

## COVERING NOTE

Complaint under Article 5 of the OECD Anti-Bribery Convention — ref. DEN-OCSE-LSM-2026/09, filed on 26 August 2026

Supplement to Annex F.2: the reasons for the judgment of the Italian Court of Cassation, Sixth Criminal Section, no. 34812/2026, De Pasquale and Spadaro (hearing of 18 June 2026, filed on 29 September 2026)

ADDRESSEES. To the OECD Secretariat — Anti-Corruption Division, Directorate for Financial and Enterprise Affairs; to the Chair of the Working Group on Bribery in International Business Transactions; to the members of the Bureau; to the Delegations to the OECD to which the complaint was transmitted; to the Permanent Representation of Italy to the OECD; and, for information, to the organisations that signed the complaint of 9 June 2025.

ANNEXES. F.2/a — Official text of the judgment, 41 pages, with the Registry's certificate of filing dated 29 September 2026. F.2/b — Complete English translation, unofficial, with a translator's note; the Italian text prevails.

REFERENCES. Page numbers in brackets without further indication refer to the official text of the judgment; the translation gives them in square brackets. "App." is the judgment of the Court of Appeal of Brescia of 16 October 2025, no. 1375 (Annex F.1). Paragraphs marked § are those of the complaint. This note was written in Italian, and its quotations are verbatim in the Italian text; here they are given in English, those from the judgment in the words of the translation at Annex F.2/b. Where the Court reports the words of others, this is stated.

Milan, 9 October 2026

### I.

On 5 March 2021 Fabio De Pasquale and Sergio Spadaro, the prosecutors in the OPL 245 trial — which the judgment calls the Eni-Nigeria trial — wrote to the Chief Public Prosecutor of Milan, Francesco Greco, and to the Deputy Chief Prosecutor, Laura Pedio. Their colleague Paolo Storari, who with Pedio herself was in charge of the connected proceedings on the so-called false conspiracy, had asked them to bring into the trial, which had reached its final hearings, certain records and documents from those proceedings. The prosecutors informed the two heads of the Office of their assessment that the material should not be acquired, and referred the decision to them (p. 32). The Chief Public Prosecutor has stated — the Court takes this from the appeal judgment — that he received from the prosecutors a memorandum "containing a detailed examination of the situation" and that he "entered it in the register of correspondence (protocol)" (p. 32). The judgment mentions no other written communication from them to the heads of the Office, so that this memorandum is, in all likelihood, the communication of 5 March. Twelve days later, on 17 March 2021, the Tribunal of Milan acquitted all the defendants in OPL 245 (§ 1).

For five years (§ 38) that communication was treated as a refusal: so it was for the charge and for the judges of Brescia (pp. 2 and 34), and so the complaint itself called it, using the charge's own word (§ 30). On that reading — and, for the Bigotti video, on the reading of a delay — De Pasquale and Spadaro were convicted of refusal to perform official acts, Article 328 of the Criminal Code, by the Tribunal of Brescia on 8 October 2024 and by the Court of Appeal of Brescia on 16 October 2025. On 18 June 2026 the Court of Cassation quashed the appeal judgment without remand “because the fact does not exist” (p. 41); on 29 September 2026 it filed its reasons.

The complaint recorded, at Annex F.2, that the operative part of the judgment was known and final and that its reasons did not yet appear to have been filed. This note supplements that annex: it transmits the official text and a complete English translation, and offers a reading of them — what the Court decided, on what grounds, what it did not decide, what follows for the questions raised by the complaint — followed, at the end, by what the facts documented in the complaint add to it. On 11 September 2026 the Chair of the Working Group stated that the Group and Italy's lead examiners will consider the complaint in December 2026, together with Italy's follow-up report; the author indicated that until then he would send nothing further, save for new and relevant facts. The reasons for this judgment are a fact of that kind. The Phase 4 report had ruled out that the trial of the prosecutors was executive interference, noting that “this process has yet to run its course”; and the Working Group had undertaken to examine the question raised in 2025 once that process was concluded (§§ 4, 37 and 42).

## II.

The operative part is at p. 41: “Quashes the judgment under appeal without remand, because the fact does not exist. Declares that the civilly liable party, the Presidency of the Council of Ministers, lacks standing to be sued. Revokes the civil-law rulings”.

