**

***Ministry of Foreign Affairs and International Cooperation***

***Inter-ministerial Committee for Human Rights***

***Italy Reply to the request of Office of the UN High Commissioner for Human Rights pursuant to the open call for inputs of the Working Group on the issue of human rights and transnational corporations and other business enterprises on ‘Connecting the BHR and anti-corruption’***

***February 2020***

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Following to your query, Italian Authorities are in a position to provide the following information.

**Italian legal, institutional and operational framework to countering corruption**

Law No. 190/2012 constitutes the basic reference for national policies aimed at fighting corruption, bringing a comprehensive set of measures aimed to prevent and repress corruption and illegality in the public administration. It aligns the Italian legal system to the key provisions included in the main international legal instruments in force in this framework by the EU, OECD, CoE and above all the 2003 UN Convention against Corruption (UNCAC) and implements the recommendations addressed to Italy by the competent bodies according to evaluation procedures in force.

This Law has informed an intense and relevant legislative activity to reform the organization and the functioning of the Italian public administration in recent years, pursuing the objectives of improving the efficiency, the effectiveness and the costs of the administrative activity, not only through the identification of measures designed to affect the status of a public servant, but more through the use of instruments to implement a culture of evaluation, quality and transparency, simplification and digitalization of the public system.

Against this background, the Italian Anticorruption Authority (ANAC) is the independent administrative authority charged with the prevention of corruption in public administrations, subsidiaries and state-controlled enterprises. The Authority was established by the aforementioned Law, implementing Art. 6 of the UNCAC. Subsequently, Law No. 114/2014 transferred the mandate of the Authority for the Supervision of Contracts on Public Works, Services and Supplies (AVCP) to ANAC. As a consequence, ANAC is now responsible for the prevention of corruption in public administrations and state-controlled companies through: a) the implementation of transparency; b) the supervision of public procurement; and c) the promotion of integrity in the public sector.

By Law No. 190/2012, the legislator has also focused the attention on prevention tools, outlining a complex framework introducing new tools and pushing for a greater coordination among various institutional subjects involved in its implementation.

The prevention of corruption is based on a model of regulation that provides for planning and control activities, with a “cascade” planning model that affects all levels of government and that is based on four instruments (i.e. transparency, training, codes of conduct and risk-analysis), yet being used in the Italian public administrations. The National Anti-Corruption Plan (PNA) is the core of this planning model, and each public administration should adopt a Three-year Plan for the Prevention of Corruption (PTCP), using the PNA as the basis so that local authorities could be properly supported by the Prefects. Hence the PNA ensures that national and international strategies for the prevention of corruption in public administration are coherent, whereas the PTCP identifies specific risks of corruption in each administration and measures deemed necessary to prevent them. The PNA is subjected to an annual update with the inclusion of indicators and targets in order to make the strategic objectives measurable and to ensure the monitoring of potential divergences from these targets arising from the implementation of the PNA.

**References to anti-corruption in the 1st Italian NAP on BHR**

The 1st National Action Plan on Business and Human Rights for 2016-2021 is the final achievement of a multi-faceted activity of the Inter-ministerial Committee for Human Rights (CIDU) at the Italian Ministry of Foreign Affairs and International Cooperation, in line with the implementation of the “Guiding Principles on Business and Human Rights” unanimously endorsed by the UN Human Rights Council in 2011.

An ad hoc working group has been established, coordinated by CIDU and composed of representatives of several ministries and institutions, for the elaboration of the present Plan. Its contents have also emerged from wide consultations with experts, business representatives, trade unions and non-governmental organizations.

Several references are included to anti-corruption in its 1st edition as well as in the revised NAP released in 2018.

In relation to the **GP 3(a) - “Enforce laws requiring business to respect human rights, assess adequacy, address gaps”** - policies, legislative initiatives and implementation measures adopted by the Government as for the issue of administrative liability of entities are reported as follows: “Decree 231 of 2001 has introduced the direct liability of legal entities for specific offences (corruption, money laundering, bribery, fraud, etc.) providing for a special form of liability, which is administrative in nature but to be ascertained by a penal judge and according to criminal law procedures. In order to avoid incurring in liability, the entity shall first demonstrate that it has adopted a sound model of organization, management and control; and secondly, that it has established a mechanism/body entrusted with monitoring and supervising the compliance to the model. Law 231 is both preventive and punitive: the list of crimes falling under the application of the law has been extended over the time and it presently includes specific human rights abuses, among others, the practice of mutilation of female genitalia; child prostitution and pornography; trafficking in human beings and slavery. In 2015, new environmental crimes have been included (environmental disaster, environmental pollution, failure to decontaminate, etc.)”.

This has entailed, in the Planned measures foreseen in the NAP that one to: “2. Strengthen the role of the legality rating - primary competence of the Italian Competition Authority – with the aim of taking it into consideration in the elaboration of the ‘rating d’impresa’ - primary competence of the National Anticorruption Authority – with the aim of promoting the respect for human rights in all economic activities; […]”.

In the passage devoted to ‘The State-business nexus - Guiding Principle 4 - *States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence*. / Guiding Principle 5 - *States should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights*. / Guiding Principle 6 - *States should promote respect for human rights by business enterprises with which they conduct commercial transactions*.” the following information are provided:

“The Italian Anti-Corruption Authority (A.N.AC.) supervises and regulates the entire public procurement market in order to ensure compliance with: i) the principles of legitimacy and transparency; ii) the effective performance of contracts; iii) anti-corruption rules. In this regard A.N.AC. and the Italian Competition Authority signed a MoU in December 2014 to establish new criteria for the assignment of the legality rating to companies. In its procurement guidelines, A.N.AC. advises the contracting authorities to include the legality rating among the criteria used to select the most economically advantageous offer.

Italy has adopted the Legislative decree 19 April 2016, n.50, implementing the EU Directives, introducing a framework of a “socially responsible public procurement policy” and reputational requirements in public procurement awarding. With regard to companies directly or indirectly owned by the State, and following a joint effort with the Minister of Economy and Finance, in 2015 A.N.AC. issued guidelines on: i) public disclosure of corporate decision-making processes on the rotation of managers and executives; ii) establishment of new conflict of interest rules; iii) definition of risk areas and protection of whistle-blowers; iv) respect of the rights of workers involved.

Export Credit Agencies and Investment Insurance Agencies (ECAs) provide government-backed loans, insurance and guarantees to support business enterprises industrial projects abroad, especially with regard to complex and risky environment. The strategic role of these public agencies (SACE and SIMEST) make them more exposed to the risk of being associated or linked with human rights infringement: they both apply the OECD Recommendation on Common Approaches and Environmental Due Diligence and conduct risk analysis on environmental and social impact in their operations”.

This information has led to the formulation, among the concerned Planned measures, of the following one: “To achieve the goals set in Principles 4, 5 and 6, and within the overall framework of the implementation of EU directives, Italy will conduct the following activities to be jointly developed and monitored by CIDU and A.N.AC: 34. Within the framework of the monitoring mechanism set in the Plan (see par. V) give special attention to due diligence of business enterprises owned or controlled by the State, including the non-financial disclosure; 35. Promote, with a proactive role of the CIDU the respect of human rights for competing enterprises in all public model tenders and agreements with business enterprises for the purchase of goods and provision of services, with particular focus on i) enterprises operating abroad; ii) enterprises availing themselves of foreign suppliers; iii) foreign enterprises e with regard to the following subjects: anticorruption, non-financial disclosure, supply chain – including ex ante – environment, labour, non-discrimination.”.