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**Open-ended Intergovernmental  
Working Group on Asset Recovery**  
**Eighth meeting**  
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**The Italian experience in the management, use and disposal  
of frozen, seized and confiscated assets**

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## **The Italian experience in the management, use and disposal of frozen, seized and confiscated assets**

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In early 2014, the Region of Calabria, Italy, started to work with the United Nations Office on Drugs and Crime (UNODC) in the field of management, use and disposal of seized and confiscated assets. This initiative, jointly undertaken by UNODC and the Region of Calabria, seeks to identify good practices with a view to developing relevant tools and guidelines on the issue of administration of seized and confiscated assets.

In the context of the joint initiative by UNODC and the Region of Calabria, a first Expert Group Meeting took place from 2 to 4 April 2014 in Reggio Calabria, Italy, involving approximately 80 experts from approximately 35 countries, agencies and organizations with experience and expertise in the area of the management, use and disposal of frozen, seized and confiscated assets. The meeting provided a platform for dialogue among practitioners involved in the tracing and seizing of assets, managing assets post-seizure, as well as experts and practitioners in the areas of disposal of assets, the use by governments of seized assets and international cooperation in the management of seized assets. Three parallel focus groups were held during the meeting to advance the work and thinking of the international community in the areas of: (i) international cooperation in identifying, seizing and confiscating criminal assets, particularly those of Mafia-based criminal organization; (ii) domestic management, use and disposal of seized and confiscated assets; and (iii) management of returned assets in asset recovery cases.

For more information on the meeting, see document CAC/COSP/WG.2/2014/CRP.1 at <http://www.unodc.org/unodc/en/treaties/CAC/working-group2.html>

One of the results of the discussions in Reggio Calabria was that there is value in describing the Italian experience in the following three areas:

- The experience of the Italian legal system with asset seizure and confiscation, non-conviction based confiscation and illicit enrichment
- Good practices, challenges and lessons learnt from the Italian experience in the administration of confiscated assets; the notion of “social re-use” and current issues for its implementation
- The judicial administrator of seized and confiscated assets: Role, training, and problematic issues

Based on this outcome, the three attached factsheets were prepared to provide an overview of the Italian legislation and good practices in the area of management, use and disposal of frozen, seized and confiscated assets.

## **The experience of the Italian legal system with asset seizure and confiscation, non-conviction based confiscation and illicit enrichment**

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1. Since 1982, Italy has established an effective legal regime in the fight against organized crime, and has introduced several innovative provisions into its criminal code which have significantly influenced the fight against criminal organizations.

In the same year, the Law of 13 September 1982, better known as the “Rognoni – La Torre” Law was adopted. This law introduced article 416-bis into the Italian criminal code, which represented a major novelty insofar as it effectively and thoroughly defined the crime of “Mafia-type unlawful association” (“Associazione a delinquere di stampo mafioso”). In this way, prosecutors were provided with an essential tool to tackle criminal organizations through the judiciary. Furthermore, the law encouraged the use of a particular investigative technique which enhanced the potential of investigations and enabled the outcome of the investigative phase to be more robust in front of the judge.

The promoter of the law which introduced the crime of “Mafia-type unlawful association” and which paved the way to asset confiscation was Member of Parliament from the Italian Communist Party (“PCI” or “Partito Comunista Italiano”) Pio La Torre, who – according to former Mafia leaders and later “judicial collaborators” (“collaboratori di giustizia”) Tommaso Buscetta, Francesco Marino Mannoia, Gaspare Mutolo and Pino Marche – was murdered for his anti-Mafia commitment. Based on admissions by the “judicial collaborators” and other evidence heard in Palermo on 12 April 1995, Mafia leaders Michele Greco, Totò Riina, Bernardo Brusca, Bernardo Provenzano, and Pippo Calò were convicted, among others, and sentenced to life imprisonment.

The second crucial novelty of the Law of 13 September 1982 was the introduction of preventive measures on assets (i.e. seizure and confiscation), the main purpose of which was to recover illicitly gained assets.

As a consequence of the above-mentioned law, a new strategy was introduced, and from then on it was possible to fight organized crime through the prosecution of its main actors (leaders and supporters), as well as by tackling those assets which were obtained through illicit or criminal acts.

2. The starting point of the Italian anti-Mafia policy is considered to be the adoption of Law 575 of 1965, which provided for the “forced residence” (“soggiorno obbligato”) of suspected Mafia members. This law contained a fundamental limitation insofar as it failed to define the typical features of a Mafia-type organization. As a consequence, the first anti-Mafia law entered into force with a significant shortcoming which affected its application and which was later addressed by judges, who over the years elaborated the definition of “Mafia-type unlawful association” which was later rectified by the law of 1982.

The action of the Italian State against the Mafia phenomenon has not always been consistent or coherent, and it could be compared to a pendulum, with significant and frequent oscillations: periods of intense anti-Mafia activity were followed by years characterized by hesitation and retrogressive steps.

The fight against the Mafia has also been carried out in such an irregular manner since it was based on the erroneous idea that the Mafia was a sort of “anti-State” actor or a purely criminal concern, an association of bandits, criminals, outlaws, murderers, or terrorist killers.

As a consequence of this analysis, for some considerable time, the Italian State employed a repressive policy focused on the military response as opposed to preventive action which would tackle the Mafia issue at the economic, social and cultural level.

Alongside the purely repressive policy, no other kind of response was forthcoming from the State, and thus the mechanisms of illicit asset accumulation evolved steadily and ensured the growth of criminal organizations, which could swiftly substitute its imprisoned members and subsidise their families, thereby obtaining their gratitude and loyalty.

Notwithstanding the numerous arrests and convictions, criminal organizations continued to operate and expand in Northern Italy and also abroad.

**3.** As before, the State faced the challenge by employing only part of its resources and did not make use of its potential at the economic and political level, employing the military response in isolation instead of backing and strengthening it with additional measures. It was undoubtedly positive in reducing the damage caused by military wings of criminal organizations, but such a repressive strategy – as the following experience demonstrated – did not resolve the problem. It was therefore an incomplete and partial action.

This became obvious after the “Capaci” and “Via D’Amelio” massacres, where judges Giovanni Falcone and Paolo Borsellino, as well as their bodyguards were brutally killed.

It was only between 1991 -when Judge Falcone was Director General of Criminal Affairs at the Ministry of Justice - and 1992, after the massacres that new instruments were adopted with a view to improve coordination between the police forces and more effective investigations carried out by the judiciary. Afterwards, Italy had the most modern and effective legislation against organized crime, which was even considered a model abroad.

Law 109/1996 allowed for a more rapid management and use of confiscated assets, and was among the most significant instruments adopted during this period. This law should have been complemented by additional mechanisms and structures to ensure the collection of all data concerning confiscated assets, and to support their social use as rapidly as possible.

Those issues turned out to be more challenging than expected, and it took a long time to adopt the appropriate complementing measures. The “National Agency for the management and use of the assets seized and confiscated to the organized crime” (“Agenzia nazionale per l’amministrazione e la destinazione dei beni sequestrati e confiscati alla criminalità organizzata”) with its seat in Reggio Calabria (Calabria Region) was established only by the Law of 31 March 2010, no. 50, and it represented a significantly positive development which had been requested by several institutional actors.

