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RINSE Talks about Confiscating Assets in the EU.

The Podcast that Follows Dirty Money

EP. 2 The allocation and administration of seized and confiscated assets

- Speaker 1 : Alberto de Chiara, Associate Professor of Administrative Law
- Speaker 2 : Daniela Lombardi, Head of the Office for the Management for Seized and Confiscated Real Estate, National Agency for the Administration and Destination of Assets Seized and Confiscated from Organized Crime (ANBSC)
- Speaker 3 : Gianpaolo Capasso, Head of the Office for Seized and Confiscated Companies, National Agency for the Administration and Destination of Assets Seized and Confiscated from Organized Crime (ANBSC)

INTRO. Established in 2012, the National Agency for the Administration and Destination of Assets Seized and Confiscated from Organized Crime (ANBSC) manages the entire process, in collaboration with the judicial authorities, to ensure that these assets are returned to communities and territories for social and institutional purposes.

Today, the agency's activities are also highly significant at the European level. European Union legislation requires Member States to set up offices for the recovery and management of confiscated assets and promotes cooperation among these institutions.

In this episode, Professor Alberto de Chiara, Associate Professor of Administrative Law at the Department of Law at Vanvitelli University, will conduct a brief interview with Dr. Gianpaolo Capasso, Head of the Office for Seized and Confiscated Companies, and Dr. Daniela Lombardi, Head of the Office responsible for the Management of Seized and Confiscated Real Estate at ANBSC

Our experts will discuss the reallocation process of both real estate and companies confiscated from criminal organizations, highlighting the strengths of the Italian legislation and the challenges encountered in practical application, particularly when the seized and confiscated asset is located abroad. Finally, there will be a brief discussion on the proposed amendment to the Anti-Mafia Code, supported by the ANBSC, to allow for the early assignment of assets before the final decision on their allocation is made.

[00:02:31] QUESTION 1

I would like to start by asking Dr. Lombardi to explain the procedures and methods used in the reallocation of both real estate and movable properties.

[00:02:42] ANSWER 1

The National Agency for the Administration and Destination of Assets Seized and Confiscated (ANBSC) was established in 2010. It has a central office in Rome and four regional offices in Naples, Reggio Calabria, Palermo, and Milan. The Agency is responsible for managing and allocating assets freeze and confiscated. This work involves several key responsibilities. Notably, the Agency provides aid and support to judicial authorities directly managing the assets after confiscation and until their destination and also, during the phase when goods are only seized in making crucial decisions regarding the management of these assets.

From the second-instance confiscation onward, the Agency's powers are significantly expanded. It becomes the entity responsible for the direct management of the assets, making all major decisions regarding their allocation. In this phase, the Agency undertakes several activities, each constituting a whole sub-procedure. The most delicate of these involves verifying, with civil law expertise, whether any good-faith third parties have legitimate claims on the confiscated assets that need to be addressed. After this verification, the Agency can proceed with the actual allocation of the assets, assigning them the purpose prescribed by law for their reuse.

[00:04:10] QUESTION 2

What are the main steps of this destination process, and what are the possible purposes of the reallocation?

[00:04:20] ANSWER 2

Firstly, the Agency must disclose information about confiscated assets. To achieve this, it publishes them on its databases, hosts specific service conferences, or sends communication letters to potential recipients or users of the confiscated assets.

Understanding the purposes of reusing confiscated assets is crucial. Specifically, these purposes may include:

- 1) be kept as the State property to be used by central administrations for their institutional purposes (justice, public order, civil protection), such as frequent reuse by law enforcement agencies;
- 2) be kept in the State patrimony and, used by the Agency itself for economic purposes under approval of the Ministry of the Interior. The proceeds from this use go into a Single Justice Fund;
- 3) be transferred to local authorities, who can use the proceeds for institutional or social purposes, including identifying social reuse projects and directly assigning them to third-sector associations, free of charge, overseeing these projects;
- 4) be assigned to local authorities to use them for economic purposes;

- 5) be assigned, free of charge, directly by the Agency to entities or third-sector associations for pursuing social objectives;
- 6) as a residual option, the law allows for the sale of goods when none of the above purposes can be pursued.

