



Enhancing Integrity and Effectiveness of Illegal Asset Confiscation - European Approaches - Italian Short Summary

Short description of the model of confiscation

Italy has a peculiar system for the confiscation of assets; it is impossible to identify it under the traditional bi-partition among conviction based (criminal) confiscation and non-conviction based confiscation. On one side there is a general regime which lies under the criminal conviction based model; on the other side a special discipline for criminal organisations is also provided and it works through a precautionary proceeding which is separate from the criminal one and it operates regardless of the criminal conviction of the person whose assets are seized/confiscated by the State.

The two-tiered regime splits confiscation procedures on two levels:

- Criminal proceedings. Seizure and confiscation proceedings are operated under the general criminal court proceedings. Confiscation can be finalised only after the decision of the third degree judge in Corte di Cassazione (Italian Supreme Court).
Also in cases regarding individuals who belong to criminal organisations, final confiscation follows a conviction decision issued by a criminal court.
- Precautionary (prevention) proceedings: it is possible to proceed confiscation of assets for some categories of persons, notwithstanding a pending criminal proceeding or a conviction by the court. The precautionary proceeding has a more flexible structure and it is carried out in criminal courts but under different rules.
The categories of individuals against whom a confiscation can operate independently from a criminal liability are listed in Legislative Decree September 6th, 2011 n.159, the so-called Anti-Mafia Code.

Short description of the national legal framework

Italy does not have a self-standing legislation on the confiscation of assets: relevant provisions are spread in the general criminal legislation, particularly the Criminal Code. The main reference for the issue is article 240 of the Criminal Code, concerning the general conditions to proceed the confiscation, included in the section of the code related to the assets security measures.

This provision provides a general rule for confiscation which is optional, based on discretion, after a conviction is ruled: assets which were instrumental to commit the crime, the product and the profit of the crime can be confiscated. Paragraph 2 introduces mandatory confiscation for other categories, the price of the crime and some inherently criminal assets. It requires confiscation also in cases where no conviction is made. Paragraph 3 and 4 introduce protections for the third parties.

Next to the general provision under article 240 of Criminal Code, there are several provisions on special cases of confiscation of assets, included in the criminal code, in other codes and in special laws.

Law September 13th, 1982, n.646, also known as Rognoni-La Torre Law, introduced the crime of mafia criminal organisations (article 416bis of Criminal Code); under paragraph 7 of this provision, a mandatory confiscation of all the assets related to crime is triggered, this being a special case to the normal rule under article 240 of Criminal Code.

More hypothesis enlarging the mandatory regime to confiscate assets are provided in the Italian legislation, under different sources of law, concerning crimes committed by public officials against the public administration, when goods which should be confiscated belong to a third person unrelated to the crime, a confiscation of goods of an equal value is disposed, for crimes against individual personality, fraud, usury, money laundering, gambling, corporate crimes, abusive subdivision of lands, traffic code violations, financial violations, transnational organised crime, smuggling.

The object of confiscation is specified in the criminal provisions where confiscation is regulated: under article 240 of Criminal Code it is the good which is the price, product or profit of the crime; under article 322ter of Criminal Code it is the good itself; under article 416bis the use of the product, the profit or the price.

Extended Confiscation. Article 12sexies of Law Decree June 8th, 1992, n.306 (Urgent amendments to the new Code of Criminal Procedure and measures to combat mafia crimes), *Special cases of confiscation*, represents a hard approach against the property of criminal organisations. This article was introduced after the Constitutional Court abrogated former article 12quinquies, because it infringed the principle of non guilt (article 27 Italian Constitution): being under investigation cannot automatically mean a disproportion between owned assets and declared income comes from an illicit activity. Article 12sexies is not an incriminating provision but it represents a property measure to confiscate assets which are not related to the charges, an area of law where a sanction is issued without a related crime.

This form of confiscation does not provide for any relation between crime and assets confiscated; the requirements for this confiscation are:

- the conviction (or plea agreement) for one of the crimes provided under article 12sexies;
- the disproportion between the goods possessed by a person and the income from his legal activity;
- insufficient explanations about the legal origin of the assets;

The burden of proof is both up to the prosecutor and the person whose assets are confiscated. On one hand, the public prosecutor must prove the disproportion between the goods possessed and the income of a person convicted for certain crimes (in practice the prosecutor carries on two parallel investigations, a criminal and a property one). On the other hand, the individual whose assets are confiscated will have to prove the legitimate acquisition of the good.

