

# Analysis of the International Best Practices on the Re-Use of the Confiscated Assets by CSOs

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## Analysis of the international best practices on the re-use of the confiscated assets by CSOs

*“Goods are neutral, their uses are social; they can be used as fences or bridges”*

*(Douglas and Isherwood 1979)*

*“It takes a network to defeat a network”*

*(Arquilla, Ronfeldt and Zanini 1999)*

## 1. GENERAL INTRODUCTION

This document aims at analysing the role of the reutilization for social purposes of the assets confiscated from criminal organisations by non-profit organisations. A complementary policy to combat organised crime that in some Countries has been adopted and is generating interesting results. Non-profit organisations, and among these social cooperatives (the Italian experience) that assume the structure of social enterprise, capable of managing effectively and efficiently patrimonies, which can produce, if opportunely valorised and “revitalised”, huge flows of wealth for the territories abused by criminal organisations. This would contribute to the creation of jobs and, at the same time, the finding of new paths for the growth of social capital and building trust towards the legal institutions. In fact, the mistrust of the community towards the latter is tightly tied to the possibility that, in a direct or indirect way (through, for example, the role of dummied companies or figurehead individuals), criminal organisations continue to practice uncontested their activity. The constraint placed on profit distribution and the typical governance model of non-profit organisations – which allows the possibility of sharing in the management of different individuals both public and private – could provide some suitable mechanisms to prevent criminal organisations from re-appropriating the assets after their sequestration and confiscation and, in this way, raise the trust of the people towards the State and its institutions. Furthermore, its multi-stakeholder nature would be able to successfully prevent the possibility of the repurchase the confiscated assets by criminal organisations and to break the vicious circle which produces mistrust among individuals, as well as between these ones and the legal institutions, and favour the economic development of the territories.

The tools of the seizure and confiscation of the illegally acquired assets and their reutilization for social and institutional purposes from non-profit organisations, could represent a juridical measures which, if well implemented, can develop an important deterrent to illegal behaviour. The high symbolic value of the reutilization for social and institutional purposes can contribute in a positive and effective way to break the yoke imposed to the territories by criminal organisations that create

“illegal” social networks and criminal activities. Furthermore, the possibility for non-profit organisations to manage the properties of criminal organisations and the possibility to convert them for the creation of socially useful activities can act, in a direct way, on the creation of wealth for the territory through the production of goods and services and job opportunities. A greater support to the diffusion of non-profit organisations, joined with a simplification of the administrative procedures which rule the assignment of the confiscated assets, can increase directly and indirectly the levels of wealth through the production and sustainment of the components of the social capital (such as trust, respect of the civil rules and the empowerment of active citizenship), that is, through those elements which improve the levels of the quality of life of the individuals, that can contribute to increase the respect for the law.

## **2. THE MODUS OPERANDI OF MAFIA-STYLE ACTIVITIES AND STRATEGIES TO COMBAT IT**

The essence of the action of Mafia-style organisations<sup>1</sup> consists to take over, directly or indirectly, the management or control of the economic activities of economic enterprises and to influence the activity of the local Public Administration<sup>2</sup>. This dangerous and pervasive capacity is increased through the use of vast financial resources, accumulated by the criminal organisations through violence, crime and clandestine trafficking. This stream of “dirty money” destined to expand the unlawful activities and to condition the legal economy, has now become a transnational phenomenon. Mafia-style organisations have the capacity “to act as economic operators in the markets, distorting their proper mechanisms, through the use of massive economic and financial resources gathered from the exercise of a multiplicity of illegal activities

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<sup>1</sup> Criminal association of the Mafia type is a crime covered by art. 416 b of the Italian Penal Code, introduced by Law no. 646 of 13 September 1982 and subsequent amendments and additions. The Law states that “Association is of the Mafia type when those who belong use group-inspired intimidation and adhere to a vow of silence to commit crimes, in order to obtain, directly or indirectly, the management or in some way the control of economic activities, concessions, authorizations, tenders and public services or to impede or hamper the free exercise of the right to vote or to solicit votes for oneself or others during elections” (art. 416 b, para. 4, Law no. 646 of 1982).

<sup>2</sup> Parliamentary Commission of Enquiry on Mafia-style Organised Crime. Report on the state of implementation of the regulation and of practices to implement it as regards seizures, confiscations and allocations of the proceeds of organised crime, 17-11-2007, p. 3.

- ranging from drug trafficking to contraband dealings, from property speculation to tendering for public works, from racketeering to extortion - carried out in Italy and abroad, and often in synergy with foreign criminal groups"<sup>3</sup>.

An understanding of the ways in which Mafia-style organisations operate has made it possible to intervene more effectively to protect the economy and the right to freely run a business, as well as protect individual freedoms, by promoting legal measures that aim to seize definitively from those engaging in organised crime any proceeds of their criminal actions.

## 2.1. THE DUAL NATURE OF MAFIAS' ASSETS

The assets of criminal organisations represent, first of all, the main symbol through which criminal organisations display their strength arousing terror<sup>4</sup>. In fact, they develop a double function. On one hand, its use increases the utility and the economic wealth of the members of criminal organisations. On the other hand, these assets are the symbols through which criminal organisations signal the community and the territory where they operate their strength and dominion provoking the submission<sup>5</sup>. In fact, through the quantity and the quality of their assets criminal organisations publicly demonstrate their power and strength. Therefore, emphasising this point of view, these goods can be compared to the microeconomic category of positional goods (Hirsch F., 1976). The latter, as it is well known, are those things which confer utility through the status they create and the relative position in the social ladder that their possession and consumption allows them to reach and/or occupy (from here comes the expression "positional good"). In other words, they are those assets which serve to improve the consumers' own wealth and relative status. Regarding positional goods, in fact, the consumer receives greater utility than he/she would receive if these were

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<sup>3</sup>Ibid., p.6

<sup>4</sup> Other symbols which can contribute to the increase of the strength of criminal organisations and boost the number of proselytes that enter the organisation are the organisation's ability to spread in the territory in which it operates and the myths and the legends on the bosses and representatives of the organisation.

<sup>5</sup> In the smaller communities it is not even necessary that assets must be "visible" and locatable by the members of the community. Information spreads in a rapid way among individuals and it is not necessary to have the material and tangible "proof" of the wealth of the criminal organisation.



possessed by other individuals. Moreover, the wealth status of a person, generated by the possession of goods, would comparatively increase if the wealth position of other consumers decreases. In conclusion, in relative terms, the possession of given goods allows for the attainment of higher levels on the social pyramid.

As a single economic agent – the consumer – the criminal organisation could accumulate goods in order to satisfy fundamental needs and to reach a superior status that serves to signal to the community its strength and its ability to produce wealth for itself and its affiliates. In other words, the more criminal organisations proceed through the use of strength to proliferate illegal activities in order to produce wealth for their members, the more they subtract productive resources from the territory, worsening the wealth position of other individuals.

This interpretation allows us to explain the reasons why criminal organisations are mostly active in territories which are in poorer socio-economic conditions. Consequently, there would be a connection between criminal organisations and the territorial impoverishment. However, the activity of criminal organisations produces goods which cannot be considered similar to the other goods for different other reasons. Firstly, these assets are the products of illegal activities which subtract economic resources from the territories depriving them from individuals who operate legally. Secondly, but not less important, these assets are obtained by arousing terror and producing crimes. The activities carried out by criminal organisations produce goods for their members which are the products of the “a-social” capital produced in before-mentioned territories and at the same time contribute to the production of other “a-social” capital. Through illegal activities the assets lose their neutral<sup>6</sup> function and their utilization is no longer social, but “a-social”, because they create obstacles between economic development and social growth.

Subtracting these assets from criminal organisations and reassigning them to the community which has suffered the theft can constitute a policy tool that is able to restore and re-strengthen the trust among individuals and between these and the legal institutions.

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<sup>6</sup> Douglas and Isherwood (1979).

### 3. STRATEGIES FOR COMBATING ORGANISED CRIME. THE ITALIAN EXPERIENCE

Italy has effective repressive measures to combat criminal, Mafia-style organisations and the accumulation of illicit capital<sup>7</sup>. Actions combating Mafia-style crime have increased thanks to the strengthening of the Italian legal statutes allowing the authorities to take action against assets illegally acquired<sup>8</sup>.

The strategy for combating organised crime can be separated into two distinct phases. The first is to attack the illicit assets and involves the identification, seizure and confiscation of the wealth of Mafia-style organisations<sup>9</sup>.

The second is the allocation of the assets and wealth to serve public ends. As distinct from the illicit wealth confiscated in penal trials, and which, once realized in monetary terms, end up in the state coffers, not earmarked for particular purposes but used for general public expenditure, the possessions and wealth taken from Mafia-style organisations are mainly returned to the community, to be reused for social and institutional purposes<sup>10</sup>.

The values and symbolic message underlying this trend in the legislation are extremely important: they demonstrate that the State is succeeding in striking at the wealth accumulated by criminal associations, thereby restoring or building trust in the institutions. The assets confiscated from Mafia-style associations constitute a precious resource for local territories, providing an opportunity for development that can help trigger and sustain processes of social and economic growth, guided by respect for the rules of good civil life and the law<sup>11</sup>.

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<sup>7</sup> Noteworthy among these are the measures for illegal wealth prevention (Section II of Legislative Decree no. 159 of 6 September 2011, known as the Anti-Mafia Code), which provide for the seizure and confiscation of assets for which no legitimate provenance has been demonstrated, and which are found to be at the direct or indirect disposal of someone suspected of belonging to a Mafia-style organisation. These measures, aimed at deterring persons deemed socially dangerous from committing crimes are, therefore, applied independently of a previous crime having been committed, and hence they are termed measures applicable ante delictum or praeter delictum

<sup>8</sup> On this point see Book I & II of the "Code of Anti-Mafia laws and measures of prevention", known as the Anti-Mafia Code, approved on 6 September 2011.

<sup>9</sup> This wealth consists of current assets (sums of money, government stock, personal accruals, jewellery, etc), registered current assets (cars, motorcycles, boats, aeroplanes, etc.), non-current assets in the form of property (villas, apartments, farm buildings, retail premises, lands, etc.), and company assets (company quotas, shares, factories, industrial premises, manufacturing plant, commercial activities, etc.).

<sup>10</sup> This prospect is of great democratic significance. It was introduced in Italy by Law no. 109 of 7 March 1996, internationally unique of its kind and providing a model for the European Community in the struggle against Mafia-style organisations at international level. The Law grew out of a popular initiative promoted by "Libera: Associations, names and numbers against Mafias", which gathered more than a million signatures.

<sup>11</sup> To give further impetus to the utilisation of assets confiscated from Mafia-style associations, and to improve efficient management of these assets, the National Agency ANBSC was founded - ANBSC being the Italian acronym for the National Agency for the Administration and Management of Assets Seized and Confiscated from Criminal Organisations. The Agency

### 3.1. BEYOND REPRESSIVE ACTION: THE RECONSTRUCTION OF SOCIAL CAPITAL

Mafia-style criminal associations are a complex phenomenon because, parallel with the use of violence, that also have the capacity to construct a social consensus, and to become a dominant cultural model in the districts where they operate, they can orientate values and behaviors.

