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Policy Implementation
in Italy: Legislation, Public
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of Law

Paul O'Brien

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RULE OF LAW**

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By Paul O'Brien

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Abstract/Résumé

Policy implementation in Italy: legislation, public administration and the rule of law

OECD indicators of structural policy show that policy changes in Italy since 1998 should have improved the environment for entrepreneurship significantly, but in the same period its economic performance has deteriorated noticeably. This may be partly because there is a difference between policy measures intended by the government or parliament and their impact on the business environment perceived by entrepreneurs. There is no certainty as to what are the main culprits, but a number of policy steps would help to improve the situation. These include better thought out and better written legislation and implementing regulations, more use of performance-oriented management in public administration, and further streamlining and reduction of incentives to procrastination in the judicial system. Legislative simplification and transparency will increase economic efficiency in themselves, while also making a contribution to reducing the incentives and opportunities for corruption and organised crime to flourish. Clear operational independence with accountability is essential for bodies monitoring and assessing the extent of corruption. This Working Paper relates to the 2013 OECD Economic Survey of Italy (www.oecd.org/eco/surveys/Italy).

JEL Codes: H H1 H7 H73 H83 K K2 K4

Key words: Italy; rule of law; civil justice; regulation; corruption; crime; legislation; transparency; accountability; public administration.

Mise en œuvre des politiques en Italie : réglementation, administration publique et état de droit

D'après les indicateurs de politique structurelle de l'OCDE, les réformes lancées par l'Italie depuis 1998 auraient dû fortement améliorer son climat des affaires, mais ses résultats économiques se sont nettement dégradés dans l'intervalle. Cette situation s'explique peut-être, en partie, par une différence entre l'effet espéré des mesures adoptées par le gouvernement ou le parlement et leur impact sur le climat des affaires tel qu'il est perçu par les chefs d'entreprise. Il est impossible de désigner avec certitude les principaux responsables de cet état de fait, mais un certain nombre de mesures contribueraient à améliorer la situation. Il faudrait notamment une législation et des textes d'application mieux conçus et mieux rédigés, une gestion de l'administration publique davantage axée sur les résultats et un effort supplémentaire de rationalisation du système judiciaire et de réduction des incitations aux mesures dilatoires en la matière. La simplification et la transparence de la réglementation renforceront l'efficacité économique d'elles-mêmes, tout en contribuant à réduire les incitations et les possibilités qui permettent à la corruption et à la criminalité organisée de prospérer. Couplée à la responsabilisation, une indépendance opérationnelle claire est essentielle pour les organismes chargés de surveiller la corruption et d'évaluer son ampleur. Ce Document de travail se rapporte à l'Étude économique de l'OCDE de l'Italie 2013 (www.oecd.org/eco/etudes/Italie).

Codes JEL: H H1 H7 H73 H83 K K2 K4

Mots-clés: Italie; état de droit; corruption; crime ; législation ; transparence ; administration publique.

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The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

POLICY IMPLEMENTATION IN ITALY: LEGISLATION, PUBLIC ADMINISTRATION AND THE RULE OF LAW

By Paul O'Brien¹

OECD indicators of product market regulation (“PMR indicators”) show that Italy’s structure of regulation evolved significantly between 1998 and 2008. Regulation has improved not only in absolute terms, but it has also moved from being much stricter than the OECD average, and therefore likely to be relatively unfavourable to growth, to a level somewhat lower than average. Other things being equal, such an improvement should give a strong boost to per capita GDP, especially relative to other countries. But per capita GDP rose more slowly in the decade up to 2007 than in any decade since the second world war, losing ground to most of its trading partners. Currently, following the renewed recession, per capita GDP is lower than it was in 2000.

A first observation is that the structure of regulation in practice may be more restrictive than it appears formally. Possible reasons for this vary from the legislation itself, through to the operation of the public administration and to corruption and crime. In most cases, quantifying either these factors themselves or their impact is very difficult. Some will affect growth through undermining economic legislation and some may have a more direct impact on increasing the costs of economic activity. This paper looks at the ways in which the explanation for this disappointing performance may lie in various aspects of governance, either through direct effects on firms or workers, or perhaps by fostering a gap between intentions and practice in regulation.

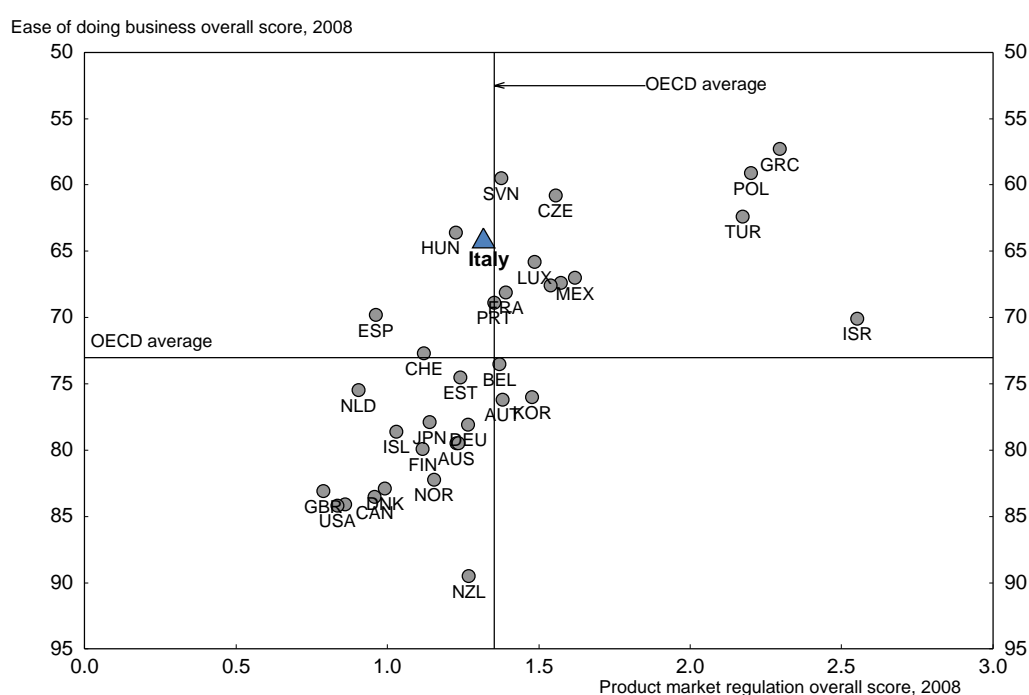
Regulation in practice may be less growth friendly than intended

This poor long-term growth is a puzzle if the improvement in PMR indicators reflects a genuine improvement in framework conditions for growth, as OECD research suggests is the case (Nicoletti and Scarpetta, 2003; Bourlès *et al.*, 2010). Assuming that the PMR indicators are as accurate for Italy as for other countries, either productivity in Italy was on track to have fallen considerably in the absence of the policy improvements behind the indicators, or some mechanism is at work that prevents the policy measures having the desired effect. The PMR indicators are compiled from very detailed questionnaires completed by officials in relevant ministries in each country. They are also cross-checked for internal consistency and, though they cannot be linked with specific legislative action, checked for plausibility with known legislative action. There is no reason to suppose they are less accurate for Italy than for other countries.

1. This paper was originally produced for the 2013 OECD Economic Survey of Italy and published in May 2013 under the authority of the Economic and Development Review Committee (EDRC) of the OECD. Paul O'Brien is a Senior Economist in the OECD Economics Department. I would like to thank Oliver Denk, Magda Bianca, Janos Bertok, Ivana Capozza, Krzysztof Michalak, Celine Kauffman, Giuliana Palumbo and members of the EDRC for valuable comments and discussions. We are also grateful to Josette Rabesona for technical assistance and to Heloise Wickramanayake for secretarial assistance.

Other indicators of business conditions present a different picture of Italy's relative position. An important example is the World Bank "Doing Business" survey (see <http://www.doingbusiness.org>).² A large part of Doing Business uses the same type of data as PMR (although they overlap precisely for only two specific indicators), based on laws and regulations as written, though PMR is very much more detailed. Some aspects of Doing Business are different, since most indicators are also based on the cost of and time taken for stylised business operations; it also includes a measure of the efficiency of courts. Generally there is a reasonable correlation between countries' scores on the overall Doing Business indicator and their scores on the OECD PMR indicators (Figure 1).

Figure 1. Italy scores relatively weaker on Doing Business than on OECD regulatory indicators



Source: OECD PMR Database and World Bank, Doing Business.

Along with Slovenia, Spain, Hungary and the Czech Republic, Italy's Doing Business score for 2008 implied that it was less business-friendly than the PMR indicators suggested should be the case. In terms of ranking, the difference is more marked: while Italy was somewhat below (better than) the OECD average according to PMR indicators, it was the 7th worst according to Doing Business. According to Doing Business 2013, Italy's score has improved since 2008 but other countries have improved more so that its ranking among OECD countries has slipped to 3rd worst, though with a score little different from Hungary and Luxembourg. The PMR indicators are not updated every year so data after 2008 are not available (an update for 2013 will be available during 2013).

