

Italian Republic
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Ratification and enforcement of the following international instruments drawn up on the basis of art.K.3 of the Treaty on European Union :

- *Convention on the protection of European Communities' financial interests, done in Brussels on 26 July 1995;*
 - *First Protocol done in Dublin on 27 September 1996;*
 - *Protocol concerning the preliminary interpretation, by the Court of Justice of the European Communities, of said Convention, with attached declaration, done in Brussels on 29 November 1996;*
 - *Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union , done in Brussels on 26 May 1997;*
- and of the OCDE Convention on combating bribery of foreign public officials in international business transactions, with annex, done in Paris on 17 December 1997.*

Delegation to the government to regulate the administrative responsibility of legal persons and of bodies without legal personality

Art.1

(Ratification of international instruments)

1. The President of the Republic is authorized to ratify the following international instruments drawn up on the basis of art. k.3 of the Treaty on European Union : Convention on the protection of European Communities' financial interests, done in Brussels on 26 July 1995; First Protocol done in Dublin on 27 September 1996; Protocol concerning the preliminary interpretation, by the Court of Justice of the European Communities, of said Convention, with attached declaration, done in Brussels on 29 November 1996; Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union , done in Brussels on 26 May 1997 and OCDE Convention on combating bribery of foreign public officials in international business transactions, with annex, done in Paris on 17 December 1997.

Art.2

(Entry into force at the international level)

1. The international instruments which are referred to in article 1 are hereby fully enforceable starting from their entry into force, in pursuance of what is respectively provided for in each of them.

Art.3

(Embezzlement, extortion by colour of office, bribery and incitement to bribery of the members of the European Communities' bodies and of the officials of the European Communities and of foreign States)

1. After article 322 of the Criminal Code there shall be inserted the following:

“Art.322-bis. – (Embezzlement, extortion by colour of office, bribery and incitement to bribery of the members of European Communities’ bodies and of the officials of the European Communities and of foreign States).

The provisions of articles 314, 316, from 317 to 320 and 322, third and fourth paragraphs, shall also apply to:

- 1) the members of the Commission of the European Communities, of European Parliament, of the Court of Justice and of the Court of Auditors of the European Communities;
- 2) to officials and contracted agents within the meaning of the Staff Regulations of officials of the European Communities or the conditions of employment of agents of the European Communities;
- 3) any person seconded to the European Communities by the Member States or by any public or private body, who carries out functions equivalent to those performed by European Community officials or other agents;
- 4) to members and employees of bodies created on the basis of Treaties establishing European Communities;
- 5) to those who, within other Member States of European Union, carry out functions or activities equivalent to those performed by public officials or persons in charge of a public service.

The provisions of artt. 321 and 322, first and second paragraphs, shall also apply if the money or other advantages are given, offered or promised:

- 1) to persons which are referred to in the first paragraph of this article;
- 2) to persons carrying out functions or activities equivalent to those performed by public officials and persons in charge of a public service within other foreign States or public international organizations, when the offence was committed in order to procure an undue benefit for himself or others in international business transactions.

The persons indicated in the first paragraph are assimilated to public officials, when they carry out equivalent functions, and to persons in charge of a public service in all the other cases.

Art.322-ter – (Confiscation) – In the cases of conviction, or imposition of punishments upon request of the parties pursuant to art. 444 of the Code of Criminal Procedure, for any of the offences as per articles from 314 to 320, even if committed by the person who are referred to in article 322-bis, first paragraph, confiscation shall always be ordered of **anything** representing the price or the proceeds thereof, unless they belong to a person who has not committed the offence; if said confiscation is not possible, the confiscation of **anything** which the offender has at his disposal shall be ordered for a value corresponding to such price.

In the cases of conviction or impositions of punishment pursuant to article 444 of the Code of Criminal Procedure, for the offence as per article 321, even if committed as per art.322-bis, second paragraph, confiscation shall always be ordered of **anything** representing the proceeds thereof, unless they belong to a person who has not committed the offence; if said confiscation is not possible, the confiscation of **anything** which the offender has at his disposal shall be ordered for a value corresponding to said proceeds and, nonetheless, not inferior to that of money and of other advantages given or promised to a public official or to a person in charge of a public service or to other persons which are referred to in art.322-bis, second paragraph.

In the cases provided for in paragraphs 1 and 2, the judge, in the conviction shall also determine the sums of money or indicate the **things to be confiscated** as they represent the price or

proceeds thereof or as they have a value corresponding to that of such proceeds or price of the offence.

2. After article 640-ter of the Criminal Code there shall be inserted the following :

“Art. 640-quater. – In the cases provided for in articles 640, second paragraph, point 1, 640-bis and 640-ter, second paragraph, apart from the case in which the fact was committed by abusing of the quality of operator of a system, the provisions as per art.322-ter, if applicable, are complied with.

