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Italian Asset Recovery Tools & Procedures.
A Practical Guide for International Cooperation.

Ministero degli Affari Esteri - Ministry of Foreign Affairs
Ministero di Giustizia - Ministry of Justice
Ministero degli Interni - Ministry of the Interior
Guardia di Finanza
Unità di Informazione Finanziaria – Financial Intelligence
Unit

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1. Overview

At their Summit in Camp David, G8 Leaders endorsed the asset recovery action plan to promote the return of stolen assets developed earlier this year through the “governance track” of the Deauville Partnership. The abovementioned Action Plan established that “each G8 member will publish a guide that describes specific steps required for assistance and cooperation in matters related to tracing, freezing, confiscation, and return of proceeds of corruption, whether through formal mutual legal assistance (MLA) or other forms of cooperation and make the guide available in Arabic”.

This guide summarizes Italy’s efforts to ensure that stolen assets are recovered and returned to those citizens victimized by corruption in line with international commitments. It provides practical information on how Italian authorities can assist other countries in the recovery of assets - including by providing assistance in asset tracing investigations, freezing, seizing, confiscation, and the enforcement of foreign restraint orders and confiscation orders - and the specific steps that other countries and foreign jurisdictions can take to access this assistance and cooperation. The tools available (informal vs. formal measures) will depend on the type of assistance sought and the agreements, whether bilateral or multilateral, in place in both countries. All requests should be accompanied by a translation into Italian.

Main Italian Authorities supporting Asset Recovery Cases:

- **Italian Ministry of Justice.** The Ministry serves as the Central Authority for international judicial assistance in criminal matters.

Ministry of Justice - Department for Justice Affairs
Directorate General for Criminal Justice- Ufficio II (International Cooperation)
via Arenula 70- 00186- ROMA
tel +390668852180
Fax +390668897528
e-mail ufficio2.dgpenale.dag@giustizia.it

- **International Police Cooperation Service** (Servizio per la Cooperazione Internazionale di Polizia - SCIP) is an interagency service for international operational police cooperation. It also comprises the National Central Bureau-Interpol, the Italian Europol National Unit and the S.I.R.E.N.E. Division. Established in 2000 within the Criminal Police Central Directorate, SCIP serves as the Italian Asset Recovery Office (ARO) set up following EU Council Decision 2007/845/JHA1 in order to facilitate, through enhanced cooperation, the fastest possible EU-wide tracing of assets derived from crime.
- **Unità di informazione finanziaria (UIF) within the Bank of Italy** is the Italian Financial Intelligence Unit appointed for the prevention and countering of money laundering and terrorist financing. The UIF performs its functions autonomously and independently using resources and instrumental goods provided by the Bank of Italy. In order to prevent and counter money laundering and terrorist financing, the UIF analyzes the suspicious transactions reported by financial intermediaries and other entities and professionals subject to reporting requirements. To this end it collects additional data from the financial intermediaries and other entities and professionals, avails itself of the contribution made by the supervisory authorities, and cooperates with the competent authorities and law enforcement bodies. The UIF also participates in the work of various international organizations (the FATF, the Egmont Group)

and EU bodies (the FIU Platform, the Committee for the Prevention of Money Laundering and Terrorist Financing).

- The **Guardia di Finanza** (Italian Financial Police) is an Italian law enforcement agency under the authority of the Minister of Economy and Finance. It is based on a military structure and it is a special police force aimed at prevention and repression of economic and financial violations. The tasks of the Guardia di Finanza are the countering of tax evasion and avoidance and the control of the public expenditure, in order to prevent and repress fraud committed against the State, Local Authorities and the European Union. Guardia di Finanza has jurisdiction in the contrast of economic and financial crime in general. As customs police it carries out investigations aimed at the fight against smuggling, drug trafficking and other illegal trafficking in general, through sea and land borders surveillance, and the execution of complex investigations. It also deals with the protection of the proper functioning of capital markets and savings through the implementation of specific controls against money laundering and terrorist financing. A strategic sector for Guardia di Finanza is the fight against organized crime, especially through structured investigations for the reconstruction of illegal assets. In fact, due to its specific competence, G. di F. is involved in investigation aimed at the asset recovery and at the confiscation of the illicit proceeds.