Persons or bodies triggering confiscation. It is the decision made by the judge to provide for the confiscation of an asset related to a crime or the profit/price used to perpetrate it. It is the conviction only, or a decision to seize the asset, to activate the confiscation proceeding. Specific persons or bodies, such as prosecutors, the national revenue agency, custom and tax authorities can indirectly lead to a confiscation procedure when they report a crime news, which results in an investigation, which in turn leads to a criminal proceeding.

Confiscation by equivalent. Article 10 of Law Decree May 23rd, 2008, n.92 (Urgent measures for public safety) introduced paragraph 2ter of article 12sexies, which provides for the confiscation by equivalent of the disproportioned goods (product, profit, price) object of the extended confiscation. This form of confiscation works when the general confiscation under article 240 Criminal Code (or special confiscations cases) of profit, product or price is not possible for different reasons (e.g. the asset is lost, missing or destroyed).

Value confiscation. There are several hypothesis where the confiscated assets do not correspond to the actual product or profit of the crime and they need to be substituted by some assets which have an equal value. This rule is provided under articles 322ter, 600septies, 640quater, 644, 648quater of the Criminal Code, article 2641 of the Civil Code, article 187sexies of Consolidated Act on Financial Intermediation, article 11 of Law to ratify and implement the Convention and the Protocols of the United Nations Convention against Transnational Organised Crime.

Destination of the criminal confiscated assets. Article 86 of the Executive Provisions of the Code of Criminal Procedure provides for the sale of confiscated assets, with procedures expressed in the Consolidated Law on Justice Expenses at articles 149 and subsequent. The sale is made through the institutes for judicial sales with incomes deposited in the Fine Deposit; article 149 specifies that sell is the general rule, unless it is differently provided under special provisions (drugs, usury crimes, smuggling crimes).

Article 12sexies of Law Decree n.306/1992. For what concerns the special cases of confiscation provided under article 12sexies, Law February 13th, 2001, n.45 introduced paragraph 4bis to article 122sexies which extends provisions for the management and assignment of assets provided under

Law n.575/1965; additional legislative integrations were gradually introduced in the following years, leading to a complex overlapping of provisions which make it difficult and uncertain to choose the correct framework to implement for the single cases. A legislative intervention by the legislator would be beneficial, in order to reaffirm paragraph 4bis, which would create a homogeneous framework for seized and confiscated assets in precautionary proceeding and under article 12sexies.

The National Agency for the Management and Assignment of Seized and Confiscation Assets is responsible for the management and custody of assets seized, and for the management and assignment of assets confiscated, both during the precautionary proceedings (ex Law n.575/1965) and during the criminal proceedings ex article 51, paragraph 3bis of the Code of Criminal Procedure (article 12sexies of Law Decree n.306/1992 is applied).

Precautionary confiscation. The fight against criminal organisations led to introduce new tools aimed at contrasting the illicit accumulation of resources. Law September 13th, 1982, n.646, *Provisions on precautionary property measures*, also known as Rognoni-La Torre Law, introduced article 416bis of the Criminal Code, *Mafia criminal organisations* but also precautionary measures related to property rather than to the individual: the *ratio* was to weaken criminal organisations through seizure and confiscation of assets.

Law Decree June 8th, 1992, n.306, *Urgent amendments to the new code of criminal procedure and provisions to contrast mafia criminal organisations*, introduced article 12sexies, which provides mandatory confiscation in cases of criminal convictions or plea agreements for certain crimes and states the implementation of provisions provided under Law n.575/1965 for management and assignment of seized and confiscated assets.

Law March 7th, 1996, n.109, *Provisions for the management and assignment of seized and confiscated assets*, introduces rule for the reuse of assets confiscated to criminal organisations for social purposes.

The main requirement for confiscation is the affinity of the subject to a criminal organisation: this relationship needs to be based on reasonable grounds which can be detected through a pending or concluded criminal case, through the normal life standard hold and by the association with convicted criminals. Even though it is not required a judicial affiliation in order to identify the social dangerousness of the subject, the knowledge of a functional participation to the activities of the criminal organisations stands as a minimum requirement.

Law Decree n.92/2008 also pursued a shift from the prosecution against the person who belongs the assets towards the assets themselves. Article 2bis, paragraph 6bis of Law n.575/1965 (introduced by the mentioned law decree) allows to continue the proceeding for the confiscation of assets also in case the subject dies.