**4.** A long time passed between Law 109/1996 and Law 50/2010. One explanation regarding the lengthy delay on the part of the legislator is that Law 109/1996 was enacted under the significant pressure from civil society and was adopted unanimously after the Parliament’s (early) dissolution had already been announced and anticipated elections had been called. It is likely that opposition to adopt additional measures was due to special political circumstances leading to the adoption of Law 109/1996, as not all political parties – and not only them – were in favour of moving further towards asset confiscation and their social use.

In brief, one could say that in the first period it was generally believed that in order to defeat organized crime, it was necessary only to adopt a repressive approach at the personal level which envisaged prison convictions up to life imprisonment (for the most serious crimes such as murder or massacres).

Such a strategy, which adopted the so-called “tough line” (“linea della fermezza”), had the advantage of reassuring the population and creating a consensus regarding action undertaken by the executive, which seemed to prefer a tough stance against criminal organizations carried out by the military. The downside of this approach was that beyond the arrests and the convictions, the problem was far from being solved.

The idea that the most effective way to tackle the criminals was to affect their finances and recover the proceeds of their actions -namely the money accumulated through illicit activities - came afterwards.

With time it became clearer that the money and the rapid creation of enormous wealth were common objectives of any kind of criminal anywhere in the world: drug traffickers, corrupt persons, criminal organizations, traffickers in arms and human beings, and heads of State concealing and embezzling their countries’ resources.

In the meantime, at the global criminal level, the Mafia was no longer the only actor, but there were also several other organizations of different nationality. If one takes an international perspective, the Mafia organization seems to be a problem rather than the problem. However, it is worth recalling that the “Mafioso method” (“metodo mafioso”) was absorbed in many foreign countries and that Mafia assets are often mixed with others of foreign origin.

Over time, the idea that one could affect all those people accumulating illegal assets at the economic level, rather than through convictions and lengthy complicated proceedings (i.e. the personal level) gained broad consensus. It became clear that it was more effective to tackle the criminals’ assets, rather than temporarily affecting their liberty.

Practical experience has demonstrated that any imprisoned criminal who kept his/her illicit assets has been able to rule from jail, to have the economic capacity to corrupt and recruit people, and to organize a press campaign in his or her favour, etc...

The ultimate ramification of such a cultural change which matured within the Italian legal system (i.e. shifting the focus from the criminals to their assets) was the introduction of non-conviction based confiscation.

5. After almost thirty years of experience which has led to the confiscation of a significant amount of highly valuable assets (money, bonds, cars, boats, planes, land, apartments, and companies), Italian legislation regarding confiscation is now based on a two-pronged approach, whereas non-conviction based confiscation represents one of the two tools employed to tackle “profit-oriented criminality”, especially – but not only – of the Mafia kind:

a) The so-called “extended” confiscation, which can be ordered within a criminal proceeding, or as a consequence of a conviction for serious economic crimes, especially when organized crime is involved;

b) The “preventive” confiscation ordered through separate (preventive) proceedings, where the “danger to society” of a person is established – namely the likelihood to commit crimes in the future – in light of his/her previous lifestyle and convictions (the latter elements may not be necessary in case the indicted person is acquitted because he/she was not found guilty “beyond any reasonable doubt”; if the proceedings have been terminated because the indicted person has died or the statute of limitations has been applied and; in cases where the

criminal proceedings are ongoing). The “danger to society” aspect which allows for asset seizure and confiscation is now (as of 2008) described in the three categories established by law (Legislative Decree no. 159/11);

b/1) Those suspected of belonging to Mafia-related groups, meaning those who may be held responsible for the offence provided for in article 416-bis of the Italian criminal code (“Mafia-type unlawful association”). The status of “suspected” implies the considerable probability (but not the certainty) of guilt. This represents the most significant and substantial category; the only one which permitted seizure and confiscation until 2008 pursuant to the above-mentioned anti-Mafia law (Law no. 575/65), as modified by the Law of 13 September 1982 no. 646 (so-called “Rognoni – La Torre” Law);

b/2) Those suspected of having committed a set of serious organized crime-related offences specified by law (a category introduced in 2008);

b/3) Those living off, also in part, off: i) illegal dealings; or ii) proceeds from criminal activity (a category introduced in 2008).

The law provides for other cases which nevertheless rarely apply.

Towards the latter groups of people, one can apply personal measures aimed at preventing the commission of crimes (e.g. the obligations to stay home at night or to not leave the municipality of residence), and which also include assets seizure and confiscation (as noted, since 2008 this is also possible against those in the above-mentioned categories b/2 and b/3).

Furthermore, since 2005 it is possible to issue preventive seizure and confiscation measures in the application of international resolutions towards the natural and legal persons pointed out by the United Nations Sanctions Committee or any other international organization which is competent to freeze economic resources when they might be dissolved, concealed or used to support (international) terrorist organizations or activities. In this context, only a few cases have been reported.

In both cases of confiscation, once a person is proven guilty (in criminal proceedings) or dangerous and most probably guilty for the cases described in the above-mentioned categories, b/1 and b/2, (in preventive proceedings), firstly the seizure of assets is ordered, which are frozen and put under the temporary management of the State; secondly, one can proceed with the confiscation of all illicitly-gained assets, namely those that exceed the official income of the owner, to the benefit of the State. It is also possible to seize and confiscate assets from third parties (so-called “wooden heads” or figureheads) when it is proved that they belong to suspected persons (some presumptions apply for close family members and other cases, but they can be rebutted by those concerned in the course of the proceedings).

The criminal proceedings follow the usual procedure. The prevention proceedings ensure that the rights and guarantees of the parties which are provided for by the Italian Constitution and the European Convention on Human Rights (signed by 49 European States) are ensured, as the Italian Constitutional Court and the European Court of Human Rights have often recognized.

The following is a brief overview of the main features of the preventive confiscation process:

a) Even though the person might have already received a criminal conviction for a related offence, the competent tribunal has to ascertain the degree of danger posed by a person and, in particular, (for the above-mentioned categories b/1 and b/2) the high probability of being found guilty through a separate fact-based (and not suspicion-based) inquiry. Hence a previous conviction is not a fundamental requirement;

b) Asset seizure is decided upon at the request of the public prosecution (usually the public prosecutor) by a panel of three judges who belong to the tribunal and also deal with other issues (civil or, often, criminal);

c) After the asset seizure, all involved actors (the suspected person and third parties) may file a complaint before the Judges' Panel should they consider their rights breached;

d) In any case, a hearing is scheduled shortly after the seizure, and on that occasion (which, upon request, is public) cross-examination between the public prosecutor and third parties is ensured before the Judges' Panel; in this hearing a wide range of requests and evidence can be presented by the parties;

e) The Judges' Panel provides reasons for its decision similar to those provided in criminal proceedings, and the decision can be appealed against at the Court of Appeal based on both, issues of law as well as of facts;

f) The Court of Appeal, consisting of a panel of three judges who also deal with other issues (civil or, often criminal) decides after cross-examination, and releases the explanation of its decision as for any other judgement;

g) The decision of the Court of Appeal can be appealed before the Court of Cassation which decides through one of its criminal sections;

h) In case new and unknown elements are brought up after the final decision is released, the parties can also file a request of "revocation" (istanza di revoca);

i) Since the seizure and confiscation of assets does not entail prison-related criminal sanctions, the proceedings against property can continue independently from the outcome of the criminal proceedings (e.g. also in case the latter cannot continue because of the statute of limitations or the defendant's death);

j) The preventive confiscation measure seeks to remove from the legal economy those assets which were acquired illegally and thus "contaminate" healthy economic relations. The owner is not punished at the personal level since the objective is to prevent him/her from using the illicitly-gained assets to commit further crimes or affect the market. Hence, as established by the Court of Cassation (all sections), in June 2014 and also by the European Court of Human Rights in several judgements, the confiscation is a preventive measure and does not aim at sanctioning (thus the corresponding guarantees are unnecessary); its objective is to limit the danger posed by the person who, by using the illicitly-gained assets (also when belonging to figureheads), increases and expresses his or her danger to society, and corrupts the healthy state of the economy. The illicit purchase of assets also justifies the seizure and confiscation of those goods which are passed to the heirs when the "dangerous" person dies either during the confiscation proceedings or if such proceedings are being instituted within five years from his or her death.

