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"OPL 245" CASE NO. 3 · PART 1

Without Fear or Favour

What Article 5 says, who put it to the test before Italy, and how the Working Group responded. A guide to reading the documents of the case.

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In December 1997, in Paris, the OECD States and a few others with them signed a Convention by which each undertook to prosecute the bribery of foreign public officials, even when the ones paying are its own companies. Inside it are two lines, Article 5, which say a simple thing: when the State investigates the bribes paid by its own company, it must not ask itself how much that company is worth to the national economy, what the foreign government concerned will think of it, or who the persons and companies involved are. Italian already has an expression for this: "senza guardare in faccia nessuno", without looking anyone in the face; English says without fear or favour. For almost thirty years the faces have been there, and so has the temptation to look at them. This is the guide to reading the documents with which, since 2025, Italy has been called upon to answer for how it applied those two lines in the OPL 245 case.

1. Two lines, three faces

The OECD "Convention on Combating Bribery of Foreign Public Officials in International Business Transactions" was signed in Paris on 17 December 1997. Italy ratified it by Law no. 300 of 29 September 2000, the same law that introduced into the Criminal Code the offence of bribery of a foreign public official.[1] The idea is a single one and fits in a single line: the bribe that a company pays to a foreign official is an offence in the company's home country too, and in the company's home country it must be prosecuted, by its own courts and under its own rules of jurisdiction.

Those who drafted it knew where it would leak. A State that prosecutes its own largest company for bribes paid abroad is prosecuting — a little — itself: its jobs, its exports, its embassies, sometimes its shareholder. Hence the temptation to look elsewhere, and Article 5 is written to resist it. It consists of two sentences. The first refers to the rules of each State: investigation and prosecution of the bribery of a foreign public official "shall be subject to the applicable rules and principles of each Party". The second lists what must not count: they "shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved".[2]

There are three faces not to look at. The company's: an investigation does not stop because the company is large or because it belongs to the State. The foreign government's: it does not stop because someone, in another capital, might be displeased. The persons': it does not stop, nor does it speed up, depending on who is involved. The official Commentaries, adopted together with the Conven-

tion, explain why: the article “recognises the fundamental nature of national regimes of prosecutorial discretion” and requires that such discretion be exercised “on the basis of professional motives”, free from “improper influence by concerns of a political nature”.[3] How to investigate and how to proceed is decided by each State under its own laws; Article 5 says only what may not weigh on those decisions.

There is another thing Article 5 does not do: it does not judge outcomes. It demands no convictions and censures no acquittals. It looks at the conditions in which an investigation is conducted and at the conduct of those who direct it. A lost trial may have been conducted in full compliance with Article 5; a won trial may have breached it. That is why the documents collected on this page do not discuss whether Eni was guilty. They discuss under what conditions the Italian State tried it, and what it did, afterwards, to those who accused it.

2. No court, no fine: the Working Group

No international court applies Article 5. The Convention establishes no tribunal and provides for no sanctions. Article 12 entrusts the Parties with “a programme of systematic follow-up to monitor and promote the full implementation of this Convention”, and places it within the OECD Working Group on Bribery.[4] The Working Group is the assembly of the delegates of the States Parties — today more than forty — and meets in Paris four times a year; it examines the countries in turn, in successive phases. Two States act as “lead examiners”: they study the country under review, visit it, question its magistrates, its officials, its companies and its civil society, and write a report which the Group adopts and publishes, with its recommendations. Two years later the State reports on what it has done, and the Group measures and publishes again.

The instrument, in short, is loss of face. The Working Group cannot fine a State or annul one of its decisions. It can write, in a public document that all the other States adopt, that the country does not comply with the Convention; it can ask for supplementary reports, send high-level missions, issue statements. For a country that sits at the OECD table, being pointed out by its peers as the State that protects the bribes of its own company has a cost. The cases that follow show that this cost has been paid, and to what extent.

