



TRANSPARENCY
INTERNATIONAL
ITALIA

Associazione contro la corruzione

ILLICIT ASSETS RECOVERY IN ITALY

ENHANCING INTEGRITY AND EFFECTIVENESS OF ILLEGAL ASSET CONFISCATION

Co-funded by the
Prevention of and Fight against Crime
Programme of the European Union



“Enhancing Integrity and Effectiveness of Illegal Asset Confiscation – European Approaches” project report
co-funded by the Prevention of and Fight against Crime Programme
European Commission – Directorate-General Home Affairs



“ENHANCING INTEGRITY AND EFFECTIVENESS OF ILLEGAL ASSET CONFISCATION – EUROPEAN APPROACHES”
is a project by:



December 2013

This report has been edited by **Transparency International Italia**.

AUTHORS:

GIORGIO FRASCHINI, Transparency International Italia

CHIARA PUTATURO, Transparency International Italia

COORDINATOR:

DAVIDE DEL MONTE, Transparency International Italia

Thanks for the support go to **Susanna Ferro**, Transparency International Italia.

TABLE OF CONTENTS

INTRODUCTION	4
1. OVERVIEW OF ITALIAN RELEVANT MODEL OF CONFISCATION OF ASSETS: GENERAL AND SPECIFIC RULES AND PROCEDURES TO OUTLINE LEGAL AND INSTITUTIONAL ASPECTS	6
1.1 The double national regime of confiscation procedure	6
1.1.1 Criminal confiscation	7
1.1.2 Precautionary confiscation	11
1.1.3 Differences between criminal and precautionary confiscation	12
1.2 Judicial confiscation proceeding	12
1.2.1 Confiscation of assets of legal persons	15
1.2.2 Protection of the third parties during confiscation	17
1.3 Judicial stages of confiscation procedure	19
1.3.1 Seizure	19
1.3.2 The judicial administration	22
1.3.3 Confiscation	23
1.4 Management of the assets	23
1.4.1 Stages and responsibilities	23
1.4.2 Legal framework	25
1.4.3 Numbers, places, typologies	25
1.5 Compliance with EU regulation	29
1.6 Confiscation and fundamental rights	32
1.7 Existing law proposals on confiscation	35
2. INSTITUTIONAL STRUCTURE AND CAPACITY OF THE ASSET RECOVERY OFFICERS (AROS)	37
2.1 The Asset Recovery Officers (AROs)	37
2.2 The National Agency for the management and the assignment of seized and confiscated assets	37
3. IMPLEMENTATION OF LEGISLATION BY ASSET RECOVERY OFFICERS AND PRACTICES	42
3.1 Analysis of the procedures	42
3.2 Response to the four key indicators	46
4. WEAKNESSES AND RECOMMENDATIONS	49
BIBLIOGRAPHY	63

INTRODUCTION

Cosa più brutta della confisca dei beni non c'è,
la cosa migliore è andarsene

"There is not a worse thing than the assets confiscation, we should rather go away" Dialogue between Francesco Inzerillo, boss of a prominent mafia organisation, and his nephews in the Turin penitentiary, 2007

The contrast to criminality and in particular to criminal organisations has proven to be really difficult, especially in specific geographical areas where the ramifications of organised crime afflict other areas of the social and economic life. Along with the traditional tools provided under the legal framework which has a repressive approach aimed at hitting *ex post* the illicit behaviours and the commission of crimes, Italian legislator has inserted property measures focused on reinstating legality through an attack against the economic benefits gained thanks to the commission of the crimes.

In 1982 the so-called "Law Rognoni-La Torre", namely Law September 13th, 1982, n.646, *Provisions on property precautionary measures and integration to Law December 27th, 1956, n.1423, Law February 10th, 1962, n.57 and Law May 31st, 1965, n.575. Establishment of a parliamentary commission on mafia*, was the first law specifically directed to contrast the economic profit and to attack the properties of criminals.

In the following years, after criminal confiscation provided under this law proved to have limited success, new special tools were gradually introduced, such as the extended confiscation (article 12sexies of Law Decree n.356/1992, converted by Law n.356/1992 also extended the possible subjects to confiscation and the list of crimes leading to seizure and confiscation proceedings), cases for mandatory confiscation,

the confiscation by equivalent, the confiscation against legal persons¹.

Important steps were the introduction of article 12sexies of Law Decree June 8th, 1992, n.306, converted by Law August 7th, 1992, n.356² which introduced seizure and confiscation in case of conviction or plea agreement for severe crimes, such as those regulated under article 416bis of the criminal code, *Criminal mafia-type organisations*.

Over pressures from many non-governmental organisations and associations, in particular *Libera, Associazioni e numeri contro le mafie*³, Law March 7th, 1996, n.109 was approved, *Provisions on management and assignment of seized and confiscated goods*. For the first time this law introduced rules to regulate what should occur to the goods when they are seized (and later confiscated). A remarkable introduction was the end for social purposes of the confiscated assets, with the restoration of these goods collected by the criminal organisations to the public community that suffered consequences of illicit behaviours and that represents the original owner of these assets. This reuse for social, collective purposes was deemed to have the double target of both weakening criminal organisations and of affirming loudly and clearly the principle of legality in areas where mafia organisations had put their roots.

Other novelties to the framework were introduced by following decrees: Law Decree May 23rd, 2008, n.92, converted by Law July 24th, 2008, n.125, *Urgent measures for public security*, and by Law July 15th, 2009, n.94, *Provisions on public security*, which extended the field of

¹ Introduced by Legislative Decree June 8th, 2001, n.231, *Provisions on the administrative liability of legal persons, companies and associations, also without juridical personality, according to article 11 of Law September 29th, 2000, n.300*.

² Article 12sexies was introduced by Law Decree June 20th, 1994, n.399, converted by Law August 8th, 1994, n.501.

³ For more information about Libera, its mission and target, see www.libera.it.

precautionary seizure and confiscation; Law Decree February 4th, 2010, n.4, *Creation of the National Agency for the administration and the assignment of goods seized and confiscated to the criminal organisations*, converted by law March 31st, 2010, n.50, introduced a specific body appointed for the management of the goods and fully responsible to deal with the phase related to the assignment of confiscated assets; Legislative Decree September 6th, 2011, n.159, known as the Antimafia Code, which consolidated all existing laws against criminal organisations and specifically regulated tools to contrast mafia organisations, such as seizure and confiscation; last is the Stability Law 2013, Law December 24th, 2012, n.228, which impacted the antimafia code and amended article 12sexies.

These progressive amendments to the legislative framework helped to improve the set of measures to efficiently and severely contrast criminal organisations but, on the other hand, this non-systematic introduction of new rules overlapped previous existing provisions and led to implementation difficulties. Moreover, there are still fields of the confiscation proceedings that remain uncovered by the law or are not dealt with a strategic long-minded perspective.

1. OVERVIEW OF ITALIAN RELEVANT MODELS OF CONFISCATION OF ASSETS:

GENERAL AND SPECIFIC RULES AND PROCEDURES TO OUTLINE LEGAL AND INSTITUTIONAL ASPECTS

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.

1.1 THE DOUBLE NATIONAL REGIME OF CONFISCATION PROCEDURE

The general discipline is based under a strictly legalised system which enables confiscation after a criminal law conviction. However, as previously mentioned, a 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.

Article 1, *Recipients* (of personal preventive measures applied by the police commissioner):

- Individuals who are considered usually committed to criminal behaviour;
- individuals who are considered to usually live with the proceeds of criminal activities, on the basis of factual evidence and for reasons related to their behaviour and their standards of living;
- individuals who are believed to permanently commit offenses that outrage or endanger minors' physical or moral integrity, health, safety and public quiet.

Article 4, *Recipients* (of personal preventive measures applied by the judiciary authority):

- individuals suspected to belong to mafia organisations⁴;
- individuals suspected to commit crimes of slavery, child prostitution, child pornography, possess of child pornography, tourism aimed at the exploitation of child prostitution, human trafficking, purchase and sale of slaves; intellectual and industrial property crimes, import and trade of counterfeited items; individuals belonging to criminal organisations trafficking drugs substances; belonging to criminal organisations smuggling foreign tobacco; belonging to organisations illicitly trafficking garbage; individuals who fraudulently transfer and or have unjustified possess of values;

⁴ Article 416bis Criminal Code, *Mafia-type association*.

- individuals at article 1 (recipients of measures by police);
- individuals who operate to commit crimes against the state and the public safety, including kidnapping and terrorism crimes;
- individuals previously members of former fascist organisations who are believed to carry on the same activities;
- individuals who violated regulations on gun control;
- instigators or financiers of crimes listed above;
- individuals who facilitated violent behaviours at sports events.

These individuals can be subject to a confiscation procedure, on independent initiative of several judiciary and administrative bodies, namely the local or district public prosecutor, the Director of the Anti-Mafia Investigation Directorate (known as DIA) and the police commissioner.

The jurisdiction for both these seizure and confiscation preventive proceedings belongs to the court located in the province county seat.

1.1.1 Criminal confiscation

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.

Art. 240 C.C., Confiscation

"1. When a conviction occurs, the court may order the confiscation of the assets that were used or were intended to commit the crime, and of things which are the product or the profit of the crime.

2. The confiscation always concerns: 1) assets that constitute the price of the offense; 1bis) assets and computer devices used in whole or in part to commit the offenses referred to in articles 615-ter, 615-

quater, 617-quinquies, 617-sexies, 635-bis, 635-ter, 635-quater, 635-quinquies, 640-ter and 640-quinquies⁵; 2) assets, the manufacture, the use, the carriage, the possession or the sale of which constitutes a criminal offense, even if a conviction is not made.

3. Paragraph 1 and numbers 1 and 1-bis of paragraph 2 shall not apply if the asset, the good or the computer device belong to a person unrelated to the crime. Paragraph 2, number 1-bis, shall also apply in case of application of the penalty on request of the parties pursuant to Article 444 of the Code of Criminal Procedure⁶.

4. Paragraph 2 shall not apply if the asset belongs to a person unrelated to the crime and the manufacture, the use, the carriage, the possession or the disposal may be authorised by administrative approval.

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. In particular specialty can be related to:

- specific offences which can trigger specific forms of confiscation;
- different categories of assets which can be object of the confiscation;
- mandatory hypothesis of confiscation;

⁵ This part of the paragraph (1bis) was added by Law n.12, February 15th, 2012, *Provisions against cybercrime*.

⁶ Paragraph amended by Law n.12/2012.

- confiscation of assets which have a value equal to those which are object of the proceeding;
- presumptions which lead to confiscation when goods belonged by a person are not proportionate to his income or declared properties;
- different level of proof demanded for confiscation;
- possible returns of the assets to the party which suffered damage or different protections to the third party.

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:

- article 322ter of Criminal Code, *Confiscation*. Confiscation of profit and price is mandatory for crimes committed by public officials against the public administration; in particular for crimes provided under articles 314 (embezzlement), 315 (embezzlement against a private person), 316 (embezzlement taking advantage of other's error), 316-bis (embezzlement against the State), 316-ter (misappropriation of funds against the State), 317 (concession⁷), 318 (corruption to exercise the function), 319 (corruption for an activity against the function), 319-ter (corruption in judicial acts), 319-quarter (improper induction to give or promise utility), 320 (corruption of a person in charge of public service).
- 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.

⁷ When the public official abuses of his position or powers and forces someone to give or promise something.

- Article 600septies, *Confiscation*. Confiscation of product, profit and price of the crime is mandatory for crimes against individual personality. This article concerns the crimes of slavery, child prostitution, child pornography, possess of child pornography, tourism aimed at the exploitation of child prostitution, human trafficking, purchase and sell of slaves.
- Article 640quater, *Application of article 322ter*. Confiscation is binding for crimes of fraud, aggravated fraud to obtain public funds, IT fraud.
- Article 644, *Usury*. Confiscation is mandatory for assets which are the price or the profit of the crime, for goods and other utilities the convicted has control of with a value equal to usury interests (with the exception of the restitution and compensation of damages to the damaged person).
- Article 648quater, *Confiscation*. Confiscation is mandatory in case of money laundering and use of money, goods and utilities of illicit origin.
- Article 722, *Accessory punishment and security measures*. Confiscation is mandatory for money and tools involved in gambling activities.
- Article 2641 of Civil Code, *Confiscation*. Confiscation is mandatory for some corporate crimes, as false corporate communications, false communications by auditors, omitted controls, unlawful return of capital, illegal distribution of profits, illegal transactions involving shares, transactions to the detriment of creditors, failure to disclose a conflict of interest, non-compliance of complaints, communications and deposits, failure to notice the plenary, fictitious capital, unlawful distribution of company assets by liquidators, property infidelity, private corruption, illicit influence on the plenary, stock manipulation, obstacles to the exercise of public supervisory authorities' functions.
- Article 187sexies of Legislative Decree February 24th, 1998, n.58 (Consolidated Act on Financial Intermediation), *Confiscation*.
- Article 44 of President of Italy Decree June 6th, 2001, n.380 (Consolidated Act on Construction), *Criminal sanctions*. If a conviction for abusive subdivision of lands is

decided, confiscation of grounds and abusive constructions on them is mandatory.

- Article n.186 Legislative Decree April 30th, 1992, n.285 (Traffic Code), *Driving under the influence of alcohol*.
- Article 11 of Law March 16th, 2006, n.146 (Ratification and Implementation of the Convention and the Protocols of the United Nations Convention against Transnational Organised Crime), *Special hypothesis of mandatory confiscation and confiscation by equivalent*.
- Article 301 of Decree of President of Republic January 23rd, 1973, n.43, on customs law, which provides mandatory confiscations for assets which are relevant to the crime of 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 Code⁸ 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*⁹, represents a hard approach against the property of criminal organisations. This article was introduced after the Constitutional Court abrogated former article 12quinqies, 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

charges¹⁰, 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 seizure 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 12sexies¹¹, which provides for the confiscation by equivalent of the disproportioned goods (product, profit, price) object of the extended

⁸ Crimes against the public administration.

⁹ The article was introduced by Law Decree June 20th, 1994, n.399, converted by Law n.501/1994, after the Constitutional Court had declared the illegitimacy of former article 12quinqies, paragraph 2 of Law 356/1992 with decision n.48/1994.

¹⁰ The confiscation of the product, the price and the profit of the crime are regulated under article 240 of Criminal Code.

¹¹ Of Law Decree n.399/1994, previously cited.

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).

A constant jurisprudence praxis of the Corte di Cassazione¹² (Italian Supreme Court) requires two necessary requirements for the precautionary seizure which anticipates the confiscation:

- *fumus commissi delicti* (probable commission of the crime), based on the evidence introduced by the prosecutor;
- *periculum in mora* (danger caused by delay): seizure can be disposed under the same circumstances of confiscation for what concerns the disproportion between assets value and income plus the lack of legal justification on the origin of the assets.

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 Intermediation¹³, article 11 of Law to ratify and implement the Convention and the Protocols of the United Nations Convention against Transnational Organised Crime¹⁴.

Destination of the criminal confiscated assets. Article 86 of the Executive Provisions of the Code of Criminal Procedure¹⁵ provides for the sell of confiscated assets, with procedures expressed in

the Consolidated Law on Justice Expenses¹⁶ at articles 149 and subsequent. The sale is made through the institutes for judicial sales with incomes deposited in the Fine Deposit¹⁷; article 149 specifies that sell is the general rule, unless it is differently provided under special provisions:

- under articles 100 and 101 of Decree of President of Republic 309/1990, concerning drugs, law provides that crafts, boats, planes seized can be entrusted to police forces for the fight against drugs-trafficking. When the assets are sold, the income is used by the Ministry of Health for assistance and recovery of drug-addicted people. As to the sums of money confiscated, they are used to reinforce the activities against drug trafficking.
- income from the sale of assets confiscated for usury crimes are deposited in the Solidarity Fund for the victims of usury crimes.
- smuggling crimes: articles 301 and 301bis of Decree of President of Republic 43/1973 provide that if the sale of vehicles used for these crimes is unsuccessful, these enter the State property. Seized recorded movable assets can be assigned in judicial custody to police forces for anti-smuggling activities. The same rules are applicable for crimes related to illegal immigration¹⁸.

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.45¹⁹ introduced paragraph 4bis to article 122sexies which extends provisions for the management and assignment of assets provided under Law n.575/1965²⁰; additional legislative

¹⁶ Decree of President of Republic May 30th, 2002, n.115.

¹⁷ This deposit, called Cassa delle Ammende, is a public body within the Department of Penitentiary Administration within the Ministry of Justice.

¹⁸ As provided under Legislative Decree July 25th, 1998, n.286, *Consolidated Law on immigrations and provisions on the status of foreign people*.

¹⁹ Law February 13th, 2001, n.45, *Amendments to the discipline and sanctioning treatment of people cooperating with justice and provisions for witnesses*

²⁰ This law and the assignment of the assets will be discussed in a following paragraph of this report.

¹² Some of the Corte di Cassazione decisions relevant to this issue are: Cass., sez. UU, December 17th, 2003, n. 920; Cass., sez. II pen., January 16th, 2009, n. 17877; Cass., sez. VI pen., April 24th, 2008, n. 21745.

¹³ Legislative Decree February 24th, 1998, n.58, Consolidated Act on Financial Intermediation.

¹⁴ These provisions were detailed in the previous paragraph.

¹⁵ Article 86, *Sale or destruction of confiscated assets*.

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 Assets²¹ 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).

1.1.2 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*²², 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.

²¹ The tasks and the role of the agency are detailed in the next chapter.

²² Converted by Law August 7th, 1992, n.356.

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 requirement²³.

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 dies²⁴.

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 actions²⁵.

²³ Article 51, paragraph 3bis of the Code of Criminal Procedure, as amended by Law Decree n.92/2008, added subjects who are under investigation by the District Antimafia Directorates. The same law also amended article 416 of Criminal Code, which now includes foreign criminal organisations within the possible subjects of antimafia precautionary provisions.

²⁴ Article 2ter inserts a five-year statute of limitation for the confiscation which starts with the decease of the subject.

²⁵ See, for example, Cass., sez. VI pen., December 18th, 2008, n. 16030; Cass., sez. II pen., May 9th, 2000, n. 2542.

1.1.3 Differences between criminal and precautionary confiscation

Criminal and precautionary confiscations both have the same final goal to contrast illicit activities through the use of an additional tool which helps to restore the legal situation and to contrast criminal activities.

However the different nature of the measures implies some differences in the application proceeding, in particular for what concerns the evaluation of evidences and the reasons which drive and are accountable for the proceedings.

Common grounds for proceeding are:

- having a right or the availability, also through another legal or physical person, of money, goods or utilities;
- disproportion between the goods value and the declared incomes or the activities performed by the criminally convicted person (based under article 12sexies) or by the person who is socially dangerous (precautionary confiscation);
- the lack of explanations about the origin of the goods by the convicted person or by the socially dangerous person.

Starting from these common grounds additional elements distinguish the two procedures:

- in the criminal proceeding a conviction is the necessary element to activate the confiscation. In the precautionary proceeding the social dangerousness needs to be verified;
- in the precautionary proceeding, it is possible to also confiscate goods of a legitimate origin. In the criminal proceeding the asset which is targeted for confiscation needs to be related to the crime the person is accused of.

A specific focus concerns in particular the evaluation of the evidences and the ground to introduce them. For example, the prosecutor needs to provide proof in relation to the confiscation of all kinds of assets that a subject owns, is a right holder of or has the availability of: most of times the assets are fictitiously or practically transferred to a third party but the

actual availability stays on the subject and it is up to the prosecutor to determine these circumstances. On the other side, it is upon the convicted subject to justify the reasons behind the disproportion of assets and the income and/or the economic activities of the convicted person.