To sum up, the proceedings fully ensure the respect of judicial guarantees to the parties, which can oppose the prosecution in a regime of cross-examination: a) third parties may put forward elements regarding the effective ownership of an asset and thus about his/her lack of involvement with the suspected person; b) the suspected person may refute the elements concerning his/her danger to society and, in particular, the high probability of being dangerous (for the above-mentioned categories b/1 and b/2), as well as prove the legitimate purchase of the seized assets.

One can notice that the latter proceedings fit exactly, both in form and substance, to the provisions of articles 53 and 54 of the United Nations Convention against Corruption (UNCAC) of 2003. On the one hand, according to article 53 (measures for direct recovery of property), "Each

State Party shall, in accordance with its domestic law: (a) Take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention.”

On the other hand, and in particular, according to article 54 (mechanisms for recovery of property through international cooperation in confiscation) “1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law: (a) Take such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party; (b) Take such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law; and (c) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.”

Also, the United Nations Convention against Transnational Organized Crime (UNTOC) of 2000 makes specific reference to the “proceeds of crime” in several provisions.

**6.** An ever increasing number of States (United States, United Kingdom, Australia, South Africa, Ireland, Albania, Colombia, Liechtenstein, Switzerland, Slovenia and Thailand) are introducing judicial institutions similar to non-conviction based confiscation, usually within civil proceedings. In these States, some form of confiscation exists which is close to non-conviction based confiscation, even though in each legal system it assumes a different name.

At the international level, in spite of several documents and conventions dealing with confiscation, only UNCAC explicitly provides for non-criminal forms of confiscation. There is an attempt to consider non-conviction based confiscation included in the Strasbourg Convention on money laundering of the Council of Europe of 1990; and article 5 of the recent EU Directive 2014/42/UE of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union seems to comply, at least in part, with UNCAC.

Non-conviction based confiscation still invites scepticism and opposition because some believe it may breach human rights and does not provide sufficient guarantees for the defendant.

However, as illustrated by the case of Italy, confiscation can only be imposed after long, complex and guaranteed proceedings with cross-examination between the parties, which have all the means to challenge the requirements needed to issue such a serious measure.

Furthermore, the first decision on confiscation is not final because it may be appealed at the Court of Appeal first, and the Court of Cassation thereafter. Only after the decision of the latter Court is it possible to achieve the final confiscation of the asset and its transfer to the State. Should new and unknown elements emerge after the final decision is pronounced, it is even possible to request the revocation of the confiscation.

**7.** Another reason which explains some of the scepticism towards non-conviction based confiscation is probably the negative impact caused by its very name.



Perhaps, under the latter point of view, it may be more appropriate to define it as a conviction to the confiscation of assets and not to imprisonment aiming at affecting profit-oriented criminality.

The latter formulation would be more precise and could emphasise the fact that the underlying proceedings are oriented to recover illicitly accumulated assets and the proceeds of crime, and that they do not seek a criminal punishment leading to imprisonment.

It would be one way to distinguish two issues which have been mixed and become overlapped for a long time: the first one is illicit enrichment, which is the target of the measure; the other one is the criminal sanction to imprisonment, which does not represent the primary objective of the current criminal policy.

In other words, while previously a criminal conviction was needed before proceeding towards confiscation, nowadays the two paths (conviction and confiscation) tend to be separated because their respective objectives are different. Therefore it is possible today to directly tackle the assets without relating such a measure to a personal conviction.

**8.** The fundamental novelty brought by recent modifications to Italian legislation in the realm of prevention is the possibility to request and obtain a measure on the assets independently from the request of coercive measures on the person, and this holds true also when the person dies before or during the proceedings. Such an innovation breaks new ground because it shifts the focus to the dangerous aspect of the assets and not of the person. This has been possible since the legislator has fundamentally separated the proceedings on the assets from the outcome of the personal preventive measures.

It represents a radical change in comparison with previous criminal justice policies, when it was commonly believed that the threat was represented by the person rather than by the accumulated assets, and that the greatest social risk came from the person's action rather than from the entry of the criminal assets into a healthy economy.

Nowadays, the objective which seems to prevail is to affect profit-oriented organized crime and all the offences which favour it.

**9.** The main actors of profit-oriented criminality are individuals moving beyond and against domestic and international law in an illicit manner. Examples of such criminality are drug traffickers, petty and grand corruptors, corrupt public officials and heads of State, white-collar criminals, businessmen, middlemen, and persons involved in finance.

All these persons, regardless of name, have something in common, that is the intention to pursue actions directed towards illicit enrichment. They are therefore common enemies of States and international organizations alike. Everybody has an interest in tackling and stopping such mechanisms of criminal enrichment.

This new feature of contemporary society not only concerns Italy, but it constitutes an international issue driven by globalization and by the tendency to transfer to one or more States the economic gains of crimes, which then enter domestic and international economies, thereby distorting markets and economic rules.

Previously, illicit enrichment was the result of a violent act (murder, violence, oppression) which caused fear, omertà (conspiracy of silence), social distress, and spread insecurity. Usually this kind of phenomenon took place in a single State, inducing other States to think that such a problem was of a purely domestic nature.

Today, illicit enrichment is achieved through other means which do not always and necessarily involve violence. Furthermore, it is impressive to observe the pace characterizing the transfer of dirty capital. In this new context, corruption is the means which allows new brands of criminals to accumulate assets and become rich.

**10.** These kinds of criminals are neither visible nor easy to identify because the profit from corruption does not create social distress as much as a homicide, an assassination or an armed robbery.

The rustling of Dollars, Euros or other currencies is not as noisy as a gun-shot: it is discreet, silent, devious and sneaky. It does not create the clamour of an armed robbery, and it does not bother to the same degree as a discovery of large amounts of drugs or arms.

In its favour, illicit enrichment implies the cooperation of many supporting and associated persons whose attitude can be identified in the ancient Latin quote: “pecunia non olet” (“money does not smell”). Money does not have any smell, hence it is not important neither where it come from, nor how it was accumulated. Nobody questions its origin. Money has a unique smell and, if one wants, it is possible to ascertain its origin and the source of the smell in spite of difficulties and obstacles.

Up until the intervention of the judicial authority, nobody realized the flow of corruption-related money besides the involved parties, which have no interest in raising the attention of the public and the authorities.

Money involved in corruption moves swiftly through national and international financial channels, where it mixes with capital originating from other crimes such as drug, human or arms trafficking, money-laundering, trafficking of radioactive and toxic waste, counterfeiting and the Mafia. The threat of Mafia-type organizations is illustrated by the fact that the U.S. has recently placed ‘Ndrangheta and Camorra on its money-laundering black list.

Compared to the past, today’s criminals present different features and they are increasingly white-collared, businessmen, as well as private and public managers.

In spite of the differences between States, the latter situation concerns all countries because the world has become increasingly global and interdependent.