3. The case that put the rule to the test: BAE, Saudi Arabia, 2006

The precedent that explains Article 5 better than any commentary is English, and it begins with a customer raising its voice. Since 2004 the Serious Fraud Office had been investigating the commissions paid by the BAE Systems group in connection with the supply of arms to Saudi Arabia, the “Al Yamamah” contract. In the course of 2006 the Saudi authorities let it be known that, if the investigation went ahead, they would withdraw their cooperation in the fight against terrorism and in the Middle East and break off the negotiations for a new contract for fighter aircraft. On 8 December 2006 the Prime Minister sent the Attorney General a personal minute on the “real and immediate risk” to cooperation between the two countries. On 14 December 2006 the Director of the Serious Fraud Office, Robert Wardle, closed the investigation. The same day the Attorney General explained in Parliament that Article 5 precluded taking into account the national economic interest and relations with another State, and that “we have not done so”: the reason was national security.[5]

An investigation into a country's own company, closed after the threats of a foreign customer, with the government invoking national security. For the claimants and for the Working Group it was the case for which Article 5 had been written; for the British government it was not. The Working Group responded as follows. In January 2007 it publicly declared its "serious concerns" about the discontinuance of the investigation; in March 2007 it reaffirmed them and decided to subject the United Kingdom to a supplementary examination, Phase 2bis.[6] The report, adopted in October 2008, does not mince its words. It states that "a number of very serious issues exist about the events of November-December 2006"; that the way in which the case for discontinuance was built, on the merits, is "troubling"; that the only written record of the Director's reasons was a press release. The examiners recommended that the United Kingdom "take all necessary measures to ensure that Article 5 applies to all investigation and prosecution decisions" in foreign bribery cases, make clear that the Attorney General's power of superintendence over prosecutors does not include the power to give directions in individual cases, and remove his mandatory consent for prosecutions in this field.[7]

Meanwhile the English courts had spoken, and the way they spoke marks the boundary between domestic law and Article 5. Two non-governmental organisations, The Corner House and Campaign Against Arms Trade, challenged the Director's decision. In April 2008 the Divisional Court quashed it: submission to a threat is lawful only if it is demonstrated to a court that there was no alternative.[8] In July 2008 the House of Lords reversed that judgment: the Director's decision was one "he was lawfully entitled to make". On the point that matters here, however, the Lords were precise: it is not for a national court to interpret Article 5 on its own. Lord Bingham wrote that "a national court should hesitate before undertaking a task of unilateral interpretation", because the Convention has, in Article 12, the forum in which divergences "can be discussed and either reconciled or resolved"; Lady Hale confessed that she "would have liked to be able to uphold the decision" of the first judges.[9] Whether national security can stop a bribery investigation, the courts did not say. They sent the question back to Paris, to the Working Group.

At the request of the Chair, the Secretariat prepared for the December 2008 meeting a note on Article 5 which remains, to this day, the reference text on what the provision requires.[10] It says three things. First: Article 5 "applies to all stages of foreign bribery proceedings, including the preliminary investigation stage", and therefore also to decisions not to open or to close an investigation. Second: where a decision to close might appear to be based on prohibited considerations, the decision-maker must apply a "strict scrutiny" test, to establish that the real reason is a different one. Third: every such decision must travel with three safeguards: "independent scrutiny at an appropriate non-political level" of the reasons, the assurance that "all reasonable efforts are taken to find an alternative solution", and "public accountability for the decision", that is, written reasons that anyone can read. And a conclusion: any decision on a case covered by the Convention "is fully reviewable by the Working Group on Bribery". In 2010 the United Kingdom passed a new law on bribery, the Bribery Act — a reform that OECD monitoring had long been urging.

The Working Group did not stop the British government, and could not. It did, however, write, in the report that all the States adopted in October 2008, that Article 5 applies to all investigation and prosecution decisions; and the Secretariat's note, which the complaints use as a yardstick, added that the closure of an investigation must be reasoned in writing and reviewed by someone who does not answer to the government, and that the judgment on those reasons belongs to the peers. This yardstick is worth keeping in mind when reading the Italian complaints.

