



Ministero della Giustizia

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Subject: Cases of international judicial cooperation in 2018 based on the UN Convention on Transnational Organized Crime (UNTOC).

Brief report on the above-mentioned cases, in view of the Italian participation in the *Experts meeting on international cooperation in criminal matters* organized by the United Nations Office on Drugs and Crime (UNODC), which will be held in Vienna from 9 to 11 April, 2019. The cases in question are 7 in total, all concerning rogatory proceedings, 4 outgoing and 3 incoming letters rogatory. The reference to the foreign State and the criminal proceeding case number are not disclosed for confidentiality reasons, being investigations still ongoing. Moreover, the information below has to be considered as strictly limited to the experts participating in the above mentioned meeting in Vienna.

More specifically, the cases in question are the following:

1. Outgoing letter rogatory

This is a letter rogatory issued by an Italian District Anti-Mafia and Anti-Terrorism Directorate in proceedings for the offence of criminal association (with the aggravating circumstances of the transnational character and having acted with the mafia-like method referred to in Articles 61-bis and 416-bis.1 of the Criminal Code) aimed at setting up and running an illegal betting collection network, made up of a large number of *companies with official headquarters in tax havens, also including trust companies, all directly or indirectly linked to the persons under investigations*, belonging to a mafia-type association. The aim of this was the non-traceability of the bets placed and (...) of the proceeds obtained, thus evading the payment of direct and indirect taxes, with the consequent making of illicit profits evading taxation for a total amount exceeding 650 million euros and the additional advantage of the obstacle to the identification of the origin of the profits, whose re-use, laundering and self-laundering was thus facilitated.

The letter rogatory – based not only on Article 12 of the UNTOC, but also on Framework Decision 2003/577/JHA of July 22, 2003, as implemented by Legislative Decree no. 35 of Feb. 15, 2016 – concerns on the one hand the execution of the decree of preventive seizure, for subsequent confiscation, of the assets of one of the aforementioned companies, based in State “X”, as well as of any accounts and other banking products registered in the name of the persons under investigation in the banks or financial institutions located in that State; the freezing of all the documents relating to

the aforementioned company, on the other hand; and finally, the ascertainment of the possible presence of other assets or property registered in the name of the persons under investigation.

The forwarding of the request is pending both for a translation problem and for failure to attach the preventive seizure decree of the Judge for Preliminary Investigation.

2. Outgoing letter rogatory

This letter rogatory is “parallel” to the one under point 1, concerning the execution of a preventive seizure decree, for subsequent confiscation, of the assets of two other companies which can be related to the criminal association, based in State “Y”. Here too, the letter rogatory concerns on the one hand the execution of the preventive seizure order, for subsequent confiscation, of any accounts and other banking products registered in the name of the persons under investigation in the banks or financial institutions located in the aforementioned State “Y”; the freezing of all the documents relating to the aforementioned companies on the other hand, and finally, the ascertainment of the possible presence of other assets or property registered in the name of the persons under investigation.

The forwarding of the request is pending both for a translation problem and for failure to attach the preventive seizure decree of the Judge for Preliminary Investigation.

3. Outgoing letter rogatory

This letter rogatory was issued by an Italian District Anti-Mafia and Anti-Terrorism Directorate in drug trafficking proceedings (Articles 73 paras 1-6, 74 paras 1-2 and 80 paras 1-2 of Presidential Decree no. 309 of 9 Oct..1990) and smuggling of foreign manufactured tobacco products (Articles 291-bis and 291-ter of Presidential Decree no. 43 of 23.1.1973), as well as fraudulent transfer of values (Article 512-bis of the Italian Criminal Code).

Given the complexity of the case, a summary of the relevant points of interest is necessary.

The investigations carried out to ascertain the drug trafficking led to the seizure of a large quantity of cocaine, whose illicit holders were arrested *in flagrante delicto*. During the operation the judicial police noted the presence of a helicopter, which subsequent investigations revealed to be the means used to transport the seized batch of cocaine.

The owner of the helicopter – who was identified as a convicted offender - was then placed under further investigation, which led to his arrest while committing the offence of aggravated smuggling, because he was caught in the act of driving the car escorting a truck on which a substantial quantity of contraband cigarettes was found and seized.

Further investigations revealed that the arrested person had not only the aforementioned car, but also two other cars at his disposal; and that all the three cars were registered in the name of another company located in a different EU Member State (from now on, “the foreign company”). The foreign company had leased them to an Italian company, which in turn had leased them to another Italian company, which, without any contract, had finally delivered them to the person under investigation. The analysis of these steps revealed many and significant anomalies, also represented by the violation of the contractual subleasing ban and by the substantially fictitious nature of the two Italian companies; as well as the huge debt that the first of these two companies had with the foreign company, which, however, had continued to lease over a hundred cars, many of which were found to be used by several convicted offenders.

