"NATIONAL RECOVERY AND RESILIENCE PLAN" AND PREVENTION OF CRIMINAL INFILTRATIONS - ITALIAN SYSTEM -

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Index

CHAPTER I

ITALIAN NRRP. CONTENT AND CONCEPT

1. INTERVENTIONS RELATED TO THE RECOVERY AND RESILIENCE PLAN (NRRP)

The Next Generation EU programme is a financial instrument of the EU, consisting of an allocation of a total of EUR 750 billion to support the Member States in the period of the pandemic crisis, boost the European economy and encourage the adoption of reforms by individual states. Like the other EU countries, Italy has prepared a National Recovery and Resilience Plan (NRRP) approved on 13/7/2021 by the EU Council, with the aim of using the resources made available by the EU, amounting to EUR 191.5 billion, in addition to EUR 30.6 billion from the CNP (Complementary National Plan for Investments, provided for by Decree Law 59/2021) obtained from national resources.

The NRRP resources will be concentrated on six missions, representing six structural areas of intervention:

1. Digitisation, innovation, competitiveness, culture and tourism
2. Green revolution and ecological transition
3. Infrastructure for sustainable mobility
4. Education and Research
5. Inclusion and Cohesion
6. Health

2. MISSIONS' OBJECTIVES

1. Digitisation: promoting the country's digital transformation, supporting innovation in the production system and investing in the tourism and culture sectors (total resources: EUR 49.8 billion)
2. Green revolution and ecological transition: improving the sustainability of the economic system and ensuring a fair and inclusive environmental transaction (total resources: €69.94 billion)
3. Infrastructure for sustainable mobility: Develop a modern, environmentally sustainable, country-wide transport infrastructure (total resources: €31.46 billion)

4. Education and research: strengthening the education system, digital and technical-scientific skills, research and technology and technology transmission (total resources: €33.81 billion)
5. Inclusion and cohesion: Facilitating labour market participation, also through training, strengthening active labour market policies and promoting social inclusion (total resources: €29.83 billion)
6. Health: strengthening prevention and health services on the territory, modernising the health system and ensuring equitable access to care (total resources: €20.23 billion)

The Plan envisages an integrated system of investments and reforms to improve the fairness, efficiency and competitiveness of the country's system and increase the confidence of citizens and businesses.

3. REFORMS ENVISAGED BY THE PLAN

The reforms envisaged in the Recovery and Resilience Plan are divided into:

- Horizontal: so defined because they cut across all the Plan's missions. Those identified in the NRRP are the reform of the public administration and the reform of justice. The first public administration reform measure is the Recruitment Act (Decree-Law No. 80/2021, converted into Law No. 113 of 6/8/2021). The justice reform includes the reform of the civil trial, the reform of the criminal trial and the criminal sanctioning system, the reform of tax justice and the reform of the judicial system.
- Enabling measures: these are designed to guarantee the achievement of the Plan's objectives and to remove administrative, regulatory and procedural obstacles that affect economic activity and the quality of services for citizens and businesses. The most important are the streamlining of legislation and the fostering of competition.
- Sector-specific: these concern specific areas of intervention to introduce more efficient regulatory regimes (e.g. the simplification of renewable energy projects, the framework law on disability, the strategic plan against undeclared work, etc.).

The monitoring of the progress of the National Reform Programme is entrusted to a Steering Committee (Art. 2 of Law Decree no. 77 of 31 May 2021, converted into Law no. 108 of 29 July 2021, hereinafter 'Simplification Decree 2021'), set up at the Presidency of the Council of Ministers, which will also have the task of reinforcing cooperation with the economic, social and industrial stakeholders and subrogation

powers in the event of inertia on the part of the competent bodies with regard to the various measures for implementing the Plan. The Steering Committee will report every six months to Parliament on the progress of the implementation of the NRRP.

The centralised coordination on the monitoring of the NRRP and the contact with the European Commission (especially with regard to payment requests) are instead entrusted to a centralised structure set up at the Ministry of Economy and Finance (art. 6 Simplification Decree 2021), which is responsible for tracking financial implementation, verifying the progress of the Plan through implementation indicators and communicating the results to the Steering Committee. The planning, implementation, monitoring, control and reporting processes of the NRRP will be assessed through the ReGis Information System, developed by the Ministry of the Economy in implementation of Article 1, paragraph 1043, of the 2021 Budget Law.

Specific interventions and sector reforms are instead entrusted to the Ministries and territorial local authorities responsible from time to time. They are responsible for monitoring the regularity of procedures and expenditure and for adopting measures to prevent irregularities and waste, ensuring the complete tracking of operations for the use of NRRP resources.

4. TIME SCHEDULE OF THE NRRP

Achieving the objectives of the NRRP requires the adoption of legislative measures to accomplish the three types of reforms envisaged in the Plan (horizontal, enabling and sectoral) between May 2021 and March 2026. The list below includes the measures achieved by the Simplification Decree 2021:

- NRRP monitoring at the Ministry of the Economy.
- Simplification of public contracts.
- Environmental simplifications.
- Simplification of the bureaucratic burden for the implementation of the NRRP.
- Definition of the NRRP governance structure.
- Simplification of the recruitment of NRRP human resources (further improved by Law Decree 80/2021 'Recruitment').
- Construction, urban planning and urban regeneration (the so-called Super bonus).

Further legislation to be adopted by 2021:

1. Enabling Act on the Reform of the Judiciary (currently before the Chamber).
2. Enabling Act on public contracts (currently before the Senate).

3. Enabling Act revising anti-corruption regulations (intervention on Law 190/2012).
4. Decree law on public administration career reform.
5. Enabling Act on the promotion and consumption of renewable gas.
6. Fiscal simplification law and IRPEF reform.
7. Annual Competition Act 2021 (local public services, transport, energy, waste).
8. Law on business subsidies and investments in the South.
9. Enabling Act on the reform of the civil trial.
10. Enabling Act on Reform of Tax Justice.
11. Enabling Act on Reform of Criminal Procedure.
12. Enabling Act on the streamlining of environmental regulations.
13. Law on the adoption of national programmes for the supervision of atmospheric pollution.
14. Law on the reform of Professional Technical Institutes.

Legal measures to be taken by 2022:

1. Water Infrastructure Act.
2. Enabling Act on civil service reform.
3. Annual Competition Act 2022 (Electricity Development Plans).
4. Teachers' recruitment Act.
5. Tax compliance Act.
6. Hydrogen tax incentives Act.
7. Hydrogeological risk management Act.
8. Water services guarantee Act.
9. Health Prevention Act.
10. Act on reducing emissions from ships (cold ironing).
11. Port Strategic Modification Act.
12. Education Reform Act.
13. Decree Law on Training of School Personnel.
14. Law amending the Equal Opportunities Code.
15. Law on remediation of potentially contaminated sites (so-called orphan sites).
16. Legislative decree reforming institutes for hospitalisation and scientific care.
17. Decree law approving the regulation governing the organisation of the National Cyber Security Agency.

Action to be taken by 2023:

1. Law on the reduction of payment times of the P.A.
2. Law on streamlining and reducing obstacles to the spread of hydrogen.

3. Enabling Act for reforming legislation for the non-self-sufficient elderly.
4. Po River Drainage Act.
5. Road concessions reform Act.
6. Legislative Decree reforming industrial property.
7. Law on the management of human resources of the P.A..
8. Electricity Network Development Plan Act.
9. Law on tourist guides organisation.
10. Law on Digitisation of the Judiciary.

Action to be taken by 2024:

1. Law on the streamlining of authorisations for renewable energy plants.
2. Law regarding the digitalisation of passenger and freight port services.

Action to be taken by 2025:

Annual Competition Law 2024.

Action to be taken by 2026:

Law completing fiscal federalism.

The following actions, which are not part of the planned action plan, are also linked to the NRRP:

1. Law on combating land consumption.
2. Law on the enhancement and support of the family (so-called Family Act).
3. Law on the reform of social safety nets.

5. AMENDMENTS TO THE GENERAL RULING ON PUBLIC CONTRACTS

The simplification decree 2021 introduces some important amendments to the general regulation on public contracts (Articles 48 to 56). These amendments are designed to streamline procedures for the implementation of projects (specifically to avoid the loss of EU funding, which is tied to specific deadlines). At the same time, however, an easing of procedures may open up opportunities for the inclusion of companies controlled by organised crime.

Article 48 introduces **simplification measures with respect to the awarding of public contracts**, for procedures involving public investments financed, in whole or in part, with the resources provided by the NRRP and the CNP and by programmes

co-financed by the EU structural funds. Specifically, it provides for the use, under certain conditions, **of the contract negotiation procedure without prior publication of a call for tenders**, the allocation of a bonus score for the use in the **project design** of specific electronic methods and tools, the expression of the **opinion of the High Council of Public Works**, exclusively on technical and economic feasibility projects for public works falling within the State' competence, or in any case financed for at least 50% by the State, for an amount equal to or greater than €100 million. The technical feasibility design, provided for in Article 23 of the public contracts code, includes the project objectives and the characteristics of the work to be carried out. The novelty of art. 48 lies in the possibility, for NRRP projects, of bypassing the two steps which follow the feasibility study (the final project with the works to be carried out and the executive project with the detailed costs and the works schedule).

An additional novelty (art. 48 paragraph 3) is the possibility for contracting authorities to apply the negotiated procedure provided for in art. 63 of the Public Contracts Code when, due to unforeseeable circumstances, the application of the ordinary terms, even if shortened, could compromise the implementation of the NRRP projects. The contract negotiation procedure does not provide for the publication of a call for tenders, but rather is addressed to a limited number of operators, contacted by the contracting authority on the basis of a prior selection. Until now, this instrument, introduced by Article 63 transposing Article 32 of Directive 2014/24/EU, was restricted to specific situations as defined in the Code.

Most importantly, Article 49 of the Simplification Decree 2021 is reforming the subcontracting discipline. In particular, with effect from the date of entry into force of the decree (31 May 2021) and until 31 October 2021, by way of derogation from Article 105(2) and (5) of the Public Contracts Code, the subcontracting activity may not exceed the share of 50 per cent of the total amount of the contract (the previous limit was 40 per cent, set in Article 1(18), first sentence, of Decree-Law No. 32/2018, the so-called " unblock worksites" decree, until 30 June 2021). Furthermore, a series of amendments are introduced to Article 105 of the Code which are instead intended to enter into force as of 1 November 2021, including:

a) the removal of the 30% limit of the total amount of the work applicable to subcontracting.

b) the task of contracting authorities to indicate in the tender documents, upon adequate justification, the services or works covered by the contract to be performed by the winning bidder. The constraint on the contractor's performance is also aimed at reinforcing the control of worksite activities to

ensure the safety of workers and the prevention of criminal infiltration. This constraint is mitigated if the subcontractors are registered in the whitelists provided for by Law 6/11/2012, no. 190 or in the anti-mafia registry of performers (art. 30 decree-law 17/10/2016, no. 189.

c) the direct link to the subcontractor obligation to certify the possession of the special qualification requirements provided for by the Contracts Code for the relevant subcontracted service.

d) the introduction of the joint and several liability of the main contractor and the subcontractor towards the contracting authority, with respect to the services covered by the subcontract.

In Italian law, subcontracting has always been subject to strict constraints because it had characteristics that favoured criminal infiltration. In recent years, these constraints have been relaxed to bring the regulation of subcontracting in line with European Directives (in particular Directive 2014/24/EU). The Simplifications Decree 2021 therefore represents a compromise, which facilitates the use of subcontracting while introducing some counterbalances, in particular the accountability of contractors and contracting authorities.

