



Council of the
European Union

Brussels, 6 February 2017
(OR. en)

10989/11
DCL 1

GENVAL 58

DECLASSIFICATION

of document: ST 10989/11 RESTREINT UE/EU RESTRICTED

dated: 16 June 2011

new status: Public

Subject: **EVALUATION REPORT ON THE
FIFTH ROUND OF MUTUAL EVALUATIONS
"FINANCIAL CRIME AND FINANCIAL INVESTIGATIONS"
REPORT ON ITALY**

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REPORT ON ITALY

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1. INTRODUCTION

At the meeting of the Multidisciplinary Group on Organised Crime (MDG)¹ on 26 February 2008, the Presidency proposed three possible topics for the fifth round of mutual evaluations², two of which received substantial support. At a subsequent meeting of the MDG on 6 May 2008, the majority of delegations were in favour of selecting financial crime and financial investigations. On 17 June 2008, the Group decided that the subject of the fifth round was to be "financial crime and financial investigations".

The scope of this evaluation cycle covers numerous legal acts relevant to countering financial crime. However, it was also agreed that the evaluation should go beyond simply examining the transposition of relevant EU legislation and take a wider look at the subject matter³, seeking to establish an overall picture of a given national system. On 1 December 2008 a detailed questionnaire was adopted by the MDG⁴.

The importance of the evaluation was emphasised by the Czech Presidency when the judicial reaction to the financial crisis was being discussed⁵. The significance of the exercise was once again underlined by the Council when establishing the EU's priorities for the fight against organised crime based on OCTA 2009 and ROCTA⁶.

Topics relating to the evaluation, in particular the improvement of the operational framework for confiscating and seizing the proceeds of crime, were mentioned by the Commission in its Communication on an area of freedom, security and justice serving the citizen⁷.

Experts with substantial practical knowledge in the field of financial crime and financial investigation were nominated by Member States pursuant to a written request to delegations made by the Chairman of the MDG.

¹ Since 1 July 2010 the responsibilities for this process have been transferred to the Working Party on General Affairs and Evaluations (GENVAL).

² 6546/08 CRIMORG 34.

³ 10540/08 CRIMORG 89.

⁴ 16710/08 CRIMORG 210.

⁵ 9767/09 JAI 293 ECOFIN 360.

⁶ 8301/2/09 REV 3 CRIMORG 54.

⁷ 11060/09 JAI 404.

At its meeting on 17 March 2009 the MDG discussed and approved the revised sequence for the mutual evaluation visits⁸. Italy was the fourteenth Member State to be evaluated during this round of evaluations.

The experts charged with undertaking this evaluation were Mr Laurentiu Afrasine (Specialist Police Officer, Directorate for countering organised crime, Romanian Police, Bucharest/Romania), Ms Kristel Siitam-Nyiri (Senior prosecutor, Northern District Prosecutor's Office, Tallinn/Estonia) and Mr Pim van der Veer (Chief inspector of Police, Operatie Opsporing, FinEc, De Bilt/The Netherlands). Four observers were also present: Mr Igor Angelini (First officer, Criminal Finances and Technology Unit, Europol), Ms Teresa Galvez Diez (Deputy National Member for Spain, Eurojust), Mr Stefan de Moor (*OLAF*, European Commission) and Mr Christian Tournié (DG Home Affairs, European Commission), together with Ms Milena Petkova and Mr Peter Nath from the General Secretariat of the Council.

This report was prepared by the expert team with the assistance of the Council Secretariat, based on findings arising from the evaluation visit that took place between 15 and 19 November 2010, and on Italy's detailed replies to the evaluation questionnaire.

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⁸ 5046/1/09 REV 1 CRIMORG 1.

2. NATIONAL SYSTEM AND CRIMINAL POLICY

2.1. Specialized units

2.1.1. Investigative authorities

The public security system in Italy encompasses various police forces whose responsibilities were last set out in the Decree on the “Review of Police Forces’ Specialist Functions”, issued by the Minister for the Interior on 28 April 2006.

The following forces are entrusted with law enforcement or policing duties in Italy, having specific roles of varying relevance to the subject under review:

- The Financial Guard (*Guardia di Finanza*)
- The Corps of Carabineers (*Arma dei Carabinieri*)
- The State Police (*Polizia di Stato*)
- The Penitentiary police (*Polizia Penitenziaria*)
- The National Forestry Department (*Corpo Forestale dello Stato*)

2.1.1.1. *Guardia di Finanza*

The *Guardia di Finanza* is a body with military status placed under the direct authority of the Minister for the Economy and Finance. It is part of the Italian armed forces. It consists of approximately 68 000 police officers and is essentially responsible for dealing with financial crime and smuggling; it has also evolved into Italy's primary agency for suppressing the drugs trade. The *Guardia di Finanza* maintains over 600 boats and ships and more than 100 aircraft to fulfil its mission of patrolling Italy's territorial waters.

The Decree of 28 April 2006 confirmed the general competence of the *Guardia di Finanza* Corps. In line with Legislative Decree № 68 of 19 March 2001, implementing provisions of Law № 78 of 31 March 2000, it laid down the following framework:

- The *Guardia di Finanza*'s mission as a police force, assigning to it general competence in all economic and financial matters;

- The extension of the responsibilities and powers recognised by law to the military officers of the *Guardia di Finanza* in the tax field to all activities falling within the competence of the economic and financial police;
- The *Guardia di Finanza*'s exclusive role as economic and financial police force at sea;
- The legitimate power of the *Guardia di Finanza* to promote and develop, as the national competent authority, international co-operation initiatives with foreign counterparts to combat economic and financial offences, also through the secondment of officers, as experts, to diplomatic and consular missions.

Within its remit, the *Guardia di Finanza* Corps carries out financial investigations both by assignment through judicial authorities as a specialised judicial police force and on its own initiative as the law enforcement agency responsible for handling suspicious transaction reports in compliance with the existing anti-money laundering legislation.

Therefore the tasks of the *Guardia di Finanza* corps are multiple: Not only has it to counter tax evasion and avoidance, but it also fulfils the role of customs police, has to control public expenditure for preventing and suppressing fraud committed against the Italian State, local authorities and the European Union; finally, it protects Italian consumers and industry by countering economic crime in the field of trademark counterfeiting and piracy of goods in the audiovisual, agricultural and foodstuffs sectors.

The main tasks of the *Guardia di Finanza* in its role as the economic police force are:

- To combat the proceeds of organized crime
- To combat money laundering and terrorist financing
- To take action against usury and loan sharking
- To combat the violation of financial market regulations

2.1.1.2. *The Corps of Carabineers (Arma dei Carabinieri)*

The Corps of Carabineers (*Arma dei Carabinieri*) is a Gendarmerie-like military corps with police duties. They also serve as the Italian military police and joined the Armed Forces on 31 March 2000.

The *Carabinieri* are organised on a territorial basis for law-enforcement missions. The territorial organization represents the core of the institution; it contains 80 percent of the force and is organized hierarchically in five inter-regional, 19 regional and 102 provincial commands. Outside the territorial organisation, the Specialist Mobile Unit Command Palidoro (based in Rome) controls the Mobile Unit Division, the Specialist Unit Division and the Special Operations Group (*Raggruppamento Operativo Speciale - R.O.S.*).

The *Carabinieri* Specialized Operational Group (*R.O.S.*) was created in compliance with Law Decree №. 324 of 13 November 1990, issued by the government to fight organized crime through the creation of central and interprovincial services of investigative police, confirmed by Article 12 of Law №. 203/1991. It was created to coordinate investigations into organized crime, and is now the main investigative arm of the *Carabinieri* which deals with organized crime and terrorism. The *R.O.S.* reports directly to the *Carabinieri* General Command.

The *R.O.S.* command centre coordinates the activities of 26 regional anti-crime sections and two specialised units. These are linked to the *Carabinieri* Provincial Headquarters of the Judicial District for operational coordination according to special procedures provided by the *Carabinieri* Headquarters.

2.1.1.3. *The State Police (Polizia di Stato)*

The State Police (*Polizia di Stato*) is the principal civil Italian police force, responsible for the maintenance of public security and order; it is run directly by the Department of Public Security (*Dipartimento della Pubblica Sicurezza*) of the Ministry of the Interior.

Within its general competence, the State Police carries out both preventive activities (patrolling, territory control) and repressive activities with regard to any type of crime all over the national territory. It has a centralized structure consisting of several Central Directorates with specific sectors of interest and competence (common and organized crime, anti-terrorism, immigration and border security, security of means of transportation and telecommunications) and some Central Directorates dealing with the organization and management of human and instrumental resources all over the national territory, as well as with the discipline of the regulation system. Furthermore, it has local branches with general competence (i.e. the *Questure*, located in each Italian province) and specific competence at a provincial and regional level (such as the Highway Police, Railways Police, Border Police, Telecommunication Police). Common and organized crime investigations are

carried out by the *Squadre Mobili* of the *Questure* that are based in every province of Italy. These police services are coordinated, at a central level, by the Central Operational Service (*SCO*), directly participating in the investigations in particularly complicated cases and when the enquiries imply international projections. The *SCO* provides local police offices with the operational support of special info-investigative resources and sophisticated technologies.

2.1.1.4. *Anti-mafia Investigative Directorate (D.I.A.)*

The Anti-mafia Investigative Directorate (*Direzione Investigativa Antimafia - D.I.A.*), based on Law № 410 of 30 December 1991, forms part of a series of broader initiatives adopted by the Italian Legislator in the second half of the last century aiming to enhance coordination of information and investigation activities in the fight against organised crime.

The *D.I.A.* is entrusted in particular with fighting against specific Mafia-type organisations, as legally defined by Article 416a of the Criminal Code, consisting of indigenous “*Cosa Nostra*”, “*Camorra*”, “*Ndrangheta*” and “Apulian organised crime” as well as of any other form of non-indigenous organised crime active in Italy.

It constitutes a special inter-force investigative body that is staffed by personnel from the *Polizia di Stato*, *Carabinieri* and *Guardia di Finanza* with suitable experience gained in financial investigations and organised crime fighting.

The numerous activities carried out in the area of prevention and repression by the *D.I.A.* are mostly investigations into economic, property-related and financial issues and are driven by the analysis of information and intelligence derived therefrom on possible laundering activities and the reinvestment of money, assets and valuable objects related to organised crime, as well as on possible Mafia infiltration in financial mediation and the legal economy.

In respect of these tasks, the provisions introduced by Legislative Decrees № 109 of 22 June 2007 and № 231 of 21 November 2007, that have transposed the 3rd EU Anti Money Laundering Directive into national law are of utmost importance as they aim to protect the financial system against the risks of criminal infiltration or its misuse for the purpose of money laundering and terrorist financing.

Within the "D.I.A" headquarters financial investigations are predominantly carried out by the 4th Division of the 2nd Branch dealing with major judicial enquiries.

Each of the 19 local *D.I.A* bureaus is headed by a senior officer, three or more officers and various investigators.

Such personnel are highly qualified in terms of professional standards and training, with background experience gained within their administrations of origin (State Police, *Carabinieri*, *Guardia di Finanza*). They are mainly responsible for the investigative analysis of suspicious transaction reports forwarded, in accordance with Article 47 of said Legislative Decree № 231/2007, by the Financial Information Unit that has its headquarters in the Bank of Italy, in order to ascertain any possible connection with organised crime.

2.1.1.5. Asset Recovery Office (ARO) and other similar bodies, and implementation of Council Decision 2007/845/JHA

The evaluation team was informed after the on-site visit that Italy has implemented Council Decision 2007/845/JHA⁹ at national level through an administrative measure (by a Chief of Police Decree). This Decree, agreed by the police forces, the Central Directorates concerned and the Ministry of Justice has designated the International Police Cooperation Service within the Central Directorate of Criminal Police as the national Asset Recovery Office. The General Secretariat of the Council was notified on 3 May 2011 about this progress in the implementation process. In order to fully implement the EU provisions at a technical-operational level arrangements are being finalised with regard to both, the flow of information to and from abroad with the various police forces/Directorates and the direct and/or indirect access to databases in compliance with the relevant domestic law.

Moreover, a national agency has recently been established for the administration and disposal of property seized and confiscated from organised crime. During the seizure phase, the agency can provide assistance to the judicial authority and the receiver.

⁹ Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime ; OJ L 332 of 18.12.2007, p. 103.

2.1.1.6. National Asset Management Agency

The National Agency for the Management and Use of Seized and Confiscated Organised Crime Assets (*Agenzia Nazionale per l'Amministrazione e la Destinazione del Beni Sequestrati e Confiscati alla Criminalità Organizzata*)¹⁰ was set up only in February 2010 and had been operational for about six months at the time the on-site visit took place. With the setting up of this Agency the former system of managing seized assets that was handled by the Public Property Agency has been superseded.

The role of the Agency lies in managing assets that, after having finally been confiscated by a judge, have been handed over to the State. The Agency has an essential role in handling the complex different legal actions connected with the administration of seized assets and in returning criminally gained or acquired assets to the State maintaining these assets in the Patrimony of the State or allocating them for free to regions, provinces and municipalities. It was interesting to note in this respect that the municipal authorities that benefited from returned assets had to regularly report back to the Agency in order to prevent misuse of those assets or recycling into criminal hands.

The Agency presently administers about 11 000 assets, including fund 1 400 enterprises and thousands of flats and hectares of land distributed on the national territory but concentrated, in particular, in Sicily (44,04%), Campania (14,86%), Calabria (14,36%), Lombardia (8,49%) and Puglia (8,31%). The experts were informed that in October 2010 a project with a volume of 8 million EUR had been launched to set up a database for managing assets that is to be established in Reggio di Calabria and which will be connected to the systems of the Revenue Office, police forces and other entities.

At the time of the visit there were approximately 30 officials serving in the Agency, which has two headquarters: one in Rome and one in Reggio di Calabria. There are plans to set up further branches in the future in Palermo, Milan Naples and Bari. Just one week prior to the visit a Decree Law had been passed authorising the enlargement of the Agency by increasing the staff and opening the four above mentioned structures.

¹⁰ <http://www.benisequestraticonfiscati.it/AgenziaNazionale/beniConfiscati.html>

2.1.1.7. Italian Customs Agency

The Italian Customs Agency (*Agenzia delle Dogane*)¹¹ was set up by legislative decree № 300 of 30 July 1999, which was part of a major reform affecting the whole Italian public administration, thereby taking over the tasks that were previously carried out by the Finance General Directorate for Customs and Indirect Taxation within the Ministry of Finance.

It has approximately 10 000 staff, organised in one central and 15 regional directorates, 80 offices and 176 local units across Italy, supplemented by 15 specialised chemical laboratories that also provide support to the judicial authorities in the field of combating drug trafficking and other illegal activities.

According to the information received during the visit, the service receives some 12 million tax declarations per year as well as 25 000 cash declarations.

2.1.1.8. Italian Revenue Agency

The Revenue Agency (*Agenzia delle Entrate*) that was set up in its present form in 2001 is a public administrative body under the Ministry of Economy and Finance.

Relations between the Ministry of Economy and Finance and the Agency are regulated by a three-year agreement, with adjustments for each financial year, stating the services to be ensured, the objectives to achieve and the resources needed.

In 2009 the Agency's action against tax evasion followed two general strategies:

- Firstly, identifying the different macro-categories of taxpayers (large and medium-sized businesses, smaller firms and the self-employed, individuals);
- Secondly, adopting methods of intervention specific to each macro-category and consistent with systems analysis and an assessment of the risk of avoidance.

At the end of 2009 the Italian Revenue Agency had 33 584 staff.

The Revenue Agency has no direct competence for financial crime and therefore it does not carry out investigations specifically focused on the fight against crime;

However, during fiscal investigations, officials of the Revenue Agency have to:

¹¹ Cf. www.agenziadidogane.it

- submit to the competent Public Prosecutor a tax crime report, in the event that, in the course of the investigations, the facts may lead to a criminal offence. (Art. 331 – 332 Code of Criminal Procedure)
- submit to the Financial Information Unit a report on unusual transactions, in the event that the investigations lead to a probable money laundering offence. (Law № 197 of 5 July 1991)

An important database, the Financial Relations Records, was created under the responsibility of the Revenue Agency in 2007. This database covers all business relationships and financial transactions carried out outside of business relationships since 1 January 2005. The database is managed and controlled and the data maintained by the Revenue Agency.