Art.4

(Misappropriation of public funds)

1. After art. 316-bis of the criminal code there shall be inserted the following :

“Art.316-ter. (Misappropriation of public funds). Unless the fact amounts to the offence as per art.640-bis, whoever, by using or producing declarations or false documents or documents containing false information, or by omitting compulsory information, unduly obtains, for himself or others, contributions, financial aids, soft loans or any other funds of the same kind, whatever their description, which are granted or assigned by the State, by other public authorities or by the European Communities, shall be liable to imprisonment for between six months and three years. When the sum unduly received is equal or inferior to 7.745.000 lire, only an administrative sanction providing for the payment of a sum of money from ten to five hundred million lire shall apply. The amount of said sanction shall not exceed the triple of the benefit obtained.

Art.5

(Modifications to articles 9 and 10 of the criminal code)

1. In article 9, third paragraph, of the criminal code, for the words: “to the detriment of a foreign country”, there shall be substituted the following : “to the detriment of European Communities, of a foreign country”.

2. In article 10, second paragraph, of the criminal code, for the words: “to the detriment of a foreign country”, there shall be substituted the following : “to the detriment of European Communities, of a foreign country”.

Art.6

(Modifications to articles 32-quater and 323-bis of the criminal code)

1. In article 32-quater of the criminal code, after the word “316-bis” there shall be inserted the following : “316-ter”, and after the word “322” there shall be inserted the following: “, 322-bis”.
2. In article 323-bis of the criminal code, after the word “316-bis” there shall be inserted the following: “,316-ter”, and after the word “322” there shall be inserted the following:”,322-bis”

Art.11

Delegation to the government to regulate the administrative responsibility of legal persons and of bodies without legal personality

1. The Government of the Republic is hereby enabled to issue , within eight months from the entry into force of this law, a legislative decree in order to regulate the administrative responsibility of legal persons and of companies, associations, or bodies without legal personality which do not carry out constitutional functions, in accordance with the following principles and guidelines:

a) providing for the responsibility as regards the commission of offences set forth in the Criminal Code, articles 316-bis, 316-ter, 317, 318, **319**, 319-bis, 319-ter, 320, 321, 322, 322-bis, 640, second paragraph, point 1, 640-bis and 640-ter, second paragraph , excluding the case in which the offence was committed by abusing of the quality of operator of a system.

[b) same as concerns offences against public safety

*c) same as concerns offences implying infringements **of prevention rules** against labour accidents and **sanitary conditions***

d) same as concerns the protection of environment]

e) providing that the entities **listed in** the first sentence of this paragraph shall be liable with regard to the offences committed, for their benefit or interest, by persons acting as representatives, directors or managers, “de facto”, or by persons exercising, even powers of management and control or by persons subject to the direction or control, of the said natural persons, when the commission of the offence has been made possible by the non- compliance with the duties connected with said functions; excluding the responsibility of those entities which are referred to in the first sentence of this paragraph when the offender has committed the offence exclusively in his own interest or in the interest of third parties;

f) providing for effective, proportionate and dissuasive administrative sanctions with regard to the entities provided for in the first sentence of this paragraph;

g) providing for an administrative pecuniary sanction not inferior to fifty million lire and not superior to three billion lire taking into account the amount of the proceeds of the offence and the patrimonial and economic conditions of the entity, with a view of fixing the amount of the sanction; providing that, when the fact is especially slight, the sanction to be applied shall not be inferior to twenty million lire and not superior to two hundred million lire; excluding [**the possibility to obtain the benefit of] paying a [sanction of a] reduced amount;**

h) providing that bodies shall be responsible for the payment of the pecuniary sanction **within the limit of their common fund or of their total assets.**

i) providing the confiscation of the proceeds or the price of the offence, even by means of a confiscation amounting to an equivalent value;

l) providing, in particularly serious cases, for the application of one or more of the following sanctions, in addition to the pecuniary sanctions:

1) Closing, even temporarily the factory or the place of business;

2) Suspension or revocation of authorizations, licences, or permissions instrumental to the commission of the offence;

- 3) Disqualification, even temporary, from carrying out the said activity and possible appointment of another person to carry out the said activity , as a substitute, when this is necessary in order to avoid damage to third parties;
- 4) Prohibition, even temporary, from dealing with the public administration;
- 5) Temporary exclusion from obtaining any allowances, fundings, contributions or aids, and possible revocation of those already granted;
- 6) Prohibition ,even temporary, from advertising goods and services.
- 7) Publication of the **judgement**;

m) providing that the administrative sanctions set forth in subheadings g), i), and **l)** shall only apply in the cases and for **the time expressly considered** and **with regard to** the offences set forth in subheading a), b), c) and d) committed after the entry into force of the legislative decree provided for in this article;

n) providing that the pecuniary administrative sanction set forth in subheading g) shall be reduced by one third to the half and providing for the non-applicability of one or more sanctions set forth in subheading l) as a consequence of the adoption by the persons indicated in the first sentence of this paragraph of a conduct ensuring an effective compensation or restoration with regard to the offence committed;