Article 50 lays down provisions concerning the **execution phase of public contracts**, aimed at ensuring compliance with the implementation schedules of the investments of the NRRP, the CNP and the programmes co-financed by the EU structural funds. It also introduces an '**acceleration bonus**' for early completion of works and increases the number of penalties for late performance.

Article 51 affects a number of provisions relating, in particular, to the direct or simplified awarding of public contracts below certain amounts of **value** (so-called '**sub-thresholds**'), and to anti-bribery checks. It extends these procedures until 30 June 2023, and establishes, inter alia, direct awarding (choice of a contractor through a contracting authority or selection by the contracting authority from a list of economic operators or a market survey) for works below €150,000 and for services and supplies, including engineering and architectural services and design activities, below €139,000. **In particular, simplified anti-mafia verification procedures have been applied to all public contract procedures for works, services and supplies initiated by 30/6/2023, in order to allow for the support and recovery of the post-pandemic economic system, and can be summarised as follows**:

- **payment to private individuals of subsidies or economic benefits where no anti-mafia documentation has been submitted, subject to restitution in the event of an interdiction order (*downstream control*).**

- **entering public contracts for works, services and supplies on the basis of a provisional disclaimer, valid for 60 days, subject to withdrawal in the event of a negative interdiction.**
- **using registration on the whitelists or in the anti-mafia register of contractors as an anti-mafia clearance.**
- **anti-mafia checks using all available databases (without specifying which ones).**
- **introduction of a new Article 83 bis in the Code of Anti-Mafia Laws for the signing of legality protocols between the Ministry of the Interior, trade associations and large companies to extend anti-mafia documentation to dealings between individuals. The call for tenders may include a termination clause for failure to comply with the protocol.**

The reduction of delays in issuing anti-Mafia permits, which constitute the most proven barrier against criminal infiltration in public procurement procedures, has been offset by a number of preventive tools, such as legality protocols, white lists, the register of anti-Mafia performers and the possibility of withdrawal by contracting authorities. If the reduction of delays may affect the effectiveness of the anti-mafia checks, the compensation mechanisms represented by the above-mentioned instruments avoid losses of effectiveness of the system as a whole, while maintaining the implementation terms of the projects financed with EU resources.

Article 52 provides, among other provisions, measures **to reduce the number of contracting authorities** for the procedures relating to the NRRP and CNP works, and extends until the year 2023 the effectiveness of several rules contained in Article 1 of Decree-Law No. 32/2019 concerning (inter alia) the lifting of the ban on "**integrated contracts**" (which provides for the assignment to the same entity both of the design and the execution of the work) and the lifting of the obligation to indicate the names of three subcontractors.

The Code of Contracts has made the two phases of design and execution of the work autonomous, to prevent the defects of the former from affecting the latter. Thus, the design phase (which may be internal and or external to the contracting authority) is checked by subjects not involved in the execution phase.

Joint awarding (Art. 59 of the Public Contracts Code) was therefore only allowed in two cases:

- special relationship between the contracting authority and the private contractor (partnership, project financing, concession, availability contract and

all the other hypotheses referred to in Article 59(1) of the Contracts Code, all of which have in common the fact that the private partner assumes the risk of carrying out the variations).

- works that include heavily technologically or operationally specialised features (Article 59(1)(a)). Decree 32/2019 (the so-called " unblock work sites" decree), with the general aim of relaunching public investments, had removed the ban on joint awarding until 31/12/2021. This last deadline was extended to 30/6/2023 by the 2021 Simplification Decree.

The requirement to indicate the names of three subcontractors, provided for in article 105, paragraph 6, of the Public Contracts Code, for activities at particular risk of mafia infiltration, which was already suspended experimentally by the " unblock worksite" decree until 31/12/2021, has been further suspended until 31/12/2023, together with the requirement for the tenderer to demonstrate, at the time of the tender, the absence of grounds for exclusion of the subcontractor under article 80 of the Contracts Code. This may constitute a risk factor for infiltration, which is partially averted if subcontractors are chosen from the whitelists or from the anti-mafia register of contractors.

Article 53 of the Simplification Decree 2021 lays down rules to **simplify the procurement of IT goods and services** for the implementation of the NRRP. Specifically, it provides for the use of direct awarding for contracts below the EU thresholds, allowing, however, the use of this procedure when, under certain conditions, it is not possible to use another awarding procedure.

It should also be noted that Article 8 of Decree 76/2020 (the so-called 2020 Simplifications Decree) introduced the following simplification measures for public contracts launched after 17 July 2020:

- permanent authorisation for interim delivery in the case of works and for interim execution of the contract in the case of services or supplies (possible grounds for exclusion of the operator and participation requirements are checked later);
- mandatory on-site inspection for the operator only if strictly necessary.
- generalised application of cuts in procedural terms for urgent reasons
- the option to award contracts even if not previously planned, with the sole obligation to update the planning documents.

These measures will apply to all public contract procedures initiated before 30/6/2023 (based on the amendment introduced by Article 51, paragraph 1, of the Simplification Decree 2021).

The entire Italian legislation on public contracts will have to be revised according to the criteria set out in the NRRP (p. 66). The envisaged reform aims to transpose EU Directives 2014/23, 2014/24 and 2014/25, integrating them only in the parts that are not immediately applicable and arranging them in a more streamlined discipline compared to the current one, which reduces to the maximum the additional requirements compared to those provided for by the European legislation, also based on the comparison with similar rules of other EU States.

The enabling act on this matter is to be approved by Parliament by the end of 2021 and implemented through a series of legislative decrees to be passed within nine months of the approval of the law. The criteria included in the law currently under review are as follows:

- Clarification of the reasons justifying the award of secret contracts or contracts requiring special security measures and clarification of the procedures for implementing them.
- Identification of contracts excluded from the scope of application of legislative decrees and specific disciplines for specific types of public contracts due to the singularity of their content.
- Provision of measures to ensure energy and environmental sustainability and health and labour protection in the awarding of contracts.
- Explicit regulation of the cases in which contracting authorities may use, for the purpose of awarding contracts, the sole criterion of price or cost, in the sense of the criterion of the lowest price or the highest bid.
- Implementation of an e-platform for assessing procurement capacity.
- Revision of the rules on integrated procurement, with a reduction of the bans (already covered by Article 48, paragraph 1, of the 2021 Simplification Decree-Law).
- Revision of the rules on subcontracting (already covered by Article 49 of the 2021 Simplification Decree-Law).
- Tending prohibition of extension and automatic renewal clauses in concession contracts.

- Strengthening of public structures for the control of road and railway works, without prejudice to the obligations of control through independent structures and maintenance to be borne by the concessionaire, with consequent sanctions in the event of non-compliance.
- Strengthening of dispute resolution tools as an alternative to court proceedings.

CHAPTER II

OPERATIONAL ANTI-MAFIA STRUCTURES

For the containment of the criminal organizations' expansion in the economy, preventive investigations are carried out in parallel with the investigations of the judicial police, which have the purpose of eliminating the possible phenomena of infiltration into the productive activities of the Country through **the adoption of ablative judicial measures of prevention, as well as of interdictory administrative measures provided for by the so-called Anti-mafia Code** (Legislative Decree, 6/9/2011, No. 159).

Furthermore, over time, the Institutions have refined the instruments to prevent both the mafia pollution of the legal economy and the connected laundering of the proceeds of crime, knowing that they must exercise a fundamental function of safeguarding the Italian economy together with the criminal repression and the prevention of the associated crimes.

The effectiveness of relevant regulations, in fact, has been strengthened by the development of agreements and relations of collaboration between the main institutional actors, in whose context are placed fundamental anti-mafia protections.

In this regard, it is worth mentioning Legislative Decree no. 231 of 8 June 2001, which, by adapting the Italian legislation to the European legislation, affirmed the criminal liability of legal persons for offences committed by persons who hold positions of representation, administration or management in the interest or to the advantage of the entity in question, or of one of its organisational units with financial and functional autonomy, and by persons who exercise management or control over the entity, even *de facto*. The rule, which generates administrative sanctions (pecuniary or interdictory), is also intended to counter the conduct of criminal organisations that tend to use corporate companies as a screen for their illegal activities. Examples of the many offences that give rise to administrative liability include those typical of organised crime, such as mafia-type association, association for the purpose of drug trafficking and offences committed by making use of the mafia association bond or to facilitate the activities of such organisations.

1. COUNTERING ILLEGAL ASSETS

Introduction

The action carried out, in Italy, by the Judicial Authorities and by the Police Forces, against the principal forms of common and organized crime, of subversion and of international terrorism has been able to avail itself, starting from the 50's of the last century, not only of the instruments provided for by the criminal justice system, but also of those offered by the contiguous **system of the preventive measures**.

The preventive measures can be, synthetically, defined as limitative measures of the personal freedom, the free circulation, the right of property and the free economic initiative, inflicted by the Judicial Authorities and, in certain cases, by the Public Security Authorities, with regard to subjects belonging to given categories expressly indicated by the Law, who are considered - on the basis of certain elements or objective and concrete circumstances and, in any case, not on mere suspicion - dangerous for their recognized capacity to put in place forms of conduct which could damage or expose public security to risk.

Such measures do not require in their application, therefore, the establishment of the responsibility for a fact constituting a crime, but exclusively an overall verification of the social dangerousness of the subject, from which an expectation derives, to a reasonable degree of probability, that he will continue to behave in an illicit way.

The effectiveness of these tools has led to a gradual expansion of their scope, resulting in many legislative interventions that have been stratified over time, making the system complex and articulated until the Legislator brought together the rules in a single text, the aforementioned **Legislative Decree No. 159 of 2011, so-called "Anti-mafia Code"**.

In this legislative process, a fundamental step was taken by **Law no. 646 dated 13 September 1982, the so-called "Rognoni-La Torre Law"**, which marked a **radical turning point in the Italian commitment against the various forms of organised crime**. Thanks to the aforementioned law, the fight against these criminal phenomena has no longer been concentrated only on the level of **public order**, but also, and above all, on the **economic and financial level, with the aim of removing the financial resources needed to support criminal activities and maintain organisations**.

It is no coincidence that this measure, which also introduced the crime of **mafia-type association** into the Italian criminal code, was enacted shortly after the murder of

Palermo Prefect Carlo Alberto Dalla Chiesa, who had been sent to Sicily to give new impetus to the fight against the mafia. The law originates from proposals put forward by two influential representatives of the Government and the opposition: the then Minister of the Interior Virginio Rognoni and the Member of Parliament Pio La Torre, who was murdered by Cosa Nostra on the 30th of April 1982 just because of his commitment against organised crime.

Classification of prevention measures

The preventive measures provided for by the Anti-mafia Code are defined as "**typical**". Further measures, called "**atypical**", are, instead, provided for by sectorial regulations, for particular purposes.

The **"typical" preventive measures** are applicable, at the present time, to **14 categories of subjects**, referable, substantially, to **four typologies of social dangerousness**:

- "**common or generic**", which includes, for example, persons who usually engage in criminal traffic or who live on a regular basis, also in part, on the proceeds of crime.

- "**qualified**", which includes, in particular, persons suspected of belonging to mafia-type associations or of serious crimes connected to organised crime, i.e., persons against whom there are sufficient factual circumstances, objectively measurable and verifiable, which lead to a judgement of reasonable suspicion that the person belongs to the criminal association or is capable of committing the crimes referred to.

- "**subversive**", which includes persons who, either individually or in groups, are engaged in activities aimed at subverting the state order or in terrorism, including international terrorism.

- "**sporting**", which mainly concerns persons who must be considered as committing crimes which threaten public order and safety, or the safety of persons, on the occasion of or because of sporting events.

The two types of measures are distinguished in "**personal measures**" and " **property measures**": the first entail limitations, also severe, to the personal freedom or to the freedom of movement of the subject of the measure, the second deprive the subject of his assets and illegally accumulated capital or temporarily prevent him from managing assets or exercising economic activities.