To defeat Mafia-style criminal organisations it is necessary to combine repressive actions with preventive strategies and measures, which weaken and destroy “the Mafia’s social capital”, interpreted as the network of relationships that enables such organisations to “communicate” in a lucrative manner with the economic and social context within which they operate, drawing further advantage from a position of intrinsic strength and assuming the false guise of a normal operator in the market”<sup>12</sup>. The attack on “the Mafia’s social capital” can in fact lead to its being allocated differently, to support the promotion of the substantive freedom of people and the general interests of a democratic community<sup>13</sup>.

In other words, it means promoting programs for the empowerment<sup>14</sup> and development of territories, in which action is taken with regard to the supply and quality of the social capital, which helps to promote respect for democratic rules, civil life and public institutions. Such measures require the advocacy and intervention of a variety of local players, institutional (and non-institutional) that establish voluntary, mutual and innovative relationships to reach shared social objectives, combining their resources and skills, to promote the gradual development of local well-being, free from Mafia-style oppression.

The return to local communities of assets gained illegally by organised crime so that they can be used for social purposes, appears to be an effective strategy for the re-allocation of social capital to the general public.

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guarantees the effective administration and allocation of seized and confiscated assets that are the proceeds of organised crime, also through a stable accord between the judicial authorities and the Public Administrations concerned

<sup>12</sup> See, Sciarone R., 2011

<sup>13</sup> Baldascino M. and Mosca M., “La gestione dei beni confiscati: un’occasione perduta per le imprese sociali?” (“The Management of Confiscated Assets: A Lost Opportunity for Social Enterprises?”), in *L’impresa sociale in Italia. Pluralità dei modelli e contributo alla ripresa* (“Social Enterprises in Italy. Plurality of Models and Contribution to Recovery”), Venturi P. and Zandonai F., eds., *Altreconomia*, 2012, pp. 213-236

<sup>14</sup> Empowerment is a process of social action whereby persons, organisations and communities take responsibility for their lives with a view to changing their social and political environment to improve equity and quality of life. On this subject cf. Wallerstein N. (2006), Zimmerman M.A. (2000), Rappaport J. (1984).

#### 4. **A** NEW DEVELOPMENT INDICATOR: SOCIAL USE OF CONFISCATED CRIMINAL ASSETS

Properties confiscated from criminal organisations are not merely non-current assets as they are for other criminals. They have been symbols of the power exercised by the “Mafiosi” over the territories they dominate. When institutions and civil society make effective use of these assets for social purposes, it is a signal of the loss of control and prestige of these criminals in the very areas they claim as theirs. This is a signal that the system of Mafia power does not easily accept. The social use of confiscated assets therefore becomes an indicator of the growth of communities that provide alternatives to the practices and culture of organised crime; a real proof of a change taking place on Mafia terrain. It demonstrates how local entities and the institutions as a whole are encouraging the construction of social capital and a sense of civil society in their territories.

This inversion of a paradigm - in which the social use of assets confiscated from Mafia-style organisations is not just a matter for the Public Administrations, but can successfully trigger steady growth in the whole territory - involves a wider concept of development than that used hitherto in social-economic practice and discourse.

Development, in fact, means both economic growth and social inclusion, where by growth is meant the releasing of the potential for an increase in a territory's average income, while social inclusion refers to the proportion of citizens who, across a range of aspects of their lives (over and above income - for instance in health, sense of security, education, quality of relationships with others, air quality, etc.), are above socially accepted levels.

If development is thought of as, in particular, the process of expanding the real freedoms that human beings enjoy in the private sphere as well as in the social and political spheres<sup>15</sup>, then we can clearly see how the criminal domination of local communities by Mafia-style organisations is the very antithesis of progress in any given territory.

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<sup>15</sup> As suggested by the Nobel prize winner for Economics, Amartya Sen. Cf. A. Sen, *Development as Freedom*, translated into Italian as *Lo sviluppo è libertà. Perché non c'è crescita senza democrazia*, Economia Oscar saggi Mondadori, Milano, 2001.

This approach tackles the challenge of development in terms of the elimination of the various types of “freedom deficits”, among them tyranny, intolerance and repression, the lack of health care, of environmental protection, and of freedom of expression, illiteracy, hunger and extreme poverty, which limit or negate for individuals, men and women, the opportunity and capacity to act in a rational manner, building the life they prefer<sup>16</sup>.

By contrast, the power systems represented by Mafia-style organisations feed and draw strength from these freedom deficits; they create and foster conditions of non-development, drawing advantage from them through their intrinsic position of strength acquired over time by violence, crime and investment of illicit proceeds.

“There exists a growing consensus in interpreting ‘traps of non-development’ [...] as the result of conscious choices by the governing classes at local and government levels. Such choices are dictated by the convenience of extracting a sure benefit from preservation of the status quo - uneducated youth, inadequate transport connections, inefficient businesses requiring assistance, administrative barriers to revenue collection, a degraded environment, tenders and projects executed badly - instead of competing for uncertain benefits in a context of innovation and growth [...]. In other words, public action is of bad quality not because of the incapacity of the governing classes that are responsible for it, but because that is their express intention”.

Thus, the effective utilisation of confiscated criminal assets, an indicator of the effectiveness of local Public Administration action, “can defuse these traps of non-development” and open up “avenues for innovators, in terms of both the public assets produced and the way in which they are produced”.

## **5. LEGAL FRAMEWORK ON MANAGEMENT AND DISPOSAL OF CONFISCATED ASSETS AT EU LEVEL AND CONNECTED LEGISLATIONS (ANTI-CORRUPTION, ANTI-RECYCLING ETC...)<sup>17</sup>**

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<sup>16</sup> Ibidem.

<sup>17</sup> This part has been extracted from Reuse of confiscated assets for social purposes (RO2013\_C5.2\_17), The Centre of Legal Resources, Editura Hamngiu, 2015.

The Directive 2014/42/EU encourages EU Member States to “consider taking measures allowing confiscated property to be used for public interest or social purpose” with regards to management and disposal of frozen or confiscated properties and the experiences has shown that in countries affected by serious problems of organised crimes, the reuse of the confiscated assets in collaboration with civil society organisations has proved to be a valid tool to reaffirm the value of the legality and show the possibility of citizens' actions against organised crime.

The social reuse of confiscated assets is a theme which has received increasing interest during the last years at European Union's level and has been proposed to reduce the lack of legal provisions requiring Member States to integrate social reuse in their legal systems.

The adoption of Directive 2014/42/EU of the European Parliament and of the Council on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (hereinafter referred to as "Directive"), represents the first binding document of the European Union regarding the social reuse of confiscated assets.

The Directive contains two references to the reuse for social purposes: Article 10(3) and paragraph 35 of the Preamble. Article 10(3) states that "Member States shall consider taking measures allowing confiscated property to be used for public interest or social purposes." The Preamble contains additional details and, although it does not define social reuse, it offers examples of possible measures, namely earmarking property for law enforcement and crime prevention projects, as well as for other projects of public interest and social utility.

Even though this Directive does not impose Member States to introduce social reuse in their law systems, its provisions, referring to reuse, impose a procedural obligation on Member States, as the preamble states. The Directive does not require a specific manner of fulfilling this procedural obligation, but offers examples such as conducting a legal analysis or discussing the advantages and disadvantages of introducing such measures. Consequently, even if the Directive does not impose Member States to adopt the social reuse of confiscated assets, its provisions referring to reuse are effective and establish obligations for Member

States that actually have to analyse the opportunity of introducing social reuse in their legislation.

Social reuse of confiscated assets is also referred to in other non-binding documents adopted by the European Union, as follows:

1. Communication from the Commission to the European Parliament and the Council - Proceeds of organised crime: ensuring that "crime does not pay" (COM/2008/0766 final).

The Communication envisages that there are differences between Member States regarding the use of confiscated and recovered assets and recommends the adoption of definite practices that have proved efficient at national level, expressly referring to the models of social reuse in the United Kingdom (where assets are shared between the authorities that contributed to their recovery) and Italy (where assets are often entrusted to NGOs for social use).

2. The Stockholm program, a multiannual document whereby the European Council requires Member States and the Commission "to identify as efficiently as possible offenders' assets and to confiscate them and, whenever possible, to consider their reuse wherever they are found in the Union".

3. Communication from the Commission to the European Parliament and the Council - The EU Internal Security Strategy in Action: Five steps towards a more secure Europe (COM/2010/0673 final).

The EU Internal Security Strategy expressly refers to the management of confiscated assets from crime and states that "Member States must do all they can to seize, freeze, manage and confiscate criminal assets and ensure that they do not return to criminal hands."

The Strategy also requires Member States to take, by 2014, all necessary institutional measures (e.g. by establishing Asset Recovery Offices) in order to ensure that frozen assets do not lose their value before they are eventually confiscated.

4. European Parliament Resolution of 25 October 2011 on Organised Crime in the European Union [2010/2309(INI)].

With this Resolution, the European Parliament directly confirms the utility and necessity of social reuse of confiscated assets, emphasizing that "the reuse of

confiscated assets for social purposes fosters a positive attitude to strategies aimed at tackling organised crime, since confiscating an asset is no longer regarded solely as means of depriving a criminal organisation of resources but is doubly constructive in that it both helps to prevent organised crime and has the effect of boosting economic and social development". For this purpose, the Parliament invites the Commission to recognize and support the adoption of European rules on the reuse for social purposes.

5. European Parliament Resolution of 23 October 2013 on organised crime, corruption and money laundering: recommendations on actions and initiatives to be taken (final report) (2013/2107(INI)). In paragraph 33, the European Parliament "encourages the Member States to promote the reuse of seized criminal assets for social purposes such as redirecting these proceeds to victims and communities which have been devastated by drugs and organised crime, and to use them to fund crime-fighting locally as well as cross-border actions by law enforcement agencies, and suggests that funds be released to finance measures to keep those assets intact".

Although as shown above at this moment the European legal framework contains minimum provisions on the social reuse of confiscated assets, in theory there have been recommendations regarding the needs it should cover in the future.

At European level thanks also to the Italian experience in the social reuse of confiscated assets there is the need to the international cooperation on the disposal of criminal assets and concrete proposals should take into account:

- minimum requirements for victim compensation;
- social reuse of confiscated assets to be treated as a disposal option of greater applicability;
- a monitoring system to ensure that assets are not reacquired by organised crime/offenders;
- the establishment of specialized national authorities for the disposal of assets;
- mutual recognition of non conviction-based asset confiscation decisions.



The quoted report also recommends Member States to take measures at the level of their own legislations in order to increase applicability and efficiency of the reuse of confiscated assets such as:

- value confiscation as a subsidiary option;
- statistically accurate data management systems on confiscated assets;
- specialized training;
- the inclusion of civil society in the phase of disposal of confiscated criminal assets;
- interagency communication and cooperation<sup>18</sup>.

## **6. INTERNATIONAL LEGAL FRAMEWORKS AT NATIONAL LEVEL (SUMMARY OF MOST RELEVANT CASES)**

### **6.1. LEGAL FRAMEWORK IN SPAIN**

Spain uses a system of indirect social reuse of confiscated assets deriving from drug offences. Such assets are sold and the relative profits go to a special state-owned fund.

