Parliamentary Committee of Inquiry
into Mafia-like Criminal Organizations

The prevention and suppression of money laundering

Testimony of the Governor of the Bank of Italy
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CONTENTS

1. THE ECONOMIC ASPECTS OF MONEY LAUNDERING

Money laundering – that is, investing the proceeds of crime in legal economic and financial activities – is the more extensive, the greater the scale of criminal organizations. As these expand, their need to invest their funds and conceal their origins increases.

Today, money laundering exploits the development of financial markets and globalization, taking advantage of the same channels that facilitate legitimate transactions, of the greater ease of communication, of technological and financial innovations and also of the fact that the reaction of the authorities is hindered by difficulty in acquiring information and by the costs of international coordination.

The possibility of using unwitting intermediaries for illicit transactions makes criminal organizations more dangerous. Loopholes in the rules and blind spots in the control apparatus of various countries enable illegal operators to engage in “regulatory arbitrage” on an international scale. Prevention and suppression may be further undermined by the self-interested tolerance of some States and the opacity of some off-shore financial centres.

Organized crime does not just subvert public order. It also attacks economic and financial stability by altering the proper functioning of market mechanisms to the advantage of dishonest operators.

In line with recent European directives, economic crime must be combated by pursuing both the objective of law enforcement and that of economic development. A balanced strategy of prevention and suppression must be founded upon rules that, on the principle of proportionality to the threat, lay down clearly formulated and easily applied obligations; that avoid intrusive instruments and excessively rigid procedures; that do not overburden honest businesses; that institute sound mechanisms of enforcement and sanctions that are swift, effective and proportionate to the seriousness of the infractions; that provide incentives for intermediaries to collaborate with the structures that fight money laundering; and that strengthen domestic and international cooperation among authorities.

The States that are most aware of the problem, perceiving that criminal organizations are most vulnerable when they seek to funnel the proceeds of crime into legitimate channels, have long concentrated on the financial system. Given the nature of its activity the financial system can be exploited to launder the proceeds of crime, but at the same time it has proven to be highly effective in cooperating with the law enforcement authorities.

The Bank of Italy stands ready to step up its own commitment to the fight against crime, both organizationally and in terms of resources. We are fully aware that money laundering and the financing of terrorism, with their great inherent danger of contagion, now constitute a grave threat to the democratic order.

Today I will briefly review the main problems impeding the prevention and suppression of money laundering and suggest possible remedies. The results of action to date are set out in documents annexed to my report.

2. THE DEVELOPMENT OF THE LAW ON MONEY LAUNDERING

2.1 *The basic guidelines*

Italy's series of legislative measures to coordinate the battle against organized crime began in the early 1980s. In 1982, having perceived the extreme danger of criminal attacks on the legal economy, Parliament introduced the crime of Mafia criminal conspiracy, characterized among other things by the aim of controlling business enterprises and reinvesting the proceeds of crime.

Italy's current legislation on the prevention of money laundering is thus the product of more than two decades of engagement on the part of Parliament and the authorities. It has adopted, and in a number of instances anticipated, the indications of the various international fora. Its development has been consistent with several fundamental choices: the distinction between prevention and suppression; the central management of information and evaluations; and cooperation between intermediaries and law enforcement authorities.

The changes made in recent years have incorporated the innovations introduced by international standards and, subsequently, by Community law. The revision of the 40 recommendations of the Financial Action Task Force (FATF) in 2003, the issue of 9 special recommendations to combat the financing of terrorism, and the approval of three Community directives, two of them quite recently,[1] represent the tangible sign of a regulatory framework that is attentive to the changes in criminal techniques.