4. Canada, 2019: a response within a month

The second precedent shows how quickly the Group can move when interference is reported as it happens. In February 2019 the Canadian press reported that the Prime Minister's Office had put pressure on the Minister of Justice to offer the SNC-Lavalin group, charged with bribery in Libya, an agreement that would avoid a trial. On 11 March 2019 the Working Group issued a statement: it was "concerned by recent allegations of interference in the prosecution of SNC-Lavalin", recalled that Canada, as a Party to the Convention, is bound to ensure "prosecutorial independence in foreign bribery cases pursuant to Article 5", and announced that it would closely follow the work of the parliamentary committee, while Canada undertook to keep it informed.[11] Little more than a month after the first reports — and before any finding of fact — the Group had put in writing, naming the country and the company, that the affair concerned Article 5. The statement accused no one. It let the Canadian government know that its peers were watching, and that was enough for the case to remain under observation.

5. Italy in 2022: "this process has yet to run its course"

The third precedent is Italy itself, and the reader will find it cited in all the complaints. The last full evaluation of Italy, Phase 4, was adopted by the Working Group on 13 October 2022, with Germany and the United States as lead examiners. The assessment is one of light and shade: Italy "has strengthened its legislation and shows a significant level of foreign bribery enforcement", at a pace that has increased since 2011; but "a high rate of dismissal" puts at risk "the commendable advances" it has made.[12] On Article 5 the report states that "there is no indication that Art. 5 factors have influenced foreign bribery investigations and prosecutions in Italy". It then devotes four paragraphs, from 183 to 186, to something that in 2022 was still happening: the two public prosecutors who had led the prosecution of Eni and Shell in the OPL 245 trial, which ended in acquittal in March 2021, were themselves being prosecuted in Brescia, on the report of a colleague, for failing to disclose certain documents to the defence. The report records the concern of civil society organisations about the possible chilling effect of that trial on future foreign bribery prosecutions, observes that this is "not a case of executive governmental interference", and concludes: "this process has yet to run its course".[13]

It has run its course. On 8 October 2024 the Brescia Court sentenced the two magistrates to eight months; on 16 October 2025 the Court of Appeal upheld the sentence; on 18 June 2026 the Court of Cassation quashed it without remand "because the act did not occur", and on 29 September 2026 it filed its reasons: the obligation said to have been breached did not exist, there had been no refusal, and the acquisition the colleague was asking for would have been — that one, indeed — "undue".[14] In the meantime the Working Group had adopted, on 10 October 2024, the two-year follow-up report: eighteen recommendations fully implemented, seven partially, twenty-three not implemented; and it had invited Italy "to report back in writing in October 2026" on five of them.[15] The dates of the documents collected on this page depend on this calendar: Italy's written report is due in October, and the meeting of the Group that will examine it is in December.

6. What changes when nobody stops anything

The Italian case has a shape that the precedents did not have, and it is better to say so before opening the complaints. In the BAE case a government stopped an investigation; in the Canadian case a

government tried to avoid a trial. In Italy nobody stopped anything. The OPL 245 investigation went all the way, the trial was held, the prosecution lost, the Office of the Prosecutor General withdrew the appeal. Then the two public prosecutors who had led the prosecution were themselves tried for five years — and convicted twice — for an act that the Court of Cassation said did not occur.

The complaint of 26 August 2026 places this mirror image before the Working Group, and it is reported here for what it is, the complainant's thesis, not a finding: the Italian State, in its judicial offices, its apparatus and its leadership, did not, on this thesis, remain a spectator, and to those who accused the company it responded for a decade with "a constancy of direction that is precisely what Article 5 forbids", the accusers punished or struck, the proceedings protected or dissolved. From this arises a question of law: whether the third prohibition of Article 5, the one on the identity of the persons involved, also covers what a State does, or allows to be done, to those who proceeded against the company, that is, to the public prosecutors, the witnesses, the civil party. The 2008 note says that Article 5 covers "all stages" and that every decision is reviewable by the Group; the Phase 4 report treated the trial of the two magistrates as a matter relevant to Article 5, while ruling out executive interference. No document of the Working Group, among those we have been able to read, has yet answered the question in this form. The Group is called upon to do so in December.