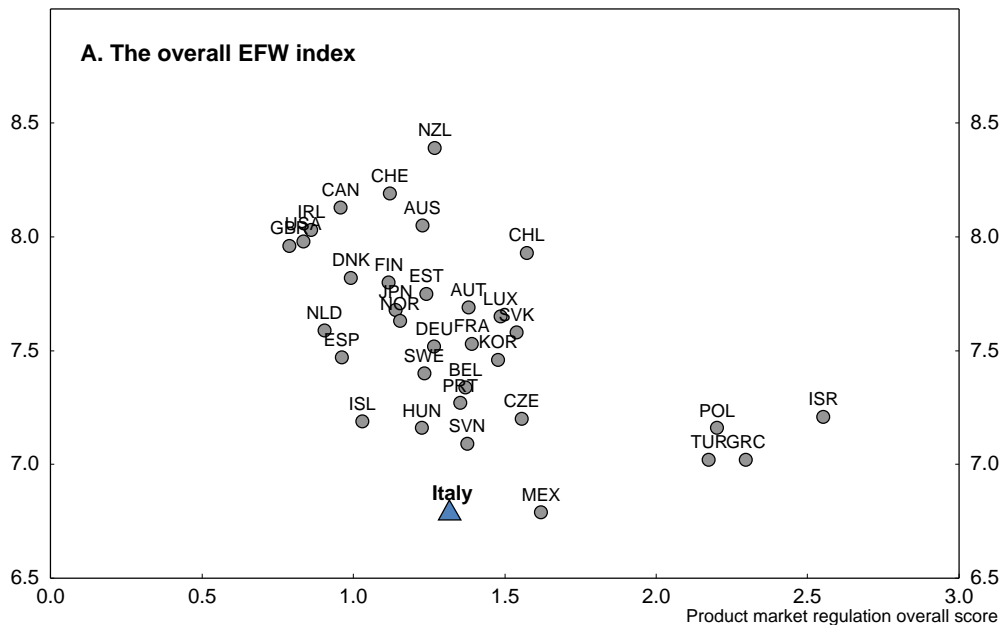
2. A World Bank independent evaluation group reviewed the compilation of data for Doing Business in the light of some criticism (World Bank, 2008). A key criticism was the narrow base of informants for some countries. The report also emphasised that the indicators measure the cost of regulation for business, not the benefits for society. This is also true for OECD indicators, but the usefulness of both sets of indicators is in part to look for ways to get the benefits of regulation with minimum economic costs.

A second comparison is with the “Economic Freedom of the World” (EFW) index from the Fraser Institute. This is a compilation of indicators, partly from other sources, including some from the World Bank,³ and partly from a survey of business perceptions of various issues. The questions are largely about whether business perceives different types of regulation as a restraint on entrepreneurship (Fraser Institute, 2012; methodological annex: <http://www.freetheworld.com/2012/EFW2012-app.pdf>). Apart from its reliance on perceptions, which may be difficult to standardise across countries, some of the assumptions might be questioned. For example, size of government, measured from national accounts statistics, is treated as in itself reducing economic freedom. But precisely because it uses a lot of perceptions data it is interesting to compare it with the strictly formal approach of the PMR indicators. The overall EFW index shows a somewhat less strong relationship with PMR than in the case of Doing Business, but nevertheless still quite similar (not surprisingly since the EFW index includes a number of items from Doing Business) and Italy is an outlier in the same way (Figure 2, upper frame). Limiting the comparison to the components of EFW which are based on perceptions, the positions of many countries change somewhat, but the overall pattern remains the same, notably with Italy as an outlier (Figure 2, lower frame).

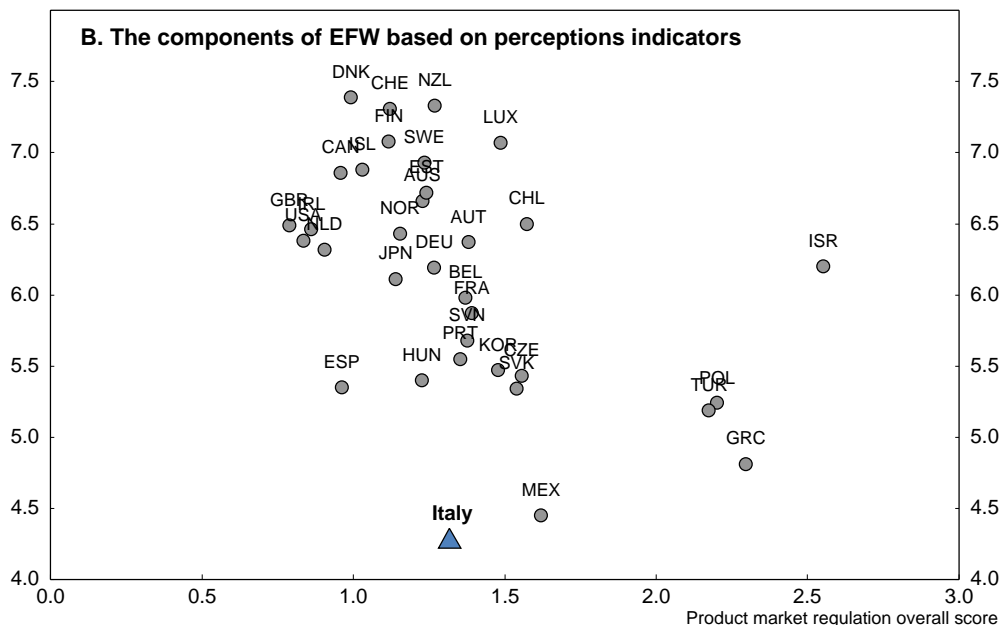
3. Among other World Bank data, it uses indicators of labour market regulation from Doing Business. The World Bank has suspended use of these in its latest, 2013, report, pending revision of the methodology.

Figure 2. Perceptions indicators rank Italy lower than regulatory indicators

Economic freedom of the World, summary average index



Economic freedom of the World, perceptions indicators¹ only



Note: The EFW index is on a scale of 0-10, where higher scores indicate less restraint on business, whereas product market regulation, on a scale of 0-6, is interpreted the other way round, higher scores indicate more restraint.

1. Simple average of 2A,2B,2C,2H,2I,4.B1,4.D1,5.B2,5.B3,5.C1,5.C2 and 5.C4 (see Fraser Institute (2012)).

Source: OECD PMR Database and Fraser Institute (2012).

A final set of indicators is provided by the Global Competitiveness Index of the World Economic Forum. This ranks Italy 42nd, below most OECD countries. The country does well in some indicators of private sector performance, producing goods high on the value chain with one of the world's best business clusters (ranked 2nd). But it displays some institutional weaknesses, including high levels of corruption and organised crime and a perceived lack of independence within the judicial system (World Economic Forum, 2012).

These different perspectives appear to corroborate what anecdotal evidence and popular opinion often suggests: that in Italy there is a gap between what legislation says, or policy intentions, and the actual framework for business and that this gap is larger in Italy than in many other countries.

There are many possible explanations for a gap between policy intentions and outcomes

It is not obvious how important the possible implementation gap that Figures 3.1 and 3.2 may indicate might be. The nature of this kind of data may not be robust enough to make quantitative estimates, but it is worth considering what factors might influence any implementation gap. Many of the potential explanations are important in their own right, for their implications for growth or other aspects of welfare.

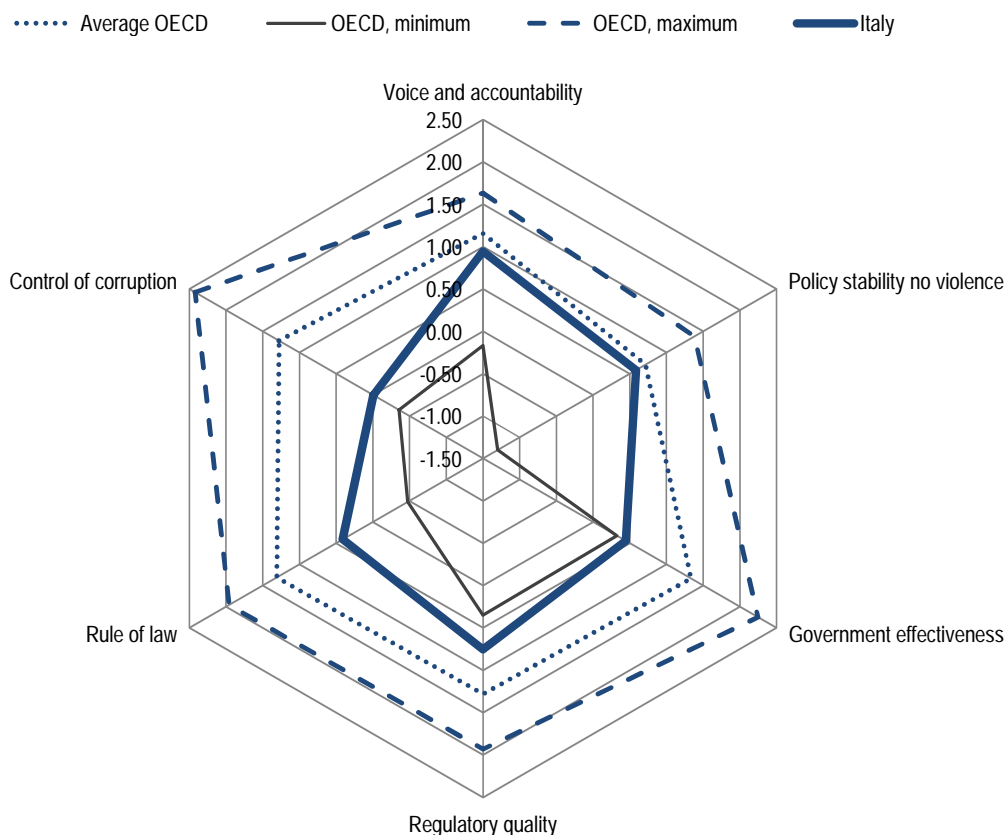
Considering the chain which links a government's intentions with the reality facing companies and workers, the following factors could contribute to an implementation gap: legislation which is unstable and sometimes fragmented, poorly drafted or ambiguous; regional/local regulation which is inconsistent with national legislation; regulations which are not effectively implemented by the public administration; inadequate administrative capacity in some regions; opposition by vested interests; implementation or enforcement which is ineffective because of slow moving courts; and regulations which are sometimes frustrated by phenomena related to corruption or organised crime. Many of the factors listed are part of what could broadly be called governance.