**11.** The assets originating from crimes affect the economy and constitute a threat to democracy because they alter their basic rules and impose non-democratic behaviour.

Not surprisingly, the Member States of the United Nations decided to use the term “transnational organized crime” to stress the supranational dimension of the organized crime phenomenon, and it did that during the Transnational Organized Crime Conference held in Naples in November 1994. A crime is considered transnational when it has an international character, i.e. when it involves two or more countries. This kind of crime is particularly powerful because it is spread and rooted in a transnational dimension.

Large criminal operations can take place because the modern criminals are able to take advantage of the legislative differences which exist between States.

The illicit activities of transnational organized crime groups inevitably cross national borders and, in doing so, breach the criminal laws of at least two different jurisdictions (the latter is the simplest case because today many cases of illicit traffic cross more countries or continents simultaneously).

These groups are highly organized since they could not carry out transnational operations and minimize the risk of being arrested without having built a network with other

criminal groups. Hence, this phenomenon leads to both the contamination of the economy and the strengthening of international criminal networks.

**12.** These modern criminals usually make use of the so-called “tax havens”, launder money, and purchase goods and services directly and indirectly on the global market, which are in turn sold and circulated.

It is a new and different kind of criminality which, as already stressed, is hardly perceivable by those who are not experts, and eludes the traditional models and older analytical instruments. At the same time, it is a criminality which aims at controlling global economic traffic by accumulating significant assets, which in turn feed new and different criminal markets and generate an endless vicious circle.

We are witnessing the rise of a new global economy in which a seemingly anonymous system of enrichment seems to have replaced the traditional market dynamics, and which is increasingly able to launder large amounts of money generated by the criminal economy.

In this context, the action of a single State is not able to face all the problematic issues involved.

Tackling illegal and criminal capital is the main objective of those States which intend to keep the economy healthy and free from criminal bonds and influences. In this new international framework it is possible to carefully consider the Italian legislation as an example, since it is strongly aimed at tackling the phenomenon of illicit enrichment through a system of preventive confiscation measures.

The historical path leading to such preventive measures on assets has been long and complex, and this demonstrates the distress and attention of the Italian legal system towards the judicial guarantees of the people involved and the full enjoyment of their lawful assets.

## ANNEX

What follows is an overview of some judgements of the European Court of Human Rights ('ECHR') on anti-Mafia preventive measures on assets which are useful to recall in order to understand the way in which Italian legislation has overcome the scrutiny of the ECHR.

One should recall that the European human rights case-law on confiscation is particularly broad and complex, touching upon similar or related issues (e.g. the English civil forfeiture).

The judgements released by European jurisprudence on the anti-Mafia preventive measures on assets are the following: European Commission of Human Rights, 15 April 1991, Marandino, no. 12386/86; ECHR, 22 February 1994, Raimondo v. Italy, App. no. 12954/87; ECHR, 15 June 1999, Prisco v. Italy, no. 38662/97; ECHR, 25 March 2003, Madonia v. Italy, no. 55927/00 (Decision on admissibility); ECHR, 5 July 2001, Arcuri and Others v. Italy, no. 52024/99 (Decision on admissibility); ECHR, 4 September 2001, Riela v. Italy, no. 52439/99 (Decision on admissibility); ECHR, Bocellari and Rizza v. Italy, no. 399/02.

### Some interesting rulings:

\*\*\* The foremost decision is the European Commission of Human Rights ('Commission'), 15 April 1991, Marandino, no. 12386/86, which found inadmissible the claimant's application regarding the violation of the European Convention on Human Rights ('ECHR').

One should stress the methodological approach followed by the Commission to define the Italian preventive measures. In particular, it was highlighted that in the Italian legal system there is a distinction between criminal sanctions and preventive measures.

Hence, "a criminal sanction concerns an offence which has already been committed, while a preventive measure is aimed at reducing the risk of committing future offences". The distinction between "sanction" and "prevention" made by the Commission will be also used later on by the ECHR, and constitutes the basic argument which shelters preventive measures from being considered in breach of human rights.

Because the ECHR acknowledged the preventive – and not punitive – nature of the anti-Mafia confiscation, the subsequent jurisprudence found that Italy was not violating the right to property, the right to a fair trial, the principle of legality and the ne bis in idem principle. The preventive character concerns the measures which intend to prevent the organized crime phenomenon. In this sense, the Commission has underlined that the Italian legislation "intended to affect the assets of the Mafia-type organizations".

\*\*\*ECHR, 22 February 1994, Raimondo v. Italy, App. no. 12954/87 established that the preventive measures cannot be compared with the criminal sanctions because they are issued to prevent the commission of crimes. This judgement highlights that the distinction between criminal sanctions and preventive measures corresponds to the difference between "criminal proceedings" and "proceedings on preventive measures". This relationship is also worth keeping in mind when discussing procedural guarantees.

\*\*\* ECHR, 15 June 1999, Prisco v. Italy, no. 38662/97 found inadmissible the claim which sustained the violation of article 1 of Protocol 1 to the ECHR (Right to property) and of article 6 (Right to a fair trial). On the most controversial issue concerning preventive measures on assets

– that is the potential breach of the right to property – the judgement fully supports the Italian model through two considerations:

1. Firstly, the ECHR stressed that “the organized crime phenomena in Italy reached an alarming scale. The Mafia-type groups are so widespread that, in some areas, the authority of the State is significantly weakened. The large profit gained through illicit activity confers a power upon them which undermines the primacy of the law in the State. As a consequence, the means employed to fight such an economic power such as the preventive confiscation seems to be crucial to effectively tackle those groups.” Hence, one could not overlook the specific circumstances which characterized the action of the Italian legislator;

2. However, the Italian legislator’s goals cannot justify the employment of those instruments which go beyond the limits established by the Convention. The ECHR has thus scrutinized the conformity of the preventive measures with the right to property, and has concluded that the proceedings complied with the relevant guarantees.

After considering these judgements, one is able to better understand the relationship between anti-Mafia preventive measures with the organized crime phenomenon on the one hand, and with treaty-based guarantees on the other: the politico-criminal objective of the legislator is to fight organized crime, and the means to reach this goal should be (and are, according to the ECHR) compliance with fundamental rights.

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## **Good practices, challenges and lessons learnt from the Italian experience in the administration of confiscated assets; the notion of “social re-use” and current issues for its implementation**

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1. The Law 109 adopted on 7 March 1996 (hereinafter: Law 109/1996) on the destination and management of confiscated assets from criminal organizations was adopted after a speedy debate within the two Houses' Committees because the Parliament was about to be dissolved and new elections called. The very core of the Law dealt with the use for social purposes of assets confiscated from criminal organizations.

However, the Law was approved only after years of intense debate both within and outside Parliament and thanks to the direct involvement of hundreds of thousands of citizens, promoted by the NGO Libera headed by Father Luigi Ciotti, who collected one million signatures.

Those signatures were issued to the President of the Chamber of Deputies on the third anniversary of the Capaci massacre, when Judges Giovanni Falcone and Francesca Morvillo were murdered along with their protection officers, thereby triggering the debate on a legislative proposal relating to the thorny issue of the seizure and confiscation of assets from criminal organizations.

The adoption of the Law 109/1996 was a breakthrough, a radical breakthrough indeed, because it meant the long-lasting problem of the use of confiscated assets could be addressed through innovative means.

Several years have passed since the adoption of Law 109/1996 and the time has come to assess its successes and shortcomings, review the toolkit which was adopted to make its provisions effective, and to focus on/stress/emphasize its main achievements and shortcomings. It will therefore be possible to make good use of the lessons learnt from the good practices, along with the flaws and shortfalls.

