average, €1,000-1,500 (US\$1,100-1,700) per year. The most common databases are *Dejure*,²⁶ *Pluris*²⁷ and *Il Foro Italiano*.²⁸ In addition, the Supreme Court hosts a publicly available database²⁹ with the decisions of the last five years.

Beneficial ownership transparency

Italy does not yet have a central register for beneficial ownership information, but is working to establish one, based on Legislative Decree n° 2019/125,³⁰ passed to comply with the 5th EU Anti-Money Laundering Directive.

A public consultation on the draft executive decree that would set up a beneficial ownership register closed on 28 February 2020.³¹ According to the latest draft, the new register will be publicly accessible, but will require payment of a fee or subscription,³² as does Italy's central company

²⁰ <https://www.oecd.org/corruption/statement-of-the-oecd-working-group-on-bribery-on-italy-implementation-of-the-anti-bribery-convention.htm>

²¹ <https://www.gazzettaufficiale.it/eli/id/2019/01/16/18G00170/sg>

²² <https://globalinvestigationsreview.com/benchmarking/the-practitioner%E2%80%99s-guide-to-global-investigations-fourth-edition/1212703/italy>

²³ <https://www.dlapiper.com/it/italy/insights/publications/2019/02/significant-changes-in-italy-on-anti-bribery-regulations/>

²⁴ http://www.cortedicassazione.it/cassazione-resources/resources/cms/documents/Report_I_reati_di_corruzione_Dott.ssa_Tripiccion.pdf

²⁵ <https://www.anticorruzione.it/portal/public/classic/Attivitadocumentazione/Pubblicazioni/RelazioneParlamento>

²⁶ <https://dejure.it/#/home>

²⁷ <http://pluris-cedam.utetgiuridica.it/main.html>

²⁸ <https://www.foroitaliano.it/>

²⁹ http://www.cortedicassazione.it/corte-di-cassazione/it/servizi_online.page

³⁰ https://www.gazzettaufficiale.it/atto/serie_generale/caricaDetttaglioAtto/originario?atto.dataPubblicazioneGazzetta=2019-10-26&atto.codiceRedazionale=19G00131&elenco30giorni=true

³¹ http://www.dt.mef.gov.it/it/dipartimento/consultazioni_pubbliche/consultazioni_in_corso/consultazione_registro/index.html

³² <https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-company-owners/5aml-d-patchy-progress/>

register.³³ The new Register of Beneficial Owners is being developed by the Ministry of Foreign Affairs, the Ministry for Economic Development and the Union of Chambers of Commerce, which already update and manage the company register. The register is run at local level by the Italian Chambers of Commerce.³⁴

Inadequacies in legal framework

While changes have been implemented to the statute of limitations in Italy, these changes will only be applicable to crimes committed after 2020, in line with constitutionally protected rights. This means all prior offences will be subject to the regulation which led to so many cases being thrown out. Whistleblower protection in the private sector is only provided by companies that voluntarily decide to implement anti-corruption plans, based on Legislative Decree 231/2001.

Inadequacies in enforcement system

The lack of a centralised database with information about foreign bribery investigations and cases remains a major problem for law enforcement. Currently, the Ministry of Justice itself is not able to request and collect information from the courts. A database would allow more effective coordination between enforcement agencies, prevent intelligence gaps and enable accurate monitoring of Italy's progress in tackling foreign bribery and other corruption offences.

There is a general lack of resources in the justice system, both for prosecutors and judges. The number of criminal proceedings is greater than the capacity of the judicial system, especially in some districts, which leads to disfunctions in prosecutorial decision making. In theory, a prosecutor must record every notification of a crime in a specific register, then investigate that crime, ending the inquiry either with a formal decision to charge the accused or with a request for dismissal filed with the court. In practice, however, considering the overload of criminal cases, prosecutors often fail to register notifications of crimes and do not take any investigative steps for many registered crimes.³⁵

Foreign bribery cases are often complex and there is insufficient training for investigators, prosecutors and judges.

Recommendations

- Publish foreign bribery enforcement statistics
- Improve the management and accessibility of information about investigations and prosecutions of foreign bribery cases (including plea bargain agreements)
- Ensure that the central beneficial ownership registry is publicly available at no cost
- Improve the definition of foreign bribery
- Extend whistleblower protection throughout the private sector and consider setting up incentives for reporting on irregularities
- Implement broader reform in the criminal justice system, including the appeal system, in order to alleviate the backlog of cases and speed up procedures
- Develop a more efficient follow-up system of criminal cases through a data web register, to help alleviate the backlog of cases
- Ensure appropriate resources and human resources in the court system
- Provide additional resources and training for investigators and prosecutors.

³³ <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Italy-2016.pdf>

³⁴ www.registroimprese.it

³⁵ <https://canestrinilex.com/en/readings/the-italian-public-prosecutor/>