Legislative trends have followed two lines of development. One – found in the Second Directive on Money Laundering (2001/97/EC) – involves extending to additional professional and commercial categories exposed to the risk of laundering the obligation to cooperate actively in prevention and suppression, previously limited to banks and other financial intermediaries. The second – introduced by the Third Directive (2005/60/EC) – makes the stringency of the know-your-

[1] Directives 91/308/EEC, 2001/97/EC and 2005/60/EC.

customer requirements commensurate with the risk of money laundering as the intermediary infers it from the nature of the counterparty, the type of service requested, and geographical location. This makes the rules more flexible, but it also heightens the responsibilities both for intermediaries, who must institute appropriate procedures, instruments and controls, and for the supervisory and oversight authorities in their duties of governing, promoting and verifying the proper application of the new provisions. Effective oversight presupposes specific knowledge of the risk factors, enabling supervisors to judge the adequacy of intermediaries' safeguards and, if necessary, to call for suitable correctives.

In 2005 the International Monetary Fund recognized that Italy's rules for the prevention and suppression of money laundering had worked well, and in fact had also served, after 11 September, to block the financing of international terrorism, even though unlike money laundering the latter is defined by the illicit use, not provenance, of the funds. Based on the IMF's indications, the imminent implementation of the Third Directive on money laundering will offer an opportunity to enhance the efficacy of a body of law that is crucial to the integrity of the national economy.

The build-up of successive provisions over the years, the lack of clarity in many rules, and shortcomings in the set of controls nevertheless make a reordering of this legislation necessary. The IMF has expressly called on Italy to produce a consolidated anti-money-laundering law, which has been envisaged but never drafted. In response the Italian Government has formed a study committee at the Ministry for the Economy and Finance, chaired by Undersecretary Antonio Lettieri with Anti-Mafia Prosecuting Attorney Pierluigi Vigna as coordinator.

2.2 The prevention apparatus

The Italian apparatus to combat money laundering originally involved the fragmentation of functions between different bodies and the prevalence of investigation over financial analysis. Reports of suspicious transactions were transmitted directly to law enforcement bodies (the chief of police) at province level. Only afterwards were they sent on to the Special Foreign Exchange Unit of the Finance Police for further analysis. In 1997, in keeping with international experience, which relies on a Financial Intelligence Unit as the heart of the system of prevention and suppression of money laundering, Italy centralized the functions of reception and analysis of the reports within a single body, the Italian Foreign Exchange Office (Ufficio Italiano Cambi, UIC), assigned to inquire solely into the financial aspects.

This arrangement was the outcome of a protracted discussion of alternative proposals: the constitution of an administrative authority dedicated exclusively to financial analysis or else of a mixed agency with investigative duties as well, grouping functions deriving from the bodies

responsible for financial supervision, the police and the courts. In Italy the latter solution would have been hard to realize and manage, given the high cost of creating and operating such an agency and the difficulty of bringing together qualified resources, removing limits on access to the confidential information held by single administrative units for their own, specific tasks.

In the span of just a few years three major legislative changes transformed the UIC's nature and functions radically: the 1997 law separating the investigative from the financial area, which assigned the Office a key role in combating money laundering; Legislative Decree 319/1998, following the introduction of the European single currency, which restructured the Office and made it an instrumental entity of the Bank of Italy; and Law 388/2000, implementing the principles of an EU Council decision (2000/642/GAI), which formally instituted Italy's national Financial Intelligence Unit under the UIC.

Within the tripartite division of anti-money-laundering functions among the entities assigned respectively to financial analysis, investigation and trial, the UIC receives suspicious transaction reports and examines them further from the financial standpoint, serving as filter between the persons submitting the reports and the investigative bodies and the courts.

The FIU receives information not only from the persons subject to the reporting requirement but also from internal and external archives, other government departments and agencies, and its foreign counterparts. The sources of information also include the database now being formed in the framework of the Taxpayers Register (provided for by Decree Law 223/2006, ratified by Law 248/2006), which is the equivalent in some respects of the Register of bank accounts and deposits contemplated by the law since 1991 but never realized.[2] The new rules require banks, other financial intermediaries and Poste Italiane to report to the Taxpayers Register all relations with customers, as determined by an instruction issued by the Director of the Revenue Agency.[3]

The FIU, then, is a crucial node in a complex web of relations. Domestically, it engages in intensive dialogue with the persons submitting the reports, with the supervisory authorities, with the investigative bodies and with the courts. Internationally, it forms part of the network of cooperation made up of all its counterpart authorities abroad.[4]

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[2] Law 413/1991, Article 20.4, provided for the establishment of a register of all persons with accounts or deposits with banks and other financial intermediaries. The procedures for its constitution were to be specified in the implementing regulations, which were issued in 2000 by Treasury Decree 269. The decree assigned the operation of the register to the Ministry of the Treasury and also specified the persons allowed access to the data (Article 4).