2. *Investigative Assistance*

The International Police Co-operation Service within the Criminal Police Central Directorate is the principal Actor in investigative Assistance. This Service ensures information exchanges through Interpol, Europol and S.I.Re.N.E. channels.

In order to recover the proceeds of corruption that are either held in Italy or moved through Italy, a foreign jurisdiction first must be able to identify the assets or assist Italian Authorities in identifying the assets. There are a variety of mechanisms through which the Italian Authorities can assist in the identification and tracing of criminally derived assets. The first step available to a foreign jurisdiction in identifying assets in Italy is often to request informal investigative assistance, through contacts among law enforcement agencies.

Following the workflow of the activities put in place by International Police Co-operation Service (acts also as ARO Italy):

1. requests from countries usually come to the International Operations Room under the form of request of information;
2. in particular the operators of said Operations Room handle the request sending a reply with the outcomes of the Criminal National database and other data available;
3. if the application is not urgent and require more and deep investigations, the request is assigned to the operative Divisions (in this frame is important for the requesting Countries to specify the main offence related to the request);
4. the Operative Divisions works strictly linked with the National Services (usually the Guardia di Finanza as National Financial Police Force);
5. the activities carried out by local Services consist in matching the results of databases, check the real situation of the subject under inquiry by traditional investigations getting information gathered directly on the field;
6. when the information is complete, ARO Italy collects all the results and sends a report to the requesting country replying to the original request.

This kind of activity requires that requests are complete. In Italy the only instrument that allow to have complete and detailed information about persons is the taxpayer code consisting in an univocal alpha numeric code processed and assigned to them by the Financial Administration based on the surname, name, sex, date and place of birth of the person in object. With regard to companies the taxpayer code consists instead in a numeric code.

In patrimonial investigation, actually, operators can directly have access to a very important database like National Tax Payer database checking directly the Annual Statements of Income.

Interpol is one of the channels to forward International Letters of Requests (I.L.O.R.)

Italian Authorities may offer support to a foreign investigation using routine investigative measures such as witness interviews, visual surveillance, public record searches, and providing public documents. In this respect, Italy participates in several networks of experts, such as the Camden Asset Recovery Inter-Agency Network (CARIN) and in the Asset Recovery Focal Point Initiative (supported by INTERPOL and StAR).

In view of the above a requests can be sent to the following addresses:

Ministry of Internal Affairs - Department of Public Security
Criminal Police Central Directorate - International Police Cooperation Service
00173 – Via Torre di Mezzavia 9/121, Roma (Italy)
TEL: +39-06-46542128
FAX: +39-06-46542243
E-MAIL: scipsalasiswazione@dcpc.interno.it

3. *Mutual Legal Assistance Requests*

Formal requests to obtain assistance such as compelled or sworn testimony, production of financial or third party records, authentication of records, and searches can also be made based on a bilateral mutual legal assistance treaty (MLAT), multilateral convention, or discretionary letter rogatory or letter of request.

Formal requests are also necessary to enforce restraining orders or execute forfeiture judgments. The Italian Central Authority for formal Mutual Legal Assistance operates within the Ministry of Justice:

Ministry of Justice - Department for Justice Affairs
Directorate General for Criminal Justice- Ufficio II (International Cooperation)
via Arenula 70- 00186- ROMA
tel +390668852180
Fax +390668897528
e-mail ufficio2.dgpenale.dag@giustizia.it

4. *General framework for Mutual Legal Assistance*

Italian Authorities may provide judicial assistance both on the basis of bilateral MLA Treaties or multilateral conventions, and in the absence of conventions, on the basis of international courtesy and reciprocity. In absence of the abovementioned provisions or if they do not provide otherwise, a specific rule provided for in the Italian Code of Criminal Procedure shall apply.

In the absence of conventions, Italy places few conditions on granting Mutual Legal Assistance (MLA), as provided under article 724 of the CCP (Code of Criminal Procedure). The main precondition to MLA is whether the activity under investigation is criminal.