Given the different nature and functions of the precautionary proceeding which tries to anticipate the commission of crimes, an overall evaluation of the subject is made to determine the social dangerousness: in particular, elements which did not result suitable to determine a criminal responsibility can be instead used to determine it in this proceeding. The precautionary proceeding is separate and independent from the criminal one, but a wide exam of the subject life can determine its status.

1.2 JUDICIAL CONFISCATION PROCEEDING

Objects of confiscation procedure. Each kind of asset can be confiscated, such as movable and immovable assets, companies' shares, whole companies, goods and rights on goods.

The general rule provides for the discretionary confiscation of assets which were used to commit the crime, the product of the crime or the profit resulting from the crime.

- profit: the economic advantage got immediately and directly from the offence. It has a direct derivation from the causal agent's conduct;
- product: the empirical result of the offence, meaning assets acquired, obtained, modified or created through the crime;
- price: the compensation given or promised as consideration for the execution of an offence²⁶.

²⁶ For example, in a corruption crime, the price is considered the bribe (being the monetary sum or the

Subjects of confiscation procedure. Confiscation of assets can be enforced both against physical and legal persons which are proved to have committed a crime by a court decision. Other persons which can suffer a confiscation procedure, independently from a conviction in court, are individuals who are believed to be members of a criminal organisation.

Additional rules regulate the protection of damaged individuals and third parties who did not take part to the criminal activity but are influenced by the confiscation proceeding.

- Physical persons: each person who commits one of the crimes which can trigger the confiscation of assets, and is convicted for the crime. As previously mentioned, the court decides a confiscation order on discretionary basis, so that not all the physical persons convicted are necessarily affected
- Legal persons
- Third parties

Under current legislation, several subjects are involved in the management of the assets. However, the administrative phase can be long and can face multiple criticalities, so that it is critical to promote some continuity.

It is up to the court any decision on the seizure decree, the confiscation or the revocation of the seizure. In particular the collegiate court²⁷:

- appoints the delegate judge²⁸ and the judicial administrator²⁹;
- decides the executive details of the seizure;
- dialogues with the National Agency for the Management and Assignment of Seized and Confiscated Assets;

- decides on the acts carried out both by the delegated judge³⁰ and the judicial administrator³¹;
- participates to the management of seized companies and decides their possible closure³².

The delegated judge 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).

After being appointed, the delegated judge, within 30 days, writes a detailed report of the seized assets, which includes: list and status of the single asset/company; the market value based on an estimation by the judicial administrator; third parties' rights on the assets; anomalies in companies' budget; indication of the preferable management strategies for the assets³³. This report is the basis for the entire confiscation proceeding.

The 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. Article 35, paragraph 5 of Legislative Decree n.159/2011, *Appointment and revocation of the judicial administration*, is the general provision concerning this role; under this article, the judicial administrator acts as a public official and establishes a trust relationship with the delegated judge which constitutes the basis

utility) given or promised to the corrupt person to perpetrate the offence.

²⁷ Both the first degree court and the court of appeal, based on the phase of criminal proceeding.

²⁸ The functions of the delegate judge and the judicial administrator are further detailed in this chapter.

²⁹ Article 35, paragraph 1 of Legislative Decree n.159/2011.

³⁰ Article 38, paragraph 1 of Legislative Decree n.159/2011.

³¹ Article 35, paragraph 7 of Legislative Decree n.159/2011.

³² Article 41 of Legislative Decree n.159/2011.

³³ This report is particularly important concerning the management of companies, which face major "survival" problems during the seizures proceedings.

for an efficient management of the asset. It is the judicial administrator to directly interface all the actors involved with the asset and to timely deal with them.

The judicial administrator is chosen by the court among the members of the National Register of the Judicial Administrators³⁴; a special section of the Register includes administrators with experience in company management.

Legislative Decree February 4th, 2010, n.14, *Creation of the Record of the judicial administrators, according to article 2, paragraph 13 of Law July 15th, 2009, n.94*, disciplines the requirements to fulfil in order to be included in the register and provides the emission of a ministerial regulation which specifies the subscription procedures. These procedures have not been issued yet, so the applicable provisions lie under article 2sexies, paragraph 3 of Law n.575/1965: the administrator has to be picked in records of lawyers, legal counsellors, accountants, bookkeepers or individuals who have administrative experience in managing the relevant assets or individuals who acted as commissioners for bankrupt companies whose assets are seized³⁵.

The judicial administrator is in charge until the seizure revocation or until the first degree confiscation; in particular, he has to preserve the assets and to increase the productivity of the assets, when possible³⁶. Among his tasks there is taking possession of the seized assets (assisted by the judicial police), issuing reports on the status and size of the assets and management activities, executing ordinary administration activities (and extraordinary upon authorisation by the delegated judge), performing the activities to assess and settle the credits, issuing a

statement on his managing activities at the end of the mandate.

During the performance of his duties, the judicial administrator can ask to the delegated judge for the use of experts (article 35, paragraph 4), who are themselves qualified as public officials for the seizure managing activities.

In case of irregularities or clear inability, the court can revoke the judicial administrator, on proposal by the delegated judge. Article 40, paragraph 4 of Legislative Decree n.159/2011, also provides the chance to file a complaint against an act of the judicial administrator. This complaint is restricted to acts which do not depend on the directions given by the delegated judge and it can be issued by the public prosecutor and the third parties involved in the proceeding, within ten days.

The National Agency for the administration and the assignment of the assets seized and confiscated to the criminal organisations was created in 2010 by Law Decree February 4th, 2010, n.4, converted by Law March 31st, 2010, n.50; its tasks are disciplined under articles 100-114 of Legislative Decree n.159/2011. The rationale for the establishment of the agency was the opportunity to appoint one body with competence on assets seized or confiscated to criminal organisations during the precautionary confiscation proceedings and criminal proceedings for crimes provided under article 51, paragraph 3bis of Code of Criminal Procedure (counterfeiting, import of counterfeited products, slavery, child prostitution, pornography, mafia crimes).

The agency can also follow all the steps of the proceeding, from the seizure until the effective management of the asset when this is confiscated: it can assist the delegated judge during the first phase and it identifies the most suitable administrative uses for the possible subsequent confiscation.

One of the limits of the Agency is that professional demands are high and tasks are relevant but resources are limited, especially with the number of available staff. Headquarter is in

³⁴ The Register is mentioned under article 35, paragraph 2 of Legislative Decree n.159/2011. It was first introduced by article 2, paragraph 13 of Law July 15th, 2009, n.94, *Provisions on public security*.

³⁵ Until the Register is legally in force, there are temporary records including professional figures who pleaded available to the task.

³⁶ This activity pursues the view of a "dynamic" administration.

Reggio Calabria, in southern Italy ³⁷, with secondary branches in other affected areas (Rome, Palermo, Milan and Naples). In order to be effective also in local centres, where a branch is not present, the agency establishes support units at the Prefectures³⁸; it is also supported by the State Property Agency and by staff employed in other local public administrations.

There are three main areas of action for the Agency under the current legislation³⁹:

- fact-finding: the Agency acquires information regarding seized and confiscated assets, in particular about the proceedings where they are involved, about their status, their size and consistency; moreover, it explores in advance options for the possible assignment of the assets, in case of their final confiscation⁴⁰;
- support to the court and to the delegated judge, in particular by proposing the most suitable options for the use of the assets during the seizure phase and with a view to the possible final confiscation. The Agency can also ask the court to revoke or to amend administrative acts taken by the delegated judge⁴¹;
- custody and administration of the assets: after the first degree confiscation, the Agency replaces the judicial administrator in this role⁴².

The judicial police supports the judicial administrator during the enforcement of the

seizure⁴³. 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 public prosecutor can propose a complaint against an act performed by the judicial administrator ⁴⁴, can file the bankruptcy procedure for the entrepreneur whose assets are confiscated⁴⁵ and gives to the court his opinion on the opportunity to carry on the business activities⁴⁶.

1.2.1 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 ⁴⁷ 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.

³⁷ Southern Italy is by far the area where a larger number of assets in confiscated to criminal organisations.

³⁸ Prefectures are the local bodies depending from the Ministry of the Interior with main functions of public order.

³⁹ In the annual relations the Director of the Agency, Giuseppe Caruso, appealed for improving resources and fields of action of the Agency.

⁴⁰ Article 110, paragraph 2 a) of Legislative Decree n.159/2011.

⁴¹ A further task is to enter agreements with the judicial authorities to enforce transparent criteria for staff rotation.

⁴² Articles 38 and 100, paragraph 2 c).

⁴³ Article 21, paragraph 1 of Legislative Decree n.159/2011.

⁴⁴ Article 40, paragraph 4 of Legislative Decree n.159/2011.

⁴⁵ Article 63, paragraph 1 of Legislative Decree n.159/2011.

⁴⁶ Article 41, paragraph 1 of Legislative Decree n.159/2011.

⁴⁷ Administrative nature of this act is disputed because criminal sanctions are provided under this act, too.

Another peculiar disposition is the one provided under article 6⁴⁸, paragraph 5, where the legislator explicitly disciplines the confiscation of profit of a crime against a legal person which is not sentenced to be convicted for that crime. When an effective compliance programme is in place, the company is not criminally responsible; however, if the company obtained some advantage from the commission of the crime, it cannot take advantage of the compliance programs.

"(...) 5. it is nevertheless ordered the confiscation of the profit that the legal person benefited from the crime, even through the corresponding value".

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*.

Article 9, paragraph 1 c), instead provides for a form of confiscation which can be considered as a sanction: in this article confiscation is included among the sanctions for administrative illicit activities related to one of the crimes which trigger the liability.

Article 9, Administrative Sanctions

"(...) Sanctions for administrative illicit conducts related to a crime are: a) monetary sanction; b) ban sanction; c) confiscation; d) publication of the decision. (...)"

Article 19, *Confiscation*, then details how confiscation works for legal persons. When the legal person is convicted, the confiscation of the profit and the price of the crime are always ordered, with two exceptions:

- when possible, the legitimate part is returned to the damaged party;
- the rights acquired in good faith by a third party are not affected by the restitution.

⁴⁸ Article 6, *Persons in managing positions and compliance programs*.

Paragraph 2 then provides that in case the profit cannot be confiscated, an equivalent payment of money, goods or utilities is subject to confiscation.

Article 17, *Restitution of the consequences of the offence*, provides for actions which can be implemented to restore the consequence of the crime. The decree provides that the body makes the profit from the crime available for confiscation, among the actions that legal person can enforce to repair the consequences of the offence and then to escape ban sanctions.

In case the legal person did not repair the consequence of a crime, it is sentenced with ban sanctions. In case the legal body does not comply with these ban sanctions, additional measures are taken. Article 23⁴⁹, paragraph 2 provides that, when the legal person does not comply with the pre-emptive ban sanctions, the confiscation of the profit of crime is made against the body which benefited from the commission of the crime.

An additional provision on confiscation concerns the activity of the judicial commissioner. Under article 15, paragraph 4 and article 79, paragraph 2⁵⁰, when the judge rules for a commissarial management instead of a measure or a ban sanction, the profit created by the prosecution of the activity is confiscated.

Other kinds of confiscation (rather than the one with sanctioning functions) are considered by the legislative decree:

- precautionary seizure, which anticipates the following confiscation, is regulated under article 53, which makes reference to articles 321 and following articles of the criminal code;
- conservative seizure, regulated under article 54: *"if there is a reasonable belief that the guarantees to pay the monetary sanctions, proceedings expenses and other sums owed to*

⁴⁹ Article 23, *Non-compliance with the ban sanctions*.

⁵⁰ Article 15, *Judicial Commissioner*; article 79, *Appointment of the judicial commissioner and confiscation of the profit*.

the State Property Agency are missing or could be wasted, the public prosecutor, in any time of the proceeding, asks for the conservative seizure of the legal person's movable, immovable assets and credits (...)."

- restoring confiscation: the above-cited article 15 concerning the activities by judicial commissioner provides that the court can decide the interruption of the legal person's activities as a sanction; the interruption sanction can be judicially replaced by the prosecution of the activities under the direction of a judicial commissioner for the duration of the sanction issued. Paragraph 4 provides that the profit gathered from the prosecution of the activities is confiscated⁵¹. Periodically every three months the judicial commissioner reports to the judge responsible for the enforcement and to the public prosecutor about the management of the company; when his mandate is concluded, he *"determines the amount of profit to be confiscated"*⁵².

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.

The analysis of the decree raises some interpretative issues:

- the profit which can be confiscated needs the existence of a logical link between the committed crime which triggers the responsibility and the advantage gathered from the legal person (indirect economic advantages for the company resulting from the crime which are not easily quantifiable);
- in cases of groups of companies, if the crime is committed by the parent company but the profit is gathered by the subsidiary, this can be

confiscated only when the subsidiary took advantage of this profit;

- the price of the crime is the amount promised or given to the individual to commit the crime. The confiscation can work on an equivalent basis where it is not possible to confiscate the profit or price of the crime⁵³.

1.2.2 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:
 - a third party could have a credit related to the asset;
 - the asset is instrumentally necessary to prosecute the relationship with a third party (e.g. the case of a company which is necessary to continue the work relationship with the third "worker/employee");
- 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

⁵¹ Also in cases of a precautionary measure (seizure), a commissioner can be appointed to prosecute the company's activities. The profit of this prosecution is seized, too.

⁵² Article 75, *Enforcement of monetary sanctions*.

⁵³ A debate occurred on whether this impossibility was related to the unavailability of the assets to confiscate or to the impossibility to determine the exact amount. Italian Supreme Court (Corte di Cassazione), in Cass, sez. UU, May 4th, n. 1993, confirms the first view: replacing with an equivalent amount allows to determine the quantity of the profit.

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.

Article 240, paragraph 3 of Criminal Code provides the exclusion of the assets from confiscation when the goods which constitute the price of the crime belong to a person which is unrelated to the crime. The same regulation is provided under special confiscation provisions, too.

Three interesting Constitutional Court decisions⁵⁴ extend the protection of the third parties. Under these decisions⁵⁵, confiscation was declared not legitimate:

- the assets were used to commit a crime but the third party was not responsible for lack of surveillance;
- the assets were illicitly subtracted to third parties (being this subtraction demonstrated in court);
- the third party who acquired the asset ignored the illicit placing on the market.

Further special cases provisions enlarge the protection of the third parties. For example, article 600septies of Criminal Code (offences against the individual) and article 644, paragraph 6 of Criminal Code (usury) restrict confiscation, making rights to restitution and compensation safe for the person damaged by the crime.

A limitation to the protection of third parties' interests is regulated under the general provision on confiscation: article 240, paragraph 4, sets a

list of goods for which there is an obligatory confiscation, also in cases they belong to a third party. There are cases where a court decides that an asset cannot be restored to the original owner because it is intrinsically dangerous and it cannot be produced or used by anyone. The asset can be criminally dangerous or its hazard must be determined by court.

The third party protection enters when an asset is not considered dangerous: article 240 of Criminal Code specifically provides for protection when the good belongs to a third party that did not take part to the crime. In order to establish the non-involvement into the crime, the court establishes that the person was not actively related to the crime and he did not give any kind of contribution to it; moreover, the absence of advantages or benefit from the crime clears from any connection.

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.

Title IV of Legislative Decree n.159/2011 regulates third parties' protection, too. Article 52 provides that the confiscation does not undermine the rights of third parties which come from acts dated before the seizure, nor possible guarantee rights. Paragraph 4 states that the final confiscation of a good leads to the termination of contracts regarding a right on the asset. These right-holders are entitled to a compensation based on the length of the contract.

Article 52, paragraph 7 regulates cases of sharing assets: the good faith co-owner has the right of first acquisition of the confiscated part, unless there is a probability that the asset can return in the possession of the person belonging to a criminal organisation or his partners.

⁵⁴ Constitutional Court, Decision n.229/1974; Constitutional Court, Decision n.259/1976; Constitutional Court, Decision n.1/1997.

⁵⁵ These court decisions regard smuggling cases.

1.3 JUDICIAL STAGES OF CONFISCATION PROCEDURE

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. This part will be analysed in a specific section.

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.

1.3.1 Seizure

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.

When an asset is seized, this is taken from the person who has its availability and it is managed by an administrator, under the court's guidance.

The seizure, along with the confiscation, is one of the precautionary measures introduced by Law May 31st of 1965, n.575, *Provisions against mafia organised crime, including foreign organisations*. Article 1 and 2ter, paragraph 2 provides for the seizure of assets which can be used and disposed by people who are suspected to be part of

criminal organisations or have committed counterfeiting, import of counterfeited products, slavery, child prostitution, pornography, mafia crimes, kidnapping or fraudulent transfer or possess of values.

There are different kinds of seizure:

- ordinary seizure;
- anticipated seizure⁵⁶: 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 DIA⁵⁷ can ask the seizure before the first hearing is set;
- urgent seizure⁵⁸: 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 formal⁵⁹;

Further requirements are needed to activate these precautionary measures. As to the subjects against whom the seizure is applied:

- in case the charge is the membership to a mafia-type criminal organisation, it is necessary to ascertain the existence of the belonging organisation⁶⁰ and to have suspects of the membership to the same organisation;

⁵⁶ Article 2bis, paragraphs 4 and 5 of Law n.575/1965.

⁵⁷ Investigative Antimafia Directorate.

⁵⁸ Article 2ter, paragraph 2 of Law n.575/1965.

⁵⁹ Article 2ter, paragraph 2 of Law n.575/1965.

⁶⁰ The characteristics of the mafia-type criminal organisations are detailed at article 416bis, paragraph 3 of Criminal Code: "the organisation is mafia-type when the members use the intimidation related to the membership and the condition of subjection and

- in case the person is suspected to have committed one of the crimes listed under article 51, paragraph 3bis of Code of Criminal Procedure or the crime under article 12quinquies, paragraph 1 of Law Decree n.306/1992, converted by Law n.356/1992⁶¹, additional assessments must be completed: a) relevant suspects of the commission of one of the crimes⁶²; b) the social danger of the suspected person.

The assessment of these requirements during the precautionary phase is based on the facts brought by the body proposing the seizure on the facts acquired by the court through its investigative powers regulated under article 2ter of Law n.575/1965⁶³.

The seizure order is issued by the judge for precautionary measures⁶⁴ or by the criminal judge with competence for precautionary measures (but without autonomous investigative powers⁶⁵) on proposal of the body proposing the seizure. For crimes listed under article 12sexies of Law n.356/1992 the body disposing the seizure is

the competent public prosecutor; as to the precautionary seizure, bodies proposing seizure can be the police commissioner, the Director of the District Antimafia Directorate (DDA) or the Director of the Investigative Antimafia Directorate (DIA).

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. In particular, it includes:

- the assets to be seized;
- the appointment of the delegated judge;
- the appointment of a judicial administrator of the asset to be chosen among a list of professionals listed under article 2sexies, paragraph 3 of Law n.575/1965⁶⁶;
- the rules for the enforcement of the seizure, with specific directions for the single assets;
- the rules for the judicial administrator of the asset;
- the directions for the judicial police to effectively support the judicial administrator and the delegated judge;
- the injunction not to act to remove (also partially) the seized asset directed to the person whose good is confiscated, third parties and creditors;
- the notification to the person whose good is confiscated, the third parties and the creditors of the seizure order;
- the order to communicate information related to the seized assets to the national agency.

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

omertà which comes along to perpetrate crimes, to take direct or indirect control of business activities, concessions, authorisations, procurements or public services, or to realise unjust profit or advantages for themselves or others, or to prevent or hinder the voting right or to get votes for themselves or others”.

⁶¹ These articles contain the offences earlier listed in this paragraph: counterfeiting, import of counterfeited products, slavery, child prostitution, pornography, mafia crimes, kidnapping or fraudulent transfer or possess of values.