Confiscated assets deriving from other types of crimes are not object of social reuse, but are sold to the general public.

The money transferred to this fund are then reused for social purposes by funding drug prevention programs, assistance and social reintegration of drug addicts, intensification and improvement of drug prevention, investigation and punishment for drug trafficking offences and international cooperation in the field. The beneficiaries of the money devoted to social reuse for the above-mentioned purposes can be: law enforcement agencies and prosecutors' offices with counter-narcotics responsibilities; NGOs and other non-profit organisations conducting activities related to drug consumption; regional and local authorities; Government Delegation for the National Plan on Drugs; international organisations.

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<sup>18</sup> See, Reuse of confiscated assets for social purposes (RO2013\_C5.2\_17), The Centre of Legal Resources, Editura Hamngiu, 2015.

Funds are distributed between eligible beneficiaries on the basis of a competitive procedure. Unlike the indirect social reuse in France, in Spain there are no legal provisions to establish the percentages of the sums collected in the special fund that are assigned for each purpose. Their distribution is decided on a case by case basis by the Coordinating Bureau for Allocation under the Government Delegation for the National Plan on Drugs.

As for the actual management of confiscated assets, in Spain there is no dedicated public authority because the system is decentralized. The responsibilities regarding the identification, management and disposal of confiscated assets are shared between courts, police and, in case of confiscated assets from drug offences, the Government Delegation for the National Plan on Drugs.

The practice has shown that courts often cannot deal with the entire amount of information in exercising their duties and that the lack of a dedicated agency for the management and administration of confiscated assets affects the efficiency of the disposal process.

## **6.2. LEGAL FRAMEWORK IN FRANCE**

In France, the form of disposal of confiscated assets depends on several factors such as the type of asset and the type of offence that led to their confiscation.

Starting from 2011, the French legislation includes provisions for the management of seized assets. The seized personal property can be entrusted by a competent judge to a specialized agency, the Agency for the Recovery and Management of Seized and Confiscated Assets (Agence de gestion et de recouvrement des avoir saisis et confisqué – AGRASC) that can sell the assets if they no longer need to be kept in order to establish the truth and if the maintenance of the attachment is likely to reduce their value. If the seized assets are not sold or they are real property, they must be managed by their owner/holder. If these persons fail to fulfill these obligations, the assets can be transferred to AGRASC. In addition, AGRASC can be entrusted with managing complex assets, such as companies.

As for the actual disposal of assets, the French legislation provides for more options such as:

- sale
- assignment for free (for certain types of assets only) either to the state/public authorities (for real property) or to the police/gendarmerie (for movable assets)
- restitution to victims
- destruction
- incentive schemes (for example, a part of the AGRASC's budget consists of the proceeds derived from the disposal of confiscated assets).

**Social and institutional reuse:** in case of assets confiscated in connection with drug offences, the sums resulted from their disposal are collected in a special fund managed by a specialized authority.

The disposal and management of confiscated or seized assets is a complex process and it involves a big number of authorities that differ from one type of asset to another. Assets confiscated in connection with drug offences (the main category of assets that make the object of real, although indirect, social and institutional reuse) go through three steps until they are reused:

**Step 1 (court)** – the judge of the case rules through a confiscation decision (in case of assets related to drug offences) that the assets are assigned to AGRASC for sale and the sums obtained by AGRASC are allocated to the Inter-ministerial Mission for Combating Drugs and Addictive Behaviours (*Mission Interministérielle de lutte contre la drogue et la toxicomanie*. - MILDT).

**Step 2 (AGRASC)** – AGRASC manages and sells at public auction movable assets and real property confiscated in connection with drug offences. The management and disposal of assets confiscated in connection with drug offences and assigned to AGRASC must be separate from other categories of assets managed by the agency. AGRASC transfers the proceeds of auctions to MILDT.

**Step 3 (MILDT)** – After the money is transferred to MILDT's bank account, MILDT wait until the end of the calendar year to present their budget. Meanwhile, the public institutions eligible for using funds from MILDT send their project proposals to obtain finance. The projects must be relevant to combating drug offences and abuse either through increased capacity of combating offences (e.g. purchase of equipment by the gendarmerie or other law enforcement forces) or through campaigns that draw attention to the consequences of drug offences or drug abuse. The projects are financed for a year and therefore they should be finalized within this period of time.

The available sums are distributed according to the following percentages and MILDT selects the projects to be financed:

60% for the Ministry of the Interior (35% for the National Police and 25% for the National Gendarmerie);

20% for the Ministry of Justice;

10% for the Ministry of Economy and Finance (for customs offices).

10% are kept by MILDT in order to be distributed between more ministries (Education, Agriculture etc.), according to their needs and submitted projects. This part of the funds plays the most obvious social role because it is mainly used to combat drug, tobacco or alcohol abuse rather than to combat the actual offences.

### 6.3. LEGAL FRAMEWORK IN OTHER MEMBER STATES OF THE EUROPEAN UNION

According to a report issued within the RECAST<sup>19</sup> project, approximately 2/3 of the EU Member States have adopted various forms of reuse of confiscated assets or of money from selling the assets through assignment to public institutions (institutional reuse) or to NGOs (direct social reuse).

The report also highlights the differences between how Member States understood to apply the reuse. For example, some Member States allow social reuse only for

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<sup>19</sup> Social Reuse Of Confiscated Assets In The EU: Current Experiences And Potential For Their Adoption By Other MS, Draft September 2014

mobile assets (in Greece only cars and in Hungary only certain assets such as food, toys, clothing, appliances), while in other countries it also applies to real property. On the other hand, in some States the reuse is possible only in relation to the proceeds from certain offences, typically drug offences (e.g. Spain and France). Member States have also chosen differently between direct reuse, i.e. direct transfer of the asset to beneficiaries, and indirect reuse, i.e. through special funds, consisting of confiscated sums or proceeds from the disposal of confiscated assets, that are used for crime prevention or for incentive schemes for entities involved in fighting crime. This last model is applied in France, Spain, Luxembourg and Scotland.

As regards the particularities of different Member States, the following are most notable:

In Belgium, social reuse for real property is applied in the Dutch/Flemish Region only.

In Hungary, starting from 2000, certain confiscated (mainly counterfeited) assets may be offered for charity purposes. In Luxembourg, the confiscated money or the proceeds from the disposal of confiscated assets from drug offences, money laundering and other serious crimes are transferred to a special fund (Fonds de lutte contre certaines formes de criminalité) and can be distributed to international organisations, national authorities and NGOs to be used in programs for fighting such criminal offences. In Scotland, confiscated assets are used through the "CashBack for Communities" program that uses community programs, facilities and activities to prevent young people from committing criminal offences.

## **6.4. LEGAL FRAMEWORK IN ROMANIA**

The Romanian legislation contains extensive provisions regulating the confiscation of criminal assets (Articles 112 and 1121 of the Criminal Code, the latter being introduced for the application of Article 3 of Council Framework Decision 2005/212/JHA on Confiscation of Crime-Related Proceeds, Instrumentalities and Property), but it does not provide for an efficient system for their social reuse.

Although Romania has no dedicated legal framework for social reuse of assets confiscated in criminal proceedings, elements of social reuse can be found in the general legal framework regarding the disposal of assets that become private property of the state, with two main legal acts:

Government Ordinance no. 14/2007 regulating the form and conditions for the disposal of assets that, pursuant to law, become private property of the state, republished, as further amended and supplemented (hereinafter referred to as "G.O. no. 14/2007");

The implementation procedures for G.O. no. 14/2007, approved by Government Decision no. 731/2007, republished.

As their titles suggest, the above mentioned legal acts do not strictly concern the reuse of confiscated assets for social purposes, but the disposal, in general, of assets that become private property of the state. They refer not only to confiscated assets (that become private property of the state under Article 3(1) of G.O. no. 14/2007), but also to other categories of assets such as vacant successions or abandoned assets.

The above mentioned legal acts provide for five forms of disposal for assets that become private property of the state: sale, assignment for free to public authorities, assignment for free to other beneficiaries (churches, NGOs, hospitals, providers of social services, kindergartens, schools, placement centers, homes etc.), destruction and restitution. Only one of these five forms of disposal (assignment for free) can be considered social reuse, but this concept is not defined as such by the legislation.

On the other hand, although the above mentioned legal acts do not expressly refer to the reuse of confiscated criminal assets for social purposes, some of their provisions can be applied for this purpose. However, assets assigned for free represent only a small percentage of the disposed assets. For example, in the first quarter of 2013 only 3.45% of the assets that became private property of the state were assigned for free.

## 7. THE WESTERN BALKANS EXPERIENCES<sup>20</sup>

In recent years, in the Balkans, there was an increased commitment by governments in the fight against organised crime<sup>21</sup>.

Most countries have ratified international conventions on the suppression of organised crime and terrorism, as the UN Palermo and Mérida Conventions - respectively against Transnational organised Crime and against corruption; the Council of Europe Convention on the Prevention of Terrorism; the Convention for the Suppression of the Financing of Terrorism and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

To strengthen the fight against corruption and organised crime, most countries developed police cooperation and reformed the judicial system, introducing new methods of investigations or new special unit and implementing rules, as the matter of confiscation.

Albania, Serbia, Macedonia in recent times reformed the law on confiscation in order to make it more efficient. The reform of law provisions against organised crime and in particular the enforcement of the law instrument of seizure and confiscation, could be placed in different dynamics.

First the EU priorities in recent years have focused increasingly on Home Affairs, in particular the fight against terrorism and organised crime, with an emphasis on the funding of terrorist or criminal activities. The integrated approach guiding the action of the EU in fighting organised crime extends from prevention to law enforcement. This is based essentially on effective cooperation between the authorities of the Member States, and especially the law enforcement agencies, including the exchange of information and mutual assistance in seizures and confiscations. Several countries in the region have carried out the procedures for application as EU member and therefore the alignment with European standards on these issues is a key factor for approbation.

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<sup>20</sup> This section has been extracted from the Report provided by the project SAPUCCA: Sharing Alternative Practices for the Utilization of Confiscated Criminal Assets, edited by Forte R.

<sup>21</sup> See for more details The general situation of organised crime in the Western Balkans - Dafne PAPANDREA, Researcher.

Secondly, for years, police and judicial cooperation - such as the implementation of the Interpol instruments - was at the centre of policies for the fight against transnational organised crime; there was a tendency to prefer policies focused on the persecution and punishment of Crime. In recent years the focus has shifted on the resources and how to hit them effectively in order to weaken criminal organisations; in this new context, the principle of confiscation has become particularly important. On the one hand, it affects the economic resources of the organisation, on the other, giving back to the society the goods confiscated, it becomes possible to change the local social situations leading to a further weakening of the criminal group.

This part of the report presents an analysis of four countries of the Balkans: Croatia, Macedonia, Montenegro and Serbia.

It provides a brief overview of the political history of each country, with the aim to point out the links and also the relevance of organised crime.

Then it analyses the situation of organised crime in each of the four countries, with a particular focus on the main criminal activities.