Governance

The World Bank maintains a database of World Governance Indicators⁴, which have a number of components (World Bank, 2012). They suggest that Italy is not a good performer (Figure 3). These indicators are derived from perceptions, not hard facts, based on a relatively small number of sources. Though the number of sources is small, the view about individual countries is fairly well defined, as the example of the component "Government Effectiveness" shows. This "captures perceptions of the quality of public services, the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government's commitment to such policies" (World Bank, 2012, <http://info.worldbank.org/governance/wgi/pdf/ge.pdf>). Figure 4 shows the level of the indicator (the average across each country's sources), with upper and lower limits derived from the standard error across the different sources used. It shows a clear separation between Italy and the better performing countries, whereas differences between Poland, Italy and Mexico are much less clear. For this indicator the number of sources is 11 for Poland, 10 for Mexico and 7 for Italy and the other countries shown. Even for better sourced indicators, however, the number of contributors is only 12 or 13. Apart from the number of sources surveyed in the questionnaire, the precise questions asked sometimes vary across countries. These indicators clearly have their limitations, therefore, but it would be unwise to dismiss them altogether.

4. Information on them can be found at <http://info.worldbank.org/governance/wgi/index.asp>. The full dataset can be downloaded from the website.

Figure 3. World Bank governance indicators

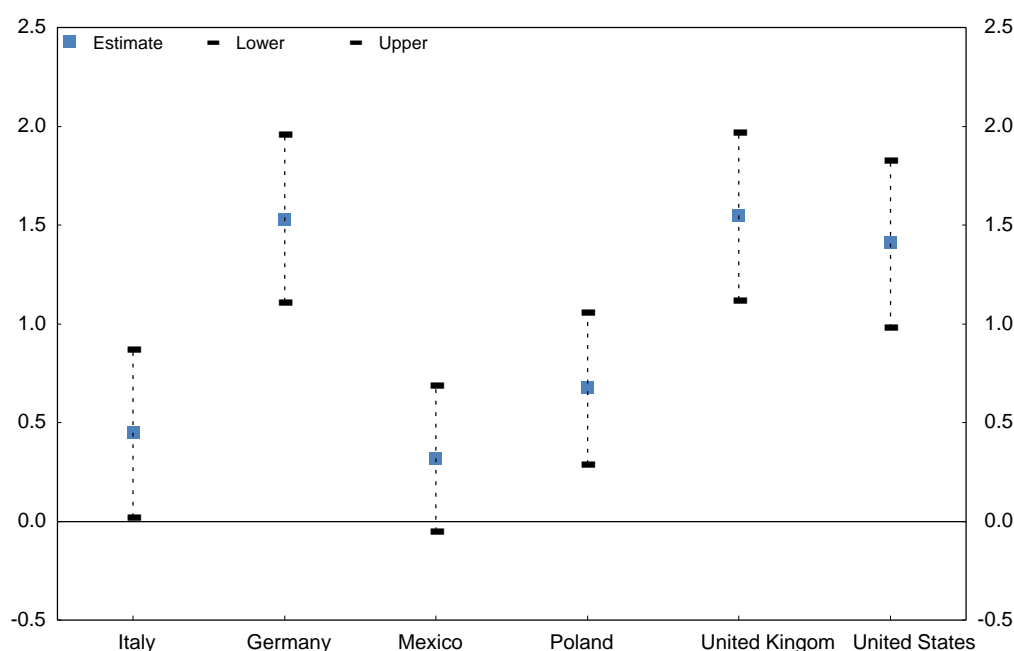


Note: The OECD average is the simple average of the OECD member countries.

Estimate of governance performance ranges from approximately -2.5 (weak) to 2.5 (strong).

Source: World Bank, The Worldwide Governance Indicators, 2012 Update (www.govindicators.org).

Perceptions of regulatory quality recorded in these governance indicators also seem poor relative to well-performing OECD countries. OECD indicators of regulatory management systems suggest this should not be the case. While Italy scores relatively low on “clarity and due process” in rule-making procedures, it is above average on “appeal, compliance and enforcement” and below average but not dramatically so on regulatory impact assessment (OECD, 2009a). As OECD (2009a) emphasises, however, for example in the case of indicators of clarity and due process, they record the existence of procedures but “[do] not gauge whether these procedures have been effective” (OECD, 2009a, p 136).

Figure 4. World Bank indicators show relatively low government effectiveness in Italy

Note: Estimate of governance performance ranges from approximately -2.5 (weak) to 2.5 (strong).

Source: World Bank, The Worldwide Governance Indicators, 2012 Update (www.govindicators.org).

The quality of legislation

One of the factors likely to influence government effectiveness is the quality of legislation. While difficult to define precisely (what is seen as good in one country might not be so in another, for example) this concept nevertheless has some concrete components, both in terms of procedures and outcomes.

Government by decree

In recent years, much, probably most, significant economic legislation has been issued by government decree (*decreto legge*).⁵ In principle reserved for situations of particular urgency, the use of this decree procedure means that many economic reforms are contained in laws entitled “Urgent measures...” This seems inappropriate for many structural reforms which include measures ranging from shop opening hours to modifications to the status of network industry regulators. Under this procedure the measures in the decree become law as soon as the decree is published in the official gazette; if the decree is not converted into law by parliament within 60 days it lapses. Parliament is free in principle to modify the law before finally enacting it but such changes are typically small but occasionally quite significant. This is an efficient way to enact important measures without spending time on long public and parliamentary debate, but has disadvantages.

5. The following discussion applies to *decreti legge*, not to *decreti legislativi*. The latter are laws prepared by the government following a *legge delega*, through which the parliament defines broad principles and then explicitly delegates the detail of legislation to the government. See OECD (2012a) for a description of the various types of legislation in Italy.

Public and parliamentary debate can reveal potential weaknesses in policy proposals. Debate should facilitate public and parliamentary understanding of the issues and the legislation, and parliament then has some “ownership” of the legislation.

A further consequence of the use of decree laws appears to be that procedures that should lead to better legislation may be neglected, notably regulatory impact assessment or similar examination of policy measures to establish whether there are better alternatives. According to Clarich and Mattarella (2010), another reason for the widespread use of decree laws is that it avoids the constraints on the public administration’s use of regulations. The latter include impact analysis as already mentioned and the fact that regulations can be challenged in an administrative court whereas laws cannot be. An OECD report on regulatory mechanisms also discusses this point (OECD, 2012). The same report also notes that Italy seems to have passed from one extreme to another in terms of regulatory impact assessments (RIA); in the past it was criticised for not using RIA, despite legislative provisions for its use, but more recently has been carrying out so many (150 a year) that they cannot be done effectively or taken seriously in the policy making process.

It should be noted that the situation in 2012 was rather special. In the case of the decrees issued by the current ‘technical’ government many of the fiscal measures were indeed urgent, because of the concerns in financial markets about fiscal sustainability. Furthermore parliament had given the government a mandate to rapidly introduce structural policy measures - most of which indeed followed recommendations that OECD reports had previously made. This could probably not have been achieved in a short time without the use of decrees. But increasing use of decree laws was apparent before 2012; the message is that future governments should aim for fewer, well-prepared laws.

The quantity of laws and transparency

Past and present governments have been conscious of the fact that it is not always easy to understand the structure of legislation. In part this has been because of the volume of laws outstanding and in 2005 the then government introduced (by decree) the “Taglia leggi” (“law cutting”) law. This was intended to take stock of existing laws (there was no clear record of how many laws were in fact currently valid), to eliminate obsolete or redundant ones and to reorganise the structure of the remainder to make it more accessible. The work to implement the *Taglia leggi* law has continued under successive governments. There were some difficulties in organising the process of reviewing and repealing old laws, which was less simple than planned, but by now the number of pre-1970 laws in force has been reduced from over 50 000 to about 2 400 and about 36 000 other laws have been repealed. When secondary laws are included, the number that have been eliminated is over 200 000. The reduction of redundant laws and regulations, along with the ongoing codification of existing legislation has significantly rationalised the legislative system, and should produce benefits in terms of greater legal certainty and savings on public and private expenditure.

The government estimates that the reduction in the quantity of legislation produced potential annual savings (to public and private sectors taken together) of EUR 21 billion, over 1% of GDP. Many individual changes may not have been of great practical significance, especially because a large proportion of the laws abolished were either not enforced or redundant. Rete Impresa Italia, the business federation for small and medium sized businesses, reported that the exercise had no identifiable impact on life for business, perhaps because such business interact with the public administration mostly through intermediaries in the professional services sector, where insufficient competition may have hindered the passing through of benefits to very small companies. Such a drastic reduction in the number of laws that potentially affect citizens or business must certainly produce some savings, however, not least in the public administration.

In some policy areas (for example concerning local public services such as water and waste, or local public transport) recent years have seen quite a large number of changes in laws or regulations, sometimes reversing previous changes, according to the Ministry of Industry and Economic Development. This both adds direct costs as enterprises and clients have to frequently adjust to changing rules and creates uncertainty about what the rules might be in the future. Palumbo (2008) reports that in a sample of sets of laws (*testi unici*) regulating a number of areas an average of 10% of the regulations were changed each year in the period 1990-95; it is not clear how exceptional this is - a similar measure for France was also 10%. The simplification process itself can even contribute to the problem of frequent changes in regulation. For example, between 2008 and 2012 there were many modifications of the rules relating to tenders for public service contracts, at least six of which were in laws whose object was simplification (Rangone, 2008). Future governments should therefore be less quick to take action to respond to specific problems and concentrate instead on making more deliberate, better prepared reforms, and also on better communication of the existing state of regulation in any particular area.

A recent example has been the response to a constitutional court ruling (No. 199, July 2012, also discussed further below) that the competition authority (AGCM) cannot intervene directly in local government contract awards to in-house services organisations as originally foreseen in a law in early 2012. To get round this restriction on AGCM action, a law introduced in October imposes transparency requirements on such contracts. They must be accompanied by publishing on the internet a reasoned justification for the contract decision, a requirement also imposed for existing contracts. The AGCM can verify respect of these provisions. Improved transparency can lead to better decision making, but the measure provides no new power to change the nature of the contracts. It would, arguably, be better for the government to address the issue either with a constitutional change that clarifies the allocation of competencies between central and local levels in the area of local public services, or through a wider and coherent reform of local public services.