A reader who is not an Italian lawyer should be told three things. Among the formulas by which an Italian criminal court acquits, “the fact does not exist” is the one that denies the offence at its root. Here it does not mean that proof is lacking, nor intent, nor that the act was justified: it means that the conduct charged, as established, does not correspond to the offence described by the law. The Court makes this clear at the outset: the issue “concerns legality in criminal law and the statutory definition (typicality) of the offence” (p. 15); the review covers the three objective elements of the offence — an act that was due, a refusal, the undue character of the refusal (p. 16) — and none of the three is made out. The judgment is quashed without remand: no court will have to return to that fact. The revocation of the civil-law rulings cancels the compensation awarded to the only civil party, Gianfranco Falcioni, which the Court of Appeal had limited to non-pecuniary (moral) damage “arising from loss of defensive *chances*” (p. 2); and the Court held that an action for damage caused by an offence committed by a magistrate in the exercise of his functions lies against the Minister of Justice, not against the Presidency of the Council of Ministers, which had been joined in Brescia as the civilly liable party (pp. 39-40).

Before the Court of Cassation the Deputy Prosecutor General asked for the judgment to be quashed without remand; the State Attorney General's Office (Avvocatura Generale dello Stato), for the Presidency of the Council of Ministers, denied — as the Court

summarises — that the offence existed “in the abstract and in concrete terms” (p. 13) and insisted that the grounds of appeal be upheld; only the civil party asked for the appeals to be dismissed (p. 1). At the last instance, therefore, none of the public parties defended the convictions. The fact must be recorded in full, because it cuts both ways: it says that, in the end, the State did not support that charge; and it leaves intact the question of how the charge could stand for five years and through two levels of judgment on the merits.

### III.

The convictions rested on reasoning which the Court summarises as follows: a procedural act which, “for systemic reasons linked to the purpose of the trial, to the sacredness of its fact-finding function, to the principle of equality of the parties and to the adversarial principle, ought to have been performed in any event, in all cases, without delay”; an obligation of “self-evident mandatory character”, whose source had been identified “essentially in Articles 358 and 430 of the Code of Criminal Procedure” (p. 17). The Court examined its propositions of law and rejected them one by one; as to the weight of the papers and the video, it held that the reasoning of the appeal judgment did not stand. Its words are worth quoting, because they are themselves the judgment.

The first proposition concerns Article 358 of the Code of Criminal Procedure, under which the public prosecutor “also carries out inquiries into facts and circumstances in favour of the person under investigation” (p. 18). For Brescia the provision applied at trial as well, because the public prosecutor “always and in any event acts in the interest of justice” (words of the appeal judgment, quoted in the appeal: p. 6), and it applied in the name of the equality of the parties and of the right of defence. The Court traces the provision from the delegating law of 1987 to judgment no. 58 of 2026 of the Constitutional Court (pp. 18-25) and concludes that it lays down a rule of conduct which “arises and develops within the phase of the preliminary investigations”, instrumental to the correct exercise of criminal action, and that the issue, “contrary to what is stated in the judgment under appeal, is not connected with the principle of equality of the parties or with the right of defence” (p. 25). To make it the source of a duty to investigate at trial is “a functional and unsystematic expansion, not permitted by the provision relied upon”; the appellants “were in no way obliged, under that provision, to carry out supplementary investigative activity in that phase of the trial” (p. 26).

The second concerns Article 430, which, after the decree committing the case to trial, allows “supplementary investigative activity” to be carried out (p. 26). For Brescia it was the source of a duty. For the Court the provision “confers a discretionary power on the public prosecutor and does not impose an obligation” (p. 28): supplementary activity is subject neither to compulsion nor to restriction, because “its performance is left to the exclusive choice of the person who holds the investigative power” (p. 27); and “what is compulsory is not, in fact, the performance of supplementary investigative activity, but ‘only’ the conduct following the discretionary decision to carry out such supplementary activity” (p. 28), that is, the filing of what one has decided to look for. The reference to Article 430 in order to construct the obligation charged “must also be regarded as legally erroneous” (p. 31).

The third concerns the public prosecutor who receives records from a colleague. For Brescia, which relied on certain judgments of the Court of Cassation and in particular on the Barbaro judgment of 2012, the prosecutor in charge of the trial was “obliged to file ‘automatically’ the records received” (as the Court summarises the appeal judgment, p. 28). For the Court this is “an erroneous legal approach” (p. 28): “the prosecutor in charge of the proceedings is not a mere recipient, an empty container that can be filled on the basis of the assessments of others, even where those are assessments made by the prosecutor in charge of proceedings concerning connected offences” (p. 29), and the reference to Barbaro is “objectively inapposite and erroneous” (p. 29). Records transmitted by another public prosecutor become supplementary activity only if the prosecutor in charge takes them in; the act of reception “is not, in turn, automatic, but follows from an evaluative and selective activity of the public prosecutor in charge of the proceedings” (p. 30), who “decides whether, and what, to acquire” after assessments “of relevance, of pertinence, of genuineness, of congruence” (p. 31).