2. The demand for far-reaching reforms allowing confiscation of assets recovered from criminal organizations and their prompt use for social purposes was increasingly pressing because it allowed for a profoundly new way of thinking; it was also more attentive to the Mafia's transformation and the need to tackle its members more concretely and effectively.

The first issue was related to how to deal with the Mafia – or, more precisely, the Mafias, since different criminal organizations exist such as the Sicilian Mafia, the 'Ndrangheta or Calabrian Mafia and the Neapolitan Camorra - in the economic field, by depriving its members of proceeds from murders, rackets, usury (“loan sharking”), drug trafficking, corruption, rigged contracts, and kidnappings.

Since the Law 109/1996 entered into force, illicit and criminal enrichment was sanctioned by law and people gradually started to consider it as socially unacceptable, regarding it with disfavour and no longer valuing it in the same way as before.

Once criminal associates were deprived of their assets, the problem regarding the destination of those assets (namely, what was fairer, more useful and feasible to do with them) arose. This represented a rather delicate issue and there was no common view on which course of action to follow. On the contrary, several different opinions existed.

Yet, the idea of using confiscated assets for social purposes soon prevailed. There were several arguments in favour of this position, linked mainly to the Mafia's nature and secular history and, above all, to the need of taking the fight to the criminal organizations with a symbolic and social meaning, together with concrete and effective actions, which the vast majority of people could immediately appreciate.

**3.** The starting point was to make it crystal clear that it was an unworthy act to join the Mafia because sooner or later the State would confiscate illicitly gained assets through criminal association and related activities. This knowledge could arguably deter those considering joining the Mafia, forcing them to reconsider the idea. Beyond the deterrence element, which is difficult to measure, this approach meant a reaffirmation of the State's power, authority and jurisdiction in a reality ruled by an alternative power to the State. The real objective of this approach was to show that such an alternative power had no future. Although the goal was not easily achievable, due to the secular history of a peculiar relationship between society as a whole and criminal organizations, the direction was deemed correct and was expected to bear fruit.

In order for this approach to be visible, the State should confiscate assets, previously and once famously in the hands of Mafia members, and use them in a way that made a clear difference. For instance, the confiscation of a property from a Mafia member and its transformation to a police barracks stood in stark contrast with its former purpose; once being in Mafia hands, and thereafter in the State's possession.

Real estate transferred to the law enforcement agencies were viewed as symbolic razors slashes in the mobsters' faces, because the "sbirri" (equivalent of the English pejorative term "pigs" - how Mafia members define policemen in their denigrating slang) enjoyed what used to be theirs. Residences and offices for law enforcement agencies, or schoolrooms transformed those places - where crimes once took place, where murders and massacres were planned and criminals and mobsters mixed - into sites populated by youngsters, policemen or other civil servants. In such a way, a bond of trust was re-established between the citizens and the State. Real estate assigned to the law enforcement agencies represented only a small portion of the assets' final destination. The vast majority was assigned to municipalities, which, in turn, used these assets for different purposes or re-assigned them to third administrators.

The list would be extremely long and several publications illustrate what has occurred over those long years. The creativity of Italians, and notably of Italian youth, has been limitless: schools, kindergartens, day care centres for disabled people, cultural centres, meeting places, youth centres, restaurants, tourist centres and service desks, and social housing have been placed in those properties which were once centres of the mobsters' wickedness and symbols of their supposedly unbreakable criminal power.

A significant example of this imaginative approach is Quarto, a Municipality of the Province of Naples, where a football team in the Camorra's hands, after being seized and not yet confiscated, was turned into a completely different reality. The Nuova Quarto Calcio per la Legalità was born, breaking with its criminal past, and placing trust in young footballers in order to change the past and build the future.

Another example is the initiative stemming from the seizure of the newsstand located in the historic centre of Pisa. The NGO Libera - thanks to coordination between the Province of Pisa and the social cooperative AXIS' (Acli per l'impegno Sociale) with the support of a wide network of partners - designed a project that foresees the re-use of the traditional activity of

selling newspapers, magazines, and periodicals in order to develop a social project to create new jobs, with particular attention to the professional integration of disadvantaged people. This is a positive example in Tuscany, which is open to criminal infiltration and corruption. The newsstand today has a new name: "Saperi della Legalità".

Moreover, other initiatives have been undertaken: land, holiday farms, productive conversion of entire agricultural concerns, where after their reassignment to cooperatives, oil, olives, vegetables, marmalades, and different foods preserved in oil are produced. On land confiscated from criminal organizations, people now produce pasta and wine labelled in memory of anti-Mafia heroes. Such products are currently sold in all Italian supermarkets. This is no small matter, because there is profit from the sales, a symbolic fact. Furthermore, information is spread among those who know nothing about the Mafia and their confiscated assets.

The experiences above illustrate that legality is no abstract concept, but a concrete reality able to create jobs. , namely, assets confiscated from mobsters' wealth are benefiting law abiding citizens and not criminals.

At the very beginning of the experience with confiscated assets, placards with "the Mafia hires, the State doesn't" showed up in Palermo. These placards cannot be seen any more. The Mafia has not been defeated and keeps buying the lives of many youngsters, but it is not as attractive as it used to be. In addition, the social use of confiscated assets is now strengthened by many years of experience and gives people hope and trust since it represents an alternative.

These facts were widely discernible because most people are able to see the change, the deep transformation, coupled with the novelty of the transfer of property in several villages and towns of Southern Italy. In some areas, the urban typology and morphology themselves changed. Such facts will also become visible to the young women and men from Central and Northern Italy, who have been spending part of their vacations working on land confiscated from the Mafias for many years. This has now become a long standing practice and involves thousands of young persons who gain work experience, see with their own eyes what it means to work the land in areas which are not yet completely reclaimed from the Mafia and where mobsters are visible and powerful. This represents a rather important learning experience and social commitment which is increasingly appreciated by young men and women who return home enriched with a new professional and cultural background, having gained an outstanding human experience.

**4.** Since the very start of the enforcement of the Law, it was clear that confiscated real estate was not solely concentrated in the South of Italy, but was also located in almost all the regions of the Centre and the North. Many were surprised to discover that Mafia members had silently penetrated those regions without the knowledge of the authorities. This shocked many people. The most alarming fact was that the members of the criminal organizations shopped in the historic centres of Rome, Turin, and Milan where they bought bars, pizzerias, and trendy restaurants. It was plainly a way to show their power and prestige. The shock of the people from the North was shared by some foreign States, which realized that, also in places far from the South, Italian Mafia members - often through interested local partners - succeeded in buying real estate, pizzerias and restaurants, and mostly in prestigious localities.

**5.** Nothing is more intolerable for a Mafia member than to be deprived of his/her assets. The history of the Mafia teaches us that its members take into account the possibility of jail and



detention for a certain amount of years from the very outset of their criminal careers. For many old Mafia bosses, jail was an integral part of their criminal curriculum, a source of pride, prestige and advancement; Mafia members in jail were honoured and respected by the other criminals and by frightened or corrupted guards. Prison did not remove their aura of authority. Rather the opposite.

On the contrary, Mafia bosses did not take into account and did not even foresee that besides the loss of personal liberty, they would suffer the humiliation of being stripped of assets accumulated over their long criminal careers. This was inconceivable and intolerable. They were aware of the fact that being stripped of their assets meant being weaker and more fragile since they could not sustain their families any longer, nor they could give money to their people in jail to guarantee salaries to the 'picciotti' (i.e. the mobsters at the bottom of the hierarchy), nor could they corrupt judges, guards, or those who should turn a blind eye if the need arose. Finally, they could no longer afford costly financial consultants, who were able to launder and effectively disguise their money, both abroad and in Italy.