Finally it illustrates the legal framework of each country, with attention to the criminalization of the various offences related to organised crime and of the instrument of seizure and confiscation.

## 7.1. CROATIA

The confiscation of pecuniary gain acquired by a criminal offence is regulated by Art. 82 of the Criminal Code. It provides that the court shall confiscate a pecuniary gain acquired by means of a criminal offence. The confiscation of a pecuniary gain shall be ordered by a court decision establishing that a criminal offence has been committed. If it is impossible to seize in full or in part the pecuniary gain consisting of money, securities or objects, the court shall obligate the perpetrator of the criminal offence to pay the equivalent sum of money. The pecuniary gain shall also be confiscated if it is in possession of a third party on any legal ground and it has not been acquired in good faith. If an injured party has been granted



his claim of ownership, the court shall confiscate only the part of the pecuniary gain which exceeds the granted claim.

Proceeding for seizure of objects and confiscation of pecuniary benefit is regulated by Chapter XXVIII of the Criminal Procedure Code.

Art. 556 provides that objects which must be seized under law, and all other objects, shall also be seized when criminal proceedings do not terminate with a judgment of conviction, provided that this is required by considerations of public safety or the protection of the honour and dignity of citizens.

According to Art. 557, pecuniary benefit obtained as a result of the commission of an offence shall be determined in the criminal proceedings by virtue of the office. The court and other authorities before which criminal proceedings are conducted shall in the course of proceedings obtain evidence and investigate circumstances that are relevant for the determination of pecuniary benefit. If the injured person made a claim for indemnification that, with regard to its ground, excludes the confiscation of pecuniary benefit obtained as a result of the commission of an offence, the pecuniary benefit shall only be determined for the part exceeding the claim for indemnification.

Finally, Art. 560 asserts that the court may order the confiscation of pecuniary benefit by a decision in which the defendant is found guilty of the offence charged. In the ordering part of the judgment the court shall state which object is to be seized or which sum confiscated.

According to the Report on Croatia's state of preparedness for EU membership, implementation of the legal framework on the seizure and confiscation of assets needs to be consolidated, as does the coordination between criminal and financial investigations. The total level of assets seized and confiscated is relatively low and further efforts are necessary in this regard.

## 7.2 MACEDONIA

In 2009 amendments to the Criminal Code was made to harmonize the matter of confiscation with the latest international standards and to facilitate the application of this measure in practice. The new Art. 98-a of the Criminal Code provides that

for perpetrator of offence committed within a criminal association which has realized profit and for which is provided a sentence of at least four years, or offence in connection with terrorism (Art. 313, 394-a, 394-b, 394-c, 419) for which is provided a sentence of at least five years, or offence linked to money laundering offence for which is provided a sentence of at least four years, the court shall confiscate property acquired in the period before the sentencing – determined by the court from the circumstances of the case, but not more than five years before committing the offence – when based on all the circumstances the court is satisfied that the grounds of the property exceeds the statutory income of the offender and comes from such offence.

A new paragraph was added in Art. 273, which stipulates that if there are factual and legal obstacles to establish the previous offence and prosecution of the perpetrator, the existence of such offence is determined on the basis of the factual circumstances of the case and the existence of reasonable doubt that the property is acquired by such offence. The duty and the opportunity to know that the property was added by the offence can be determined based on objective factual circumstances of the case.

Property could be confiscated also from members of the offender family for which is derived or transferred, if there is evidence that they didn't give compensation corresponding to its value, and from third person if he/she did not prove that the object or property was obtained with compensation corresponding to their value.

Adopting these legal provisions FYROM has introduced expanded confiscation in its criminal legislation, following the recommendations of international documents and comparative experience of developed countries, in which this approach has already been successfully applied in dealing with organised crime. The problem remains the enforcement of this new legal instrument.

### **7.3. MONTENEGRO**

Chapter Seven of the Code regulated the Seizure of material gain. Art. 112 on the Ground for seizure of material gain provides that no one shall be allowed to retain

any material gain obtained by a criminal offence, which shall be seized on conditions envisaged by the Code, by a judicial decision ascertaining that is a perpetration of a criminal offence.

According to Art. 113 (which regulated Conditions and manner of seizure of material gain) money, things of value and all other property gains obtained by a criminal offence shall be seized from the offender; if such a seizure will be not possible, the perpetrator shall be obliged to pay for the monetary value of the obtained property gain. A material gain obtained by a criminal offence shall also be seized from the persons it has been transferred to without compensation or against compensation that is obviously inadequate of its real value.

In June, amendments to the Law on Management of Seized and Confiscated Property were enacted, extending the definition of property and improving its management.

## 7.4. SERBIA

Chapter Seven of the Criminal Code regulates the Confiscation of material gain.

Article 91, concerning the Grounds for Confiscation of Material Gain, prescribes that no one can retain pecuniary benefit obtained by criminal offence and that such benefit shall be seized, under the conditions prescribed by the Code and the Court decision determining that a criminal offence has been committed.

Article 92 established that money, items of value and all other material gains obtained by a criminal offence shall be seized from the offender, and if such seizure should not be possible, the offender shall be obligated to pay a pecuniary amount commensurate with obtained material gain. Material gain obtained by a criminal offence shall also be seized from the persons it has been transferred to without compensation or with compensation that is obviously inadequate to its actual value. Also if material gain is obtained by an offence for another, such gain shall be seized.

The procedure for seizure of pecuniary benefit if the injured party has a property claim is prescribed by the law provision entitled Protection of the Injured Party (Art. 93). It established that if in criminal proceedings a property claim of the injured

party is accepted, the court should order seizure of material gain only if it exceeds the adjudicated amount of the property claim. The injured party who in criminal proceedings has been directed to institute civil action in respect of his property claim, may request compensation from the seized material gain if (s)he institutes a civil action within six months from the day the decision referring her/him to litigation becomes final. The injured party who does not file a property claim during criminal proceedings may request compensation from the seized material gain if (s)he has instituted civil action to determine her/his claim within three months from the day of learning of the judgement ordering seizure of material gain, and not later than three years from the day the order on seizure of material gain became final. In cases referred in §2 and §3 of this Article, the injured party must - within three months from the day the decision accepting her/his property claim became final - request to be compensated from the seized material gain.

Criminal Procedure Code regulates procedural rules for seizure of pecuniary benefit, in Articles 513 to 520.

Article 513 prescribes that in the course of proceeding, the Court and other authorities before which criminal proceedings are conducted are bound to obtain evidence and investigate circumstances which are relevant for the determination of a pecuniary gain.

Article 515 provides that the Court may establish the amount of pecuniary gain freely, if establishing it precisely would cause disproportionate difficulty or considerable prolongations of procedure.

Article 516 enables the application of provisional measures of securing the property that is the subject matter of the seizure. This measure is used only in case of enabling the pecuniary request of the accused and not the possible confiscation of pecuniary gain.

According to Article 517, the Court may pronounce the confiscation of pecuniary gain in the convicting judgment and other mentioned decision in which the Court decided on the responsibility of the accused.

The Law on the Confiscation of the Proceeds from Crime regulates the conditions, procedures and bodies responsible for detection, seizure and management of the proceeds of crime.

The competent bodies are the Special Unit for Financial Investigation, under the Ministry of Interior, and the Directorate for Confiscated Property Management, under the supervision of the Ministry of Justice.

The main role of the Directorate is to manage confiscated assets derived from criminal offences, the proceeds from crime and the property given in pledge to a third party from criminal proceedings. The Directorate participates in the provision of international legal assistance in connection with the seizure of property stemming from criminal acts. The Directorate also manages the proceeds derived from business criminal offences.

The Special Unit for Financial Investigation performs financial investigations and the provisional seizure of the proceeds from crime, in collaboration with the competent Prosecutor.

This Law also defines such crimes are subject to these provisions, in particular the criminal offences containing the element of organised crime, some criminal offences committed against commerce, humanity and crimes against public office, such as corruption related offences.

The Law on the Confiscation of the Proceeds from Crime represents a very important step by the state authorities of Serbia in the fight against organised crime and corruption. The law establishes the legal framework for the confiscation of proceeds from perpetrators of serious criminal offences when they fail to prove that they have been legally acquired, resulting in reversal of the burden of proof. If suspects will be unable to do so, the state seizes the property and the revenues end up in the state budget. The law also blocks suspects to send money abroad and to transfer property to their friends and relatives.

## 8. **O**VERVIEW OF THE BULGARIAN ASSET RECOVERY SYSTEM<sup>22</sup>

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<sup>22</sup> This section has been extracted from Atanas RUSEV, Research Fellow, Center for the Study of Democracy

According to Bulgarian law, the seizure of proceeds from crime is done by the Court upon claims by the Prosecution Office under the provisions of the Penal Code, and upon claims from the Commission for Establishing the Property Acquired from Criminal Activities (CEPACA) in compliance with the provisions of the Law on Forfeiture of Proceeds of Crime (LFPC). The issued court orders on forfeiting assets acquired from criminal activities for the benefit of the state are sent for execution to the National Revenue Agency (NRA). The NRA is focused on selling the recovered property, though the law also provides the option for transferring confiscated assets to budgetary organisations. The latter option is applied mostly to confiscated motor vehicles.

After a court order for confiscating proceeds from crime is issued, the assets become public property. The court order execution is carried in accordance with a joint instruction of CEPACA and NRA.

Possibilities for the use of confiscated property for social purposes

- The existing procedure

In Bulgaria, the Act for the National Revenue Agency also provides a possibility for reuse of confiscated assets, including reuse for social purposes. Until now, however, this procedure is applied mainly for confiscated movables (motor vehicles), and to a much lesser extent for real estate property.

The use of confiscated property for social purposes (or the so-called 'social reuse') is a widely established practice in Italy<sup>23</sup>. The procedure includes transfers of confiscated real estate to local authorities on the condition that the property would be used for delivering social services and with involvement of community based organisations. There are several reasons for opting for such an approach. The most important among these are the difficulties of finding buyers of this type of property and the existing risk the property to be bought back by organised crime accomplices at a minimal price. Another reason is the urge to resist the 'culture of crime', which makes criminals popular role models. Last but not least, it is the idea

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<sup>23</sup> The Italian experience is

to bring back to local communities the wealth accumulated by the criminals at their expense<sup>24</sup>.

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<sup>24</sup> Antimafia: The Italian experience in countering organised crime (in Bulgarian), Sofia: Center for the Study of Democracy, 2011

## 9. ITALIAN LEGAL FRAMEWORK AND ADMINISTRATIVE PROCEDURES OF CONFISCATION AND RE-ASSIGNMENT OF CRIMINAL ASSETS

### 9.1. SEIZURE, CONFISCATION AND REUTILIZATION OF ILLEGAL ASSETS

The economic theory on crime suggests to increase the cost of illegal action in order to discourage it. However, a system of disincentives based on the tightening up of sanctions can produce counterproductive results. Firstly, in fact, criminal organisations can react to “desperate diseases”, represented by the tightening up of the norms, with “desperate remedies”, that is increasing the illegal activities in order to have an increase in the benefits with respect to the costs. This action-reaction process can continue in time and be influenced, in a positive or a negative way, from the intensity of the repressive policies and from the efficiency of the juridical system.