These legislative novelties follow a purpose of “objectification” of the anti-mafia precautionary provision, aiming at contrasting criminal organisations and their enrichment tools. The legislator intended to separate the prevention proceeding from the criminal one, and the case law is according to this autonomy of actions.

Confiscation body

Italy does not have a unique confiscation body: the National Agency for the management and assignment of seized and confiscated assets was recently established but it is not the only body responsible for the proceeding and it is not in a leading position from the early stages. Among the asset recovery actors there are:

- judicial administrator is the person who actively manages the assets during the seizure phase; he takes custody, preserves and manages the assets, trying to increase their profitability, when possible;
- the court responsible for the seizure proceeding, and in particular the delegated judge which is a judge chosen within the collegiate court and represents the main institutional figure during the seizure/confiscation proceeding: his position is central, since he coordinates the activities of the court, the judicial administrator and the National Agency. He supervises the whole procedure, he reports to the collegiate court in cases of a motion to revoke the seizure measure and he can eventually appoint experts (e.g. when the evaluation of an asset is contested);
- the judicial police supports the judicial administrator during the enforcement of the seizure. It also fulfils activities directed to the correct execution of the administrative acts, such as the acquisition of information related to the criminal status of people, and it supports also the physical execution of activities, like the access to sites or taking possession of assets;
- the National Agency for the management and the assignment of seized and confiscated assets;
- support units (at the prefectures).

The National Agency is regulated with provisions included in Legislative Decree n.159/2011.

The staff provided for the agency was of 30 members only (senior executives included), with the faculty of using other public officials assigned to different public administrations to back up. The so-called “Stability Law” has increased the organisation of the agency, by amending both the number of senior management and the operative staff. Moreover an additional integration by the Stability Law is the increase of financial resources for the agency.

Within a national context where the financial crisis led the State to operate cuts on the public administrations, the Agency is kept safe from the staff reductions which are imposed on other public bodies.

In order to better perform a full range of activities the Agency should also be entrusted with a different nature. In particular it should be allowed to acquire professional staff which cannot be found within the public administration workforce. The only possible way in order for this to happen is a formal change of the agency from public legal body with legal person which acts under the surveillance of the Ministry of Interior to an economic public body, characterised by a larger independence for accountant, organisational and financial matters which can act with private law regulation for specific issues:

As to the geographical positioning of the National Agency, the headquarter is located in Reggio Calabria, a regional chef-lieu in southern Italy. Reggio Calabria is the nineteenth largest city in Italy and its choice as the seat of this agency has both a strategic and symbolic value, since data show how Southern Italy is the area where the majority of assets is confiscated and where the presence of criminal organisations is wider. Additional branches of the agency are located in Rome, Milan, Naples and Palermo. In addition to these five offices, the Agency establishes the Support Units, established at the Prefectures, which help to deal with local needs and characteristics, in particular during the stage of the assignment of the assets.

The role of the agency is to act as a point of reference which can direct and coordinate the actions of the several institutional actors. While the agency does not have a leading role during the first phase of the seizure of the assets, its importance rises to the top with the confiscation. Both because of its limited size and the complexity of the proceedings, the Agency needs to build up a network with other actors to guarantee a homogeneous implementation of law on procedures. Since the mission of the agency is the high-valued role of contrasting criminal organisations, all the actors to the proceeding need to enforce profitable cooperation with the agency: precautionary and criminal magistrates (previously referred as court, delegated judge, etc.), judicial police, judicial administrators, public administrations (in particular the local bodies where the assets are located but also the important institutions involved in earlier steps), prefectures, associations and no-profit organisations.

Article 113, as modified by the Stability Law, provides for conventions between the Agency and other public administrations or public owned companies (State Property agency, State Forrestry Body, Association of business accountants, Judicial Sales Bodies). Additional conventions are to be reached with the Custom Agency and the Cultural Heritage Office for assistance in the evaluation of valuables and art works.

During the confiscation proceedings the National Agency conducts several activities which differ from stage to stage. During the first part of the judicial phase the agency assists and supports the

judicial authority (court and delegated judge) and the judicial administrator; after the first degree confiscation the agency carries out the direct management of the asset; after the confiscation is final, the agency assigns the asset to the collective interest and it keeps monitoring the adequate use of the asset in compliance with the assignment order.