⁶² In case of the crime under article 74 of President of Italy Decree, October 9th, 1990, n.309, *Consolidated law on the regulation of narcotic drugs and psychotropic substances, on prevention, treatment and rehabilitation of drug addiction statuses*, concerning the criminal organisations trafficking illicit drugs or psychotropic substances, the existence of this organisation needs to be verified, too.

⁶³ Law May 31st, 1965, n.575, *Provisions against mafia organised crime, including foreign organisations*.

⁶⁴ Article 2bis of Law n.575/1965.

⁶⁵ Articles 291, 279 of Code of Criminal Procedure and article 91 of the executive provisions of the Code of Criminal Procedure.

⁶⁶ The regulation for the Register of the judicial administrators of the confiscated assets is being defined: the Authority for the Protection of Private Data confirmed its approval to the proposed regulation through its Opinion of June 27th, 2013, *Parere del Garante su uno schema di regolamento recante disposizioni in materia di iscrizione nell'Albo degli amministratori giudiziari* (www.garanteprivacy.it/web/guest/home/docweb/-/docweb-display/docweb/2576306).

(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). Legislative Decree July 28th, 1989, n.271⁶⁷ requires for seizure procedures being disciplined under article 104 of the enforcement provisions of the Code of Criminal Procedure, *Enforcement of the precautionary seizure*:

- actual enforcement which includes all the publicity duties on behalf of the administration in order to notify the possible appellers 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.

Different fulfilments are then required, based on the type of asset:

- on movable assets and credits, with rules provided in the civil code for the foreclosure against debtors⁶⁸ or third parties⁶⁹;
- on real estates and recorded movable assets, by registering the measure at the competent bodies;
- on companies' assets, in addition to the rules for movable and immovable assets by entering in the disposal of the administrator and by recording the seizure in the Commercial Register where the company is registered;
- on stocks and company shares, by recording in the company registers and the Commercial Register;

- on dematerialised financial instruments, including public debt stocks, by recording in the designated account hold by the dealer⁷⁰.

The court appoints an administrator⁷¹, who enters the proceeding and manages the assets, assisted by the judicial police and the bailiff⁷². Some assets are instead shifted to the "Fondo Unico di Giustizia" (Justice Unique Fund), a fund managed by the company Equitalia Giustizia to receive money or other incomes seized or confiscated through criminal or administrative proceedings⁷³. 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 companies⁷⁴.

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. Article 36 provides this relation to be completed within one month, while article 41, paragraph 1, requires for an additional extended report within six months for

⁶⁷ This legislative decree concerns *Provisions on implementation, coordination and transition of the code of criminal procedure*.

⁶⁸ Article 513 and subsequent articles of Code of Civil Procedure.

⁶⁹ Article 543 and subsequent articles of Code of Civil Procedure.

⁷⁰ According to article 34 of Legislative Decree June 24th, 1998, n.213, *Provisions to introduce EURO in the national order, according to article 1, paragraph 1 of Law December 17th, 1997, n.433*, and in fulfilment of Legislative Decree May 21st, 2004, n.170, *Enforcement of Directive 2002/47/CE on financial guarantee contracts*.

⁷¹ According to Law Decree June 25th, 2008, n.112, *Urgent provisions for economic development, simplification, competitiveness, stability of public finance and fiscal equity*, converted by Law August 6th, 2008, n.133 and by Law November 13th, 2008, n.181.

⁷² The bailiff is a public official assisting judges and public prosecutors for notifications, executions and complains. A bailiff is present in each tribunal.

⁷³ This fund was introduced by Law Decree June 25th, 2008, n.112, *Urgent provisions for economic development, simplification, competitiveness, public finance stability and fiscal equity*, converted by Law August 6th, 2008, n.133.

⁷⁴ Article 6, paragraph 2bis of Law April 23rd, 2009, n.38, converting Law Decree February 23rd, 2009, n.11, *Urgent provisions on public security and contrast to sexual violence and persecution*.

companies. Relation has to be sent to the National Agency, too, and it must include:

- 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 management⁷⁵ (he can also request the urgent seizure⁷⁶).

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.

1.3.2 The judicial administration

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

The aim of seized assets management is the custody, the preservation and the administration in order to increase their profitability, if possible⁷⁷. The judicial administrator acts under the direction of the delegated judge, which has to also follow the general guidelines of the national agency.

As to the management of the seized asset the judicial administrator has duties and prohibitions:

- he can perform the ordinary administration activities⁷⁸;
- he cannot be party to legal proceedings, he cannot stipulate loans, transactions, arbitrations, bank guarantees, mortgages;
- he cannot alienate immovable goods or perform extra-ordinary activities without a written authorisation by the delegated judge;
- he has to issue a periodic report on the management of the asset (the frequency fixed by the court).

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.

The early phases of the assets' management (during the seizure phase) expose immediate criticalities related to the need of high professionalism required to the task. Concerning the court side, judges should be qualified and specialised on the issue, because of the complexity and the variety of aspects to be covered. The delegated judge, specifically appointed during the prevention proceeding, seems to better answer the needs of the proceeding because he better answers to both the requirements of continuity (the judge is the same for all the length of the proceeding) and expertise.

On the other hand, during criminal proceedings, the attention of the judge is necessarily focused on determining the facts and the responsibilities; moreover the continuity is lacking because the competence is on the proceeding judge, which changes from the judge for preliminary

⁷⁵ A similar report to urgently seize an asset can be brought by the judicial police.

⁷⁶ Article 22, paragraph 2 of Legislative Decree n.159/2011.

⁷⁷ Article 35, paragraph 5 of Legislative Decree n.159/2011.

⁷⁸ In cases where the asset to be managed is a company the competent judge determines the boundaries of the ordinary administration, based on the kind of business activity, the workforce employed, the production capacity and the market.

investigations to the first degree judge, to the appeal judge.

1.3.3 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).

1.4 MANAGEMENT OF THE ASSETS

1.4.1 Stages and responsibilities

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

For example, for what concerns money, article 37, paragraph 3 of Legislative Decree n.159/2011 provides that sums of money collected by the judicial administrator (except for those related to

business companies) need to flow into the Justice Unique Fund.

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, this can be sold immediately (with authorisation by the delegated judge);
- in other cases, especially when the asset is of relevant value, it can be simply kept in custody (this is the case of pieces of jewellery, art works, etc.). Registered movable assets⁷⁹ are kept in judicial custody, with their status updated in specific registers. However, if the asset risks a consistent depreciation, it can be sold (rules for the sale are listed later in this paragraph);
- the good can be assigned to be used (onerously or free of charge);
- when the custody is too costly, the delegated judge can give the authorisation to sell the good⁸⁰. The sell shall bring the largest payment possible and shall void for the good to be purchased by the person who previously owned it or by an intermediate of him. It follows the rules provided for the sale of confiscated assets, which is regulated under article 60⁸¹ of Legislative Decree n.159/2011:
 - the asset value is pointed out by the judicial administrator during his initial relation (an external expert or the Technical Office of the Treasury can be appointed to the task);
 - publicity is given to the sale in order to attract a large participation;
 - the judicial police investigates and gathers information on the buyer, to check possible relationships with the person whose asset was confiscated or with criminal organisations. The police

⁷⁹ Registered movable assets are vehicles and intangibles goods like licences.

⁸⁰ Although there is not a specific prohibition to sell the asset during the seizure phase, it is preferable to wait for the first degree confiscation to proceed with the sale.

⁸¹ Article 60, *Liquidation of assets*.

also makes controls to ensure the asset is not bought with illicit earnings (article 48, paragraph 5 of Legislative Decree n.159/2011);

- the judicial administrator finalises the sale under the approval of the delegated judge;
- when the asset is sold, the sum is deposited in the Justice Unique Fund, with the restriction of a possible restitution to the owner of the asset if the seizure/first degree confiscation is revoked.

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 asset⁸².

A specific procedure concerns movable assets (money, collections, objects and animals), registered movable assets (vehicles, intangibles goods like licenses) and financial assets (all kind of stock and financial goods), which are sold and whose proceeds are deposited into the Justice Unique Fund. In case the procedure is not economically favourable, these kinds of assets can be transferred for free or destroyed⁸³.

The focus of our analysis is on remaining goods, such as immovable assets (immovable units for residential, lodging, commercial or industrial use and lands) and companies.

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 substitution⁸⁴.

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 Fund⁸⁵.

In July 2011 an official communication of the Ministry of Interior established the creation of

⁸²Article 47 of Legislative Decree n.159/2011.

⁸³Article 48 of Legislative Decree n.159/2011.

⁸⁴Article 48 of Legislative Decree n.159/2011.

⁸⁵Article 48 of Legislative Decree n. 159/2011.

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.

1.4.2 Legal framework

The seizure decree starts the administration of the asset phase: this administration ends with the annulment of the seizure (with assets returning to the holder) or with the final confiscation (assets are transferred to the State). The legislative framework concerning the assignment and use of the assets sustained continuous amendments in the last few years:

- First rules on the administration of assets were introduced in Antimafia Law n.575/1965 by Law September 13th, 1982, n.646, *Provisions on precautionary property measures and integrations to Law December 27th, 1956, n.1423, February 10th, 1962, n.57 and May 31st, 1965, n.575. Creation of a parliamentary commission on mafia.*
- Law March 7th, 1996, n.109, *Provisions on management and assignment of seized and confiscated assets*, enlarges the field in the administration of assets: to preserve the asset, to increase its productivity, to reintroduce (also if temporarily) the asset in a legal area.
- Law July 15th, 2009, n.94, *Provisions on public security*, introduced several new amendments aimed at facing the difficulties in managing the companies confiscated to the criminal organisations.
- Law Decree February 4th, 2010, n.4, *Creation of the National Agency for the administration and the assignment of the assets seized and confiscated to the criminal organisations*⁸⁶,

established this agency which will be the reference authority for this phase of the confiscation proceeding which follows the seizure order.

- Legislative Decree September 6th, 2011, n.159, *Code of antimafia laws and precautionary measures, new provisions on antimafia documentation based on articles 1 and 2 of Law August 13th, 2010, n.136*⁸⁷, coordinates the existing legislation in one act of law and introduces new important provisions (e.g. article 21, which regulates the enforcement of the seizure; articles 35-55 which deal with the administration and the management of seized and confiscated assets; articles 110-113 which add new tasks to the work of the National Agency).

The assignment of the goods generally depends on the nature of the asset, but it can be enforced through different implementation actions:

- transfer of monetary sums to the State;
- sell of movable assets, companies and immovable assets (as to immovable assets, the sale is the residual option);
- rent of companies;
- conservation of immovable assets;
- transfer of immovable assets to the properties of municipalities or other local bodies, with further assignment to associations or social cooperative companies.

1.4.3 Numbers, places, typologies

Specific data about confiscated assets are available; however, a first difficulty consists in the availability of two different kinds of data, coming from two different sources, the National Agency and the Ministry of Justice. The first database, most known and easier to access⁸⁸, is on the official website of the Agency, while the second

⁸⁷ This law is named *Extraordinary plan against mafia, proxy to Government on antimafia legislation*.

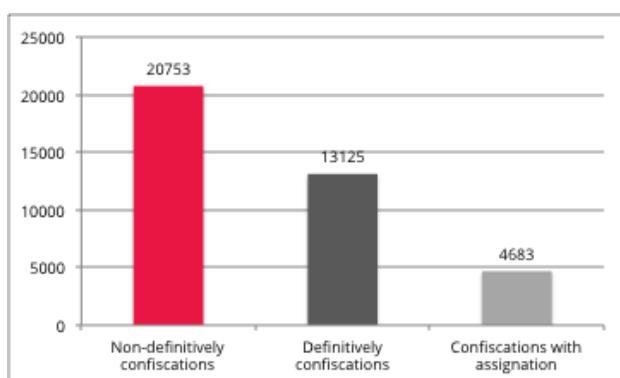
⁸⁸ Some inaccuracies have been found in the use of terms on the website of the National Agency: same data are first presented as "Seized and Confiscated Assets", then as "Confiscated Assets" and then "Definitively Confiscated Assets", three substantially different categories.

⁸⁶ Converted by Law March 31st, 2010, n.50.

one is included in a Parliamentary act⁸⁹, it is more detailed but more difficult to use. These two sources have proven to be inconsistent one to each other, so we report both sets of statistics here.

The number of confiscated assets according to the Ministry of Justice is **38.561** up to March 2013, the 35,6 % of the overall number of assets in the database⁹⁰; this amount includes three types of confiscated assets: non-definitively confiscated, definitively confiscated and allocated assets, distributed as follows:

FIGURE 1: Confiscated assets, Ministry of Justice (Data, March 31st, 2013)



The National Agency reports a number of **18.625** definitively confiscated assets and allocated assets.

Despite relevant differences in numbers and in categories of considered assets, both sources of data confirmed that immovable assets are the bulk of the total amount of assets.

FIGURE 2: Typology of definitively confiscated assets, Ministry of Justice (Data, March 31st, 2013)

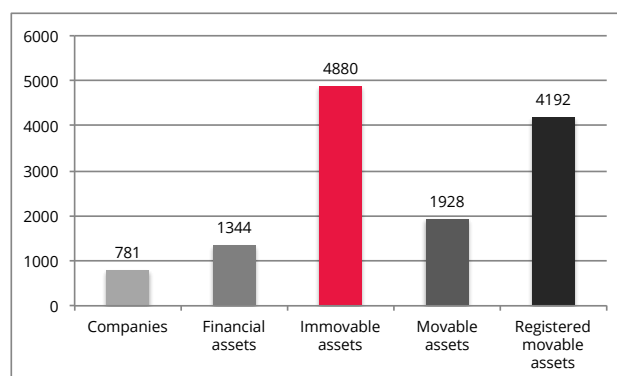
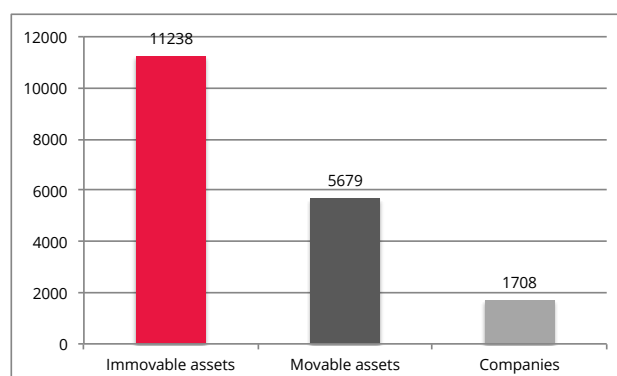


FIGURE 3: Typology of definitively confiscated or assigned assets, National Agency (Data, December 31st, 2012)



In order to detect the efficiency of the confiscation process it can be useful to compare the overall amount of confiscated assets with the numbers related to assignments or deliveries. From Figure 1 we notice that the assets in the assignment phase are much fewer than those confiscated at a first stage; this can be due to the revoke of the seizure or the confiscation by later judicial decisions and due to long procedures, as will be further analysed in the next paragraph.

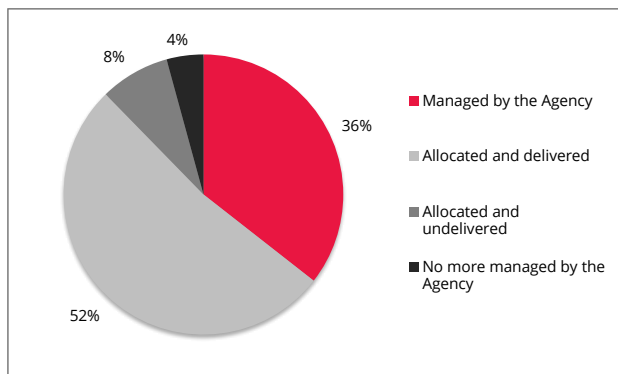
A similar gap can be found in the data related to immovable assets by the Assets Confiscation Agency, which refer to definitively confiscated and assigned assets. Among them, the assigned and delivered assets represent the 52% of the total amount, this meaning that almost half of definitively confiscated immovable assets

⁸⁹ Report on Size, Assignment and Use of Seized and Confiscated Assets and on the status of seizure and confiscation proceedings, prepared by the Ministry of Justice, updated at March 31st 2013.

⁹⁰ The overall number also includes seized, revoked, stand-by assets.

assigned to the Agency are not practically used because they are waiting to be assigned (36%), they have been assigned but not yet delivered (8%) or they are no longer under the agency's management (4%).

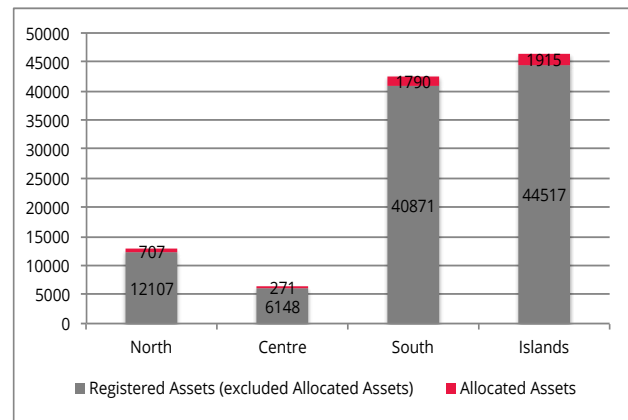
FIGURE 4: Status of confiscated or assigned assets, Confiscated Assets Agency (Data 31st December, 2012)



Another interesting issue worthy to be pointed out is the geographical distribution of confiscated assets. According to the Ministry of Justice, the higher percentage of confiscated assets is located in the islands and in Southern Italy, with Sicily, Campania and Calabria in the first positions⁹¹ (according to data 2009-2012). The Confiscation Assets Agency reports a similar geographical distribution: immovable assets are concentrated in the islands (44%) and in the South (38%), with the highest share in Sicily (4892 assets), Calabria (1650) and Campania (1571).

At macro-regional level we found again a relatively low numbers of allocated assets as compared with remaining assets. At this purpose it is interesting to look at overall data of confiscated assets as reported by the Ministry of Justice (this time included also forfeited and allocated assets), and allocation provisions from 2009 to 2012 in the North, the Centre, the South and the Islands.

FIGURE 5: Registered and assigned assets: macro-regional data, Ministry of Justice (Data, March 31st, 2013)



This figure shows the disproportion between all assets involved in the process and those finally given back to the community, in all regions. In the North the difference is lower than in other areas: allocated assets are 5,5% of all registered assets, while the share is around 4,2 % in other regions. This can be due to a more efficient process, but a lot of variables can play a game in these results. At this regard it is interesting to highlight that the first asset to be delivered to a Municipality and assigned to an association was the *Villa of Via Origoni*, in Vigevano, Lombardy (Northern Italy), in 1996.

If we considered the immovable assets only, according to the Confiscated Assets Agency, the highest share of assigned assets are in Trentino Alto Adige (100%), Molise (100%) and Sardinia (81%), even if in the first two cases the overall number of assets is very low.

The Ministry of Justice provides data on a temporary basis, too. It is useful to analyse the above-mentioned information (number, typology and status of confiscated assets) during the years, in order to detect any improvements, in particular after the introduction of the National Confiscation Agency (2010).

⁹¹ According to data for the years 2009-2012.