Thus, it is necessary to use together preventive and repressive policies in order to break the ties and the networks which criminal organisations build and implement in the community.

In fact, criminal organisations count on a system of strong relationships which allows the attainment of a social consent through which they succeed in dominating their territories. Therefore, this social consent is the basic element for the creation and the existence of criminal organisations, but it is created and strengthened by destroying the trust existing among individuals and also towards the legal institutions<sup>25</sup>. Trust, as it is stressed by economic literature, is fundamental to favour economic and civil growth (Putnam 2004; Bruni and Zamagni 2004). These measures would furnish a relevant contribution to the fight of the organised crime and to the social-economic development of the territories. In fact, they could stimulate the formation of social activities which would favour the accumulation of the “pure” social capital.

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<sup>25</sup> According to Fabio Granata, vice president of the Italian Antimafia Commission, “in order to defeat the Mafia, arrests, confiscation and criminal trials are not sufficient, but social and cultural operation is essentially needed”.



Among the present juridical tools, the seizure and the confiscation of assets illegally obtained represent the most effective measures to fight criminal organisations<sup>26</sup>. These are what organised crime fears the most, because they deprive it not only of the economic wealth, but of the social consent which is used for spreading the sense of invincibility in the territories.

Seizure and confiscation represent political tools that allow criminal assets to be deprived of the characteristics which make them status symbols<sup>27</sup>. From status goods, that produce wealth through the exploitation and the impoverishment of the economic and civil resources of the territories, they can be transformed into opportunity for economic and social development.

Through this metamorphosis these assets would reacquire their neutral function and be used socially. This principle is ratified by the Law No. 109/1996, which allows the reutilization of the assets belonging to organised crime and to apply the deterrent tools, such as seizure and confiscation.

Art. 2-undecies of the Law 109/1996 gives the possibility to assign the assets seized to non-profit organisations underlining, in this way, the social role which these can develop in the commutation of the “illegal” goods into useful community activities. The strengthening of the social economy can be seen as a cure to criminal economies. In fact, the maximisation of the social utility by these organisations can facilitate the growth processes of social capital and social community.

The development of social entrepreneurship can be an ideal mechanism able to produce civil, social and economic development in the territories. The increase of the number and activity of social entrepreneurship represents, without doubt, an augmentation of job opportunities and increase of wealth. The empirical data of several researches confirm that the richest territories in Italy are also characterized by the presence of a greater number of social cooperatives as well as of other non-profit organisations. It is not by chance that in the Southern Italy there are recorded, in general, a low diffusion of social cooperatives and non-profit organisations.

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<sup>26</sup> In fact, The European Commission has recognized the strategic priority of confiscation of assets illegally obtained as an effective tool in the fight against criminal organisations. See European Commission 2012.

<sup>27</sup> In particular, they deprive criminal organisations of economic wealth and, therefore, of financial capability to bribe judges, prosecutors, witnesses, politicians, entrepreneurs, professional men or women and all others subjects with whom Mafia form its “shadow alliances”.

Seizure, confiscation and above all the reutilization of the illegal assets for social aims can be used as indicators of the loss of power and influence of the criminal organisations on their territories.

Therefore, the number of reutilised goods for social and institutional purposes and activities can be considered a proxy of the conversion of a “asocial” capital into social capital in a territory and the level of civil and social development.

## **9.2. THE ITALIAN NORMATIVE ON SEIZURE, CONFISCATION AND REUTILIZATION OF ILLEGAL ASSETS**

Italy possesses innovative laws to fight criminal organisations based on the forfeiture and reutilization for social aims of the mafias' assets. They are the result of numerous legislative interventions taking place over the last fifty years. The law No. 1423/1956 represents the first act which has introduced preventive measures of imprisonment of dangerous people for safety and public morality. The law No. 575/1965, *Dispositions against Mafia*, introduced the explicit reference to members of associations based on the mafia structure with the application of preventive measures regarding the individuals, and their properties, suspected of belonging to mafia, camorra organisations, or to other local illegal associations. It also extended to these individuals the application of preventive measures of imprisonment, such as preventive detention and internal exile, with the possibility to investigate his/her standard living, financial assets and properties suspected to being acquired through mafia connection. Moreover, it allowed to investigate also the consort, children and cohabitants of the individual suspected to belong to criminal organisation with the last five years, as well as of corporations of which he/she resulted to be in control. In order to prevent the disappearance of the forfeiture assets, it is possible to seize the goods before the hearing is set. Art. 22 of the Law 14 May 1975, No. 152 introduced the freezing of personal assets so that they could not be used for illegal activities.

A few years later, the Law of 13 September 1982, No. 646, known as the Law Rognoni-La Torre<sup>28</sup>, provided a normative definition of Criminal Association of Mafia Type, introducing it in the Italian Criminal Code (See Art. 416-bis)<sup>29</sup>. Moreover, the range of the tools enforceable towards individuals suspected of belonging to Criminal Associations of Mafia Type, has been widened through the introduction of the seizure and the confiscation of assets of suspicious source.

In order to overcome some difficulties tied up to the management of the seized and confiscated goods, Decree No. 230/1989, converted by Law No. 282/1989, *Urgent Dispositions for the administration and the destination of the confiscated Assets by Law 575/1965*, changed a part of the pre-existent Italian Normative on the Management of the Confiscated Goods. However, despite this law, difficulties tied to the criticalities of the destination of the criminal assets still persist.

A next act, Law No. 109, 7 March 1996, *Dispositions on the management and destination of the seized and confiscated goods*, completed the Law 575/65 by several integrations finalized to improve the destination procedure of the confiscated assets<sup>30</sup>. This law envisages the social and economic value of the reutilization for social purposes of goods belonging to criminal organisations and combines the expropriation of the assets illegally accumulated to the restitution of the seized or confiscated properties to the community. This possibility represents the main economic aim of that law. The assets illegally accumulated through stealing resources to the community can invert their status of subjugation goods to criminal organisations in public goods which can produce benefits for the same community (Mosca and Villani 2010).

The new code of preventive measures and anti-Mafia documentation (the so-called *New Anti-mafia Code*), issued by Legislative Decree No. 159, 6 September 2011, follows this route and puts Italy in a prominent position compared to other countries in the improvement of strategies to combat organised crime. However, there is still much to be done, because the new code:

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<sup>28</sup> The impoverishment of Mafia through the confiscation of the assets illegally obtained is a strategy that had already suggested more than twenty years ago by Pio La Torre, an Italian deputy killed by Mafia in Palermo in 1982.

<sup>29</sup> According to what is foreseen by the Italian Law, a criminal organisation is considered of Mafia Type when members use a threatening strength as a specific characteristic of associative tie and condition of submission and conspiracy of silence that derives from it, to commit crimes and to acquire the management or the control of economic activity or concessions or realisation of profits and unfair advantages.

<sup>30</sup> The law 109/1996 passed thanks to *Libera, nomi e numeri contro le mafie*, an Italian nonprofit association that collected up over a million of signatures. It was approved to the unanimity from the components of the Parliament.

- 1) establishes a discipline of relations between preventive confiscation and criminal seizure which is not based on realistic foundations; for example, the time limit for the enactment of the confiscation decree of two and a half years – which is renewable for periods of six months and not more than twice (See Art. 24, Para. 2, of the *New Anti-mafia Code*) – is too short; property investigations are often complex and time-consuming, especially when part of the assets illegally obtained is hidden abroad;
- 2) offers an excess of guarantees where it is not appropriate; for example, it offers the possibility to revoke the confiscation of the property even if this has already been assigned and allocated for social use (See Art. 28 of the *New Anti-mafia Code*);
- 3) did not change the regulation of the vote in exchange for favours (See Article 416-ter of *Criminal Code*), which is punishable only if the votes were bought using money, while for some time investigators and experts are all asking to extend that rule to cases of votes acquired in exchange for contracts, public financing, licensing, recruitment, etc.;
- 4) does not speed up the procedures required to obtain the confiscation of assets obtained illegally and their reutilization for social purposes.

## **10. ALBANIAN LEGAL FRAMEWORK AND ADMINISTRATIVE PROCEDURES ABOUT CONFISCATION AND RE-ASSIGNMENT OF CRIMINAL ASSETS**

For the Albanian law it is possible to seize property as part of a criminal sanction for the offence that the property was used to commit or it was in someway intrinsically connected with the offence.

The article 36 of the Criminal Code contains general rule for the confiscation of proceeds and instrumentalities of crime. This rule also includes the confiscation of intermingled and transformed assets, and provides for value-based confiscation.

The confiscation rules are contained also into the Albanian Criminal Procedure Code. The property can only be confiscated if there is a final judgement of conviction against the defendant, and the Court imposes the confiscation as a supplemental punishment (article 30 of the Criminal Code). In particular, chapter

VI of the Albanian Criminal Procedure Code imposes the seizure of assets (article 274) when:

1. There is a danger that free possession of an item connected to the criminal offence may aggravate or prolong its consequences or facilitate the commission of other criminal offences, the competent court, on application of the prosecutor, orders its sequestration by reasoned decision.
2. Seizure may also be ordered against items, proceeds of the criminal offence and against any other kind of property that is permitted to be confiscated in conformity with article 36 of the Criminal Code.
3. The application conditions alter, the court, on the application of the prosecutor or interested person, cancels the seizure.

“A Court, upon the application of the prosecutor, must issue the seizure of assets. The seizure procedure is also stressed by the Albanian Anti-Mafia Law (Law No. 10.192 of 3 December 2009). The essence of the law is “preventing and striking at organised crime and trafficking through the confiscation of the assets of persons who have an unjustified economic level as a result of suspected criminal activity” (art.2). The Anti-Mafia Law allows the seizure and confiscation of assets when there is reasonable suspicion of a person (or more than one) having committed, among others, the crimes of money laundering and terrorism financing.

The seizure can be applied from both the natural persons and their close relative (up to the 4th generation), and natural and legal persons (art.3).

The Anti-Mafia Law acts as a “preventive measure” and consists of “any measure of a property nature that the court orders in a judicial proceeding through the sequestration of assets, the economic, commercial and professional activity of persons, as well as through their confiscation” (art.4).

Although the Anti-Mafia Law declares that its proceedings are autonomous (article 5) in relation to the criminal proceedings, article 5.3 declares that the criminal proceedings and its effects take priority over the civil proceedings under the Anti- Mafia Law.

Article 11 defines the criteria for sequestration of assets. In fact when there is a motivated request of the prosecutor “the court orders the sequestration of assets of the persons according to article 3”. The request must be sustained by “a

reasonable suspicion based on indicia that show that the person may be included in criminal activity and has assets or income that do not respond obviously to the level of income, profits or lawful activities declared, nor are they justified by them and when:

a) a real danger exists of the loss, taking or alienation of the funds, assets or other rights over which the putting into implementation of the measure of confiscation according to the provisions of this law is provided; or

b) there are reasonable suspicions that show that the possession of the assets and the exercise of the particular economic, commercial and professional activities are in a state of danger or influence by a criminal organisation or that may facilitate criminal activities.

Article 12 clarifies that the “request for the sequestration of assets is examined by the court with the participation of the prosecutor, within five days from the date of submission, on the basis of the documents submitted by him.