2.1.2. Judicial authorities

2.1.2.1. Prosecution services and judges

Magistrates

In Italy, prosecutors and judges form part of the same authority – the magistrates. Their competence is based on territoriality. Magistrates are selected through national competitive examinations. Under the existing Italian legislation, the ordinary judiciary can be joined after having successfully passed a competition. Those accepted are assigned the functions of judges - either in criminal or civil matters - and of prosecutors, depending on the availability of vacancies for the two functions. Magistrates can move from exercising the functions of a judge to exercising those of a prosecutor and vice versa during their career.

The High Judicial Council (*Consiglio Superiore della Magistratura*) has the competence to appoint, promote and assign magistrates and also has the power to take disciplinary action. The High Judicial Council also organises training courses for magistrates.

The Italian authorities reported after the on-site visit that the ordinary judiciary is made up of 6 249 judges and 2 094 prosecutors. It should, however, be noted that the aforementioned number of judges includes those in charge of both criminal and civil cases.

Prosecutors

In Italy the prosecutor is the director of an investigation.

Prosecution in Italy is mandatory – when any of the law enforcement agencies receives information about a crime which has been committed, it is obliged to report it to the prosecutor. The competent prosecutor then decides which police force will be entrusted with the task of conducting the investigation.

The Public Prosecutor's Office is headed by the prosecutor general. At first instance and appeal level there are also local offices, headed by the chief prosecutor. The chief prosecutor decides on the organisation and competence of the office.

As the leader of the investigation, the prosecutor is also in charge of establishing assets during the preliminary investigation.

The Prosecutor's Office is governed by a hierarchical system and the head of the office can give instructions. However, nobody from the outside can give instructions to the prosecutor. If a prosecutor does not comply with such instructions, the head of the office may assign the case to another prosecutor. According to the information received, however, this seems to be rare in practice and is carried out by a written procedure and forwarded to the High Judicial Council.

As a rule, casework in Italian courts is not distributed depending on the type of offence and therefore there are no court divisions in place dealing with financial and Mafia-related crime only. There are, however, exceptions with regard to prosecutors: in particular, Anti-Mafia District Prosecuting Offices (*Direzione distrettuale antimafia - D.D.A.*) have been set up and are based at the Prosecuting Offices attached to the courts of the main district towns. At present there are 26 *D.D.A.s* made up of a number of prosecutors which varies depending on the size of the office. There are 232 prosecutors posted to *D.D.A.s* in total. *D.D.A.s* deal with, inter alia, investigations into the offences listed in Articles 416a (*Association of Mafia type*) and 416b (*Exchange of votes between politicians and Mafia members*) of the Criminal Code and investigations into "common" offences (including financial offences) in cases where they are committed by Mafia-type criminal organisations or using a modus operandi which is typical of such criminal organisations. As far as financial offences falling within the competence of ordinary prosecuting offices are concerned, so-called specialised units are set up only at medium and large-sized prosecuting offices, and are responsible for conducting investigations into a relevant category of offences. The number of magistrates in these specialised units varies depending on the size of the relevant office.

The *D.D.A.* have jurisdiction over attempted or actual Mafia-related crimes or crimes having terrorist purposes. They are staffed by specially trained Public Prosecutors designated by the District Chief Prosecutor acting on the opinion of the National Anti-Mafia Prosecutor. Notice must also be given to the latter when the composition of District Anti-Mafia Offices is changed (Art.70-a, Royal Decree № 12 of 30 January 1941).

Owing to the Italian specificity of judges and prosecutors being grouped under an ‘umbrella’ of what is referred to as magistrates, only a small amount of specific information was received with regard to their function in tackling financial crime and conducting financial investigations as no separate statistics are kept concerning the two different functions.

For instance, the Italian authorities were not in a position to specify the precise number of judges who deal with criminal cases as judges in many medium-sized and small courts exercise mixed functions in both criminal and civil law cases.

Furthermore, the expert team was unable to identify how many magistrates had been recruited since 1995, the year following which some of the most important laws to fight Mafia and organised crime had entered into force.

The Italian authorities were also not in a position to supply other important statistics such as the average caseload and the average number of trials per month, which would have allowed an assessment to be made of the workload that a prosecutor or judge has to handle.

2.1.2.3. Anti-Mafia National Public Prosecutor’s Office (D.N.A.)

The Anti-Mafia National Public Prosecutor’s Office (*Direzione Nazionale Antimafia - D.N.A.*) is a prosecutorial body, independent and autonomous from the Minister for the Interior and Justice. It was established by Giovanni Falcone, a magistrate who was murdered on 23 May 1992 along with his wife Francesca Morvillo and his bodyguards. With a view to combating Mafia-related organised crime more effectively, it was established within the Office of the Prosecutor General attached to the Court of Cassation in Rome (Decree Law no.367 of 20.11.1991, as amended by Law № 8 of 20.1.1992).

This law also created the Anti-Mafia District Offices (*Direzione distrettuale antimafia - D.D.A.*).

The *D.N.A.* is made up of prosecutors who constitute a judicial body mandated to oversee investigations and law enforcement forces. The *D.N.A.* has a central role in the coordination and organisation of investigations into “Mafia crimes” – as specified by section 51 para. 3a of the criminal procedure code – conducted by the District Anti-Mafia Offices.

Throughout the domestic territory, this role is played by the National Anti-Mafia Prosecutor or, upon his delegation, by Deputy Prosecutors belonging to the *D.N.A.*. The Anti-Mafia National Public Prosecutor’s Office, therefore, does not conduct investigations directly; in addition to taking over cases, it also coordinates investigations.

The National Anti-Mafia Prosecutor performs his duties with respect to the crimes set out under Section 51(3)(a) of the Criminal Procedure Code, namely:

- Conspiracy for the purposes of illicit trafficking of narcotic or psychotropic substances
- Mafia-type conspiracy (Section 416a of the Criminal Code)
- Conspiracy for the purposes of smuggling of tobaccos processed abroad
- Kidnapping for ransom
- Conspiracy for the purposes of committing offences under sections 600, 601, and 602 of the criminal code
- Enslavement or holding in slavery or servitude; trafficking in persons, Acquisition and transfer of slaves
- Offences committed by exploiting conditions indicated under Section 416a of the Criminal Code or with intent to further the activities of the organisations covered by this Section.

In the performance of his duties, the National Anti-Mafia Prosecutor may make use of law enforcement bodies specialised in combating organised crime (the *D.I.A.*; *Polizia di Stato*, *Carabinieri* and *Guardia di Finanza*) and issues instructions concerning the use thereof for investigative purposes.

Moreover *Polizia di Stato*, *Carabinieri* and *Guardia di Finanza* have specialised Units to conduct investigations delegated by the DNA-DDA Prosecutor Offices. Those Units are respectively: *Servizio Centrale Operativo (S.C.O.)*, *Raggruppamento Operativo Speciale (R.O.S.)* and *Servizio Centrale Investigazione Criminalità Organizzata (S.C.I.C.O.)*

These investigative bodies are functionally subjected to the National Anti-Mafia Prosecutor.

In carrying out the investigative link between police forces and the trial link between the various district offices in charge of interconnected investigations, the National Anti-Mafia Prosecutor may issue specific instructions to and convene meetings with District Prosecutors to resolve any disagreement that may have arisen, notwithstanding the specific instructions issued.

In order to meet specific investigative or trial requirements, the National Anti-Mafia Prosecutor may second prosecutors from the National Bureau or from District Offices on a temporary basis to handle criminal proceedings regarding “Mafia crimes”.

Furthermore, with respect to its own duties, the National Anti-Mafia Bureau was designated as the national correspondent of Eurojust (Art. 9, Law № 41 of 14.3.2005), as a body established to combat serious types of crime pursuant to Council Decision 2002/187/JHA of 28.2.2002.

2.1.3. The Financial Security Committee (FSC)

Following the events of 11 September 2001, Italy established a Financial Security Committee (FSC) by Decree Law № 369/2001, converted into Law № 431/2001 within the Ministry of Economy and Finance, as an independent body. The Legislative Decree № 109/2007 now contains the updated provisions regarding the Committee. The Committee coordinates all Italy's efforts to prevent and contrast the financing of terrorism. It expanded its work into the field of anti-money laundering with Legislative Decree № 231/2007. The Committee, chaired by the Director General of the Treasury, includes representatives of the following ministries, agencies and law-enforcement bodies and authorities: the Ministries of Economy and Finance, Foreign Affairs, Home Affairs and Justice, the Bank of Italy, CONSOB (the Stock Exchange Commission), ISVAP (Insurance Sector Supervisory Authority), the FIU (Financial Intelligence Unit), the *Guardia di Finanza*, the *Carabinieri*, the *Direzione Nazionale AntiMafia (D.N.A.)* and the Anti-Mafia Investigative Directorate (*D.I.A.*). Its key role is the coordination of different administrations and the analysis of risks, threats and vulnerabilities in the fight against money laundering and the financing of terrorism. The FSC may request members to perform inspections (mainly performed by *Guardia di Finanza*). Furthermore it has the authority to propose measures to enforce the effectiveness of the Italian preventive system in the field of AML/CFT, but has no power to coordinate investigations.

2.1.4. The Bank of Italy (Banca d'Italia)¹²

The Bank of Italy (*Banca d'Italia*) is a part of the Italian supervisory system for the financial sector that, according to its own supervisory principles and activities, carries out checks of varying intensity on intermediaries.

The legal framework on which the supervisory activities of the Bank of Italy rest, are derived from a variety of international, EU and domestic legal instruments and provide it with a wide array of instruments with which to supervise banks and financial intermediaries and intervene when problems occur, including the right to convene the board of directors or the shareholders' meeting and to impose restrictions on some activities.

In the most serious cases the Bank may adopt measures such as special administration and compulsory administrative liquidation and in the event of operational irregularities and violations of the law it may impose administrative sanctions on the guilty corporate officers.

The Bank of Italy also carries out checks limited to verifying satisfaction of the requirements to engage in the business and compliance with the sectoral legislation and that on money laundering and usury, without verifying the capital adequacy and sound and prudent management.

The Bank of Italy and the other financial sector supervisory authorities monitor compliance with the obligations established by Legislative Decree 231/2007. This Decree transposed Directive 2005/60/EC (the Third Anti-Money-Laundering Directive), which reorganized the powers and tasks of the various institutions involved in preventing and countering money laundering and the financing of terrorism.

2.1.5. The Italian Financial Intelligence Unit (FIU)

The Italian Financial Intelligence Unit (FIU) was set up in its present organisational structure at the Bank of Italy in 2008 as "*Unità di Informazione Finanziaria*" (*UIF*). It is charged with receiving and analyzing information on suspicious transactions (STRs), submitted by the various entities subject to reporting requirements, and forwarding these disclosures, together with the outcome of

¹² Cf.: <http://www.bancaditalia.it/vigilanza>

the analysis in a technical report, to Italy's competent investigative authorities. It is independent in its organization and functions and carries out STR analysis, produces anomaly indicators (subsequently issued by competent authorities) and operational schemes, performs on-site inspections, analyses aggregated data and conducts studies and research. Beyond that received through STRs, the FIU considers in its analysis any other available information.

At the end of 2009 the FIU had 97 staff.

As compared to the STRs received by the Italian FIU in 1997¹³ where 101 STRs were received, a substantial increase had taken place with 14 242 (plus 360 for financing of terrorism) STRs in 2008. A further sharp increase was noted for 2009 with 20 660 STRs (plus 406 for financing of terrorism), and although the figures for 2010 were not available at the time of the on-site visit a further significant increase was expected for that year¹⁴. According to the information received 65 % of the STRs are reported by the banks.

2.1.6. Financial Supervisory Authority (*CONSOB*)

According to information which is publicly available, the Italian Companies and Stock Exchange Commission (*Commissione Nazionale per le Società e la Borsa - CONSOB*)¹⁵ is an independent authority, with a particularly high level of operational independence.

The *CONSOB* was incorporated by Law № 216 of 7 June 1974, as a government administration to which stock exchange functions, previously carried out by the Italian Treasury, were transferred.

With the additional task of supervising listed companies, *CONSOB* became an independent authority about ten years later, when Law № 281 of 4 June 1985 acknowledged the Institute as a legal entity incorporated under public law with extensive organisational and operational independence.

The Commission is a collective body comprising a chairman and four members, appointed by decree of the President of the Republic, on a recommendation by the Prime Minister.

Its members are chosen from among persons in possession of specific skills and experience, as well as unquestionable morals and independence. They hold office for seven years without the option of renewal.

¹³ The law entered into force on 1 September 1997.

¹⁴ Cf. also: Banca d'Italia, Financial Intelligence Unit: Annual Report 2009, Summary.

¹⁵ Cf. www.consob.it

The decisions are taken by the majority of the members in attendance. For some decisions, the law states the need for an absolute majority (at least four votes in favour).

Each year, *CONSOB* submits a report to the Ministry of the Economy and Finance on activities carried out, on current issues and on the guidelines and strategies of its programme. Once it has been presented to the banking industry, the Ministry then forwards the report to Parliament with comments where appropriate by May of the following year.

According to the information retrieved from its website, *CONSOB* exchanges information with and enlists the collaboration of the *Guardia di Finanza* (Financial Police) for the performance of investigations and enquiries instrumental to the accomplishment of the institutional duties. A specific group within the *Guardia di Finanza* the *Nucleo Speciale Polizia Valutaria* deals with enquiries conducted by *CONSOB*.

2.1.7. Insurance Supervisory Authority (*ISVAP*)

The Italian Insurance Supervisory Authority (*Istituto per la vigilanza sulle assicurazioni private e di interesse collettivo - ISVAP*)¹⁶ - the supervisory body for private insurance - is endowed with legal status under public law, and was set up by Law №. 576 of 12 August 1982. *ISVAP* is an independent authority, fully autonomous in the juridical, financial, accounting, organizational and management field.

ISVAP's organs are: the President, who also acts as Director General, and the Board of Directors, made up of six members apart from the President. The chart contained in this section shows *ISVAP*'s internal organisation. The number of permanent staff serving in March 2011 was 354, while 15 units were hired with a fixed-term employment contract; they work according to Staff Rules.

To enhance the overview of the activities carried on by the single market participants, off-site supervision is exercised by two supervisory divisions which are complementary to each other and which organise their work by Insurance Groups. *ISVAP*'s on-site supervision is carried on by a single division, which is responsible for all inspections.

¹⁶ Cf. the information contained in: www.isvap.it

In exercising its functions *ISVAP* may require the supervised entities to communicate data and information - even on a regular basis - and order on-site inspections as well as specific investigations that may also be carried out in collaboration with the *Guardia di Finanza*; it may call the insurance and reinsurance undertakings' administrative and controlling bodies' members and directors general, the auditing companies' legal representatives, the auditing actuary, the appointed actuary for life business and the appointed actuary for motor liability insurance. Furthermore, it may also request that the general meeting be convened or that the undertakings' administrative and controlling bodies be called, and may convene them directly in cases where the individuals in question have failed to do so.

2.1.8. Training

2.1.8.1. Investigative authorities

In their answers to the questionnaire, the Italian authorities have declared that training of personnel specialised in financial investigations is performed through internal procedures aiming to update them on legislation and optimize procedures.

However, different approaches are taken by the investigative services that were visited by the evaluation team.

Guardia di Finanza

The *Guardia di Finanza* has a very elaborate training scheme encompassing all ranks and professional stages of the service. Divided into basic and post-graduate training, it is based on the principle of lifelong learning throughout the professional career of a *Guardia di Finanza* official.

Basic training extends over three years and is completed by earning a degree in economic and financial security science. Postgraduate training extends over another two years and ends with a master's degree on the same subject. The curricula of these studies cover a wide range of subjects that are necessary to tackle economic and financial crime and to fulfil the tasks of the *Guardia di Finanza*.