Article 724 of the CCP only provides for a limited number of reasons for refusing MLA (typically, where there are reasons to believe a person is being prosecuted based on considerations of race, religion, sex, nationality, or a similar base). Similarly, the expiration of the statute of limitations does not prevent Italy from returning stolen assets, even though MLA requests do not suspend the running of the statute of limitations.

4a. Requests Made Under a Treaty/Convention

Italy has ratified several multilateral Conventions adopted by the Council of Europe, United Nations and European Union. In particular, in the framework of the Council of Europe, the main multilateral Convention in the matter of judicial assistance in force in Italy is the European Convention on Mutual Assistance in Criminal Matters signed in Strasbourg on 20 April 1959, and the relevant Additional Protocol adopted in Strasbourg on 17 March 1978. At the EU level, the main international law source ratified by Italy is the 1990 Convention implementing the Schengen Agreement of 14 June 1985.

Italy has also ratified multilateral Conventions regarding specific offences adopted by the Council of Europe and the United Nations, including the 1988 Vienna Convention against Illicit Traffic in Drugs, the 2000 UN Convention against Transnational Organised Crime (UNTOC) with its additional Protocols, and the 2003 UN Convention against Corruption (UNCAC). Furthermore, in the matter of mutual legal assistance, Italy signed and ratified several bilateral Treaties, i.a. with Algeria, Lebanon, Morocco and Tunisia.

The existing bilateral treaties on mutual legal assistance already provide for specific arrangements for the delivery or apportionment of assets seized abroad (e.g. the treaty with the U.S. already includes such an arrangement). Italy intends to insert such clauses also in future Treaties. For the Return and disposal of confiscated assets to the State of confiscation (artt. 740 *bis* and *ter* CCP) see below, under point *6a*.

4b. Non-Treaty-based Letters of Request

The general rule in our legal system is that international assistance is mainly governed by international Conventions in force in Italy as well as by general International law provisions. In case of absence of the said provisions or if they provide otherwise, a specific law provision provided for in the Code of Criminal Procedure shall apply. Such a rule is provided for in articles 696, 723 et seq. of the Code of Criminal Procedure.

In general, the Code of Criminal Procedure provides that the Minister of Justice, once the letter of request is received, will order that it be executed, unless he believes that:

- The documents requested may prejudice the sovereignty, safety or other essential interests of the State;
- The acts requested are expressly forbidden by the law or are contrary to the fundamental

- principles of the Italian legal system;
- The criminal proceedings may be prejudiced by discriminatory reasons.

The Minister of Justice, if he believes that the letter of request is enforceable, shall forward it to the Court of Appeal which has jurisdiction over the acts requested. The Court of Appeal, unless it believes that the reasons set out in b) or c) recur, or if the fact is not regarded as an offence under Italian law, shall execute it.

4c. Steps to follow when seeking Mutual Legal Assistance

In general, when seeking Mutual Legal Assistance (MLA) from Italy, the steps outlined below should be followed:

Step 1: Consult with the Central Authority before submitting the request. It is recommended that the requesting authority in your country contact the Italian Central Authority (Italian Ministry of Justice, see Page One) in advance of making a request for MLA, particularly in the most serious cases, to ensure the assistance which you seek is available under Italian law and the request will meet the legal requirements of the Italian legislation. In addition, the following steps should be followed in every case.

Step 2: Specify the legal instrument used to seek assistance. In drafting your request, begin by clearly identifying the treaty, convention or other avenue of cooperation being referred to in seeking the assistance from Italy.

Step 3: Identify the authority conducting the investigation / prosecution. Clearly indicate which authority in your country is conducting the investigation and/or prosecution.

Step 4: Summarize the case. Provide a detailed outline of the case under investigation or prosecution, including a summary of the evidence that supports the investigation/prosecution. This outline should also include the necessary link between the requested activity and the investigation under way.

Step 5: Set out the applicable legal provisions. Identify and set out the verbatim text of all relevant legal provisions under investigation and/or prosecution, including applicable penalties.

Step 6: identify the assistance being sought. Outline, in specific terms, exactly what are you seeking to obtain from Italy, and any particular requirements that must be met (example: certification/authentication needs). In addition, considering the nature of the assistance sought, the following information must be included:

- a. If **witness statement/testimony** is being sought, include:
 - Details and location (if known) of the person;
 - Procedural rules provided for in the legal system of the requesting state, which can be taken into account by the Italian authorities in carrying out the requested activities;
 - The specific information sought from the witness, including, if possible, a list of questions.