The decision for a sequestration measure can be executed upon its announcement. The sequestration measure is valid for a six-month period, starting immediately after the moment of its implementation.

In the case of complex verifications, at the request of the prosecutor, the court may decide to extend the time period of implementation of the sequestration measure for three month periods, but no more than one year from the date of the ending of the time period of the sequestration measure according to point 2 of this article. An appeal to a court of a higher level may be taken against this decision.

When the sequestration measure is set against immovable assets or assets registered in public registers, the administrator appointed immediately notifies the offices where these registers are kept of this measure.

No later than five days before the end of the time period of the sequestration measure provided in point 2 or 3 of this article, the prosecutor may submit a request for the confiscation of the assets or the extension of the time period of the

sequestration measure. In the case of a request for confiscation, the sequestration measure continues until the end of the adjudication for the confiscation of the assets.

Failure to submit a request according to point 5 of this article brings about the extinguishment of the sequestration measure. However, the extinguishment of the sequestration does not hinder the submission and acceptance of a request for confiscation of the assets.

Chapter III (article 15-20) of the Anti-Mafia Law brings forth rules and procedures pertaining to the administration of assets subject to preventive measures. The court that ordered the preventive measure does not administer the assets subject to preventive measures; rather, the Albanian Agency of Administration of Sequestered and Confiscated Assets ("Agency") is tasked to administer them upon the decision issued by the court (article 15.1).

The Agency may further authorise assistance from specialists in order to administer the assets (article 15.2). Although the Anti-Mafia Law does not provide for specific rules, one is led to expect that the Agency has its own sets of laws, rules and regulations which would be applicable whenever the Anti-Mafia Law is silent in that regard. The administrator must report, within 15 days from his appointment, on the existence and condition on which the asset is to the court, the prosecutor and the Agency (articles 18.1 and 18.3). The administrator must also notify the court, the prosecutor and the Agency of other assets that may be subject to preventive measures, which he/she is made aware of during his/her administration (articles 18.2 and 18.3). The administrator may not (article 17), unless otherwise authorised by the court, take part in the "the adjudication, to take loans, to sign agreements of conciliation, arbitration, promise, pledge, mortgaging or alienation of the sequestered assets or to perform other legal actions of administration that are not ordinary." It should be noted, however, that the status of specialists called to assist the Agency in administering the assets is not clearly defined by the Anti-Mafia Law. As they are not the administrators, one is led to the conclusion that the limitations

imposed to the administrators under article 17 are not applicable to the specialists. This, in turn, could bring several problems relating to either the active or passive bribery of said specialists.

In the event that the seized assets are damaged or whose value is highly volatile (i.e. movable property), these may be transferred to bona fide third parties (not including the persons under article 3.2) to administer the assets (article 19).

The use of confiscated assets is regulated by the chapter VI. Article 29 contains the procedure of the passage of confiscated assets to the ownership of the state. In fact, the procedure stresses that:

1. Assets confiscated by court decision according to this law pass to the ownership of the state.
  
2. A final decision for the confiscation of assets is sent immediately to the Agency of Administration of Sequestered and Confiscated Assets.
  
3. When a decision of confiscation becomes final, the assets pass to the ownership of the state in a non-returnable manner. In this case their owner [Alb. zotëruesi] has the right to seek fair indemnification, if it is subsequently proven that the confiscation was illegal or not grounded.

Article 32 reports the procedure of the use of movable assets and monetary means. "The administrator carries out actions necessary to deliver to the accounts of the Agency of Administration of Sequestered and Confiscated Assets funds in monetary means:

- a) confiscated [and] which will not be used for the administration of other confiscated assets or which will not be used for the indemnification of the victims of the criminal offences of organised crime.
- b) earned from the sale of movable assets that are not used in the activity of the commercial legal person and of the securities [lit. titles], in net value, earned from the sale of assets for the indemnification of the victims of organised crime. If the procedures of sale are not economical, the Minister of Finance orders the transfer



of ownership without payment or the destruction of the confiscated assets by the administrator.

c) which are earned by the taking again of personal loans, if the procedure of taking them again is not economical or when, after the verifications done by the Agency of Administration of Sequestered and Confiscated Assets about the payment ability of the debtor, it turns out that he is insolvent, the personal loans are annulled by the Minister of Finance”.

Article 33 contains the “use of immovable assets and those that serve for economic, commercial and professional activities.

1. On the proposal of the Minister of Finance, the Council of Ministers determines the criteria, amount and manner of use of immovable assets and those that serve for economic, commercial and professional activities, part of the special fund, within the limits of the destination established by this law.

2. In issuing this decision, the Council of Ministers bases itself on the principles of good administration of property, the increase of effectiveness of criminal justice, as well as rehabilitation and fair indemnification”.

The role of the Agency of Administration of Sequestered and Confiscated Assets is contained into the article 34 that envisages that:

“1. The Agency of Administration of Sequestered and Confiscated Assets is the institution responsible for the administration of sequestered and confiscated assets.

2. Detailed rules about the organisation, competences and functioning of the Agency of Administration of Sequestered and Confiscated Assets are set by the Council of Ministers.

3. Detailed rules about the criteria of evaluation, the manners and procedures of giving confiscated assets in use and of their alienation are set by the Council of Ministers”.

In order to enforce the fight against the organised crime the Anti-Mafia law has constituted (art. 35) an Inter-institutional Expert Advisory Committee for Measures against Organised Crime that has competences as concern:

"1. ... the supervision of the administration of confiscated assets by the Agency of Administration of Sequestered and Confiscated Assets, as well as for taking decisions about the destination of the confiscated assets, the Inter-institutional Expert Advisory Committee for Measures against Organised Crime is created and functions. This committee meets at the Ministry of Finance".

2. The Committee consists of eight members proposed, respectively, by the Minister of Finance, the Agency of Administration of Sequestered and Confiscated Assets, the General Prosecutor, the Chairman of the Office of Administration of the Judicial Budget, the Chief Registrar of Immovable Properties of the Republic of Albania, the Minister of Justice, the minister who covers issues of public order and the minister who covers social issues. The member proposed by the Minister of Finance is the chairman of the committee.

3. Representatives of public institutions or other organisations, local and foreign, active in fields of interest for the implementation of this law, may also be invited to take part in the activities of the committee.

4. The Agency of Administration of Sequestered and Confiscated Assets reports to the committee about its activity at least once every three months.

5. Based on the priorities defined in article 37 of this law, the committee gives recommendations, which are addressed to the Ministry of Finance, for the effective disposition of the income within the State Budget, also including a recommendation for the payment of the operating expenses of the agency.

6. At least once every six months, the committee asks for information in writing from the central institutions that have [the assets] in administration, as well as

detailed data on the condition and manner of use of immovable assets from the local units that own confiscated immovable assets.

7. The committee meets at least once every three months. The committee approves internal rules of its functioning”.

The Decision No.632, dated on July 23, 2010 regarding “The evaluation criteria, the methods and the procedures of the used and the disposal of confiscated assets in accordance to the law no. 10192 dated december 03 rd, 2009”, allows CSOs to benefit from confiscated assets. In fact, at the Chapter II when it refers to the Hiring possibilities it states that:

1. The law enforcement institutions, local government units and non profit organisations with the object of protection and rehabilitation of victims of organised crime, are the subject that benefit from hiring.

2. The forms of use will be:

- a) the transition in management responsibilities, for the Central Institutions
- b) the transitions in ownership, for the Local Government Units
- c) giving in usufruct, for other eligible entities.

## **11. EUROPEAN BEST PRACTICES ABOUT MANAGEMENT OF CONFISCATED ASSETS**

This section follows the report ‘The management and disposal of confiscated criminal assets in the EU Member States provided by the Center for the Study of Democracy, Policy Brief No. 45, July 2014.

The report shows that most MSs have introduced forms of reuse of the assets that involve either public institutions (institutional reuse, via incentive schemes) or society/NGOs (social reuse). The former option, as noted, seems to be more frequent than the latter.

What distinguishes social reuse of confiscated assets from the traditional transfer of confiscated assets to the State budget (which is still the main disposal option within

the EU) is the visibility of confiscated assets among citizens that it guarantees. Even in the context of traditional forms of reuse assets are, broadly speaking, used for public purposes (since they become part of the State budget); still, they are mixed up with any other public resource, so that citizens cannot link their subsequent public or social reuse to the original nature of confiscated assets.

Currently there have been established two models of social reuse in the EU: 1) direct reuse of confiscated assets for social purposes and 2) reuse of the proceeds of the confiscated assets via specialised funds/programs that invest these proceeds for fighting drug trafficking or crime prevention.

Significant experiences of direct reuse of confiscated criminal assets for social purposes have been introduced in the following MSs: Italy and Belgium (Flemish region).

The model for reuse of the proceeds of the confiscated assets via specialised funds/programs exists in the following EU countries: France, Spain, Luxembourg, UK (Scotland), Romania.

Current social reuse experiences have many advantages. What stems from crime is openly given back to society (especially in schemes for direct reuse for social purposes), thus spreading an important cultural message that promotes the so called 'social fight' against organised crime. Still, these social purposes often conflict, in everyday life, with economic efficiency.

In general, incentive schemes are easier to manage than social reuse schemes, since it is generally easier to handle money than property itself.

## **11.1. BEST PRACTICE REGARDING THE MANAGEMENT OF SEIZED ASSETS**

In France, in order to ensure efficient use of available resources, AGRASC does not administer seized complex assets implying too high administration costs, exploiting the possibility offered since 2010 by the Code of Criminal Procedure, that disciplines seizure of property without dispossession and therefore makes it possible to leave seized assets in the custody of the owner, who must bear maintenance costs.

## 11.2. BEST PRACTICE REGARDING PROPERTIES WITH MORTGAGES

In Sweden, if the value of the real estate does not cover both the mortgage and the cost of the sale, no freezing measure is imposed.

Best practice in terms of institutional building arrangements:

In Italy, France and Cyprus exist centralised and dedicated authorities to handle the disposal of confiscated assets.

## 11.3. BEST PRACTICE IN TERMS OF INTERAGENCY COOPERATION

In Sweden the Justice Department recently issued an order for closer cooperation between the police, Economic Crime Bureau and Prosecution Service, which resulted in the establishment of the National Function for Proceeds of Crime, intended to act as advisor for the different authorities.

Best practice in terms of sale of confiscated asset at Internet auction

Good practise in terms of sale of moveable assets can be found in Belgium, Germany and the United Kingdom, where confiscated goods are offered at internet auctions, as a way to achieve better value for money and timelier disposal.

Best practice in terms of centralised management & sale of confiscated real estate

In Belgium, after the final confiscation order, the Federal Public Service Finance takes over the management of the confiscated real estate. A special central office, named FINDOMIMMO, ha recently been created to ensure a better and more efficient management of all real estate, property of the Belgian State. The office prepares property for sale, and when the property is ready FINDOMIMMO gives a sale order to the competent real estate committee, specialised in the sale of real estate.