Polizia di Stato

Training of the *Squadre Mobili* personnel engaged in the fight against money laundering is performed through ad hoc and regular updating sessions concerning rules of procedure and legislation.

Carabinieri

Staff for the *R.O.S.* are selected from all *Carabinieri* units, and after a probationary period and the acquisition of the “Anti Crime Operator” specialization. Such staff are exclusively employed in operational activities and are administered by *Carabinieri* Territorial Headquarters.

The *Carabinieri* training course for “Anti Crime Operators” focuses on specialized investigative techniques.

In order to encourage synergy with the territorial units, the staff of the *R.O.S.* often attend professional refresher courses and conferences with the *Polizia di Stato* and the *Guardia di Finanza*.

D.I.A.

The *D.I.A.* has been training a considerable number of staff on the financial aspects of crime.

2.1.8.2. Judicial authorities

Training in Prosecutors’ Offices is considered to be a common learning process. If a prosecutor is assigned to a specialised group of the service (e.g economic crime or a *D.D.A.*), the Higher Judicial Council organises seminars for specialised training. However, according to information received from the Prosecutor’s Office in Rome (the largest in Italy), specialisation courses were short and, since there has never been a national school for prosecutors, the Superior Council of the Prosecutor’s Office is organising courses in the field of financial and economic crime.

2.2. Criminal policy

2.2.1. Proceeds-oriented Policy

In order to counter organised crime the Italian legislator has adopted several legal provisions, some of which are specifically aimed at tackling the proceeds from crime.

Italy attaches great importance to this aspect of fighting crime, and the policy of tackling illegal proceeds originates from an awareness that law enforcement measures alone do not reduce the danger emanating from criminal organisations based on profit, the latter being the reason for their existence and the basis for their effectiveness, stability and credibility. Hence the Italian authorities consider depriving both common and organised crime of their assets as an effective law enforcement tool, also in view of the fact that illegal assets and crime proceeds are reinvested in the economic-financial circuit and reused to make investments, including financial investments, in Italy and abroad.

The importance of a proceeds-oriented investigation policy becomes even more obvious when one considers that the assets (movables, registered movables and immovables, money, credits and business enterprises or company shares) recovered by the State will be used for social purposes (for instance *Legge 109/96*), and to finance judicial and police bodies.

Therefore the Italian authorities consider it extremely important that, during judicial police investigations, the illicit origin of assets (or the gathering of material evidence in this respect) is ascertained for the purposes of their seizure and subsequent confiscation.

A crucial stage of the seizure procedure is the exchange of information between the parties concerned. It goes without saying that this involves all police forces and the judiciary as well as bodies expressly set up to fight organised crime - such as the Anti-Mafia National Public Prosecutor's Office (*D.N.A.*) and the Anti-Mafia Investigative Directorate (*D.I.A.*) - or to manage seized organised crime assets and decide on their use (National Agency for the Management and Use of Seized and Confiscated Organised Crime Assets). Economic and property-related investigations imply, inter alia, access to the computer records of several public and private agencies. In this respect, banking institutions as well as professionals and associations etc. play an important role.

2.2.2. Prioritisation of tracing, seizure and confiscation of assets

Generally speaking the Italian authorities were not in a position to qualify the priority accorded to an investigation or prosecution of acquisitive crime in their official investigation or prosecution policy since, according to Italian legislation, prosecution is compulsory. As a result, it was not deemed possible to identify patterns of crime to be prioritised compared to others.

According to Italian legislation, crime fighting takes place concurrently at criminal level (evidence obtained makes it possible to bring charges against a subject for a specific offence) and at a preventive level (circumstantial evidence gathered – that cannot prove the offence yet - makes it possible to ascertain the disproportion between the suspect's life style and the revenue declared by him/her or by his/her relatives).

Both the above mentioned levels can result in preventive and/or criminal seizure and confiscation of assets/proceeds of crime. Both the prevention procedure and the criminal procedure are completely jurisdictionalized.

During the investigations aimed at adopting a preventive seizure measure, as a preventive property measure the competent authorities (this can be either the “*Questore*” (i.e. the provincial chief of police), the public prosecutor or the Director of the Anti-Mafia Investigative Directorate) are entitled to conduct investigations, also through the *Guardia di Finanza* Corps or the judicial police, into the standard of living of the suspect, his/her funds, assets and economic activities carried out. The explicit reference which the law makes to the *Guardia di Finanza* is based on the fact that they are best trained and equipped to conduct accounting enquiries and to examine financial and tax-related documents.

In this respect, reference should also be made to the practice in cases of money laundering investigations: Money laundering is referred to in Article 648a of the Criminal Code and consists of transferring assets, money and other items of value originating from non-culpable offences or carrying out activities aimed at concealing or disguising their illicit origin, and it is a form of delinquency that is often connected to other financial crimes. Law № 197 of 5 July 1991 (the so-called “anti-money laundering” law) had introduced restrictions on the use of cash. The Law has been abrogated when the Legislative Decree 231/2007 was introduced to implement the Third Money Laundering Directive (2005/60/CE).

It is important to highlight that such Decree compacts most of the Italian AML legislative framework in a single piece of legislation. As an example it draws a new AML institutional lay out, defining roles and competences of relevant actors (Minister of Economy, the above mentioned Financial Security Committee, Supervisory Authorities, FIU, Polices forces, etc.). It also re-defines Customer Due Diligence (CDD) obligations, following the risk-based approach, and indicates those cases where enhanced or simplified CDD applies; strengthens current limitations and prohibitions on cash payments and bearer passbooks.

The limitation currently applying concerns cash transactions between individuals: these cannot occur for an amount above 5000 EUR (as otherwise sanctions are being applied). Entities and persons obligated under AML/CFT legislation shall send a report of any suspicious transaction to the FIU whenever they know, suspect or have reason to suspect that money-laundering or terrorist financing is being or has been carried out or attempted. The Italian FIU forwards relevant reports to the Anti-Mafia Investigative Directorate (*D.I.A.*) and the *Guardia di Finanza* Corps.

More specifically, the FIU, whose activities consist of preventing and fighting money laundering and terrorist financing, analyses the STRs from financial intermediaries, non-financial operators and professionals. All obliged parties are required to send the FIU a report “whenever they are aware, suspect or have reasonable grounds for suspecting that money laundering or terrorist financing operations are underway or have been carried out, or that attempts are being made to this end”. Such a suspicion can be inferred from the characteristics, extent and nature of the operations or from any other circumstance on the basis of the functions performed by the subject and considering, inter alia, his/her economic capability. Ad hoc anomaly indicators, developed and periodically updated on a proposal from the FIU, facilitate the detection of suspicious transactions.

After collecting the necessary information, the FIU conducts an in-depth financial analysis and transmits its findings to a specialised unit of the *Guardia di Finanza* the *Nucleo Speciale Polizia Valutaria* and to the Anti-Mafia Investigative Directorate (*D.I.A.*), which in turn conduct their enquiries, informing the Anti-Mafia National Public Prosecutor (*D.N.A.*) in the case of organised crime involvement. Hence it is clear that such reports form a significant input for the authorities dealing with proactive investigations to detect organised crime assets and proceeds.

In addition, Law № 248 of 4 August 2006 made some amendments in terms of “reporting to the Financial Relations Records”, which must be informed about the existence and nature of any

relationship with banks or other financial intermediaries. Basically, any information on the subject having a financial relationship with banks or other financial intermediaries or effecting any operation or financial transfer whatsoever, outside an existing relationship, must be reported to the Financial Relations Records and stored specifying the holders' personal data.

Regulation (EC) No 1889/2005 of the European Parliament and the Council of 26 October 2005 on controls of cash entering or leaving the Community entered into force on 15 December 2005 and has been applicable since 15 June 2007. The national law - Legislative Decree № 195/2008 - has implemented internal measures also for intra-community cash movements and the Italian Customs Agency is empowered, under the national cash control regulations, and at the borders, to undertake controls on persons, their baggage and their means of transport, detain cash that has not been declared and collect any declarations submitted.

2.2.3. Tracing, seizing and confiscation of assets a separate goal of criminal investigations

The Italian authorities have ascertained that tracing, seizing and confiscation of assets forms an integral part of prevention and prosecution activities with a view to countering organised crime and that depriving criminal organisations of their assets is seen as one of the most effective law enforcement tools. For this reason it has been addressed by several laws aimed at improving and expediting procedures concerning assets recovery, management and use.

These laws are specifically:

- **Security Package Law № 125 of 24 July 2008:** In 2008 several provisions were introduced in order to combat organised crime from an economic point of view. For instance, it is now also possible to seize and confiscate assets which are fictitiously registered in the name of third persons; the Law envisages those cases in which a transfer of assets from one subject to another may be considered fictitious, with the ensuing possibility of declaring such transfers null and void; seizure and confiscation can be enforced even in the event of the death of the subject to whom the procedure applies.
- **Law № 94 of 15 July 2009** including Public Security Provisions introduced significant new tools in the fight against organised crime and, more specifically, new actions aimed at attacking Mafia-related assets.

In order to target criminal organisations' economic interests, said Law envisages the following:

- The “*Prefetti*” (Government's representatives at provincial level) of the province in which the assets seized are kept shall decide on their use (without prejudice to the competence of the State Property Office) in order to expedite the procedure of restitution to the community of seized Mafia property;
- Facilitations for seized Mafia business enterprises and companies (suspension of executive procedures and precautionary measures and non-enforcement of the quality of creditor and debtor in case of confiscation of assets, business enterprises or companies);
- Seized movables may be placed in the custody of a court with the power to use them, or assigned to police authorities to fulfil, inter alia, judicial police requirements;
- Creation of the National Register of Receivers, subdivided into two sections: a standard section and another section concerning corporate management experts who are entrusted with the management of seized business enterprises in order to avoid their bankruptcy;
- Possibility of enforcing property-related (but not person-related) preventive measures, irrespective of the persisting risk posed by the subject on submission of the enforcement proposal;
- To counter infiltration attempts by organised crime in public tenders, the “*Prefetto*” is empowered to order investigations to be carried out in the building sites of the business enterprises involved in public works;
- To widen the categories of subjects (financial intermediaries, real estate mediation agencies etc.) targeted by access and investigation measures in order to ascertain possible infiltration attempts by organised crime (the Minister for the Interior delegates his powers to the Director of the Anti-Mafia Investigative Directorate).

In order to counter racketeering practices, the law prescribes that entrepreneurs who do not report extortions, save in the case of necessity or self-defence, will be excluded from public tendering procedures.

- Moreover, **Decree-Law № 4 of 4 February 2010**, converted into **Law № 50 of 31 March 2010**, established the National Agency for the Management and Use of Seized and Confiscated Organised Crime Assets (*Agenzia Nazionale per l'Amministrazione e la Destinazione del Beni Sequestrati e Confiscati alla Criminalità Organizzata*). This body has

to ensure the unified and effective management and use of such assets by constantly liaising with judicial and other authorities concerned in order to guarantee the swift reuse of said assets.

- The **Extraordinary Anti-Mafia Plan** – The Parliament is passing a bill by means of which the Government intends to launch a new far-reaching strategy to finally defeat organised crime. The new law includes major amendments aimed, on the one hand, at rearranging, rationalising and supplementing the whole set of provisions in force in relation to anti-Mafia regulations, preventive measures, anti-Mafia certificates and undercover operations and, on the other, at introducing new regulations and tougher controls on public tendering procedures, tracing related financial flows and attacking Mafia assets as well as combating the eco-Mafia more effectively, inter alia through targeted action by the Anti-Mafia Investigative Directorate (*D.I.A.*).

2.3. Conclusions

- The visits to the different law enforcement and judicial entities have revealed the specific situation, challenges and risks from organised crime (OC) that Italy is facing in its daily routine, which is highly specific with regard to the threat of OC and Mafia-type OC.
- In Italy many actors are entrusted with and involved in the fight against financial crime and the conduct of financial investigations. Law enforcement agencies in Italy are under different ministries – *Arma dei Carabinieri* under the Ministry of Defence; *Polizia di Stato* under the Ministry of the Interior; *Guardia di Finanza* under the Ministry of Economy and Finance. The three aforementioned Police Forces are coordinated, at a national level, by the Department of Public Security of the Ministry of the Interior (the Minister of the Interior and the Chief of the Italian Police - General Director of Public Security - are National Authorities of Public Security), whereas, at a provincial level, they are coordinated by the *Prefetto* and the *Questore* (who are both Provincial Authorities of Public Security). The experts had the impression that this sometimes resulted in a disproportionate effort having to be invested in coordination rather than in the capacity to accomplish the task at hand. The evaluators also noted that the Italian authorities were coordinating their efforts, both in the field of the different police services and in those ministries responsible for economy and finance. On the police side, such coordination takes place in the *Direzione Centrale della Polizia Criminale* and the *Servizio*

Cooperation Internazionale di Polizia; at the level of the Ministry of Finance, the Financial Security Committee acts as a coordinating body in the field of prevention of money laundering and terrorist financing. These coordination centres aim to avoid any overlap when investigating, establishing the analytical and preventive strategies against OC and launching the witness program, which is sorely needed.

- The Italian Customs Agency, although no law enforcement agency, exercises police powers in specific customs matters such as e.g. the fight against customs frauds (smuggling, drug and weapons trafficking, counterfeiting, infringement of goods safety regulations, smuggling of tobacco products, under-invoicing, trafficking in illegal, hazardous waste and goods, control over EU VAT compliance activities).
- The evaluation team has gained an insight into how the Italian system to tackle financial crime and conduct financial investigations works. It has become apparent that the fight against organised crime is one of the country's priorities. In this way, the combating of all financial crime related to Mafia crime has encouraged Italy to set up new structures, policies and tools. It was remarkable to note how much effort, funds, and means are currently directed at dismantling OC structures. On the other hand, financial crime which is not linked to OC suffers from a lack of human resources allocated to combat it and consequent delays, leading to a high degree of withdrawal from the investigations.
- The five police services are fully aware of the need to coordinate and share the information that is stored in a unified police database. The evaluators were told that the databases contained information from all police entities and, conversely, were accessible to all police bodies.
- The evaluation team noted that strategic analysis is common practice within all the police services visited and is fed by information from every available source. The investigative bodies and prosecutors combating economic and financial crime related to organised and Mafia crime appeared to be highly and skilfully specialized. The team noted that the *Guardia di Finanza*, *Polizia di Stato* and *Carabinieri* were well trained and showed a high level of commitment and motivation to investigate OC. Similarly, the *Direzione Investigativa Antimafia (D.I.A.)* is a powerful inter-force body comprising of investigators seconded by *Carabinieri*, *Guardia di Finanza* and *Polizia di Stato* with broad access to the financial information from the Financial Relation Records (Revenue data base) and from the STRs

forwarded by the FIU. They have powers to seize assets as a preventive measure and to carry out preventive wiretapping for intelligence purposes with judicial authorization. The information obtained in such a way, however, cannot be used as judicial evidence before the trial.

- The *Direzione Nazionale Antimafia (D.N.A.)* as a prosecutorial body is autonomous and independent from the Ministers for the Interior and Justice. According to the information received, the prosecutors enjoy full independence in cases assigned to them. They are well trained and highly committed to tackling OC.
- The team noted that the specialization and training of the law enforcement agencies and prosecutors led them to identify new typologies of OC, such as the infiltration of Mafia groups in public tenders. Raising awareness of such a phenomenon goes beyond standard investigation and pursues new preventive measures such as an “anti-Mafia certificate”, which is used to check the references and backgrounds of supplier companies.
- Apart from prosecutors in the specialized agencies, who are themselves highly specialised, those based in the normal courts could benefit from the possibility of specializing and from training in economic and financial crime-related matters.
- The National Agency for the Management and Use of Seized and Confiscated Organised Crime Assets (*Agenzia Nazionale per l’Amministrazione e la Destinazione del Beni Sequestrati e Confiscati alla Criminalità Organizzata*) is a fairly new body which was set up in February 2010 and which is considered to be an effective tool for optimizing the recovery of illegally gained assets and the management of seized assets. The remit of the new body is quite broad and comprises the management of seized and confiscated assets, properties and companies as well as their disposal. The management includes all aspects of the confiscated asset: from legal to tax, to those pertaining to the laws and workplace safety. The Agency maintains an updated database identifying all seized and confiscated assets. Furthermore, this new institution is conducting a follow-up of assets or properties following their disposal in order to avoid new infiltrations from organised crime groups. The agency also advises on such matters during the judicial stages of proceedings.
- There are clear differences between investigations into standard criminal associations and those of the Mafia type and organised crime: the investigative bodies for Mafia-type crime have broad access to sensitive and confidential information contained in the STRs forwarded by the FIU, the Financial Relations Records and other strategic analysis instruments.