- b. If **documentary evidence** is needed:
- A clear indication of the documents to acquire;
 - A clear indication as to the place where the assets can be found or the person or the entity which detains them.
- c. If the **execution of a search warrant** is sought:
- Enclose, if possible an order (search warrant) issued by domestic judicial authority;
 - Give precise indications of the places to be searched;
 - Specify detailed rules to follow in executing the search (notices to be served, time schedules to observe and so on);
 - Provide accurate indications on the assets or documents to be searched;
 - Specify the guarantees that can be offered to the bona-fide third party;
- d. If **seizure/confiscation of criminal proceeds** is requested:
- provide a copy of the order issued by the domestic judicial authority (seizure or confiscation order);
 - provide precise indications of the assets to be seized / confiscated;
 - indicate any specific rules to be followed in executing the search (notices to be served, time schedule to be observed etc.);
 - provide any information available on the possible rights of bona-fide third parties with regard to the assets.

Step 7: highlight any specific confidentiality requirements. In Italy, the existence and nature of requests for assistance are subject to confidentiality. However, as some disclosure may be necessary, particularly where compulsory measures are required to provide the assistance, if your case is sensitive, the need and reasons for confidentiality should be expressly set out in the request.

Step 8: identify any urgency in the execution of the request. Identify any time limit within which compliance with the request is desired and the reason for the time constraints (example: pending court proceeding/time-sensitive investigation, etc.). If you face limitation periods, set out the precise dates.

Step 9: provide a list of relevant contact points in your country. Include a list of the names and contact numbers for key law enforcement/prosecution authorities familiar with the case. You should include the name and, where applicable, the contact information of your Central Authority, in case that its Italian counterpart wishes to contact you for the purpose of clarification or obtaining additional information.

Step 10: Translate the request. Italy requires incoming requests for MLA to be provided, in writing, in its official language, namely Italian.

Step 11: limitations on use of evidence provided. Note that any evidence which Italy provides in response to a mutual legal assistance request may only be used for the specific purpose stated in the request. If further use of the evidence is required, your country must first seek Italy's consent to the further use.

5. *Financial Information Requests*

To continue tracing assets to determine whether an individual, entity, or organization maintains an account or have performed transactions through an Italian financial institution, the Financial Intelligence Unit (FIU) of a foreign jurisdiction may request information to the Unità di Informazione Finanziaria (the Italian FIU), in the framework of international cooperation amongst FIUs for combating money laundering and terrorist financing. FIU Italy has access, i.a., to the Italian bank accounts database, held by Agenzia delle Entrate (Italian tax authority) which contains information on the existence of banking and financial relationships held by individuals, entities and organizations with Italian financial intermediaries.

Upon receipt of a request of the Italian FIU, Italian financial institutions are required to search their records and provide the appropriate information on accounts and transactions performed by their customers.

Italy is a member of the **Egmont Group**, an association of 131 FIUs from around the world that have agreed to share financial intelligence to improve cooperation in the fight against money laundering and financing of terrorism and to foster the implementation of domestic programs in this field. Exchange of information with foreign FIUs is submitted to international standards as specified by the Egmont principles of information exchange and European and national law. FIU Italy may exchange information with non-Egmont FIUs, also in the absence of a specific Memorandum of Understanding, subject to the respect of the reciprocity, especially concerning the confidentiality of information exchanged.

Foreign FIUs are required, when needing the assistance of FIU Italy, to submit a request indicating a brief description of the case investigated, the reasons for the request, the purpose for which the information will be used and the information required.