o) providing that sanctions set forth in subheading l) shall also apply in connection with provisional measures, expressly specifying the conditions required therefor;

p) providing, in case of infringement of duties and prohibitions **entailing the** sanctions set forth in subheading l), for imprisonment from between six months and three years for the natural person who has committed the offence; providing for the application of the sanctions set forth in subheadings g) and i) or, in the most serious cases: the application of one or more sanctions set forth in subheading l) other than those already inflicted, against the **entity** in the interest or for the benefit of which the infringement was committed; providing that provisions set forth under this subheading shall also apply when sanctions set forth in subheading l) were already applied **as** provisional measures pursuant to provisions set forth in subheading o);

q) providing that the administrative sanctions against the **entities** shall be applied by the judge having jurisdiction on the offence; providing that the provisions set forth in the criminal procedure code shall apply, if compatible, within the proceeding for the ascertainment of responsibility, providing adequate conditions of participations and defence by the **entities** in the **various** phases of the proceeding;

r) providing that the administrative sanctions set forth in subheadings g), i) and l) shall be time-barred after in 5 years from the commission of the offences provided for in subheading a), **b), c) and d)**; providing that **interruption** of the running of time shall be **governed** by the provisions of the civil code;

s) providing the establishment of a National Register for administrative sanctions inflicted against the subjects indicated in the first sentence of this paragraph **with no additional costs for the State's budget**;

t) providing for the right of shareholders, of members or of partners of **the entities listed in** the first sentence of this paragraph, whose administrative responsibility has been ascertained with regard to the provisions of subheadings a) to q), to withdraw from the company, the association or the body, unless those persons have given their consent or have carried out, even indirectly or in practice, management, control or administrative functions; providing specific mechanisms for the payment of their share without prejudice for any claim for damages mentioned in v) and z); regulating the terms and modalities for the exercise of said right and providing that the liquidation of the share following the withdrawal, occurs by an evaluation of said share according to art. 2289, 2° paragraph b, and art. 2437 of the civil code; providing that the liquidation of the share may take place even to the costs of said persons; in this case the withdrawing party is under the obligation, if the case provided for in subheading l), point 3), does not take place, to request to the President of the Court where the entities have their registered office, the appointment of a liquidator to whom will be given all the management powers connected with the activities which are necessary for the liquidation of the share, including the capacity to stand trial; the costs for the public finance of this sub-paragraph shall be charged to the section on arbitration and litigation costs of the Ministry of Justice;

u) providing that the shareholders action for damages against directors of legal persons and companies, of which the administrative responsibility with reference to what has been provided for from subheadings a) to q), has been ascertained, is decided by their shareholders meeting by a number votes cast of at least one twentieth of the social capital when this is inferior to five hundred million lire, and of at least a fortieth in all other cases; similarly regulating the cases of waiver or settlement of an action against directors;

v) providing that the ascertainment of the damage in the claim action for damages by the partner or a third person against the directors of the entities which are referred to in the first sentence of this paragraph, of which the administrative responsibility has been ascertained in accordance with subheadings a) to q), shall not be bound to the evidence of the existence of a direct chain of causation between the fact establishing the responsibility of the entity and the damage suffered; providing that this rule does not apply whenever the offence was committed by a person subject to the direction or control of a representative, director or manager, or by persons exercising, even “de facto”, powers of management or control, when the commission of the offence has been made possible by the non compliance with the duties connected with said functions;

z) providing that the rules of letter v) apply also when the action for damages is directed against the shareholder, member or partner of the entities mentioned in subheading a), who was consenting or has performed, albeit indirectly or “de facto”, functions of management, control or administration, before the fact that brought about the ascertainment of the responsibility of the entity;

2. for the purpose of sub – par. 1 “legal person” means entities endowed with legal personality, excluding the State and the other public **entities** which exercise public powers.
3. The Government is also enabled to consolidate provisions related to all the other laws of the State, as well as to enact the transitional provisions in the legislative decree provided for in paragraph 1.

Art.13
(Competent Authority)

The Ministry of Justice – General Directorate of Criminal Affairs, is appointed as the competent authority to the purposes provided for in article 11 of OCDE Convention on combating bribery of foreign public officials in international business transactions, made in Paris on 17 December 1997.

Art.14
(Exercise of the delegations)

1. The draft of the legislative decrees provided for in articles 11 and 12 shall be transmitted to the Chamber of Deputies and to the Senate of the Republic at least 90 days before the deadline for the exercise of the delegation. Parliamentary Commissions competent on the subject-matter shall express their advice within 60 days from the day in which said draft were transmitted. After this term, the legislative decrees may be adopted also without said advice.

Art.15
(Transitional provision)

1. Provisions set forth in article 322-ter of the criminal code, introduced by paragraph 1 of article 3 of this law, shall not apply to the offences thereby provided for, as well as to those indicated in paragraph 2 of said article 3, which were committed before the date of the entry into force of this law.

Art.16
Entry into force

1. This law shall enter into force on the day following that of its publication in the Official Journal.