

## Compliance Today – January 2022 The differences and similarities between American and Italian healthcare fraud, waste, and abuse laws: Part 3

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Part 1 of this article series, published in the November 2021 issue of Compliance Today, outlined in general the American and Italian healthcare systems. Part 2, published in the December 2021 issue, outlined America’s primary healthcare fraud laws. Part 3 of this series outlines the Italian healthcare enforcement regime, criminal law, and the Anti-Corruption Act.

Italian enforcement against fraud and corruption, including in the healthcare field, has traditionally been reserved to criminal courts, with no specific effort to coordinate or combine these actions through civil remedies. In light of the largely state-funded healthcare system in Italy, government corruption is in the foreground of efforts to detect and prevent fraud, waste, and abuse in healthcare. Egregious scandals erupted in Italian healthcare sectors, especially in the 1990s. Perhaps the most notorious case involved Dr. Duilio Poggiolini, the Ministry of Health’s general manager of the pharmaceutical department whose fortune included gold, jewels, and paintings of enormous value.<sup>[1]</sup> Poggiolini was charged and arrested for using his position for personal benefit, and his sentence of seven and a half years in prison was reduced on appeal.<sup>[2]</sup> The scandal surfaced during an investigation, called “mani pulite,” by a pool of public prosecutors operating out of the Milan criminal court. They were able to pierce the veil of silence that long protected government corruption. While its success resulted from significant cooperation and solidarity among the prosecutors, their coordination was not officially structured as an institutional team.

### Italy’s criminal law

Italian criminal law always has included crimes of government corruption. The Italian Criminal Code has been amended periodically, not only to increase the sanctions (as, for example, in the latest “Spazza-Corrotti” amendments in 2019), but also with the aim of criminalizing more subtle corruption than an outright offer of cash in exchange for favorable treatment by a public official.

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The single most important criminal statute in Italian anti-corruption law is no. 190/2012 of November 28, 2012, titled “Provisions for prevention and repression of corruption and illegality in the public administration” (the Anti-Corruption Act).<sup>[3]</sup> First, the Anti-Corruption Act identified evolving and more nuanced conduct in order to combat ever more sophisticated corruption phenomena, such as the following:

- **Corruption forced by a public official** (“concussione”): Section 317 of the Italian Criminal Code has been amended so that this type of corruption now applies to public officials and is no longer limited to persons in charge of a public service.<sup>[4]</sup> The revised Section 317 of the Criminal Code now sanctions both giving or promising money or other benefits and is no longer limited to the receipt of the inducement. The minimum period of imprisonment has been increased to six years from four years.
- **Corruption related to the exercise of official functions** (“corruzione per l’esercizio della funzione”), pursuant to Section 318 of the Italian Criminal Code, sanctions the acceptance by a public official, in connection with the exercise of their functions or powers, of an undue sum of money or benefit. This provision is typically interpreted as applicable regardless of whether the official actually performs or refrains from a public duty and has been extended by the Anti-Corruption Act to the public official’s “functions” (whereas before it was strictly linked to the public official’s “office”). The period of imprisonment following conviction has been increased to the current range of one to five years.
- **Inducement to give or promise undue benefits** (“induzione indebita a dare o promettere utilità”). The offence of corruption through inducement, which previously appeared under Section 317 of the Italian Criminal Code, has been completely recodified under the new Section 319-quarter. It sanctions public officials or persons in charge of a public service who induce a person to pay an undue sum of money or other benefit, as well as persons actually giving or promising such benefits to public officials or persons in charge of a public service.
- **Trade of undue influence** (“traffico di influenze illecite”). A new criminal offence has been introduced under Section 346-bis of the Italian Criminal Code. It sanctions persons who take advantage of their existing or alleged relationship with a public official or a person in charge of a public service in order to receive an undue sum of money or other monetary benefits. The statute applies when such mediation is exercised to obtain a performance contrary to public duties, or an omission or postponement of any public duties. The sanction for violations is imprisonment of one to three years.

Additionally, the Anti-Corruption Act also has introduced criminal law sanctions for corruption among private parties (“corruzione tra privati”). Before the enactment of the Anti-Corruption Act, only conduct involving public officers was criminally relevant. The Anti-Corruption Act introduces an entirely new crime of corruption where both parties are private parties. Paragraph 1 of new Section 2635 of the Italian Civil Code applies to companies’ directors, general managers, or executives having the task to draw up financial documents, including auditors and liquidators. If upon receipt or promise of money or other benefits they breach the duties assigned to them and damage the company, they are subject to criminal sanctions (namely imprisonment of one to three years). In addition, as per Paragraph 2, companies’ employees who, under the direction of the above subjects, engage in the same conduct (upon receipt or promise of money or other benefits that breach their assigned duties and damage the company) also risk imprisonment of up to one year and six months. Persons who give or promise any such benefits to any of the above-mentioned actors can also be sanctioned, according to Paragraph 3.

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