The opposing thesis must be stated in full, because the reader will meet it and must be able to weigh it. It runs as follows: the final acquittal is the outcome of a trial held before an independent court, and the acquittal of the two public prosecutors in the Court of Cassation proves that the system has its remedies; Article 5 concerns the investigation and prosecution of foreign bribery, not every subsequent proceeding against magistrates, witnesses or lawyers; the Working Group is not a fourth instance; and a site whose guarantor is a complainant and a civil party is writing a partisan brief. Each of these objections rests on something, and the pages of this case do not hide it. The answer of the complaints is that none of them asks for the Italian trials to be held again: they ask that the State answer, before its peers, precise questions about the conditions in which those trials were conducted. Whether an answer is owed, and to what extent, the Group will decide.

7. Who can knock at the door

A final caveat concerns the door, so that the reader does not expect what the Convention does not provide. No private person has a right of action: the monitoring under Article 12 takes place between States, and the Working Group is not a court before which a citizen can summon their own country. Organisations and citizens can, however, bring information to the Group, which assesses it in the monitoring cycle; in Phase 4 the examiners consult civil society, and the 2022 Italian report records its observations. One knocks; one does not sue. The documents that follow should be read within this frame.

On 9 June 2025 three organisations, The Corner House (United Kingdom), Hawkmoth (Netherlands) and HEDA Resource Centre (Nigeria), asked the Chair of the Working Group for a review of Italy under Article 5, documenting sixty "red flags" from 2013 onwards. The Chair replied, according to what the organisations themselves report, that a review would have to await the "final disposition" of the trial of the two public prosecutors; on 7 July 2025 the organisations submitted an amended version of the request, with forty-nine red flags, which replaces the first.[16] On 18 June 2026 the Court of Cassation brought that trial to its final disposition. On 23 June the organisations, joined by Re:Common (Italy), publicly declared that they would hold the Working Group to its undertaking.[17]

On 26 August 2026 Avv. Luca Santa Maria — the sole civil party joined against Eni in the Milan trial of the so-called "conspiracy" — filed with the OECD Secretariat a complaint of his own under Article 5, autonomous from that of the organisations and not coordinated with it: forty-eight paragraphs, thirty-three annexes, in two identically numbered texts, Italian and English. On 7 September the Secretariat acknowledged receipt; on 9 September a Synthesis in twenty points followed; on 11 September the Chair of the Working Group wrote that the Group and Italy's lead examiners will consider the complaint in December 2026, together with Italy's follow-up report; on 9 October the complainant transmitted the reasons for the judgment of the Court of Cassation, with a complete English translation and a covering note. On 16 October the organisations wrote to the Chair that the Group now has before it "two independent complaints", complementary to each other, each to be assessed on its own merits.[18]

8. How to read the documents on this page

The documents of the case are collected on the case page (in Italian), in chronological order. Newcomers would do well to begin with the next part (in Italian), which tells OPL 245 in twelve dates, from the Nigerian licence of 1998 to the Court of Cassation in 2026: without that chronology the complaints cannot be understood. Then comes the request of the organisations of June-July 2025, the fullest reconstruction of the affair as seen from outside. They are followed by the complaint of 26 August 2026, which brings what only a party inside the Italian trials could bring, and the Synthesis of 9 September, which sums up its thesis in twenty points, stating for each what appears from the record, what is stated by others and what is the writer's inference. Last comes the note of 9 October on the judgment of the Court of Cassation: with that document the trial of which the 2022 report said that it "has yet to run its course" enters, concluded, into the examination of the Working Group.

Article 5 judges not outcomes but conditions and conduct. Whoever reads these documents would do well to use the same yardstick, and to judge without fear or favour, sparing no one, not even those who wrote them.