Until recently, there was no easy way a citizen could get access to the text of any particular law currently in force, other than by subscribing to a private service. As part of the ongoing programme to simplify laws and legislation, this is now available through a government website (www.normattiva.it). This is a significant improvement in transparency. The laws are often impenetrable in their drafting, however. For example, as most laws modify existing legislation, there are frequent references to other texts, but these references are almost always opaque. To understand the impact of a particular modification it may be necessary to trace the text of several previous laws. The logical structure of this arrangement is impeccable, and has become somewhat easier to deal with through www.normattiva.it, but it could be made more user-friendly. Some improvement has already appeared in 2012 as a number of laws incorporate an explanation of the previous legislation they are modifying.

The eventual solution to this problem is to bring together legislation in a unified text (“*testo unico*”) for well-defined areas. These already exist in many areas and the 2005 *Taglia leggi* law indeed foresees it as a general objective, once obsolete and redundant laws have been cleared out. Progress is being made, though it is not easy to see how far it has reached.⁶ The process of simplifying legislation also has to be followed through with simplifying regulations themselves. This process is on a slower track, and regulating ministries may not have as strong an incentive to reduce and simplify these as for simplifying the legislation. The *Taglia Oneri* (“burden cutting”) programme, which is run by the Office for Administrative

6. In a naive test, a simple search, using www.normattiva.it, for mention of “*testo unico*” in the title of a law gives 27 linked references since 2005, referring to immigration, military regulations, party finance, bank, apprenticeships, financial intermediation, public security, prisons, drug addiction, media, elections, bio-fuel, excise taxes, income taxes, and local government finance. While this indicates that unified texts indeed exist in many cases, none of the linked references led to the *testo unico* itself, only to laws that modify parts of it. [9/11/12]

Simplification of the Department of Public Administration, seeks to assess the costs of individual regulations and where possible modify or eliminate them if the same objective can be achieved more efficiently.

Transparency in legislation and regulation is helped by clear writing. Legislation is notorious in many, probably most, countries for being difficult for non-professionals to understand and there is currently no way to know whether the situation is worse in Italy than elsewhere. Some OECD indicators may give a misleading impression. The indicators of product market regulation (which use some of the regulatory management systems indicators) show Italy among the leading countries for regulatory transparency, rather the opposite of what is being suggested here. This is because parts of the questionnaires from which the indicators are derived may no longer be well-adapted to distinguishing good from bad performers. Notable amongst these are “Is there a general policy requiring ‘plain language’ drafting of regulations?” “Is the ‘silence is consent’ rule used at all?” and “Are there [one stop shops] for getting information on notifications and licences?” These questions require a yes/no answer, and since some countries reply ‘no’ to at least one of the questions and Italy correctly replies ‘yes’ to all, Italy appears among the best performers. As before, being based on questionnaires to the public administration, it is difficult for these indicators to take into account actual practice, *e.g.* whether the one-stop shops are numerous or effective, whether ‘silence is consent’ is used frequently or only very occasionally, or whether the plain language rules are actually followed. The questions to be used in the 2013 PMR on these particular points have been revised to take account of some of these problems.

According to Clarich and Mattarella (2010), the plain language rule is very far from being followed, at least in legislation and, while guidelines for drafting legislation exist, they are not followed. They cite examples which might appear trivial but which can at the least impose costs and at worst make legislation ambiguous. One such example is the use of several different words to refer to the same concept or entity, which can lead to ambiguity in interpretation. Another example cited is the use in many laws of a final catch-all article that says that the present law takes precedence over all existing laws that conflict with it, but no information is provided about which laws might be concerned. In the absence of such information the utility of such articles is not clear, although by the implication that potentially conflicting laws do exist they strengthen the argument that completion of the process of codification in *testi unici* will be very helpful. As for regulations, in nearly all countries there was by 2008 a register of subordinate legislation (question 5 in the OECD indicators of regulatory management systems), which could help to trace these potential conflicts, but Italy was in the minority of countries without such a register.

The constitution

One final point that might affect the nature of legislation which affects the operation of the market is the constitutional provisions relating to economic initiative and activity. Article 41 states (“*L’iniziativa economica privata è libera. [...]*”) that private economic initiative is free but does not explicitly say the same for private economic activity.⁷ Free initiative could be taken to mean freedom to choose the area of one’s activity, while not implying any basic freedom about how that activity is exercised, although this is not the only interpretation (De Benedetto (2012) and web discussion at <http://www.apertacontrada.it/category/articolo-41/>). On economic activity itself, the same article of the constitution states that the law shall define ways in which to ensure that private and public activity are directed towards social ends.

7. A translation into English by the Italian Senate translates “iniziativa” as “enterprise”. If this were accurate there would be little or no ambiguity to worry about. Other translations (*e.g.* from the municipality of Florence) translate it directly as “initiative.”

In an attempt to reduce the tendency to over-regulate, rather than change article 41 of the constitution, the government introduced a provision (in the “Save Italy” law of December 2011) which is intended to establish the presumption that all economic activity is allowed unless expressly forbidden. More precisely it requires that any administrative measures that might restrict economic activity must be justified by the existence of a general interest, and gives the Competition Authority the power to query such measures in an administrative court. This could have significant long-term consequences as it probably removes the basis for much of the regulation that regional and local administrations have used to restrict the development of new retail and commercial outlets (Pellegrini, 2012). Sub-national administrations have often used the impact on potential competitors as a criterion for allowing new outlets, if the new law is effective it would restrict them to using more normal planning criteria. This measure could have an effect quite rapidly because it provides for the automatic suppression of rules that are incompatible with the liberalisation of economic activity.

A constitutional court judgment (no. 199, of 17th July 2012) has, however, thrown some doubt on how effective this “all economic activity is allowed unless expressly forbidden” clause, and the consequent suppression of incompatible regulations, can be. This doubt arises precisely because it would potentially interfere with the rights of regions to legislate in areas reserved to them by the constitution and also because the law itself is ambiguous and would lead to uncertainty. The aim of this part of the law was both to promote liberalisation itself and to reduce complications for businesses operating in different parts of the country. But the constitutional court’s ruling makes this aim more difficult to achieve.

This raises a related point, not particularly connected with the constitution, as to whether general ‘horizontal’ measures to promote simplification are likely to succeed, since they may inevitably be subject to obstruction in practice by other laws, especially in Italy’s context of decentralisation. An example is the s.c.i.a. (*segnalazione certificata di inizio attività*), a document which replaces all specific authorisations to exercise an economic activity unless some direct assessment by the public administration is required. For some time, there was some uncertainty about its validity because the law stated that the s.c.i.a. must be accompanied by certificates of technical conformity only when expressly laid down in “legislation in force”; this led to companies who might be uncertain as to what relevant legislation might be in force asking local public administrations for *ad hoc* documents anyway (Rangone, 2012). This problem has been dealt with by issuing a regulation listing what kinds of activity are subject to the s.c.i.a. only and which are subject to additional requirements (Rangone, 2012).

Sub-national legislation

Italy has become a quite decentralised country. Health provision, environment, professional training and energy policy are regional responsibilities. The organisation of fiscal federalism has still not caught up with the degree of decentralisation. Responsibility for revenue raising is not yet well-aligned with the level of spending obligations although some good ground rules for this were laid in legislation in 2008. Laws and regulations made by regional governments may also suffer from some of the same problems as national legislation, but there is no systematic information. The number of laws varies quite widely across regions, with particularly large numbers in the autonomous regions such as Sicily, but not only in those. Some regions, such as Lombardy, have their own *Taglia Leggi* and legislative simplification programmes.

There are provisions for regions to coordinate their policy among themselves and with central government, in the Conference of the Regions and the State-Regions Conference respectively. However, for some policy areas the decentralisation to regions does not make much sense, however much coordination is undertaken. As OECD (2011a) and OECD (2013b) point out, this is the case for energy policy, where current arrangements require every region to have its own strategic energy plan. The government has proposed legislation to bring energy planning policy back to central government.

An important set of measures simplifies administrative procedures for companies to get authorisation to operate; it emphasises the principle of freedom of private companies to engage in economic activity and limits the range of conditions a company has to meet. The legislation nevertheless lists (in article 12 of the “Simplification” law) the areas where there may be constraints: health, environment, landscape, cultural and historical heritage, human dignity, social utility, public order, and Italy’s international obligations. Most of these would be applied by sub-national government and, at first sight, some of them provide a significant source of potential loopholes. The Joint Conference, in which representatives of the State, Regions and local authorities meet to promote policy coordination, has set up a panel to work on how to draft implementing provisions of the Simplification Law effectively.

A study by the competition authority of commercial liberalisation measures taken by the central government in 1998 shows that while many regions took advantage of the law to increase competition, some did very little and a few actually tightened regulation. The study divided the 20 regions into three groups according to their “competitiveness” (more properly, the level of commitment to competition) and studied outcomes on variables such as investment, consumer price inflation and productivity comparing the period 1994-99 with 1999-2004. Regions that were more committed to promoting competition tended to see a larger fall in inflation (from above average to slightly below average), and an increase rather than a fall in investment. Employment tended to fall, or fall by more, in the competitive regions but wages rose relative to the others (AGCM, 2007).

This suggests that decentralisation of regulatory powers can reduce the ability of central government to effect policy changes in a consistent way across the country, and that some regions are likely to make more use of the reserve provisions for intervention listed in the Simplification law. In one sense, this is not necessarily a problem for policy implementation. Meaningful decentralisation implies the possibility of variation in policies across regions, as the constitutional court judgement mentioned above implicitly recalls. To the extent that this is true, it means that there is no clear, nationally defined, policy in some cases.

