

# Italy Reinforces Its Criminal Legal Framework to Target Crimes Affecting the Interests of the European Union

July 31, 2020

On July 30, 2020, Italian Legislative Decree no. 75 (the “Decree”) went into effect, introducing amendments to the Italian Criminal Code (“I.C.C.”) and a new set of criminal offences in the context of corporate liability under Legislative Decree no. 231 of June 8, 2001 (“Decree 231”), among which a number of tax crimes.<sup>1</sup>

The Decree implements Directive (EU) 2017/1371 (known as the “PIF Directive”) aimed at tackling fraud and other illegal activities affecting the financial interests of the European Union by further harmonising criminal law regulations among Member States.

In sum, the Decree:

- includes a new set of offences against public authorities to the list of crimes that trigger corporate liability under Decree 231, in addition to tax offences;
- increases penalties for a number of criminal offences negatively affecting the financial interests of the European Union;
- introduces criminal liability for embezzlement and all bribery offences involving non-EU public officials to the extent they may negatively affect the financial interests of the European Union;
- introduces criminal liability also for fraud committed against public entities of the European Union;
- restores criminal liability for serious customs offences and increases related penalties;
- amends the rules on the control of community aid for the production of olive oil.

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<sup>1</sup> For further information, see Cleary Gottlieb Alert Memorandum, Italy Enlarges Corporate Criminal Liability to Encompass EU VAT Frauds (July 27, 2020), available at <https://client.clearygottlieb.com/72/1803/uploads/2020-07-27-italy-enlarges-corporate-criminal-liability-to-encompass-eu-vat-frauds.pdf>.



The Decree expands the list of crimes that may trigger liability for companies under Decree 231, including:

- fraud in public procurement
- abuse of office (art. 323 I.C.C.), embezzlement (art. 314, paragraph 1, C.C. and art. 316 I.C.C.) to the extent they may negatively affect the financial interests of the European Union;
- fraud (art. 640, paragraph 2, no. 1 I.C.C.) and computer fraud (art. 640-ter I.C.C.) against European public entities;
- agricultural fraud (Law No. 898/1986) as well as smuggling (D.P.R. 43/1973) in order to challenge misappropriation or wrongful retention of funds or assets coming from the EU or EU-managed budgets.

The Decree also introduces various amendments to the Italian Criminal Code.

Specifically, it increases penalties for individuals responsible for the below criminal offences to the extent they negatively affect the financial interests of the European Union and related damages or profit are greater than €100.000:

- embezzlement (art. 316 I.C.C. 316-ter);
- undue receipt of funds (art. 316-ter I.C.C.);
- undue solicitation to give or promise money or value committed by a public official (art. 319-*quater* C.C.)

Furthermore, the Decree extends criminal liability to embezzlement and all bribery offences involving foreign public officials to the extent they negatively affect the financial interests of the European Union, as well as fraud committed against public entities of the European Union, and not only against the Italian State.

With respect to international trade, the Decree also restores criminal liability for customs frauds in excess of €10.000 and introduces aggravating factors for the offence of smuggling in case the amounts exceed certain specified thresholds.

Amendments have also been made to the rules concerning the control of Community aid for the production of olive oil (Law No. 898/1986). The Decree provides for an increased penalty in case of disclosure of false data or information in order to obtain undue aid, premiums, compensation, refunds, contributions or other payments coming in full or in part from the European Agricultural Guarantee Fund

or the European Agricultural Fund for Rural Development.

Since under Decree 231, the adoption and effective implementation of a compliance model suitable (“adequate”) to prevent crimes of the same kind as that committed may shield from liability, companies should carefully review their existing programs to reflect all the new updates to Decree 231 and set up an adequate management system to prevent the new offences included therein.

In light of these developments, for example, companies should consider to update policies and procedures to ensure that any activity requiring interaction with EU public entities is subject to robust anti-fraud controls and to issue training or other internal guidance to individuals who are exposed to the risk of commission of the new offences included.

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