Notes

1. Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Paris, 17 December 1997, with the Commentaries adopted by the Negotiating Conference on 21 November 1997 (official English text on the OECD Legal Instruments website, OECD/LEGAL/0293). Law no. 300 of 29 September 2000, ratifying and implementing the Convention, which introduced Article 322-bis into the Criminal Code. The guarantor of this site, Avv. Luca Santa Maria, is the author of the complaint of 26 August 2026 discussed in § 7 and is a civil party in the Milan trial of the so-called "conspiracy" against Eni, which is still pending: the reader should know this before reading on.
2. Article 5 ("Enforcement"), official English text, quoted in full in the text.
3. Commentaries, no. 27: "Article 5 recognises the fundamental nature of national regimes of prosecutorial discretion. It recognises as well that, in order to protect the independence of prosecution, such discretion is to be exercised on the basis of professional motives and is not to be subject to improper influence by concerns of a political nature".
4. Article 12 ("Monitoring and Follow-up"): the Parties co-operate "in a programme of systematic follow-up to monitor and promote the full implementation of this Convention", which, unless otherwise decided by consensus, is carried out "within the framework of the OECD Working Group on Bribery in International Business Transactions".
5. The facts are summarised in the judgment of the House of Lords, R (Corner House Research and another) v Director of the Serious Fraud Office [2008] UKHL 60, 30 July 2008, §§ 1, 11, 17, 19-22 (opinion of Lord Bingham), consulted on the website of the UK Parliament. The Prime Minister's minute spoke of "a real and immediate risk of a collapse in UK/Saudi security, intelligence and diplomatic co-operation" (§ 17); the Attorney General told Parliament that Article 5 precluded taking into

account “considerations of the national economic interest” or “the potential effect upon relations with another state”, and that “we have not done so” (§ 22).