In principle, with decentralisation and appropriate fiscal federalism, sub-national government has incentives to ensure such cost-minimisation without centrally-imposed rules. But wide observed variations in prices of identical items (hospital syringes are a frequently mentioned example), unjustified by considerations of quality or quantity ordered, suggest that in at least some parts of the country capacity to control costs is lacking. There is also some evidence of occasional manipulation of procurement rules by purchasing managers who specify particular characteristics that are only met by one favoured supplier. This lack of capacity or will to control costs, rather than a conscious choice by some regions to restrain competition in commercial distribution, may also be the explanation for the uneven implementation of the 1998 liberalisation of commercial distribution. In 2012 the government took measures to strengthen the obligation on public administration at all levels to make use of competitive tenders and centralised procurement agencies to ensure projects and supplies are procured at least cost, including through the national procurement agency, CONSIP.

The government has tried to reduce the direct costs of decentralisation with legislation that reduces the size of the middle tier of sub-national government, the provinces. There are currently 110 provinces and 20 regions. 24 of the provinces are autonomous or in autonomous or special regions; only the remaining 86 are “ordinary” regions where central government has the power to modify their functions. Some functions have been removed to other levels of government and parts of their controlling bureaucracy abolished. A draft law was presented to parliament to reduce the number of ordinary provinces from 86 to 51 by January 2014, with significant cost savings expected. These plans were shelved due to the early elections and the new government will have to decide how to proceed; according to the 2013 Stability law, relevant decisions were to be made by December 2013. Eliminating provinces altogether from the hierarchy of levels of government would be an alternative step towards simplification

and improved coordination, reducing the cost of government, but would require a constitutional law, which would take longer to pass the higher parliamentary hurdles. The longer period for discussion could be useful to ensure adequate consensus and preparation for such a significant step.

Although these or other changes may modify the balance of decentralisation, the principles of the plans for fiscal federalism outlined in 2009 legislation remain valid. The main pillars are an agreed allocation of responsibility for raising revenue between the national and sub-national levels, compensation for centrally imposed spending mandates using transfers based on standard costs, and redistribution from richer to poorer regions based on a standard formula. There have been long delays in implementing these plans, which were in principle mandated by the constitutional reform in 2001.

Policy implementation and public administration

A key factor in Italy's low score on perceptions of government effectiveness shown in Figure 3.3 is likely to be weaknesses in public administration. It is often slow, with levels of efficiency that vary widely across the country, vulnerable to favouritism, and occasionally to corruption and even organised crime. Since at least the 1990s (with the 'Bassanini reforms') governments have been progressively introducing measures to improve efficiency. The latest comprehensive reform plan dates from 2008-9, the 'Brunetta Reform' (OECD (2010) provides a comprehensive description of the Brunetta reform). Anti-corruption legislation, finalised in late 2012, is also an important foundation for improving public sector efficiency.

The Bassanini reform aimed at improving public administration, notably by introducing a performance management system. According to OECD (2010) the results fell short of expectations, while public sector salaries had risen faster than in the private sector. The Brunetta reforms added provisions for greater transparency, simplifying the performance management process, as the incentive system had generally been used to give equal reward to all managers independent of performance.

A 2010 survey by a public relations company of employees in the public administration considered a number of factors that might inhibit progress in public administration reform (Forum PA, 2010). Since respondents could select only from pre-defined problems, the survey indicates perceptions of the relative importance of some issues, rather than necessarily identifying the most significant ones overall. Since respondents were self-selected from a relatively restricted, possibly unrepresentative, group, the results are of uncertain statistical significance. Some indications of relative perceptions of obstacles to reform are nevertheless interesting. In terms of making use of human capital, twice as many people identified the rigid hierarchy and lack of openings for individual talent as identified lack of implementation of incentive systems. As obstacles to change, the fact that organisations were not adapted⁸ to the objectives they were pursuing, complex and contradictory rules and lack of functional integration were identified much more frequently than absence of evaluation of policies, poor information flows or system coordination. And as obstacles to improved ethics, interference from politics and lack of transparency on appointments were thought more important than the 'spoils system'.

A final significant indication in this survey was that the most frequently identified obstacle to improving productivity through better use of information technology was incoherence between organisational change and technological change; perhaps surprisingly in a context of fiscal stringency, lack of financial resources for IT was the least often cited problem. If procedures designed to work in a paper-based system are not modified to take advantage of IT, the use of IT may be pointless, or even an extra cost, rather than improving productivity.

8. "Non tarate" which might refer to inadequate resources or to inappropriate orientation.

According to the same survey, lack of training among employees in the public service did not rank high among the perceived obstacles to change. Lack of willingness, perhaps collective rather than individual, does nevertheless seem to be a problem, at least in some areas. An example concerns implementation of one of the provisions of the Brunetta reform: an office of the public administration can no longer require a citizen to provide a document which itself is produced by the public administration (whether the same or another office). In the past, document chasing has been one of the key complaints of users of the public administration, so implementing this provision should significantly increase overall efficiency and requests for them should be illegitimate. Initially administrative office sometimes continued – illegitimately - to ask for such documents, but a monitoring exercise shows that that production of certificates in local government fell by half in the first 10 months of 2012. In another case, the improved monitoring of the performance reward system may have reduced, but has not eliminated, the phenomenon whereby a tacit agreement to set performance standards that are easily reached prevents the system from rewarding exceptional efforts.

These individual examples show that there is likely to be a delay between introducing a reform and it having a practical impact. Contrary to the view of many of the respondents to the survey discussed above, it also shows that policy evaluation is an important tool, especially in the case of public administration where there are few self-evident measures of efficiency. Early monitoring of outcomes is important to see whether the expected outcomes are being achieved, especially where the aim is simplification of bureaucracy. Such monitoring is indeed under way to investigate the implementation of decertification measures, through monitoring exercises in municipalities and ISTAT surveys of citizens and business.

Accountability and performance management

Measures taken in 2012 to follow through on the Brunetta reforms include a requirement that offices of the public administration designate identified individuals who are responsible for the provision of particular services. This is a valuable measure to reduce costs and increase transparency and accountability, provided that resources and authority are aligned with the responsibility undertaken. It also supplements moves by successive governments to promote a performance management approach at all levels of the public administration.

Trying to go too far with incentives can also undermine effort. Whereas identifying individuals as responsible for particular services is a good idea for promoting transparency and accountability, concentrating sanctions for poor performance on those individuals could backfire. Demands that are too onerous or unreasonable given the degree of autonomy the person has in reality may encourage defensive behaviour - the person concerned may concentrate on avoiding sanctions rather than improving services. It may be that transparency, along with pursuing outcome-oriented performance management within the administration, but without the threat of individual sanctions would be equally effective, and less likely to provoke counterproductive behaviour.

Both the Brunetta reform and additional measures adopted under the 2011-13 government have put strong emphasis on transparency, generally in the form of requiring ministries and agencies of the national public administration to put various kinds of information on their websites, for example salaries and curriculum vitae of senior staff, absenteeism data, and information on performance management processes. The 2012 anti-corruption law provides for a “consolidated text” of all transparency measures taken in recent years to be prepared by the end of 2012; compilation of this text is under way.

In a working environment where openness was the norm, providing such lists of mandatory provision of information could provide useful guidelines. However, under other circumstances it could be largely ineffective as officials might tend to provide information according to the precise wording of the law rather than in its spirit. Such a box-ticking approach has been observed at least in parts of the Italian

administration in the past, for example in the implementation of regulatory impact assessment (RIA) guidelines (OECD, 2009a, 2009b). This was followed by an excessive number of RIA being undertaken without sufficient time to do them properly (at the same time as key legislation was being introduced under ‘emergency’ procedures which by-pass the RIA requirement, as discussed above). This has led to a proposal to introduce some filtering mechanism to ensure that when they are done, RIA are done properly (OECD, 2012).

Hence, even quite clear guidelines can remain without effect when background conditions are not favourable. Given the clear intention of policy, as stated by the Minister of Public Administration (Patroni Griffi, 2012), to aim for maximum transparency, a useful supporting measure would be an explicit freedom of information law. In parallel with existing and planned guidelines on what information ministries and agencies should make available, such a law could make clear that unless there are specific reasons (in the public interest) to the contrary, information should be made available to reasonable requests. Such an approach would match moves already made towards express freedom of economic activity except on specified grounds, and could also support, and be supported by, the recent provision in the anti-corruption bill to protect whistle-blowers.

Until the passage of the anti-corruption law (November 2012) there was no protection for a civil servant who might choose to expose malpractice, whether corruption, disregarding the law or simple inefficiency, in the public administration. The law now prevents retaliatory action being taken against whistle blowers and protects their identity, including allowing evidence in court to be given anonymously (with some exceptions). This is an important step even if, as the OECD *Integrity Review of Italy* points out, there are some weaknesses in what is otherwise a solid framework. For example, while the law may forbid retaliatory action it does not specify what kind of compensation might be due if this provision is violated nor specify any sanctions against an employer who retaliates (OECD, 2013a). Also, there is no protection for whistle blowers in the private sector, nor for contractors, consultants or former public employees, as the law protects only “public employees”.

Civil justice

Efficient civil justice is important to a market economy, in addition to its obviously essential role of providing justice in society more generally. One way to summarise its impact is that it supports the level of trust. Without a high level of trust, complicated transactions can be risky and more costly. This is likely to affect firm size, firm finance and even innovation behaviour. There is some discussion as to whether causality runs from effective legal institutions to a high level of trust, or vice versa. “[I]f trust in friends is generalized so that people assume the good will of strangers, a society can economize on some of the coercive apparatus of the state” (Rose Ackermann, 2001, cited in Berggren and Jordahl, 2006). The opposite causality is also plausible however, so that there is some hope that significant improvements in civil justice can provoke self-reinforcing effects through higher levels of trust, resulting in less recourse to justice and lower costs for society.