#### **11.4. BEST PRACTICE TO COORDINATE CRIMINAL AND NON-CRIMINAL PROCEEDINGS INVOLVING THIRD PARTIES**

In the United Kingdom there are some local arrangements where matrimonial issues are held in the same court as asset disposal. These arrangements, although yet not consistent and subject to further improvement, are a promising approach for dealing with perplexed legal disputed around the assets to be recovered.

#### **11.5. BEST PRACTICE TO INVOLVE CITIZENS IN THE SOCIAL FIGHT AGAINST ORGANISED CRIME AND SOCIAL REUSE**

Social reuse is the only form of disposal that guarantees the visibility of confiscated assets among citizens, since what stems from crime is explicitly given back to society. It therefore spreads an important cultural message that promotes the involvement of citizens in the so called 'social fight' against organised crime. This practice is implemented in Italy (see the later section).

#### **11.6. BEST PRACTICE TO PROMOTE THE IDENTIFICATION OF ASSET BENEFICIARIES**

Estonian Tax and Customs Board and the General Directorate of Public Finance in Romania are a good example for effective promotion of assets available for social reuse and identification of possible beneficiaries for the confiscated assets. Both authorities maintain publicly accessible lists of goods available for social reuse purposes on Internet and eligible beneficiaries can submit applications for these. Best practice in terms of disposal monitoring to avoid that criminals buy their asset back

The Antimafia Code in Italy envisages that when –based on reports by citizens or information held at Prefecture- it emerges that confiscated assets have been re-acquired by the criminal, then the act that assigned the assets is revoked.

## 12. ITALIAN BEST PRACTICES ON MANAGEMENT AND SOCIAL REUSE OF CONFISCATED ASSETS. SOCIAL ECONOMIC ACTIVITIES ON CONFISCATED PROPERTIES

Italy offers several good practices as concern the social reuse of confiscated goods. In particular:

### 12.1. THE “LE TERRE DI DON PEPPE DIANA - LIBERA TERRA SOCIAL COOPERATIVE”

This experience of a social reuse of a confiscated asset represents a good practice as concern the synergy between the institutions and responsible civil society. The collaboration generated the “Le Terre di don Peppe Diana (The Lands of Father Peppe Diana) - Libera Terra Social Cooperative” that was constituted on 20 September 2010, between five partners with specific professional profiles, selected by public notice of competition. It is dedicated to Father Peppe Diana, the priest assassinated in his church by the Camorra at Casal di Principe (in the province of Caserta).

The Cooperative is the enterprise that manages the greatest number of confiscated properties in Campania, with about 80 hectares of land, 3 rural buildings and a cheese factory, distributed over five different municipalities in Caserta Province<sup>31</sup>.

The cheese factory produces organic mozzarella, thanks to commercial agreements with local raisers of livestock, who have shared in the programme of conversion to organic farming for their herds of buffaloes. The wheat grown on part of the confiscated lands is processed into flour at Gragnano to be made into the “Paccheri di don Peppe Diana” pasta (“paccheri” are a type of traditional Neapolitan pasta). The other agricultural products are taken to the Libera Terra Mediterranean Consortium<sup>32</sup>, which brings together all those, throughout the whole of Italy, involved in enterprises engaged in the productive utilisation of

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<sup>31</sup> The municipalities where the confiscated properties managed by the cooperative are located are Castel Volturno, Cancellò and Arnone, Carinola, Pignataro Maggiore and Teano

<sup>32</sup> <http://www.liberraterra.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPage/7>

confiscated criminal assets, creating products bearing the Libera Terra trademark<sup>33</sup>.

## 12.2. THE BEPPE MONTANA – LIBERA TERRA SOCIAL COOPERATIVE

The Beppe Montana - Libera Terra Social Cooperative was constituted in June 2010 and is formed of four working partners, selected by public notice of competition. It presently manages agricultural lands confiscated from the Riela gang of the Mafia, in local districts in the Province of Catania, and from the Nardo gang in districts in the Province of Syracuse.

The Municipalities affected are Belpasso, Motta Sant'Anastasia and Ramacca in the Province of Catania, and Lentini in the Province of Syracuse. The lands cover a surface of 100 hectares and are distributed through one of the most fertile areas in eastern Sicily, extending from the district of Etna on the slopes of the Hyblaean Mountains, and crossing the Plain of Catania. The lands are mainly planted in citrus trees, with a number of rows of olives and a part that is devoted to the cultivation of crops. Because of the lengthy time that passed between confiscation and allocation, about twelve years, the crops initially suffered, because of the unusually intensive maintenance work required, but the potential shown by both the citrus fruit and olives, and indeed by the crops too, have made it possible for the business to enter a new and more specific planning phase. Unfortunately, a fire in 2012, probably due to arson, destroyed about six hectares of citrus trees at Casabianca in the district of Belpasso-Catania, sending about 2,000 orange trees and 100 olive trees up in smoke.

The Cooperative uses organic farming methods, and currently produces red orange marmalade and extra virgin olive oil. It too belongs to the Libera Terra Mediterranean Consortium, to which it sends part of its agricultural produce

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<sup>33</sup> Libera Terra is the trademark that distinguishes all organic products from cooperatives that are members of Libera and manage productive buildings and lands confiscated from Mafia-style organisations



### 12.3. **NCO-NUOVA COOPERAZIONE ORGANIZZATA (NEW ORGANISED COOPERATION)**

A meeting between four Social Cooperatives<sup>34</sup> which for some years have been using properties confiscated from the Camorra in Caserta Province gave rise to the NCO - New Organised Cooperation - Consortium<sup>35</sup>.

The Consortium aims to contribute to the civil growth of the territory, sustained by a culture of inclusion and legality, by developing sustainable social economic activities that create dignified work for persons in difficulty. The activities aim to involve the community, in order to achieve the socio-cultural change of the territory, and to make the confiscated assets and/or particular Municipalities be increasingly seen as symbols and resources of communities free from the Camorra. The Consortium has managed the project, promoted by the Father Don Peppe Diana Action, Protection and Environmental Sustainability Committee, called "Facciamo un pacco alla camorra" (see below for more detail); the implication of name is to wrap up all the products created on properties confiscated from the Camorra, together with products from anti-racket entrepreneurs, as Christmas presents.

### 12.4. **RES – RETE DI ECONOMIA SOCIALE (SOCIAL ECONOMIC NETWORK)**

The first Italian attempt to construct a different model of local development, utilising assets recovered from the Camorra, was born in one of the districts where the presence of organised crime was at its strongest.

The RES - Social Economic Network project, supported by the Foundation with the South, experimented with an action aimed at the whole economic system: it sought to promote, across a pilot area that was one of the most complex in Caserta Province, a model of integrated local development founded on the idea of the social economy becoming an essential part of the local infrastructure, by

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<sup>34</sup> The Cooperatives belonging to the Consortium are Agropoli Onlus, Eureka Onlus, Al di là dei sogni ("Beyond Dreams") and Un fiore per la vita ("A Flower for Life") ["ONLUS" is the Italian acronym for Non-profit Social Utility Organisation].

<sup>35</sup> <http://www.ncocooperazione.com>

making properties confiscated from organised criminal organisations become productive, pursuing “the general interest of the community in human promotion and the social integration of citizens, and increasing social capital invested in a system of legality”.

The integrated development programme set itself three objectives in the measures undertaken:

- to promote and implement practices and chains of social economy through the use of assets confiscated from the Camorra, with a view to creating a network;
- to promote the positive freedoms of people, beginning with the most disadvantaged, and respect for cultural differences, in order to construct educative communities with a sense of social solidarity,
- to promote the good practices of social inclusion and innovative models of welfare<sup>36</sup>;
- to ensure that the actions taken by the local Public Administrations in favour of sustainable local
- development and to combat organised crime are accessible, transparent, and open to evaluation.

The organisation that is responsible for the project is an APS (Association for Social Promotion), the Father Peppe Diana Committee, together with a partnership comprising 31 public and private organisations<sup>37</sup>. The territory over which the action is spread falls within the Municipalities of Casal di Principe, Casapesenna,

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<sup>36</sup> For a discussion of the characteristics of a functional welfare model in contrast with organised crime see Mosca M., “Welfare e contrasto alla criminalità”, in “La fine è l’inizio”, edited by Musella M., Giappichelli, Torino 2011, pp. 347-355. For an analysis of the characteristics of the co-management model trialled in the Region of Campania, see Baldascino M. and Mosca M., “Il modello di cogestione del welfare di comunità: l’esperienza della Campania” in “La sussidiarietà orizzontale. Economia, politica, esperienze territoriali in Campania”, edited by Marco Musella, Carocci editore, 2012. For a discussion of the particular features of a new welfare model in accordance with the principles of subsidiarity see Baldascino M. and Mosca M., “Sussidiarietà orizzontale, welfare comunitario ed economia sociale”, De Frede editore, Napoli, 2012.

<sup>37</sup> Partners in the project are: the Provincial Authority of Caserta, Caserta Chamber of Commerce, Second University of Naples (SUN), Political Science Faculty University of Naples “Federico II”, Faculty of Letters and Philosophy University of Naples “Federico II”, Agrorinascite Scarl, Confederazione Italiana Agricoltori Caserta-Napoli, Coldiretti Caserta, Confagricoltori Caserta, Legacoop Campania, Association for Industrial Design Campania, Libera, Arci, Aislo, Git Caserta Banca Etica, Euricse, Parish of San Nicola di Bari, Associazione Centro Laila, Coop. soc. Le Terra don Peppe Diana – Libera Terra, Associazione Nero e non solo! O.n.l.u.s., Coop. soc. Eureka onlus, Coop. soc. Agropoli onlus, coop. soc. Al di là dei sogni, Coop. soc. EVA, Associazione di Volontariato Onlus Black and White, Associazione Auser Caserta, Archdiocese of Capua – Centro Immigrati Fernandes, A.R.CA. Associazione Risanamento CastelVolturno, Associazione di volontariato medico sociale Jerry Essan Maslo, Coop. soc. DAVAR Onlus, Associazione Foro di Giano.

Castel Volturno, Cancellò and Arnone, Grazzanise, Santa Maria la Fossa and Frignano.

Essential to the project was the first “Network Contract” drawn up in Italy between parties using (or intending to use) confiscated assets, with an agreement to set up a “Joint Network Programme” and a “Solidarity Fund”, to make the programmes of social economy sustainable, through the use of assets recovered from the Camorra. In particular, specific sector chains will be implemented for social agro-alimentary activities, responsible tourism and social communication, while close political, economic and cultural relations will be promoted between enterprises, entities and/or extra-Regional territories and local operators.

## **12.5. ACTIVITIES PROMOTING THE SOCIAL REUSE OF CONFISCATED ASSETS**

The “Lands of Father Peppe Diana” Festival of Civil Involvement

The “Lands of Father Peppe Diana” Festival of Civil Involvement is the first artistic festival in Italy to be held on property confiscated from criminal organisations, transformed into a place where people can come to enjoy themselves and be entertained.

The Festival, born in Caserta Province, was promoted by the Father Peppe Diana Committee and the Association “Libera: Associations, names and numbers against Mafias”, to sensitise communities to the social reutilisation of confiscated criminal assets and to build a network among people with skills, talents, local knowledge and national and international experience, founded on the development of culture, art, creativity and innovation.

