

## ITALY

### National Procedures for Mutual Legal Assistance on laundering, search, seizure and confiscation of proceeds of crime (ETS 141)

Updated on 03/05/2021

#### Procedure for search (asset-tracing) and seizure

<b>The Central Authority responsible for mutual legal assistance:</b> (including freezing and seizure)	Ministero della Giustizia (Ministry of Justice) – Direzione Generale degli Affari Internazionali e della Cooperazione Giudiziaria (Directorate General of International Affairs and Judicial Cooperation) - Ufficio I (Office 1), via Arenula 70 (Arenula street 70) – 00186 Roma Phone: +39 06 68852180 Fax: +39 06 68897528 e-mail: <a href="mailto:cooperation.dginternazionale.dag@giustizia.it">cooperation.dginternazionale.dag@giustizia.it</a>
If different from the Central Authority, the authority to which the request should be sent:	//
<b>Channels of communication</b> for the request for mutual legal assistance: (directly or other)	Directly between Ministries of Justice, as Central Authorities, according to article 24, paragraph 1. However, diplomatic channels are not excluded. Direct communication between judicial authorities involved is also allowed, but only in urgent cases according to article 24, paragraph 2. For urgent seizures, issued in view of the issuing of a confiscation order, the request shall be sent to the district public prosecutor office (the public prosecutor office attached to the court of first instance of the city where the court of appeal seats), having regard to the place where the seizure must be executed. For confiscation orders, as well as seizures connected to confiscation orders which have been already issued, the request shall be sent to the general prosecutor office attached to the court of appeal, having regard to the place of birth of the person concerned; if the place of birth is unknown, the request shall be sent to the General Prosecutor Office attached to the Court of Appeal of Rome. In any case, we suggest to ask the advice of the national experts listed in the list of official, as well as the contact points of the European Judicial Network, and also refer to the relevant tools, like Atlas, Fiches Belges, etc.
<b>Means of communication:</b> (eg. by post, fax, e-mail <sup>1</sup> )	By post. Any other mean, like fax and e-mail, is also accepted, provided that it gives an assurance that the communication comes from the competent authority. Encryption and/or electronic signature is not required.

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<sup>1</sup> Please indicate if encryption or electronic signature is required.

<b>Language requirements:</b>	Languages accepted are Italian, English and French.
<b>Double criminality requirement, if applicable:</b>	As provided for in article 18, paragraph 1, letter f).
<b>Other requirements:</b>  (e.g. a link between the proceeds and the criminal offence, or that a request for the confiscation judgment or measure will be made later, or that leave is given by a judge for the seizure of assets/goods)	Seizure and/or confiscation of assets commensurate with the value of proceeds of crime are allowed only if direct seizure/confiscation is not possible.
<b>Modalities/requirements</b> for the execution of MLA requests for investigative assistance (search, tracing, special investigative techniques), existence of a central register of real estate/bank accounts, duration of preservation of bank data, etc.:	<p>MLA requests for investigative assistance are executed without any special requirement, according to the provisions of the European Convention on Mutual Assistance in criminal matters, signed in Strasbourg on 20.4.1959, and the relevant Additional Protocols.</p> <p>In relation to real estate and goods like cars, boats, etc. Italy is provided with public registries. In relation to bank accounts, on the contrary, Italy is equipped with database created and managed by the specialized police force in charge of the fight against tax and economic crimes.</p> <p>According to article 31, paragraph 3, of Legislative Decree 21.11.2017 n. 231 (implementing directives 2005/60/CE and 2006/70/CE on the prevention of the use of the financial system for the purpose of money-laundering and terrorist financing), banks, insurance companies, etc. are required to preserve all the documents, data and information related to each business relationship at least for ten years starting from the end of the relationship itself.</p>
<b>Limitation of use of evidence obtained:</b>	According to the reservation made at the time of the deposit of the instrument of ratification in relation to article 32, paragraph 2, the information or evidence provided by Italy may not, without its prior consent, be used or transmitted by the authorities of the requesting State in investigations or proceedings other than those specified in the request.
<b>Modalities/requirements</b> related to the execution of provisional measures (freezing, prejudgment seizing) including lifting of these measures (possibilities to seize (im)movable properties) and applicable time limits, if any:	<p>Starting by saying that, in general, any kind of asset can be frozen and/or seized in Italy, be aware that, according to Italian law, freezing and/or seizure of assets for the purpose of their confiscation fall under the competence of the judge for preliminary investigations of the court of first instance of the place where the asset is located. So, the public prosecutor office, which is competent to receive the request to freeze and/or seize an asset, has to ask the above mentioned judge for the freezing and/or seizure.</p> <p>Within the time limit of one year starting from the issuing of the freezing/seizure order, the requesting State has to ask also for the execution of the relevant confiscation order. This time limit can be extended for a maximum of six months. The requesting State has to ask for the extension and the decision thereof is up to the judicial authority which issued the freezing/seizure</p>