[3] The instruction was issued on 19 January 2007. A circular dated 4 April introduced additional provisions for the formation of the Register. It must contain the personal identifying particulars, including tax number, of the persons with whom the institution has relations from 2005 on. Data on the amount of funds in the accounts, on transactions thereon, or on the amount of assets under management are not to be reported. Access to the Register – reserved to the tax administration, the courts and the investigative bodies expressly specified by the law and solely for the purposes specified – is open also to the UIC, which can use the data for its further inquiry into suspicious transactions. Contacts are under way between the UIC and the tax administration for the prompt institution of a link, which should become operational in the next few months. The tax administration is allowed access to the Register exclusively for the purposes of "activities in connection with enforceable tax collection" and for the execution of banking investigations.

[4] The European FIUs have constituted a "platform" in the framework of the EU Commission for the detection and resolution of operational problems and for the exchange of experiences and best practices.

The most significant money laundering activity has supranational implications. For effective prevention, therefore, both cooperation between the authorities of the countries involved and uniform rules to prevent distortion and regulatory arbitrage are essential. Accordingly, FIUs take part in the international bodies assigned to the prevention and suppression of money laundering and in bilateral and multilateral initiatives.

As the supervisory authority for the credit system, the Bank of Italy is responsible for guaranteeing the sound and prudent management of the individual institutions under its supervision and for the overall stability, efficiency and competitiveness of the financial system. With a view to these purposes the legislation and regulations in force oppose entry into the banking sector of unreliable operators; set integrity and experience requirements for top corporate officers and significant shareholders; subject the owners of intermediaries to controls on personal qualifications and on conflicts of interest; require adequate organization and in particular an effective system of internal controls; and promote transparency and fairness in relations with customers. These are all provisions that help to prevent the exploitation of financial mechanisms for money laundering and that testify to the existence of complementary relations and convergence between the aims of credit and financial supervision and those of the law against money laundering.

In order to strengthen the safeguards against the exploitation of intermediaries for purposes of money laundering, the Bank of Italy first issued its "Operating Instructions for identifying suspicious transactions" in 1993. The instructions are intended to assist intermediaries by specifying indicators of anomaly that point to suspicious transactions. The instructions were updated in 2001 to take account of the development of the securities market, the technical advances in the payment system and the spread of new channels for the marketing of financial products.[5] A further update will be effected, as the International Monetary Fund has recommended, after the transposition of the Third Directive into Italian law.

[5] First of all the instructions lay down organizational rules – consistent with the supervisory regulations – under which intermediaries must know their customers better, which is a first fundamental safeguard against money laundering and the infiltration of criminal organizations into the financial system. Intermediaries are required to take every appropriate action to improve their knowledge of customers and pick up any contradictions between a customer's economic profile and the services requested. They must procure up-to-date information on the customer's activities, the economic context in which the customer operates, the financial services requested and any relationships with other intermediaries. The instructions provide a series of illustrative cases of indicators of anomaly of individual transactions in the presence of which the intermediary must determine whether or not to make the suspicious transaction report. The general indicators tend to identify the techniques used to conceal or split transactions and to detect unusual or illogical forms of transaction. The case examples also consider relations that could indicate usury, which can be inferred from transactions on a suspected usurer's account or the sudden, unexpected appearance of financial resources on the account of customers in difficulty. As a complement to these instructions, the UIC has analyzed the transactions reported by banks for purported usury to provide intermediaries with specific, technical indicators based on the similarities of behaviour observed in these financial operations.

