



Ministero della Giustizia
Dipartimento per gli Affari di Giustizia
Direzione Generale della Giustizia Penale
Ufficio I – Affari Legislativi ed Internazionali
Via Arenula, 70 – 00186 Roma – Tel.+39 (0)6 68852320–68897520 Fax +39 (0)6 68897359
Il Direttore

Modelos comparados de Responsabilidad Penal de las Personas Juridicas

El delito de coecheo

Lorenzo Salazar

Law in practice 2: cases under investigations

- **“Oil for food”**: 17 ongoing trials in Milan (2 of which led to a verdict of guilty) (Italian Courts have stated that the incrimination of international corruption is of application in such a case)

Law in practice 2: cases under investigations

- **Total Sa:** the French company is the target of an investigation for alleged bribery of the local government of Basilicata in relation to a bid for oil-drilling contracts;

Law in practice 2: cases under investigations

- **Cantieri Navali Vittoria:** the italian shipyard company is alleged to have used an Italian middleman, a Councilor for Tourism in the Lombardy Region, to pay bribes to Eritrean public officials in order to obtain an order for eight ships;

Law in practice 2: cases under investigations

- **Alstom SA:** in 2008 a Milan court convicted a former executive of Alstom SA and two Alstom subsidiaries. The court found that the US-based Alstom Power had ordered the bribes and Swiss subsidiary Alstom Prom AG had laundered the funds through Switzerland;

Law in practice 2: cases under investigations

- **Snamprogetti Netherlands, Eni SpA**, the joint venture **TKSJ**: the activities of the TKSJ in Nigeria have been under investigation in France, Nigeria, the UK, and the US. Milan prosecutors regarded an investigation to its activities in Nigeria;

Law in practice 2: cases under investigations

- **Veolia Environnement:** in Milan in 2001, a senior executive in Veolia's water division (before Vivendi) was convicted and received a prison sentence for bribing the President of the Milan city council.

Law in practice 2: cases under investigations

- **Siemens AG:** it faced a Milan court judgement in 2004 concerning the Enelpower case. (see Trib. Milano 22-09-2004).

Law in practice 2: cases under investigations

Bribery investigations in Italy relating to the medical sector:

- **AIFA (Italian Agency for Pharmaceuticals):** payments made by lobbyists on behalf of foreign pharmaceutical companies to officials of the AIFA;

Law in practice 2: cases under investigations

Bribery investigations in Italy relating to the medical sector:

- **Immuncor:** this company is under investigation both in Italy, since 2004, and in the US;

Law in practice 2: cases under investigations

Bribery investigations in Italy relating to the medical sector:

- **UDI (United Defense Industries Inc.):** the US company is reportedly under investigation both in Italy and in the US in connection with allegations about its activities in Italy;

*Law in practice 2: cases under
investigations*

*Bribery investigations in Italy relating to the
medical sector:*

- **GlaxoSmithKline:** illegal payments by this company to doctors who agreed to prescribe its products (see **Corte di Cassazione, sez. VI penale, 28-8-2008, n. 34417**).

Supreme Court sentences

- ✓ **Corte di Cassazione sez. VI Penale 2 ottobre 2006, n. 32627** establishes that *judge is not able to impose compulsory adoption of models of the agency's organization when urgent measures are revoked.*

Supreme Court sentences

- ✓ The Supreme Court (**sez. VI, 22 aprile 2004, n. 18941**) has established that the provisions of the Decree No. 231 are **not of application in front of individual company.**

Supreme Court sentences

- ✓ **Corte di Cassazione sez. VI Penale, 17 September 2009** has affirmed very strict conditions, for the legal person which has not adopted the organisational and management model, in order to exclude its liability only when a person in leading position has acted in his own sole interest or that of third parties (art. 5.2) (**reversal of the burden of the proof concerning the adoption of the “model”**).

Supreme Court sentences

✓ **Corte di Cassazione sez. VI Penale, 7 April 2009** has reaffirmed that Decree No. 231 provides a legal person's independent (and not any more “ancillary”) liability for crimes committed in its interest underlining that, unlike the ordinary regime provided for by the criminal code, **confiscation** (also of the equivalent value) of proceeds of crimes **is always mandatory against the legal person.**

Supreme Court sentences

- ✓ **Corte di Cassazione S. U. Penali, 2 July 2008** has affirmed that the notion of price or the profit, functional to the confiscation, is to be established in connection with the strict economic advantage derivate from the crime (see artt. 19 and 53, Decree 231).

Case Law on “Organisational Models”

- Legal person’s liability is excluded when the crime is committed by persons in leading position in conflict with the (efficient) organisation model adopted (Trib. Milano, 17-11-2009).

Case Law on “Organisational Models”

- The legal person has a positive obligation to adopt and adapt the organisational models, in order to avoid situations of risk, when an offence involving the legal person is discovered (Trib. Milano, 28-04-2004)