According to Italian Anti-Money-Laundering (AML) Law, Financial intermediaries, non-financial businesses (such as antique dealers, gaming houses, lawyers, accountants, real estate agents, etc.) and professions must send the UIF a report "*whenever they know, suspect or have reason to suspect that money-laundering or terrorist financing is being or has been carried out or attempted*". The suspicion may arise from the characteristics, size or nature of the transaction or from any other circumstance ascertained as a result of the functions carried out, with account also taken of the customer's subjective profile (business engaged in, assets owned and income-earning capacity). The UIF analyzes the suspicious transaction reports (STRs) and transmits them, together with the financial analyses performed, to the Nucleo Speciale di Polizia Valutaria - NSPV of the Guardia di Finanza (Finance Police) and the Direzione Investigativa Antimafia DIA (Bureau of Antimafia Investigation).

6. Confiscation of property related to Foreign Offences

6a. How to pursue in Italy a Forfeiture Action for Foreign Assets

After the ratification in 2009 of the United Nations Convention against Corruption, Italy inserted a new provision into the CCP (article 740bis). This provision allows Italian authorities to seize and return assets to a foreign country where a foreign verdict provides for the seizure of such assets, so

long as (i) a request is made to the Italian authorities and (ii) the foreign court decision is recognised by the Italian authorities.

When assets have been identified, Italy can assist countries in asset recovery in two main ways. First, if the country or foreign jurisdiction has a foreign order against the asset, Italy has the authority to enforce the order upon receiving an appropriate mutual legal assistance request from a foreign jurisdiction. Second, if the foreign jurisdiction does not yet have a foreign order against the asset, Italian Courts may be able to initiate an action, either as a criminal confiscation or as a “non-conviction based” (freezing and confiscating assets irrespective of a prior conviction of the owner in a criminal court) confiscation.

6b. Types of Confiscation Proceedings

Italian law allows the seizure and confiscation of property derived from criminal activity, either at the conclusion of a proceeding concerning specific offences, or depending on the overall conduct of a person who is constantly involved in illicit activities or addicted to certain crimes and whose assets are not justified on the basis of his/her legitimate earnings.

Both ordinary court proceedings (aimed to establish the defendant’s responsibility in relation to specific offences) and proceedings for the application of prevention measures (aimed to assess the overall conduct of the person concerned and the extent and legality of his/her assets) require lead times of approximately six months to one year, first to conduct the relevant inspections and verifications - often complex because of the need to analyse financial data and balance sheet - and then to hold a hearing with the essential defensive guarantees.

7. Asset Disposition/Return

After the ratification in 2009 of the United Nations Convention against Corruption, Italy inserted two new provisions into the CCP: article 740 *bis* (“Devolution of confiscated goods to a Foreign Country”) and article 740 *ter* (“Devolution Order”). This latter provision allows Italian authorities to return assets to a foreign country, on a reciprocity basis. Three major requirements apply in order to issue the Devolution Order: 1) the Foreign Court decision disposing the confiscation of criminal proceeds must be recognised by the Italian authorities; 2) a formal request for devolution must be issued by the requesting country; 3) the recognition of the Foreign Court decision by the Italian Authorities and the issuance of the Devolution Order must take place simultaneously.

The concrete execution modalities of the Devolution Order will be subject to bilateral arrangements among the Italian Ministry of Justice and the competent Authorities of the requesting country.

8. Italian Support for Asset Recovery and the Implementation of Chapter V of the UNCAC

- **Promoting Policy at the Multilateral Level:** Italy worked with G20 partners at the Seoul Summit to adopt commitments on asset recovery cooperation and to welcome, at the Cannes Summit, principles for effective asset recovery.
- **Supporting Multilateral Initiatives:** Italy is a partner of the Stolen Asset Recovery Initiative (StAR) and has joined the Camden Asset Recovery Inter-Agency Network (CARIN), an informal network of contact points dedicated to improving cooperation in all aspects of

tackling the proceeds of crime. Italy also participates in the Asset Recovery Focal Point Initiative supported by INTERPOL and StAR.

- **Disseminating knowledge and Fostering Capacity Building:** Italy supports a wide range of anticorruption technical assistance activities, including through workshops and international seminars. In May, 2012, in Rome, the Bank of Italy hosted - in the framework of its annual programme for technical cooperation with central banks of emerging countries - a seminar devoted to the fight against money laundering, terrorism financing and the misuse of payment systems. Presentations have been given by experts from Banca d'Italia, the Italian Financial Intelligence Unit, Direzione Investigativa Antimafia and Guardia di Finanza.
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