6. OECD, press release “OECD to conduct a further examination of UK efforts against bribery”, March 2007: the Working Group “reaffirmed its serious concerns about the United Kingdom’s discontinuance of the BAE Al Yamamah investigation” and “decided to conduct a further examination”. The statement of January 2007 is referred to in the Phase 2bis report.
7. OECD Working Group on Bribery, United Kingdom: Phase 2bis, Report on the Application of the Convention, adopted in October 2008: § 107 (“a number of very serious issues exist about the events of November-December 2006”), § 112 (“It is troubling…”), § 114 (on the only written record of the reasons), commentary after § 108 (“take all necessary measures to ensure that Article 5 applies to all investigation and prosecution decisions”), commentaries after §§ 118 and 129 (Attorney General). The plenary meeting of 14-17 October 2008 adopted its final text (OECD, DAF/INV/BR/M(2008)3/REV1, summary record).
8. R (Corner House Research) v Director of the SFO [2008] EWHC 714 (Admin), 10 April 2008, as summarised by the House of Lords, cit., § 27: “submission to a threat is lawful only when it is demonstrated to a court that there was no alternative course open to the decision-maker”.
9. [2008] UKHL 60, cit., § 42 (“the Director’s decision was one he was lawfully entitled to make”), § 45 (Lord Bingham: “a national court should hesitate before undertaking a task of unilateral interpretation”; Article 12 as the forum in which divergences “can be discussed and either reconciled or resolved”), § 52 (Lady Hale: “I confess that I would have liked to be able to uphold the decision”), § 48 (order).
10. OECD, Article 5 of the OECD Anti-Bribery Convention: Issues concerning the Exercise of Investigative and Prosecutorial Discretion, Note by the Secretariat, DAF/INV/BR/WD(2008)16, 5 December 2008, prepared for the meeting of 9-12 December 2008: § 22(c) (“Article 5 applies to all stages of foreign bribery proceedings, including the preliminary investigation stage”), § 22(a) (“strict scrutiny” test), Part C (the three safeguards: “independent scrutiny at an appropriate non-political level”, “all reasonable efforts are taken to find an alternative solution”, “public accountability for the decision to the greatest extent possible”; and the closing sentence: every decision “is fully reviewable by the Working Group on Bribery”). It is a note by the Secretariat, not a decision of the Group; the complaints of 2025 and 2026 cite it as a yardstick.
11. OECD Working Group on Bribery, statement “OECD will follow Canadian proceedings addressing allegations of political interference in foreign bribery prosecution”, 11 March 2019: “concerned by recent allegations of interference in the prosecution of SNC-Lavalin”; the Convention “requires prosecutorial independence in foreign bribery cases pursuant to Article 5”.
12. OECD, press release “Despite notable achievements, concerning issues impede Italy’s further progress in fighting foreign bribery, says OECD Working Group on Bribery”, October 2022; Implementing the OECD Anti-Bribery Convention, Phase 4 Report: Italy, adopted on 13 October 2022 (the date given by the Italian Ministry of Justice on its page devoted to the OECD reports), published on 17 October 2022.
13. Phase 4 Report: Italy, cit.: “There is no indication that Art. 5 factors have influenced foreign bribery investigations and prosecutions in Italy”; §§ 183-186 and footnote 66 on the trial of the two public prosecutors: “not a case of executive governmental interference”; “this process has yet to run its course”. The quotations are taken from the complaint of 26 August 2026 (§ 37), which verified them against the official text.
14. Court of Cassation, Sixth Criminal Division, judgment no. 34812/2026, hearing of 18 June 2026, filed on 29 September 2026, pp. 26, 28, 34 and 37; the Italian text and the English translation are published on this site, together with the commentary “The Public Prosecutor: a Character in Search of an Author?” (7 October 2026).
15. OECD Working Group on Bribery, Italy: Phase 4 Two-Year Written Follow-Up Report, DAF/WGB(2024)36/FINAL, adopted on 10 October 2024, § 1 (“Italy has fully implemented 18 recommendations, partially implemented another 7 and not implemented 23”) and § 53 (“The Working Group invites Italy to report back in writing in October 2026” on recommendations 4(b), 10(e), 12(b), 12(d) and 14(b)).
16. Request for Article 5 review by Working Group on Bribery of the Republic of Italy, 9 June 2025, 47 pages, §§ 12.f and 50 (sixty “red flags”), §§ 58-61 (the requests); Amended Complaint, 7 July 2025, § 1 (“replaces the Complaint previously sent to the Chair”), § 12 (the Chair’s reply: “any Article 5 Review of Italy must wait until there is a final disposition” of the trial of the public prosecutors), forty-nine “red flags” (§§ 9, 15.f, 52). Both texts are published on the Global Anticorruption Blog (post by Richard Messick of 18 June 2025, which dates the first request to 5 June; the document bears the date of 9 June). The Chair’s letter is not public: her reply is known only through the organisations.
17. HEDA Resource Centre, Corner House, Hawkmoth and Re:Common, statement of 23 June 2026 (“We will now hold the Working Group to its undertaking”), published on the HEDA website on 30 June 2026.
18. Complaint DEN-OCSE-LSM-2026/09, 26 August 2026, §§ 3 and 36-38 for the thesis reported in § 6; acknowledgement of receipt by the Secretariat (W. Loo), 7 September 2026; Synthesis, 9 September 2026; letter from the Chair of the Working Group, 11 September 2026; covering note to the reasons of the Court of Cassation, 9 October 2026; letter from The Corner House, HEDA and Hawkmoth to the Chair, 16 October 2026 (“two independent complaints”). The complainant’s documents are published on the case page; the chronology of the correspondence is in the complainant’s records. Register. Verified against the official texts: the Convention, the Commentaries, the 2008 note, the Phase 2bis report on the United Kingdom,

the English judgments of 2008, the 2019 statement on Canada, the 2024 follow-up report on Italy, the two 2025 requests of the organisations, the judgment of the Court of Cassation. In this English edition, quotations from English-language sources are given in the original; quotations from the Court of Cassation follow this site's English translation. Attributed: the quotations from the Phase 4 report (2022) to the complaint that reports them; the 2025 reply of the Chair to the organisations that report it. Not found, in the public documents of the Working Group consulted as of 19 October 2026 (OECD website, one.oecd.org archive): any pronouncement of the Group on the application of Article 5 to proceedings against the public prosecutors of a foreign bribery case; the question in § 6 remains open.

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