The first phase is worthy to be mentioned, when the activities performed by the agency concern fact-finding, planning, consultancy.

The agency and the system here benefit from the lack of rigidity of the law, which does not create a bureaucratic platform with strict framework of tasks and functions but it established a context where the agency and the judicial authority can cooperate and dialogue.

Stages of confiscation

There are three main phases related to the confiscation proceeding: the first one starts with the seizure decree by the judge and ends with the first degree confiscation; the second one begins with the first degree confiscation and it is concluded by the final confiscation; the third one is extra-judicial as it follows the assignment and the management of the asset after the confiscation becomes final. During the first phase immediate issues need to be addressed: the seizure is made and some administrative actions have to be taken to the management of the asset. When the first degree proceeding is completed, so is the first degree confiscation: at this moment either the seizure can take some stability because of the cross-examination or the assets are returned to the holder (seizure is revoked). In the following phase the assets are consolidated by the management in the view of the final confiscation: in this moment the National Agency takes the lead and starts to prepare the ground for the assignment.

The seizure is a precautionary measure, adopted by the court on input by the competent body, based on lighter motives than those requested for the successive confiscation. Lighter requirements are due to the fact that seizure is implemented without a hearing of the person against whom the measure is taken.

There are different kinds of seizure:

- ordinary seizure;
- anticipated seizure: when there is a real and present risk that the assets can be wasted or alienated. In these cases, the public prosecutor, the police commissioner or the director of Antimafia Division can ask the seizure before the first hearing is set;
- urgent seizure: it is disposed by the President of the court during the proceeding by proposal of the same proponents provided for the anticipated seizure.

The precautionary seizure can be ordered when some conditions occur only:

- the value of the assets is disproportionate to the declared income or to the performed economic activity;
- on the basis of reasonable evidence, the assets are supposed to be the result of an illicit activity or they can constitute their reuse;
- the direct or indirect availability of the goods by the suspected person. This availability needs to be substantial rather than formal;

The seizure order is issued by the judge for precautionary measures or by the criminal judge with competence for precautionary measures (but without autonomous investigative powers) on proposal of the body proposing the seizure. The seizure order is divided in two parts, one describing the goods which are the object of the measure, the other containing directions on how to enforce the seizure and how to manage the assets.

The assets which can be object of a seizure order are all the goods on which a right can be exercised. The main distinction is among companies (and companies' shares) and others (immovable assets, movable assets recorded in a public register, movable assets, dematerialised financial instruments, credits).

As to the enforcement, seizure is enforced by the public prosecutor (ex article 12sexies) or by the judiciary police under proxy by the court (precautionary seizure). Procedure includes:

- actual enforcement which includes all the publicity duties on behalf of the administration in order to notify the possible appealers or protests;
- fulfilling formal duties for the transfer of the asset to the judicial administration;
- the physical taking of the goods;
- the possible forced clearing of the immovable assets.

The court appoints an administrator, who enters the proceeding and manages the assets, assisted by the judicial police and the bailiff¹. Some assets are instead shifted to the "FondoUnico di Giustizia" (Justice Unique Fund), a fund managed by the company EquitaliaGiustizia to receive money or other incomes seized or confiscated through criminal or administrative proceedings. Assets managed through this fund are money and related incomes, interests, State bearer securities, revenue stamps, monetary credits, deposit accounts, saving deposits and other financial monetary interests not related to companies.

The judicial administration is a cross-section activity which concerns all the stages of the proceeding.

¹ The bailiff is a public official assisting judges and public prosecutors for notifications, executions and complains. A bailiff is present in each tribunal.

The judicial administrator has some duties to accomplish during the first execution phases of the seizure. He needs to present a detailed report on the status and consistence of the seized assets to the relevant judge, including:

- description of the activities performed during the seizure and of urgent managerial activities performed;
- description of all the assets, their value and the rights by third parties;
- strategies and proposals for an improved asset management;
- to make the judge aware of other related assets which could be seized that he had known during his management (he can also request the urgent seizure).

It is the delegated judge to fix the schedule for periodic relations on the proceeding; special, further relations can be requested, too, in case of unexpected needs.

The delegated judge, and the court, on their side can amend or complete the seizure by revoking the seizure of a particular asset (because of formal discrepancies or because not in possession of the indicted person) or by disposing the seizure of additional assets.