- Being an administrative body within the Bank of Italy, the Financial Intelligence Unit acts as the AML Centre, in charge of being the initial filter for the STRs. The FIU has established mechanisms and bridges to retrieve and exchange information from the law enforcement bodies as *Guardia di Finanza* and *D.I.A.*.
- The experts felt that in order to increase efficiency and speed up the assessment from the FIU, liaison officers from the law enforcement bodies in the FIU's analysis centre with direct access to the police database would represent an improvement on the earlier assessment of the STR or UTR, and a swift assessment by the FIU could reinforce freezing powers in real time. Contrary to what is provided for by international and EU standards the Italian FIU presently does not have access, neither directly nor indirectly, to law enforcement information relevant for the analysis of STRs;
- As a general rule, criminal proceedings in Italy are organised in two stages: a pre-trial stage followed by a trial stage, which normally involves adjudication by the first instance court and a right to up to two appeals on the merits of the case and on points of law respectively. A recurring problem in Italy that the experts have encountered is the excessive length of judicial proceedings. This issue has already been addressed by various international fora, including a monitoring exercise carried out by the Committee of Ministers of the Council of Europe, looking inter alia at the measures taken by the Italian authorities to resolve this problem¹⁷. On the other hand, the rules on limitation periods applicable in criminal cases provide for an ultimate period which may not exceed one and a half times the length of the basic limitation period, amounting in principle to 5 years. Therefore the ultimate limitation period may not exceed seven and a half years. It applies to the totality of the proceedings at all stages and is not subject to interruption or suspension. In practice it implies that the whole pre-trial stage and the subsequent trial, including the proceedings in the Court of Cassation, should be accomplished within the prescribed period in order for an effective verdict to be delivered by the court.

Given the above state of affairs in Italy and taking into account the complex nature of financial investigations, which would often imply extensive court hearings, there are sufficient grounds to conclude that although strong evidence may have been collected, the majority of judicial proceedings on financial crimes may simply be dismissed because the

¹⁷ Cf.: Interim Resolutions CM/ResDH(2009)42 and CM/ResDH(2010)224

limitation period has expired, thus precluding the possibility of a court decision on the merits of the case.

- Among other factors, the efficiency of the system put in place to tackle financial crimes is measured on the basis of the number of successful investigations resulting in effective sentences in court. The evaluation team therefore deemed it necessary that the Italian authorities ought to consider effective strategies and subsequently set up an action plan with clear timelines including measures addressing the problem of the excessive length of criminal proceedings, while ensuring that cases involving financial investigations are decided on a factual basis.
- From the information received from the replies to the questionnaire and during the visit, it appeared that prosecutors at regional level do not receive any special training or preparation but are rather learning through practice. While on the one hand Italy has a highly trained and specialised police force, particularly the *Guardia di Finanza*, on the other hand it appears to have prosecutors who do not receive any special training on the subject. The experts are of the opinion that in such a setting the efforts of an investigation might be at risk. The regular training seems to be focused more on updates of legislative amendments, etc. and only to a lesser degree (the extent of which could not finally be established during the evaluation) to special expertise in the field of combating economic or financial crimes. With the exception of those prosecutors who deal with Mafia-type crimes, the training of specialised prosecutors does not seem to be sufficient. The experts feel it necessary to note that quality training is also a motivating factor and essential in order for them to do their work properly.
- The expert team was unable to establish during the on-site visit whether the portion of the assets that would only be partially confiscated was taxed when it was returned to the perpetrator.

3. INVESTIGATION AND PROSECUTION

3.1. Information and databases available

3.1.1. Databases and Registers

3.1.1.1. The Multi-Agency Information System

The Multi-Agency Information System and Data Processing Service of the Central Directorate of the Criminal Police provides an information system into which data is fed exclusively by the Italian police forces (*Polizia di Stato*, *Carabinieri Corps*, *Guardia di Finanza Corps*, *Prison Police* and *State Forestry Corps*), and which can be used and accessed not only by the former but also by several other services (e.g. intelligence and security services or municipal police) that have a role to play in public security.

The database contains the following information:

- information relating to all offences laid down in the Criminal Code and specialised legislation,
- other facts of interest for the police forces (e.g. lost documents, suicides, forest fires),
- violations as provided for by the Criminal Code (e.g. failure to comply with provisions issued by competent authorities),
- administrative violations (e.g. gambling)

The system can be used for a large variety of investigative and analytical tasks.

3.1.1.2. Financial Relations Database¹⁸

Italy has a national Financial Relations Database¹⁹ maintained by the Revenue Agency.

It is a section of the central “Tax database” (*Anagrafe Tributaria*).

This database covers all relations (even occasional relations) between natural or legal persons and financial intermediaries. The information available is restricted to the existence and type of relation but not to the specificities of transactions.

The data base contains about 1 200 million bank accounts, 185 million notices on banking transactions not inserted in bank accounts, and over 9 000 financial institutions (banks, financial intermediaries, trusts, companies, etc.).

Through specific conventions and protocols concluded with the Revenue Agency, the database is also available to the following entities during the course of their activities:

¹⁸ With regard to the question whether this database could be understood as a centralised register of bank accounts the Italian authorities have informed after the on-site visit that « The Financial Relations Records doesn't contain detailed information (account number, date or amount of transactions, etc...) connected to a single person or individual on bank accounts. This archive gives the possibility to know through electronic means (since January 2005) the following information:

- Personal information on customers (individuals or corporate bodies) and any other account holders/co-owners;
- Amount and kind/ type of relations and the financial institution where the bank account is kept;
- Start/end date of bank account.

The notices concern bank accounts kept since the first of January 2005. Information connected to nominees or persons who act on behalf of others also goes into the archive together with information on the transactions realized outside the nation by resident financial operators (if they don't have a legal autonomy).

The information contained in the data base is sent by financial operators to the Revenue Agency (according to Legislative Decree number 231/2007). »

¹⁹ Established under Article 7 (6) and (11) of Presidential Decree № 605 of 29 September 1973, as amended by Article 37 (4) of Decree-Law № 223 of 4 July 2006, amended and turned into Law № 248 of 4 August 2006.

- *D.I.A.* (Anti-Mafia Investigative Directorate)
- UIF (Financial Intelligence Unit)
- Equitalia (privately organised Italian Agency for the collection of taxes)
- Customs Agency
- Judicial authorities
- *Guardia di Finanza*
- *Polizia di Stato* (no protocol yet)
- *CONSOB* (no protocol yet)

During fiscal investigations the *Guardia di Finanza* Corps is entitled to access the data autonomously.²⁰

By the date of the visit, the Revenue Agency had dispatched more than 40 000 enquiries.

Traders are obliged to notify any existing relation and transaction carried out outside a continuous relationship, and to specify their nature and indicate the identity details of the holders and subjects maintaining a financial relationship or conducting any operation outside a continuous relationship, on their own behalf or on behalf of a third party, including the taxpayer's code number.

The database can be used for fiscal purposes, for searching and securing evidence and sources of evidence during criminal proceedings as well as for pre-trial investigations, for performing the functions provided under Article 371a of the Code of Criminal Procedure and during the subsequent procedural phases. In addition, the database can be used to conduct property-related investigations for preventive purposes as regulated by ad hoc law provisions, to enforce preventive measures and to carry out further investigations into STRs.

²⁰ The Italian authorities informed after the on-site visit that the access to the Financial Relations Database is provided for by Art.7 (6) and (11) of Presidential Decree № 605/1973, in accordance which the *Guardia di Finanza* is entitled to access the Database within:

- (a) **administrative proceedings** and in particular for the development of the financial investigations in the fiscal, VAT and income tax fields and for property assessments with the aim of preventing Mafia-type activities, money laundering and terrorism;
- (b) **penal proceedings**, in carrying out investigations for the search and acquisition of evidence or at any other stage of the preliminary or procedural inquiries.

In the Financial Relations Database the following data are specified for each financial relation reported:

- The type and date of start, change and termination. The records do not supply any information on the content of financial activities (e.g. balance or money transfers);
- Data detected, including the taxpayer's code of natural and legal persons, associates or third parties having connections with such relations as well as the type of connection.

With regard to extra account transactions, personal data are kept, including the taxpayer's code numbers of the subjects making transactions on their own behalf or on behalf of a third party. Reporting takes place just once for each calendar year, namely when the first transaction is made.

The existing records contain information on ongoing relations and on transactions made since 1 January 2005. Since 2007 an electronic procedure has been introduced to provide detailed information on each account held by an individual.

3.1.1.3. *Punto Fisco*

Siatel v2.0 - *PuntoFisco* is an information system platform by which the Italian Revenue Agency, according to a MoU, makes the data stored in the Tax Register available for an on-line access to Local Bodies (Regions, Provinces and Municipalities), Welfare Bodies (e.g. National Insurance Institute, State Employees National Insurance Institute, Industrial Accidents National Institute), Ministers and other Bodies (e.g. Health Authorities, Chamber of Commerce, State Auditors' Department, Universities, State Broadcasting).

3.1.1.4. *Telemaco*

Telemaco is an information system that allows the access to the Chambers of Commerce Archives and enables the users, by a web interface, to retrieve all the data on business structures which are subject to publicity in the Business Enterprises Register. The access is available on-line, without restrictions, upon payment.

Access to *PuntoFisco* and *Telemaco* bases is provided for to Officers/Agents of the judicial police belonging to the Italian Law Enforcement Agencies in order to carry out checks aimed at seeking

and acquiring evidence and sources of evidence in the course of criminal proceedings, both for the purpose of conducting preliminary investigations while exercising the functions provided for in Article 371 bis of the Code of Criminal Procedure and in the subsequent phases of criminal proceedings. It is possible to query such databases also while carrying out property-related investigations for the prevention aims laid down in ad hoc provisions of law regarding the implementation of prevention measures. Access to them is online and monitored through control procedures allowing unique user identification via user ID and password.

3.1.1.5. SISTer

SISTer constitutes a computer platform of the Territory Agency used for cadastral searches and mortgage surveys; all data concerning immovable property and transfers of real estate are accessible to judicial authorities and police forces and they are entitled to access data directly.

3.1.1.6. Databases of the Traffic Control Authority

The databases of the Traffic Control Authority allow computerised access to the National Vehicles Register and to the National Register of Driving Licence Holders (Article 226 of the Highway Code);

Judicial authorities and police forces are entitled to access the data directly.

3.1.1.7. Maritime registers

Registers of pleasure boats and pleasure ships are kept at harbour offices and contain information on pleasure craft and their owners. The data contained therein can be accessed by judicial authorities and police forces. All authorities entitled to do so may access data directly.

3.1.1.8. Other registers

Furthermore, Italy has several other registers from which information can be obtained by the appropriate authorities in the course of an investigation, e.g. the civil aircraft register or the register of race horses.

3.1.2. Cooperation at national level

3.1.2.1. Identification of bank accounts

As already referred to in Chapter 3.1.1, the **Financial Relations Database** allows a preliminary and swift attribution of a bank account to a specific person.

- The identification of an unknown bank account belonging to a specified person can take place by querying the financial relations database or by addressing all head offices of credit institutions operating in Italy.
- The identification of the unknown owner of a specified bank account,
- The identification of operations from and to a specified bank account in a specified period in the past,
- The monitoring of operations to and from a specified bank account in the future can only be effected by asking the head office of the bank where the account has been opened to provide relevant information.

As for preventive investigations, the Director of the *D.I.A.* has been permanently empowered by the Minister for the Interior to access and investigate credit institutions and financial intermediaries and to require the officials of such agencies to provide information and data on any document in their possession as well as any information deemed useful for performing the functions conferred.

3.1.2.2. Legal Framework

The provisions laid down in Article 248 of the Italian Code of Criminal Procedure stipulate that, during judicial police investigations and on the basis of the measures enacted by the competent judicial authorities, all measures regarding bank accounts which have been addressed in Chapter 3.1.2.1 above may be executed.

3.1.2.3. Types of crimes covered

All measures to obtain information on bank accounts, including the monitoring of movements to and from a specified bank account in the future (*as set out in Question 2.1(d) of the questionnaire*) can be applied during investigations into any pattern of crime.

3.1.2.4. *Duration of a measure concerning a bank account*

The maximum duration of the measure cannot be set *a priori*, since this depends on the requirements of the investigation and the autonomous decisions taken by the judicial authorities.

3.1.2.5. *Competent authorities*

All the above-mentioned measures may be requested or implemented respectively only through activities delegated by judicial authorities in the course of an investigation.

Furthermore, the Director of the *D.I.A.* is also entitled to request such measures.

The *Guardia di Finanza* Corps is entitled to direct access to the Financial Relations Database both for administrative enquiries and criminal investigations whereas the other police forces and judicial authorities can access this database only via the *Guardia di Finanza* or the Revenue Agency, pending completion of the necessary connection procedures.

Information stored in the above mentioned database is supplied by traders periodically, i.e. on a monthly basis, and is therefore updated accordingly.

3.1.2.6. *Notification of persons affected by the measure*

Article 329 of the Code of Criminal Procedure, lays down secrecy obligations, according to which investigations carried out by the public prosecutor and the judicial police must be kept confidential until the defendant can be informed of them but, in any case, no later than the end of pre-trial investigations.

3.1.3. Cooperation at European level

3.1.3.1. *Legal Framework*

Owing to the pending implementation and transposition of several European instruments (e.g. FD 2003/577/JHA, FD 2006/960/JHA) that have been adopted with a view to facilitating the cooperation of law enforcement within the European Union, judicial cooperation between Italy and other Member States is still governed by the European Convention on Mutual Legal Assistance in Criminal Matters, signed in Strasbourg on 20 April 1959, which entails a requirement to send letters

rogatory via the respective Ministries of Justice or, in the case of those Member States that are party to the Schengen Agreement, between themselves. Therefore any exchange of information that becomes necessary in cases of financial crime or in the course of financial investigations is governed by this legal framework.

3.1.3.2. Information requests via the ARO

As Italy at the time of the on-site visit had not yet established an Asset Recovery Office no information about the use and functioning of this instrument for an exchange as provided for by Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between such offices in the Member States in the field of tracing and identification of proceeds from, or other property related to, crime was available.²¹

3.2. Financial investigations and use of financial intelligence

3.2.1. Legal framework

Crime-related financial investigations are carried out in the context of normal criminal investigations.

Furthermore, Italian legislation provides for the possibility of carrying out financial investigations:

- With regard to preventive measures (Law № 575 of 31 May 1965), within the framework of extensive economic and property-related investigations into suspects of Mafia-type conspiracy or of organised crime offences (Article 51, paragraph 3a of the Code of Criminal Procedure);
- In order to prevent the financial system being used for the purpose of money laundering, in line with EU directives last adopted with Legislative Decree № 231 of 21 November 2007 and subsequent amendments thereto.

²¹ The evaluation team has been informed after the on-site visit that Council Decision 2007/845/JHA had been implemented at national level through an administrative measure (Chief of Police Decree) and that the International Police Cooperation Service within the Central Directorate of Criminal Police had been designated as the national Asset Recovery Office through notification of 3 May 2011. In order to fully implement the EU provisions on a technical-operational level, in compliance with the relevant domestic law, arrangements are being finalised with regard to both the flow of information to and from abroad with the various police forces/Directorates and the direct and/or indirect access to databases.

Within these contexts, authorities carrying out further investigations into suspicious transaction reports (*Guardia di Finanza* and *D.I.A.*) may obtain bank data without the prior authorisation of the judicial authorities.