FIGURE 6: Registered assets: macro-regional data on a yearly basis (2009-2013), Ministry of Justice (Data, March 31st, 2013)

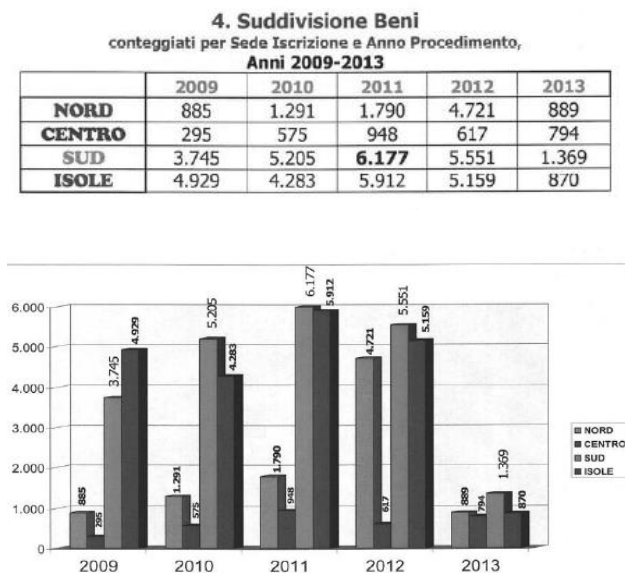


FIGURE 7: Registered assets: typologies of assets on a yearly basis (2009-2013), Ministry of Justice (Data, March 31st, 2013)

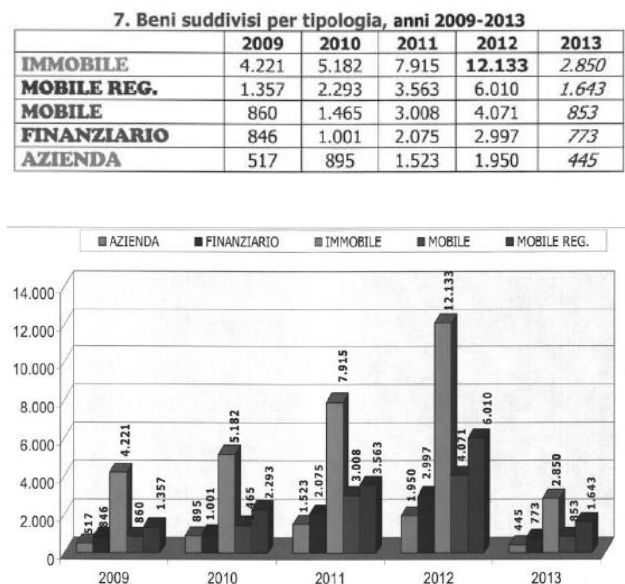
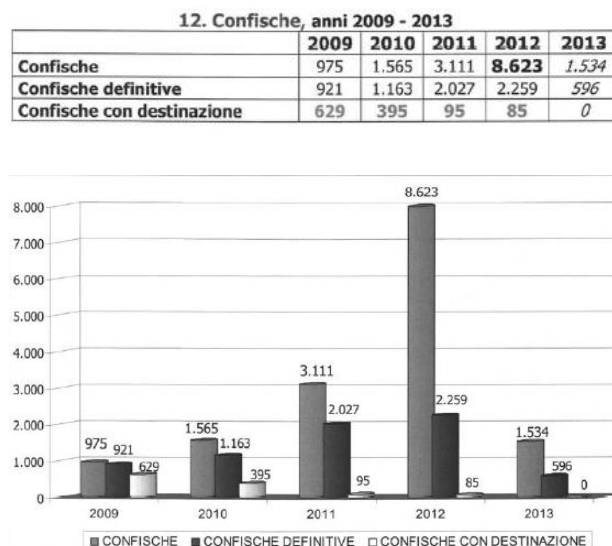


FIGURE 8: Confiscated assets: status of confiscation on a yearly basis (2009-2013), Ministry of Justice (Data, March 31st, 2013)



The overall number of registered assets (from seized to assigned assets) increases of 18% yearly on average, with a pick of increase in 2011 (30%), the first year of activity of the National Agency. The highest number of confiscated assets was in 2011, in Southern Italy (6.177 registered assets), while the highest average increase was in Northern Italy between 2011 and 2012. Data related to 2013 are still partial and have not been taken into account.

Regarding the typology of assets, immovable assets are almost half of total assets every year, with a pick in 2012 (12.133 assets), even if the highest average increase is related to movable assets (money, objects, collection, animals).

Finally, while numbers of temporary confiscations have significantly increased, with a record in 2012 (8.623 assets), assignments have decreased every year, particularly in 2011. This constitutes the only value with a reverse trend, partly because of the natural time lags between temporary confiscation and assignment, with the high difference being a sign of slowness and inefficiency of the system.

Assigned assets deserve a specific analysis. From data of Ministry of Justice we know that the overall value of assigned assets is of almost 340 million Euros from 2008 to 2012, with a decreasing trend both in absolute terms and in the average value per asset.

Another interesting information concerns the type of allocation: assets can be assigned to the State or to Municipalities. Around 3/4 of assets went to Municipalities (according to both sources) and, among them, almost 2/3 are intended for social aims (rather than institutional purposes), according to the Ministry of Justice data (for years 2008-2012). Among the assets delivered to the State, most of them are assigned to law enforcement agencies.

1.5 COMPLIANCE WITH EU LEGISLATION

In the last few years European Union has adopted several rules concerning seizure and confiscation of illegal assets. Several framework decisions impacted the matter, starting from 2001 with the Council Framework Decision 2001/500/JHA *On money laundering, the identification, tracing, seizing and confiscation of instrumentalities and the proceeds of crime*.

The analysis of a subsequent act, the Council Framework Decision 2005/212/JHA *on Confiscation of Crime-Related Proceeds, Instrumentalities and Property* shows the position of the European Union: a) the confiscation of the proceeds of crimes punished with prison sentence over one year; b) the confiscation of goods owned or controlled by a person convicted for determined crimes, when the goods are the result of criminal activities.

In particular article 3⁹², paragraph 1, defines the reference area for confiscation, and paragraph 2 lists the necessary provisions to internally implement in the member countries. Extended

confiscation powers are provided to counter criminal organisations.

This framework decision, which is not binding, left the member states huge discretion regarding extended confiscation, rules about seizure, non-confiscation base systems and rights of third parties.

Italy adhered to these EU obligations through the Law February 25th, 2008, n.34, *Provisions for the implementation of duties coming from membership to European Union*: this law delegates⁹³ to the government for the implementation of the Framework Decision, with the extension of confiscation powers⁹⁴.

Italy, as other member States, has not complied yet with the framework decision: in order to overcome these implementation delays, the Commission has issued a draft for a Directive of the EU Parliament and the Council *on the freezing and confiscation of proceeds of crime in the European Union*⁹⁵.

This proposal does not introduce novelties as to the list of offences, which include all the criminal activities committed by participating in criminal organisations⁹⁶.

Six key points of the discipline are instead amended, and we can analyse whether Italy's existing legislation complies with these possible changes or not:

⁹³ Article 28, *Mandate to the Government for the implementation of framework decisions*.

⁹⁴ The implementation was due to be issued within March 21st, 2009 but a review is still under consideration.

⁹⁵ Namely COM(2012)0085 – c7-0075/2012 – 2012/0036(COD), as amended by the European Parliament on May 20th, 2013.

⁹⁶ See article 83 of The Treaty on the Functioning of the European Union, issued on May 9th, 2008.

⁹² Article 3, *Extended powers of confiscation*.

	NOVELTIES IN THE DIRECTIVE PROPOSAL	ITALIAN FRAMEWORK COMPLIANCE
PROCEEDS OF THE CRIMINAL OFFENCE	All the advantages which derive, directly, or indirectly, from a criminal offence: it is any form of property, any subsequent reinvestment or transformation of the proceeds by a suspected/accused person, any valuable benefit.	Italy seems already been compliant: the fields covered by the law are sufficiently wide to include the reuse of proceeds of crime.
EXTENDED CONFISCATION POWERS ⁹⁷	Member states can apply extended confiscation if: a) the court is fully convinced that the good comes from the criminal activity the owner/right holder is convicted of; b) the court is fully convinced that the good comes from a criminal activity similar to one the owner/right holder is convicted of; c) the value of the property is disproportionate to the person's income and the national court is convinced that the good comes from illicit activities by the person. The standard of proof asked to the court is based on probabilities grounds (the Council would advise to eliminate this balance of probabilities).	Italy already provides for an extended confiscation which is based on the conviction plus the disproportion between the goods possessed by the person and his income. The illicit origin of the goods does not have to be proved by the prosecution but the burden to explain the disproportion is upon the convicted person.
POSSIBILITY OF A NON- CONVICTION BASED CONFISCATION ⁹⁸	Member States take necessary measures to allow the courts to confiscate proceeds and tools used to commit the crime without a criminal conviction, if they are	Italy already provides for non-conviction based confiscation during precautionary proceedings. Requirements asked to the court

⁹⁷ Article 4 of the Directive proposal.

⁹⁸ Article 5 of the Directive Proposal.

	convinced that assets come from activities of criminal nature on the basis of specific circumstances and the available evidence.	to confiscate these assets are softer than those provided under the directive proposal (disproportion between income and properties plus the membership to criminal organisations can trigger precautionary confiscation).
CONFISCATION FROM A THIRD PARTY ⁹⁹	It is possible to confiscate goods which were transferred to a third party.	Italy is compliant with this issue, also considering the rights of third parties.
SAFEGUARDS ¹⁰⁰	<ul style="list-style-type: none"> a) right to remedy against confiscation before it is final; b) right to legal representation; c) prompt communication of a seizure against; d) prompt communication of a confiscation against; e) right to appeal the confiscation in court; f) the right to demonstrate the legal origin of the goods which result non proportionate to the income. 	Italy responds to these required safeguards positively.
MUTUAL RECOGNITION OF CONFISCATION DECISIONS ¹⁰¹	One of the main goals of the directive is to promote the mutual recognition of confiscation decisions.	Italy has proved not sufficient measures to guarantee the internal cooperation on international mutual cooperation requests ¹⁰² ; in particular it never implemented framework decisions asking for this mutual recognition.

⁹⁹ Article 6 of the Directive Proposal.

¹⁰⁰ Article 8 of the Directive Proposal.

¹⁰¹ Article 2 of the Directive Proposal.

¹⁰² Not only concerning to confiscation proceedings.

1.6 CONFISCATION AND FUNDAMENTAL RIGHTS

The need to create tools which can hardly and effectively contrast the criminal organisations faces another prerequisite at the same time: the guarantee of protection of the fundamental rights of persons which could be severely affected by strict provisions.

The confiscation of assets is one tool that goes beyond the ordinary restoration of legality to contrast illicit behaviours, in particular when committed by criminal organisations which can affect the life of entire communities.

That is why conviction-based confiscation only seemed not sufficient to contrast criminal organisations and precautionary confiscation was introduced, providing for goods being confiscated without a criminal conviction and possibly even without an ongoing criminal proceeding against the person whose assets are confiscated.

The right of property

The right to keep personal private properties is a fundamental right, protected by the Italian Constitution, too¹⁰³. The confiscation proceedings violate these rights for a higher purpose through measures provided under the criminal law. It lies within the legal constitutional section dedicated to economic relationships (not within the secured rights, such as the right to personal freedom).

The European Convention for Human Rights provides that "(e)very natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest

or to secure the payment of taxes or other contributions or penalties"¹⁰⁴.

Article 17 of the Charter of Fundamental Rights of the European Union concerns the right of property, too: *"1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest. 2. Intellectual property shall be protected"*¹⁰⁵.

Both under national and international guidance, this right can be compromised in case of public higher interest, adhering to a test of proportionality of the measure.

The commission of a crime constitutes an excessive use of the right of property, which is not suitable to its social purpose. However the extended antimafia confiscation is not strictly related to the commission of a crime; the right of property can be sacrificed with the aim of a higher public goal. Precautionary measures are necessary to tackle criminal organisations, which make a strong use of the relevant properties to operate their criminal activities.

¹⁰⁴ Article 1 of Protocol n.1 attached to the European Convention on Human Rights, concerning the "Enforcement of certain Rights and Freedoms not included in Section I of the Convention".

¹⁰⁵ Article 52, paragraph 3 of the Charter of Fundamental Rights of the European Union that "(i)n so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection". Since article 17 of the Charter and Article 1 of the Protocol 1 attached to European Convention on Human Rights coincide in their content, protection at a European level needs to be based under the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights.

¹⁰³ Article 42 of the Italian Constitution.

The principle of non retroactivity of the measures

Article 25 of the Italian Constitution provides for the principle of non retroactivity of the laws, which applies to a criminal case the law existing at the time when the crime was committed or the most favourable to the accused person when a new softer law is later introduced. This article is a pillar of the principle of certainty of the law, providing some guarantees to the accused person, too.

It is therefore important to focus on the nature of the precautionary measures which are introduced to prevent rather than to sanction. The Constitutional Court dealt, even if several years ago, with the issue of the precautionary measures and admitted their retroactive application, based on the preventive nature¹⁰⁶.

As to confiscation, this retroactive application does not affect the extent of the sanction because the confiscation happens or not; the retroactivity matters in the case of application to crimes which previously did not provide for confiscation.

The European Court for Human Rights, instead, decides upon the European convention which does not provide for a distinction between sanctions and precautionary (security) measures, but states the non retroactivity of *penalties*¹⁰⁷. In two separate cases the court confirmed the non retroactivity in the use of precautionary measure: the case JAMIL¹⁰⁸ and the case WELCH¹⁰⁹, with the Welch case particularly interesting as it concerned a confiscation case.

¹⁰⁶ Constitutional court, Decision n.53/1968.

¹⁰⁷ Article 7 of the European Convention on Human Rights.

¹⁰⁸ ECHR, Jamil vs. France, Decision June 8th, 1995.

¹⁰⁹ ECHR, Welch vs. Great Britain, Decision February 5th, 1995.

The principle of personal criminal liability

This principle has two main outcomes: the impossibility to be liable for an act committed by other individuals and the strict personality of the punishment (collective sanctions are not possible).

It is therefore clear how the confiscation should be applicable to the person responsible of the crime only; however precautionary antimafia and extended confiscation involve a plurality of individuals.

At a EU level, even if the convention does not include explicit provisions, the court ruled the personality of guilt, too¹¹⁰.

When an asset is confiscated, the right of third parties who were not responsible for the crimes is protected. As to the definition of the third, extraneous party, this needs not to have a bad faith right on the asset nor being an accomplice to the crime.

Provisions of article 12sexies of Law n.356/1992 and article 2ter of Law n.575/1965 enlarge the field; so does the Legislative Decree n.231/2001 which introduces liability of legal persons.

The principle of proportionality of sanctions

The proportionality of the sanction needs to be balanced to the gravity of the committed crime. The level of the punishment needs to be fair and it cannot either be too soft (this could impact the deterrence function of the sanction) or too hard (it would be perceived as unfair thus compromising the aim of re-education). However, on a wider criminal contrasting perspective, the sanction needs to be calibrated on the social interest damaged by the behaviour.

The confiscation is usually related to a good which is pertinent to the crime committed, but there are cases where this correlation does not

¹¹⁰ See, for example, ECHR, A.P., M.P., e T.P. vs. Switzerland, Decision August 20th, 1997.

exist. Interpretational problems arise, for example, on the confiscation by equivalent, where the monetary sum is not directly related to the crime but it works as a substitute¹¹¹; or the case of the confiscation of profit, where it is not specified whether the goods to be confiscated (monetary sums) should be net or gross¹¹².

Proportionality of the sanction becomes a huge matter of debate as to precautionary antimafia measures where the confiscated assets are even unrelated to the crime and the goal of the law is specifically to hit the criminal organisations as severely as possible. The sanction is not proportionate to the crime but it is related to the nature of the offender and the simple suspicion of his guilt.

The proportionality here is not based on the committed crime but reasoning is about the proportionality of the means (confiscation) compared to the goal (contrasting criminal organisations). This *ratio* is by the way debatable since article 12sexies is not applicable to criminal organisations only but, for example, to tax evaders, too.

The principle of presumption of innocence

Article 27, paragraph 2 of Italian Constitution states that the accused person is not considered guilty until the final decision (third degree decision): some interpreters believe that this status of non guilt rather than innocence places the accused person in a neutral position.

EU Convention instead provides that “(e)veryone charged with a criminal offence is presumed innocent until proved guilty according by law¹¹³”.

Two different rules seem to be provided: based on Italian constitution criminal confiscation can

be enforced when the decision is final; under the EU Convention, confiscation can be enforced after the first degree¹¹⁴, when the culpability is first certified.

There are some cases where confiscation is therefore compromised by the Italian rule of final confiscation; for example corruption cases or other offences against the public administration where the relatively short statutes of limitations often make the criminal charges expire before the third degree decision, thus compromising the final confiscation, too.

Precautionary measures act on a different level: their function is to pre-empt the commission of crimes or damages in a public interest, so that a possible conviction does not look as a necessary requirement for their application.

This precautionary system is often criticised since these property measures often strike goods that are not dangerous in themselves or in their availability to the accused person.

Another debatable issue concerns the burden of proof, for example when the Italian courts can provide for seizure of goods that are not proportionate to the income of the accused person, shifting on him the burden to prove the licit origin of the assets.

However a support to the possibility to this reversion of the burden of proof is the need by the court to back the disproportion in the income with sufficient evidence that the goods were illicitly acquired.

The system structured by the legislator is based on a wide perspective of impossibility for the prosecuting system to ascertain the illegal origin of the single goods, and it leaves in any case an easy way to the person whose asset is confiscated to restore the previous status (for example by showing a document which proves the licit acquisition/inheritance of the good).

¹¹¹ The calculation of the equivalent amount can be subjective.

¹¹² Also regarding who should be responsible to repay the management costs of the seized/confiscated asset.

¹¹³ Article 6, paragraph 2 of the European Convention on Human Rights.

¹¹⁴ See, for example, also the case ECHR, Wemhoff vs. Germany, Decision June 27th, 1968.

1.7 EXISTING LAW PROPOSALS ON CONFISCATION

The confiscation of assets is an important and discussed issue which transcends political ideologies. Due to this reason several bills of law from different parties (and also on popular initiative) have been recently introduced on the issue.

Bill of Law of popular initiative C.1138, *Measures to favor the development to legality and the protection of workers of companies seized and confiscated to criminal organizations*, June 3rd, 2013.

This recent Law Proposal of popular initiative, also known as “Let’s re-activate the job” provides for several facilitations for seized and confiscated companies in order to improve the management phase. The Law Proposal, promoted by the labour union CGIL and by major civil society organisations (ARCI, Libera, Centro Studi Pio La Torre, Avviso pubblico, Confesercenti SoS impresa, Legacoop), was presented to the Parliament in May 2013. In November 2013 it was under discussion in the Justice Commission of Deputy Chamber.

Main criticalities affecting confiscated enterprises are tackled in the law proposal. First of all, some measures are provided in order to make the process more efficient and transparent:

- a quicker information exchange mechanism between the Ministry of Justice and other bodies, the National Agency in particular, when a company is confiscated definitively (article 1);
- the creation of a more detailed and updated database of confiscated companies by the National Agency (article 1);
- the establishment of a specific office within the Agency (Office of Industry and Union Activities) to plan development policies and manage relations with the unions (article 2);
- the creation of a permanent Provincial Table for seized and confiscated companies in each Prefecture, which can work in cooperation with the Support Units and is aimed at

managing problems concerning companies in each territory (article 4).

Economic, fiscal and financial supports are designed for increasing sustainability and rewarding companies that comply with the law (article 5). In particular:

- an automatic recognition of the Legality Rating¹¹⁵, which offers facilitation for accessing public tenders;
- a discount on the VAT taxation;
- agreements with Public Administration for the supply of works and services.

The critical issue of mortgage is faced with the establishment of a fund to guarantee credit (article 6), covered by the Cassa Depositi e Prestiti¹¹⁶, and through the freezing of debts contracted with financial institutions until the final confiscation (article 8).

Measures favourable to employees of confiscated companies are provided, too:

- automatic access to social security cushions regardless of company size and typology (article 4);
- incentives for companies that hire former employees of confiscated companies (article 4);
- improvement of controls on health and social security rights for workers (article 7);
- economic incentives for employees that decide to establish a workers’ cooperative (article 9).