An adequate balance is operated both between the operating subjects and between the interests to achieve: the judicial administrator and the delegated judge need to cooperate, with decisions taken by the judge being motivated, and both the subjects have to simultaneously protect the rights of the parties involved with the long-term view of the final assignment of the asset after the confiscation.

Confiscation. As previously described, the seizure of the assets is decided during the precautionary phase; this decision needs to be confirmed during the effective court proceeding where the defendant can litigate the charges and try to turn over the seizure order and to have the seized assets returned. The first degree confiscation can be appealed but the parties involved in the proceeding can assume a higher expectation of a final confiscation since this degree follows the cross-examination of the parties; after the appeal, the second degree confiscation provides even more stability expecting the final confiscation. The confiscation is final when the third degree judges confirm the decision issued in the previous degrees.

The confiscation temporarily follows the decision (conviction) or the plea agreement on one of the crimes provided under the law. In cases where the confiscation was not preceded by the seizure, the judge in charge of enforcing the decision has to check the existence of the objective requirements for confiscation (i.e. direct or indirect availability of the good on behalf of the convicted person, the lacking explanation of the disproportion between a good's value and the income or the business activity).

The management of the asset is a crucial part of the confiscation proceeding; the activities can prominently differ based on the kind of asset.

A different approach needs to be adopted when it comes to movable assets, depending on the nature of the asset itself: when the good is perishable or its custody too costly, it can be sold, when it is of relevant value it can be kept in custody, or finally, it can be assigned to be used.

The proper management stage starts when the confiscation is decided by the first degree court and the asset is assigned to the National Agency. After the confiscation becomes definitive through the "Corte di Cassazione" judgement, the asset continues to be managed by the Agency but it enters into the State property, with the Agency in charge of the assignment, which is carried out through a resolution of the Directive Counsel. Within a maximum 90 days (extendable to additional 90 days in case of "particularly complex operations"), the Agency has to adopt the "assignment order" for the confiscated asset.

Immovable assets can either remain into the State property or be transferred first to the Municipality or secondly to the Province or the Region where the asset is located. In the first case they can be used for justice, law enforcement or civil protection purposes, or other government or public needs related to the implementation of institutional activities of public offices, tax agencies, universities or cultural institutions of considerable interest; and they can also be used by the Agency itself for economic purposes. Local administrations (Municipality, Province, Region) can receive the asset for institutional or social purpose, this meaning that they can directly manage the asset or assign it to communities, included youth groups, volunteer organisations, cooperatives, therapeutic and rehabilitation centres for drug-addicted people, environmental protection associations. This grant must be free of charge and in accordance with principles of transparency, adequate publicity and equal treatment.

Local authorities also have the opportunity to use the asset for profit purposes if it cannot be allocated and the income is re-used for community purposes exclusively; moreover, sell is restricted to business associations, public authorities and foundations. The Municipality has one-year time for providing an allocation for the asset; after this period the agency revokes the transfer and appoints a Commissioner with powers of substitution.

There is a different procedure for companies which can be rented, sold or cleared: the rent is possible when there is a proven possibility that the activity can continue or restart; in this case, it can be rented either to public and private companies, upon payment, or to cooperatives of workers, free of charge. The sell or clearing are instead admitted when it comes a higher benefit for public interest. All proceeds coming from the rent or the sell are deposited into the Justice Unique Fund.

In July 2011 an official communication of the Ministry of Interior established the creation of Support Units at each Prefecture, meant to include representatives of other administrations, local bodies and associations for the assignment and monitoring process; State Property and Law Enforcement agencies are also particularly encouraged to be involved. The aim is to speed up the

assignment procedure through the suppression of obstacles that could make the assets less attractive for local administrations, to support the Prefecture in monitoring the assigned assets, and to assure that the most suitable conditions are restored to enable an actual use of the asset according to institutional and social purposes.

Other important information from the research

Two interesting areas of research concern the confiscation of assets of legal persons and the protection of third parties during the proceeding.

Confiscation of assets of legal persons. Legislative Decree June 8th, 2001, n.231 (*Administrative liability of legal persons, companies and associations*) introduced the administrative liability for legal persons: companies are responsible for a list of illicit acts committed by employees. Legislative Decree provides for confiscation of assets from private companies' illicit activities, too: confiscation is linked to the crime committed by a physical person and it is carried out through goods of equal value when it is needed. Under this law, the legal person loses its qualification of interested third party.