Moreover, according to Italian legislation, revenue authorities (Revenue Agency and *Guardia di Finanza*) are also entitled to conduct financial investigations in the tax field in order to detect tax offences. This occurs without the prior authorisation of the judicial authorities but subject to internal authorisation.

3.2.2. Special legal powers and tools for investigating the financial aspects of criminal activities

No specific legal powers and tools for investigating the financial aspects of crime have been developed in Italy. According to the answers given in reply to the questionnaire, judicial authorities can conduct all types of investigations envisaged by the Code of Criminal Procedure for prosecution purposes and, inter alia, investigate the proceeds and /or financial aspects of criminal activities.

3.2.2.1. Inter-departmental cooperation

The presence on the national territory of various Police Forces requires a constant multi-agency coordination and planning activity which is performed by the Director-General of Public Security through an ad hoc staff office. Within the Ministry of the Interior's Public Security Department, the Office for the Coordination and Planning of Police Forces safeguards the strategic coordination of the police forces. This office is a multi-agency staff office, set up by Act № 121/1981.

Furthermore, at an operational level, inter-departmental coordination is ensured by the International police cooperation service in the Central Directorate of the Criminal Police.

3.2.3. Use and effectiveness of financial investigations in specific crimes

The expert team has received no specific information as to what impact the use and effectiveness of financial investigations had when investigating and fighting certain types of crimes.

3.2.4. Continuation of an investigation into the financial aspects of crime after closure of a case

The continuation of an investigation into the financial aspects of crime may be envisaged in the case of certain specific patterns²² of crime.

In addition, tax regulations envisage the possibility of taxing the proceeds of crime, if they have not been seized or confiscated following a court order.

3.2.5. Involvement of private experts in the investigations

The Italian authorities indicated that, if deemed useful, judicial authorities can avail themselves of consultants during the investigations.

However, the experience and competence of the *Guardia di Finanza* is also normally used in such cases.

²² In this respect the Italian authorities have informed after the on-site visit that in accordance to article 12 sexies of Decree-Law No. 306/1992 and further amendments, in case of specific offences (namely those under articles 416 bis, 629, 630, 644., 644 bis, 648 paragraphs 1 and 3, 648 bis, 648 ter of the Criminal Code, 12 quinquies paragraph 1 of Decree-Law No. 306/1992, 73 and 74 of the Presidential Decree No. 309/1990, 295 paragraph 2 of the Presidential Decree No. 43/1973, as well as those committed under the conditions provided for in article 416 bis of the Criminal Code or with a view to facilitating the criminal conduct of the organisations indicated in the same article, or also for purposes of terrorism or subversion of the constitutional order), “confiscation of money, assets or other things of value shall always be ordered whenever the convicted person cannot justify their origin and it turns out that, even through natural and legal persons acting on his/her behalf, he/she is the owner of or has them in some way at his/her disposal, their value being disproportionate to the income he/she has declared for tax purposes”. Such provisions establish a rebuttable presumption of unlawful accumulation of assets in relation to individuals convicted of said types of offences. Aforesaid convicted individuals are required to prove the legitimate origin of the assets they are the owners of or have at their disposal, even through persons acting on their behalf, provided that the value of such assets is disproportionate to their declared income or to their economic activity.

3.2.6. Financial intelligence

3.2.6.1. Financial investigations in the intelligence phase

The Financial Intelligence Unit, following proper analysis, forwards the suspicious transaction reports, together with a technical report, to the competent agencies responsible for further enquiries (*Guardia di Finanza* and *D.I.A.*) for anti-money laundering and counter terrorism financing purposes. During this last phase and on the basis of the findings obtained it is also possible to initiate criminal investigations. On the basis of an MoU the Anti-Mafia Investigative Directorate will investigate only those STRs for which a clear link with a Mafia-type organization can be suspected.²³

The experts were able to establish neither what form the cooperation of the investigative bodies with other authorities took in the intelligence phase with regard to financial investigations nor whether financial intelligence information served as a starter for criminal and financial investigations.

²³ The Italian authorities elaborated after the on-site visit that in this context, as far as cooperation is concerned, a memorandum of understanding has been signed with the Antimafia Investigative Directorate, according to which the DIA, in fulfilment of the competences it was ascribed, processes the reports that come out to be related to mafia-type associations (Article 416 bis of the Italian penal code); in the other cases, the Special onetary Police Unit of the *Guardia di Finanza* is competent. Referring to the cooperation with the other law enforcement agencies, at intelligence level, the *Guardia di Finanza* processes and analyses the data contained in its data banks and in other data banks to which it has access. In this context, the data stored in the SDI - a data base containing criminal records and other police information - are of crucial importance. Additional intelligence activities are also carried out at local level when the various units of the *Guardia di Finanza*, while processing the reports for suspicious transactions, obtain information on persons under investigation from the other law enforcement agencies.

3.3. Cooperation with Europol and Eurojust

3.3.1. Cooperation with Europol

3.3.1.1. Past experiences

According to the information received in the answers to the questionnaire, Europol support in the field under review mainly consists of exchanging information on money laundering and suspicious financial transactions. This has been the case since 2000, when a Protocol extended Europol's competence to money laundering in general, regardless of the predicate offence. This Protocol entered into force in Italy on 29 March 2007.

Italy contributes information to the AWF SUSTRANS, an Analytical Work File opened in 2001 aimed at collecting, storing, analysing and sharing information in order to identify subjects involved in international money laundering networks and suspicious financial transactions and to support the competent authorities in the Member States in preventing and combating all forms of criminality within the mandate of Europol related to this specific phenomenon.

The Italian agencies participating in AWF SUSTRANS are the *Guardia di Finanza*, the *Carabinieri*, the Anti-Mafia Investigative Directorate (*D.I.A.*) and the Central Operations Office (*SCO*) of the *Polizia di Stato*.

AWF SUSTRANS membership entails for Italy contributing data concerning ongoing investigations to allow for the preparation of operational analysis reports to assist investigations conducted in the Member States.

3.3.1.2. Expectations regarding Europol support for financial investigations

In their answers to the questionnaire the Italian authorities explained that since the Europol channel had been used to exchange information on money laundering and suspicious financial transactions, the analytical support provided by AWF SUSTRANS had proved a valid tool to support investigations in the Member States, and that it was highly desirable that this law enforcement channel be increasingly used by all Member States. Furthermore they pointed out that both AWF SUSTRANS and the EIS database need to be regularly updated with significant contributions on investigative activities through the Europol National Units, the sole liaison body between the competent authorities in the Member States and the European Police Office.

The Italian authorities noted after the on-site visit that the Europol Information System (EIS) will benefit from e.g. the development of the Europol Information System Automatic Data Loader software which would enable the automated transfer to the EIS of the data originating from national police forces via the Europol National Unit that is responsible for verifying, validating and sending to the EIS data concerning those forms of crime referred to in the EUROPOL Decision, which so far have been entered manually.

The Italian authorities informed that in order to make this new function operational a feasibility study has been started in Italy on the secure data transmission between the Europol National Unit and the National Contact Points through access recognition and encryption of the data forwarded.

3.3.2. Cooperation with Eurojust

3.3.2.1. Experiences of Eurojust support in financial investigations

Generally speaking, there has been a steady increase since 2004 in the number of fraud cases referred to Eurojust - including tax fraud, computer fraud, misappropriation of capital stock and VAT fraud - which rose to 214 in 2009. In addition, in seven cases referred to Eurojust, the offences had been committed to the detriment of the European Union's financial interests.

The number of coordination meetings held on fraud cases rose from 15 in 2008 to 20 in 2009, the majority of which were tax fraud cases (12) and VAT fraud cases (7).

Based on the experience of the Italian representatives at Eurojust, 58 cases were handled in the period from 2008 to 2009 originating from requests by Italian judicial authorities. Since Italy has not implemented legal instruments on mutual recognition, letters rogatory are still the main instrument to obtain evidence and the proceeds of crime from foreign authorities. This has inevitably caused delay and sometimes even failure in actions taken, due to persistent difficulties encountered with a number of countries which require compliance with the principle of dual criminality.

3.3.2.2. *Joint Investigation Teams*

Italy has not implemented Framework Decision 2002/465/JHA on Joint Investigation Teams²⁴.

However, during 2009 Eurojust continued to play an important role in the development and creation of joint investigation teams (JITs), both by providing general support and by assisting in operational cases. Eurojust National Members participated in 7 JITs and Eurojust was notified about the setting up of JITs in 10 cases. The figures given are, however, general figures and are not specifically related to financial crime.

Regarding joint investigation teams, the role of Eurojust in the setting up of such teams, as well as during operation and follow-up, usually in the form of prosecution, has been increasingly recognised by practitioners and is also reflected in EU legislation.

3.3.2.3. *Expectations regarding Eurojust support for financial investigations*

In light of the new Council Decision 2009/426/JHA and the broader legal framework that can be developed under the Lisbon Treaty, the Italian authorities expected growing support from Eurojust, also with regard to financial investigations. They expected this role particularly to be strengthened if Member States implemented the new legal instruments in a timely and accurate manner. It was highlighted that specifically with regard to JITs the new 'Eurojust Decision' specifically provides for such a strengthened role:

- Article 9 entitles Eurojust National Members, their deputies and assistants to participate in JITs acting as a national competent authority and/or in their capacity as members of the College of Eurojust. Furthermore it provides for Eurojust always to have the possibility of being a member of the JIT if it receives funding from the European Commission or Eurojust through the JIT funding project.
- Article 13 also recognises the role of Eurojust in promoting best practices in this area and stipulates that all Member States must inform Eurojust when a JIT has been set up.

Full implementation of the new Eurojust Decision in all Member States will enable Eurojust to become the only contact point in Europe in a position to provide the actual figures on the development and use of JITs in the EU, including in the specific area of financial crime and financial investigations.

²⁴ Council Framework Decision 2002/465/JHA of 13 June 2002 on Joint Investigation teams, OJ L 162 of 20.6.2002, p.1.

3.4. Conclusions

- The Financial Relations Database is an investigation support tool that enables law enforcement and other entities fighting financial crime and conducting financial investigations to quickly access information needed in this type of undertaking. The Revenue Agency manages and controls the data and the information can be exchanged at the request of the *D.I.A.* (Anti-Mafia Investigative Directorate), the FIU, the Customs Agency, the Judicial Authorities or the *Guardia di Finanza*.
- As regards the FIU, a comprehensive structure has been put into place. The overall institutional capacity demonstrated during the visit could be assessed as sufficient to fulfil the FIU functions in a satisfactory manner. A comprehensive list of reporting entities, including financial intermediaries, non-financial operators and professionals (lawyers and notaries among others) are obliged to report STRs. The financing of terrorism is addressed. Cash transactions are also covered. In general, it was observed that an increasing number of STRs are processed and transmitted for further scrutiny to the *Guardia di Finanza* and the *D.I.A.* On the positive side it should be noted that those reports are processed through an integrated information system operated by the *Guardia di Finanza* and the *D.I.A.*
- While banks have traditionally been and remain the biggest contributors to the number of STRs filed to the FIU, the share of these reports sent by other obliged entities is increasing. During the visit the evaluation team was informed that the control mechanisms put into place to monitor compliance with reporting obligations still needs improvement. Some of the interlocutors emphasised that if the banks, being the major financial intermediaries, did not comply with their obligation to report that could severely compromise the results of investigations, especially when an adequate preventive seizure was delayed.
- Although the FIU is not a supervisory agency it is also empowered with some inspection powers which, however, are only a complement to the primary functions conducted in this area by competent supervisory authorities, in charge of ensuring that obliged entities duly comply with AML/CFT obligations and that sanctions are levied when breaches are ascertained.
- The Italian authorities conceded that there were delays in complying with reporting duties by banks and that intermediaries – following the detection of a suspicion - could sometimes take

a long time to send an STR (more than two years in some cases according to the information given by the *Guardia di Finanza*). According to the testimony given by the *Polizia di Stato* banks usually report when a customer is going to close a bank account.

- The records of administrative sanctions imposed for infringements of the AML legislation are kept by the Ministry of Economy and Finance. The amount of administrative sanctions imposed during 2009 was equal to 2265, for a total amount of EUR 48 million (source: 2009 AML annual assessment).
- *Guardia di Finanza* and *D.I.A.* are the agencies responsible for follow-up of STRs transmitted by the FIU. However, there are other police authorities, such as the *Polizia di Stato*, which are competent to conduct financial investigations in cases which concern financial crimes. The evaluation team was informed that in such cases the lack of information on suspicious transactions could compromise the successful outcome of the investigation. The experts therefore thought that it would be beneficial for all authorities competent to conduct financial investigations to be granted access to the tools and existing information relevant to the investigations they conducted. Inter-agency cooperation should be strengthened in this regard.²⁵
- All authorities whom the evaluation team met in the course of the on-site visit pointed out that the absence of criminalisation of trading in influence and so-called self-laundering (where the laundering of the proceeds of crime is effected by the perpetrator of the predicate offence) are in some cases an obstacle to effective combating of financial crimes. A comprehensive legislative framework against financial crimes should provide for criminalisation of recurring forms of that type of crime. The experts would therefore encourage the Italian authorities to address this issue accordingly.
- In the field of economic and financial crime Italy is a member of the Analytical Work File (AWF) SUSTRANS (suspicious transactions and money laundering), AWF MTIC (missing trader intra-community fraud or VAT carousel fraud), AWF SMOKE (illicit tobacco trade) and AWF COPY (product counterfeiting). In relation to the Euro and other means of payment, Italy is also a member of AWF SOYA and AWF TERMINAL respectively.

²⁵ Following the on-site visit the Italian authorities have emphasized that while the *Guardia di Finanza*'s central AML role (along the *D.I.A.*) has been confirmed by a Ministerial Decree from the Minister of the Interior of 28 April 2006 and information on STRs is handled by these bodies, this does not prevent information from being shared with other police forces which may obtain the information relevant to their own investigation.

- Although Italy is one of the biggest EU Member States, the number of cases initiated by Italy at Europol remains low. In particular, only a small proportion of those cases initiated refers to financial crime and financial investigations and the vast majority actually concern the communication of single seizures of forged banknotes in Italy. The same situation is reflected in the contributions to specific Europol projects in support of MS investigations against economic and financial crimes.
- In fact Italy comes behind several other countries (ranking 9th) both in number of cases initiated and overall exchange of messages. Typically Italy is a country which frequently receives requests from all other Member States and third parties, but at the same time makes limited use of the Europol channel to fulfil its intelligence needs.
- Nevertheless, in 2010, Italy's cooperation with Europol is characterised by clear signs of improvement in some of the sectors considered above, e.g. in the field of forgery of money, after the creation of a specific working group at Europol, together with France and Spain, which recently led to some successful operations in Italy.
- In the field of money laundering, Italy (and the *Guardia di Finanza* in particular) has started to contribute cash seizures with potential transnational links to AWF SUSTRANS. Moreover contacts are more frequent in relation to a series of investigations being carried out in this field by the Italian law enforcement authorities against non-EU criminal groups. Another positive sign is the joint presentation given by the *Guardia di Finanza* and the *Carabinieri* at Europol during the AWF SUSTRANS annual meeting on a case concerning the laundering of the proceeds of a multi-billion VAT fraud.
- In relation to Suspicious Transaction Reports (STRs) a technical obstacle seems to prevent Italy from contributing this vital financial intelligence to Europol. In its strategic plan 2010-2014 (Stockholm Programme), the Council of the European Union calls on the Member States to reduce the number of opportunities available to organised crime as a result of a globalised economy inter alia by further developing information exchange between the Financial Intelligence Units (FIUs) in the fight against money laundering.