The preventive seizure and confiscation. Subjective and objective preconditions.

The preventive measures on assets provided for by the Anti-Mafia Code are six: **"seizure", "confiscation", "bail", "judicial administration of personal assets",**

"judicial administration of assets connected to economic activities and companies" and **"judicial control"**.

The preventive seizure and confiscation were the first property preventive measures to be introduced, **as an effect of the Law dated 13th September 1982, No. 646, so-called "Rognoni-LaTorre Law"**, into the Italian legal system and their application is under the jurisdiction of the Judicial Authority, with which the Police Forces collaborate in the sensitive phase of the assets investigation. The property preventive measures can be **proposed by the National Anti-mafia and Anti-terrorism Prosecutor, by the District Prosecutor, by the Questore or by the Director of the Anti-mafia Investigative Directorate**, with rules that provide for adequate information exchange and investigative coordination between these four authorities.

Seizure is a measure aimed at temporarily removing the goods and properties from the subject of the measure, by entrusting them to a state body which administers them during the proceedings whereby the conditions for confiscation are verified, if any. The preventive seizure has, in fact, a precautionary nature and is aimed at preventing the subject in question from transferring, concealing, or dispersing his assets while waiting for the decision on confiscation.

The preventive **confiscation** brings about the definitive removal of the subject's goods and properties and entails their compulsory transfer to the State's assets.

The application of the preventive confiscation and, therefore, also of the prior seizure, requires precise subjective and objective assumptions.

The **subjective assumptions** are:

- **the eligibility of the person to one of the categories of dangerousness outlined by the Legislator**: in order not to incur in objections of constitutional illegitimacy, in terms of compliance with the principle of applicability, the Legislator has identified, as mentioned above, the individual categories of dangerousness, to make them more specific and not based on vague and indefinite elements. The aim was to avoid, as in the past, subjective and arbitrary judgments, based on the evaluation of the person's way of being, or of the social or moral worthlessness of his/her conduct;
- **the social dangerousness of the person**, understood as the verified inclination to crime, which is consequent to a global evaluation of the entire personality of the individual resulting from all the social manifestations of his life. The assessment must be carried out on the basis of objectively recognisable behaviour, objective and factual circumstances, which make it possible to pronounce a hypothesis of

reasonable likelihood of committing criminal activities, thus excluding suspicions, inferences, conjectures and anything that cannot be objectively confirmed.

As a consequence of the principle of disjunctive application[1], it is not necessary to ascertain the social dangerousness of the person at the moment of requesting the property preventive measure, although this does not mean that the application of preventive confiscation can ignore the verification, in concrete and incidental way, of the existence of this assumption at the moment of the acquisition of the assets subject to this measure.

As a consequence of the same principle and of the specificity of the preventive procedure - in which, unlike in the criminal procedure, the principle of individuality of the criminal responsibility, prohibiting the State to exercise the sanctioning power on individuals other than the author of the crime does not apply - the preventive confiscation is possible **also in the case of death of the offender**, both if it occurred after the beginning of the procedure, which will continue, in this case, against the heirs or, in any case, against the entitled persons, and if it occurred before the request for the application of this measure against him had been presented, which can, in this hypothesis, be brought forward within five years from the death against the universal or particular successors.

The **objective assumptions** are:

- **the direct or indirect availability of the asset**. The availability is to be understood as including not only the goods on which the subject of the measure formally exercises a right of ownership or other real right, but also those, owned by third parties, of which he is the *de facto dominus*. The proof of indirect availability must be rigorous, since it affects the right of ownership of a third person, even if it can be provided on the basis of serious, precise and consistent elements from which the purely formal character of the registration can be deduced and, correspondingly, the permanence of the goods in the offender's control.

  Some legal assumptions simplify the burden of proof on the proposing body, in the phase of seizure and on the judge, in the phase of confiscation, regarding the demonstration of the attribution of the assets to the proposed subject of the measure. In fact, **until proof to the contrary is provided, it is presumed** that the

[1] Until 2008, the preventive measures on assets could be applied only jointly with the personal ones, by virtue of the auxiliary principle, according to which they formed a potentially inseparable pair. The legislative reforms of the years 2008 and 2009 have redesigned the procedure of prevention, introducing the principle of the separate application of the personal and property measures, thus rescinding the link of judicial incompatibility between the former and the latter, which had previously characterized the system.

transfers and incorporations carried out by the subject to whom the measure is addressed in the two years prior to the proposal for application **are fictitious**:

- ✓ for any reason whatsoever, therefore also against payment, towards the ascendant, descendant, spouse or person who lives with him/her on an ongoing basis, as well as towards relatives within the sixth degree and relatives-in-law within the fourth degree.
- ✓ in a gratuitous or fiduciary capacity, towards other natural or legal persons.

- the existence **of sufficient evidence regarding the illicit origin of the goods**, such as to suggest that they are the fruit of illicit activities or constitute the reuse thereof. The formula used by the legislator - which basically coincides with the notion of proceeds of crime incorporated at international level (e.g. in the United Nations Convention against Transnational Organized Crime, approved in Palermo on December 16, 2000) and EU level (most recently, for example, in Regulation EU/2018/1805, on the mutual recognition of freezing and confiscation orders, in which reference is made to "*any economic advantage derived , directly or indirectly, from crimes, consisting of any asset and including subsequent reinvestment or transformation of direct proceeds and any economically assessable advantage*") - makes liable to confiscation not only the economic benefits achieved as a result of the execution of criminal activities but also any form of use or investment of the proceeds of criminal acts in economic or financial activities.
  In order to ensure the effectiveness of the measure in the execution phase, the regulations foresee that, if it is not possible to proceed, for any reason, with the direct seizure of the goods of illicit origin, for example because they have been disposed of, distracted, devalued or alienated to third parties in good faith in order to sidestep the application of the ablative measure, the preventive confiscation can also be ordered by means of "**equivalent value**", that is, it can concern money or other goods of the proposed subject of the measure, even if they are of legal origin, whose value corresponds to the verified illicit assets;
- **the disproportionate value of the assets** compared to the declared income or to the economic activity carried out by the offender. As an alternative to demonstrating that his/her assets have been obtained from illicit activity or derive from a subsequent reinvestment, the legislator has established that the illicit origin of the assets can be presumed when they are inconsistent with the income declared to the tax authorities or with the economic activity carried out, to be understood as alternative parameters for which, once the disproportion has been ascertained with respect to the former, there is no need for further verification with respect to the latter.

The judgement on the "disproportion" is not to be carried out through a global and thorough evaluation of the person's assets, but rather in relation to each single item of the person's property, making reference to the time of the single purchases, and therefore to the value of the assets that from time to time became part of the subject's assets. Moreover, there must be a temporal correspondence between the period in which the person has shown to be "dangerous" and the moment of acquisition of the goods.

This is a relative assumption and, therefore, can be overcome by justifying the legitimate origin of the assets, which the proposed subject of the measure can always provide through the mere allegation of facts, situations or events that, if found, are suitable, "reasonably and plausibly", to demonstrate the lawful origin of the goods. In any case, the specific law provision, preceded by a conforming jurisprudential orientation, envisages that the subject of the ablative measure cannot justify the legitimate provenance of the assets by claiming that the money used to purchase them is connected with tax evasion.

The consistency of preventive confiscation with the European Convention on Human Rights

The **legal nature of this type of confiscation** has been the subject, in Italy, of debate in doctrine and conflicting jurisprudential pronouncements, at least until 2014, when the United Sections of the Supreme Court established that the "ratio" pursued by the Legislator in the regulation of this type of confiscation is to remove assets of illicit origin from the circuit of the legal economy. For this reason, , this form of ablation must be considered **comparable to a real security measure and having a preventive purpose**, consisting in "*dissuading the affected subject from the commission of further crimes and from adopting lifestyles that contrast with the rules of civil society*".

In the context of the European Convention on Human Rights, the Italian preventive confiscation has been considered by the Strasbourg Court as an instrument limiting the right to private property, legitimate insofar as it complies with the requirements of art. 1 of the Additional Protocol ECHR and not subject to the application of the conventional rules of "criminal matters".

From the point of view of the extra-criminal qualification of this confiscation, the Court relies on the functional aspect of the measure, arguing that it is not intended to repress a violation but to prevent the commission of serious crimes. In this way, the preventive confiscation has been considered conventionally legitimate, as "*endowed with a legal basis*" and "*proportionate*" with respect to the public interest

pursued, because of the essential nature of such measures in the framework of criminal policies aimed at fighting the phenomenon of organized crime, of the dangerous economic power of an organization such as the Mafia, against which the confiscation appears as "*effective and necessary weapon in the combat against this cancer*".

In its jurisprudence on this subject, the European Court has observed that - having regard to the national and international regulatory framework of reference and regardless of the qualification provided by the national legislator - the hypotheses of confiscation of assets of criminal origin which are independent of a conviction in criminal proceedings must be attributed a civil nature and, for this reason, recourse to the evidentiary standard of the "*preponderance of evidence*" (i.e. "more likely than not") can be considered proportionate with respect to the aims, of economic compensation and crime prevention, which the measure aims at, since it is not a criminal sanction but an instrument aimed at regulating and limiting the exercise of the right to property for public interest reasons.

A similar nature has been recognized by the Court to another similar form of "*non-conviction-based confiscation*", i.e. "confiscation without conviction", provided for by the US law, which is called "***civil forfeiture***". This last measure - which can be defined as an "actio in rem", i.e. against assets to be confiscated and not against the owner of such assets - is very similar to the Italian preventive confiscation since, outside the framework of criminal proceedings and a conviction for a specific crime, it allows the confiscation of assets deemed to be of criminal origin. The "*civil forfeiture*" can refer to the assets used for committing the crime ("*instrumentalities*"), those that have facilitated the commission of the crime ("*facilitating property*"), as well as the proceeds of the crime ("*criminal proceeds*") and those whose detention is per se illicit ("*contraband*") and is applied at the outcome of a judicial procedure originating from a "*civil action*" of the public authority by which the owner of the assets to be confiscated is brought to trial, according to schemes which, in many respects, are similar to civil lawsuits in the field of property ownership, despite being a measure specifically aimed at combating economic crime.

Cooperation on preventive confiscation within the European Union

Judicial and police cooperation in the field of preventive seizure and confiscation takes on particular importance if consideration is given to the increasingly **pronounced transnational projections** manifested by the main forms of crime, in particular mafia-type crime.

From this point of view, it is possible to observe that, **within the European Union**, if, on the one hand, there are effective tools of cooperation with regard to the conduct abroad of investigations aimed at the reconstruction of the assets, the economic position and the financial situation of a subject - ensured by the Framework Decision 2007/845/JHA of 6 December 2007, implemented by the Decree of the Chief of Police of 2011, which provided for the establishment in each Member State of the "*Asset Recovery Offices (A.R.O.)*", by the Framework Decision 2002/465/JHA of June 13, 2002, on the establishment and operation of "*Joint Investigation Teams (JITs)*", implemented in Italy by Legislative Decree no. 34 of February 15, 2016, and by Directive 2014/41/EU of April 3, 2014, which introduced the "*European Investigation Order in criminal matters*", implemented in Italy by Legislative Decree no. 108 - on the other hand, until the end of 2020, there were no forms of cooperation in force, provided for by EU law, governing, with regard to asset preventive measures, the seizure of assets located in other Member States. The implementation of these measures abroad was entrusted to the instruments made available by international conventions, such as the Strasbourg Convention of the Council of Europe, signed on 8 November 1990, on laundering, search, seizure and confiscation of the proceeds of crime or by bilateral agreements.