One of the most interesting characteristics emerging from the analysis of the law is the nature given to the confiscation, which is here considered as a sanction rather than as a security measure.

it is mandatory to confiscate the profit coming from a crime committed by individuals in apical position, if the same legal person did not provide for an adequate compliance programme to prevent the crime. This provision has a precautionary *ratio*.

Confiscation for legal persons hires a function to restore an economic balance which had been altered by a crime. The approach for confiscation against legal bodies does not lie on juridical basis only but it is intended to widely contrast the economic criminality.

Protection of the third parties during confiscation. When an asset is confiscated, third parties' interests can be relevantly affected. A third party can be connected to the asset in various forms:

- the asset can belong to a person who did not commit a crime or an illicit behaviour; he is the owner or the co-owner of the asset, so he has a direct interest against the confiscation;
- a third party has a right *in rem* over the good (they can be warranty rights on the good or rights to use and get benefit from the good). This hypothesis implies difficulties when the asset needs to be confiscated and it enters under the disposition of the State;
- the asset belongs to the person who committed the offence which led to the confiscation of the asset. In these cases several other interests can be indirectly related to the asset:

- the damaged person: when the good illicitly subtracted to the person offended by an illicit behaviour is confiscated, his direct right to restitution can be compromised. A similar consequence happens where the offended person has a right *in rem* over the good.

Since conflicting interests are at stake, a balance of their relative load is made. On one hand, the type of crime can lead to a restriction to the third party's protection, in case, for example, of criminal organisations' offences. On the other hand, a third party's interest can gather a stronger protection when the third party is the person damaged by the criminal behaviour.

The burden of proof to show a right or legal, direct interest on an asset lies upon the third party which needs to prove to be the rightful owner of the asset or to have a legal right on it.

Data. Data shows that most part of assets are immovable assets and are mostly located in Southern Italy and in the Islands. The number of temporary confiscated assets is much higher than the number of definitive assets and the gap is even wider if we compare confiscation and assignments. Since the National Agency came into force in 2011, the number of confiscation increased, while the amount of assignment has slightly decreased. All data confirms a slowness and inefficiency of the procedures.

Main conclusions

- Lack of clarity in the discipline. Italy has a long history regarding the seizure and confiscation of assets. In addition to the general rules on confiscation provided under the criminal code, several new legislative interventions amended and integrated the discipline to make a better use of these tools. This continuous review clearly shows that the discipline is adaptable to the improved forms of contrast to criminal activities but it entails a reasonable lack of homogeneity in the law.

The possible solution to fix these interpretation issues is the adoption of a consolidated act on confiscation, which can collect and harmonise the provisions scattered throughout multiple legal sources.

- Excessive length of proceedings. The length of judicial proceedings really affects the value of the assets: it takes often some years for a proceeding (particularly the criminal ones) to conclude with a third degree decision, so it implies several years for the seized asset to be permanently confiscated. This affects the seized companies which are managed by the judicial administrator that cannot operate independently but is limited by his mandate to fulfil ordinary operations, only; it also affects the immovable assets which lose their value and deteriorate during the years, requiring maintenance costs to keep them intact. Concerning the judicial proceedings, the solution is to speed up the court proceedings but it would require to impact severely on the code of criminal procedure to review the "times of justice"; although a drastic reform of the trial functioning would be highly beneficial, this would require structural changes. Other actions are probably more practical:

- creation of dedicated sections of the criminal court for confiscation proceedings, in order to guarantee a stricter schedule;
 - aligning precautionary and criminal confiscation proceedings;
 - entrusting the national agency with all the confiscation proceeding, starting from the seizure.
- Collection of data on the confiscated assets. Data on confiscated assets are collected and published both by the Ministry of Justice and the National Agency for the Administration and Assignment of Seized and Confiscated Assets. The data are provided by multiple authorities because of the different functions performed during the proceeding: the National Agency, which has a special competence, is not in charge from the beginning of the proceeding nor for all the assets. Moreover, current public databases do not allow to monitor the status of a single asset from the seizure to confiscation, to assignment. Ministerial data rely on information that the Ministry receives from the court: the only way to obtain reliable judicial information starts from the rationalisation of the courthouses; data from the agency are affected from the recent birth of the same agency and its inheritance of the archives from the Property State Agency which suffered the incompleteness of data (scarce computerisation) and the lack of a collection of information specifically focused on confiscated assets. The agency is updating its database
 - Further legislative amendments to the Antimafia Code (Legislative Decree n.159/2011), like improving the administration of the assets during the judicial phase. a reformulation of the duties of the judicial administrator.
 - Status of the assets and economic resources. Several assets are in very bad conditions. Among the immovable assets recorded by the National Confiscation Agency, only the 17% are in good status, due to the long time lapse that lasts between the seizure of the asset and the actual assignment, a long period where the asset is almost abandoned. The final condition of the asset is then affected, demanding high initial investments for securing and renovating the good. Moreover, buildings are sometimes built disregarding environmental or security regulations and so they require additional measures to comply with required legal standards. These expenses constitute a financial burden both for the municipality and the associations budgets, causing delays and renounces. Moreover, access to credit is particularly critical for recipients of a confiscated asset. Local authorities keep the property of the asset; therefore this cannot be used as a guarantee whenever the recipient asks for a credit.
An access to economic resources can help the efficiency of the system. An interesting example is the possible use of the Justice Unique Fund (FUG): several sums of money from multiple sources are placed in this fund, including sums of money from seized and confiscated assets both from criminal and precautionary proceedings. Unfortunately a large part of the money flown into this fund are not assigned to specific purposes. A part of the sums which were put in the fund is "saved" to be returned to the owners in cases

seizures are revoked; however the amount of money which constitutes the fund is huge and it looks unreasonable to keep this amount of money completely locked and non-assigned. Also in case the will is to prolong this static status of the fund, the sums could at least be used as a guarantee for financing related to the management of the assets.

- The administration of companies. The number of companies which are subject of seizure and continue to operate until the final confiscation is really limited. The reasons for these difficulties in managing the company as proficiently as it was before the seizure are explained by the costs related to the “legalisation” of the company. The management process does not really work for companies because the activity is seized for a long period, with inactivity being very damaging for a firm since machineries deteriorate and enterprises loose links with customers and suppliers. Bad performance of seized and confiscated companies under judicial management (before sell or clearance) is also due to low entrepreneurial capacities of public officials that manage the asset.

There are however some successful examples, such as the “CalcestruzziEricinaLibera”, a concrete plan in Sicily that is currently managed by the workers and that overcame several difficulties.

In order to help the companies working after the seizure and to keep them competitive until the assignment after the final confiscation some specific actions along with a wide cooperation need to be taken:

- a specific expertise is needed in the administration of the companies, which are more demanding compared to movable and immovable assets. The Register of judicial administrators, which has not yet introduced, should contain a separate section;
- the involvement of official institutions, along with local associations and entrepreneurs should create a virtuous network helping the company not to lose partners and customers.

A recent Law Propose of popular initiative currently under discussion in the Justice Commission at the Chamber of Representatives, provides for several facilitations for seized and confiscated companies that could improve their management: more transparent and detailed databases; specific offices and working tables at the Agency and Prefectures focused on confiscated companies; fiscal benefits for companies and workers; the creation of a fund to guarantee credit and support investments; major control on workers’ conditions and support to employees’ training.

- Burdens related to immovable assets. According to the 2012 Annual Report of the National Confiscation Agency, a major criticality for immovable assets managed by the Agency are the mortgages as 1.666 assets out of 3.995 are affected by mortgage(42 %). An asset can be mortgaged and the Bank can claim for the mortgage after the confiscation has been accomplished, thus suspending or slowing down the process.

A proposal amending current legislation would allow to separate the credit of the bank over the asset from the asset itself: the credit will not be guaranteed by the asset (which

the State will provide to assign, according to Law n.109/1996) but by an economic equivalent value to be taken from the Justice Unique Fund.

- Sale of immovable assets. One of the most debated issues related to confiscated assets is the possibility to sell immovable goods, which can be seen in contrast with the reuse of the assets for social purposes provided by law.

The sale of the assets should be reconsidered in a wider state interest: the social purpose of the law should be the primary parameter, since the reuse of confiscated assets stands as a symbol of legality, most of times in areas deeply affected by criminal organisations. However the productivity of an asset is important, and some confiscated goods are difficult to be recovered proficiently to social purposes, with the high risk of decreasing considerably their value. By the way it is not wise also to consider the sale of the immovable assets as an easy way to acquire money, mostly because of the difficulties in selling assets which belonged to a criminal organisation.