The fourth concerns the weight of those papers. The Court of Appeal had written that the money referred to in the chats had been received “perhaps even for purposes other than the corruption of the witnesses, but which in any event deserved to be brought to light” (App., p. 109): the author reads in this a yardstick that does not ask the papers what they prove, but what use they might be put to. The Court of Cassation does not examine that sentence. It measures the papers by another yardstick, their self-evidence, and does so on the declarations reported in the appeal judgment, among them that of the Chief Public Prosecutor, who had considered that material “marginal stuff, not decisive” (p. 32).

The conclusion is that “that documentation which Dr Storari had pointed out was not self-evident and would not have changed the fate of the trial”; and that “the typicality of the offence cannot change as a result of an undifferentiated retrospective assessment, which is affected by the level — greater or lesser — of the review that one may wish to exercise over the discretionary nature of the appraisal entrusted to the public agent” (p. 34).

The fifth is the heart of the charge: not filing would have amounted to refusing, although the assessment had been explained in writing to the heads of the Office and referred to them. “It is not disputed” that the prosecutors informed the Chief Public Prosecutor and the Deputy Chief Prosecutor — “who was, moreover, jointly in charge of the connected proceedings” — of their assessment, “whether correct or mistaken”, “referring the decision, however, to Dr Greco and Dr Pedio” (p. 32). Greco and Pedio “remained silent, raised no objection, asked for nothing, did not consider that the matter should be examined further, called no meeting, did not ask for explanations either before or even afterwards” (p. 33). It is not clear, the Court writes, why it should be asserted that the prosecutors “arbitrarily, and for ulterior purposes, decided not to proceed”: on this point the appeal judgment is “essentially assertive and one-sided” (p. 33). The decision to involve the heads of the Office, “quite apart from its intrinsic correctness”, represents “an act not of refusal but of objective, due, transparency; an act which reveals that the defendants did not act according to a logic of hiding, of improbable concealment, of self-referentiality, but sought a physiological dialogue with the heads of their office” (p. 33). The prosecutors “refused nothing” (p. 34).

The sixth concerns the chats. For the Court of Appeal the other chats on the telephone handed over by Armanna — those which Storari was asking to bring into the trial — could be acquired because there had been an order concerning the “container”, that is, the telephone (pp. 36-37, referring to App., p. 93). The Court of Cassation sets out, on the basis of the documents annexed to the appeal, that in the conspiracy proceedings the technical examination was aimed at verifying the veracity only of the chats between Armanna, Descalzi and Granata; that the latter two had asked for access to the entire content of that telephone “and, therefore, also to the other chats; a request for access to the content of the very chats which Dr Storari later asked to have acquired in the Eni-Nigeria trial” (p. 35); that the request was rejected by the Deputy Chief Prosecutor and, following an objection, by the Judge for Preliminary Investigations, because the full copy contained information different from and additional to that for which the examination had been ordered, and therefore “not only not pertaining to the matter to be proved, but to be dutifully kept away from duplication and external disclosure” (pp. 35-36); and that the Court of Cassation itself, by judgment no. 22795 of 22 March 2022, dismissed the appeals of Granata and Descalzi (p. 36). The principle is that of the seizure of data: the object of seizure “is not the handset, nor even the so-called *copia mezzo* (instrumental copy), that is, the forensic copy which reproduces the entire content of the electronic device, but only the data which are extracted from that copy because they are considered relevant for the purposes of proving the offence”; “this, only this, guarantees the proportionality of the measure” (p. 36). It follows that those chats “could not be accessed in those proceedings except by means of a further order explaining the reasons why, also with respect to those additional chats, it was necessary to proceed, and why their content would have been relevant to the crime which it was intended to prove”, and that their content “could not be automatically poured into the Eni-Nigeria proceedings either, because that acquisition would in any event have lacked a legal basis; that is, a new authorising order was needed, extending cognisance of, and access to, the data of that telephone” (p. 36). The Court of Appeal’s contrary statement “is seriously flawed”; the prosecutors’ decision “was in conformity with the principles and the statutory rules governing evidentiary seizure” (p. 37). And the Court adds a sentence that turns the charge upside down: “Conversely, the acquisition of the content of those chats, as instead requested by Dr Storari, would have been undue” (p. 37).

The seventh concerns the video of 28 July 2014, the so-called Bigotti video, which according to the prosecution was made available to the parties late. The Court records as undisputed that some defence counsel were aware of it as early as February 2018, and that the video was produced at trial, at the request of the defence teams, in July 2019, “that is, well before the final deadline indicated in the charge, ‘17 March 2021’” (p. 38); it recalls that the presiding judge, Tremolada, reported a “veiled complaint and then... in closing arguments also explicit” by the defence teams (p. 38); and it concludes that “it is not at all clear” why there would have been an undue refusal, since it has been explained neither why the video should necessarily have been filed earlier nor why the defence counsel who had had it for some time had not requested its acquisition (p. 38).