A number of cross-country studies show that well-functioning civil justice is economically important (e.g. Kumar, Rajan and Zingales, 2001). It can affect use of resources and technology (Ferguson and Formai, 2011). It can contribute to the development of financial and credit markets by ensuring better creditor protection in bankruptcy or insolvency procedures (Djankov *et al.*, 2008) or better and larger loan facilities (Bae and Goyal, 2009; Qian and Strahan, 2007). Protecting returns from investment allows firms to grow larger (Leaven and Woodruff, 2007). Testifying to the likely relevance of the subject in Italy, many studies look at geographical regional variation within Italy, reaching similar conclusions, especially relating to firm size (Giacomelli and Menon, 2012) and to labour relations (Ichino, 2003).

The definition of efficiency in justice is not simple, since it clearly involves a combination of providing equitable access to redress, getting the right decisions, and getting them in a timely fashion, whereas a budget constraint is likely to impose clear trade-offs between these elements. Comparisons across countries in order to look for best practice are also difficult since there are few standardised definitions that allow comparisons to be made. In terms of funding, as a share of GDP, Italy is broadly in line with the OECD average. In terms of access, financial cost is less of a barrier than in many countries, though this leads to some problems, discussed below.

Civil justice is slow

One thing which is clear about Italian civil justice is that it is slow. Differences in types of case and types of law makes benchmarking hazardous, but a number of cross-country comparisons of reasonably similar types of case reach the same conclusion: common civil court proceedings may be twice as long as in many countries, as much as four times longer than in some of the fastest (Table 1).

Table 1. Civil courts can be slow and expensive

| Number of days necessary to settle a first level civil case | | | |
|---|--------------------------------|----------------|-------------------------------------|
| | 2006 | 2008 | 2010 |
| Italy | 507 | 533 | 493 |
| Portugal | 449 | 430 | 417 |
| Spain | 261 | 296 | 289 |
| France | 262 | 286 | 279 |
| Austria | 135 | 129 | 129 |
| The cost of resolving commercial disputes (2010 data) | | | |
| | Number of procedures necessary | Number of days | Cost, as % of the amount in dispute |
| Italy | 41 | 1210 | 30 |
| Germany | 30 | 394 | 14 |
| France | 29 | 390 | 17 |
| Spain | 39 | 510 | 17 |
| United Kingdom | 29 | 399 | 26 |
| United States | 32 | 370 | 14 |
| OECD average | 31 | 510 | 20 |

Source: CEPEJ (2008, 2008, 2010) and World Bank Doing Business 2012.

The counterpart of the length of time that cases take is a very long backlog of cases in all the civil courts, as the number of new cases has exceeded the number of cases completed in every year since 1990 (except 2000 and 2001) by an average of about 10% over that period (the phenomenon goes back to the 1970s). The lack of cross-country studies of what determines the length of time taken by court proceedings handicaps diagnosis of the problem. Research in Italy has nevertheless highlighted a number of factors that are likely to contribute, suggesting that for the most part it is a problem of demand management (“pathological” demand, according to Marchesi, 2007). Certainly there has been a significant increase in the number of civil cases being opened over the years: in the 1970s the number of new cases was around 1.1 per thousand of the population, this rose to 2 by the late 1990s and was 3 or more from 2005 onwards.⁹

9. Data in this paragraph are all from: Istat, Serie storiche, Tavola 6.3 Procedimenti civili sopravvenuti ed esauriti per ufficio giudiziario.

A number of these issues were highlighted in a government study in 2007-8 (Ministry of Economy and Finance, 2008) and also, for example, in Bianco *et al.* (2007) and Marchesi (2008). These pointed out that the problem had been known for many years and a number of measures had been taken, but that they tended to impose targets without considering what incentives would be needed to reach them. One example is a 2001 law which laid down the maximum acceptable duration for different stages of legal proceedings, providing for compensation for litigants when these were exceeded. The law did not significantly modify the incentives for different actors in the process and had little visible effect. But in recent years, one source of additional legal actions has been the number of people taking action in the appeal courts to claim this compensation, further diverting resources from dealing with the underlying backlog. There would even appear to be cases where lawyers take into account the possibility of being able to claim such compensation when considering starting legal action in the first place.

Two key aspects of civil justice pricing are the form in which lawyers are remunerated and the cost of access to justice. Action has recently been taken in both of these cases. Traditionally, lawyers have been remunerated on the basis of ‘fee for service’ with specific remuneration for each separately defined act in court proceedings. An act can be, for example, introducing a document into evidence. Since there has been no reward for anyone (except for the parties involved, and sometimes not even for them) for expediting cases, lawyers have an incentive to maximise the number of pieces of evidence they introduce.

Legislation in February 2012 on professional services outlawed obligatory remuneration structures such as the ‘fee for act’ system that applied for lawyers. Lawyers and clients are now free to reach agreement on remuneration, including no result no charge agreements or other forms of incentive. This could have far-reaching consequences. Concerns about a transition to this approach, very novel for Italy, have led to some modifications. The professional services legislation provided for the judge in a case to arbitrate on appropriate remuneration if a lawyer and client could not reach agreement (presumably recognising that it was unlikely that competition between lawyers would serve to overcome such difficulties). The legislation also provides for a scale of charges to help judges define what a fair fee would be in such cases. Although this is logical, so as to avoid arbitrary variation between fees in different courts and under different judges, there is a risk that this scale may in effect be used as a reference for fees.

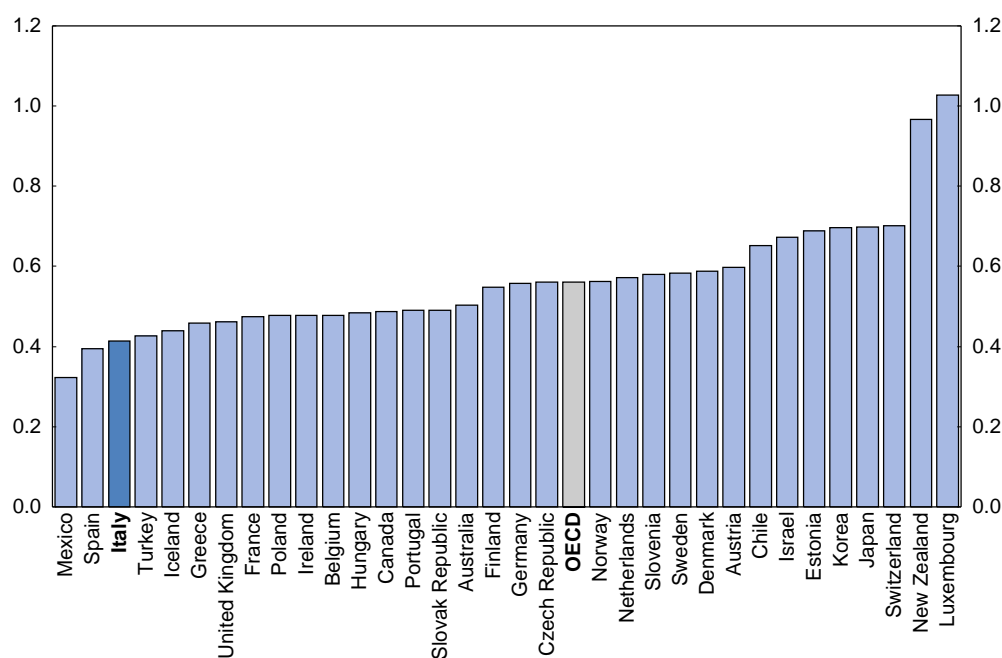
Sometimes, one party in a case has an active interest in prolonging a dispute s/he is certain to lose, because while a case is in court, settlement of a transaction in dispute (which might be a tax payment due, or a debt between private parties) is suspended. This seems in fact to be the motivation behind a number of cases where the low cost of access to courts gives a simple way to postpone settlement of debt. In 2009 the cost of making small claims was increased, producing a reduction in the number of new cases. In 2011, the cost of appeals was also increased.

These perverse incentives apply, or applied, in all areas of Italy. Yet there is wide regional variation in the speed of civil justice. Some of this is for idiosyncratic reasons; for some time a significant proportion of the national backlog of cases was accounted for by one court in an area where the regional office of INPS, the social security agency, had been making a large number of mistakes in calculating old-age pension entitlements. Such effects cannot explain all regional variation, so steps are needed to improve efficiency, other than getting prices right. Much of this depends on the organisation of courts, where research suggests that three kinds of measures should lead to improvements: increasing the average size of courts, through amalgamations, to take advantage of economies of scale in administration; specialisation of courts and judges to allow complex cases to be handled more quickly; increasing average court size makes specialisation among judges more feasible; and more attention being paid by court managers, in particular the court president, to finding efficient ways to manage the caseload. Recommendations in all these areas had been put forward in Ministry of Finance (2008) and there was some discussion of this in OECD (2009b) and OECD (2009c).

In 2012 action was taken on all these fronts. A process of closing many small courts is now under way, with staff being transferred to other courts on the same area. 20 courts specialising in some commercial cases, and correspondingly specialised judges, have been set up. Heads of courts are also required to produce annual plans for case management and their professional evaluations are now to take into account of how these are managed. Given the need to balance quantity of cases (or speed) against quality, it is important for evaluations to get a good balance between these two aspects. They also need to promote dissemination of best practice information, for which a suitably organised information system is needed, as well as appropriate training and selection of judges for the administrative roles. The 2011 report on the operation of civil justice recognises these needs, though it also notes that the “office culture” can be an obstacle to innovation if not carefully handled, primarily through information and training (Corte Suprema di Cassazione, 2012).