- Within the framework of the European Information Management System their analyses could feed a database on suspicious transactions, for example within Europol.²⁶
- Article 9(4) of Italian Legislative Decree 231/2007 states that the Italian FIU “shall conclude memoranda of understanding with the Finance Police and the Bureau of Anti-Mafia Investigation establishing the conditions and procedures for such bodies to exchange police data and information, directly as well as indirectly, with foreign and international counterparts”. This article seems to constitute a solid legal basis for allowing the Italian law enforcement authorities concerned to exchange the relevant intelligence contained in Suspicious Transaction Reports (STRs) with international counterparts like Europol (the European Police Office). Unfortunately the lack of any such memorandum of understanding seems to pose a serious obstacle to cooperation.²⁷
- As far as product counterfeiting is concerned, it is worth mentioning one of the most successful operations supported by Europol in 2010. Coordinated by AWF COPY, Operation GOMORRAH targeted an Italian organised criminal group that was trafficking all over Europe unsafe counterfeit commodities such as power tools and generators. After several actions in other Member States, the final intervention was conducted in Naples by the *Guardia di Finanza* in May 2010. Similar improvements are yet to be seen in relation to cooperation with Europol in the field of the illicit tobacco trade and V.A.T. fraud.

²⁶ The Italian authorities noted after the on-site visit that the Italian legislation (and the EU provisions in the Council Decision 2000/642/JHA as well) prevented the FIU from providing information on STRs to Europol and that such information can only be sent, domestically, to competent law enforcement agencies and, internationally, to other FIUs and that any further use or dissemination was exceptional and subject to specific authorisation.

²⁷ Following the on-site visit, the Italian authorities informed that MoUs pursuant to Art. 9 (4) of Legislative Decree 231/2007 have already been prepared and that negotiations are underway and should be finalised shortly. In this respect, they emphasised that, while the said memoranda are pending, international cooperation can be conducted based on the applicable legislation.

Furthermore they explained that the memoranda of understanding referenced in Legislative Decree 231/2007 are designed to address and regulate the exchange of investigative information related to STRs, as disseminated by the FIU, between the recipient law enforcement agencies (i.e. *Guardia di Finanza* and *D.I.A.*) and their foreign police counterparts. One of the aims pursued by this provision is that of ensuring, by means of appropriate agreements, that the international exchanges between NSPV and *D.I.A.* and their foreign law enforcement counterparts do not conflict or overlap with the FIU-to-FIU exchange of information on STRs. The Italian authorities deemed this particularly important as some foreign competent police agencies have the national FIU embedded in their organisations and particularly in such cases, it is essential to keep the two domains of cooperation properly distinguished and coordinated.

- Although a fully-fledged member, Italy did not provide any contribution to AWF SMOKE in 2010. The project regularly identifies major Italian tobacco seizures reported in open sources, but the consequent requests for information did not prove to be effective as replies are very slow and contain few details. This lack of substance limits the ability of project SMOKE to provide ongoing analytical support, as the results of any subsequent investigations following the seizure are not shared and there is difficulty in obtaining detailed live intelligence from ongoing investigations. Due to its strategic position at the EU borders, Italy is traditionally a very important transit country for tobacco smuggling and should be a vital source of intelligence for AWF SMOKE.
- A similar situation can be found with AWF MTIC. No cases have been initiated in this field by Italy and the general level of contributions is low, given that VAT fraud is considered a matter of concern in Italy. Moreover those contributions are mainly triggered by specific requests from other counterparts, instead of being data on recently opened criminal investigations in Italy.
- It is also worth mentioning that during the visit a request for support by Europol was communicated to the members of the evaluation team. Answering a specific question on the relevance at EU level of Italian organised crime groups, the *Servizio Centrale Operativo* (*S.C.O.*) acknowledged that this is not only an Italian problem and said that in this respect the Italian law enforcement authorities (and *S.C.O.* in particular) would strongly support a project at Europol designed to target these criminal groups within an EU coordinated effort.
- From the information received during the visit it could be deduced that cooperation with Eurojust appeared to be well known by the law enforcement authorities and prosecutors.

4. FREEZING AND CONFISCATION

4.1. Freezing

4.1.1. At national level

4.1.1.1. Legal basis

In the Italian legal system the freezing of assets may be obtained through a seizure order issued for evidentiary or precautionary purposes for all criminal offences including financial crime.

There are three types of seizure:

- (1) **“Evidentiary” seizure** (Articles 253 ff. of the Code of Criminal Procedure), of things on which or through which an offence has been committed, as well as things which are the “product, profit or price” of an offence. This measure is taken during preliminary investigations conducted by the public prosecutor and, subsequent to prosecution, by the competent court.
- (2) **“Preventive” seizure** (Art. 321 of the Code of Criminal Procedure) of things relevant to the offence and the free availability of which may aggravate or prolong the consequences of the offence or facilitate the commission of other offences, or of things liable to confiscation. This measure may only be taken by the competent court based on a request by the public prosecutor, or in urgent cases by the public prosecutor or the judicial police, subject to validation by the court.
- (3) **“Preservative” seizure** or attachment (Art. 316 of the Code of Criminal Procedure), which may only be imposed subsequent to prosecution, when there are reasons to believe that there is no guarantee of payment of a fine imposed or when there is a risk of loss of the guarantees for payment of the fine, legal costs and any other money due by the convicted defendant to the State. This form of seizure is ordered by the trial judge upon request by the public prosecutor.

In addition, there are other forms of seizure and confiscation of property which may be applied outside criminal proceedings and regardless of a conviction, but as a consequence of a person’s illicit behaviour (legislation on preventive measures).

4.1.1.2. *Types of crime for which the measure can be obtained*

A seizure order may be issued within criminal proceedings with regard to any criminal offence, provided the above conditions are met.

The “preventive” seizure of property liable to confiscation is limited to the offences for which this measure is envisaged, namely:

- pursuant to Article 240 of the Criminal Code, things which generally constitute the “product, profit or price” of an offence, as well as things whose manufacture, transportation or possession constitutes an offence;
- property which constitutes the “profit” or “price” of offences such as embezzlement of public funds; misappropriation to the detriment of the State; unlawful collection of funds to the detriment of the State; extortion by public officials; corruption; (unsuccessful) incitement to corruption; embezzlement, corruption and incitement to corruption of members of EC bodies or foreign countries. If such property belongs to a person who was not concerned in the offence or if the seizure order cannot be enforced, other property of corresponding value available to the offender will be seized and confiscated;
- things which were used or intended for use in the commission of Mafia-type conspiracy and things which are the “product, profit or price” or the reinvestment thereof;
- property and sums of money derived from usury;
- property which constitutes the “product or profit” of such offences as handling stolen goods, money laundering, investment of money and goods of illegal provenance;
- property, money and other things of value whose legitimate provenance cannot be proved by a defendant convicted of certain offences (embezzlement of public funds, extortion by public officials, corruption, usury, handling stolen goods, money laundering, investment of money and goods of illicit provenance).

4.1.1.3. *Duration of the measure or, where applicable, conditions for a prolongation of the measure*

There are no time limits for seizure measures taken within criminal proceedings.

Seizures ordered in the context of proceedings for the application of preventive measures lapse if a final decision is not taken within a year, with a possible extension for a further year in very complex cases.

4.1.1.4. Authority competent to take/request the measure

In general, as with any other court order, a seizure order is normally enforced by the public prosecutor, who is assisted by the judicial police for the actual execution of the order.

“Preventive” seizure is enforced:

- (a) on movable property and on debts, in accordance with the provisions of the civil procedure code on debtor or third party attachment;
- (b) on registered immovable or movable property, with registration of the relevant order with the competent agencies;
- (c) on corporate assets organised to operate a business, in accordance with the procedure applicable to individual items of property seized, and with the property being handed over to a receiver and the measure entered in the relevant company register;
- (d) on stocks and shares, with the measure being recorded in corporate books and in the company register;
- (e) on dematerialised financial instruments, including public debt instruments, with registration of the specific account held with an intermediary pursuant to Article 34 of Legislative Decree № 213 of 24 June 1998. Article 10(3) of Legislative Decree № 170 of 21 May 2004 applies.

4.1.1.5. Information of persons affected by the measure

If the person affected is present during the execution of the seizure order, he/she obviously receives immediate notification of the seizure report.

Otherwise, the seizure report is lodged within three days with the public prosecutor’s secretariat and notification thereof is served on the person concerned.

If the seizure is carried out by the judicial police, the suspect is notified of the validation of the measure.

4.1.1.6. Legal remedies for the person concerned by the measure

The person concerned may appeal the measure to the relevant court section both with regard to questions of law and to the substance of the measure.

Additionally, the person concerned may apply for the lifting of the seizure either to the public prosecutor or the court and file an appeal against the decision to reject.

Court decisions may be challenged with regard to questions of law before the Supreme Court of Cassation.

Special provisions apply to prevention measures.

A seizure order may be cancelled – both with regard to questions of law and to the substance – by the court competent to decide on the appeal, or withdrawn by the public prosecutor or the issuing court in the absence of the circumstances that allow seizure. The seizure order may also be cancelled by the Supreme Court of Cassation on questions of law.

4.1.1.7. *Management of seized assets*

Following the adoption of a seizure order the judicial authority appoints a custodian specifying the rules of custody, ranging from mere preservation of the asset to the operation of business in the case of corporate assets. In the latter case, a receiver is appointed from a special national register.

In the case of property seized in the course of proceedings for the application of prevention measures a receiver is always appointed. Registered movable property (cars, vessels) may be assigned to the police force which made the seizure for use in their institutional activities.

The National Agency for the Management and Use of Seized and Confiscated Organised Crime Assets (*Agenzia Nazionale per l'Amministrazione e la Destinazione del Beni Sequestrati e Confiscati alla Criminalità Organizzata*) has only very recently been established, in February 2010, for the administration and disposal of property seized and confiscated from organised crime syndicates. This agency liaises with the judicial authority to arrange for the future assignment of seized property once the final decision on confiscation has been made. During the seizure phase, the agency provides assistance to the judicial authority and the receiver.

4.1.2. Cooperation at European level - Implementation of Framework Decision 2003/577/JHA

Italy has not yet implemented Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence.²⁸

²⁸ OJ L 196, 2.8.2003, p. 45.

The implementation of FD 2003/577/JHA was envisaged by Law № 34 of 25 February 2008 concerning "Provisions to fulfil the obligations deriving from Italy's membership of the European Communities (Community Law 2007)", in particular in Article 28 ("Delegation to the Government as regards implementation of Framework Decisions") and Article 30 ("Guiding principles and criteria for the implementation of Council Framework Decision 2003/577/JHA").

However, at the time of the on-site visit implementation was pending, inter alia due to the early dissolution of Parliament, so that domestic Italian law has not yet been harmonised.

Consequently, with regard to judicial cooperation with Italy, the applicable instrument is the European Convention on Mutual Assistance in Criminal Matters²⁹ (the 'Strasbourg Convention') of 1959. Therefore, requests for assistance have to be made in accordance with the procedure set out in Articles 14 ff., by sending letters rogatory via the respective Ministries of Justice or, in urgent cases, directly. The judicial authorities of countries that are parties to the Schengen Agreement may directly exchange letters rogatory between themselves.

In any case, the decision on the execution of a request under FD 2003/577/JHA rests with the judicial authority, which may invoke the clause referred to in Art. 1 of the 1959 European Convention on Mutual Assistance ["The Contracting Parties undertake to afford each other the widest measure of mutual assistance (...)]. For a competent authority of a Member State in which Framework Decision 2003/577/JHA has been implemented it is only possible to issue a freezing order together with a certificate and forward it to a Member State for it to be treated as a request for mutual legal assistance if it meets the necessary requirements of the European Convention on Mutual Assistance in Criminal Matters.

The Italian authorities have ascertained that the level of assistance provided in this area was very good, given the wide experience of Italian investigative and judicial authorities in this field. However, no statistics were available on the numbers of judicial cooperation requests.

²⁹ Council of Europe CETS. № 30.

4.1.3. Mutual assistance in the area of freezing

As referred to above, due to the non-availability of the EU instruments that have been created in this area, mutual assistance in the area of freezing is subject to the legal possibilities laid down in the 1959 European Convention on Mutual Assistance in Criminal Matters

4.2. Confiscation (including FD 2005/212/JHA and FD 2006/783/JHA)

4.2.1. Confiscation at national level

4.2.1.1. Legal basis

In Italy the legal bases that apply are basically the same as those for seizure of property liable to confiscation, already referred to in chapter 4.1 of this report, .

In addition to “traditional” criminal confiscation, other forms of confiscation are also possible:

(1) The so-called “extended confiscation”, pursuant to Art. 12e of Law Decree № 306 of 1992.

In the case of a conviction (or “plea bargain”), the court orders confiscation of the money, property or other things of value whose legitimate provenance cannot be proved by the convicted person and which the latter directly or indirectly (through nominees) controls, when the value is disproportionate to his/her declared income or business.

This form of confiscation is possible for the following criminal code offences:

- Articles 314, 316, 316a, 316b (embezzlement of public funds and misappropriation to the detriment of the State);
- Art. 317 (extortion by public officials);
- Articles 318, 319, 319b, 320, 322, 322a (corruption offences);
- Art. 325 (utilization of inventions or discoveries known by reason of office);
- Art. 416(6) (unlawful association to commit enslavement, etc);
- Art. 416a (Mafia-type association);
- Articles 600, 601 and 602 (offences of enslavement, trafficking in persons, purchase and sale of slaves);
- Articles 629 and 630 (extortion and kidnapping for ransom);
- Articles 644 and 644a (usury offences);
- 648, 648a and 648b (handling stolen goods and money laundering).

Furthermore, “extended” confiscation may be executed for the following offences provided for by special laws:

- offences under Articles 73, excluding paragraph 5, and 74 of the Consolidated Law on drugs and psychotropic substances;
- offences committed for the purposes of terrorism and subversion of the constitutional order;
- smuggling offences in the cases referred to in Art. 295(2) of the Consolidated Law adopted by Decree № 43 of 23 January 1973.

(2) The so-called “**confiscation of equivalent value**”, applicable to cases where the confiscation of things which constitute the “product, profit or price” of the offence is not possible. Here the court orders the confiscation of money or property directly or indirectly available to the offender of a value equivalent to said “product, profit or price” of the offence.

This form of confiscation is possible for the following offences:

- corporate offences (Art. 2641 of the civil code);
- usury (Art. 644 of the criminal code);
- offences against public administration (embezzlement of public funds, corruption, extortion by public officials) according to Art. 322b of the criminal code);
- aggravated fraud (Art. 640c of the criminal code.);
- enslavement, child prostitution, child pornography, etc. (Art. 600f of the criminal code);
- cross-border offences provided for by Art. 3 of Law № 146 of 16 March 2006.

In addition to the various forms of “criminal” confiscation, there is also a form of “**preventive**” confiscation which may be imposed on a person against whom prevention proceedings have been instituted and who is unable to prove the legitimate provenance of the property he/she directly or indirectly (through nominees) controls, when the value of such property is disproportionate to his/her declared income or business. The measure is also applicable to assets generated from unlawful activity or which are the reinvestment thereof.

4.2.1.2. Authority competent to decide on the confiscation

Confiscation is ordered by the court at the end of trial proceedings, if all conditions provided for by law are met.

Preventive confiscation is ordered by the court at the end of prevention proceedings.

As a general rule, confiscation is enforced by the authority which ordered the measure.

In certain cases, including the case of prevention measures, there are special provisions governing the competence of first and second instance courts.

4.2.1.3. Information of persons affected by the measure

The measure of confiscation, both in ordinary criminal proceedings and in proceedings for the application of preventive measures, is always taken at the end of a trial where the arguments of the party concerned have been heard.

If the property is at the disposal of a third party, there are notification mechanisms in place to enable the person concerned to exercise his/her right to defence.

4.2.1.4. Legal remedies for a person affected

The person concerned may appeal a confiscation order to the territorial court on matters of law or fact, and to the Supreme Court of Cassation on matters of law.

4.2.1.5. Involvement of the ARO during this procedure

As Framework Decision 2007/845/JHA had not been implemented at the time of the on-site visit and Italy had not yet designated an Asset Recovery Office, no information on the involvement of the ARO in the confiscation procedure had been received.³⁰

After final confiscation, administration of the asset is assigned to the administration – initially, the Public Property Agency with territorial responsibility, now the new National Agency (*Agenzia nazionale per l'Amministrazione e la destinazione dei beni sequestrati e confiscate alla criminalità organizzata*). Where cash or financial instruments are confiscated, the agency returns them to the FUG (*Fondo Unico Giustizia*) or to the Erario (Ministry of Economy and Finance) in cases where the sums of money confiscated should not be used for the management of seized assets or should not be used for compensation for victims of mafia-type crime.