Finally, some initiatives are introduced in order to increase entrepreneurial capacities in confiscated companies:

- incentives to hire employees with managerial qualification for cooperative of workers (article 9);

¹¹⁵ The legality rating was introduced in 2012 by the Antitrust Authority and assigns a rate to companies according to the adoption of certain integrity measures. A high legality rating favours concession of funds by public administrations and access to credit.

¹¹⁶ An Italian State-partially owned bank (70% of shares).

- support on training programmes for workers concerning business organisation, development opportunities and workers' rights through cooperation with institutions and inter-professional funds (article 10).

Bill of Law S.799 (Senator Cardiello and others), *Urgent measures on criminal organisations' assets and for the national agency for assets seized and confiscated to the criminal organisations.*

The bill, communicated to the Presidency of Senate in June 2013, aims at strengthening the National Agency, by accelerating assignment procedures and extending the opportunities to sell the assets. In particular, it assigns to the Agency a status of public economic body, increasing the Agency personnel (from 30 to 130 units), introducing the opportunity to hire further highly qualified experts, establishing new locations for the agency and providing for the use of resources from the Justice Unique Fund to solve mortgages issues and payments of internal personnel. The Agency has additional tasks, such as the promotion both of agreements with financial institutions and workers' cooperatives, or to possibility adopt regional tenders or to simplify assignment procedures. An important novelty would be the introduction of private bodies among the purchasers of immovable goods, in addition to business associations, public authorities and foundations.

Bill of Law C.380 (Deputy Garavini and others), *Mandate to the Government to implement the Framework Decision 2006/783/GAI of the Council, of October 6th, 2006, on the implementation of the mutual recognition of confiscation decisions.*

This law proposal, presented to the House of Representatives on March 2013, stems from the obligation of compliance with European Framework Decision 2006/783/GAI, which provides for a mutual recognition of confiscation decisions within European Member States. The purpose of the European initiative is to uniform the mechanism of contrasting proceeds of organised crime. The deadline for the implementation of the Framework Decision has passed (it was set in November 2008), and Italy

has still to adopt it; because of this reason the law proposal introduces a specific mandate to the Government.

Bill of Law S.456 (Senator Amati and others), *Provisions on assignment of assets confiscated to criminal organisations regarding youth and childhood issues.*

The bill, communicated to the Presidency of Senate in April 2013, introduces two main amendments to the legal framework. Firstly, the option of sell is completely excluded, in order to fully accomplish the social purpose of confiscation: this is made possible also through a change in financial conditions for interests on debt, which are planned to be more sustainable for the State. Secondly, immovable assets staying in the State property can be used for the purpose of safeguarding childhood and adolescence (in addition to justice, law enforcement or civil protection) and the incomes coming from rent, selling or clearance have to be primarily used for school buildings and the safeguard of youths.

Bill of Law S.1180 (Senator Gasparri and others), *Provisions for the use of assets confiscated to criminal organisations in order to facilitate productive activities and promote employment.*

This proposal, presented in November 20th, 2013 to the Senate, would allow to assign the assets confiscated to criminal organisations not only for social purposes but to private subjects, too.

Bill of Law C.1555 (Deputy Picierno and others), *Creation of a rotation Fund to support organisations working for legality and fight against mafia and to extinct real rights of third parties on assets belonging to criminal organisations, creation of a National Register of organisations for legality and fight against mafia, amendments to the antimafia and precautionary measures code, introduced by Legislative Decree September 6th, 2011, n.159, and Law Decree September 16th, 2008, n.143, converted with amendments by Law November 13th, 2008, n.181.*

The bill was presented to the Deputies Chamber in September 2013 and the text is not available.

2. INSTITUTIONAL STRUCTURE AND CAPACITY OF THE ASSET RECOVERY OFFICERS (AROS)

2.1 THE ASSET RECOVERY OFFICERS (AROS)

There are multiple Asset Recovery Officers identified by the law: different actors act during the course of the confiscation proceeding.

The main actors which directly involved are:

- judicial administrator
- the court responsible for the seizure proceeding, and in particular the delegated judge
- the National Agency for the management and the assignment of seized and confiscated assets
- support units (at the prefectures)

We already mentioned the role of the main actors in the first judicial part (judicial administrator and delegated judge) and in the assignment and monitoring stage (support units); here we focus on a deeper analysis of the agency that was recently specifically appointed for the purposes of seizure and confiscation proceedings.

2.2 THE NATIONAL AGENCY FOR THE MANAGEMENT AND THE ASSIGNMENT OF SEIZED AND CONFISCATED ASSETS

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

113 disciplines the organisation and functioning of the Agency.

"1. With one or more regulations, adopted pursuant to Article 17, paragraph 1, of the Law August 23rd, 1988, n.400, on proposal of the Ministry of the Interior, in consultation with the Ministries of Justice, Economy and Finance and for Public Administration and Innovation, under the spending limit referred to in Article 118, regulations provide: a) the organisation and the allocation of human and material resources for the Agency; b) financial and economic capital accounting required for the Agency's management, ensuring separation between financial and accounting activities and the administration and custody of seized and confiscated assets; c) information flows necessary to perform the tasks assigned to the Agency as well as the telecommunication modes between the Agency and the judicial authorities. 2. For the purposes of the administration and custody of confiscated assets referred to in Article 110, paragraph 2, letter d) and e), connections between the Agency and the State Property Agency are set by a special, not onerous agreement concerning, in particular, the estimate and maintenance of assets, as well as the use of State Property Agency's staff. 3. After the regulation entries into force, the Agency may rely on other authorities or public bodies, including the tax agencies, for the performance of its tasks, on the basis of specific, not onerous agreements. 3-bis. For the needs related to the sell and liquidation of companies and other assets permanently confiscated, the Agency can appoint, within the economic available resources, a public-owned company (also partially owned). The relationships between the Agency and the appointed company are regulated through a specific convention which clarifies the implementation of the committed activities and all the accounting and review duties. 4. The Agency is inserted in Table A attached to the Law October 29th, 1984, n.720, and subsequent amendments".

On March 15th, 2012, the executive regulations for this article came into force. In particular Decree of President of Republic December 15th, 2011 n.235 provided an intended final asset for the agency, by confirming directions provided by law

(Law Decree February 4th, 2010, n.4) when the agency started up.

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"¹¹⁷ has increased the organisation of the agency, by amending both the number of senior management and the operative staff¹¹⁸.

Within the Board of Directors of the Agency the representative selected by the Ministry of the Interior and the director of State Property Agency (or his delegate) is replaced by two "qualified experts on companies and property management appointed by the Ministry of the Interior and the Ministry of Economy and Finance"

¹¹⁷ Namely Law December 24th, 2012, n.228, *Provisions for the annual and multi-year State balance sheet*.

¹¹⁸ Article 111 of Legislative Decree n.159/2011, *Bodies of the Agency*

"1. The bodies of the Agencies, that have a four-years mandate, renewable once, are: a) the Director; b) the Board of Directors; c) the Board of Auditors. 2. The Director, selected among the prefects, is appointed by decree of the President of the Republic on the proposal of Ministry of the Interior, upon deliberation of the Council of Ministers, and he is placed under article 3bis of Law Decree October 29th, 1991 n.345, ratified with amendments by Law December 30th, 1991, n.410. 3. The Board of Directors is chaired by the Director of the Agency and is composed by: a) a representative of the Ministry of the Interior; b) a magistrate appointed by the Ministry of Justice; c) a magistrate appointed by the National Anti-Mafia Prosecutor; d) the Director of the State Property Agency or his delegate. 4. The Ministry of the Interior proposes to the President of the Council of Ministers a nomination decree appointing the members of the Board of Directors, appointed pursuant to paragraph 3. 5. The Board of Auditors, composed by three permanent members and two alternates, shall be appointed by decree of the Ministry of the Interior among those enrolled in the register of auditors. A permanent auditor and an alternate shall be appointed by the Ministry of Economy and Finance. 6. The remuneration of the bodies are established by decree of the Ministry of the Interior, in consultation with the Ministry of Economy and Finance, and charged to the budget of the Agency."

Law introduce a new article (113bis) within the Antimafia Code which changes the organisational staff, too, through a distinction between "fix structure" and "mobile structure". The fix structure keeps its number of staff members to 30 units; the mobile structure will be formed by 100 military and staff units, belonging to public administrations and other economic public bodies, selected among executive and non-executive levels.

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 bodies¹¹⁹. The Director has also the faculty to sign temporary employment contracts until December 31st, 2016.

However the building up of the Agency's structure does not seem sufficient to perform efficiently and proficiently all the activities requested by the law. In particular, article 110 of legislative Decree n.159/2011, Article 110, provides that:

"(...) 2. The agency is competent for the following tasks:

a) acquiring data on seized and confiscated assets from criminal organisations during criminal and prevention proceedings; acquiring information about the status of seizure and confiscation proceedings; checking the status of goods in the same proceedings; assessing the consistency, the destination and use of the goods; programming of the allocation and the assignment of confiscated assets; analysing the acquired data, as well as the critical issues concerning the phase of allocation and assignment.

¹¹⁹ Staff reductions in public administrations are imposed and regulated under article 2 of Law Decree July 6th, 2012, n.95, *Urgent provisions on review of public expenses with no effect on services for public citizens and reinforcing financial measures for the banking companies*, converted by Law August 7th, 2012, n.135.

b) assisting the judiciary authority in the administration and custody of seized assets during the prevention proceeding provided under book I, title III.

c) assisting the judiciary authority in the administration and custody of seized assets, also under article 12sexies of the Law Decree June 8th, 1992, n.306, ratified with amendments by Law August 7th, 1992, n.356, plus subsequent amendments, during criminal proceedings for offenses under article 51, paragraph 3bis of the Code of Criminal Procedure, and managing such property starting from the conclusion of the preliminary hearing;

d) administration and destination of confiscated assets as result of the prevention proceeding provided under book I, title III;

e) administration and destination of confiscated assets, also under article 12sexies of Law Decree June 8th, 1992, n.306, ratified with amendments by Law August 7th, 1992, n.356, plus subsequent amendments, as result of criminal proceedings provided under article 51, paragraph 3bis of Code of Criminal Procedure;

f) adoption of initiatives and measures necessary to timely ensure the allocation and destination of the confiscated assets, also through the appointment, if necessary, of ad acta commissioners. (...)”

In order to better perform this full range of activities the Agency should be extended in its staff number and it 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

issues¹²⁰. This measure is included, as we mentioned, in the bill n.799/2013.

Moreover the desirable outcome cannot be reached for several reasons: the structural costs related to the activity of the Agency and the impossibility of earning incomes without the sale of major confiscated assets, which could compromise the public interest.

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 Palermo¹²¹. 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

¹²⁰ This shift can be crucial with particular focus on employment contracts where a private approach can overcome the rigidity of the public law.

¹²¹ Rome is the capital and largest city in Italy; Palermo and Naples are the major southern Italy cities where criminal organisations related to mafia and camorra have a strong presence; Milan is Northern Italy largest city and chef-lieu of the fourth region for confiscated assets in the country.

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 Law¹²², provides for conventions between the Agency and other public administrations or public owned companies:

- State Property Agency: during the last years the Agency for seized and confiscated assets has gradually replaced the state property agency for the activities related to confiscation;
- State Forestry Body: in July 2012 the National Agency has started a cooperation with the State Forestry Body for the optimisation of confiscation assignment proceedings in country and mountain territories. In particular the State Forestry Body assists the agency with inspections of the assets, recording and cataloguing of the assets, monitoring, suppressing of environmental crimes, clearing of the assets (along with judicial police);
- Association of business accountants: a convention has been agreed upon the accounting activities and the business evaluation of confiscated companies. The association will also assist the agency or can be delegated during the activities aimed at the alienation of the assets;
- Judicial Sales Bodies: a memorandum of understanding has been approved on the sale of crafts, vehicles or valuables which have been finally confiscated.

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:

- acquisition of data concerning seized assets and information on the status of the proceeding;
- check of the status, size and use of the assets;
- support during management and custody activities;
- planning of future assignment activities (after final confiscation);
- proposals to the court regarding the best use of the asset;
- demands for revocation or amendment of administrative acts by the delegated judge.

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.

Article 38, Legislative Decree n.159/2011, *Agency's tasks*

(...the Agency assists the judicial administrator under the direction of the delegated judge...).

Article 40, *Management of seized assets*

(1. The delegated judge issues general directions about the management of seized assets, also taking into consideration directions and guidelines by the Board of Directors of the Agency itself...).

¹²² Article 1, paragraph 189 f) of Law n.228/2012.

One of the severe inadequacies which central agencies have usually to face in daily activities is the unreliability of the data gathered by decentralised administrations; this shortage is one of the aging problems with information from the courts. Courthouses differ considerably in their methods of collection of data and most of them are not completely computerised yet.

However the Agency needs to deal with a plurality of public and private bodies which somehow take part to the confiscation proceeding. A new IT system is then crucial in order to improve coordination, to make public information about confiscated assets and to make the community aware of the importance of confiscations and the commitment of the institutions in the fight against criminal organisations.

At this purpose, 7.305.000 Euros were allocated to develop the REGIO¹²³ project, through the financial resources coming from the Operational Target of the National Operational Plan "Sicurezza per lo Sviluppo - Obiettivo Convergenza 2007/2013".

¹²³ REGIO stands for Realisation of a system directed to the Computerised and Operational Management of administrative and assignment procedures for crimes seized and confiscated to criminal organizations.

3. IMPLEMENTATION OF LEGISLATION BY ASSET RECOVERY OFFICERS AND PRACTICES

3.1 ANALYSIS OF THE PROCEDURES

The analysis of the asset recovery officers, their role and the established procedures help to outline the capacity to tackle criminal organisations and to better implement seizure and confiscation proceedings.

Discretion

The level of discretion that the asset recovery officers can use during the proceeding is quite limited. During the judicial phase, in particular, the procedures are strictly defined by the several laws on confiscation approved during the last few years.

A certain freedom both on content and schedule is left to the operators of the management and assignment phase:

- administration, judicial phase: during the judicial phase procedures are quite detailed, with appointed administrators which have to mainly deal with ordinary administration of the assets. When an extraordinary act needs to be carried out, for example, the judicial administrator needs to ask the court the permission to;
- assignment phase: notwithstanding several procedures are established for this stage, a certain autonomy is left to the bodies responsible to choose the destination of the asset. For example, the decision about assigning an asset for social purposes or selling it is based on the opportunity to have a good free from burden with a beneficiary

which could reuse it or not. Moreover, the *ratio* behind the support units is to create working groups at the prefectures, composed by an heterogeneous mix of experts which can discuss over the nature and the status of an asset, the district and the social context where it is located and then decide for the best allocation possible, which is based, for immovable assets, on social purposes only.

A further consideration over this dynamic concerns the body where the asset is transferred before it is assigned to the associations: the local bodies can decide the beneficiary of the good based on their personal belief. It would be really hard, if not impossible, to define which is the best possible addressee of the good, that is why the support units are established by law to assist the local bodies in the most impartial way imposed by their mixed composition. Unfortunately the initiative to establish and make these units work is left to the prefectures, which have seldom adopted these efficient structures.

Political independence

Similarly to the discretion requirement, also political influence can affect, even in a limited way, the assignment stage, since the destination of the asset is ultimately decided by the local administrators (usually the political representatives elected in administrative elections at local level).

Asset recovery officers are politically independent, since they do not need to ask authorisation to political institutions nor they are supervised by political bodies.

The only asset recovery officers which are not completely independent by the political power are bodies of the National Agency. The bodies of Agency¹²⁴ with a four-years mandate and once renewable are the Director, the Board of Directors and the Board of Auditors.

¹²⁴ Article 111 of Legislative Decree n.159/2011.

Paragraph 2 provides that *“(T)he Director, selected among the prefects, is appointed by decree of the President of the Republic on the proposal of Ministry of the Interior, upon deliberation of the Council of Ministers (...)”*.

Also the Board of Directors, regulated at paragraphs 3 and 4, is composed by members chosen by ministries, namely:

- a representative of the Ministry of the Interior;
- a magistrate appointed by the Ministry of Justice;
- a magistrate appointed by the National Anti-Mafia Prosecutor;
- the Director of the State Property Agency or his delegate.

The Ministry of the Interior proposes to the President of the Council of Ministers a nomination decree appointing the members of the Board of Directors. The Board of Auditors, composed by three permanent members and two alternates, is appointed by decree of the Ministry of the Interior among those enrolled in the register of auditors. A permanent auditor and an alternate shall be appointed by the Ministry of Economy and Finance.

Also The remuneration of the bodies are established by decree of the Ministry of the Interior, in consultation with the Ministry of Economy and Finance, and charged to the budget of the Agency.

Corruption pressures

The permeability of the confiscation system to possible corruption pressures looks quite limited; there are not spaces for manoeuvre for actors who want to take advantage of illicit crimes to affect confiscation proceedings.

Procedures are quite detailed and actions which need to be carried out by individuals which could eventually be bribed are actually delimited by law requirements.

A non-adequate level of publicity could be ascribed to the stage of the assignation of the

asset: since most of the confiscated assets are not known, or there is not enough clarity for public citizens about their status, a possible path could be searched to have access to detailed information about the available assets.

However this seems to be a residual, theoretical hypothesis to affect the proceeding nor any case of corruption of asset recovery officers has been detected yet.

Accountability and public scrutiny

Seizure and confiscation issues are really popular in Italy, especially since the fight against criminal organisations arose to a critical matter in the last few years; the large number of law proposals approved or brought into the parliamentary commissions in the last two decades show how the public interest on the matter is relevant: some laws were in particular pushed by non-governmental associations, such as the well known Libera, and are from popular initiative: the most recent is the Law Proposal C. 1138, *Measures to favour the development to legality and the protection of workers of companies seized and confiscated to criminal organisations*, introduced on June 3rd, 2013 and also known as “Io riattivo il lavoro” (I reactive the job).

It is quite difficult to challenge the work of asset recovery officers during the judicial phase: the co-existence of different actors (court and delegated judge, judicial administrator, national agency) create a balance of duties and responsibilities which allow a cross-check of the activities and an *equilibrium* of the system. The third parties which have rights on the seized assets are then protected by the law.

The assignment phase is a more public stage of the proceeding: the social purpose of the law makes the community involved in the process or at least careful to the destination of the assets. Unfortunately publicity on the confiscated assets is still difficult¹²⁵ and, with the exceptions of some

¹²⁵ There is a strong commitment, through the enforcement of the Regio Project, by the national

notorious, relevant immovable goods or companies, public knowledge about other assets is still limited and the work by AROs during the assignment phase could then a bit compromised.

Another criticality concerns the lack of monitoring on the use of the asset after its assignment, with an absent review of the destination criteria.

Conflicts of interest

Within all the legislative acts concerning confiscation there are not provisions regulating possible cases of conflict of interest by the asset recovery officers.

As a consequence rules applicable to officers in the course of the confiscation proceeding are those included in their professional code of behaviour:

- national agency's employees, as public employees, should respect rules of the "Code of behaviour of public employees", included in Decree of the President of Republic of April 16th, 2013, n.62, which requires public employees to abstain from taking part to proceedings where they have a conflict of interest (article 7). The code provides also the declaration of the assets (article 6);
- magistrates involved in the proceeding need to comply with the new Ethical Code of Judiciary¹²⁶ which does not provide specific rules on the conflict of interest but reaffirms the respect of principles of integrity and especially impartiality. This code does not require the declaration of assets.

A common point in the two codes are the requirements required in relation to the membership to other organisations or associations: this demand is particularly sensitive because of the social purpose destination of the assets confiscated to criminal organisations.

Article 7 of the codes for magistrates forbids to be member of associations which require "loyalty duties"; article 5 of the code of behaviour for public employees instead requires for the civil servants to communicate each membership they have in associations or organisations, nevertheless the field of operation of the same associations.