However, on **December 19, 2020**, **Regulation 2018/1805** of the European Parliament and of the Council of November 14, 2018, entered into force, for the **mutual recognition of all types of seizure and confiscation orders issued in the context of criminal proceedings**, including extended confiscation, third-party confiscation and confiscation without conviction**.**[2].

The regulation is directly applicable in member states ex art. 288 TFEU and replaces framework decisions 2003/577 and 2006/783.

There is no doubt that its scope of application includes all forms of confiscation provided for by the Italian criminal system. However, the main question is whether it can also be applied to the preventive confiscation regulated by the Anti-Mafia Code.

In the definitions set out in art. 2 of the aforementioned Regulation, it is specified, at number 2), that "'*confiscation measure*': *a definitive sanction or measure imposed by a*

[2] The principle of mutual recognition of decisions of the judicial authorities of EU Member States - codified in Article 82(1) TFEU with respect to "all types of judgments and judicial decisions" (paragraph 2(a)) - was first adopted in the conclusions of the Tampere European Council of October 1999, becoming one of the "cornerstones" of freedom, security and justice: "*Criminals must find no ways of exploiting differences in the judicial systems of Member States" and "no hiding place for ... the proceeds of crime within the Union".*

judicial body following proceedings related to a crime, which causes the definitive deprivation of a physical or legal person's property".

This definition seems to **allow the application of the Regulation also to the anti-mafia property preventive measure**, considering that it is applied with a procedure that certainly falls within the "*procedures connected to a crime*", assuming an evaluation of social dangerousness based, first of all, on the existence of evidence of the commission of crimes in the cognitive part of the judgement, as well as, if the dangerousness is current, on the future commission of offences and having as its object the profits or proceeds of the offence (both when dealing with "*assets that are the fruit of illicit activities or constitute the reuse thereof*", *and when dealing with assets "of a disproportionate value to one's own income, as declared for the purposes of income tax, or to one's own economic activity*" since the disproportion is highlighted as a symptom of the illicit origin).

This interpretation of the Regulation - which allows the perimeter of application to be extended also to the Italian property preventive measures, which, therefore, will have to be recognized and executed also in the member States whose national legislation does not provide for such measures - is considered to be correct also by the Ministry of Justice. According to the memorandum dated February 18, 2021 of the Directorate General for International Affairs and Judicial Cooperation, in fact, this interpretation is allowed because:

- Pursuant to Article 67(3) TFEU, one of the objectives of the Union is "*to seek to ensure a high level of security through measures to prevent and combat crime, (...) as well as through the mutual recognition of judicial decisions in criminal matters...*";
- - According to recital 13 of the Regulation, "*proceedings in criminal matters*" is an autonomous concept of Union law as interpreted by the Court of Justice of the European Union, and also covers measures issued in the absence of a final conviction[3];
- - Title V of the TFEU makes a distinction between "*judicial cooperation in criminal matters*" (art. 82, par. 1, of the TFEU) and "*judicial cooperation in civil matters*" (art. 81, par. 1, of the TFEU). Therefore, the notion of criminal matters can also be

[3] According to Recital 13 of the Regulation, '*criminal proceedings*' *is an autonomous concept of EU law as interpreted by the Court of Justice of the European Union, without prejudice to the case-law of the European Court of Human Rights. That term therefore covers all types of freezing and confiscation orders issued as a result of proceedings relating to a criminal offence, and not only measures falling within the scope of Directive 2014/42/EU. It also covers other types of measures issued in the absence of a final conviction." Thus, seizure and confiscation orders issued in the context of civil or administrative proceedings are excluded from the scope of the Regulation.*

defined in a negative way, in the sense that it excludes civil matters as interpreted by the Court of Justice of the European Union[4];

- - The material and procedural characteristics of preventive measures now fully justify their inclusion in the autonomous EU concept of "*criminal matters*": assessment of dangerousness based on the connection to specific criminal cases, relevance of the "circumstantial" evidence assessment, which is typical of criminal matters, recognition of all the essential guarantees and remedies provided in the criminal field.

To further support this thesis, it is pointed out that the Italian legislator has already attributed, in application of the mutual recognition principle, a criminal nature to the preventive proceedings. **Article 1, paragraph 3, letter d) of Legislative Decree no. 137 of 7 August 2015**, on the "*Implementation of Framework Decision 2006/783/JHA*" on the application of the principle of recognition of confiscation orders, indicates, in fact, also the preventive confiscation as a measure issued in the context of criminal proceedings[5].

Confiscation for disproportion

The **"confiscation for disproportion" or " extended confiscation"** constitutes, currently, the main instrument of contrast, in the criminal field, to the forms of illegal assets collection.

This form of confiscation - which presents substantial similarities with the preventive confiscation, although structurally differing in some applicable assumptions - was introduced with art. 2, paragraph 1 of Law Decree no. 399 of 1994, which added, in the corpus of Law Decree no. 306 of June 8, 1992 converted by **Law no. 356 of August 7, 1992, art. 12-sexies**, entitled "***Particular cases of confiscation***".

The legislative modification became necessary following the declaration of unconstitutionality of art. 12-quinquies, paragraph 2 of Law Decree no. 306/92 - a

[4] The proposal for a Regulation, submitted by the Commission in 2017, had a scope of application restricted to measures of seizure and confiscation disposed "*in the framework of criminal proceedings*" ("*criminal proceedings*"), i.e. proceedings aimed at judicially establishing criminal liability for specific facts. Upon an Italian proposal, following the agreement of 8 December 2017, the Council amended Article 1.1 of the proposal, extending the scope of the Regulation to the much broader scope of measures *ordered* "*in criminal proceedings*" ("*proceeding in criminal matter*").

[5] Article 1 Provisions of principles and definitions.

3. For the purposes of this Decree the following definitions shall apply

d) decision of confiscation: a measure issued by a judicial authority within the framework of criminal proceedings, which consists in definitively depriving a person of an asset, including the measures of confiscation ordered under Article 12 sexies of the Decree Law of 8 June 1992, No 306, converted, with amendments, by the Law of 7 August 1992, No 356, and those ordered under Articles 24 and 34 of the Code of anti-mafia laws and measures of prevention, referred to in the Legislative Decree of 6 September 2011, No 159, and subsequent amendments".

decree issued after the massacre of Capaci and converted into law after that of via D'Amelio - which punished, with imprisonment from two to five years, the unjustified possession of assets by subjects suspected or accused of certain crimes.

In application of the **principle of code reservation**, art. 12 sexies was then transposed[6] into the **new art. 240-bis** of the criminal code, entitled "***Confiscation in particular cases***".

The discipline of the extended confiscation allows the Judge to order the confiscation of all the assets (goods, money or other profits) of which a person - already subjected to conviction or plea bargaining for one of the crimes indicated by the regulation - is not able to justify the legitimate origin and is owner or otherwise disposes of them, in a disproportionate value compared to the declared income or to the economic activity exercised.

The effectiveness of the confiscation for disproportion, therefore, is defined on the basis of the following assumptions:

- the **pronouncement of a conviction or the application of the penalty at the request of the parties** for one of the criminal offences provided for.
- the **ownership or use**, even by means of a third party of **assets, money or other benefits**.
- the **disproportion between the value of the assets** purchased by the offender and his **declared income for tax purposes or the economic activity** carried on by him.
- the **inability** of the offender to **justify the origin of the alleged assets**.

Contrary to what happens in the context of the preventive measures system, **establishing criminal liability** [7], represents, therefore, a formal indicator of the illicit accumulation of wealth which, by reason of the nature of the crime committed and of the profits possessed in disproportionate value, is presumed to derive from criminal activities other than and in addition to those examined in the trial.

For the application of the extended confiscation, it is necessary to underline that the Judge **does not have to make any evaluation on the existence of the pertinent connection** of the goods and properties identified with the criminal activity of the

[6] By Article 6, paragraph 1 of Legislative Decree No. 21 of 1 March 2018.

[7] Following the introduction of Art. 578-bis of the Code of Criminal Procedure, by Art. 6 of the Legislative Decree 21/2018, which has acknowledged a previous, although not uniform, jurisprudential orientation, it is more correct to refer - as does the jurisprudence of legitimacy - to "positive ascertainment of guilt for one of the crimes raised by the Legislator as possible indicators of an illicit accumulation". In fact, due to the above mentioned rule, the extended confiscation can find application also where the crime is declared extinct through prescription or amnesty.

offender, this latter being a distinctive feature of the "ordinary" confiscation of Art. 240 Criminal Code[8].

Concerning the definition of the concepts of "ownership" and " use", there are no doubts: the first consists in the formal juridical registration of the good, the second, instead, refers to the possibility for the person to exercise an effective control over the thing, independently of the formal registration of the same. The applicability of the ablative measure, therefore, does not depend on the direct or indirect use of the assets, since it can also concern goods and properties owned by the convicted person also through a third party, physical or legal. In this last case, for the purposes of the application of the measure, it will be the duty of the Public Prosecutor to demonstrate the **concrete divergence between formal registration and effective use of the goods and properties by the offender**[9].

With regard to the disproportion, the **confiscation of the assets** - due to the absence of any link of relevance between seizable assets and the crime - **applies regardless of the time of acquisition of the goods and properties undergoing confiscation**. The measure, in other words, can concern assets which entered into the possession of the convicted person in moments prior or subsequent to the completion of the formally ascertained criminal activity. The jurisprudence, however, has identified, over time, certain limits with the purpose of avoiding an excessive expansion of the scope of application of this type of confiscation. In particular, according to the Supreme Court of Cassation, the Judge must evaluate the **existence of an incongruous and significant imbalance** between the declared income or proceeds of the economic activity exercised and the value of the goods and properties, **at the moment of the acquisition of each single asset** and not considering the value of the entire wealth as a whole resulting from the investigation of the assets: in other words,

[8] The absence of any link of derivation/pertinence, as claimed by a part of the doctrine, brings the extended confiscation away from the perimeter of security measures and closer to that of typically afflictive patrimonial sanctions. Nevertheless, the vast majority of case law considers confiscation for disproportionality as a security measure of atypical nature.

[9] The situation of fictitious inter-position must be demonstrated by the Public Prosecutor, not on the basis of mere circumstantial evidence, but on the basis of factual elements, distinguished by the seriousness, precision and concordance requirements, such as, for example, the legal nature of the dispositive act, the relationship of family between the parties involved, the personal qualities of the beneficiary, the object of the dispositive act, the destination of the asset. With specific reference to the hypothesis in which the holder of the goods and properties is the spouse (or, in any case, a close relative) of the convicted person, the jurisprudence of legitimacy clearly states that the relative presumption on the illicit patrimonial accumulation, provided for the "extended" confiscation, operates, not only in relation to the goods and properties of the convicted person, but also in reference to the goods and properties in the name of the convicted person, also in reference to the goods and properties in the name of the spouse of the same, if the disproportion between the assets in the ownership of the spouse and the work activity carried out by the latter, compared with the other circumstances that characterize the concrete fact, appears demonstrative of the simulated nature of the registration.

he must establish whether or not the subject disposed of lawful financial resources such as to allow him, at the date of the transaction, to achieve the asset increase. The Constitutional Court, on the basis of what has already been argued by the jurisprudence of legitimacy in matters of preventive confiscation, has identified a further limitation, represented by the so-called **temporal reasonableness**, underlining that the presumption of illicit origin of the goods and properties cannot, in any case, "*operate in an unlimited and indiscriminate way, but must necessarily be confined within a temporary reasonable range, which allows a connection to be made between the goods and properties and the criminal fact*", and therefore, it cannot be extended to goods and properties acquired too far from the commission of the crime held to produce an illicit accumulation of wealth, for which it would be particularly problematic to justify the lawful origin.