Tax evasion

One specific aspect of the rule of law is the extent of tax evasion. The authorities have been taking increasingly strong measures to improve tax compliance. They have imposed a relatively low limit (€ 1000) on the amount of cash that can be legally used in a transaction, to try to improve traceability for both tax and anti money-laundering purposes. Another example is a method known as the *redditometro* (“income meter”), whereby information from records of purchase or ownership of consumer durables is used as a check against declared income. Tax evasion is also significant elsewhere: the low yield of VAT revenue relative to its theoretical yield reflects both this and the number of exemptions and special rates (Figure 5). There can be a trade-off between the strength of anti-evasion measures and the administrative burden on legitimate individuals and businesses. Until the problem of tax evasion diminishes considerably, such higher administrative costs may be a necessary evil. The agency for collecting tax debts (“Equitalia”) has also become increasingly aggressive (and unpopular). Sometimes, collaboration between national tax offices, which taxpayers may view as remote, and local institutions such as chambers of commerce and unions can help to build a culture of legality, including better tax compliance. A draft framework law on tax reform provides for developing such cooperation. It has also been suggested that local government take over the collection of local taxes, though for collecting unpaid taxes, and where tax evasion may be linked to corruption or crime, a national agency may be better placed to take effective action.

Figure 5. VAT revenue ratio 2011¹

Note: The OECD area is the simple average.

1. Or latest year available. Data for 2011 are estimates.

Source: OECD Consumption Tax Trends 2012; OECD Revenue Statistics and Annual National Accounts Database.

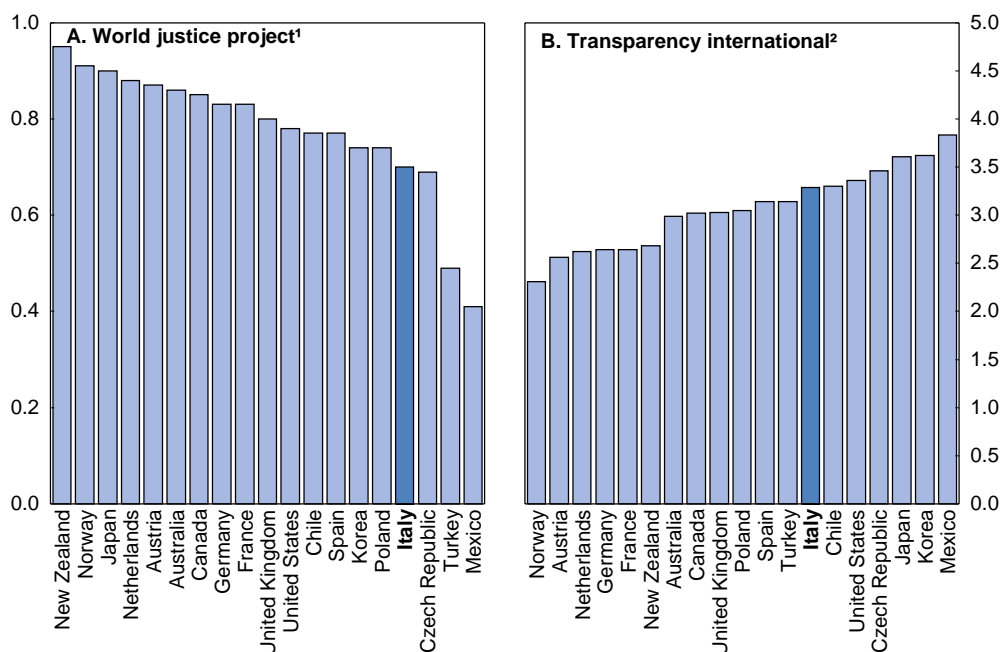
Decisive follow-up through the courts and punishment of major evasion commensurate with the degree of evasion are important to establish effective dissuasion alongside effective monitoring, though the criminal law should be invoked only for fraud and intentional large-scale evasion. Allowing negotiated out-of-court settlements, with full public disclosure of settlement terms to reduce corruption risk, could speed up decisions and reduce the overall load on the courts.

Corruption

The extent of corruption

Analysing corruption in a cross-country comparative manner is difficult. It could – perhaps - be argued that Italy suffers as much from a reputation for corruption as from the actual phenomenon, given that objective cross-country evidence on its prevalence cannot easily be collected.

Such international comparisons as exist do show that Italy performs poorly compared with most OECD countries (Figure 6). These comparisons clearly depend on what is being looked for, however. While Italy ranks poorly according to both the World Justice Project and Transparency International, countries such as the United States and Japan score better than Italy on the overall rule of law (for the World Justice Project) but worse on the Transparency International index which focuses more precisely on corruption.

Figure 6. Italy scores poorly on international perceptions of the rule of law and corruption

1. 1= best possible performance; 0 = worst performance.

2. 0=not at all corrupt, 5=extremely corrupt.

Source: The World Justice Project 2011 (<http://worldjusticeproject.org/rule-of-law-index>) and Transparency International, the global coalition against corruption, 2010-11 (<http://gcb.transparency.org/gcb201011/>).

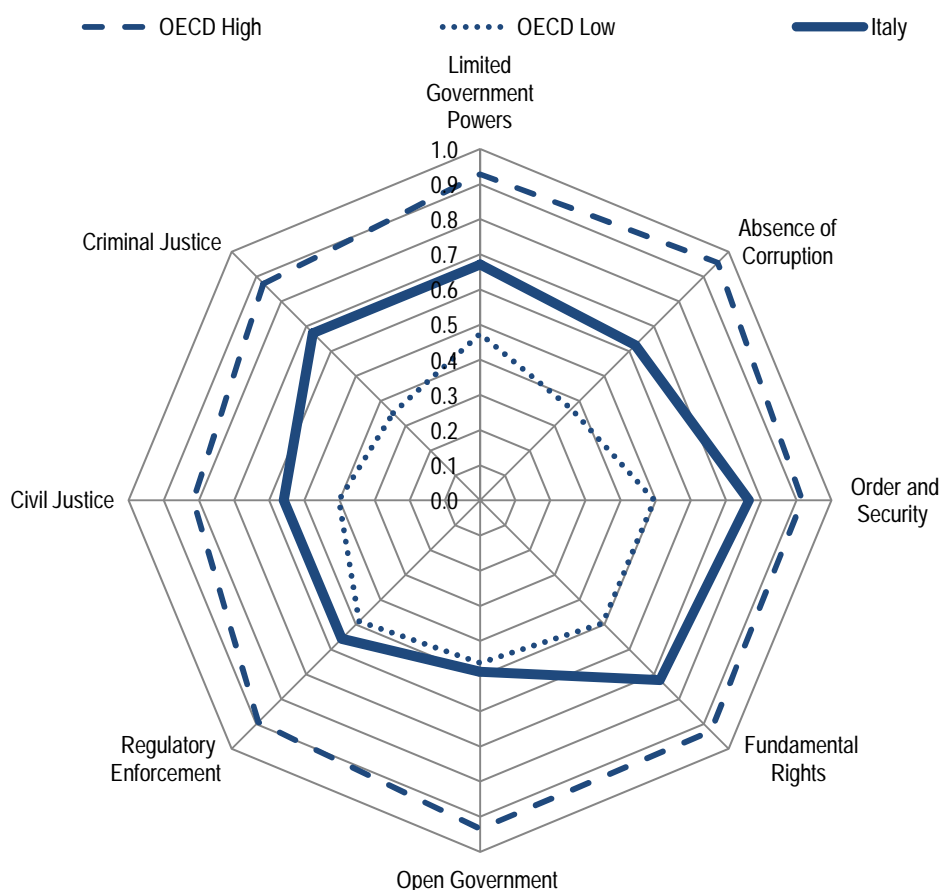
The rule of law index has a number of components. Italy scores close to the worst, among OECD countries, for effective enforcement of regulations and transparency in government, but is less extreme in other dimensions, including those most closely related to corruption, *i.e.* “absence of corruption” and “limited government powers” (Figure 7).

Whatever the precise international comparison, the Italian authorities take the problem seriously. According to a 2007 study on the phenomenon of corruption in Italy, which was carried out by the High Commissioner against Corruption, corruption in public administration is widely diffused and favoured by some specific features of the Italian administrative system, such as a recruitment and promotion scheme that suffers from a certain obscurity and inefficiency (Department of Public Administration, 2008). The High Commissioner study also refers to other research pointing out that, in Italy, corruption is deeply rooted in different areas of public administration, in civil society, as well as in the private sector: the payment of bribes appears to be common practice to obtain licenses and permits, public contracts, financial deals, to facilitate the passing of University exams, to practice medicine, to conclude agreements in the soccer world, etc.

The Office of the High Commissioner against Corruption was abolished in the year that report was published and its functions later transferred to the Department of Public Administration, in what became its Anti-Corruption and Transparency Service (see <http://www.anticorruzione.it/>). If it is true that corruption is “deeply rooted” in the public administration, a more formally independent body to do at least some of the job of monitoring corruption and proposing action against it could be important. The parliament has an anti-mafia commission which covers much of the same ground but is focused on organised crime. A Transparency International study also shows that Italians perceive political parties to be the most corrupt

institutions in the country (Transparency International, 2010). An expert committee to consider the prevention of corruption was set up in early 2012 to suggest ways to reduce corruption issuing a report in October (Commission on corruption in public administration, 2012). The anti-corruption law incorporates a number of its proposals, for example the existing independent commission for evaluation in public administration was allocated the functions of an independent National Anticorruption Authority.

Figure 7. Components of the rule of law index



Note: 1= best possible performance; 0 = worst performance.

Source: The World Justice Project 2012 <http://worldjusticeproject.org/rule-of-law-index>.

The economic consequences of corruption

The presence of corruption implies that laws are not being enforced as intended. And some civil servants receive income, or other rewards, to which they are not entitled, at the expense of private individuals and companies and, implicitly, of more honest civil servants. Provided the civil institutions against which corruption is working are “good” it is hard to argue that corruption is not bad. There are a number of channels through which corruption may negatively impact growth. It is a tax on firms and their investments, it is a barrier to entry of new firms, it induces distortions in the allocation of public resources, it distorts the incentives of market operators, reduces the efficiency of public spending (Cingano and Pinotti, 2009), and reduces public consensus and trust.