[00:06:00] QUESTION 3

What can be considered the strengths of this legislation?

[00:06:05] ANSWER 3

The allocation of assets for social and institutional purposes is a strength of Italian legislation and a distinctive feature of our system. This destination prevails when confiscated goods are used directly by local authorities (such as municipalities). The re-use for social and institutional purposes is also supported by the Agency's possibility to directly assign the property to entities or third-sector associations, based on a special agreement in compliance with the principle of transparency and adequate publicity. Another strength is that allocation for social purposes requires strong coordination among multiple administrations, both in determining the destination and monitoring of the asset users. This extensive coordination among administrations significantly reduces the likelihood of assets returning to the control of those from whom they were seized.

[00:07:07] QUESTION 4

In your opinion, are there any weaknesses of this legislation?

[00:07:12] ANSWER 4

Unfortunately, there are still weaknesses; however, the Agency has existed since 2010 and is still a relatively young entity. Certainly, the length of the allocation process impacts the value of confiscated assets, it remains a long process and divided among the responsibilities of various administrations. The Agency does not operate alone; there are responsibilities that remain with the judiciary, others with prefectures, law enforcement agencies, local administrations, and third-sector entities. The Italian legislation does not yet provide for a centralized office to coordinate all these players, which sometimes further slows down the process. Another issue that certainly represents a weakness is the difficulty in involving civil society in the allocation process, especially in areas with higher crime rates where the number of confiscations may be significant. There are municipalities where each resident has access to dozens of confiscated assets because they are small communities with a high volume of seized assets, often exceeding local needs. In these municipalities it is challenging for the Agency and local administration to effectively contribute to the reuse of confiscated assets.

[00:08:56] QUESTION 5

I would now ask Dr. Capasso about the current situation of management and allocation of companies and corporate assets which also represent a significant part of seized and confiscated properties.

[00:09:14] ANSWER 5

Let's start with the data regarding the companies currently managed by the Agency. As of now, we have approximately 3,100 companies across the country, primarily located in Sicily, Calabria, Campania, and Lazio. Of these 3,100 companies, about 70% have been definitively confiscated, while the others are managed by the Agency during the judicial phase. The number of actively operating companies is quite low. The updated data as of June 30, 2023, shows that out of the total 3,100 seized or confiscated companies, only 130 are active in various sectors such as trade or construction, which are typical channels of criminal activity. These 130 companies employ approximately 2,000 workers, highlighting the significant social implications of managing confiscated companies, not only for employees but also for various stakeholders involved in Agency management.

The Agency allocates approximately 200/150 companies per year. This annual allocation trend may vary due to inputs from the judiciary, which influence the process.

The primary destination for companies differs somewhat from those for real estate: for enterprises leasing, liquidation, and sale are prevailing. Most companies are placed into liquidation because when they come under the Agency's management, they have no prospects for the continuation or resumption of productive activity. Liquidation aims to settle debts verified by the judiciary. After paying creditors, any remaining financial resources from liquidated companies are directed into the Single Justice Fund. A small number of companies, approximately 10%, are designated for sale or lease. These are what I would call optimal situations where there is an operational company with a market value exceeding the sum of its individual productive assets. In such cases, the Agency initiates competitive procedures to sell the companies. However, sales procedures are lengthy. They involve verifying the purchaser's identity and compliance with Anti-Mafia Regulation to prevent the asset from returning to individuals affected by confiscatory measures or affiliated to organised crime. These necessary checks often lead to concluding the awarding process even a year after the Agency's allocation.

Alongside these more traditional destinations for companies, new allocation possibility was introduced in 2017¹, representing an evolution in the prospect of confiscated companies and a convergence with the reallocation's purposes of real estate. The law introduced a mechanism for direct allocating companies to third-sector associations and cooperatives involved in social projects.