	order (see article 737-bis, paragraph 6, of the criminal procedure code).
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<b>Available asset management system</b> including preservative measures (for example pre-judgment selling) concerning the seized goods:	The management of seized goods is up to the judicial authority which issued the seizure order. At this purpose, the same authority appoints a judicial manager and can take advantage of the qualified assistance provided for by the National Agency for the management and the assignation of goods seized and confiscated from the organized crime groups (see art. 104-bis of the regulation of implementation of the criminal procedure code).
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**Procedure for confiscation/Recognition of foreign decisions. Recovery of confiscated assets.**

<b>The Central Authority Responsible for confiscation/ recognition of foreign judgments/decisions/measures:</b>	Ministero della Giustizia (Ministry of Justice) – Direzione Generale degli Affari Internazionali e della Cooperazione Giudiziaria (Directorate General of International Affairs and Judicial Cooperation) - Ufficio I (Office 1), via Arenula 70 (Arenula street 70) – 00186 Roma Phone: +39 06 68852180 Fax: +39 06 68897528 e-mail: <a href="mailto:cooperation.dginternazionale.dag@giustizia.it">cooperation.dginternazionale.dag@giustizia.it</a>
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If different from the Central Authority, the authority to which the request should be sent	//
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<b>Channels of communication</b> for the request for mutual legal assistance: (directly or other)	Directly between Ministries of Justice, as Central Authorities, according to article 24, paragraph 1. However, diplomatic channels are not excluded. Direct communication between judicial authorities involved is also allowed, but only in urgent cases according to article 24, paragraph 2. Hence, for urgent confiscation orders, as well as urgent seizures connected to confiscation orders which have been already issued, the request shall be sent to the general prosecutor office attached to the court of appeal, having regard to the place of birth of the person concerned; if the place of birth is unknown, the request shall be sent to the General Prosecutor Office attached to the Court of Appeal of Rome. In any case, we suggest to ask the advice of the national experts listed in the list of official, as well as the contact points of the European Judicial Network, and also refer to the relevant tools, like Atlas, Fiches Belges, etc.
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<b>Means of communication</b> (eg. by post, fax, e-mail <sup>2</sup> ):	By post. Any other mean, like fax and e-mail, is also accepted, provided that it gives an assurance that the communication comes from the competent authority. Encryption and/or electronic signature is not required.
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<b>Language requirements:</b>	Languages accepted are Italian, English and French.
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<b>Document requirements and modalities/requirements for the procedure of confiscation:</b>	Starting by saying that the foreign confiscation order must be final, be aware that the general prosecutor office has to ask the court of appeal for the recognition; the said court of appeal decides within ninety days. The decision of the court of appeal can be challenged before the court of cassation, which decides
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<sup>2</sup> Please indicate if encryption or electronic signature is required.