Assessment of the assets

The evaluation of the asset is made by the judicial administrator during the seizure phase. In his report, which has to be given to the delegated judge within 30 days from the appointment, he has to include, among other relevant information, *"the presumable market value of the goods as evaluated by the judicial administrator"*¹²⁷. In order to better evaluate the assets, the judicial administrator can make use of the assistance of experts.

This estimate has a great impact on the proceeding as it makes the reference for all the other evaluations based on the asset, such as the confiscation by equivalent, the right of third parties on the asset.

However, this estimate constitutes the starting point only of the proceeding: during the administration of the asset from its seizure, the management of the asset is aimed at increasing the productivity and the value of the asset, or, in case the administration is undermined by external factors or burdens on the good, the asset's value can decrease, too.

For example, when a restitution by equivalent is made, the interested party has the right to receive a sum equivalent to the value of the asset resulting from the periodic management account plus the improvements made and the inflation rate (this determination is made by the court).

When the assets are sold, the judicial administrator makes a plan to repay the creditors: in this moment they can issue remarks

agency to make the database about the confiscated assets more detailed and accessible to the public.

¹²⁶ Which dates back November 13th, 2010.

¹²⁷ Article 36 of Legislative Decree n.159/2011, *Report of the judicial administrator*.

about the value given to the goods, from which the payment of their rights is based.

Length of the confiscation proceedings

The length of the proceedings is a key issue for the effectiveness of the confiscation process. The proceedings require some terms to carry out some activities or to contest actions or decisions made by other actors in proceeding.

Length of proceedings is deemed to be quite too long, according to the special needs around the seized and confiscated assets; and length of proceedings differ when confiscation comes after a criminal or precautionary proceeding.

As long as it concerns the criminal confiscation, no time limit is set, if not the statute of limitation set for the reference crime against the person whose assets are seized. The stages of confiscation go along with the stages of the criminal proceeding, with the first degree confiscation being decided with the first degree conviction of the accused person and the confiscation being final after the third degree confiscation decided by the third degree court (Corte di Cassazione). The times of justice in Italy are really long, because of both complex procedures and the excessive number of court cases. Moreover, most of the cases related to the confiscation proceedings concern complex criminal cases with multiple offences or multiple offenders (such as criminal organisations' ones). Courts then do not have the flexibility to amend tribunals' agendas in order to facilitate or speed up criminal proceedings for special purposes.

On the other hand, as it happened with other issues related to confiscation, Legislative Decree n.159/2011 altered the framework in case of precautionary confiscation.

Intervention by the legislator is viewed as an attempt to shorten the proceeding, in particular through the introduction of articles 24 and 27. Article 24, paragraph 2 provides that the seizure order is revoked if the court does not decide for confiscation within a year from the capture of the asset by the judicial administrator; this term can

be prolonged for six months with a motivation decree by the court (not more than twice)¹²⁸.

Then there is article 27, paragraph 6, providing that "*in case of appeal, the confiscation order is not effective if the court of appeal does not issues a decision within a year and a half from the appeal*".

This articles seems to create a judicial framework where, at the expiry of the term, the court cannot order a final confiscation order. However, different interpretations are given to these combined articles: this can be considered a sort of expiry term for the confiscation order or it can be considered as a term which makes the order lose its effectiveness, with the faculty up to the court to issue a new seizure order if specific requirements occur¹²⁹.

In order to find the best possible interpretation of the law, the proxy law August 13th, 2010, n.136, *Extraordinary plan against mafia organisations and proxy to the Government for antimafia legislation*, which then led to the introduction of the antimafia code, provided for two limitations upon the legislator at article 1, paragraph 3:

- the legislator should have analysed existing legislation in order to introduce a consolidated law which could have not exceed the "living rule of law";
- where the proxy law was giving explicit directions, the law should have not exceeded them by introducing different regimes.

The interpretation of the law cannot introduce special measures which can overcome the ordinary procedural rules which do not permit that precautionary measures can affect the merit of a proceeding: it looks reasonable to state that in cases where the seizure loses effectiveness because of the expiry of terms, the court will be able to eventually order the confiscation since it makes an evaluation on the merit.

¹²⁸ Of course this term does not include the suspension causes provided under the code of criminal procedure.

¹²⁹ Requirements which did not previously occur but are able to make the seizure order now applicable.

As to the terms, it is worthy to mention other relevant issues:

- extension: it needs to be motivated by the court, for six-months period, not more than twice, in case of complex investigations or assets with relevant value;
- suspension of the term operates on the basis of the code of criminal procedure. Article 304¹³⁰ of the code does provide for the terms being suspended automatically without a specific order in cases provided by law. As to property precautionary proceedings, a maximum term is not provided. Causes for suspension of the terms are:
 - a) during the court proceeding, when this is suspended or postponed for legitimate impediment of the accused person or upon his request;
 - b) when the court proceeding is suspended because the defence attorney does not show up or is removed (and the accused person does not have legal representation though);
 - c) during the writing of the decision¹³¹.

The maximum terms for seizure/confiscation are:

- first degree: 1 year and six months, plus two 6 months extensions, plus possible suspensions¹³²;
- second degree: 1 year and six months, plus the variable time between filing the first degree confiscation order and the appeal, plus two six months extensions, plus possible suspensions.

Some strategies can be implemented to overcome the expiry of the seizure, such as setting the court hearing along with the seizure order and fixing terms to present documentation.

¹³⁰ Article 304 of coded of criminal procedure, *Suspension of the maximum terms for precautionary custody*.

¹³¹ As provided under article 544 of the code of criminal procedure.

¹³² A 90 days suspension can operate for the deposit of the orders.

3.2 RESPONSE TO THE FOUR KEY INDICATORS

Transparency

The level of transparency of the confiscation proceedings can hardly be measured and the level of transparency can be considerably increased.

During the judicial phase, activities carried out by the judicial administrators are motivated and are accessible by interested actors; so are the decisions issued by the court.

Much more debatable is the level of transparency during the assignment phase, where the processes to chose the destination of the assets are not really open, especially concerning immovable assets. The goods are usually assigned by the national agency to local public administrations (commonly the municipality where the confiscated asset is located) which then decide for the final (temporary on a normal basis) destination.

Actually the municipalities have a large degree of liberty on the decision of the beneficiaries. Some criteria for the assignment should be done, such as preliminary research of addressees fit or interested to the asset, creation of specific criteria or requirements, periodic communications or publications of the seized and confiscated asset they are about to assign.

In absence of binding parameters for the assignment of the asset, the local body can pick the assignee without formal grounds for their decision to be appealed. Support units to be established by the national agency at the local prefecture level should help to identify the most appropriate associations to receive the goods.

Accountability

The accountability of the subjects involved in the confiscation proceedings is guaranteed through a set of institutionalised controls that these actors can conduct reciprocally.

For example, during the judicial phase, the asset recovery officers involved in the proceeding (judicial administrator, court and delegated judge, national agency) have different, specific duties which do not contrast but which allow a cross-checking of the other officers' activities. In particular, the National Agency acts as an advisor and the delegated judge can appeal against some actions carried out by the judicial administrator; on the other way, the judicial administrator has to ask for permission to enforce extraordinary activities concerning the asset. Also the interested parties (such as the accused person whom the asset belongs and interested third parties) can appeal against some activities of the judicial administrator.

This cross-checking system does not work similarly during the assignment phase where the activities by the actors are more independent and not strictly connected: the national agency is fully responsible of the asset when the confiscation becomes final and implements the acts to prepare the good for the assignment. Once the asset is transferred to the local body, this municipality has no control by other subjects on the final destination¹³³.

Integrity

The level of integrity is difficult to be evaluated, since the presence of measures to prevent corruption within the institution does not automatically attest a corruption free area. As previously mentioned, the asset recovery officers have a code of code of behaviour or an ethical code which aims to prevent risky situations where corruption could take place.

In addition to these obligations, which are eventually sanctioned through disciplinary proceedings in case of violation, Italian has recently introduced an anticorruption law¹³⁴ which will constitute the pillar for the fight against

corruption within public administrations. Among the novelties introduced by the law, there is a systematic approach to prevent corruption behaviours, rather than for sanctioning violations: each public administration has to draft and implement triennial anticorruption plans and to appoint a responsible for the anticorruption activities.

However this law is not free from criticism, since the administrations seem unprepared to respond with specific activities required by the law (and by the plans), public officials are not aware or inclined to recognise these new procedures, the monitoring phase is not valued enough by the law and some tools have been introduced in an insufficient way only (such as whistleblowing protection which is introduced for the first time in the legal Italian framework but it is definitely inadequate compared to the international standards).

Effectiveness

In order to analyse the effectiveness of the confiscation framework, we should consider the number of confiscation proceedings which conclude with the final confiscation of assets, and then the most profitable assignment of these assets.

Unfortunately the analysis of data and statistics cannot be very specific for the purposes of this research, since it is not possible to track the history of single assets. And it is difficult to also compare the advancement of the whole confiscation system during the years because of the legal amendments which consistently alter the field of study.

Some data produced by the Ministry of Justice at the Senate on March 31st, 2013¹³⁵ show the

¹³³ See earlier paragraph on transparency, also on the role of the support units.

¹³⁴ Namely Law November 6th, 2012, n.190, *Provisions to prevent and contrast corruption and illegality in the public administration*.

¹³⁵ *Relazione sulla consistenza, destinazione e utilizzo dei beni sequestrate o confiscate e sullo stato dei procedimenti di sequestro e confisca*, prepared by the Ministry of Justice and introduced by the Ministry for the relationships with the Parliament and the coordination of governmental activities, March 31st, 2013.

number of actions during the confiscation proceedings divided per stage.

FIGURE 11: Number of goods per year and stage of proceeding, Ministry of Justice
(Data are updated to March 31st, 2013*)

	2009	2010	2011	2012	2013*
GOODS (I DEGREE CONFISCATION)	4.054	6.066	9.300	14.133	2.335
GOODS (II DEGREE CONFISCATION)	548	935	1.004	4.000	468
GOODS (FINAL CONFISCATION)	757	972	1.218	1.179	621

As previously mentioned, these data do not allow to carry out scientific evaluations but it is possible to observe how the number of goods which reach a first degree confiscation is really increasing (it is a particular prominence the top data of the last completed year, 2012). Moreover, it is of interest to notice the great difference between the goods confiscated in first degree and permanently confiscated, which seems to contrast with the rational stating that once the asset is confiscated in first degree, parties involved can assume it will reach the final confiscation, too.

Detailed analysis on the functioning of single courts can probably allow to deepen the data provided by the ministry of justice and by the national agency and to understand the effectiveness of the asset recovery officers in completing the proceedings.

Further data analysing the performances of the asset recovery officers during the post-confiscation phase are provided in the section related to the assignment of assets.

4. LOOPHOLES AND RECOMMENDATIONS

The confiscation process is not “a straight line but a tangle¹³⁶”.

From the analysis several loopholes, problems and criticalities can be easily detected; however some recommendations have been (and will be) issued to fix them.

Once the confiscation is final through the third level of jurisdiction, the proceeding can face different kinds of obstacles that can delay the assignment or the delivery of the asset, or even subtract the asset from the public management.

Moreover, additional difficulties can arise after the assignment, concerning the sustainability of the property, in the phases of renovation and actual use of the asset by the beneficiaries.

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.

As previously mentioned the continuous interventions on the confiscation legislation added several new provisions which are not included in a single-standing compact law. Novelties which were added in recent years to improve the framework amended the criminal code, the code of criminal procedure and other criminal laws: this non-systematic production of

provisions has created problems to the deciding courts on the interpretation between contrasting provisions included in different acts and it also led to issues on the competence during the administration of the assets.

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.

The two different forms of confiscation (criminal and precautionary) should be pointed out and should be the basis for this consolidated act.

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 assignment, the law established a maximum time lapse between the final court decision on the confiscation and the formal assignation of the good, which is 90 days, plus other 90 days for particular complex procedures. The limit is often not respected and the average length is higher. This is due to structural obstacles (lack of accountability and incompetence of public administration, excessive bureaucracy, condition of assets, collusion of public officials with criminal organisation) and it compromises the quality of the assets, sometimes facilitating illicit occupation. The situation is particularly critical when the asset is an enterprise, since delays protract the period of inactivity, then reducing potential productivity and competitiveness.

¹³⁶ Alessandra Coppola and Ilaria Ramoni, *Per il nostro bene*, Chiarelettere, 2013, page 11.

Bureaucracy has been identified as one of the most common criticalities in the phase of planning of the activities and renovation of the good by the beneficiary, as clearly showed by the detailed analysis realised by TRANSCRIME on eight confiscated assets funded by the PON (National Operative Programme) Sicurezza 2000-2006. In particular, long procedures to obtain credits, as well as environmental licenses or utility connections, require long time and good competences.

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 proceedings¹³⁷;
- entrusting the national agency with all the confiscation proceeding, starting from the seizure.

Collection of data on the confiscated assets

Consistently with the ordinary collection of statistics and data about the judiciary system in Italy, the collection of statistics on the accessibility to these data and information by public creates some problems.

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:

- Ministry of Justice: these data have a difficult access and it is not possible to gather specific information on single assets, their location or

status. Moreover the publication of these data on accessible databases is not timely: for example, information on confiscated assets updated at 2013¹³⁸ need to be tracked in government acts and they are not on a public database.

- National Agency: the national agency's website (www.anbsc.it) provides data and statistics about the assets which have been finally confiscated, in particular companies and immovable assets. These data provide detailed information on the number of assets permanently confiscated and on their geographical location (information details up to the municipality where the asset is located). However not all the assets are characterised by further details: in the table the assets are listed by name, juridical nature, assigned body, asset details, assignment decree. Unfortunately only name and juridical nature are always pointed out (in some cases, in particular in some determined areas, the assignment decrees, too).

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.

Possible solutions then need to consider the different methods to gather information regarding criminal proceedings:

- the ministerial data rely on information that the Ministry receives from the court: unfortunately the organisations of the courthouses and the computerisation of their activity is still not uniform (data from several courts are scarcely accessible or difficult to be classified). The only way to obtain reliable

¹³⁷ Precautionary proceedings require less fulfilments, with quicker and more concise proceedings: however a special consideration must be given to the rights (also constitutional) of third parties.

¹³⁸ Reference here is to the *Report on Size, Assignment and Use of Seized and Confiscated Assets and on the status of seizure and confiscation proceedings*, prepared by the Ministry of Justice, updated at March 31st 2013

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 implementing the REGIO project to overcome these loopholes, and it is updating its database¹³⁹.

Further legislative amendments to the Antimafia Code (Legislative Decree n.159/2011)

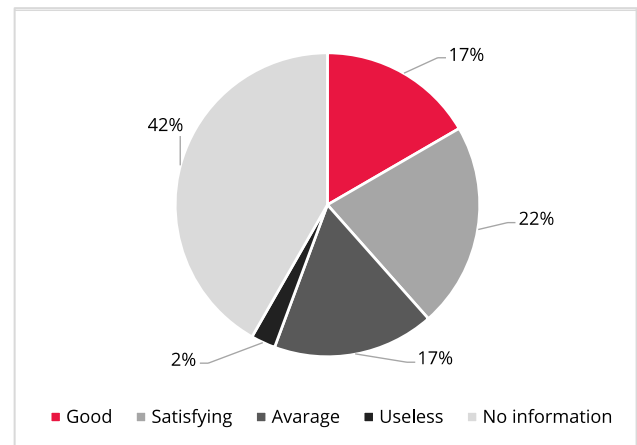
The antimafia code reviewed the confiscation tools and created a uniform framework to tackle criminal organisations through these measures. However specific provisions of the Legislative Decree n.159/2001 could be easily amended, in particular to improve the administration of the assets during the judicial phase.

For example, a reformulation of the duties of the judicial administrator, regulated under article 37 of Legislative Decree n.159/2011, would be beneficial, as the current legislation provided by the Law Decree February 1st, 1991, n.293, *Regulations on procedures to report performed activities and for the budget by the judicial administrator*, has been severely amended by the Antimafia Code, with a necessary coordination to come.

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, as shown by Figure 9.

FIGURE 9: Status of assets, National Agency (Data, December 31st, 2012).



This is 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 judicial administrator can require exceptional interventions for security reasons (unfortunately this does not protect the assets from deterioration). Moreover, abusive occupation of the asset can occur and squatters can provoke additional damages to the asset and goods can be subjected to act of vandalism.

There are several examples of these kinds of events. One of this is the farmstead “Caccia” in Piedmont (North Italy), where the family of a mafia leader, Domenico Belfiore, took away and destroyed the electrical system, water and heating tubes, woods and marbles before leaving the confiscated assets in 2007.

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

¹³⁹ The number of resources working for the agency is still limited for all the activities to be performed: the faculty to pick selected employees for specific functions is crucial.

whenever the recipient asks for a credit. This is particular critical for cooperatives and associations that have not high amounts of resources to rely on. In order to face this problem, some local responses have been designed, such as, for example, the creation of a fund made by different public and private partners in Puglia and Sicily (Unifidi Impresa Sicilia and Coopfond). Moreover a recent law proposal of popular initiative¹⁴⁰ provides for this kind of funds for enterprises at a national level.

Initially, as reported by TRANSCRIME¹⁴¹ in 2013¹⁴², the Law n.109/1996 provided for a national prefectural fund in each prefecture made by resources coming from confiscation of movable assets. These funds were initially designed for the management of confiscated assets or for other social purpose but they were foreseen for one trimester only. Some prefectures have even never launched the fund.

Some municipalities have benefited from national and European funds through the National Security Operational Programme (Programma Operativo Nazionale – PON – Sicurezza) from 1997 to 2013, which provides for supports in four southern regions (Calabria, Campania, Puglia and Sicily) in relation to projects focused on prevention and contrast of criminality, promotion of development and improvement of a good civil perception of institutions. Within this initiative 227 of the assets confiscated from 2000 to 2013 have been recovered and upgraded.

¹⁴⁰ Law Proposal n.1138/2013. The law proposal of popular initiative is an institution of direct democracy, through which citizens may submit either to Parliament or to a local administrative authorities, such as the Region, a bill that will be then debated and voted on. There is a minimum number of signatures to be collected, which, in the case of a national law proposal, is 50.000.

¹⁴¹ Transcrime is a Joint Research Centre on Transnational Crime of the Università Cattolica del Sacro Cuore of Milan and the University of Trento.

¹⁴² TRANSCRIME and Università Cattolica, *Progetto PON Sicurezza 2007-2013 Il riutilizzo dei beni confiscati*, 2013.

Also during the judicial confiscation proceedings some activities related to the assets need to be dealt with: “extraordinary” expenses are covered through the sums of money seized to the same person whose asset is seized or through the incomes coming from the management of the assets.

As previously explained, the assets often need an active management to fix anomalies and to “solve” burdens: 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. Moreover, at least the sums related to seizures and confiscations could be used to assist the seized companies to “legalise” their position.

For example, when immovable assets are seized, a partial amount of the sums recovered through the management of the asset should be kept out of the Justice Unique Fund in a first moment, in order to have immediate funds to use without necessary delays related to the procedures to access FUG¹⁴³.

¹⁴³ Law Decree July 30th, 2009, n.127, *Implementing regulations of article 61, paragraph 23 of Law Decree n.112/2008, converted with amendments by Law n.133/2008, and of article 2 of Law Decree n.143/2008*,

Additional amounts could be recovered through an adequate reduction of the premium which Equitalia Giustizia¹⁴⁴ receives from the management of the fund, which currently is at 5% of the annual profit of the fund¹⁴⁵.

Concerning the management of the seized assets (article 40) an amendment should regulate the different requirements to appeal acts performed with or without the authorisation of the delegated judge.

As to the seized companies¹⁴⁶, a limit on the expenses that the State has to deal with during the administration phase could be expressed in the seizure decree by the court or his delegated judge.