It was possible to understand that this was the case by looking at how Mafia members behaved in the context of the criminal proceedings during which they were accused. When the Court was supposed to rule on personal criminal sanctions and likely sentence the accused to detention, there were normally protests, although kept to the extent of philosophical reasoning, and loud remonstrations, both as a way to vent their anger and to encourage their subordinates who saw their bosses raging against the judges and showing they did not fear the consequences of their actions.

On the contrary, during the proceedings deciding on the destination of assets accumulated as a result of criminal activities, the climate was different since the first cues were given: it was tense, hot, intimidating, and featured a tone of explicit and undisguised threat. There was a crowd made up of relatives protesting, attempting to hinder the proceedings and prevent the judges from making a composed decision.

This is the strongest evidence to show how much more important it was for a Mafia member to safeguard his assets rather than his personal liberty. This holds even truer today since several assets are laundered and located not only in Italy, but also in many foreign countries.

**6.** Among the numerous examples of good practices, it is worth indicating the most recent and least known ones, which show that good ideas travel. A historic museum dedicated to the Arm of Carabineers on the occasion of its bicentenary was recently created in those places confiscated from the Mafia in via Principe di Granatelli in the historic centre of Palermo.

In Secondigliano, a fair trade clothing store formerly belonging to the Camorra, selling goods made in the city and regional penitentiaries will soon open. The shop has been assigned to a social cooperative for the project "DiversaMente: vendiamo creatività!" which foresees the sale of artistic serigraphic products made by individuals with mental disabilities. Located in the ward Monte Rosa in Scampia, there will be the seat of the NGO "Papà separati" for the project "Ancora Genitori": a day-care, accompaniment, and support service for separated parents.

There are also cases of regions funding the municipalities in order to better exploit real estate, by merging the resources of the two entities.

With funds from the Region Emilia-Romagna, the following projects were financed: in Cervia a building was destined to be used as a shelter for female victims of violence. In Lido Adriano di Ravenna a property was used to cope with housing emergencies.

Also the Podere Millepioppi di Salsomaggiore Terme, a large agricultural farm, has been used as seat of the Regional Park of the Stirone (administrative, technical offices and public relations offices). A number of educational and cultural initiatives to create infrastructure for the restoration of wildlife take place within the Park.

In Forlì, a property has been assigned as a high-level educational/training institution for the region. A building confiscated was demolished and replaced with a public garden in Pianoro. In Berceto, a villa was confiscated from a Camorra boss and turned into a civic centre for children and aged people. The villa is equipped with an indoor swimming pool and ample rooms and is located in the centre of the town.

In Genoa, one can find an interesting experience because it represents the only seized asset in the whole city. It is composed of three shops located on the ground floor of a building and an apartment located in the same premises. The assets are in the historic city centre, more precisely, in the quarter Maddalena. There, the social shop "In Scia Stradda" was opened. As mentioned, this is the first shop in Liguria obtained from a confiscated asset. The former owner was a Sicilian boss, member of Cosa Nostra. For the reconstruction of the shop the Municipality of Genoa invested a large amount of money. Thereafter, the Municipality published a call for competitive bids, and, eventually, the assets were assigned to the social cooperative "Il Pane e le Rose", a constituent part of the renowned NGO "Comunità di San Benedetto", founded by Father Andrea Gallo, active for 27 years. "In Scia Stradda" there is a shop selling different kinds of goods: Zero-Km products and fair trade delicacies coming from land confiscated from the Mafias; books, CDs, clothing, goods made by the members of the "Comunità di San Benedetto al Porto"; and second-hand merchandise.

**7.** The long-time experience of the Consortium of Municipalities "Sviluppo e legalità" (Development and Legality), joining the Municipalities of Corleone, San Giuseppe Jato, San Cipirello, Piana degli Albanesi and Monreale shows that positive experiences can flourish, even in extremely hard environments.

The experience was established in 2000 on the initiative of the Prefecture of Palermo and still represents a good example of how the assets confiscated can be administrated well. After years, the experience has grown, become stronger and has continuously been productive. This is a positive result.

It is an example of how such an experience contributes to ameliorate the productive structure of an area, that around Corleone, the development of which has been traditionally affected by the presence of criminal organizations.

The operation involved 200 fields and rural buildings belonging to Salvatore Riina, Bernardo and Giovanni Brusca, and Bernardo Provenzano, who have been at the apex of Cosa Nostra and among the conspirators of the murders of Capaci and Via D'Amelio.

The original idea which inspired the project was to return the territory to a legal state by generating new opportunities for development and a new entrepreneurial culture among the unemployed from the administration of the assets confiscated from Mafia members.

The administration is entrusted with new cooperatives specialized in the organic agriculture sector and made up of young unemployed people selected through public procedures. In this way, about one hundred people have been hired. Clean and legal work. New developmental conditions and a new entrepreneurial culture were created among the young people living in the area.

About seven hundred hectares of fields confiscated from the Mafia were recovered and returned to production, rural buildings improved and turned into holiday farmhouses, riding stables, wineries, social centres; everything was reallocated into the legal economy.

There is a new map in those lands once dominated by Riina and Provenzano. Now there are new names remembering the victims of the Mafia. They are the main characters; no longer their murderers. Thus, in Monreale, a precious historic site, the holiday farmhouse "Portella delle Ginestre" and the riding stable "Giuseppe di Matteo" was created in lands confiscated from Bernardo Busca; the holiday farmhouse "Terre di Corleone" was created in land confiscated from Salvatore Riina; the winery "Centopassi" was created, where high-quality grapes are grown and wine produced in confiscated vineyards in San Cipirallo; again in Corleone, a laboratory, where the vegetables grown in confiscated lands are processed, was established within an asset that was owned by Riina.

High quality pasta, wine, tomatoes, honey, beans, marmalades, organic food are made in those lands; they are processed in the local plants; and can be tasted in the holiday farmhouses.

The goods are traded and distributed in the whole country, both in big super-markets and in local small shops and send a strong symbolic message; it is possible to build clean wealth in land recovered from the Mafia. Today, the cooperatives' annual turnovers reach 5 million Euros, amounts which were unthinkable at the beginning of the venture.

Finally, the Prefecture of Palermo has established protocols which foresee thorough controls on those who are competing for public tenders, published by the Consortium in order to recover real estate confiscated from the Mafia, and to prevent bid-rigging.

Among the good practices, one should remember the "National Agency for the management and use of the assets seized and confiscated to the organized crime" ("Agenzia nazionale per l'amministrazione e la destinazione dei beni sequestrati e confiscati alla criminalità organizzata"), with its headquarters in Reggio Calabria, established by the Law No. 50 adopted on 31 March 2010, which constitutes a positive outcome because its establishment was advocated by so many.

**8.** The collection of data on seized and confiscated assets is not yet ensured with sufficient certainty. The data are not uniform and this creates knowledge problems, which are likely to be solved by the Agency's new structure. In spite of the difficulties, the data are nevertheless meaningful.

According to the report of 9 April 2014 released by the fact-finding Parliamentary Commission on the Mafia phenomenon and signed by its President Mrs. Rosy Bindi, the confiscated assets number 41,451. Of this number, 21,204 are confiscations (assets which have passed the seizure phase), 15,400 are final confiscations, and 4,847 are confiscations with destination. Almost 60% of the total confiscations have become final in the last five years. 80% of the assets are assigned to municipalities and are generally used for social purposes.