The three propositions that supported the convictions — that the act was due, that there had been a refusal, that the refusal was undue — have failed as a matter of law, each in the words quoted; as to the weight of those papers and the video, the Court held that the reasoning of the appeal judgment did not stand; the remaining issues need not be decided

(pp. 37-38). That is why the Court did not remit the case to another court: it ruled out that the conduct established by the judges of the merits was an offence. It is in this precise sense that the judgment demolished the legal bases of the Brescia convictions: it did not correct one step in them, it denied their premises.

#### IV.

A rigorous reading must also say what the judgment does not say.

The Court does not judge the correctness of the prosecutors' choices. It says so at the outset: the subject-matter of the proceedings "does not concern the assessment of the general propriety of the conduct of the two appellants, or of the non-negotiable duty of fairness and impartiality of the Public Prosecutor", but the typicality of the offence, and "not every possible breach of the duty of propriety constitutes, in itself, an offence" (p. 15). It repeats this with the formulas that accompany their assessment: "whether correct or mistaken" (p. 32), "quite apart from its intrinsic correctness" (p. 33), "rightly or wrongly" (p. 34), "whether or not one shares their view" (p. 35). These are formulas of abstention on the merits, not of reservation: none of them declares an error, and the conclusion does not depend on them, because the offence is lacking in any event. Where, by contrast, the Court does judge, its judgment is clear-cut: the involvement of the heads of the Office was an act "of objective, due, transparency" (p. 33), and the decision not to acquire the content of those chats "was in conformity with the principles and the statutory rules governing evidentiary seizure" (p. 37). Nor does the Court reduce the duties of the public prosecutor: impartiality and fairness "always characterise the action of the public party, from the moment the investigations are initiated until the conclusion of the trial", but are "filled with specific content through the rules of procedure, which, however, are inspired by the discretionary nature of the public prosecutor's action and by its not being subject to restriction or to compulsion"; and in the course of the trial, according to the reading of legal scholarship which the Court adopts, the public prosecutor's "role as a party" is accentuated (pp. 27-28). What the Court ruled out is that the offence charged could be derived from those duties.

The judgment does not decide other questions, because the conclusions reached are "dispositive on the logical-legal plane" (p. 37): the defendants' actual availability of the records, intent, the state of the technical examination of the telephone, the time limits set by the Tribunal of Milan on acquisition (p. 38). The declarations of the Chief Public Prosecutor, Greco, of the Deputy Chief Prosecutor, Pedio, and of the presiding judge, Tremolada, are reported by the Court as the appeal judgment reports them (pp. 32-34): they remain declarations. The judgment does not mention the OECD or its Convention, does not enter into the merits of the OPL 245 trial and does not deal with any motive: it is a judgment on the offence of refusal to perform official acts, and on that alone. Of Paolo Storari, whose reports lie at the origin of the charge (p. 2), the Court examines the requests, not the conduct: the prosecutor in charge of the trial was not bound to take in his assessments (p. 31); the documentation he had pointed out was not self-evident (p. 34); the acquisition he was "forcefully" requesting (p. 36) would have been undue (p. 37). This note does not make the judgment say more.

A limit follows, which must be stated with the same clarity. The judgment does not prove that the Brescia trial was brought or conducted for reasons extraneous to justice, nor that it served an interest which Article 5 excludes from consideration: the complaint does not pronounce that connection as a conclusion, it puts it as a question (§ 38). What the judgment establishes, with the authority of the Court of Cassation, is simpler and, for Article 5, no less relevant: beneath those convictions, *in law*, there was no offence.

## V.

The relevance for the complaint lies in three points.

The first concerns Phase 4. The report of 13 October 2022 ruled out that the trial of the OPL 245 prosecutors was “a case of executive governmental interference”, and noted that “this process has yet to run its course” (§ 37). The complaint does not assert that that trial was brought by the Government, and the judgment records that at the last instance the State Attorney General’s Office asked for the convictions to be quashed (pp. 1 and 13). The question that Article 5 raises is a different one: whether the prosecution of foreign bribery remained sheltered from prohibited considerations, and whether the State protected the conditions for it. It will be said that the acquittal shows that the system worked. It worked in the fifth year and at the third instance. In the meantime two magistrates who had prosecuted the State company were tried and convicted twice for a fact that does not exist; the same affair led to an investigation of the Deputy Chief Prosecutor, whose position was dismissed (p. 32); De Pasquale left the leadership of the Third Department in 2024 — the unit of the Milan Prosecutor’s Office that had built OPL 245 — and, according to press reports, left the judiciary after the judgment (§ 30). The effect that matters for Article 5 — on every public prosecutor who tomorrow must assess an investigation unwelcome to the State company (§ 30) — is measured not by the outcome, but by the path. The reasons filed on 29 September now say what that path rested on: an obligation that the law did not impose, a refusal that did not happen, and an acquisition that would indeed have been undue.