The **presumption of illicit origin of the wealth**, once the disproportion has been proved, is, however, a matter of a **relative nature**, since it is up to the defendant to allege, in a precise and timely manner, all the elements necessary to provide a plausible justification for the lawful origin of the assets held: in particular, it is a matter of a positive demonstration of the lawfulness of the derivation of the disputed wealth, since it is not sufficient to simply assert the non-criminal origin of the assets.[10]. In this regard, it is highlighted that, similarly to what is provided also for the preventive confiscation, the regulations exclude the possibility for the defendant to justify the origin of the assets by adducing that they have been acquired with the proceeds or the re-investment of the tax evasion[11].

With regard to the scope of application, although this form of confiscation was introduced for the fight against organized crime of the mafia type, its efficacy in carrying out the function of preventive barrier intended to avoid the proliferation of wealth, of unjustified origin, introduced into the circuit of the legal economy, has determined, over the years, a **constant enlargement of its applicative perimeter**,

[10] The unified sections of the Court of Cassation ruled out the possibility of a real reversal of the burden of proof, since the person concerned is required to put forward facts and circumstances that can justify the legitimate origin of the wealth. It would therefore be a mere burden of allegation and not a formal burden of proof..

[11] The defendant may provide, by submitting supporting documents, all the elements needed to demonstrate that the purchase was made with additional income to that regularly declared (e.g. hereditary legacies, gambling winnings or income deriving from lawful activities before the expiry of the deadline for the declaration), provided that the provisions are lawful and traceable. In particular, the jurisprudence of legitimacy has specified that the interested party cannot demonstrate the proportion between disposable income and the value of purchases or investments through the mere indication and production of certificates of receipt of sums won at a game in a betting competition which, as they are issued on the basis of the presentation of non-nominative receipts, certify only the receipt of the sum, but not the winning player who may have sold them, even against payment of money, to anyone who needed to show the legality of a source.

which has extended well beyond the area of the criminal activities that are directly connected with the so-called "qualified" organized crime.

- As a consequence of the multiple interventions made, over time, by the Legislator, the confiscation for disproportion, pursuant to **Art. 240-bis**, is currently applicable to the following crimes (the so-called "*spy-crimes*" or "*source-crimes*").
- mafia-type associations, including foreign ones (**Article 416-bis of the Criminal Code**) and offences committed by availing oneself of the conditions provided for by the same criminal provision or in order to facilitate the activity of mafia-type associations, including foreign ones.
- **political-mafia electoral exchange** (**Article 416-ter of the Criminal Code**), fraudulent transfer of valuables (**Article 512-bis**), extortion (**Article 629**), kidnapping for the purpose of robbery (**Article 630**), usury (**Article 644**), receiving stolen goods, with the exception of that of particular minor importance (**Article 648**), money laundering (**Article 648-bis**), use of money, goods or benefits of unlawful origin (**Article 648-ter**) and self-laundering (**Article 648-ter.1**).
- association aimed at the illegal trafficking of narcotic or psychotropic substances (**Article 74 of Presidential Decree No 309 of 1990**)[12].
- offences committed for the purpose of terrorism, including international terrorism or subversion of the constitutional order;
- criminal association for the purpose of smuggling foreign processed tobacco (**Article 291-quater of Presidential Decree No 43 of 1973**)[13].

- **most offences against the public administration**[14]**;**

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[12] According to Art. 85-bis of the D.P.R. No. 309 of 1990, the extended confiscation applies also to crimes of **production, trafficking and illicit possession of narcotic or psychotropic substances**, provided for by Art. 73, excluding the hypothesis of minor entity.

[13] Pursuant to Article 301, para 5-bis of the Presidential Decree No. 43 of 23 January 1973, the extended confiscation also applies to the cases of **aggravated smuggling** provided for by Article 295, para 2 of the same decree.

[14] In particular, these are the offences of **misappropriation of funds (Article 314 of the Criminal Code), misappropriation of funds through the exploitation of another person's error (Article 316), misappropriation to the detriment of the State (Article 316-bis), undue receipt of funds to the detriment of the State (Article 316-ter), extortion (Article 317), bribery for the exercise of a function (Article 318), bribery for an act contrary to official duties (Article 319), bribery in judicial proceedings (Article 319-ter), and bribery of a person who has committed an offence. 317), bribery for the exercise of a function (Article 318), bribery for an act contrary to official duties (Article 319), bribery in judicial proceedings (Article 319-ter), undue induction to give or promise benefits (Article 319-quater), bribery for an act contrary to official duties (Article 319). 319-quater), bribery of a person in charge of a public service (Article 320), incitement to bribery (Article 322), embezzlement, extortion, undue induction to give or promise benefits, bribery and incitement to bribery of members of international courts or bodies of the European Communities or international parliamentary assemblies or international organisations and officials of the European**

- corruption between private individuals (Article 2635 of the Italian Civil Code).
- criminal conspiracy (Article 416 of the Criminal Code) aimed at certain crimes relating to illegal immigration[15]
- conspiracy to commit certain counterfeiting offences [16];
- conspiracy to commit certain offences relating to currency **counterfeiting** [17];
- **environmental disaster (Article 452-quater of the Criminal Code), activities organised for the illegal trafficking of waste (Article 452-quaterdecies), criminal association for the purpose of committing crimes against the environment (Article 452-octies, paragraph 1).**
- reduction to or maintenance in slavery or servitude (**Article 600 of the Criminal Code**), **trafficking in persons (Article 601)** and the purchase and sale of slaves (Article 602) and criminal conspiracy aimed at committing the aforementioned offences
- exploitation of or induction into child prostitution (**Article 600-bis of the Criminal Code**), child pornography limited to exploitation and trade (**Article 600-ter**), virtual pornography, in relation to the conduct of producing or trading in pornographic material (**Article 600-quater.1**), tourist initiatives aimed at exploiting child prostitution (**Article 600-quinquies) and criminal conspiracy aimed at committing the above offences**.
- illegal brokering and exploitation of labour (Article 603-bis of the Criminal Code).
- misuse and falsification of credit and payment cards (**Article 493-ter of the Criminal Code**).
- **certain cybercrime offences** [18], when the punishable conduct concerns three or more systems.

Communities and foreign states (Article 322-bis), use of inventions or discoveries known by reason of office (Article 325).

[15] These are the offences provided for in Article 12, **paragraphs 1, 3 and 3-ter** of Legislative Decree no. 286 of 25 July 1998. Legislative Decree no. 286 of 25 July 1998.

[16] In particular, the offences of: **counterfeiting, alteration or use of trademarks, distinctive signs or patents, models and designs (Article 473 of the Criminal Code), introduction into the State and trade of products with false signs (Article 474), manufacture and trade of goods made by usurping industrial property rights (Article 517-ter), counterfeiting of geographical indications or designations of origin of agri-food products (Article 517-quater).**

[17] In particular, **it concerns the offences of: counterfeiting money, spending and introduction into the State, with complicity, of counterfeit money (Article 453 of the Criminal Code), altering money (Article 454 of the Criminal Code), spending and introduction into the State, without complicity, of counterfeit money (Article 455 of the Criminal Code), counterfeiting watermarked paper used for the manufacture of public credit cards or stamps (Article 454 of the Criminal Code).), spending and introduction into the State, without acting in concert, of counterfeit money (Article 455), counterfeiting of watermarked paper used for the manufacture of public credit cards or revenue stamps (Article 460), manufacture or possession of watermarks or instruments intended for the counterfeiting of money, revenue stamps or watermarked paper (Article 461).**

[18] In particular, **this concerns the offences of: installing equipment designed to intercept, prevent or interrupt computer or telematic communications (Article 617-quinquies of the Criminal Code), altering**

Finally, in addition to the offences listed above, there are tax offences to which extended confiscation is applicable under **Article 12-bis of Legislative Decree no. 74 of 2000. 74 of 2000**: this concerns, in particular, fraudulent declaration by means of invoices or other documents for non-existent transactions, where the amount of the fictitious passive elements is higher than €200,000 (**Article 2 of Legislative Decree 74/2000**), fraudulent declaration by means of other schemes, if the evaded tax is higher than €100,000 (**Article 3**), issuance of invoices for non-existent transactions, where the amount of the fictitious passive elements is higher than €200,000 (Article 4 of Legislative Decree 74/2000). 3), the issuance of invoices or other documents for non-existent transactions, if the untrue amount indicated in the invoice is higher than €200,000 (**Article 8**) and fraudulent evasion of tax (**Article 11**), if, in the case provided for in the first paragraph, the amount of tax, penalties and interest is higher than €100,000 and, in that of the second paragraph, if the amount of assets lower than the actual amount or of fictitious liabilities is higher than €200,000[19].

In accordance with Art. 321, para 2, Code of Criminal Procedure, also for the assets for which the confiscation for proportion is provided for, the preventive seizure is admitted, for precautionary purposes, for whose concurrence it is sufficient that the Judge ascertains the existence of the so-called "*periculum in mora*", i.e. the presence of serious indications of the existence of the conditions that legitimize the ablative measure.

2. ANTI-MONEY LAUNDERING SYSTEM

The anti-money laundering system pursues the objective of preventing resources of criminal origin from entering the legal system; it therefore contributes to preserving stability, competition, the proper functioning of financial markets and, more generally, the integrity of the economy as a whole. At the same time, prevention is an important tool to complement law enforcement, as it intercepts and hinders the use and concealment of criminal proceeds. The anti-money laundering apparatus,

or suppressing the content of computer or telematic communications (Article 617-sexies), damaging information, data and computer programmes (Article 635-bis), damaging information, data and computer programmes used by the state or another public body or in any case of public utility (Article 635-ter), damaging computer or telematic systems (Article 635-ter). 635-bis), damaging computer information, data and programmes used by the State or another public body or in any case of public utility (Article 635-ter), damaging computer or telematic systems (Article 635-quarter), damaging computer or telematic systems of public utility (Article 635-quinquies).

[19] Articles 240-bis of the Criminal Code and 12-bis of Legislative Decree 74/2000, therefore, have a relationship of kind to kind: for the operation of the extended tax confiscation - in the part in which the legislator has provided for the mechanism of the "thresholds" - a "*quid pluris*" is required with respect to the mere criminal relevance of the conduct and of the relative assessment of liability.

because of its ability to identify and reconstruct criminal conduct, is also used to combat the financing of terrorism and the proliferation mass destruction weapons.

The Italian anti-money laundering legislation has developed in line with international standards and European directives. To this end, a broad notion of money laundering has been adopted which also includes self-laundering activities, i.e. the use of illicit proceeds in economic or financial activities by those who have committed or concurred in committing the alleged offence.

The money laundering prevention system is based on cooperation between operators, administrative authorities, investigative bodies and judicial authorities.

Italy has long had a structured procedure for assessing the threats of money laundering and terrorism financing, identifying the vulnerabilities of the system for preventing and combating these phenomena and, therefore, the most exposed sectors to these risks.

In line with international standards and EU provisions, the Italian legal system has introduced provisions aimed at enhancing the transparency of beneficial ownership of legal persons and trusts, through the creation of a central registration system of beneficial owners in special sections of the Companies Register.

Other preventive measures typical of the Italian system, aimed at hindering conduct involving a high risk of money laundering, are restrictions on the use of cash and bearer securities and obligations to channel the relevant transactions through supervised intermediaries.

Operators located at the crossroads of legal circuits and in key positions to intercept possible money laundering and terrorism financing phenomena are called upon to cooperate with the Authorities, carrying out a timely identification and reporting of possible transactions related to criminal activities. The range of recipients of the obligations has been broadened over time and now includes several homogeneous categories of persons. A first, long-standing group of recipients is represented by banking, financial and insurance intermediaries and other financial operators, to which other categories of professionals (notaries, lawyers, chartered accountants, auditors and auditing firms) and non-financial operators (trust and company service providers, persons trading in antique goods, etc.) have been added.