The main typology of confiscated assets is property (5,491), followed by movable assets such as money and bank accounts, but also furniture, animals and precious goods (2,181); afterwards there are financial goods such as cheques, government bonds, shares (1,649), and finally there are companies (877). As for the latter assets, the majority are limited liability companies ("società a responsabilità limitata") and then one-man companies, especially in recent years.

According to the Agency, as of 7 January 2013, the seized and confiscated assets are 12,944. Of this number, 11,237 are properties and 1,707 companies. 42,61% of the assets are

located in the Sicily Region, 14,82% in the Campania Region, 13,99% in the Calabria Region, 8,70% in the Puglia Region, and 19,89% in the other Italian regions. In particular, with regards to the confiscated companies, 36,50% are concentrated in the Sicily Region, 20,336% in the Campania Region, 9,435% in the Calabria Region, 7,67% in the Puglia Region and 26,075% in other Regions.

As of 7 January 2013, 3,995 assets have not been assigned by the National Agency and 1,666 of them are “blocked” by bank mortgages. The others are still unused and occupied (1,376), not accessible or to be restored.

The data on the value of the assets are still quite fragmented. The Agency calculated that in 2012 the value of the managed properties was €24.802.315,28 (the evaluation was made on 4,06% of the total assets, that is 162 out of 3,995). Among those 162 properties, nine of them had a value ranging between €500,000 and €3,000.000.

No one has carried out a cost-benefit analysis so far because the “spirit” of the law is to use the assets for social purposes, regardless of the economic profit. On the other hand, the issue is useful for those companies, which need to compete on the market to survive.

**9.** The hate and resentment of the Mafia people whose assets have been taken from them is testified by the conditions of the properties, which they were forced to give up. There have been particular cases, which have taken place when the property is first entered. It is a terrifying picture: doors, windows and frames have been removed, together with bathroom furniture and toilets; and when this was not possible, they were destroyed and rendered useless; the pavements were stripped away, the walls and ceilings broken, the stair railings dismantled and removed, and the steps severely damaged; the surveillance cameras destroyed or removed; the gates taken away; the trees, the flowerbeds and the pools wrecked.

There are pictures and shots, which give evidence of this scenario. The property seems to have gone through an intense air bombing. This comparison is to give an idea of the devastation, and absolute disgust towards the property, which was compulsorily transferred to the State.

The properties, which have been left in such a condition, required considerable financial efforts from the relevant municipalities to be restored and made ready for their assignment. This phase is particularly important and significant because it confirms that the wild and destructive rage of the Mafia failed to achieve practical results.

The Mafia who decide to carry out this kind of destructive action have the possibility to do all this because much time – sometimes several days – lapses between the seizure decision and the formal notification of the seizure itself.

The municipalities involved have often invested significant amounts of money to restore the properties, and thus decided to get together and share experiences, resources, and consortia. “Avviso Pubblico” (“Public Alert”), the national organization which brings together municipalities and regions striving for legality and against Mafia-type organizations, for many years has become an essential instrument in this approach because it follows the administrators engaged in this quest for legality. Its role has become increasingly important, also in light of the fact that around 80% of the confiscated assets are given to the municipalities, which at a later stage allocate them for social use.

**10.** Next to the good news in relation to the long process of confiscated assets, there are also critical and challenging issues. There are many cases and they sometimes overlap. There

are various reasons which may explain such a negative reality: the long time between the seizure, the final confiscation and the delivery of the assets; the lack of competences of many judicial administrators; the superficiality and the red tape in the assets management; the lack of resources to restore the properties or to start a business; the different views between institutional officials, and lastly the Agency for seized and confiscated assets. The list is long.

Surely the long time characterizing the judicial proceedings and the significant period between the seizure and the confiscation has generated undeniable problems for business assets, especially in the farming sector, which in many cases have been left unproductive for many years. The properties, which needed resources to be restored, were damaged by the time which elapsed and added further to their deteriorated state. Besides identifying the list of all critical issues, it is important to point out the major problems which determined a regrettable situation apart from the slowness of the Italian judicial system and the lack of competence of some judicial administrators.

The first problem is represented by the fact that in some contexts it was ascertained that the judicial administrator, instead of acting in the public interest, managed the confiscated asset in the name and on behalf of the Mafioso who owned it. It seems a paradox, but it is not. It happened in many cases, and this strongly testifies to the lasting power of Mafia-type organizations and the fragility of the whole system.

The second problematic issue concerns the complicated mechanism characterising the relationship between the legal framework on confiscated assets and the different authorities, which were called to apply it. After Law 109/96, there have been some seizure and confiscation operations which were carried out without any coordination at all. Only on 3 February 1999 the Decree of the Ministry of Economy and Finance, which established the "Monitoring Unit on confiscated assets" involving various Ministries, was adopted.

The Monitoring Unit proved to be unfit to face the management challenges created by the legal framework, and thus the Government decided to appoint a "Special Commissioner for the management and use of confiscated assets" ("Commissario straordinario del Governo per la gestione e la destinazione dei beni confiscati") with Decree of the President of the Republic ("D.P.R.") 28 July 1999. After the appointment of three different Commissioners, on 23 December 2003, the Council of Ministers abolished the "Special Commissioner" institution and established the "State Property Agency" ("Agenzia del Demanio"). As a consequence, since 1 January 2004, the State Property Agency has been the only authority entrusted with such a mandate. Lastly, with Law 31 March 2010 no. 50 the "National Agency for the management and use of the assets seized and confiscated to the organized crime" ("Agenzia nazionale per l'amministrazione e la destinazione dei beni sequestrati e confiscati alla criminalità organizzata") with its seat in Reggio Calabria (Calabria Region) was established.

The different transitions and legislative modifications illustrate the difficulty in identifying the most appropriate instruments to manage assets. They also prove that the delay in selecting the proper tools generated critical issues and challenges, which influenced the functioning and the results of the Agency itself.

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## **The judicial administrator of seized and confiscated assets: Role, training, and problematic issues**

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1. The judicial administrator plays a crucial role, especially in the phase from the seizure of the asset until its confiscation or return to its owner.

In this phase, he/she acts under the guidance and the control of the judicial authority. His/her duties are established by law and monitored by a judge. From the time of the appointment, he/she becomes the “guardian” of the asset and takes the role of the owner; he/she also manages the property, but for any act which goes beyond regular administration, a specific judicial authorization is required.

The management of the asset, which was personal and private until its seizure, becomes public interest-driven, and the State may even advance some specific expenses for such a purpose. The role of the judicial administrator is not only a passive one, since he/she has to be involved as much as the interest of the seized property (which coincides with the State’s interest) demands. In case a one-person company is seized, the judicial administrator is vested with all the rights and obligations which pertain to the single member of the company.

Since the judicial administrator operates under the guidance of the judicial authority, he/she becomes an agency of the judge and should exclusively pursue the aims underlying the seizing order issued by the Tribunal.

The judicial administrator is therefore the person who implements the public interest. He/she is obliged to act together with the judge, and not to be influenced by private interests; he/she is chosen from people admitted to the National Register of the Judicial Administrators (the “Register”). The latter Register was established by Legislative Decree no. 14/2010, is divided in two sections (one for ordinary administrators, the other for experts in business administration), and it is managed by the Ministry of Justice. The rules of access to the Register are set in the Decree of the Ministry of Justice of 19 September 2013, no. 160.