The objectives of the Festival are:

- to remember and to remind people of the innocent victims of organised crime, paying particular attention to the figure of Father Peppe Diana, the Parish Priest at Casal di Principe assassinated by the Camorra on 19 March 1994;
- to contribute to the growth, reinforcement and spread of an anti-Mafia consciousness and to the emancipation of communities, by pursuing legality, justice, and the social use of confiscated criminal assets;

- to promote, through activities and events, the assets confiscated from criminal organisations and their social use, as a fundamental way to boost an economy that is an alternative to the criminal economy;
- to involve all citizens and instate them as leading players in the change process, through their participation in collective events and in the organisation of them, in a perspective of cooperation and openness to others and to change.

The Festival, now in its 6th year, obtained the Distinguished Patronage of the President of the Republic for the years 2011 and 2012.

The broad artistic areas of Festival events are: music, theatre, cinema, and literature, with particular attention to local cultures and traditions. The artistic presentations will always be accompanied by debates and discussions on social questions that impact on the community.

The Festival of Civil Involvement is now considered by many artists to be a leading venue at which to present their works and to create new ones.

The Festival has a bottom-up structure, and the organisations proposing events are invited to submit their possible contributions in accordance with guidelines and underlining the social use of confiscated criminal assets as a central theme. Every association or group that intends submitting a Festival event to the organising committee must respect the format and characteristics indicated by the promoter, and send in a detailed proposal form.

The entire project of the Festival, which depends on the commitment of so many volunteers from the Father Peppe Diana Committee and the Libera Association of Caserta, carefully watched over and coordinated by an attentive and prestigious Festival Artistic and Technical Committee, has, over the years, won the support of the Institutions, from the Office of the President of the Republic, to the Campania Regional Authority, the Caserta Provincial Authority, and the individual Municipal Councils. The 2013 Festival was included on the official programme to celebrate the 150th anniversary of the Unity of Italy.

## 12.6. THE “LE TERRE DI DON PEPPE DIANA - ESTATE LIBERI” (THE LANDS OF FATHER PEPPE DIANA - SUMMER IN FREEDOM) CAMPS FOR VOLUNTEERS

For many years now, the programme conducted in Caserta Province has seen thousands of young people from all over Italy choosing to take part in a civil training camp for volunteers on lands confiscated from the Camorra, managed by social cooperatives<sup>38</sup>. The main object of the volunteer camps is to spread a culture founded on legality and social justice, able to be an effective counterweight to the culture of violence, privilege and blackmail.

Between the months of June and September, hundreds of young people belonging to scouting, parish, and environmental groups, as well as individual citizens, arrive in the Province of Caserta from all the Regions of Italy, to paint murals, build fences, set up libraries, refurbish rooms, scythe and mow, and cultivate hectares of land. Above all, they meet dozens of special witnesses living locally (family members of victims of the Camorra, anti-racket entrepreneurs, writers, social workers, etc.).

A fundamental characteristic of the Camps is in fact the deeper study of the phenomenon of organised crime through discussions with family members of victims of the Mafia, with representatives of the public institutions, and with those working in social cooperatives. The experience of the Work Camps is divided into three different kinds of work: agricultural labour or work on refurbishing the property; education; and meeting with locals for intercultural exchange. The activity of the Camps is the most effective example of how memories of the past can inspire commitment for the future; it is a tangible sign of the necessary change that must counter material and cultural Mafia culture.

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<sup>38</sup> For further information see <http://www.libera.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/7635>

## 12.7. “FACCIAMO UN PACCO ALLA CAMORRA” (“LET’S GIVE THE CAMORRA A CHRISTMAS PRESENT”<sup>39</sup>)

“Facciamo un Pacco alla Camorra” is the result of a web project promoted by the Father Peppe Diana Committee, with the support of the NCO - New Organised Cooperation - Consortium, which has involved numerous organisations, including social cooperatives, enterprises that have denounced racketeering, and associations.

Products that have been created on confiscated properties are sold in various gift wrappings, thanks to the work of disadvantaged people who are members of cooperatives.

The initiative aims to promote innovative cultural and economic models, in particular that of the social economy as an antidote to the criminal economy, starting from the promotion of the activities that have sprung up on properties confiscated from the Camorra. In those places, these properties were once symbols of violence and oppression, and they are now restored to a new life, due to the collaboration with the public institutions and all social organisations in the territory.

The initiative, started up some years ago, has had a vast resonance both a national and international level. In 2012 it was presented to the European Parliament, receiving the commendation of its President, Martin Schultz<sup>40</sup>.

## 13. ADAPTATION OF THE BEST PRACTICES TO THE ALBANIAN CONTEXT

The current Albanian legislation on the seizure, confiscation and the reuse of confiscated assets would allow, thanks to the role played by the Albanian Agency of the Administration of Sequestered and Confiscated Assets, the social reuse of confiscated assets. A new approach of reuse could be an interesting way for Albania in order to show the resources illegally acquired should be reused for

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<sup>39</sup> The name of the initiative refers to regional slang of southern Italy, where the term “pacco” (literally “gift wrap”) is sometimes ironically used as a synonym for an unwanted “homage” such as a practical joke, con, or swindle.

<sup>40</sup> Video message from the President of the European Parliament, Martin Schulz, on 27/11/2012 [www.youtube.com/watch?feature=player\\_embedded&v=Auu0EMyYgM](http://www.youtube.com/watch?feature=player_embedded&v=Auu0EMyYgM)

social purposes, thus returning the ill-gotten gains to the community that has suffered the theft. The social reuse of confiscated goods, therefore, may represent a new enforcement tool against crime able to make it more costly for the criminals to pursue illegal actions. The good experiences of reuse for social purposes of assets that are offered by the European countries, especially Italy, can be reproduced in Albania improving even some inefficiencies that there were currently being implemented in these countries. This requires a strong understanding between the public institutions dealing with the prevention and suppression of crime and the Albanian third sector. An understanding and collaboration that should be pursued through shared roundtable able to envisage the emergence of sharing rules for the inter institutional collaboration. A new way of collaboration able to valorise the role and skills and resources of each (public and private) organisations supporting the social re-use of assets confiscated from organised crime. In other words, to develop and make available new policies to combat organised crime that, as repeatedly emphasized in this report, has now assumed transnational dimensions and for those reasons must be fought with new policies supporting preventive actions and interventions in addition the traditional ones based on a repressive approach.

### **13.1. THE NEED FOR A REFORMULATION OF POLICIES TO FIGHT ORGANISED CRIME**

The powerful action of repression of criminal phenomena, recorded in Italy over the years, especially in the southern regions, has been emasculated by the proliferation of crimes committed by criminal organisations. This finding highlights the need for a reformulation of policies aimed at combating crime in the territories, promoting those that support criminal prevention, that is those which aim at contributing to the economic and social growth. It is necessary to (re)-act by generating actions and interventions which aim at preventing criminal behaviour by building a social fabric that transfers different values from those of crime. This is particular aimed at that part of the population (not just youth) who, for various reasons, experience discomfort and could be recruited for criminal activities. Prevention policies, on the other hand, if properly implemented, can reduce the

costs which the system generates when imposing punishment and provide an overall improvement in terms of re-education and re-qualification of individuals.

Criminal behaviour is, in fact, a complex phenomenon which depends on different socioeconomic factors. For these reasons, in order to individualise the best policy tools to fight the expansion of criminal organisations, it is first of all necessary to underline the role that these factors have on the propensity to commit crimes. Criminal organisations use relationships and nets which are built in the territories among individuals and between these individuals and institutions. These nets arouse and display strength and power and flaunt the myth of invincibility on the Institutions and the ability to produce wealth for their members.

To contribute to the fighting of crime it is necessary to weaken the determinants of the social consent used by criminal organisations. Only in this way it is possible to break the twofold vicious cycle which goes from the social and cultural impoverishment to the increase of the social insecurity and the incentives to illegal activity, from the spread of distrust between citizens or between them and the legal institutions to the strengthening of a development model sustained by crime which inexorably undermines the chances of economic and social growth of the territories. The promotion of initiatives which stimulates social activities could favour the accumulation of the "pure" social capital by activating the mechanisms which push individuals to prefer legal to illegal activity<sup>41</sup>.

It is common knowledge that criminal organisations use social ties and networks to construct a solid social consent which allows them to operate, uncontested, in the production of illegal wealth for their members. They are mostly diffused and particularly strong in territories where the level of social capital and the economic wealth is low. For this reason, this report aims at demonstrating that in order to break the aforesaid vicious circle between the social and cultural impoverishment and the strengthening of an economy sustained by crime it is necessary to utilize

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<sup>41</sup> These questions have received little attention, particularly by economists. In the economic literature, a pioneering work on this issue was written by Buonanno P., Montolio D. and Vanin P. According to these scholars, the "civic norms may attach guilt and shame to criminal behaviour and may also stimulate trust in others, lower resources and effort devoted to self-defense and thus multiply opportunities for crime. Similarly, associational networks may increase returns to non-criminal activities and raise detection probabilities, but they may also work as communication channels for criminals. Further, whatever the empirical correlation, one may wonder whether it reflects a causal link, in what direction and with what implications for anti-crime policy" (Buonanno, Montolio and Vanin 2009).



the same determinants of the social consent used by criminal organisations. The contribution in fighting organised crime has to start from the social and economic development of the territories by promoting initiatives that stimulate social activities which are able to favour the accumulation of “pure” social capital. Only in this way, in our opinion, one can avoid these organisations to continue to gain the consent of a large part of the population living in the territories in which they operate<sup>42</sup>.

The tools of the seizure and the confiscation of criminal assets combined with the possibility of the reutilization of this goods for social and institutional purposes by non-profit organisations, provided by the Italian Anti-Mafia Normative, represent an important deterrent to the diffusion of illegal behaviour. The high symbolic value of the reutilization of these assets can contribute in positive and effective way in breaking the vicious circle established above all in territories with strong criminal traditions.

An intensive support by the State for a wider diffusion of social enterprises can directly produce economic wealth for a territory through the production of good and services and job opportunities in addition to those generated by the private (for-profit organisations) and public sectors. Furthermore, this diffusion can generate indirect effects on the levels of wealth through the production, the fuelling and the maintenance of the social capital components, such as trust, respect for the law and incentives to take an active part in civic activities of the community. These elements can improve the quality of the individual's life and, at the same time, can contribute to the creation of new roads towards legality and respect for the law.

For the aforesaid reasons, this document sustains that a serious fight against organised crime should be primarily characterized by social and employment promotion policies, because jobs are often offered as a favour, when it should be guaranteed as a right, and that there is a strong need to accelerate the administrative procedures which precede, accompany and follow the assignment

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<sup>42</sup> In fact, it may seem paradoxical, but the aforesaid people very often protest the imprisonment of the criminal leaders, because they still provide employment opportunities, create jobs and bestow benefits, and the recipients of these hope that they will never end. In this way, the criminal organisations accumulate consensus and social capital, which is exchanged with politicians and all other people who request it in exchange for profits, further consent and gratitude.

of the assets illegally obtained in order to prevent their impoverishment through the destructive actions of criminal organisations.

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