The second point concerns the material referred to in § 30, whose history the judgment now makes it possible to set in order by date. In the conspiracy proceedings Descalzi and Granata asked for access to the entire content of the telephone handed over by Armanna, and therefore also to the other chats; the Deputy Chief Prosecutor and the Judge for Preliminary Investigations rejected the request, and on 22 March 2022 the Court of Cassation upheld the rejection (pp. 35-36). On 8 October 2024 and 16 October 2025, in Brescia, the OPL 245 prosecutors were convicted for not having filed “for the benefit of the defence” — the words of the charge — in the Eni-Nigeria trial, in which Eni’s chief executive was a defendant (§ 3), documents including those same chats (pp. 2, 4 and 35). The 2022 decision went against the request of Eni’s executives. The point here is not who benefited from it, but that the same material was held, in 2022, to be kept from the defence in the proceedings from which it came and, in 2024 and 2025, to be handed to the defence, on pain of criminal liability, in the trial it had never entered. The Court endorsed the first decision and erased the second: the choice not to acquire those chats was in conformity with the rules on evidentiary seizure, and what would have been undue was the acquisition, “as instead requested by Dr Storari” (p. 37).

The third point is a correction. In the complaint the communication of 5 March is called a refusal: “the refusal put in writing in the note of 5 March 2021” (§ 30), the prosecutors who “refuse” and “reject” (§§ 28 and 47), and so too the description of Annex E.9. It was the word of the charge, and the Court has held that it was not the right one. Where the complaint says refusal, the reader should read what the Court wrote: that the prosecutors assessed that those records should not be acquired and referred the decision to the Chief Public Prosecutor and the Deputy Chief Prosecutor, who in fact shared it (pp. 32-34). The correction does not weaken the question raised in § 30; it makes it sharper. The material whose non-filing was held in Brescia to be an offence had not been concealed: it was known to those who headed the Office, to whom the prosecutors submitted their assessment in writing (pp. 2 and 32-33).

## VI.

The Court judged on the law. Of the memorandum of 5 March 2021 it considered the form, an assessment referred to the heads of the Office, “whether correct or mistaken” (p. 32); on the merits, the memorandum said that the judicial police “did not understand what the discussions were about” and that the money referred to in Armanna’s chats was not the price of testimony, but the price for obtaining a file of the EFCC, Nigeria’s Economic and Financial Crimes Commission, which would have contained the list of the ultimate beneficiaries of the so-called mega-bribe which, according to the prosecution, had been paid in Nigeria for the OPL 245 licence (Annex E.9).

The facts documented in the complaint and in the subsequent Synthesis, both already filed, show where the thesis that the memorandum refuted came from, and where the reading of the so-called Bigotti video, on which the other limb of the charge rests, came from: two initiatives of the company’s defence — the company, its executives, their counsel — one concerning the video of 28 July 2014, the other concerning the chats.

The first operated in the OPL 245 trial, the second in the conspiracy proceedings and up to the threshold of the OPL 245 judgment; from both, according to the complaint, came the Brescia charge.

Amara says that he recorded the video in agreement with Granata, who denies it, and that the recording was “aimed at blackmailing Armanna” (interrogation of 18.11.2019).

Casula’s defence counsel had held a “semi-complete” transcript of it since February 2018; Eni’s defence counsel held a second one, partial, received as counsel for Mantovani in review proceedings: the same one which the KPMG report of September 2018, commissioned by Eni, had used (Trib. Brescia, pp. 112 and 114).

The initiative of filing it with the Tribunal, on 23 July 2019, after the examination of Armanna and at the moment of his cross-examination, was theirs (Trib. Brescia, p. 112): they thus gave life, in the trial, to the accusatory thesis of ‘Armanna, Eni’s blackmailer before the accusations of 30 July 2014’.

Counsel for the chief executive declared on 23 July “today we learn of the existence of this document” (transcript of 23.7.2019, p. 23), thereby invoking an injury (vulnus) to the defence through the public prosecutor’s failure to file a document whose transcript the defence teams of Casula and of Eni were bringing into the courtroom.