The Agency was created only in 2010 and works under the supervision of the Minister of the Interior and the control of the court of auditors.

³⁰ The Italian authorities have informed that – following the notification of the national implementation of FD 2007/845/JHA in May 2011 - in order to fully implement the EU provisions on a technical-operational level, arrangements were still underway.

The agency checks whether the returned assets are used for social purposes; if not, they take them back.

The recently created national agency is responsible for the handling of assets confiscated from organised crime syndicates.

4.2.1.6. Additional information related to possibilities for confiscation referred to in Article 3(2) of Framework Decision 2005/212/JHA of 24 February 2005

Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property³¹ has not been transposed.

4.2.2. Confiscation at European level

4.2.2.1. Implementation of Council Framework Decision 2006/783/JHA

Framework Decision 2006/783/JHA is in the process of being implemented. Law № 88 of 7 July 2009 containing "provisions for the fulfilment of obligations deriving from Italy's membership of the European Communities – Community Law 2008", in particular Articles 49 and 50 thereof, delegates the Government to implement Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders, setting out the relevant guiding principles and criteria.

The draft legislative decree, which has already been adopted by the Council of Ministers, is currently before Parliament for comments.

4.2.2.2. Expected solutions from the implementation of FD 2006/783/JHA

With a view to implementation of FD 2006/783/JHA in the not too distant future, the Draft Decree assigns tasks and competencies as follows: With regard to incoming requests, the recognition and execution of confiscation orders issued by other Member States will lie within the responsibility of the court of appeal; with regard to outgoing (i.e. those issued by Italy) requests, the responsibility of promoting recognition and execution of Italian confiscation orders rests with the public prosecutor attached to the court issuing the order. The principle is established that requests may be forwarded directly between the competent authorities of the issuing and executing States or via the Ministries of Justice designated as central authorities.

³¹ OJ L 68, 15.03.2005, p.49-51.

The expert team was informed that no practical guidance on the issuing of a confiscation order and the use of the certificate had been forthcoming at the time of the visit, nor had any subsequently been issued.

4.2.2.3. Current legal basis prior to implementation of FD 2006/783/JHA

As already referred to in this report, until FD 2006/783/JHA is fully implemented the European Convention on Mutual Assistance in Criminal Matters of 1959 remains the legal basis for cooperation in executing a confiscation order.

It is only possible for a competent authority of a Member State in which the Framework Decision has already been implemented to issue a confiscation order together with a certificate and forward it to Italy for it to be treated as a request for judicial cooperation under the "normal" regime if it meets the necessary requirements of the European Convention on Mutual Legal Assistance. In any case, the decision on the execution of a request rests with the judicial authority, which may invoke the clause under Art. 1 of the European Convention on Mutual Legal Assistance of 1959 [“The Contracting Parties undertake to afford each other the widest measure of mutual assistance (...)”]

4.3. Conclusions

- In the Italian legal system, seizure is a preventive measure – the goods or property are removed from the person and are managed and administered by a judicial administrator under the direction of the judge.
- Confiscation is the measure adopted by the judge, as yet provisional pending the final expropriation of the asset. The asset is made over to the State and its management is transferred to the appropriate administrative authority.
- The Italian legal system has a set of measures that can be used to secure assets and deprive criminals of their resources after a final judicial decision. The idea of “hurt them in their assets” has long been familiar to Italian investigative and legislative authorities. Due to long experience in this field (especially in the fight against organised crime and Mafia-type crime) there is no need to emphasise the importance of it.

- However, statistics provided by the Italian authorities indicate that there is a big difference between the value of seized assets and confiscated assets. In 2009 the value of seized assets was 3.9 billion Euros, the value of confiscated assets 1.4 billion Euros (which means that only 1/3 of the seized assets were confiscated). Although the experts do concede that there might be many logical reasons for the differing numbers (seizure is a provisional measure at the beginning of an investigation and a lot can change during the investigation), the disproportion warrants a closer look at this issue to see if something needs to be changed. As the statute of limitations was also mentioned as a problem, it may also be one of the reasons behind the difference between those numbers. However, the experts were not provided with relevant statistics from which to draw a final conclusion.
- The Law on preventive measures is an effective tool for fighting organised crime (OC). One of the features of OC is the splitting up of roles, with consequent disassociation of the masterminds, the perpetrators and the front men. The organised groups plan their criminal activity as an enterprise. The traditional means of proof grounded in direct evidence is not enough to convince in court. The investigators must look for circumstantial evidence such as proof of membership of Mafia groups, criminal records, habitual offending, previous criminal records, an unbalanced financial profile, inconsistencies between official income and actual lifestyle and information from relatives' backgrounds. Such circumstantial evidence is independent and separate from pre-trial conviction. This pattern is similar to civil confiscation under Common Law systems. A panel of Judges is entitled to carry out the preventive measures. The prosecutors request seizure before the judge. In urgent cases the prosecutor can issue the order and ask for validation later. The preventive procedure is initiated by the *D.I.A.* (or by any subject entitled to issue a preventive measure, i.e. the "*Questore*" and the Public Prosecutor), the burden of proof being reversed on the defendant's side. The involvement of a judicial authority is needed for bank account and phone information. The prosecutor brings this request before the judge, who takes the decision within a short period of time. The administrative and preventive seizure is based on the social threat linked with Mafia-type associations.
- There are however, a number of weaknesses in the Italian system: non-implementation of the mutual recognition instruments creates serious difficulties for international cooperation in criminal matters. Important EU instruments on freezing and confiscation and instruments supporting such measures have not been transposed. These are in particular:

- Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence;³²
- Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union,³³
- Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime;³⁴
- Furthermore, Italy has not ratified the EU Convention on Mutual Legal Assistance of 29.05.2000³⁵ and its Protocol of October 2001³⁶, along with other important mutual recognition instruments, such as on JITs. As a result Italy cannot participate in EU joint investigation teams.³⁷
- In practice, the system in force results in severe delays. As an example, mutual legal assistance always takes place through the central authorities. Passive Judicial Assistance

³² OJ L 196, 2.8.2003, p. 45ff

³³ OJ L 386, 29.12.2006, p. 89ff

³⁴ OJ L332, 6.12.2007, p. 103.

The evaluation team has been informed after the on-site visit that this instrument had in the meantime been implemented at national level.

³⁵ Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (2000/C 197/01), OJ C 197, 12.7.2000, p. 1ff.

³⁶ Council Act of 16 October 2001 establishing, in accordance with Article 34 of the Treaty on European Union, the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (2001/C 326/01), OJ C 326, 21.11.2011, p. 1ff.

³⁷ The Italian authorities have informed after the on-site visit that, although they were unable to participate in a JIT under Framework Decision 2002/465/JHA of 13 June 2002 in conjunction with Art. 13 of the Convention, at international level, a similar instrument was provided for by Art. 19 of the UN Convention Against Transnational Organized Crime (ratified by Law No. 146 of 16 March 2006) and by Art. 49 of the UN Convention Against Corruption of 31 October 2003.

The discussion of a Bill on the establishment of JITs has been at a standstill in the Senate for many years due to problems of compatibility and transposition of the provisions in the code of criminal procedure as well as to consequences at the level of the relevant constitutional provisions. The Bill was eventually approved in the form of consolidated Law by the Senate on 6 April 2011 and is currently awaiting scrutiny by the Chamber of Deputies. As regards the ratification of the MLA Convention, the relevant Bill was submitted by the Government to the Chamber of Deputies on 20 February 2002. For direct cooperation between judicial authorities, the legal basis used in Italy is the Schengen Convention.

demands a three-step mechanism: Minister of Justice, Court of Appeal and Court of Cassation. The 1959 CoE Convention (CETS. 30) is still the common model. Direct exchange and assistance within Judicial Authorities is not seen as a standard channel. The urgency of the request is the only exception for direct contact within judicial authorities. The Italian desk of Eurojust devotes a lot of resources to building bridges with European authorities dealing with the same investigation, tracking letters rogatory and monitoring quick replies. A lot of time and resources need to be invested to obtain the right reply in time.

- It was interesting to note from the visit to the Rome Prosecution Office that standard financial crime has to undergo a lengthy procedure that often results in inefficiency and withdrawal of the prosecution.
- From a presentation given by the *Servizio Analisi Criminale* it was deduced that an unbalanced ratio of frozen assets to confiscated assets prevailed. The team noted that the figures for confiscated assets are lower than for frozen assets and that the rate decreases post-conviction.
- Italian law provides inter alia for preventive confiscation which may be imposed on a person against whom prevention proceedings have been instituted and who has not been able to prove the legitimate origin of his property. This system has proved efficient for confiscating a considerable proportion of assets of illicit origin outside criminal proceedings. It is enforced on the basis of past criminal record and inconsistencies between the tax returns and the actual standard of living of the persons concerned.

The evaluation team was, however, informed that international cooperation in this regard was extremely difficult, since there are no rules at EU level in this respect.

The recent communication by the European Commission entitled "The EU Internal security strategy in action: Five steps towards a more secure Europe"³⁸ envisages comprehensive legislation for strengthening the EU legal framework on confiscation, to be submitted in 2011 with the aim inter alia of facilitating mutual recognition of non-conviction-based confiscation orders between Member States.

In this regard, the experts see fit to further encourage the European Commission to consider this issue as an important factor in establishing a comprehensive legal framework for confiscation at EU level.

³⁸ (COM (2010) 673 final)

- As a general observation, it appeared that the Italian authorities make use in practice of various strategies which are intended to overcome some of the problems of the judicial system. This trend could be exemplified by the simplified investigation teams which the investigative authorities set up with partner countries for the purposes of smoother exchange of case-relevant information, or the number of bilateral treaties setting up a tailored framework for international cooperation, or the wide use of non-conviction-based confiscation which compensates for the excessive limitations on traditional confiscation, including its extended form, which is virtually unenforceable, often because cases are time-barred. The evaluation team, however, was not convinced that these measures could sufficiently bridge the recurring problems of excessive court proceedings or non-transposition of the EU instruments for judicial cooperation in criminal matters into the Italian national system.
- The experts were of the opinion that given the hypothetical length of court proceedings (the possibility of pursuing a case up through the court hierarchy for example) a thorough analysis
- of the current application of mandatory prosecution principles could clarify whether the possibility for a prosecutor to close a case in petty crimes could free capacity for more serious crimes, in which case the statute of limitations would also cease to be such a big problem;
- The peculiarity of Italy is the high level of mafia-related crime. Thus the creation of a new asset-managing agency is the result of a practical need. As the agency had only been in existence for 6 months at the time of the on-site visit, it is too early to evaluate the results, but there is no doubt that it will be (and already is) a very important tool in the fight against organised crime.

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5. PROTECTION OF THE FINANCIAL INTERESTS OF THE COMMUNITIES

5.1. Available mechanisms, particularly cooperation with OLAF

5.1.1. Measures to ensure pro-active transmission of information to OLAF

Article 76 of Law № 142 of 19 February 1992 established the **Anti-Fraud Committee**, whose tasks were reviewed by Presidential Decree № 91 of 14 May 2007 assigning further advisory and guidance functions for effective coordination of all activities related to the fight against fraud and irregularities in the fiscal sector as well as in the common agricultural policy and the structural funds.

It should be pointed out that one of the main tasks of the Committee consists in addressing all issues concerning the obligations of Article 325 of the Treaty on the Functioning of the European Union, as well as those regarding the information flow on illegal collection and recovery practices.

Within the Anti-fraud Committee the duties of the *Guardia di Finanza* Unit at the Department for Coordination of Community Policies of the Prime Minister's Office include handling, collecting and analysing the communications on irregularities and structural fund frauds detected by the various national authorities which have to be forwarded quarterly to the European Anti-Fraud Office (OLAF) in compliance with the obligations laid down by Regulation (EC) 1681/94 and subsequent amendments and by Regulation (EC) 1828/06. In addition, the said Unit – at the request of the European Commission - draws up a progress report on the implementation of the above-mentioned Article 325, containing information on all offences committed in relation to the management of EU funds, any new internal provisions and the organisation of the bodies responsible for specific checks.

Moreover, the above Unit compares the statements on "amounts awaiting recovery" drawn up under Article 8 of Regulation (EC) 438/01 by each national managing and paying authority with the data included in the relevant communications on irregularities recorded that are forwarded to the European Commission.

The **Italian agencies cooperating with OLAF**, within the framework of the relevant competence, are the *Guardia di Finanza* Corps, the Customs Agency, the *Carabinieri* Corps and the *Polizia di Stato*.

Legislative Decree № 68 of 19 March 2001 concerning the review of tasks of the *Guardia di*

Finanza Corps emphasizes the role of the Agency as the sole police force responsible for the protection of the economic and financial interests of the State and of the European Union and, by Decree of the Minister of the Interior dated 28 April 2006 on the “*Review of Police Forces’ Specialist Functions*”, highlights the priority role of the Corps in the implementation of tools preventing and countering fraud affecting the European Union.

Technical and operational cooperation relations between OLAF and the *Guardia di Finanza* Corps are still governed by the “Technical Memorandum of Understanding” of 4 October 1996 (signed with UCLAF, the pre-existing Anti-Fraud Coordination Unit) envisaging cooperation and exchange of information between the Contracting Parties in order to prevent, analyse, investigate and counter illegal activities affecting the financial interests of the Communities; the ensuing operational instructions intended for the *Guardia di Finanza* Corps are set out in Circular Letter 36000/RCI/5 of 11 June 1997 of the General Headquarters/Second Branch.

With regard to the operational practice shared between the *Guardia di Finanza* Corps and OLAF, particular importance is attached to "on-the-spot checks" ex Regulation (EC) 2185/1996 in relation to which assistance is usually requested (even though OLAF is not obliged to cooperate directly with national Authorities) as well as to frequent information-sharing and operational meetings and to an intensive and constant exchange of data for anti-fraud purposes.

The Italian Customs Agency is the main contact for the exchange of information and provides administrative assistance to ensure the correct application of the law on customs and agricultural matters referred to in EC Regulation 515/97.

In this context, there is a systematic exchange of information, data and documents aimed at dealing with cases initiated by OLAF (INF AM) in relation to possible EU fraud cases. In dealing with such cases (administrative investigations under reg. EC 1073/99 and reg. EURATOM 1074/99) OLAF collaborates with member countries participating, with their staff, in the missions carried out in third countries.

During the visits conducted by mixed teams composed of officials from OLAF and the customs administrations of member countries, investigations are carried out, coordinated by OLAF, with access to manufacturing companies, government agencies, shipping companies, etc., for the purpose of obtaining evidence to allow the detection of frauds and the recovery of payments due. In some cases, OLAF spoke in support of the member countries involved at a later stage, supporting coordination and exchange of information between customs administrations and the Courts.

The exchange of information between OLAF and the Member States (customs agency) referred to in reg. 515/97 pertains also to suspicions of irregularities, fraud trends and methodologies, regulatory gaps.

5.1.2. Possible role of the European Commission in a criminal investigation involving fraud against the financial interests of the Communities

According to Regulation (EC) 1073/1999 OLAF is a service that conducts administrative investigations and is entrusted with two basic tasks: the power to carry out on-the-spot inspections at the premises of economic operators suspected of irregularities and frauds to the detriment of the Community budget and secondly, the power to investigate officials and other servants of the Communities for fraud, corruption and serious failure to discharge professional obligations.

When the European Commission sues for damages in a criminal court in relation to offences affecting the financial interests of the European Union, the assessment in such proceedings is done by the European Commission Legal Service, subject to an Inter-Service Consultation, during which OLAF can express its opinion. This has occurred on many occasions, mainly in the customs sector as well as in relation to direct expenses and aid to third countries.