[00:15:16] QUESTION 6

An assessment regarding this latest aspect: what could be the strengths or weaknesses of this legislative provision provided for the reallocation of seized or confiscated companies to associations and cooperatives?

[00:15:27] ANSWER 6

In my opinion, there is a significant difference when it comes to allocating real estate to associations rather than companies. The Agency opens a public tender to assign immobile properties to

¹ Law no. 161/2017

associations, a process that has been relatively successful. However, the same procedure for companies has been less effective.

A company comprises various assets and, if active, has numerous contracts, including employment contracts. Transferring a company's assets and, consequently, its employment relationships to an organization or association presents several challenges. Since the introduction of the new provision in 2017, there has been only one successful instance in 2018 where a company was allocated to an association for social purposes.

In Tuscany, a farm was acquired by a regional entity which, based on regional provisions, was able to transform the company into a municipal enterprise. This remains the only example.

Due to the challenges encountered, the Agency, through the legislative office of the Ministry of the Interior, has submitted several proposals to amend the current regulations. Among these proposals is one aimed at modifying the scope of the 2017 provision.

[00:17:53] QUESTION 7

Another relevant aspect is the global dimension of the fight against economic crime through freezing and confiscation measures, which requires the Agency to engage at the European level, especially following the adoption of Regulation (EU) 2018/1805 that allows for the mutual recognition of freezing and confiscation orders among Member States. I would like to ask Dr. Lombardi how the Agency operates within Europe, whether there are communication channels in place, and if any peculiarities have emerged in the practical application of the Regulation, given the differences in legal frameworks in other jurisdictions.

[00:18:34] ANSWER 7

The fight against illicit assets is a great European commitment, ensuring that crime is not profitable is a priority for the European legislator. The key to this plan is to deprive criminal association of their profits, addressing the issue from a European perspective. At the European level, Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union is very advanced as it allows for ordinary confiscation, equivalent confiscation, extended confiscation and, in exceptional cases for non-conviction-based-confiscation. It also requires Member States to adopt legislation that allows these confiscation measures even without a prior criminal conviction. Following this Directive, Regulation (EU) 2018/1805 on the mutual recognition of freezing and confiscation orders was introduced. This Regulation aims to streamline and simplify the enforcement of confiscation orders issued in one state when assets are located in another state.

However, despite this advanced legislation, some major issues remain unresolved, issues that the Agency continues to face, particularly regarding collaboration with judicial authorities in different countries. These challenges arise in particular from the seizure phase and are mainly related to the recognition of different types of confiscation, as well as the connection with other legal measure provided for companies in other jurisdictions, such as bankruptcy laws. This makes it very difficult to adopt destination measures within the EU in line with the intended purposes previously described.

And then there is the issue of necessary prior conviction for the crime. For instance, UN conventions addressing confiscation, such as Merida Convention, have encouraged Member States to adopt confiscation even in the absence of a confirmed crime. This approach differs from that seen in European regulations, thus it is essential to harmonise the interpretation of these measures as applied by authorities within individual Member States.

[00:21:16] QUESTION 8

I would like to conclude by asking Dr. Capasso to explain the peculiarities concerning enterprises situation, where the phenomenon of foreign seizure or confiscation orders is even more significant. Are there any cases or good practices worth mentioning? Finally, I would like Dr. Capasso to tell us about the issue of early asset allocation, for which the Agency has proposed normative amendments.

[00:21:49] ANSWER 8

The number of assets located abroad managed by the Agency is significant. Managing these assets presents practical and legally challenges. For example, if a company is confiscated in France, unlike what would happen in Italy, I am required to appoint a legal representative according to French law. This means identifying a person who lives there and is familiar with French legislation.