It is not so easy to find evidence that it has a negative impact on aggregate measures of economic performance such as GDP, but some evidence does exist. Mauro (1995) found an overall negative

correlation between cross-country variations in perceived corruption and the rate of growth. Aidt *et al.* (2008) found evidence that where institutions are “good”, higher levels of corruption are associated with lower growth. They also found evidence that with weak institutions, corruption has no impact on growth, a finding that they interpret as showing that there are offsetting benefits from individuals being able to circumvent the worst institutional deficiencies. Evrensi (2010) finds that corruption may be associated with higher growth in a sample covering both developed and developing countries, but that this result may only reflect the fact that mature (developed) economies have both less corruption than developing countries and also grow more slowly as they are nearer the production frontier. Houston (2007) found a similar result, specifically focusing on the interaction between weak institutions and corruption.

Looking at variations in growth within Italy, Del Monte and Papagni (2001) use objective though indirect data on the extent of corruption (the number of crimes against the public administration per employee) to show a negative effect of corruption on growth. They further argue that one route for this effect is through less effective public investment in areas with high corruption. This latter conclusion, though perhaps hitting the limits of what data analysis can show, is quite important given the correlation between areas of Italy that are clearly lacking in efficient public infrastructure and the prevalence of organised crime. Another paper using regional variation within Italy, which looks at organised crime in general, not just corruption, assesses the impact of the mafia¹⁰ move into Puglia and Basilicata during the 1970s, and estimates the consequences as a long-term loss of 16% of GDP (Pinotti, 2011, which includes a useful literature survey and some concise historical scene-setting).

The context of corruption

Simplistic analysis of the causes of corruption can be misleading, but some observations can be useful. If corruption is “deeply rooted in different areas of public administration, in civil society, as well as in the private sector” (quoting from the High Commissioner’s report noted above), then it is likely viewed in many cases as conventional behaviour by those involved. Recalling the link between institutions and the apparent impact of corruption at a macro level mentioned earlier, some occurrences could be viewed as legitimate in view of some real or imagined injustice or inefficiency in the public administration. In this there is a parallel with the strongly linked phenomenon of organised crime, whose origins, it has been argued, are partly in legitimate defence of people’s rights against an oppressive (at the time) state or indeed in providing services in purely private transactions (Gambetta, 1996). Today’s state is not oppressive, but social structures set up against it survive and their action is now part of what sustains corruption, with credible threats of violence. Seeking to reduce corruption mainly by aiming to punish the corrupt or the corrupters, without changing the institutional arrangements that might make it seem acceptable (or unavoidable), would create feelings of injustice which might undermine the effort.

Treating corruption as intolerable under all circumstances might therefore be counter-productive, although this should obviously be the approach in two key areas, that is, among the judiciary and in parliamentary institutions, since these are the places which decide and enforce institutional and legal reforms. Del Monte and Papagni (2007) investigate regional variations in corruption in Italy and find they are inversely correlated with measures of civic values, but they also argue that political corruption involving “legislators, bureaucrats and businessmen, who are the actors involved in bribery” has become important.

Fiorino and Galli (2010) also used regional variation within Italy to look for explanations of corruption and found a link with level of income and education (using instrumental variables to try to control for endogeneity). While the correlation with income is negative, there is a positive link with

10. The word “mafia” is commonly taken to cover the main criminal organisations in Italy, while originally referring to “the” Mafia, the specific Sicilian example.

education and also with public investment. The finding of an impact of public investment corroborates other evidence, for example from the parliamentary anti-mafia commission, that public infrastructure investment is a key target for organised crime, while the link with education could be discouraging as education is often, rightly, seen as one of the ways of trying to undermine support for organised crime (Antimafia Commission, 2011). Fiorino and Galli interpret the link with education as being related to the fact that corruption and, to a great extent, the activity of organised crime, is a “white-collar occupation”.

In a study which focuses on what might be thought of as a counterpart of (the absence of) corruption, Buerker and Minerva (2012) show that measures of ‘civic capital’ (based on the prevalence of altruistic acts such as donating blood) appear to be one determinant of variation in firms’ plant size across Italy’s regions. Bank of Italy researchers assess the following factors as being particularly likely to enhance corruption: low social capital; excessive bureaucratic burdens and low quality of bureaucracy (these are both cause and effect); ineffective enforcement; limited independence of the media and a high crime rate (Bianco and Tonello, 2012).

Dealing with corruption

The anti-corruption law, approved in December 2012 after much parliamentary discussion following its original proposal under the previous government, strengthens sanctions, which were perceived to be too weak in many cases. New criminal offences have been introduced: taking into account the suggestions of the Merida Convention and the OECD, “trading in influence” becomes a criminal offence, with a sanction of 1 to 3 years of prison; following the indications of a number of institutions and international conventions a sanction of 1 to 3 years of prison is applied to top managers of private companies that violate their duty in exchange for money or benefits.

The law also takes a number of important steps related to incentives and the context in which corruption occurs, notably its provisions to support transparency. These include assigning responsibility for monitoring corruption to an independent national authority, CIVIT, and the provisions for whistle-blower protection. In line with the general theme of this paper, it is important that the good intentions behind this and other laws are not dissipated when implemented in practice. If corruption is somehow “deeply rooted” in parts of the public administration, while taking into account the fact that the vast majority of civil servants are like those in all countries - doing their best to carry out their assigned tasks - implementation in practice is not a trivial task. To ensure full and continued implementation of the spirit of the law, CIVIT needs to establish and maintain its credentials of independence. Its task of investigating corruption may not always be easily consistent with its more mundane role of overseeing evaluation and efficiency.

The provisions for automatic ineligibility for public office of those convicted of serious offences are among those that could have a significant long-term benefit. Once seen to be operating reliably, they could help to change the position of politicians as one of the least trusted, and perceived as most likely to be susceptible to corruption, groups in society. Speedy judicial action is important for such provisions to be effective. One unhelpful property of the criminal law (it is not the case in the civil law) is in the definition of the statute of limitations. Although it is not an essential part of a judicial system (there is no statute of limitations for criminal cases in the United Kingdom, for example) it has some reasonable properties, such as the length of the time-out period being linked to the gravity of the offence. But the clock does not stop once judicial proceedings have been initiated (as it does in civil cases in Italy, and also in the United Kingdom), but continues through until a final decision has been reached, including first and second appeals. Incentives to prolong civil proceedings have already been noted earlier, in criminal proceedings the incentive can be even stronger since a case may simply be dropped if it runs out of time. It can happen that difficult prosecutions are not initiated because it is anticipated that they may take too long. In the specific case of cross-border corruption that falls under the OECD Anti Bribery Convention, the OECD Working Group on Bribery has found that shortness of the limitation period applicable to companies (legal

persons) inhibits enforcement of the convention (OECD, 2011b). In addition to perhaps adjusting the length of specific limitation periods, changing the operation of the statute of limitations to work as in civil cases, and using other provisions¹¹ to ensure that trials do not take too long, could improve the credibility of some of the measures in the anti-corruption law.

Along with progress towards fewer and better laws, with proper evaluation – including “risk management”, *i.e.* assessment of their vulnerability to corruption or mafia – the measures in the anti-corruption law should help, no doubt slowly, to make citizens and firms both more able and more willing to respect laws and regulations. The results of Buerker and Minerva (2012), where civic capital appears to influence firm size, may result partly from civic capital acting to reduce the prevalence of corruption and therefore the reliability of the public administration. Government policy has few ways to influence civic values, except by example, but an effective education system, notwithstanding the apparent link between level of education and prevalence of corruption (Fiorino and Galli, 2010), is surely a necessary condition. The indication in Barone and Narciso (2012) that education is, if anything, underfunded in areas with greater mafia presence, suggests that some better targeting of resources for education could help.

In measures designed to promote economic development of the poorer regions, there are difficult conflicts to solve. Barone and Narciso (2012) argue that large parts of central government transfers to Sicily, intended to help diminish the persistent gaps in development between Sicily and other southern regions and the rest of the country, are in fact siphoned off by the Sicilian Mafia. It is hard to argue that such funds should be cut off for that reason, but the tendency for resources to be diverted in this way has to be taken into account in deciding how much to allocate, and especially in designing conditionality on its disbursement to try to ensure that money is not transferred without clear results.

The planned development of the social safety net, and measures to improve female participation, have been signalled as important for improving the working of the labour market. They can also have an indirect influence on the position of organised crime. The main mafia organisations often provide a form of social security, through support given to the families of members killed or imprisoned, typically delivered for obvious reasons to females. An improved universal social safety net could simply provide more resources, without changing the incentives for involvement in mafia activity, but it, and greater employment opportunities for women, could help to improve the range of choices available.

Finally, while organised crime has clear local roots and effects in Italy, it is also highly mobile, nationally and internationally. Cooperation with other countries is important, both in making it more difficult for the proceeds of illicit operations to be legitimised and in preventing the development of mafia organisations in other countries. Some countries may underestimate the extent to which they are vulnerable to the development of mafia and mafia-like organisations. OECD members thus need to cooperate fully with Italy in tracking cross-border mafia activities, in both their own and Italy’s interests. Both they and Italy could probably benefit from greater exchange of information and experience.

11. In addition to domestic provisions, appeal to the European Court of Human Rights is an option, though over-use of this by Italian litigants led to the 2001 law on compensation for too-long trials discussed earlier.

Box 1. Summary of recommendations on improving policy implementation

- Reduce the use of decree laws, work towards codified (“testo unico”) legislation, implement rules on impact assessment of laws and regulations and increase the use of sunset clauses.
- Pursue performance-oriented management (not just performance pay).
- Further emphasise accountability and transparency. A Freedom of Information Act could bolster this.
- Widen the range of operation of the centralised public procurement body, CONSIP, to cover as much procurement activity as possible, making a database of comparative purchase prices publicly available.
- Streamline court processes, including length of written judgments and effective use of information technology. Continue streamlining sub-national government.
- Revise the law on limitations (“prescrizioni”) in criminal corruption cases to reduce incentives to dilatory behaviour, such as the inclusion of the full trial and appeals process in the limitation period.

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