In Italy similar cases have been recorded in the customs sector (criminal proceedings based in Catania and Verona concerning illicit trafficking in bananas) or within the framework of investigations into cigarette smuggling activities in Montenegro (criminal proceeding instituted in Bari and pending appeal) as well as in relation to aid to third countries as a result of the investigations conducted into some Italian NGOs. At present, the Commission is assessing its position within the framework of a criminal proceeding based in Milan concerning direct expenses. In theory, the above procedure would be possible in other sectors, too; however, with regard to structural funds, for instance, the Member State is expected to assume that role, this being a case of so-called shared management of the European Union budget. This procedure applies in any European Union Member State.

5.1.3. Participation of OLAF officials in a criminal investigation

In the event of criminal inquiries, the sole function of OLAF agents/investigators is to act as expert witnesses for the Public Prosecutor at the request of a Judicial Authority and/or of Judicial Police Assistant at the request of the Judicial Police (whether by delegation or not).

In the former case the expert witness is appointed pursuant to ex Article 359 of the Code of Criminal Procedure: he/she must possess specific technical, scientific or other skills and carry out an activity not only consisting in the performance of concrete actions that imply a certain level of technical ability but also and above all in the critical analysis of the results of such activities. Hence, the expert witness plays a role also during the trial at the initiative of the Judicial Authority. The appointment does not require/involve the opening of a case/file at OLAF. On the contrary, the criminal proceeding is sometimes instituted as a result of or within the framework of OLAF's administrative investigations. In these cases, appointing an expert witness makes it possible for the Office (having administrative powers only) to maintain an active role in a criminal context. In the latter case, Article 348(4) of the Code of Criminal Procedure states that, within the framework of their autonomous activity or of an activity performed by delegation of the Public Prosecutor, the Judicial Police, should they not intend or not be able to undertake actions or carry out operations "requiring specific technical skills", are empowered to avail themselves of "suitable persons" who are obliged to give their services. Though legally possible, we are not aware of any such case.

5.1.4. OLAF participation in a joint investigative team (JIT)

As to participation in a Joint Investigative Team, the Italian legislation has not yet envisaged introducing it. The issue is being addressed by the Senate in its discussion of Bills AS 804 and AS 841.

5.1.5. Experience with JITs dealing with fraud against the financial interests of the European Communities

The Italian authorities' answers indicate that as yet there has been no experience with joint investigation teams (JITs) dealing with fraud against the financial interests of the European Communities.

5.1.6. Coordination with OLAF in concrete cases

Apart from the cases that have been referred to in chapter 5.1.1 above, Italy has various coordinating bodies for contacts with OLAF in concrete cases. As to the *Guardia di Finanza* Corps, the above-mentioned Technical Memorandum of Understanding envisages the channelling of requests

- from OLAF (requests for passive assistance), and
- to OLAF (requests for active assistance)

through the Head of the Second Branch of the General Headquarters who acts as sole contact point for the Corps.

A request for passive assistance initiates a procedure at central level whereby the information received is verified by querying databases and comparing the data with those that can be extracted from the *Guardia di Finanza* General File for the adoption of possible coordination measures.

Following this preliminary activity, a decision is taken at central level on the involvement - if any - of the competent operational unit in order to obtain the information necessary to outline the context of the investigation.

Requests for active assistance can be based either

- on a request made autonomously at central level or
- on a request for coordination-related information originating from investigations conducted by *Guardia di Finanza* operational units, so as to achieve the maximum level of efficiency thanks to the information-based and operational support provided by OLAF.

Thus, the Second Branch of the General Headquarters cooperates intensively with OLAF in all EU sectors of interest both by making requests for cooperation and international coordination connected to investigations carried out by *Guardia di Finanza* Branches and by supporting OLAF's activity in the performance of its duties.

5.1.7. Support expected from OLAF in cases related to fraud against the financial interests of the EU

In cases related to fraud against the financial interests of the European Union, cooperation with OLAF should result in:

- more effective law enforcement action in complex transnational fraud cases;
- coordination and exchange of data between the competent units of the Member States;
- experience sharing;
- improved cooperation with third countries.

5.2. Conclusions

- In the field of the Protection of EU financial interests, the different Conventions and Protocols (dating from 1995-1996-1997) have been ratified by Italy since 2009, but several problems of compliance remain.
- The most important problem relates to the length of criminal proceedings in Italy, highlighted by the Attorney General of the Supreme Court of Cassation and the First President of the Court of Cassation on 30/01/2009, as well as the Council of Europe (Interim Resolution CM/ResDH(2009)42), in combination with the Law of 5 December 2005, which in fact reduced the time bar for serious fraud to 5 rather than 10 years.
- Subsequently, interruption of prescription has been abolished/ and or very much restricted for cases of fraud and corruption.
- As a result, most of the complex cases of economic-financial crimes are mathematically likely to prescribe. This result is reflected in the follow-up of the OLAF investigations related to Italy. This situation is not in compliance with the obligation to impose effective, proportionate and dissuasive penalties on EU fraud.
- Besides, there is also an implementation issue as regards jurisdiction when the fraud affecting the EU's financial interests is committed by an Italian citizen outside the national territory, where Article 9 of the Criminal Code stipulates that a request must be made by the Ministry of Justice.

6. RECOMMENDATIONS

6.1. Recommendations to Italy

Given the present legal and organisational set-up, and taking into account the specificities of the Italian governmental and administrative services, the evaluation team came to the conclusion that cooperation between the different players works well in general terms. All practitioners met seemed to be highly motivated and dedicated to their duties. Nevertheless the evaluation team thought fit to make a number of suggestions for the attention of the Italian authorities.

The experts would like to summarise their suggestions in the form of the following recommendations:

1. Should improve the training of prosecutors in economic and financial crime matters and create a motivation system to encourage even more experienced and willing people to work in the field of financial investigations; such training should also be provided for judges: (cf. 2.3)
2. Should consider effective strategies and subsequently set up an action plan with clear timelines, including measures addressing the problem of excessive length of criminal proceedings, while ensuring that cases involving financial investigations are decided on their merits; (cf. 2.3)
3. All authorities conducting financial investigations should be granted access to the existing tools and information relevant to their investigations; inter-agency cooperation should be strengthened in this regard; (cf. 3.4)
4. Should effectively put into place rapid implementation of the EU instruments for mutual recognition and judicial cooperation in criminal matters; (cf. 3.4)
5. Should provide comprehensive training schemes on the implementation of those instruments and circulate guidance for the competent authorities to that effect; (cf. 3.4).
6. Should transpose the EU instruments on freezing and confiscation.
7. Should consider further strengthening of the control mechanisms put into place to monitor the compliance of the reporting entities with their reporting obligations under the AML law, including both regular planned inspections and random spot checks; (cf. 3.4)
8. Should establish clear policies of sanctions and inspections on the spot and fix reasonable deadlines for the banks to fulfil their duty to report unusual or suspicious transactions; (cf. 2.3)

9. Should consider, in order to reinforce the efficiency and speed of assessment of the FIU, appoint liaison officers from the law enforcement bodies to the FIU analysis centre, with access to the police database, with a view to better and earlier assessment of STRs; (cf. 2.3)
10. Should consider introducing legislation on criminalizing trafficking in influence; (cf. 3.4)
11. Should consider criminalizing self-laundering of money to reinforce the fight against e.g. Mafia group infiltration of public tenders and supplies; (cf. 3.4)
12. Should review the statute of limitations regime as provided for in the law of 2005 to bring the period of prescription into line with the actual length of the procedures; (cf. 4.3)
13. Should conduct a thorough analysis of the current application of mandatory prosecution principles (e.g. dismissal of case for petty crimes) and the possible savings that could be made; (cf. 4.3)
14. Should consider introducing changes to tackle the severe delays in criminal proceedings to avoid the numerous withdrawals; (cf. 2.3)
15. Should consider extending the period of limitation for fraud and swindling, taking into account the difficulties of investigating economic and financial crime; (cf. 2.3)
16. Should initiate a thorough analysis to find the reasons for the huge difference between assets seized and confiscated; (cf. 4.3)
17. Should assess the action taken in response to the recommendations made in this report eighteen months after the evaluation and report on progress to the Working Party on General Affairs, including Evaluations (GENVAL).

6.2. Recommendations to the European Union, its Member States, institutions and agencies

6.2.1. To the Member States:

18. Should study the financial investigations and preventive procedures contained in Law 575/1965, under which circumstantial evidence (habits, standard of living, asymmetry and disproportion between income and property) and seizure of assets regardless of conviction is enough to allow legal action against persons who are not going to be indicted. (cf. 2.2.2 and 4.3)
19. Should study the possible benefits of a financial database such as the Financial Relations Database maintained by the Italian Revenue Agency; (cf. 3.1.1.2)
20. To better fight organised crime at EU level, should introduce a common definition of organised crime and adopt special tools to fight the highest levels of organised crime;

21. Should study the benefits that institutions like the “*Agenzia Nazionale per la Amministrazione de la Destinazione del Beni Sequestrati e Confiscati alla Criminalità Organizzata*” could bring in the Member States (cf. 2.1.1.8).

6.2.2. To the European Commission

22. The European Commission is encouraged to consider the issue of mutual recognition of non-conviction-based confiscation orders as an important factor in establishing a comprehensive legal framework for confiscation at EU level (cf. 4.3).

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ANNEX A: PROGRAMME FOR VISIT

15 November 2010

- Arrival of experts -

Day 1 - 16 November 2010

Time	Subject
09.15	Picking up of delegation at hotel and escorting to Central Directorate of Criminal Police
10.00	Round table with institutional representatives and presence of the Director of the International Police Cooperation Service and of the Director of the Criminal Analysis Service
11.00	Presentation of EU delegates
11.30	Coffee break
11.45	DCPC (<i>Direzione centrale polizia criminale</i> - Central Directorate of Criminal Police) - International Police Cooperation Service
12.45	DCPC - SS.II
13.20	DCPC - Criminal Analysis Service
13.40	DCPC - Legal and litigation technical service
14.00	Lunch
15.15	Central Anti-Crime Police Directorate

Day 2 - 17 November 2010

Time	Subject
09.15	Picking up of delegation at hotel and escorting to National Anti-Mafia Directorate - Ministry of Justice
11.15	Coffee Break
12.30	Visit to Special operative service (<i>Reparto Operativo Speciale</i>) (<i>R.O.S.</i>) of <i>Carabinieri</i>
13.30	Lunch
15.00	Visit to Prosecutor's office

Day 3 - 17 November 2010

Time	Subject
09.15	Picking up of delegation at hotel and escorting to General Command of <i>Guardia di Finanza</i>
11.15	Coffee Break
11.30	General Command of <i>Guardia di Finanza</i> – Visit to Ministry of Economic Affairs and Finance (to be confirmed)
13.30	Lunch
14.30	<i>Nucleo Speciale Polizia Valutaria della Guardia di Finanza</i> (unit specialized in anti-money laundering and financial investigations)

Day 4 - 19 November 2010

Time	Subject
09.00	Picking up of delegation at hotel and escorting to Anti-Mafia Investigative Directorate
11.15	Coffee Break
11.30	Debriefing
13.00	Lunch
13.30	Escorting of delegation to airport

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ANNEX B: LIST OF PERSONS INTERVIEWED/MET

NAME	UNIT
<p>Direzione Centrale della Polizia Criminale “Polo Anagnina”</p>	
Maurizio MASSARINI	Ufficio Coordinamento e Pianificazione FFPP
Andrea PIZZABIOCCA LANZI	Agenzia delle Entrate
Antonio COLACICCO	
Piero MARRAFFA	DCPC - Servizio Cooperazione Internazionale di Polizia
Loredana STAMATO	DCPC - Servizio Analisi Criminale
Antonio MAIORANO	DCPC-Servizio Sistema Informativo Interforze: Gen B. CC Curatoli
Giancarlo BIANCHINI	DCPC- Ufficio Tecnico Giuridico e Contenzioso
<p>Polizia di Stato Direzione Centrale Anticrimine</p>	
Edgardo GIOBBI	2 Divisione
Mariacarla BOCCHINO	Divisione Analisi
Sergio MARIOTTI	Polizia di Stato Polizia Postale
<p>Banca d'Italia U.I.F.</p>	
Teresa DI BIASE Daniela MURATTI Alessandra CUZZOCREA Catello CRISCIUOLO Clemente CARFORA	

Ministero della Giustizia Direzione Nazionale Antimafia	
Pietro GRASSO Alberto CISTERNA Maria Vittoria DE SIMONE Giovanni RUSSO	
Carabinieri Raggruppamento Operativo Speciale	
Giampaolo GANZER Roberto CASAGRANDE	
Procura della Repubblica di Roma	
Giancarlo CAPALDO Aniello ROSSI	

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Agenzia Nazionale per l'amministrazione e la destinazione dei beni sequestrati e confiscati alla c.o.	
Mario MORCONE Antonio CANANA	
Ministero dell'economia e delle finanze Prevenzione Crimini Finanziari del Dipartimento del Tesoro	
Giuseppe MARESCA Giulia CARDOSA Giovanna PERRI	
Comando Generale della Guardia di Finanza	
Fabrizio CRISOTOMI Gianfranco CAROZZA Massimo BENASSI	Ufficio Cooperazione Internazionale Economia del II Reparto Ufficio Reclutamento e Addestramento del I Reparto Sezione Criminalità Organizzata e stupefacenti del III Reparto
Guardia di Finanza Nucleo Speciale Polizia Valutaria	
Oleandro CUZZOCREA Antonio GRAZZIANO Luca ALBERTARIO	Ufficio Operazioni del Nucleo Speciale Polizia Valutaria Ufficio Raccordo Informativo, del Servizio Centrale I.C.O della Guardia di Finanza
Direzione Investigativa Antimafia	
Pasquale NAPOLITANO Massimo PETROCELLI Nicoletta NIGRO Andrea PIROZZI	

ANNEX C: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

ACRONYM ABBREVIATION TERM	ACRONYM OR TERM IN THE ORIGINAL LANGUAGE	ENGLISH TRANSLATION/EXPLANATION
ARO		Asset Recovery Office
AWF		Analytical Work File
CARIN	-/-	Camden Assets Recovery Inter-Agency Network
CoE	<i>Consiglio d'Europa</i>	Council of Europe
CONSOB	<i>Commissione Nazionale per le Società e la Borsa</i>	Italian Companies and Stock Exchange Commission
CPC	<i>Codice di procedura penale</i>	Criminal Procedure Code
DCPC	<i>Direzione centrale polizia criminale</i>	Central Directorate of Criminal Police
<i>D.D.A.</i>	<i>Direzione distrettuale antimafia</i>	Anti-mafia district prosecuting office
<i>D.I.A.</i>	<i>Direzione Investigativa Antimafia</i>	Anti-mafia Investigative Directorate
<i>D.N.A.</i>	<i>Direzione Nazionale Antimafia</i>	Anti-Mafia National Public Prosecutor's Office
FSC		Financial Security Committee
GENVAL		Council Working Party for General Affairs, including Evaluations
ISVAP	<i>Istituto per la vigilanza sulle assicurazioni private e di interesse collettivo</i>	Insurance Supervisory Authority

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ACRONYM ABBREVIATION TERM	ACRONYM OR TERM IN THE ORIGINAL LANGUAGE	ENGLISH TRANSLATION/EXPLANATION
MDG		Multidisciplinary Group on Organised Crime
OCTA	-/-	Organised Crime Threat Assessment
OLAF	Office européen de lutte anti-fraude	European Anti-Fraud Office
PC		Penal Code
ROCTA	-/-	Russian Organised Crime Threat Assessment
R.O.S.	<i>Raggruppamento Operativo Speciale</i>	<i>Carabinieri</i> Special Operations Group
SAR	-/-	Suspicious Activity Report
<i>S.C.I.C.O.</i>	<i>Servizio Centrale Investigazione Criminalità Organizzata</i>	<i>Guardia di Finanza's</i> Central Organised Crime Investigation Service
S.C.O.	<i>Servizio Centrale Operativo</i>	<i>Polizia di Stato's</i> Central Operative Service
STR	-/-	Suspicious Transaction Report
UCLAF	Unité de Coordination de La Lutte Anti-Fraude	Unit for the Co-ordination of Fraud Prevention