In its judgment of 17 March 2021 on OPL 245, without hearing Amara, the Tribunal fully embraced the thesis that the video proved “incontrovertibly” the motives of Armanna’s accusations, seeing in it an attempt to blackmail the company’s leadership, from which it drew the accuser’s “intrinsic unreliability” (Trib. Milan, pp. 329-331).

The judgment of “intrinsic unreliability” did not logically imply that the statements made by Armanna from 30 July 2014 onwards were false, the only point relevant to the trial; and, even supposing that his words of 28 July had an “extraordinary defensive value” (thus Trib. Brescia, p. 113), those statements were not refuted by Eni’s defence, which waived cross-examination (transcript of 24.7.2019, p. 12).

The Tribunal, moreover, followed the thesis of an injury to Eni’s defence and found it “incomprehensible” that the public prosecutor had not filed the video for the defence teams (Trib. Milan, pp. 328-331), two of which, Eni’s among them, had filed its transcripts (the chief executive’s defence had denied all knowledge of it).

Point 5 of the Brescia charge took up the same twofold reading of the video, later placed at the foundation of the convictions by the Tribunal and by the Court of Appeal: on Armanna’s motive, and on the claim that the public prosecutor, by failing to file it, had inflicted an injury on Eni’s defence (Trib. Brescia, pp. 4 and 70-71).

The Court of Cassation, which does not enter into the merits of the assessment of the evidence except in terms of lack of self-evidence and lack of decisiveness, denies that the filing, made “well before the final deadline indicated in the charge”, amounts to an undue refusal; and indeed it writes: “what is not clear is why, if that video had been so relevant, none of the defence counsel, who had had that video at their disposal since February 2018, had requested its acquisition” (p. 38). Counsel for the chief executive, who so declared in court, was not among them.

As to the Nigerian chats extracted from Armanna’s iPhone between late 2020 and early 2021, it does not appear that anyone at the time considered the origin of the other accusatory thesis, ‘Armanna, briber of witnesses in the OPL 245 trial’.

On this point a fact must be set out which the first-instance judgment of Brescia accepted only in Storari’s reading — the false papers as Armanna’s “further calumny”, as proof of the prosecutors’ “protective attitude” towards him (Trib. Brescia, p. 124 and note 128) — and which, according to the complaint and the subsequent Synthesis, radically changes the picture, adding a crucial piece to it.

On 23 January 2020 Eni’s General Counsel, during a search, speaks, without any record being made, in the presence of the Deputy Chief Prosecutor, Pedio, of serious facts which he had allegedly learned through internal checks at Eni; among them he reports a Nigerian contact “who reportedly paid to secure the testimony of the witness” expected in OPL 245 six days later (Guardia di Finanza note for the file, 24.1.2020).

It is the first time that the thesis of the payment of a Nigerian witness in OPL 245 enters the conspiracy proceedings; Armanna’s name does not yet appear in it, and on this point §§ 24 and 26 of the complaint are to be corrected.

On 20 February the company’s counsel files, asking for them to be verified, papers which the General Counsel says he received from an anonymous source: foreign bank

statements, a sheet of “identified foreign accounts” and the screenshot of a chat in which two interlocutors allegedly say that “Vincenzo insists on a person to be sent to Milan for November” (Alecci note of 20.2.2020).

On the 27th the General Counsel adds that 500,000 dollars to Bayo Ojo, “business partner of Vincenzo ARMANNA”, could be “a form of funding intended for the witness” (witness statement of 27.2.2020, pp. 3-6).

The theme is thus restated, now with Armanna’s name, supported by documents whose origin, however, unlike on 23 January, is no longer internal to Eni but anonymous.

By the end of October the Prosecutor’s Office learns from the Bank of Italy’s Financial Intelligence Unit that all the bank statements filed on 20 February were false (UIF notes of 6 and 20.10.2020); the person who had brought them, however, is not placed under investigation until July 2022.

The sheet of accounts bears the IBAN of the Taha account, which will turn up in a 2019 chat between Armanna and Renda (Guardia di Finanza report of 4.7.2025, p. 128): for the complaint filed here, whoever constructed the forgery of 20 February knew the content of the telephone *before* the Prosecutor’s Office (§ 27), which acquired it only on 5 November of the same year.

For the public prosecutor Storari “the point was whether or not ARMANNA was the author of this doctoring” (interrogation of 28.5.2021, pp. 41-42). It does not appear, however, that he ordered any investigation to test his belief. Who fabricated the forgeries has never been established, and the hypothesis that they came from the company’s defence was not investigated: the Deputy Chief Prosecutor’s proposal to hear the General Counsel with a lawyer present was not followed up (chat of 5.3.2021).

On the conspiracy front, Storari’s thesis, or suspicion, turns against the accuser, Armanna.