The Public Administration is not formally included among the reporting entities, but certain offices are required to report data and information concerning suspicious transactions to the Financial Intelligence Unit (FIU) established at the Bank of Italy, on the basis of instructions that have recently been issued by the FIU.

With regard to the more operational aspects, it should be noted that the suspicious transaction reporting procedure is based on the active involvement of both private and institutional actors, in which:

- financial intermediaries, professionals and other non-financial operators transmit the suspicious transaction reports.
- the Financial Intelligence Unit carries out financial analysis tasks.
- the Special Currency Police Unit and the Anti-Mafia Investigative Department carry out the ensuing investigative development.

The FIU, once it receives reports of suspicious transactions sent by intermediaries or by another category of operators that are subject to anti-money laundering requirements, carries out the financial analysis on the basis of:

- the results of studies on financial flows carried out on the capital market and on individual anomalies, sectors of the economy deemed to be at risk, categories of payment instruments and specific territorial economic realities.
- additional data and information beyond those reported, acquired from intermediaries, also through inspections.
- data contained in the register of financial relations (Article 37 of Decree-Law No 223/2006, converted with amendments into Law No 248/2006);
- in-depth investigations carried out in cooperation with the competent supervisory authorities, as agreed in specific memoranda of understanding.
- data and information exchanged with the Financial Intelligence Units of other States.
- information received from the Supervisory Authorities and Professional Associations concerning cases of omission of suspicious reports.
- information received from the Judicial Authorities on cases deemed relevant to money laundering or reuse of illicit proceeds through transactions carried out with intermediaries.

- information received from the investigating bodies on facts and situations considered to be relevant for anti-money laundering purposes.

The FIU *transmits without delay* the suspicious reports to the DIA and to the Nucleo Speciale Polizia Valutaria (Special Currency Police Unit); if the elements acquired already give rise to indictable offences, the FIU also reports them in writing without delay to the Public Prosecutor or to a law enforcement official, pursuant to Article 331 of the Code of Criminal Procedure.

Each report is accompanied by a technical report containing the results of the financial analysis as well as the risk ranking of the report assigned by the FIU. In fact, the FIU, in transmitting the report, provides a background relevance parameter which may vary from zero to five, where the level zero refers to the dismissed reports and level five represents the reports with the highest risk level.

Upon receipt of STRs, the internal assignment of inspection tasks between the DIA and the Special Currency Police Unit is carried out on the basis of the memorandum of understanding concluded on 16 March 1998, according to which:

- the D.I.A., in compliance with the competencies attributed by the constitutive law, proceeds to the in-depth examination of the reports that are pertinent to the mafia-type associative phenomena referred to in Article 416 bis of the Criminal Code; in the other cases, action is taken by the Special Currency Police Unit.
- the D.I.A. carries out the necessary checks to verify whether the report is directly or indirectly related to persons against whom it is investigating or who are involved in previous transactions. If such connections emerge, the D.I.A. carries out further investigations and, at the same time, informs the Special Unit thereof. Otherwise, the D.I.A. transmits to the Special Currency Police Unit any useful results, which may be included in the files.
- if, during the investigations carried out by the Special Unit, any connection with the activity of mafia-type associations should come to light or, in the context of the investigations initiated by the D.I.A., different criminal cases should emerge, the two investigative bodies will exchange information, which will be brought to the attention of the National Anti-Mafia Prosecutor.

3. ANTI-MAFIA PREVENTION SYSTEM

Anti-mafia interdictory measures - Historical and legal evolution

The need to fight the mafia-type criminal organizations, also in their economic activities, has been felt since the middle of the 60's of the last century and has resulted

in a series of legislative interventions which have come together in the already mentioned Anti-mafia Code and in the subsequent supplementing and amending decrees.

The fight against the mafia phenomenon, with specific regard to the economic ambit, goes back originally to the Law 31st May, 1965, No. 575, the so-called anti-mafia Law, bearing "Provisions against the mafia", which, for the first time, provided for the withdrawal, by law, of licences, concessions and registrations in the registers of contractors of works or public supplies for those subjects affected by a preventive measure referred to in the Law 27th December, 1956, No. 1423. However, also due to the social alarm created as a consequence of the continuous expansion, in the 70's, of the mafia phenomenon, the limits of the aforementioned regulations were understood, inasmuch as the sole measure of the revocation of the licences already obtained did not impede organized crime groups to acquire new ones and, consequently, to increase their own lawful sources of supplying.

Therefore, first, by Law No. 646, of 13th September 1982, , the so-called "Rognoni-La Torre Law" (known, in particular, for having introduced in the Criminal Code, the provision on mafia association) and, immediately after, by Law No. 936 of 23rd December, 1982, a more effective instrument was introduced, through the modification of Art. 10 of Law No. 575/1965, to counter the interference of organized crime in public contracts: the Public Administrations, in the process of adopting licences and/or authorizations to and of stipulating contracts with companies, were obliged to ask the Prefect for specific documentation, the "anti-mafia certification".

The Prefect was entrusted with the task of communicating to the competent public administrations the existence of measures impeding the granting of authorisations, contracts, etc., acquired through a flow of information which passed from the judicial offices to the police headquarters and from the latter to the Prefectures.

Law No 55 of 19 March 1990 introduced the possibility for the private individual to request an anti-mafia certification and to submit in some cases a self-certification; in 1991 and 1992, the scope of application was extended to include convictions for certain offences typically associated with organised crime.

The transformation, over time, of the historical mafias into financial and entrepreneurial platforms has entailed, as a consequence and reaction, the continuous evolution of the so-called anti-mafia information, transformed by the reforms of the Legislator (and by the interpretations of the jurisprudence) into an instrument that anticipates, to the maximum, the preventive action of the State, sharing with the preventive measures, a clearly protective logic.

A further intervention was made in 1994 with the Legislative Decree No. 490, introduced by the enabling act No. 47 of the same year, which distinguished the contracts according to ranges of value, identifying, likewise, those exempt from the obligation of certification, those falling within the intermediate range subject to the issue of the anti-mafia certification and those of the higher range subject to the so-called information requirement. This last type of documentation, in addition to covering the reporting area, also led to assessing the existence of the so-called "attempt of mafia infiltration" (Article 4, paragraph 4).

In the following years, the anti-mafia legislation was refined until the approval of the current Anti-Mafia Code (Legislative Decree no. 159 of 6 October 2011), which, as previously mentioned, unified and coordinated the relevant rules.

In fact, under the previous legislation, three forms of interdictory notices could be distinguished: the first concerned the interdictory notices acknowledging causes of prohibition, whose evidence automatically caused the termination of the relationship with the public administration (or prevented it from being established); a second type concerned those interdictory notices which, since they did not apply automatically, were an expression of the discretionary power of the Prefect, in case his own investigations led him to the conclusion that there was mafia infiltration in a specific company. The third typology concerned the so-called *atypical notices*, in which the Prefect, while recognising the absence of causes of exclusion, indicated to the concerned Administration the presence of certain critical elements; such elements would then be submitted to the same Administration for discretionary evaluation. The Code of Anti-Mafia Laws repealed the atypical interdictory notices and gave them a binding character.

Finally, Law No. 161 of 17 October 2017, which amended the Anti-Mafia Code, is also part of an expanding trend in prefectorial information. The rationale of this last provision consists in strengthening the fight against organized crime also by expanding the situations subject to anti-mafia verifications of an administrative nature which can then lead to the issuance of an anti-mafia interdictory order, but also the use of differentiated instruments, which are interconnected and capable of being shaped, in their effectiveness and aggressiveness, on the needs of individual enterprises at risk, so as to restore them to legality.

Significant aspects of the reform concern, however, consistently with what was stated in the introduction, also the revision of the discipline of the judicial administration and the introduction, ex novo, of the Judicial Control system, both placed in the section of the Code regarding precisely preventive measures other than confiscation. Unlike the latter, the aforementioned regulations allow the State, through the judicial authority, to recover the companies contaminated (or even

merely threatened with contamination) by the criminal syndicates, without, however, completely ousting the entrepreneurs from the management of the economic activities.

Paragraph 1 of Art. 34 concerns the hypotheses in which there is "sufficient evidence", i.e. serious, precise and concordant evidence in relation to the probative material collected, which leads to the belief that the free exercise of certain economic activities (also of an entrepreneurial nature) is directly or indirectly subjected to the conditions of intimidation or subjugation provided for by Art. 416-bis of the Criminal Code or, alternatively, that it could, however, facilitate the activity of persons against whom a preventive personal or property measure has been applied, or even only proposed, as provided for by Articles 6 and 24 of the Code, as well as of individuals subjected to criminal proceedings for a series of crimes deemed to be a sign of mafia infiltration (so-called sentinel crimes). At the same time, Law No. 161/2017 also introduced ex novo the measure of judicial control of companies, Article 34-bis of the Code. The provision provides that judicial control may be ordered, also ex officio, by the court where there are factual circumstances from which a concrete danger of mafia infiltration can be inferred, and which are capable of affecting the business activity only "on an occasional basis". Regarding the subjects of the measure, Art. 34-bis contains a reference to the preceding article and recalls the same categories of subjects who can be affected by the application of the judicial administration.

Paragraph 6 of Article 34-bis of Legislative Decree no. 159/11 provides that the judicial control may be requested directly by the companies which have been the subjects of anti-mafia interdictory measures referred to in Article 84, paragraphs 3 and 4, of Legislative Decree no. 159, provided that they have lodged an appeal against the relevant measure issued by the Prefect before the competent Regional Administrative Court. The following paragraph 7 provides that the measure ordering the judicial control suspends the effects of the interdiction referred to in Article 94 of the same decree.

Anti-mafia interdictory measures - Legal framework

The anti-mafia interdiction is an administrative measure of a preventive nature issued by the Prefect, which has the objective of protecting public order, free competition among the enterprises and the good course of the Public Administration. It is not based on ascertained data, but on a probability evaluation on the basis of serious, precise and concordant evidence and is not of an inflictive nature but tends to impede that organized crime penetrates and infiltrates the legal economy.

The administrative discretion conferred by the regulations of the Anti-mafia Code has led the jurisprudence to elaborate criteria to establish the legitimacy of the

evaluations made by the Government bodies in the interdiction process: as stated by the Council of State, in fact, the evaluation made by the Prefect is "open to review by the Judiciary in the event of manifest illogicality, unreasonableness and distortion of the facts", while the administrative Judge is precluded from establishing the facts on which the measure is based. The long-standing jurisprudence of the Council of State has clarified that the danger of mafia infiltration must be assessed according to an inductive reasoning, based on probability, which does not require to reach a level of certainty beyond reasonable doubt, typical of the ascertainment aimed at establishing the criminal responsibility, and therefore founded on evidence, but implies a prediction supported by a reliable degree of probability, on the basis of serious, precise and concordant indications, so as to consider "more probable than not", the danger of mafia infiltration. As far as the probability approach is concerned, the Council of State, in its judgement No. 4483 of 2017, established that in the case of the adoption of interdictory measures "the interpreter is always bound to develop a rigorous argument on the methodological level, even though it is sufficient to ascertain that the hypothesis around that fact is more probable than all the others put together, that is, represents the 50% + 1 possibility, or, with a more appropriate formulation, the so-called crucial probability".