2. The role of the judicial administrator is extremely sensitive because he/she becomes a de facto public official and is thus called to fulfil his/her duties with diligence. His/her main task is to take care of the custody, preservation and management of the seized asset throughout the whole proceedings, and – at the same time – to increase its profitability within the limits set by law, especially when assets are represented by companies, hotels, restaurants, commercial or farming activities.

Therefore, the judicial administrator is entrusted with the onerous duty of trying to maintain the economic value of the seized company unchanged, and eventually to increase it.

The judicial administrator is called to manage a particular kind of company which, before its seizure, was part of an illegal criminal system protected by the Mafia-type organization, and which thus operated in the market due to an illicit “competitive advantage”.

The competitive advantage is closely linked to its clients being aware of the true nature of its owners. They find themselves in a situation where they either could not avoid maintaining relationships with the Mafia-business due to the threat of severe repercussions, or favored such relationships because of the related advantages, such as preferred access to bank credit, the absence of unions which allowed greater discretion in the treatment of the workforce, as well as the guaranteed business opportunities.

One of the most crucial and complex duties of the judicial administrator is to return the company in every respect to a situation of legality.

**3.** The judicial administrator is confronted with the reality of having to manage a business which formerly operated in the market under very different circumstances and takes on the responsibility for a number of workers.

Often, the workers of Mafia-related companies also find themselves in an illegal situation (underpaid or paid illegally), and it is not rare that when the judicial administrator is appointed they are concerned about losing their jobs; hence it is necessary to legalize their unlawful situations, as well as providing guidance and establishing the workers' duties and responsibilities.

The Mafia-related company usually does not follow safety standards, nor does it respect labour laws, and it often employs a criminal workforce.

Further problematic issues faced by the judicial administrator after his/her appointment are that, on the one hand, banks reduce or reset their economic exposure and cause financial difficulties for the company; on the other hand, the suppliers do not deliver their goods, and customers turn to other businesses after the Mafia bond is dissolved.

The duty of the judicial administrator is to act carefully and, at the same time, with resolution while keeping in mind the core objectives of his/her mandate.

The company which has to be managed is in a sensitive situation and the integration of the judicial administrator into its governing body may cause managerial confusion and disorientation which are not easy to handle. Sometimes, the existing employees of the companies may even enter into a conflict with the Court-appointed administrator, who may be perceived as an "enemy" breaking up the previous equilibrium and established practices in the company's operations.

One of the crucial issues for the judicial administrator in the management of human resources is to avoid as much as possible the reduction of the asset's workforce. This is an issue of utmost importance because the message should not be sent that companies are able to work and afford jobs only when they are related to Mafia-type organizations.

**4.** A positive example in this context is illustrated by a recent initiative which demonstrates how the proper management of seized assets may enhance a valuable property. It concerns the Grand Hotel Gianicolo, with 4 floors, roof garden, pool, garden and car-park, located around Porta S. Pancrazio, in the heart of Rome, next to the famous "Gianicolo's walk" ("passeggiata del Gianicolo"), which offers a unique view of the city, including the Vatican's chapel.

When the hotel was first inspected it was ascertained that the employees consisted of: 8 workers with irregular contracts; 6 completely illegal workers; and 8 partners of a cooperative company linked to the owners of the hotel. The judicial administrator, after having expelled the previous board, affirmed the principle of legality by regularizing all workers through official employment contracts (after a discussion with labour unions and a conciliation agreement among those involved). Today, the workforce consists of 35 individuals (more than under the previous management), plus other part-time workers (so-called "a chiamata") who are employed through special agencies.

Although a 4-star hotel, the Grand Hotel Gianicolo was found in a neglected and derelict condition. The restaurant was only used for banquets and the daily meals for family members

who managed the hotel alongside the director. Obviously, the real objective of the hotel was not to excel in Rome's market sectors of hospitality and tourism.

Much attention was also paid to the hotel's brand and quality by opening the restaurant, giving the young chef the opportunity to express his talent (earlier he was illegally employed for breakfasts and the family's meals), renovating the pool and the panoramic roof garden, and also using both these locations for special events.

The Grand Hotel Gianicolo is an active business success once again, and it proves that lawful management of assets under judicial administration can also be profitable and competitive with other similar private businesses in the market.

**5.** The path leading to the Law of 2010, which defined and specified the duties of the judicial administrators and also established their official Register, was not an easy one.

For a long time, especially in the early period, the judicial administrators were chosen by the judges according to criteria linked to the context and to the direct knowledge of the person who had to be appointed for such a challenging responsibility.

Sometimes the Tribunal called expert administrators who had already proved to be competent, independent and, most difficultly, firm with Mafia-related people; the latter can in fact move well in their areas and have the capacity to threaten or deter citizens.

For these reasons it was decided to exclude those (valuable) professionals who had lawfully worked with individuals suspected of being part of criminal organizations and their lawyers.

It was fundamental to build relationships of absolute trust. In spite of such precautionary measures, it has happened that relatives of people with a criminal record, their figureheads, or people close to Mafia leaders were appointed as judicial administrators in the Regions of Sicily, Calabria and Campania.

The latter are negative examples which undermine the reputation of and the public trust in the institution of the judicial administrator; most significantly, they confirm that in some contexts Mafia-related people are still strong, and that the supervision mechanisms still have some loopholes and shortcomings.

Professional requirements are an important element in the appointment process. Lawyers, accountants and fiscal experts admitted into their respective official registers for at least five years may be admitted to the Register of judicial administrators (both the ordinary and the "business administration experts" sections).

**6.** It is also fundamental that the judicial administrator is trained and kept up-to-date because he/she, besides the need for a high degree of ethical sensibility, needs to possess some professional skills which might not always be part of his/her experience.

Currently, the judicial authority seizes new kinds of structured companies (or groups of companies) operating in the farming business, in the construction and health sectors, as well as in the tourism/hospitality and wood-related industries (e.g. farms, construction companies, famous hotels, private hospitals, etc.).

Due to the fast pace of the modern-day economy, the judicial administrator has to possess (or be able to acquire quickly) the skills involved in such a wide range of sectors and competences.



Training and advanced courses may be the answer to the latter problem. Another idea is to establish mandatory Master programmes, which can ensure specific and wide-ranging training and education on legal, as well as on management and economic-related issues.

Workshops may also be organized and experts in the field of business administration, labour relations, as well as domestic and European project financing, could participate and share their positive experience. These workshops may be particularly helpful for recently-appointed judicial administrators, who could thus take part in traineeships and update sessions with skilled judicial administrators. This exchange of experiences could be extremely helpful for everybody, regardless of age.

**7.** The official number of judicial administrators is not yet available; however, from an empirical observation of the activity of both the Tribunals and the “National Agency for the management and use of the assets seized and confiscated to the organized crime” (“National Agency”) it would appear that the approximate number is 500, even though it may increase significantly in the future.

**8.** The National Agency has not yet been able to offer any training, so it is therefore managed by private entities and Universities on a paid basis. In recent years, the training courses took place at two Universities, the Università Cattolica of Milan (“Catholic University of the Sacred Heart”) and the DEMS (“Department of European Studies and International Integration”) of Palermo. In 2013, the latter institution organized an advanced training course for the fourth time in “Administration, management, and use of seized companies and assets”, which is a second-level advanced training course and includes modules on economy, business administration and law. Attending such a course enables the participants’ admittance to the National Register of Judicial Administrators.

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