All these circumstances led to the hypothesis that one or more unknown representatives of the foreign company, *facilitating the conduct sanctioned by the Article 648-ter C.C. (...) with the aggravating circumstance set out in Art. 4 law no. 146/2006 (now Article 61-bis of the Criminal Code), may (could) have been set up or financed with capital of criminal origin*, more particularly coming from illegal trafficking involving drugs and smuggled tobacco products.

The letter – based on the UNTOC and the European Convention on Mutual Assistance in Criminal Matters of 20.4.1959 - concerns the acquisition of a copy of the documents and articles of association of the foreign company, the identification of the relevant members and administrators on the one

hand; and the identification of bank and financial information necessary to verify the validity of the accusation.

The request was sent directly to the judicial authority of the EU Member State where the foreign company is located and a response is awaited.

The requesting authority was informed of the entry into force of the legislative decree implementing the EIO directive.

4. Incoming letter rogatory

This letter rogatory was sent by State “M” in proceedings for trafficking in human beings for the purpose of sexual exploitation, consisting in soliciting and recruiting young State “M” transvestites, then forced or otherwise induced into prostitution to pay the debts incurred for carrying out cosmetic surgery and traveling to Italy, where coercion or induction continued also for the payment of further debts arising from the reception and accommodation given to victims by two members of the criminal group.

The letter rogatory - based on the UNTOC and on the existing bilateral treaty on mutual assistance in criminal matters – concerns, on the one hand, the exact location of the offended persons and the ascertainment of their usual place of abode, as well as of the place and methods for carrying out the relevant prostitution activity; and on the other hand, the identification of the assets belonging to the two persons under investigation for subsequent seizure, in the probable case their *criminal origin* emerges.

The letter of request was returned both because it was made by a judicial police authority instead of a judicial authority; and because it lacks sufficient elements to establish the territorial jurisdiction of an Italian judicial authority.

5. Incoming rogatory letter

This letter rogatory was issued by the judicial authority of State “N” in proceedings brought against a group of Roma people of Romanian citizenship, on the assumption that they had established a criminal association operating on the *whole European territory* and involved in the commission of the so-called RIP DEAL scams. As a matter of fact, the proceedings concern a big scam carried out to the detriment of two citizens from State “N”, who had published an online announcement for the sale of a boat of great value.

The letter rogatory - based on the UNTOC, as well as on the European Convention on Mutual Assistance in Criminal Matters of 20.4.1959 and on the Convention on laundering, search, seizure and confiscation of the proceeds from crime of 8.11.1990 - concerns on the one hand the acquisition of a copy of the documents of parallel proceedings in Italy; and on the other hand the verification of the Italian mobile phone owner name and the identification of the relevant user, together with the acquisition of his criminal record and the transmission of information about any *ongoing investigations for similar facts*.

The letter rogatory was sent to the Italian Prosecutor’s Office for execution.

6. Incoming letter rogatory

This letter rogatory was issued by the judicial authority of State “P” in money laundering proceedings, following airport checks on a Bolivian passenger arriving from Bolivia, who was found in possession of four bank cheques for a total amount of 8 million US dollars and slightly less than 3 million euros, all drawn by a Bolivian company payable to an Italian citizen residing in State “P”. He provided unbelievable information about the relations at the basis of the drawing of the cheques in question, which would be finally negotiated in Luxembourg to finance an indefinite and generic series of investments that the Bolivian society had the intention to make in Europe, South America and Africa. The request - based exclusively on the UNTOC – is firstly aimed at the acquisition of the criminal record of the beneficiary of the cheques; secondly to the acquisition of information *on companies, businesses, foundations or associations* in which the person in question has somehow an interest;

thirdly, the setting up of a joint investigation team, whose composition and purpose, are not specified in any way.

The letter rogatory was sent for execution to the Italian Prosecutor's Office.

7. Outgoing letter Rogatory

This letter rogatory was issued by an Italian Prosecutor's Office in car theft proceedings, due to the fact that some of its parts were subsequently seized in State "Q" (an EU Member State), where criminal proceedings were consequently instituted, presumably for the offense of receiving stolen goods.

The letter rogatory - based on the UNTOC, the European Convention on Mutual Assistance in Criminal Matters of 20.4.1959, the Convention implementing the Schengen Agreement of 19.6.90 and the Convention on laundering, search, seizure and confiscation of the proceeds from crime of 8.11.1990 - concerns the acquisition of a copy of the documents of the State "Q" criminal proceedings.

The request was sent directly to the State "Q" judicial authority. A response is awaited.

The requesting Authority was informed of the entry into force of the legislative decree implementing the EIO directive.

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