The regulatory framework is defined by paragraph 3 of Article 84 of Legislative Decree no. 159/2011 and consists of "certification of the existence or non-existence of one of the causes of disqualification, suspension or prohibition referred to in Article 67, as well as, without prejudice to the provisions of Article 91, paragraph 6, certification of the existence or non-existence of any attempts of infiltration by the mafia aimed at influencing the choices and directions of the companies or enterprises concerned as indicated in paragraph 4". The causes of disqualification, as specified by Art. 67 referred to by Art. 84, concern "licences, authorisations, concessions, registrations, certifications, approvals and disbursements referred to in paragraph 1, as well as the prohibition to conclude public contracts of works, services and supplies, of fiduciary piecework and relative sub-contracts, including piecework of any kind, hot hires and supplies with installation". The danger of Mafia infiltration must be anchored to symptomatic conduct and be based on a series of factual elements, some of which are typified by the Legislator (Art. 84, para 4, of the Legislative Decree No. 159 of 2011), while others, "free conduct", are left to the cautious and motivated discretionary assessment of the administrative authority, which "may" assume the attempt of Mafia infiltration, pursuant to Art. 91, paragraph 6 of Legislative Decree No. 159 of 2011, from non final convictions of offences instrumental to the activity of the criminal organizations, along with concrete

elements proving that the entrepreneurial activity may facilitate the criminal activities, also indirectly, or be influenced by them.

However, the Legislative Decree No. 159 of 2011 also provides, in Art. 84, para 4, letter d) that the symptomatic elements of mafia infiltration, also beyond those provided for by Art. 91, para 6, can also be deduced "from the investigations ordered by the Prefect". Moreover, the atypical nature of the capacity, on the part of the mafias, to pursue their own ends imposes, for the service of the Prefectures, a use of instruments, verifications, connections, results, necessarily even of an atypical nature.

A separate mention should be made of the so-called "sentinel crimes", that is, "conduct which reflects in itself the danger of mafia infiltration, insofar as it concerns cases which cause greater social alarm, around which, with greater statistical regularity, the world of mafia-type organized crime gravitates", referred to in Article 84, para 4, letter a) of the Anti-mafia Code, which establishes that the danger of mafia infiltration underlying the adoption of interdictory anti-mafia information is inferred "from the measures which order a preventive measure or trial, or which bear a conviction, even if not final, for some of the crimes referred to in Articles 353, 353-bis, 603-bis, 629, 640-bis, 644, 648-bis, 648-ter of the Criminal Code, of the offences referred to in Article 51, paragraph 3-bis, of the Code of Criminal Procedure and in Article 12-quinquies of Decree-Law no. 306 of 8 June 1992, converted, with amendments, into a law by the Court of Justice. 306 of the decree-law of 8 June 1992, converted, with amendments, by the law of 7 August 1992, no. 356".

The main actors of this legislative system are the Coordination Committee for the High Surveillance of the Infrastructures and Priority Settlements (CCASIIP), which operates at a central level in a multidisciplinary manner, and the Interforce Anti-mafia Groups (GIA), which operate at a peripheral level at the Prefectures. The latter ensure the necessary synergy between the Police Forces and the provincial governmental authority in particular for all needs related to the fight against mafia infiltration in public procurement.

Still on the subject of public procurement, another important anti-Mafia watchdog is the Mission Structure, chaired by a Prefect and hinged within the Ministry of the Interior. The structure is committed to preventing and combating the infiltration of organised crime in public and private contracts related to the reconstruction of the areas of central Italy affected by the earthquakes. In particular, it has the task of carrying out checks for the issuance of anti-mafia notices, an essential certification

for the award and execution of public and private contracts benefiting from public contributions. Economic operators planning to take part in the reconstruction work must apply for registration in the anti-mafia register of contractors, a list managed by the Structure in cooperation with the Prefectures of the provinces affected by the earthquakes. The **Central Observatory for Public Contracts (O.C.A.P.)** plays a "barycentric" role and acts as a link with the Mission Structure. It is established within the DIA and contributes to ensuring that the delicate sector of public procurement remains free from mafia pollution. In particular, the Observatory, with the cooperation of the territorial branches of the DIA, carries out checks to ensure that contractors are registered in the anti-mafia register. The Structure of Mission then refers the matter to the Central Inter-force Group, set up within the Criminal Analysis Service of the Central Directorate of the Criminal Police, for further in-depth analysis of the context of those entrepreneurial realities which, from an initial examination, may have highlighted possible " critical points ".

Briefly, the monitoring of the public contracts is, therefore, finalized to identify entrepreneurial initiatives which are only apparently lawful and, therefore, to attack companies that are vulnerable to or contaminated by mafia influences, which could be concealed or disguised through the use of front men.

Unique national database for anti-mafia documentation (Bdna)

The Unique National Database for Anti-Mafia Documentation (Banca Nazionale Unica per la documentazione Antimafia - Bdna), set up at the Ministry of the Interior, was created to speed up the issuance of anti-mafia clearance notices and information notices in an automatic manner to public administrations, public bodies and companies supervised by the State.

The documentation issued by the Bdna is required before entering into, approving or authorising contracts and subcontracts relating to public works, services and supplies or before allowing the issuance of measures provided for by the Anti-Mafia Code.

In order to access the above-mentioned database, public administrations, public bodies and State-controlled companies must be accredited by the competent Prefectures and granted access credentials.

The Bdna, which has links with other databases, is governed by the Decree of the Presidency of the Council of Ministers No. 193 of 30 October 2014, which specifies the modalities of operation, access and consultation.

Central Interforce Group

The composition of the Central Interforce Group was established by decree of the Minister of the Interior, in agreement with the Ministers of Economy and Finance and of Defence, on 15 December 2020.

The Group operates within the Criminal Analysis Service - Central Directorate of Criminal Police at the Department of Public Security of the Ministry of the Interior and carries out monitoring, collection and analysis of anti-mafia information, as well as specialized support to the administrative prevention activities of the Prefects, including as regards the implementation of major works and the occurrence of any emergency justifying its intervention.

In particular, it deals with inspections relating to major infrastructure works and major events, as well as reconstruction and redevelopment processes also following civil protection emergencies.

CHAPTER III

ORGANISATIONAL MEASURES APPLIED BY THE POLICE

Introduction

The allocation of Community financing, for the implementation of the investments and of the connected structural reforms provided for in the context of the "***National Recovery and Resilience Plan***" requires the bodies of the State and, in primis, the Police Forces to maximize every possible effort in the attempt to impede that the massive Community contribution be tapped by the illicit initiatives of the mafia organizations through forms, more or less direct, of infiltration into the multiple areas covered by the allocations.

In fact, it cannot be ignored that such complex and imposing economic-financial scenario, besides offering the Country an exceptional and unmissable opportunity for the recovery and relaunching of the economy, as well as for the modernization of structures and infrastructures, can represent for the criminal associations an equally unrepeatable occasion to finalize their expansive-infiltrative tendency in the legal economic sector, through the acquisition of orders and public contracts and the reinvestment of significant flows of capital which have been illicitly obtained in the various segments of the productive and financial system.

At this point, the attention of the Police Forces, fully aware of the challenge that is imposed on them, is, therefore, maximally centred on the elaboration of organizational formulas and targeted operative strategies, which are suitable to support, in a preventive and counteractive capacity, each one in its own sphere of competence and the protective action of the Country as a whole.

PUBLIC SECURITY ADMINISTRATION

The Minister of the Interior is responsible for the protection of public order and security and acts as the national public security authority.

The Minister of the Interior is in charge of public order and safety services and coordinates the tasks and activities of the police forces.

The Minister of the Interior performs his duties in the field of protection of public order and safety by making use of the Public Security Administration under which the Department of Public Security is established, which is headed by the Chief of Police - Director General of Public Security, who provides, according to the directives and orders of the Minister of the Interior:

1) The implementation of public order and security policies.

2) Technical and operational coordination of the Police Forces.

3) Direction and administration of the State Police.

4) direction and management of technical support, also for the general needs of the Ministry of the Interior.

Within the Department of Public Security, there are two inter-agency structures in charge of dealing with matters concerning international relations:

The Office for the Coordination and Planning of the Police Forces, through the Service for International Relations, manages and develops the strategic planning of the relations in the European and international areas.

The Central Directorate of the Criminal Police, through the International Police Cooperation Service, ensures, by implementing the strategic planning of international relations, the performance of police cooperation tasks at European and international level. The aforementioned Service acts as a Single Point Of Contact (SPOC) for the Law Enforcement system of other countries, ensuring the interoperability of databases, also making use of the network of expert security liaison officers.

The Central Directorate for Criminal Police collects, classifies and analyses information and data on the protection of public order and safety, as well as on the fight against the most significant criminal phenomena.

In particular, the Criminal Analysis Service of the aforementioned Central Directorate carries out strategic analysis on criminal phenomena as well as on the evolution of organized crime, also of an international and transnational nature, participating inter alia in international criminal analysis initiatives.

1. STATE POLICE

The **State Police** is a police force based on civil law and with general competence. The Minister of the Interior is the National Authority for Public Security and ensures that public order is maintained. It relies on the Department of Public Security, headed by the Chief of Police - Director General of Public Security.

The **State Police**, as part of its powers, to date has stipulated a protocol of understanding with the Guardia di Finanza, aimed at the investigative cooperation between the two Administrations, to be implemented through the sharing of

information of a financial nature and of the STRs in matters of money laundering. Specifically, it is provided that the Questors can request from the Provincial Commands of the Guardia di Finanza, anti-money laundering information pertaining to the prevention procedures initiated by the investigative units of the State Police.

Furthermore, at the organizational level, the State Police is intervening through the "mobile squads" with adequate guidelines aimed at increasing the awareness of the personnel in the search for possible signs of criminal infiltration into the economy, such as, for example:

illicit competition through the use of violence or threats.

money laundering and reuse of money, goods or assets of unlawful origin.

fraudulent transfer of assets and fraud to obtain public funds.

corruption, in the context of relations with the Public Administration, and other unlawful conduct by public administrators, especially in interactions between the public sector and private enterprises in the areas of intervention of the National Recovery and Resilience Plan.

the aggression and influence of the complex cycle of the contract, especially in the areas in which the investments of the National Recovery and Resilience Plan will solicit the illicit initiatives of the criminal holdings, either through the constitution of new ad hoc companies or, again, through the acquisition of sub-contracts[20].

Furthermore, the Mobile Squads have been urged to intensify, in the intelligence-investigative phase, the direct contacts with the trade associations operating on the territory (Manufacturers' Association, Trade Confederation, Business Confederation, Craftsmen's Association), as well as to enhance the investigative framework that has been acquired, in respect of the preliminary investigation needs, with the objective of progressively mapping the evolution of the economic critical situations and to identify the sectors particularly exposed or "sensitive" to criminal infiltration.

Finally, with regard to organization, the State Police has proceeded to strengthen its own specialized offices, both at the central and territorial levels.

At a central level, in particular, the functions of the Fourth Division of the Central Operative Service have been redesigned[21], which was established at the Central Anti-

[20] Examples include building interventions for urban regeneration and/or energy efficiency.
[21] An operational test phase is currently in progress.

crime Directorate of the State Police, to which new competencies have been attributed in matters of advancement, coordination and direct participation in investigations on crimes against the public administration, to guarantee the carrying out of investigations of a wider scope. Furthermore, within the same Division, the Patrimonial Investigations Section has been reinforced, with personnel who have experience in the management of databases relating to national and foreign companies, in the analysis of balance sheets as well as public register acts.

This strategic implementation, at peripheral level, has enhanced the specialist components of the "patrimonial investigation units", already trained at the Mobile Squad and Anti-crime Divisions, through courses in matters of criminal confiscation and prevention, as well as the anti-corruption sections and units of the Mobile Squad, in order to open targeted intelligence-investigative activities which focus on the potential incidence of the corruptive systems in the political-administrative apparatus[22].