- Squatting and deterioration of the immovable assets. When it concerns to immovable assets (real property), the administration can be affected by the presence of individuals on the property when the seizure is carried out. When the owner/right holder stands in the real property object of the seizure, this needs to be cleared out since the person does not longer hold the original right. There are some protections for the person (and his family): a welfare aid or the temporary stay in the seized property until the measure turns into confiscation. A proper and immediate use of the asset should be enforced, through some crucial actions:

- a quick and detailed “knowledge” of the asset from the seizure phase;
- the timely clearing of the asset from people who occupy it (owner or right-holder, his family, third parties, other people there without a legal title) and a plan to prepare the next occupation by a person unrelated to the owner/right holder against whom the proceeding is in force. If possible this occupation should be directed to the final assignment of the asset;
- in case it is granted to the person against whom the seizure is made the chance to keep using the immovable asset², this right is revoked with the second degree confiscation;
- the clearing must be in any case effective when the confiscation is final;
- all the issues related to the clearing of the asset (both physical clearing and from the use/possession rights) need to be treated and solved during the judicial proceedings (precautionary or criminal)

- Shared assets. Confiscation can sometimes regard only a part of the asset, causing further difficulties in its management.

When an asset is shared between multiple partners, law provides the co-owner with the right to acquire the part of the asset confiscated to the criminal person. Law should be

² This can be allowed under article 40, paragraph 2 of Legislative Decree n.159/2011.

reviewed limiting this right where there is a public interest that the asset enters the availability of the State: the third party should be compensated for this ablation.

- The role of the National Agency. The agency is the specific designed body responsible for the administration and the assignment of the confiscated assets, and it has only been recently introduced. The creation of a central dedicated and professional body with specific expertise on the matter represents an important and positive factor for the confiscation system; unfortunately the structure of the agency seems to be not “ready” to the purpose: limited experience, difficulty in recruiting expertise, not sufficient staff levels. Without dedicated actions to improve the agency’s organisation these weaknesses will tend to increase considerably, because of the growth of competences and workload brought both by practice and legislative amendments.

Improvements at the agency’s level should be directed to increase staff (both on a quantitative and qualitative level), to program medium term strategies to guarantee continuity of action, to establish networks with offices of public prosecutors, associations, public bodies and professionals, to improve the level of transparency and publicity concerning the *status* and the assignment of the assets.

- Support Units. Law provides the creation of support centres at the prefectures as local ramifications of the national agency, which does not have a structure to be directly operational in all the Italian provinces. These support units are thought to be a reference advisory body for the activities related to the assignment of the confiscated assets to the most suitable and adequate associations. In order to better select the recipients of the assets, these centres, which are established by the prefects at a provincial level, have a mixed composition of local public administrations, police forces, representatives of relevant NGOs or other non-lucrative associations, magistrates. An example of successful implementation of this body is the Support Unit of Brescia, thanks to the individual initiative of the prefect.

Unfortunately, these centres have not been created in all the prefectures, yet, or they are sometimes created but their meetings don’t run on a regular basis, with the consequence they cannot be effective or helpful to the better assignment of the assets. These deficiencies should be addressed through the establishment of the centres where they are absent and with scheduling periodical meetings in order to give continuity to the processes.

- Lack of accountability and incompetence of public administration. The common problem of scarce accountability and capacities of public officials can be experienced also in the process of assignment of confiscated assets. Lack of capacities and awareness regarding the confiscated of assets has been sometimes faced through the organisation of training courses on the management of confiscated assets for public officials.
- Monitoring. The disclosure of an asset that comes from illicit proceeds can be the tip of an iceberg of a deep-rooted criminal network that acts under the approval of local political

authorities. Municipalities can be colluded with mafia organisations and reluctant to cooperate for the confiscation of the asset. Italian legislation on confiscation does not provide for adequate mechanisms for the monitoring of the assigned confiscated assets. Since the law provides for the destination for social purposes, a more meticulous review of the actual use of the assets should be done periodically, possibly through the use of the support centres which are provided with the miscellaneous composition advisable for such duty and are also supposed to have a direct knowledge of the specific assets and their destination.

- Socio-psychological contest. A confiscated asset, especially when it was previously linked to an organised crime, can found a hostile environment where to grow up. A cultural change is needed to face these kinds of socio-psychological problems. Information on the presence of mafia in the economic context has to be promoted in order to make citizens aware of risks. Moreover, a wider education on legality is crucial to convince people that an alternative is possible. At this purpose, publicity and visits of confiscated assets can have a significant educative power on community and young generations.