Typically, most assets are sold within the countries where they are confiscated, and the proceeds from these sales are distributed through agreements between the involved countries. However, a more advanced approach was implemented by the Agency in 2021 in France. Based on a French legislative initiative, which introduced the possibility of allocating confiscated properties for social purposes without deriving any financial benefit from the asset, this approach was realised.

In this case, the property in question was an apartment located in Paris that had been confiscated by the Italian judicial authorities. Through an agreement with France, the apartment was reallocated to an association dedicated to protecting women who are victims of violence. This example represents a more advanced approach compared to the original method of selling the assets.

Turning to proposed legislative amendments, the Agency has been involved in preparing a package of proposals to amend the Anti-Mafia Code. This package includes provisions to anticipate, starting from the seizure phase, the possibility of allocating properties and businesses for social purposes, as well as considering their potential sale. We started with a premise: the difficulties we face upon final confiscation stem primarily from the lack of management during the seizure phase, thereby making it impossible to address certain critical issues at that time. Anticipating the possibility of allocating these assets from the time of seizure undoubtedly addresses the root problems related to timing. The flip side is, of course, that seizure is a non-final measure, and there is a possibility that the asset may need to be returned. In the Agency's proposal, it has been envisaged that in the event of revocation of the seizure measure, the subject entitled to return shall be solely compensated with the equivalent monetary value determined based on the report prepared by the judicial administrator at the time of seizure.

HIGHLIGHT

The Italian National Agency for the Administration and Destination of Assets Seized and Confiscated from Organized Crime (abbreviated as ANBSC) was established in 2010 and is responsible for managing assets seized from organised crime. When assets are only seized, the Agency supports the judicial authority in preserving their value. Once assets are definitively confiscated, the Agency directly manages them and decides on their destination.

To clarify the technical jargon in this field, the destination procedure serves to give assets the purpose prescribed by law for their reuse: assets can be used by public administrations, by the Agency itself for economic purposes, or allocated for use by local authorities, both for institutional and social purposes. Confiscated assets can also be directly allocated to third-sector organizations that can develop social projects. As a residual option, assets can be sold. The social reuse of assets is a strength of Italian legislation and is the preferred purpose. When an asset is entrusted to a third-sector organization to pursue a social goal, there is strict control over its use, preventing the asset from returning to the hands of its previous owner to whom it was confiscated, a risk that is high when the asset is simply sold.

Companies can also be seized and confiscated; currently, approximately 3,100 companies in Italy are under the Agency's management. Few of these are active in the market, only 130. These 130 companies employ around 2,000 workers. The main historical destinations for companies are rent, liquidation, and sale. If the companies are non-operational, they must be liquidated to satisfy creditors; if the companies still have market value, they are rented or sold through competitive procedures. It is crucial to prevent the company from being repurchased by the subjects to whom it was confiscated. In addition to these, since 2017 the Anti-Mafia Code provides for new allocation methods benefiting the third sector, such as associations and cooperatives. Allocating the company to an association is complicated; the main difficulties lie in transferring employees' employment contracts. However, social reuse allows civil society to reclaim the wealth stripped away by criminal activity. It is the initial step toward transforming social culture to bolster the state and combat criminal phenomena, particularly those deeply entrenched. The transnational dimension of organized crime generates a turnover in Europe of approximately 110 billion euros, of which only 2.2% is intercepted and confiscated. Confiscation represents a fundamental tool in the fight against organised crime. Since 2014, Directive No. 42 on asset freezing has provided for the possibility for Member States to adopt broad forms of confiscation, not only direct confiscation but also of value, and even in the absence of a previous criminal conviction. This Directive was followed by Regulation (EU) 2018/1805 on the mutual recognition of freezing and confiscation orders throughout the European territory. The Italian National Agency already manages assets located abroad, and the distance makes management more complicated. In these cases, European regulatory instruments should be better coordinated with the domestic legislation of each individual state. Foreign assets are immersed in a social, economic, and political context distant from the knowledge of the Agency managing them, and this is a challenge that catches Member States still unprepared and on which more could be done.

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