This medium- and long-term strategic implementation will allow an adequate interaction between specialist departments operating on the territory and central coordination structures, in order to adequately counter the foreseeable critical issues related to the implementation and management phase of EU funds, as well as to the prolonged structural intervention in the various economic sectors.

2. CARABINIERI CORPS

The **Carabinieri Corps** is an armed force and a police force with a general military system, on permanent public security duty. Because of its special military police function, its tasks and powers are set out in the Code of Military Order.

The **Carabinieri Corps** has planned to train its personnel through specific training courses on the subject of asset investigations and anti-corruption. In particular, the Higher Institute of Investigative Techniques of the Corp of Velletri has already trained on the first of the aforementioned topics and on the preventive measures, 500 military personnel of the most committed Units in the activity of countering the

[22] With particular reference to the sector of public concessions and construction, as well as, above all, to the imminent disbursement of EU-derived funds for the financing of NRRP projects, an operational testing phase is currently in progress.
7 Pursuant to Law 3/2019 which introduced the possibility of using the undercover agent for some of the most significant offences against the Public Administration [Articles 317, 318, 319, 319-bis, 319-ter, 319-quater, first paragraph, 320, 321, 322, 322-bis, 346-bis, 353, 353-bis of the Criminal Code].

potential aggressiveness of the criminal interests, planning the training of another 76 units within the year.

Furthermore, the same Institute has trained 420 units on the subject of the fight against corruption, organizing further courses, addressed to the officers of the Investigative Police, in view of possible employment in undercover activities, which are now permitted also in relation to crimes against the Public Administration[23].

Furthermore, the Corp has set among its strategic priorities the implementation of the international police cooperation and of the collaboration with the Judicial Authorities - in particular, with the newly constituted European Public Prosecutor Office (E.P.P.O.), but not before having scheduled courses on the international cooperation and on the subject of assets investigations, in the same centre, in favour of the personnel assigned to the E.P.P.O. Sections.

In view of the growing trans-national dimension assumed by the major criminal phenomena, it also issued special dispositions on the subject of police cooperation in the international area, identifying "procedural protocols" for a better use of the support supplied by Europol and Interpol.

The other guidelines identified by the General Command of the Carabinieri are included in the above-mentioned guidelines to favour:

- the access to information bases and databases which are of interest (Archive of Financial Reports, Regional Explorer), as well as to the circuit of the Suspected Transactions Reports.
- the sharing of information.
- relations with the economic and business community, through the signing of specific protocols, in order to establish communication channels with the business world.

3. GUARDIA DI FINANZA

The **Guardia di Finanza** is a military police force with exclusive competence in economic and financial matters. It performs tasks related to the prevention, investigation and reporting of financial evasion and violations, monitoring of compliance with provisions of political and economic interest and surveillance at sea for financial police purposes.

At an organizational level, the counteraction system is composed of the Central Investigation Service on Organized Crime (S.C.I.C.O.) and of 26 Investigation Groups on Organized Crime (GG.I.C.O.), at the seats of the Court of Appeal.

They are supported by the special Units competent in the matter, among which, the Special Currency Police Nucleus which, together with the Anti-mafia Investigative Direction and the FIU, form the tripartite model on which the anti-money laundering prevention system currently in force is founded.

From the point of view of the international projection, the investigative methodologies of the **Guardia di Finanza** have been oriented towards the search and identification of assets and capital deriving from illicit activities, thanks also to the instruments made available by Interpol, Europol and the various offices of asset recovery, accessed through the International Police Cooperation Service, as well as the opportunities deriving from the exchange of information in the administrative field.

Regarding its operational aspect, the most recent investigations carried out by the Units of the Guardia di Finanza have confirmed the persistent attractiveness of the pandemic scenario, which constitutes an important business opportunity for criminal organisations with respect to both production chains and essential services that remained active even during the lockdown (waste disposal, sanitation, agro-food and logistics), and to the most severely affected sectors by the crisis, which are therefore more vulnerable and permeable.

In addition, particular attention was paid to illicit conduct more directly related to the health contingency, which made it possible to hinder the illicit marketing of personal protective equipment (PPE) and other goods useful to deal with the epidemiological emergency, as well as to minimise the risk of anti-competitive practices and speculative manoeuvres related to the increased demand for certain products.

Furthermore, the Corp, in order to better strengthen the action of countering criminal infiltration, has reinforced the activity of analysis carried out by its Units, on the assumption that certain dynamics can be indicative of the potential pollution of the legal economy with criminal matrix. The attention has thus been more focused on the needs of liquidity of families and businesses in financial difficulty, as well as on the stipulation of legal contracts on assets, referring to operations of termination, start-up, take-over and, in general, to interventions which are instrumental to variations of the proprietary *assets*.

Finally, since June 2020, the Units of the Corp have received the impulse to reinforce the monitoring activities on the movements of money which could feed forms of illicit gain, with consequent distorting effects on the economy, as well as to concentrate the operative attention on the sectors rendered more attractive by the protraction of the pandemic, in line with the initiatives assumed in the various institutional seats, giving, without delay, the maximum impulse to the investigations on the financial flows. In this perspective, initiatives have been adopted to speed up, to the maximum extent possible, the flow of examination and operative examination of all the STRs, on the basis of the positive experience matured at the beginning of the emergency period, when the establishment of specific phenomenal codes was agreed with the FIU in order to identify those contexts which can already be attributed, at a first impact, to potential offences related to the pandemic[24].

In the particular sector of the revenues of the State Budget, the Corp has oriented its own inspection activities towards targets characterized by high-risk profiles, enhancing, to the maximum, the transversality of action in the fight against all the phenomena of economic-financial illegality.

On the other hand, operational experience shows that criminal associations are oriented towards re-employing illicit capital in the entrepreneurial circuit and, with similar frequency, resort to false invoicing not only to evade tax, but also to give an appearance of legality to financial flows traceable to money laundering, corruption or to the undue receipt of national or European financing.

The legislation on the taxation of illicit proceeds and the measures to combat tax crimes, now including the 'extended' criminal confiscation, clearly show the natural combination of profit crime and tax crimes and, in this direction the territorial Departments are oriented to develop an action of prevention of tax fraud through targeted controls on new VAT numbers, to neutralize in the early stages the fraudulent circuits fed by newly established so-called “paper companies”, preventing them from being instrumental to other criminal interests.

This approach is also likely to have a positive effect on undue compensation, which is the subject of a particularly high level of audit attention, given that the emergency legislation has introduced a number of facilitating measures in the form of tax credits and tax deductions transferable to third parties.

Even the undeclared work is affected by controls focused on the conduct most seriously affecting the rights of workers and the related economic and financial repercussions.

[24] The so-called “S.O.S. COVID”

Recent investigative experiences show a significant spread of the phenomena of recruitment and exploitation of labor (so-called "caporalato") exacerbated by the pandemic emergency with an increase in the use of labor in the field of home deliveries, including through digital platforms.

In the field of excise duties and consumption taxes, the monitoring system has been intensified in order to promptly intercept illegal trafficking related to the movement of alcoholic and petroleum products in tax evasion and to acquire useful elements for the reconstruction of the criminal chain, through constant checks on the movement of such products and inspections aimed at investigating any evidence potentially indicative of criminal infiltration, which could take advantage of the economic difficulties and reduced liquidity of companies to acquire assets, such as storage depots or fuel distribution facilities, through the laundering of illicit capital.

Particular attention is also paid to customs fraud, taking into account that ports and airports constitute the privileged place of entry, exit and transit of goods and persons and, therefore, of illicit trafficking connected to their movement in Italy and the EU, as well as to the undue use of facilities connected to the import of goods related to the health emergency.

Specifically on the issue of smuggling of foreign manufactured tobacco, investigative activities are directed, inter alia, to the illegal trade activities, including online or small-scale sales of tobacco products managed by criminal organizations, which, following the measures to contain the health emergency, have reorganized their distribution network through home deliveries by courier or delivery rider.

Similarly, as the revenue sector, the Guardia di Finanza - entrusted by law to the protection of the budget of the State, of the Regions and of the EU - is committed to guarantee the prevention and counteraction of the conduct of illegal awarding of tenders, which often jeopardizes the survival of healthy businesses on the markets.

With regard to this particular sector, i.e. the protection of public expenditure, the operational commitment is geared towards ensuring that the resources allocated to support income, families and businesses, given the pandemic, are not subject to misappropriation, fraud and embezzlement.

In this context, even recently, there has been an overall effort to update/implement operational relations with the central Administrations, local entities and investee companies, which are responsible for the management of emergency measures to support people and the economy adopted in the last period and which, above all, will be called upon to implement the measures provided for by the NRRP. In this regard, memoranda of understanding have been renewed with the Ministry of Economic

Development, S.A.C.E. S.p.A., the Ministry of Ecological Transition, the Internal Revenue Service, I.S.M.E.A., the Ministry of Labour, and Terna S.p.A.; further memoranda are being concluded or renewed. A cooperation protocol has been drawn up with the Attorney General's Office of the Court of Auditors.

These methods of collaboration will be further strengthened in the wake of the discussions initiated with the State General Accounting Office (Ragioneria Generale dello Stato), in whose framework, by Decree Law No. 77/2021, the centralized structures of coordination and audit connected to the implementation of the 'National Recovery and Resilience Plan' have been instituted, envisaging the collaboration of the Guardia di Finanza for the enforcement activities.

In the above mentioned sense, the mentioned decree, in attributing to the Corp a key role in the monitoring system of the resources connected to the implementation of the NRRP, provides, in fact, that:

- "*for the purpose of strengthening control activities, also aimed at preventing and combating corruption and fraud as well as identifying conflicts of interest and duplication of public funding, the central administrations in charge of interventions provided for by the NRRP may enter into specific memoranda of understanding with the Guardia di Finanza without any further or new burden for the public budget*".
- the technical coordination structures supervise "*adopting the necessary initiatives to prevent, correct and sanction irregularities and undue use of the resources, frauds and conflicts of interest, as well as to exclude the risk of double public financing of the interventions, also on the basis of protocols of understanding with the Guardia di Finanza*".

In addition to the activities of an administrative nature, the Corp continues to be strongly committed in support of the Judicial Authorities in the carrying out of investigations against crimes against the P.A. and, in particular, of corruption, a phenomenon which constitutes the principal instrument of infiltration into the management of the public supplies by the economic criminality, also of an organized type.

In this context, the European Public Prosecutor's Office, competent to investigate and prosecute crimes that damage the financial interests of the Union, which will include all the frauds affecting the resources deployed for the interventions of the NRRP, finds in the Guardia di Finanza a fundamental point of reference, due to the powers and functions of economic-financial police attributed to the Corps by the Legislative

Decree no. 68/2001, as confirmed by the Decree of 15 August 2017 of the Ministry of the Interior[25].

On the same basis as the national Judiciary, the Corp makes available, also to the delegated European Prosecutors, its own operational mechanism, articulated on Units widely distributed on the territory, among which, in primis, the Nuclei PEF located in every capital of the Province, as well as the Units of the Special Component. The Special Unit of Public Expenditure and Repression of Community Fraud, instituted by the Community Law of 1994 with specific functions of repression of Community frauds and the attribution, with the European Law of 2013, of further far-reaching investigative powers, assumes a role of absolute importance.

The EPPO's start of operations was accompanied by the issuance of directives by the General Command of the Guardia di Finanza, which provided precise indications to its operational Units in order to encourage and boost cooperation with the delegated European Public Prosecutors, followed by targeted training initiatives for the benefit of the personnel employed in the services accessible to the competences of the new Judicial Office.

Further training initiatives are systematically implemented in order to strengthen the prevention and fight against any form of economic contamination by criminal organisations.

[25] Directive on police specialty areas and rationalisation of police stations.