3. INSTRUMENTS OF PREVENTION AND SUPPRESSION

The fight against money laundering deploys a sophisticated series of instruments. These include the legal definition of the crime of money laundering itself, the limits on the use of cash for payments between private parties, the identification of persons who establish continuous relationships with intermediaries or who effect transactions larger than the legal threshold, the recording of these transactions in special databases, the statistical analysis of financial flows to detect indicators of anomaly, the requirement to report all transactions, regardless of size, that arouse suspicions of being connected with illegal activities. The framework is completed by the application of sanctions and the confiscation of property of criminal origin.

3.1 The definition of the crime

Italian penal law has conducted a protracted process of refinement and extension of the legal definition of the crime of money laundering, upon which the detection of illegal conduct depends.

In 1978 the crime was defined with reference to funds originating in a small number of particularly grave offences aimed at the appropriation of goods (robbery, extortion, kidnapping). In 1990, as part of the fight against Mafia-style criminal organizations, Law 55 extended the list of "predicate offences" to include drug trafficking. In 1993, Law 328 extended predicate offences to all crimes not of negligence, thereby simplifying the job of the persons called on to detect and report suspicious transactions.[6]

Under the present law, "active accomplices in the predicate crime" cannot be charged with money laundering as well (Article 648-*bis* of the Penal Code). The criminal law approach taken here provides for the illegality of money laundering to be included in that of the predicate offence. Consequently, when it is advantageous for the perpetrators, skilful trial defence based on false confessions of participation in the predicate crime allows defendants to escape conviction for money laundering.

The IMF has suggested reconsidering this choice, citing the good results attained by laws against "self-laundering", i.e. money laundering by the perpetrator of the predicate crime that

[6] Article 648-*bis* of the Penal Code made punishable "whoever substitutes or transfers money, assets or other benefits deriving from a crime not of negligence, or effects in relation to such money, assets or benefits other transactions such as to conceal their criminal origins". Article 648-*ter* makes "whoever invests money, assets or benefits deriving from a crime in economic or financial activities" punishable for illicit use of funds."

originates the illegal acquisition of financial resources.[7] The question is now before the Lettieri Committee, which may weigh the need for a better definition of the crime of money laundering focusing on acts serving to conceal the illegal origin of the money or property.

3.2 Limits on the use of cash

The rules in Italy prohibiting transfers of significant amounts of funds between private parties in cash or with bearer instruments are aimed at impeding money laundering by obligating economic agents to use the banking channel for payments.[8] Such rules are not common in legislation within the Community.[9] The number of violations, often involuntary, remains high.

The consensus opinion in our country is that the limitations on the use of cash constitute a fundamental bulwark against money laundering; that it should be confirmed and made more efficient by lowering the permitted amount and introducing more stringent monitoring of funds transfers by means of so-called money transfers.

The draft legislative decree for the transposition of the Third Directive, on which the Ministry for the Economy opened a consultation in February, clarifies some points regarding the application of the current rules and promotes the spread of registered payment instruments.[10] A significant lowering of the ceiling now set on the use of cash in transactions between private parties is being examined by the Lettieri Committee.

Certainly, the increasing integration of payment services affects the efficacy of measures adopted on a purely national basis. In April the European Parliament unanimously approved the Payment Services Directive, which establishes the conditions for providing retail payment services in all the members of the Union and defines pan-European payment schemes (for credit transfers, payment cards and direct debits) and thus contributes to the realization of the Single Euro Payments Area (SEPA) project developed by European banks to promote the use of electronic

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[7] The assessment must take into account relations with other crimes, such as the reinvestment of illegal proceeds (Article 648-*ter* of the Penal Code); criminal conspiracy (Article 416), which is a hallmark of the Italian legal order; assisting and abetting crime (Article 379); and fraudulent transfer of assets for the purpose of facilitating money laundering, under Law 356/1992, Article 12-*quinquies*. While making "self-laundering" a criminal offence in itself could make it easier to get evidence of complex crimes, it must also be considered that where the predicate crimes are less serious, such an approach could lead to excessively severe punishment.

