



Human &
Environmental
DEVELOPMENT AGENDA

THE
CORNER
HOUSE

Mr. Drago Kos

Chair

Working Group on Bribery in International Business Transactions
OECD

Rome, 1st April 2022

Re: Upcoming CSO consultation within Italy's Phase 4 Peer Review – additional documentation concerning procedural issues of the Opl245 Appeal trial in Milan

Dear Mr. Kos,

In the run-up to the consultation with CSOs scheduled in Milan on April 5th - which will be attended by ReCommon and Global Witness, among others - as part the on-site visit being conducted by Germany and United States' representatives in the context of the Phase 4 Peer Review of Italy under the OECD Anti-Bribery Convention, , and as a follow-up on our previous submission to the Working Group on Bribery, we share with you herewith a complaint – Annex 1&2 - filed today by ReCommon to the Chief Prosecutor of the Supreme Court of Cassation in charge of monitoring the correct behaviour by Italian prosecutors, according to the Judiciary Code.

We request that the attached documentation be shared as soon as possible with all members of the Working Group on Bribery and in particular with the lead examiners of Italy. In this regard we provide an in-house translation into English of our complaint.

Through this complaint we contest the recent decision by the Prosecutor General of the Appeal Courts of Milan, Ms. Francesca Nanni, to not allow prosecutor Fabio De Pasquale to lead the Appeal against the decision of the First Instance Court to dismiss charges against Shell, Eni and others over alleged international corruption relating to the OPL 245 deal. Dr de Fasquale was in charge of the investigation and the first instance trial, as already detailed in our previous submission to the WGB.

We regard the decision by the Prosecutor General as unlawful on procedural ground, given that serious reasons of convenience were not properly considered. We have called on the Chief Prosecutor of the Supreme Court to promptly act in order to ensure that the prosecution in the Opl245 appeal trial be conducted fairly and in an unbiased manner according to the spirit and the letter of the OECD Convention against Bribery.

We would like to recall that, in its Phase 3 review of Italy, the OECD Working Group recommended that Italy establish specialised divisions in Italian Public Prosecutor Offices focused just on tackling international economic and financial crimes. Subsequently, Italy took some positive steps through the creation of an "Office of European and International Affairs" in the public Prosecutor Office of Milan. However to date such an office has no corresponding division in the General Prosecutor Office at Milan Appeal Courts, thus undermining progress achieved so far.


As an example, the selection of prosecutor Ms. Celestina Gravina to lead prosecution in the abbreviated appeal trial of two intermediaries involved in the Opl245 occurred already on exceptional grounds by not following the ordinary procedure of assigning a prosecutor in charge of economic crimes. In this regard we would like to recall that Ms. Gravina, in her conclusion statement on the case, in order to justify her request of acquittal of the two defendants stated in court that “the [prosecutors’] positions that have led to this enormous deployment and waste of resources must be investigated in depth” - see Annex 3, official transcript in Italian of hearing 22.03.2021 court case n. 4479/19 R.G., p.23.

Without getting into the merit of the case, given that an appeal is pending and due to start on 19th July 2022, while sticking to mere procedural issues, we strongly encourage the WGB and leading examiners of Italy’s Phase 4 peer review to ask the Italian government, as well as the General Prosecutor of the Supreme Court and the General Prosecutor of the Appeal Courts of Milan, to clarify how the recent appointment of Ms. Celestina Gravina as prosecutor in the main Opl245 appeal trial in Milan accords with the OECD’s Phase 3 recommendation that prosecutors should be drawn from a specialised economic crimes unit. We hope that you will promptly adopt our suggestion and act accordingly.

With our best regards,



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