The administration of companies

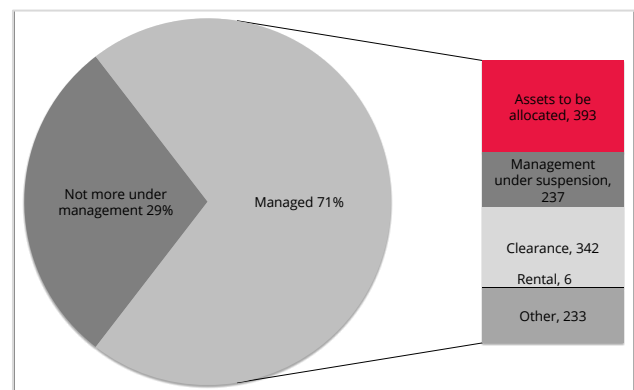
The number of companies which are subject of seizure and continue to operate until the final confiscation is really limited. The reasons for these difficulties in managing the company as proficiently as it was before the seizure are explained by the costs related to the "legalisation" of the company.

Confiscated companies are, according to the Confiscated Assets Agency, 1.708 units. Almost half of them are located in Sicily (36%) and Campania (20%), while the third Region is Lombardy (13%), the economic and financial centre of the country. 28% of confiscated companies work in the construction sector, the same share is in the commercial sector (properties, houses) and the 10% operates in hotel and catering business.

As the Figure 10 shows, most part of confiscated companies are currently not running because

they have to be allocated, they are in the phase of sell or liquidation or they are in stand-by because of some criticalities (e.g. ongoing criminal proceedings). Among companies no longer under management, most part (57%) are no longer running (they have been removed from the Register of Economic and Administrative Information), the remaining part has been cleared (31%) or sold (9%). According to a research of Assolombarda¹⁴⁷ of October 2012 only 4% of confiscated enterprises were effectively running, with actual employees.

FIGURE 10: Status of confiscated companies, National Agency (data elaborated by Transparency International Italy (Data, December 31st, 2012)



This confirms that 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.

The management of the companies during the seizure/first degree confiscation phase is very complex. The administration of a company requires a high level of expertise during the

converted with amendments by Law n.181/2008, and following amendments, on Justice Unique Fund.

¹⁴⁴ The company appointed to recover taxes and credits on behalf of the State.

¹⁴⁵ The fund is currently over 1.000 million Euros.

¹⁴⁶ Articles 41 and following articles of Legislative Decree n.159/2011.

¹⁴⁷ National Agency for the Administration and Assignment of Seized and Confiscated Assets, Assolombarda and other partners, *La valorizzazione delle competenze dei dirigenti industriali di Milano nella gestione delle imprese sequestrate e confiscate alla criminalità*, October 2012.

ordinary life of the same company, and the seizure can only make more difficult to run it proficiently; the characteristics of the judicial administrators appointed to manage the company need to be more specifically driven to these contexts. Bad performance of seized and confiscated companies under judicial management (before sell or clearance) is mainly due to low entrepreneurial capacities of public officials that manage the asset. Unfortunately, the precautionary measure (seizure) entails further difficulties because it involves all the actors who used to deal with the company (banks, insurance companies, suppliers, customers, employees, etc.), which now face a completely different counterpart.

As previously mentioned, in addition to the initial relation compiled by the judicial administrator, in cases where companies are seized, an additional detailed report needs to be filed. The delegated judge acquires this report and the opinion of the public prosecutor and issues his proposals to the court¹⁴⁸: the court then issues a measure which decides if prosecuting or not the company's business activity and which eventually gives directions; this responsibility lies upon the court because a collegiate decision is necessary when multiple interests are involved.

Several principles contribute to the decision by the court:

- the freedom of private enterprise of the person whose assets are seized and third parties are entitled until the confiscation is final (the eventuality the seizure is revoked hangs on the proceeding);
- the "legal" prosecution of the business activities;
- the opportunity or not to interrupt business activities which were operational before the seizure;

- the rights of companies' employees to keep a their employment;
- the wide aim of keep or improving the productivity of seized assets;
- the final view of assignment of the asset to social purpose if and when the confiscation will become final.

The simultaneous analysis of these competing factors pushes the court to pursue, when it is possible, the prosecution of the companies' activities, under the "legal" direction of state bodies. Business activities are interrupted when the company cannot be reversed from its criminal nature.

The management of the company¹⁴⁹ adheres to relevant provisions of the Civil Code, with the judicial administrator acting under directions of the delegated judge and the court; it is the delegated judge to set the limits for the ordinary administration. The person owning the seized company (or a relevant right-holder) is totally excluded from the management.

Additional criticalities related to the reintroduction of the company in the "legal" area need to be fixed, such as the regularisation of accountability, employment contracts, safety measures, etc.

Moreover, there are several enterprises that were built for money laundering or for concealing illegal activities only rather than for profit purpose. Due to this reason former owners often intentionally chose sectors easier to start and run and with a higher impact on the territory (construction, hotels). A change of management often implies a swift from illegality to legality that includes a research for a completely new network of partners. This is particularly difficult considering that employees continue to work under the old and the new owner and, before the effective confiscation of the asset, they used to live in a "grey area of compromise" with the

¹⁴⁸ During this phase the person whose assets are confiscated and individuals who have rights on the asset can only present their depositions.

¹⁴⁹ Article 41 of Legislative Decree n.159/2011.

previous criminal owner and illicit customs. This is very common for hotel activities, as in the case of the Hotel San Paolo Palace in Palermo¹⁵⁰. As the example of Ericina concrete plant also points out¹⁵¹, the most difficult task is to compete with other companies while complying with rules in a context where illegality and shortcuts are the rule. Due to this reason former owners have often better performance and could assure higher employment salaries and opportunities to local community¹⁵².

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 initiative¹⁵³, 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.

¹⁵⁰ Alessandra Coppola and Ilaria Ramoni, *Per il nostro bene*, 2013, page 94.

¹⁵¹ See specific box.

¹⁵² This brings people to affirm that mafia can guarantee more jobs.

¹⁵³ Law Proposal n.1138/2013, also known as "Let's reactivate the job".

A BEST PRACTICE: ERICINA LIBERA CONCRETE PLAN

The company *Calcestruzzi Ericina Libera*, located in the municipality of Trapani, was a property of Vincenzo Virga of the *Cosa Nostra* mafia clan, seized in 1996, definitively confiscated in June 2000 and assigned in 2009. The company operates in the construction sector, one of the most concerned by confiscation and it produces cement for reinforced concrete and, since 2009, it recycles construction waste.

It represents a peculiar case in Italy because, since 2001, Ericina is managed by a cooperative of workers that are literally the "tenants" of the enterprise. And here the first difficulty already emerges: "According to the legislative decree 109/1996¹⁵⁴, the rent to cooperatives of workers should be free of charge. However this was not applied because not provided by the Italian Civil Code" said the current President of Ericina, Giacomo Messina. Moreover, they cannot have access to the funds of the PON Sicurezza (National Security Operational Programme), because these funds are designed for municipalities and immovable assets exclusively. Giacomo Messina confirms some of the criticalities listed in the report: excessive time lapse between forfeiture and assignation (15 years), lack of specific competences in the commodities sector and lack of control regarding judicial and financial administrators, status of the asset and difficulties in finding funds for renovation and re-launch of the activity. Mr Messina complains about the general approach to confiscated companies, and in particular to workers' cooperatives: "The confiscated company is considered as a normal firm, even if this is not the case. Normative support is deficient. The analysis on specific enterprise is superficial and it focuses on the mere balance sheet. Workers do not have social security supports and they are not involved in the initial stage of the proceeding, the seizure. Regarding workers' cooperatives, they are superficially taken into account, even in the new legislative proposal¹⁵⁵. A general lack in the process is the complete neglect of the post-assignation phase: confiscated companies benefit from little support and monitoring after the assignation. Another important point is the lack of support for

¹⁵⁴ Recalled in the Article 48 of Legislative Decree n. 159/2011

¹⁵⁵ Bill of Law n.1138/2013.

creating a network among seized and confiscated enterprises, which would be useful to create a virtuous circle”.

The experience of *Ericina* is particularly significant because of the troubles it had to face. Since February 2001, when the fugitive Vincenzo Virga was arrested, they began to experience a systematic decrease in commissions (-50%), which compromised the survival of the company. Financial administrators, despite an intensive activity of negotiations with construction companies, had serious difficulties in concluding contracts for new supplies, due to reasons apparently related to uncompetitive prices and economic conditions. The lifeline came with a big contract thanks to the Prefecture of Trapani, which came to aid of the confiscated company. Another threat arose when some dubious purchasers showed up to acquire the assets; this affair ended with their arrest because of their links with *Cosa Nostra*.

The *Ericina* reacted and showed an innovative approach, through opening, for example, a recycling branch. Today the company has 13 employees (7 of them are members, too) and 1.200.000 Euros of turnover. Messina explained that “it was the support of some institutions and civil society organisations, as well as the workers, the Prefecture and the Prosecutor Office of Trapani, the Financial Administrator, law enforcement agencies, the State Property Agency, the Confiscated Assets Agency, Libera, Legacoop, the financial group UNIPOL, the business association ANPAR, Legambiente and the media, to save the *Ericina* firm. A set of actors that, accordingly to their specific relationship with the confiscated company responsibly and deliberately played their part for a common goal: making the confiscated good a tool to fight illegal economic activities. The unique strength point of *Ericina* is synergy. Regarding the community support, Messina is more uncertain: “We cannot praise an unconditioned support by the local territory. Local administrators are missing. To economic operators, the law sometimes seems to be perceived as a *stink* to walk away from. School groups come to visit us, they remain perplexed but at the same time they bring along some seeds of hope. The problem is that the perspectives and suggestions that we give them for their work-life collide with the reality”.

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 %) ¹⁵⁶. 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. Sometimes criminals that know to be under inquiry can intentionally take out a mortgage on properties that are more likely to be confiscated.

Two conditions have to be in place in order for the warranty right to be recognised: the registration of the mortgage needs to be primary over the forfeiture and the bona fide of the credit institution has to be proved, that is its non-involvement and the unawareness about the offence. If these conditions are not in place, the judge can revoke the mortgage. This is the case for example of several assets of the *Valle family* in Lombardia, where the lack of *bona fide* by several financial institutions (among them, the National Labour Bank-BNL and Barclays Bank) was proved by the Court of Milan. When this is not the case, the assignment can be accomplished only once the mortgage is repaid. In this case a renegotiation can occur with the credit institution in order to lighten the mortgage. This occurred for example with *Vermuncaudo* property, in Sicily, where, after more than 20 years since its final confiscation, the National Agency succeeded to renegotiate the mortgage with Unicredit Bank.

The main criticalities related to the assignment of immovable assets concern their appeal because of mortgages they are affected and the lack of care in their conservation ¹⁵⁷.

The first activity is a review of the history of the asset, with an investigation on the good faith of

¹⁵⁶ National Agency for the Administration and Assignment of Seized and Confiscated Assets, Annual Report, 2012.

¹⁵⁷ Most of times the assets are already in a poor status in the moment they are confiscated.

the bank when it granted the loan; unfortunately if the bank can prove the good faith, the risk that the assignment of the asset can be compromised is high¹⁵⁸.

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 Fund¹⁵⁹.

A better analysis of why the mortgages represent a delicate but severe issue for the confiscation proceedings needs to start from the different laws concerning this matter.

For precautionary proceedings lying under antimafia code, article 45, paragraph 1 provides that the assets are transferred to the State without burdens, meaning that all the problems¹⁶⁰ related to the assets need to be solved within the judicial proceeding. In order to compensate the creditors, it is possible to sell the asset; in case of co-ownership, the State cannot receive only a share of the asset which is sold to the interested co-owner or is fully acquired by the State¹⁶¹. When the confiscation is final and the good is not sold, the immovable asset will be free from any burden, including creditors rights which are repaid up to the limit of 60% (article 53) if some requirements (listed at article 52) are met.

Concerning the good faith of the credit institutions, law should provide, according with Law n.228/2012, that the lack of good faith violated banking regulations which could be

subject to sanctioning by the banking vigilance authority.

In any case the sell of immovable assets should be the last possible option, since the importance of their social destination represents the spirit of the law. Also in cases where their sell could be legitimate to honour the creditors, it should be first preceded by the sell of movable assets or companies or it should be protected through the use of money from the justice unique fund. This last option should be particularly useful when there is not availability of movable assets which can be sold to pay a credit of limited amount: in no case a relevant immovable asset should be affected.

Decision n.10532/2013 of the Corte di Cassazione gives interesting interpretation of the Law n.228/2012: article 1, paragraphs 194 to 205 introduce a new discipline for the mortgage and right of distraint holders.

The creditors can present a request to have their credit compensated: twelve months after this deadline the national agency identifies goods with a market value more than double than all the credits (paragraph 201); then it liquidates the goods under procedures provided by Legislative Decree n.159/2011¹⁶²; the proceeds are included in the justice unique fund, in a separate section for the time necessary to pay the credits (paragraph 202); then it plans the payments to all the creditors for all the assets. Payments cannot exceed the lower amount between the 70% of the asset value and the income recovered by the sale; all the sums of the separate section are then merged in the justice unique fund (paragraph 204).

Unfortunately confiscations under article 12sexies do not seem to be directly covered by this law: an extension of the stability law would be advisable to include these assets in the new framework, too.

¹⁵⁸ Especially when the transcription of the mortgage in the records of immovable goods precedes the transcription of the seizure order.

¹⁵⁹ It is important to notice that the Justice Unique Fund is upgraded by the revenues of the sales of the assets (in particular movable assets).

¹⁶⁰ By problems we mean all third parties' rights on the good.

¹⁶¹ Article 52 paragraph 7 of Legislative Decree n.159/2011.

¹⁶² In particular under article 48, paragraph 5 and article 52, paragraphs 7, 8 and 9. Residual goods can be assigned or sold according to article 48.

Immovable assets: sell or not to sell?

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 purposes¹⁶³.

Law provides for the possibility of selling or clearing companies after a detailed economic evaluation by the National Agency and when there is a “higher utility for the public interest”¹⁶⁴. Rent is preferred when there is a proven possibility that the activity can continue or restart. Legislators left wide possibilities of interpretation and there are both objectors and supporters to the practice of sell. Further hypothesis for the sell of the assets have been introduced more recently by other laws to repay creditors¹⁶⁵.

The issue is sensitive because it concerns the destination of a common good, which has been acquired by the State after a legal battle. It has a strong symbolic power because it represents the redemption from an illegality situation and the sanction against a criminal organisation which has to repay the community for its damages. This message can be more easily conveyed if the asset is public and can be visited by citizens, if it can work as an historical testimony of the story of the fight against criminality in the country.

Sometimes the goods are located in the middle of countryside, in isolated mountain regions, because previous inhabitants chose intentionally secret and discreet location for dwelling or running illicit activities. The position of assets can be inconvenient for running a community service as most associations and cooperatives do. This is the case when lodging or selling can be preferred

because it is the only opportunity to guarantee sustainability to the asset.

Moreover the main reason why the sell is disliked is the risk that the asset can fall back into the criminality circle. Purchasers can be affiliated to the criminal organisation or they can be ready to accept some illegal shortcuts and compromises; this is likely to happen when illegality is deeply rooted in the economic context and controls are weak. Giacomo Messina, President of Ericina, shares these fears: “Since the market is not free but substantially biased, it forces the purchaser to accept compromises in order to survive, through tax-evasion, neglect of national collective bargaining agreement or security standards, etc.”. Controls and regulation could significantly lower this risk.

A different view is provided by Umberto Ambrosoli, son of the famous Giorgio Ambrosoli¹⁶⁶ and a candidate in the last elections for Lombardy Region Presidency: “I believe in a vision of the justice as a driving force for economic development. We know that the economic balance sheet of the justice sector is negative and this is also due to the management of confiscated assets”. Because of this reason, he supports the sell of confiscated assets, under some conditions: “Rules to avoid that the asset is acquired by criminality and prohibition of selling the asset before a 15-years period”. Another supporting voice to the sell comes from the famous whistleblower, writer and journalist Roberto Saviano, who lives under body-guard protection, since he was 27 years old. He tweeted in 2012: “Confiscated assets coming from criminal organizations should be immediately sold. We must give back to the State loot resources”.

On the other side, Giacomo Messina considers the sell as a capitulation of the State, while Davide Pati, the national responsible for confiscated assets of Libera association, thinks

¹⁶³ Article 2undecies of Law May 31st, 1965, n.575, introduced by Law March 7th, 1996, n.109.

¹⁶⁴ Article 48 of Legislative Decree n.159/2011

¹⁶⁵ Article 60 of Legislative Decree n.159/2011. Moreover article 1, paragraph 198 of Law n.228/2012 (Stability Law) allows the sale to repay the good faith creditors.

¹⁶⁶ Giorgio Ambrosoli is a symbol of legality and fight against strong criminal organisations. He was an Italian lawyer killed while investigating the malpractice of the famous banker Michele Sindona, who was then proved to be linked to mafia organisations.

that sell is not the priority nor the solution to the problems concerning confiscation.

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.

On this matter, in contrast with the consolidated court praxis, a decision from the Corte di Cassazione¹⁶⁷ (Italy Supreme Court) ruled that a person whose house is seized and his family have the right to live in the house until the confiscation. This ruling represents a minority view, since it clearly contrasts the purpose of seizure and confiscation which follows precautionary needs and it is aimed to contrast the illicit origins of the asset.

The common praxis is that immovable assets are therefore cleared out when they are seized or after the first degree confiscation: when the

assets are cleared they can be temporarily assigned (especially if they are in “state of need” and preservation activities have to be carried out). By the way, at latest when the second degree confiscation is reached, the property needs to be cleared to allow the national agency being prepared to the final destination when confiscation becomes final.

However, because of the long time of abandon of the good, cases of illegal occupation of buildings and flats are not unusual; this causing additional damages to the good and slowing down the process. Sometimes relatives of the convicted person illegally inhabit the asset. An emblematic example concerns, at this purpose, the location of the office-space by the National Confiscation Agency in Rome: although there are several confiscated assets in the capital city, the agency has to pay a rent for its offices¹⁶⁸.

As already exposed, the decrease in the asset value is one of the main criticalities which the asset recovery officers need to face. 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 asset¹⁶⁹ 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 asset¹⁷⁰;
- in case it is granted to the person against whom the seizure is made the chance to keep

¹⁶⁸ A lawyer illegally occupied the confiscated building that was identified to host the Agency and this complicated the procedure for the transfer.

¹⁶⁹ As provided under article 21 of Legislative Decree 159/2011, *Enforcement of the seizure*.

¹⁷⁰ For this purpose, a specific provision should be introduced so that a legal title is given to the “new” occupying individual/association in case of the possible, following final confiscation.

¹⁶⁷ Cassazione civile, sez. II, decision 11.03.2011 n. 9908.

using the immovable asset¹⁷¹, 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. This mainly happens because “seizure and confiscation are bureaucratic acts conceived at closing doors in a court hall, they rarely face the reality¹⁷²”. There are some examples of associations that are forced to share the good with the family of the convicted person that still owns some property rights, this causing conflicts and recriminations. This is the case, for example, of Don Giacomo Panizza, a priest in Lamezia Terme, who faced threats and reprisals because he inherited, in 2002, the hard task to open a centre for disabled people in a confiscated building surrounded by the stronghold of the leading ‘*ndrangheta* family¹⁷³. Another example is located in Casal di Principe, one of “camorra” main centres, where the house of Francesco Schiavone (the so-called “Sandokan”, boss of the Casalesi clan) has been divided by a real “Berlin wall” between Schiavone’s family and an association for autism disease managed by a police agent¹⁷⁴.