[8] In particular, the rules: a) prohibit transfers between private parties of money and bearer instruments with a total value of more than €12,500; b) require that the personal or corporate name of the beneficiary be indicated and the non-transferability clause be shown on cashier's cheques and personal cheques larger than that amount; and c) set a €12,500 ceiling on the balance of bearer passbook savings accounts.

[9] France alone has provisions comparable to Italy's. The other member states do not prohibit the use of cash even for large payments, but require economic agents to evaluate the characteristics of the transaction to detect any anomalies.

[10] Article 51 of the draft legislative decree expressly prohibits the opening and use of anonymous accounts or savings books.

payment instruments. Measures to reduce costs and taxes[11] could further stimulate the spread of non-cash payment instruments, which are traceable save in marginal cases.[12]

By European standards, Italy makes scant use of non-cash payment instruments. In 2006 there were 62 non-cash payments per inhabitant, compared with the euro-area average of 150 in 2004.[13] Cards are the main instrument that permit consumers to limit their holdings of money for transaction purposes. Although Italy's infrastructure endowment is up to the European standard, payment card transactions numbered no more than 22 per inhabitant in 2006, compared with 46 in the euro area as a whole in 2005.

3.3 Identification and recording requirements

The current legislation requires intermediaries and other specified persons[14] to identify their clients at the time the business relationship is set up or when they carry out transactions in an amount of €12,500 or more.[15] Consequently, every transaction potentially linked to money laundering leaves a trace and can be reconstructed even after the passage of time.

As I mentioned, with the implementation of the Third Directive on money laundering the customer identification rules will have to be calibrated so that the strictness of the identification procedure is commensurate with the risk of money laundering, as independently evaluated by every person subject to the requirement. In many cases this will lead to the adoption of less stringent or more stringent procedures than the present ones.

The data gathered must be recorded by each person in a database. Transposition of the directive is an opportunity to simplify the rules for keeping electronic databases, so as to facilitate database management by the persons subject to the requirement and consultation during inspections.

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[11] Possible measures concerning costs are pricing incentives for the acquisition of more advanced technology and the reduction of interbank fees, which depends on both payment circuit operators and the Antitrust Authority. As to taxes, the reference is to "stamp tax" on current accounts and the deductibility of the expenses incurred by retailers to equip themselves with electronic payment terminals. These matters are addressed in the Government's bill, now before the Chamber of Deputies, on "measures in favour of consumers and to facilitate productive and commercial activities and provisions concerning sectors of national importance".

[12] The Community provisions permit exempting non-reloadable electronic money instruments up to €150 and reloadable ones with an annual ceiling of €2,500 from the identification requirements. Nevertheless, identification is mandatory for transactions greater than €1,000.

[13] Factors that help to explain these differences include the lower degree of financial deepening of the economy, customers' concerns about the security, practicality and cost of alternative payment instruments, the fragmentation of retail trade and the size of the underground economy.

[14] Notaries, lawyers, members of the Italian accounting profession, auditors and labour consultants and persons that engage in activities deemed by Decree 374/1999 to be exposed to money laundering (for example, claims recovery, cash handling and transport, gambling casinos, etc.).

[15] The law provides for various ways of identifying customers, both in their presence and at a distance.

Aggregated data derived from intermediaries' archives are the basis of the statistical analyses that the Financial Intelligence Unit uses to conduct studies of individual phenomena or territories, to supplement the examination of suspicious transaction reports, to check on possible failures to transmit reports, and to develop models for automatic detection of anomalies.[16]

3.4 Reporting of suspicious transactions

The reporting of suspicious transactions is the linchpin of the legislation against money laundering.

On the basis of their knowledge of their customers, intermediaries and other persons subject to the requirement identify suspicious cases and send reports to the national FIU. As the authority expert in financial matters, the FIU functions as a filter, analyzing the reports, probing more deeply and condensing the results of its analysis in a summary report that it transmits to the investigative bodies, which evaluate whether to pursue the matter and, possibly, open a formal inquiry.

The effectiveness of the FIU's work is shown by the outcome of the most important money laundering trial, which recently concluded at first level, after ten years, before the Brindisi Court. As this Committee knows, the judgment not only imposed stiff sentences, but also awarded the UIC €3 million in damages, testifying to the important role it performed, as a civil party, in reconstructing the banking transactions under investigation.