On 5 November 2020 Armanna hands his telephone to the prosecutors; a non-repeatable technical examination is ordered under Article 360 of the Code of Criminal Procedure, with the safeguards of adversarial participation, aimed at verifying the veracity “only of the chats” of 2013-14 between Armanna, Descalzi and Granata (p. 35), which the company’s defence said were false; for that verification the mobile phones of Descalzi and Granata were not examined; onto the Article 360 examination, whose operations, according to the judicial police records, were suspended on 13 November, is grafted a parallel examination by the public prosecutor, without adversarial safeguards, covering the entire content of Armanna’s phone; according to the officer who analysed it, the content was read in full, on a “verbal order” from Storari (Seragusa, Trib. Brescia 18.1.2024, pp. 97-98, 157-158); how far the content examined file by file actually extended is not established; the fact remains that no record indicating keywords as the criterion for extraction appears.

The Court of Cassation would write that those chats, already in those proceedings, could not be accessed except by means of “a further order” stating reasons (p. 36; above, III): no such order appears.

Ten weeks after Armanna’s phone was handed over, the examination conducted by the public prosecutor Storari with the Guardia di Finanza leads to the extraction of chats with

the Nigerians (note of 14.1.2021) and, in the following weeks, of those with Timi Ayah, which, speaking of 50,000 dollars delivered by Armanna and of Eke's testimony, seem to confirm the thesis of 'Armanna, briber of witnesses in the OPL 245 trial', first formulated by Eni's General Counsel, in veiled terms on 23 January, explicitly with the false documents of 20 February and the statements of the 27th.

On 23 January 2021 Storari writes to the Deputy Chief Prosecutor "We must arrest them" and, in the same sequence, "Mantovani's account statements" — presumably the bank statements of the package, already found to be false, which attributed transfers of 37 million dollars to Eni's former head of legal affairs, Mantovani, dismissed by the company in 2019 — and the payment of the Nigerian witnesses (chat of 23.1.2021); the Deputy Chief Prosecutor states that she expressed a negative opinion on his draft request for a precautionary measure against Armanna (p. 32).

On 5 November 2021 the technical report finds the 2013 chats altered, without attributing the alteration to anyone; on 10 November Armanna is entered in the register of suspects for calumny; on 10 December the positions of Descalzi and Granata are severed (§ 28).

On the OPL 245 front, the thesis of the payment of witnesses — in substance the same as that of the package — reaches the threshold of the Tribunal's judgment.

The draft report of 19 February 2021 devotes a chapter to the "payment of the witnesses", and Storari asks that it be brought "as soon as possible" to the attention of the Tribunal and of the defence (email of 19.2.2021); the memorandum of 5 March refutes the draft: the payment was not made to corrupt, but to obtain a file of the Nigerian EFCC, potentially dangerous for Eni's defence in OPL 245; and twelve days later the Tribunal acquits.

The final version of the Guardia di Finanza report, of 7 April, no longer contains the "payment of the witnesses", which its author would nonetheless defend in court (Seragusa, Trib. Brescia 20.2.2024, pp. 16, 35, 43-44); in Brescia the presiding judge said: "as to those 50,000, we all understood that they were to pay for the file, not to pay the witnesses" (transcript of 17.9.2024, p. 117).

For Brescia the memorandum of 5 March was a refusal, and the prosecutors were convicted for not having filed "for the benefit of the defence" those chats (pp. 2, 4 and 35), whose acquisition, for the Court, would have been undue (p. 37), and for the delay in filing the Bigotti video, which the Tribunal of Milan had discussed at length in the reasons for the acquittal, as stated above.

The 2013-14 chats, which gave rise to the non-repeatable technical examination under Article 360 just described, predated the accusations of 2014 and the email of 2017 against De Pasquale and the author, and could prove neither a promise of retraction nor the contrary (§§ 22 and 28); it is not easy to define any significant probative relevance for them in the conspiracy proceedings, which arose years later. After the report of the technical expert, who finds anomalies without being able to prove who caused them and records, among the computers connected to Armanna's iPhone, one without a name — "another very strange one called John Doe", he would say in court (report of 5.11.2021, p. 12; examination of 8.5.2025) — accuser and accused exchange roles, and the accusation that

Armanna had been suborned to retract becomes a calumny by him against Eni's top executives, including the chief executive.

For the complaint, therefore, the two initiatives worked in the same direction, creating — the second with false evidence — accusations against Armanna that prove non-existent or scarcely credible: in OPL 245 the video grounded the accuser's unreliability; in the conspiracy proceedings the accuser, who had implicated others in the subornation he reported, became a suspect for calumny against those who, like Eni's chief executive, had benefited from the retraction of his accusations; in Brescia the video and the chats became the charges against the prosecutors, who allegedly refused to file them for Eni's defence teams: teams which, as stated, were not unconnected with the use of that evidence in the trials.

