



Council of the European Union
General Secretariat

**Interinstitutional files:
2023/0135 (COD)**

Brussels, 12 May 2025

WK 6019/2025 INIT

LIMITE

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WORKING DOCUMENT

From: General Secretariat of the Council
To: Delegations

Subject: Anti-corruption Directive
- Note from the Italian delegation, including a press release

Please find attached a note from the IT delegation.



**Rappresentanza Permanente d'Italia
presso l'Unione Europea**

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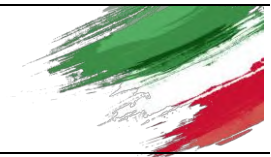
Brussels, 9 May 2025

WORKING PAPER

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WORKING DOCUMENT

From: The delegation of Italy
To: Delegations, Presidency
Doc. WK 5726/2025 INIT



Subject: Proposal for a Directive on combating corruption

The Italian delegation thanks very much the Presidency for the work already done and for carefully considering the positions of the Member States.

With regard to the trilogue ongoing and following the note of 9 April 2025, Italy intends to inform the other Member States that on 8 May 2025 the Italian Constitutional Court has announced its decision on the questions of constitutional legitimacy (raised by fourteen courts, including the Court of Cassation), of the repeal of the offence of abuse of office by Law No. 114 of 2024. We attach the Constitutional Court's press release to this note for your kind consideration.

The Court held that only the questions raised with regard to the obligations arising from the United Nations Convention against Corruption (the so-called Merida Convention) were admissible.

On the substance, the Court declared these questions unfounded, holding that: there is no obligation, under the Merida Convention, to provide for the criminalisation of the offence of abuse of office; there is no prohibition, under

the Merida Convention, to abrogate such offense, where it already existed in national law.

In view of the aforementioned constitutional decision, as well as all the reasons already set out in the note of 9 April 2025, **Italy firmly reiterates its request to keep the criminalisation of abuse of office as optional and non-mandatory. Keeping the wording of Article 11 on the offence of “abuse of functions” as in the General Approach, constitutes a red line.**

As already stated several times, we believe that the text of the General Approach, providing for optional criminalisation of the abuse of functions, is very well balanced and fully respects national specificities. The ‘may’ clause would allow Member States to implement the directive in accordance with their national legal systems: in our opinion, this flexibility is enshrined in the principle of minimum harmonization in substantive criminal law.

It is important to highlight that an EU mandatory provision of criminalisation of the abuse of functions would have a strong negative impact on our national judicial system, on our public administrations’ activity and ultimately on the certainty of law.

In conclusion, we oppose any amendment that could result in the mandatory criminalisation of the offence of abuse of functions, even if the scope of the provision were to be restricted. The Italian position on the entire text of the directive proposal depends on the result of negotiations on this point.

We have great confidence in the Presidency's action and we insist that the Presidency defends the General Approach.



Ufficio comunicazione e stampa della Corte costituzionale

Comunicato dell'8 maggio 2025

NON È INCOSTITUZIONALE L'ABROGAZIONE DEL REATO DI ABUSO D'UFFICIO

In esito all'udienza pubblica svoltasi ieri, la Corte ha esaminato in camera di consiglio le questioni di legittimità costituzionale sollevate da quattordici autorità giurisdizionali, tra cui la Corte di cassazione, sull'abrogazione del reato di abuso d'ufficio ad opera della legge numero 114 del 2024.

La Corte ha ritenuto ammissibili le sole questioni sollevate in riferimento agli obblighi derivanti dalla Convenzione delle Nazioni Unite contro la corruzione (la cosiddetta Convenzione di Merida).

Nel merito, la Corte ha dichiarato infondate tali questioni, ritenendo che dalla Convenzione non sia ricavabile né l'obbligo di prevedere il reato di abuso d'ufficio, né il divieto di abrogarlo ove già presente nell'ordinamento nazionale.

La motivazione della sentenza sarà pubblicata nelle prossime settimane.

Roma, 8 maggio 2025