



Italian legislation on organised crime, corruption and money laundering

Italy is the location of one of five criminal hubs in the EU, according to Europol. The Italian State has developed an extensive *corpus* of legislation and administrative measures to prevent, combat and disrupt the activities of criminal networks such as *Mafia*, *Camorra*, *'Ndrangheta*, and *Sacra Corona Unita*. Key elements of Italian law in this field are outlined below.

Specific rules on organised crime

Italian legislation against Mafia-type associations was most recently codified by [Legislative Decree No 159 of 6 September 2011](#), the so-called *Codice Unico Antimafia*. Criminal penalties apply to membership of a criminal organisation of three or more persons. Harsher penalties are applied under Article 416-bis of the Italian Penal Code in the case of a *Mafia-type unlawful association*¹. This is said to exist when participants use the power of intimidation of their association and of the resulting conditions of submission and silence to commit criminal offences, or to manage or control, directly or indirectly, economic activities and concessions. The promotion, direction, participation and running of such criminal organisations can be punished with heavy penalties which range from seven to 24 years imprisonment (in particular when there are aggravating circumstances such as in case of an armed organisation).

As a complementary measure it also foresees the confiscation of the means used to commit the offence, *and of the possessions that represent the price, the product or the proceeds of the said offence, or that constitute its employment*. Pursuant to Article 22 of the Anti-Mafia Code in some cases (such as with dispersed, stolen or alienated goods) this confiscation can be decided as a preventive measure by the President of the competent Court even before the first judicial hearing.

An issue which has also been debated at EU level is the *tough imprisonment* regime under article 41-bis of the Law on the penitentiary

system. By decision of the Minister of Justice, inmates can be cut off from their relatives and from their former criminal associates with strict limits to any form of communication with the outside world, on association or correspondence with other prisoners, and on meetings with third parties. According to the legislature and the judiciary, this regime is necessary to combat mafia crimes and protect civil society. Moreover, the [UN Working Group on arbitrary detention](#) acknowledged at the conclusion of its 2008 mission to Italy that the European Court of Human Rights has repeatedly stated that this form of detention does not amount to torture, inhuman or degrading treatment.

Investigatory bodies

Created in 1991, the National Anti-Mafia Office (*Direzione Nazionale Antimafia, DNA*) is the judicial coordinating body which enforces anti-mafia legislation. It comprises the National Anti-Mafia Prosecutor (*Procuratore Nazionale Antimafia*) and 20 deputy prosecutors. The DNA works in close coordination with the Anti-Mafia Investigation Office (*Direzione Investigativa Antimafia, DIA*) [which is part of the Department of Public Security](#) and comprises specialised personnel tasked with intelligence-gathering and pre-judicial investigations.

Establishing the DNA and DIA aimed to foster coordination between the various judicial offices in Italy, but at the same time preserve two fundamental constitutional principles. Under Article 112 of the Constitution, the public prosecutor has the duty to initiate criminal proceedings in all cases in which the criminal law is breached. Secondly, according to Article 101 of the Constitution, judicial offices, including prosecutors, have independence in their activities.

The head of the DNA has suggested in a statement to the CRIM committee that this model of administrative coordination could inspire similar practices in other EU countries

as well as at EU level, for example building on similar activities by Eurojust and OLAF.

Preserving rule of law in local government

Criminal organisations may try to infiltrate and interfere with the activities of local government and other elected bodies. If this happens, local administrators can be suspended by a judicial measure notified to the local Italian Government representative, the *Prefetto* (Article 59 of the Local Authorities Code – *Testo Unico Enti locali*).

In similar circumstances, elected members of local councils can be dismissed if there is a founded suspicion that the local decision-making process is affected or altered, directly or indirectly, by criminal organisations. If an inquiry confirms such wrongdoing, the Home Affairs Minister can obtain a decree dissolving the council and providing for new local elections (Article 143 of the Local Authorities Code). In the meantime, according to Article 141, special Commissioners are appointed to ensure the essential activities of the local council are carried on smoothly.

Corruption

Law No 86 of 26 April 1990 (amending the Italian Penal Code) is the most recent legislation dealing in particular with wrongdoing by public officials. The behaviour specifically criminalised is referred to in Articles 316 (Embezzlement by profiting from another's mistake), 316-bis (Misuse of public funds), 317 (Extortion), 318 (Bribery to obtain an act of a public office) and 319 (Bribery to a public servant to act contrary to their duty) of the Penal Code.

Articles 100 and 103 of the Italian Constitution foresee a specific administrative judiciary body, the *Corte dei Conti* (Court of auditors), which is responsible for the verification of the legitimate and efficient use of public money. Its decentralised offices verify the expenditure of regional and local public institutions.

In 2009, Italy ratified the [UN Convention against corruption](#) which covers both the public and private sector. Italy has also ratified the [Council of Europe Conventions on corruption in Civil law](#) and [Criminal law](#). The

Italian authority leading the fight against corruption, called for by the UN Convention, has been set up in the [Public Administration Department](#).

The Italian Parliament is currently debating a draft law² which would strengthen national legislation to the most advanced standards defined at international and European level³, in particular to meet the requirements of the [Council Framework Decision of 24 October 2008](#) on the fight against organised crime.

Money laundering

The EU's [third Money-laundering Directive \(2005/60/CE\)](#) was transposed by Italy in Legislative Decree No 109 of 22 June 2007. This measure has since been [complemented and amended by several additional acts](#). According to the Directive, financial institutions (banks but also other auditors, accountants and tax advisers, credit and financial institutions, lawyers and notaries, and other financial advisers) have to notify any suspicious financial transaction to the national [Financial Intelligence Unit](#) (within the Bank of Italy).

The Directive implements the standards set by the Financial Action Task Force ([FATF](#)) on anti-money laundering and terrorist financing. These standards are currently under revision and are likely therefore to be transposed shortly into EU legislation (through a revision of the Directive) and thereafter national legislation.

Endnotes

¹ See "[Legal frameworks and investigative tools for combating organised transnational crime in the Italian experience](#)", Giovanni Turone, 2006.

² See the text as adopted by the "Camera dei Deputati" and currently in the Senate, [Atto Senato n. 2156-B](#).

³ It will become enforceable before the Court of Justice from December 2014. On this subject see Valsamis Mitsilegas, "The third wave of third pillar law: which direction for EU criminal justice?", in *European Law Review*, 2009-34, pp 523-560.