	within sixty days (see article 734 of the criminal procedure code).
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<p><b>Other requirements, if applicable:</b> (e.g, a link between the proceeds and the criminal offence.)</p> <p>In case of money laundering, what are the requirements for the predicate offence(s)</p>	<p>Confiscation of assets commensurate with the value of proceeds of crime is allowed only if direct confiscation is not possible.</p> <p>In case of money laundering the predicate offence must be a crime. Self-money-laundering is also punished by Italian law.</p>
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<p><b>Procedure /possibilities to trace assets/proceeds</b> when a (foreign) confiscation order is already given:</p>	<p>Italian law foresees the possibility to trace assets/proceeds of a crime when a foreign confiscation order has not already been given. At this purpose, the requesting State has to issue an ordinary MLA request, to be executed as such (see article 737-bis, paragraph 1, of the criminal procedure code and its reference to previous articles 723, 724 and 725), or, if applicable, according to the provisions of the European Convention on Mutual Assistance in criminal matters, signed in Strasbourg on 20.4.1959, and the relevant Additional Protocols.</p> <p>Furthermore, Italian law foresees the possibility to seize assets/proceeds of a crime when a foreign confiscation order has already been given. At this purpose, the general prosecutor office has to submit a request to the court of appeal, whose decision can be challenged before the court of cassation (see article 737 of criminal procedure code).</p>
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<p><b>Procedure for sharing of assets, if applicable:</b></p>	<p>The general rule is that the confiscated assets go to Italy, as requested State.</p> <p>However, according to international conventions, Italian law allows, under the reciprocity clause, the complete or incomplete assignation of goods to the foreign requesting State, whose request must be clear.</p> <p>The total or partial assignation to the foreign requesting State is ordered by the court of appeal at the same time of the recognition of the foreign confiscation order.</p> <p>In case of asset sharing, the decision of the court of appeal is sent to the Ministry of Justice, who is in charge to sign the sharing agreement with the counterpart.</p>
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<p><b>Where applicable, limitations to the possibility for the requesting state to serve judicial documents directly to the persons concerned:</b></p>	<p>According to the reservation made at the time of the deposit of the instrument of ratification in relation to article 21, paragraph 2, procedures set out in letters a) and b) of this paragraph, concerning the transmission and serving of judicial documents to persons affected by provisional measures and confiscation, shall be allowed in Italy only when, in its relations with the other State, they are provided for under Italian legislation or in the international agreements which generally govern mutual assistance in criminal matters.</p>
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#### Other particularly relevant information on special types of assistance

<p><b>Non Conviction Based Confiscation:</b></p>	<p>Italian law allows non-conviction based confiscation, according to the provisions of legislative decree 6.9.2011 n. 159, in relation to proceeds of crime and/or disproportionate assets of qualified socially dangerous persons, like persons belonging to mafia-style organizations, usual corrupts and/or corrupters, etc.</p>
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<p><b>MLA regarding liability of legal persons:</b> (criminal, civil or administrative)</p>	<p>According to Italian law, liability of legal persons has only an administrative nature, but it is ruled quite as a criminal matter by Legislative Decree 8.6.2011 n. 231. So, it is possible to execute an MLA regarding such a liability.</p>
<p><b>Other information:</b> (for example, extended confiscation, confiscation for the purpose of victims)</p>	<p>According to article 240-bis of the criminal code, extended confiscation is allowed in relation to a broad and heterogeneous group of crimes, including money-laundering and self-money-laundering.</p> <p>Please, be aware that Italian law does not provide for specific confiscation orders issued with a view to compensate the victims of crimes; however, the judicial authorities do recognize and execute such extended confiscations on the basis of a similar domestic mechanism (see art. 316 and following of the Criminal Procedure Code).</p>
<p><b>Links to national legislation, national guides on procedure:</b></p>	<p>Information about national legislation and procedures can be gathered by asking the advice of the national experts listed in the list of official, as well as the contact points of the European Judicial Network, and also referring to the relevant tools, like Atlas, Fiches Belges, etc.</p>