That the initiatives were conceived for this purpose, on false papers and with a reading of the video forced by design, is the complaint's hypothesis, founded on the procedural facts cited.

Perhaps all that has been written here is mere coincidence, exceptionally improbable but possible: if another explanation of equal power leads to different results, it is welcome.

It is not the connection that the complaint leaves to the question of § 38 (above, IV); it is the material on which that question is posed.

Further evidence has recently been added to this material, of which the complaint and the subsequent Synthesis have given an account: in particular the Guardia di Finanza report of 4 July 2025 and the interrogations of two Equalize operatives (Annexes E.12 and E.13).

In the proceedings against Eni's General Counsel, Stefano Speroni, the prosecutors requested on 19 March 2026 a shelving order for lack of proof of intent, while confirming the falsity of the papers lodged with the Milan Prosecutor's Office and describing as "manifestly imprecise, incomplete and even illogical" the statements he had made at the time to the Chief Public Prosecutor and to the Deputy Chief Prosecutor (Annex G.1). The Deputy Chief Prosecutor had been placed under investigation in Brescia, and her position dismissed, for "not having promptly entered" Armanna in the register of suspects for calumny to the detriment of Eni's executives (p. 32; above, V).

A final remark.

The author of this note is still under investigation by the Milan Prosecutor's Office for offences he has not committed, which have been alleged against him one after another, as his legal initiatives to protect his rights as a person calumniated in the conspiracy have developed and intensified.

## VII.

The Secretariat is asked to acknowledge receipt of this note; to circulate it, with Annex F.2 thus supplemented, to the members of the Working Group and to the Phase 4 lead examiners, together with the complaint and the Synthesis, before the December meeting; and to confirm that this has been done. The Working Group is asked to consider, in the examination of the complaint which the Chair has announced for December together with Italy's follow-up report, the effects of these reasons on the 2022 assessment

concerning the trial of the prosecutors (§ 37). The author remains available to be heard, in Paris or by video link, and to transmit every document cited, including judgment no. 22795 of 2022.

For five years the memorandum of 5 March 2021 — in all likelihood the one which the Chief Public Prosecutor said he had entered in the register — was read as a refusal. In filing on 29 September 2026 the reasons for the judgment of 18 June, the Court of Cassation read it for *what it was*: an assessment referred, in writing, to those who headed the Office.

Milan, 9 October 2026

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civil party in proceedings no. 4659/2023 R.G.N.R. — no. 643/2024 R.G. dib., Tribunal of Milan  
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(covering note, Cass. 34812/2026 – v06)

## Appendix — The translator’s note that opens the English translation (Annex F.2/b)

This is an unofficial working translation: the Italian text of the judgment (Annex F.2/a) is the authentic text. It is complete: nothing has been omitted or summarised. The numbers in square brackets, from [p. 2] to [p. 41], mark the point at which each page of the original begins, so that every passage can be cited by the page of the official text.

In the first part of the judgment (*Ritenuto in fatto*, “Facts of the case”) the Court sets out the grounds of appeal in the Italian conditional mood, which signals that these are the parties’ submissions and not findings of the Court; the translation renders it with reporting formulas (“it is argued”, “allegedly”, “according to the appeal”). The same applies where the Court reports, without adopting them, the views of others: legal scholarship, the judgments under review, witnesses.

The operative formula, “annulla senza rinvio la sentenza impugnata perché il fatto non sussiste”, is rendered “quashes the judgment under appeal without remand, because the fact does not exist”, the wording already used in the documents filed with the Working Group. Among the acquittal formulas of Italian criminal procedure it is the one that denies the offence at its root: in this judgment it means that the conduct charged does not fulfil the objective elements of the offence.

The surname of Eni’s chief executive appears in the original sometimes as “Descalzi”, sometimes as “De Scalzi”: the translation always writes “Descalzi”. Two evident slips in the original are translated as they stand and flagged with [sic]: “Amara’s telephone” at p. 9, where the context indicates Armanna’s telephone; the reference to Article 328(1) of the Code of Criminal Procedure at pp. 28 and 31, where the Criminal Code is meant. Other minor slips are rendered without comment.

On p. 1 the number of the judgment (34812) is stamped and the section number (952) is handwritten; on p. 33 a handwritten correction, initialled in the margin, completes a word of the text (“coloro”, “those”), and the translation incorporates it. Latin expressions and words that the original leaves in a foreign language are in italics. Case citations, headnote numbers (Rv.) and dates are reproduced as in the original.