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 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 expertise¹⁷⁵, 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:

- local prosecutors’ offices are increasing the application of precautionary confiscation measures¹⁷⁶;
- the agency is now competent¹⁷⁷ for seizures and confiscation provided for crimes listed under article 12sexies¹⁷⁸.

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.

¹⁷¹ This can be allowed under article 40, paragraph 2 of Legislative Decree n.159/2011.

¹⁷² Alessandra Coppola and Ilaria Ramoni, cited work, page 34.

¹⁷³ Alessandra Coppola and Ilaria Ramoni, cited work, page 40.

¹⁷⁴ Alessandra Coppola and Ilaria Ramoni, cited work, page, 35.

¹⁷⁵ Staff selection can be made within the public administrations only.

¹⁷⁶ For example courts are recording an increase of measures against “socially dangerous tax evaders”.

¹⁷⁷ Amendments were introduced by Law n.228/2012 (Stability Law 2013).

¹⁷⁸ With the exception of crimes provided under article 51 paragraph 3bis of Code of Criminal Procedure, such as usury, extortion, crimes against the public administrations and others.

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.

Support Units can be tools to avoid political discretion and lack of transparency in the phase of assignment. Procedures applied for the assignment of the assets by Municipalities are not strictly regulated and they can be determined by political or familiar kinship. In some cases open tenders are a common procedure, as in the case of Milan¹⁷⁹. However, even in this case, a real open competition has to comply with certain transparency and timing requirements, otherwise the tender can be biased.

At this purpose, Support Units have an advisory role and they can increase democracy and transparency in the decisional process, even if the final decision is due to 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. This is the case, for example, of the Support Units, where the actual implementation of the bodies depends on the personal initiative of an individual employee. The lack of a real person in charge of the process, accountable for the success or the failure of it, discourages a responsible and efficient assignment mechanism. Lack of entrepreneurial and long-term planning capacities worsens the situation.

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 (e.g. at Università Cattolica del Sacro Cuore in Milan, University of Palermo, University Orientale of Naples). These kinds of courses can be further promoted and incentivised.

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. This is the case of the Municipality of Reggio Calabria, which falsely alleged that a confiscated villa (*of Condello in Archi*) was empty, while it was occupied by the family of the convicted boss of an '*ndrangheta* clan. An inspection of the Carabinieri¹⁸⁰ discovered the real use of the asset, exposing the collusion of the Municipality with the mafia

¹⁷⁹ According to Giuseppe Giuffrida (interview in 2013), Contact Person of confiscated assets for Libera Lombardia, since 2009, in Milan 125 out of 130 confiscated assets have been allocated through public tenders.

¹⁸⁰ Carabinieri is one of the three police forces in Italy, along with the Polizia di Stato and the Guardia di Finanza.

family¹⁸¹. As in this case, the disclosure of collusion of Municipalities with criminal organisation, and the following termination of the local administration, sometimes stems from some failures in the management of confiscated assets. This reveals that supervision on the confiscation process can be an instrument to increase the detection of mafia organisations in the territory.

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 (see relevant paragraph) 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.

Moreover, TRANSCRIME¹⁸² suggests a scheme to check ex-ante and ex-post the efficiency of the assignation through matching the social and economic needs of a territory with the activities carried on by recipient organisations. This allows evaluating if assignations really answered to local needs.

Socio-psychological contest

Boycott, frights, threats, concealing. A confiscated asset, especially when it was previously linked to an organised crime, can found a hostile environment where to grow up. This happens when the convicted person is deep-rooted in the territory, has gained respect and gratitude from the community and has commercial and personal links with local authorities, enterprises and citizens. For this reason goods can be targets of vandalism acts, frights and threats by either the criminal organisation or the community itself. There is plenty of cases of fields managed by

Libera Terra¹⁸³, especially in Southern Italy, where plantations were burn down. As the President of Ericina concrete plant (a best practice among confiscated companies, analysed later in this report) said, “Legality is perceived as a stink”. People can be frightened about reprisal in case they have relationship with the association or the company that benefits from the asset. In case of companies, this aspect is very critical because acting according to laws can be inconvenient in an environment where illegality continues to be the rule.

There are also cases where the activity or service provided by the association is not welcomed from the community, as in the case of rehabilitation centres for drug-addicted people. Or there are cases in which neighbourhoods reject the existence of criminality in their area and they do not allow exhibitions of plaques or memorial symbols: this occurred in Northern Italy mainly, as in the case of the ethical and eco-friendly *Cangiari* boutique in a fashion street in Milan or the *Club* Association for disable people in Corsico, near Milan¹⁸⁴.

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.

¹⁸¹ Alessandra Coppola and Ilaria Ramoni, *Per il nostro bene*, 2013, page 93.

¹⁸² TRANSCRIME, cited work.

¹⁸³ Libera Terra is a network of cooperatives which adhere to Libera association and work on agricultural areas.

¹⁸⁴ Alessandra Coppola and Ilaria Ramoni, *Per il nostro bene*, 2013, page 88. In Northern Italy criminal organisations have developed silently and it needs more time for this criminal phenomenon to be unveiled and socially accepted than in Southern Italy. Mafia, 'ndrangheta and camorra were erroneously long perceived as a southern problem only.

BIBLIOGRAPHY

NATIONAL LAWS

Decree of the President of Republic of April 16th, 2013, n.62, Regulation of Code of behaviour of public employees, according to article 54 of Legislative Decree March 30th, 2001, n.165

Law December 24th, 2012, n.228, Provisions for the elaboration of annual and multi-year State balance sheet (Stability Law 2013)

Law November 6th, 2012, n.190, Provisions to prevent and contrast corruption and illegality in the public administration.

Law February 15th, 2012, n.12, Provisions against cybercrime

Decree of President of Republic December 15th, 2011 n.235, Regulation on the organisation and staff and instrumental allocation of resources for the functioning of the National Agency for the administration and assignment of goods seized and confiscated to criminal organisations, according to article 113, paragraph 1, point a) of Legislative Decree September 6th, 2011, n.159

Legislative Decree September 6th, 2011 n.159, Code of anti-mafia laws e prevention measures, and new provisions on anti-mafia documentation, according to articles 1 and 2, Law August 13th, 2010, n.136.

Law March 31st, 2010, n.50, Conversion into law, with amendments, of Law Decree February 4th, 2010, n.4, Institution of the National Agency for the Administration and Destination of Assets Seized and Confiscated from Criminal Organisations

Legislative Decree February 4th, 2010, n.14, Creation of the Record of the judicial administrators, according to article 2, paragraph 13 of Law July 15th, 2009, n.94

Law Decree February 4th, 2010, n.4, Institution of the National Agency for the Administration and Destination of Assets Seized and Confiscated from Criminal Organisations

Law Decree July 30th, 2009, n.127, Implementing regulations of article 61, paragraph 23 of Law Decree n.112/2008, converted with amendments by Law n.133/2008, and of article 2 of Law Decree n.143/2008, converted with amendments by Law n.181/2008, and following amendments, on Justice Unique Fund

Law July 15th, 2009, n.94, Provisions on public security

Law Decree February 23rd, 2009, n.11, Urgent provisions on public security and contrast to sexual violence and persecution

Law Decree June 25th, 2008, n.112, Urgent provisions for economic development, simplification, competitiveness, stability of public finance and fiscal equity

Law Decree May 23rd, 2008, n.92, Urgent measures for public safety

Law February 25th, 2008, n.34, Provisions to fulfil obligations for Italy's membership to European Communities (European Communities Act 2007)

Legislative Decree April 3rd, 2006, n.152, Regulations on environment

Law March 16th, 2006, n.146, Ratification and Implementation of the Convention and the Protocols of the United Nations Convention against Transnational Organised Crime

Legislative Decree May 21st, 2004, n.170, Enforcement of Directive 2002/47/CE on financial guarantee contracts

Decree of President of Republic May 30th, 2002, n.115, Consolidated law on laws and regulations on justice expenses

Legislative Decree June 8th, 2001, n.231, Administrative liability of legal persons, companies and associations, also without juridical personality, according to article 11 of Law September 29th, 2000, n.300.

President of Republic Decree June 6th, 2001, n.380, Consolidated Act on Construction (Text A)

Law February 13th, 2001, n.45, Amendments to the discipline and sanctioning treatment of people cooperating with justice and provisions for witnesses

Legislative Decree July 25th, 1998, n.286, Consolidated Law on immigrations and provisions on the status of foreign people

Legislative Decree June 24th, 1998, n.213, Provisions to introduce EURO in the national order, according to article 1, paragraph 1 of Law December 17th, 1997, n.433

Legislative Decree February 24th, 1998, n.58, Consolidated Act on Financial Intermediation

Law March 7th, 1996, n.109, Provisions on management and assignment of seized and confiscated goods

Law Decree June 20th, 1994, n.399, Urgent measures on confiscation of unjustified values

Law Decree June 8th, 1992, n.306, Urgent amendments to the new Code of Criminal Procedure and measures to combat mafia crimes

Legislative Decree April 30th, 1992, n.285, Traffic Code

Law Decree February 1st, 1991, n.293, Regulations on procedures to report performed activities and for the budget by the judicial administrator

President of Republic Decree, October 9th, 1990, n.309, Consolidated law on the regulation of narcotic drugs and psychotropic substances, on prevention, treatment and rehabilitation of drug addiction statuses

Law December 13th, 1989, n.401, Provisions on clandestine betting and gaming and protection of the fair execution of sporting events

Legislative Decree July 28th, 1989, n.271, Provisions on implementation, coordination and transition of the code of criminal procedure

Code of Criminal Procedure, 1988

Law September 13th, 1982, n.646, Provisions on property precautionary measures and integration to Law December 27th, 1956, n.1423, Law February 10th, 1962, n.57 and Law May 31st, 1965, n.575. Establishment of a parliamentary commission on mafia

President of Republic Decree January 23rd, 1973, n.43, Approval of the consolidated law on customs

Law October 2nd, 1967, n.895, Law on guns control

Law May 31st, 1965, n.575, Provisions against mafia organised crime, including foreign organisations

Law June 20th, 1952, n.645, Provisions implementing the XII transient and final disposition (first paragraph) of the Constitution

Italian Constitution, 1947

Civil Code, 1942

Code of Civil Procedure, 1940

Criminal Code, 1930

OTHER INSTITUTIONAL DOCUMENTS

Authority for the Protection of Private Data, Opinion on a draft regulation with dispositions on the registration to the Record of Judicial Administrators, June 27th, 2013

Relazione sulla consistenza, destinazione e utilizzo dei beni sequestrate o confiscate e sullo stato dei procedimenti di sequestro e confisca, prepared by the Ministry of Justice and introduced by the Ministry for the relationships with the Parliament and the coordination of governmental activities, March 31st, 2013

National Agency for the Administration and Assignment of Seized and Confiscation Assets, Annual Report, December 2012

Circolare Ministero dell'Interno addressed to Prefects, object: Action of subtraction of proceeds collected by organised crime. Institution of Support Units at Prefectures-Local Government Offices, July 13th, 2011

Ethical Code of Judiciary, November 13th, 2010

BILLS OF LAW

Bill of Law S.1180 (Senator Gasparri and others), Provisions for the use of assets confiscated to criminal organisations in order to facilitate productive activities and promote employment

Bill of Law C.1555 (Deputy Picierno and others), Creation of a rotation Fund to support organisations working for legality and fight against mafia and to extinct real rights of third parties on assets belonging to criminal organisations, creation of a National Register of organisations for legality and fight against mafia, amendments to the antimafia and precautionary measures code, introduced by Legislative Decree September 6th, 2011, n.159, and Law Decree September 16th, 2008, n.143, converted with amendments by Law November 13th, 2008, n.181

Bill of Law of popular initiative C.1138, Measures to favor the development to legality and the protection of workers of companies seized and confiscated to criminal organizations, June 3rd, 2013

Bill of Law S.799, (Senator Cardiello and others), Urgent measures on criminal organisations' assets and for the national agency for assets seized and confiscated to the criminal organisations

Bill of Law S.456, (Senator Amati and others), Provisions on assignment of assets confiscated to criminal organisations regarding youth and childhood issues

Bill of Law C.380 (Deputy Garavini and others), Mandate to the Government to implement the Framework Decision 2006/783/GAI of the Council, of October 6th, 2006, on the implementation of the mutual recognition of confiscation decisions

INTERNATIONAL RULES

COM(2012)0085 – c7-0075/2012 – 2012/0036(COD), as amended by the European Parliament on May 20th, 2013

Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, December 13th, 2007

Treaty on the Functioning of the European Union, December 13th, 2007

Council Framework Decision 2005/212/JHA on Confiscation of Crime-Related Proceeds, Instrumentalities and Property

Council Framework Decision 2001/500/JHA On money laundering, the identification, tracing, seizing and confiscation of instrumentalities and the proceeds of crime

Charter of Fundamental Rights of the European Union, December 7th, 2000

Council of Europe, European Convention on Human Rights, 1953

COURT DECISIONS

European Court on Human Rights:

A.P., M.P., and T.P. vs. Switzerland, Decision August 20th, 1997

Jamil vs. France, Decision June 8th, 1995

Welch vs. Great Britain, Decision February 5th, 1995

Wemhoff vs. Germany, Decision June 27th, 1968

Constitutional Court:

Constitutional Court, Decision n.1/1997

Constitutional Court, Decision n.48/1994

Constitutional Court, Decision n.259/1976

Constitutional Court, Decision n.229/1974

Constitutional Court, Decision n.53/1968

Corte di cassazione:

Cass, ss. UU, May 7th, 2013, n.10532

Cass, sez. II civ., March 3rd, 2011, n.9908

Cass., sez. II pen., January 16th, 2009, n. 17877

Cass., sez. VI pen., April 24th, 2008, n. 21745

Cass., sez. VI pen., December 18th, 2008, n. 16030

Cass., ss. UU, December 17th, 2003, n. 920

Cass., sez. II pen., May 9th, 2000, n. 2542

Cass, ss. UU, May 4th, n. 1993

BOOKS

Alessandra Coppola and Ilaria Ramoni, *Per il nostro bene*, 2013

Emanuele Nicosia, *La confisca, le confische : funzioni politico-criminali, natura giuridica e problemi ricostruttivo-applicativi*, Giappichelli, 2012

Francesco Menditto, *Le misure di prevenzione personali e patrimoniali : la confisca ex art. 12-sexies l. n. 356/92*, Giuffrè, 2012

Tomaso Emilio Epidendio, *La confisca nel diritto penale e nel sistema delle responsabilità degli enti*, CEDAM, 2011

Massimo Nunziata, *La confisca nel codice penale italiano: un'analisi critica per la riforma*, Edizioni Scientifiche Italiane, 2011

Francesco Vergine, *Confisca e sequestro per equivalente*, IPSOA, 2009

OTHER PUBLICATIONS

TRANSCRIME and Università Cattolica, *Progetto PON Sicurezza 2007-2013 Il riutilizzo dei beni confiscati*, 2013

Tertio Millennium Onlus, *Dal bene confiscato al bene comune*, 2013

Assolombarda, Fondirigenti, ALDAI, Agenzia Nazionale dei Beni Sequestrati e Confiscati, *La valorizzazione delle competenze dei Dirigenti Industriali di Milano nella gestione delle imprese sequestrate e confiscate alla criminalità*, 2012

Fondazione Libera Informazione, *Beni confiscati alle mafie: il potere dei segni Viaggio nel paese reale tra riutilizzo sociale, impegno e responsabilità*, 2009

ACADEMIC ARTICLES

Mara Auriemma, *Sequestro preventivo ai fini della confisca nella responsabilità da reato degli enti collettivi*, *Giurisprudenza italiana*, 2013, n.3

Marlon Lepera, *L'ambito di applicazione della confisca per equivalente di cui all'art. 322 ter, comma 1, c.p.*, 2011, n.3 *Annalisa Mangiaracina*, *Cooperazione giudiziaria e forme di confisca*, *Diritto penale e processo*, 2013, n.3

Giuliano Merola, *La destinazione dei beni confiscati tra evoluzione normativa e incerte prospettive future (d.lgs. 6.9.2011 n.159: artt.45-51, 110, 120)*, *La legislazione penale*, 2012, n.2

Marco Mazzamuto, *Gestione e destinazione dei beni sequestrati e confiscati tra giurisdizione e amministrazione*, *Giurisprudenza italiana*, 2013, n.2

Salvatore Mazzamuto, *Gli aspetti civilistici della confisca dei beni alla criminalità organizzata*, *Contratto e impresa*, 2012, n.6

Enrico Mengoni, *Confisca di prevenzione e morte del titolare: basta la pericolosità al momento dell'acquisto del bene* [Nota a sentenza] *Sez. VI, 18/10/2012 (dep. 4/3/2013)*, n. 10153, *Cassazione Penale*, 2013, n.9

Antonio Francesco Morone, *La confisca per equivalente: normative a confronto*, *Giurisprudenza italiana*, 2013, n.4

Elvira Oriani, *Il sequestro preventivo funzionale alla confisca per equivalente*, *Diritto Penale e Processo*, 2011, n.5

Lorenzo Pulito, *Profili problematici del sequestro preventivo per equivalente finalizzato alla confisca del profitto del reato*, *Archivio della nuova procedura penale*, 2013, n.2

Antonio Scaglione, *L'agenzia nazionale per l'amministrazione e la destinazione dei beni sequestrati e confiscati alla criminalità organizzata (d.l. 4.2.2010 n.4, conv., con modif., in l. 31.3.2010 n.50)*, *La legislazione penale*, 2010, n.3

Vincenzo Scordomaglia, *La probatio diabolica della ingiustizia originaria della confisca antimafia*, *La giustizia penale*, 2012, n.5

Francesca Scudiero, *La confisca allargata. caratteristiche e limiti di configurabilità*, *Diritto penale e processo*, 2012, n.10

Marco Serraino, *Nuovi presupposti sostanziali per l'applicazione della confisca allargata*, *La legislazione penale*, 2013, n.33

Gaspare Jucan Sicignano, *La confisca delle misure di prevenzione*, 2011, n.2

Guido Sola, Sequestro preventivo e confisca “allargata” tra disfunzioni strutturali e inversione dell’onere della prova, *Giurisprudenza italiana*, 2012, n.6

MEDIA ARTICLES

Davide Pati, Più impegno e coraggio nella confisca dei beni, *Il Mattino*, November 18th, 2013

Maria Rosaria Pavia, Il cementificio simbolo della lotta all’ecomafia, *Corriere della sera*, January 23rd, 2012

WEB SOURCES

www.anbsc.it

www.libera.it

INTERVIEWS AND QUESTIONNAIRES

Umberto Ambrosoli, Counselor at Lombardy Region

Gabriella Arcifa, Researcher, Università di Catania

Giuseppe Caruso, Director, National Agency for the administration and assignment of seized and confiscated assets

Giorgio Costantino, Professor, Università Roma3

Antonella De Luca, Judicial administrator, Naples

Giuseppe Giuffrida, Contact Person of confiscated assets for Libera Lombardia and Director of Districtual Antimafia Direction, Brescia and representative of

Vittorio Manes, Professor, Università del Salento and Università di Bologna

Massimo Mazza, Police Chief Commissioner, Rome

Francesco Menditto, Head Public Prosecutor, Lanciano

Giacomo Messina, President of Ericina Concrete Plant

Vito Monetti, Public Prosecutor, Court of Appeal, Genova

Nicoletta Parisi, Professor, Università di Catania and Università Cattolica di Milano

Davide Pati, National Responsible on confiscation of assets, Libera

Ilaria Ramoni, Lawyer

Michele Riccardi, Project Manager, Transcrime

Francesco Vergine, Professor, Università di Bari



TRANSPARENCY INTERNATIONAL ITALIA

VIA ZAMAGNA 19 – 20148 MILANO

TEL. + 39 02 40093560

INFO@TRANSPARENCY.IT

WWW.TRANSPARENCY.IT

