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## **I. Justice System:**

*I.1 Independence of judges, prosecutors and court presidents.* According to Italian Constitution Judges are subject only to the law (art.101) and the judiciary order is autonomous and independent from any other power. The Superior Council of the Judiciary (SCJ) is chaired by the President of the Republic (art.104). In terms of power balance Italian justice system higher regulation can be considered a best practice. However in the functioning and decision process of the SCJ there is still a room for improvement in terms of criteria transparency and accountability. Even if the career evaluation presents wide margins of appreciation, it is necessary to increase the foreseeability of the decision-making process.

*II.2 Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal liability of judges.* The accountability of judges is a key-issue in Italy and many other EU MS. The transparency and accountability of public institutions decision process is a crucial indicator of democracy but when it concerns judiciary system it has to be balanced with the fundamental principle of independence. The current Italian system is based on a clear separation of disciplinary regime and ethical rules from legal liability of judges. The first is in charge of the SCJ and this is in principle a best practice even if with the aforementioned concerns. The legal system governing the liability of judges is based on l.117/1988 providing that anyone who suffered illegal damages as a result of a behavior, an act or a judicial measure put in place by a judge/prosecutor with willful misconduct or gross negligence in the exercise of his functions or for denial of justice can take action against the State to obtain compensations. In any case the activity of interpreting rules of law or evaluating the fact and evidence cannot give rise to liability. In case of criminal responsibility, according to the article 11 Code of Criminal Procedure, to guarantee the impartiality of the judgment, the proceedings in which a magistrate assumes the quality of a person under investigation, accused or offended or damaged by the crime, which would be attributed to the competence of a judicial office included in the district of the court of appeal where the magistrate exercises (or exercised) his functions them at the time of the fact, turn under the responsibility of the judge, equally competent for the matter, who is based in the main venue of the closer court of appeal district. This system can be considered a best practice in terms of balance between independence and accountability/responsibility of judiciary order.

## **II. Anti-corruption framework**

### *C. Repressive measures:*

#### *26. Criminalisation of corruption and related offences*

The holistic approach to the fight against corruption of the l.190/2012 can be envisaged in the repressive framework, namely in the combination between the “traditional” offences of “bribery” and “corruption” and the new ones (undue inducement to give or promise money or other benefits and trafficking in illicit influences). The choice of the legislator to maintain the historical criminal option of the anticipation of the criminal intervention threshold to the mere promise of utility is certainly to

be considered a best practice. The criminalization of the danger of the sale or abuse of the function can be appreciated because of the synergy with the prevention of the public malpractice. Similarly, the choice of the Italian legislator to release the repression of corruption from the identification of a specific "act of the office" in favor of criminalizing the abuse or the sale of the public function can be considered a best practice. The focus on the function exercised lightens the procedural burden linked to the proof of illicit conduct. At the same way, a best practice can be considered the choice of the 2012 legislator to provide for an intermediate case between corruption and public extortion (the aforementioned undue induction pursuant to Article 319 *quater* of the Criminal Code) and to punish the private who has been persuaded by the public official to promise or give money or other benefits, overcoming the taboo of absolute non-punishment of the extorted private individual. In view of the swot analysis of the repressive system of corruption in Italy, however, it must be noted: 1. the difficulty of distinguishing between extortion by coercion, undue induction and corruption; 2. the difficult application of trafficking in illicit influences. This latter case, in fact, is based on the unlawfulness of the intermediation between the private and the public official. However, in the absence of lobbying regulation, the benchmark of lawfulness of mediation activities is missing and therefore the possibility of distinguishing between lawful and illegal/criminally relevant lobbying.

(4942 char.)