Among the different systems adopted in Europe, those of Italy and Spain place the greatest burden of assessment on persons required to make reports, who are asked to make an accurate prior evaluation in order to report only truly suspicious cases. In the United Kingdom, where even simple anomalies must be reported, more than 200,000 transaction reports were made in 2006, aggravating the task of the UK's Financial Intelligence Unit in sifting the transactions for further investigation. France and the Netherlands use more composite methods.

The approach chosen in Italy seems preferable, even if it is more onerous for operators. Using the information in their possession, they are required to evaluate the operations of the persons with whom they have relations and to compare transactions' objective features with customers' subjective characteristics in order to detect any anomalies. Greater selection at source reduces the number of transaction reports, making them easier to handle for the FIU, which received some 10,000 reports in 2006 and more than 5,400 in the first five months of this year.[17]

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[16] There is the so-called "usury model", developed together with the Italian Bankers' Association, to assist intermediaries in detecting and evaluating suspicious transactions potentially related to the crime of usury.

[17] A suspicious transaction report does not constitute the "report of a crime" but a form of due cooperation requested of informed persons who are in a position to assist the ascertainment of possible penal offences.

Since 2000 the FIU has had the power to dismiss reports that lack significance; this enables it to concentrate financial analysis and further inquiry on the cases of real interest.[18]

The identity of those who report suspicious transactions must remain confidential for the mechanism to work properly. For some time now the protection of reporting entities and individuals has received attention from the Italian Parliament and the Community institutions. The Third Directive also requires member states to adopt appropriate and effective measures. Efforts must be intensified in this direction.

The involvement of individuals cannot be avoided by entrusting the identification of anomalous transactions to computer programs based on predetermined standards. These programs, however sophisticated and technically advanced, can only be an aid; they cannot replace the personal evaluation that is essential to the good performance of the system.

Cooperation among all those who are involved, in different capacities, in the fight against money laundering and the financing of terrorism is of crucial importance. Satisfactory results depend on the correct and efficient functioning of the entire chain of actors, each of whom is called upon to contribute actively within his competence to the process. Intermediaries are showing that they are willing to pitch in. Greater cooperation must also meet the need for faster feedback from the investigative bodies on the outcome of reports. This will serve both to refine the evaluation process and to preserve business relations with customers who are found to be in order.

3.5 Sanctions

Backing Italy's legislation against money laundering are penal sanctions whose application in the courts has been limited and administrative sanctions that have proven ineffective.[19]

The draft legislative decree to implement the Third Directive reinforces the apparatus of sanctions, above all by empowering the competent authorities (the Bank of Italy, Isvap and Consob) to applying sanctions directly to the persons under their supervision for non-compliance with the provisions on administrative organization and internal control procedures.

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[18] This power was introduced by Article 151.2 of Law 388/2000. Reports that have been dismissed are nonetheless forwarded to the investigative bodies, which could have significant additional information on the parties concerned.

[19] Legislative Decree 56/2004, implementing the Second Directive to combat money laundering (2001/97/EC), merely introduced some adjustments designed to simplify and rationalize the procedures.

The Government's legislative mandate does not allow it to decriminalize the penal offence of non-compliance with the customer-identification and transaction-recording requirements, often caused by mere procedural errors, and to replace it with an administrative sanction. Such a step would be advisable not least to ensure that intermediaries do not abstain from exercising the greater discretion that the directive grants them, for fear of committing a crime. In any event, gross negligence would remain subject to penal prosecution insofar as it abets the perpetration of more serious crimes.

Another incongruity is the penal sanction for the failure of the control bodies of legal entities to report even simple organizational irregularities, given that the analogous provisions of the Consolidated Law on Banking and Consolidated Law on Finance provide for administrative sanctions.

Altogether, I think a comprehensive reconsideration of the matter is advisable to obtain a closer correspondence between the severity of the offence and that of sanctions, which must be applied effectively. Severe punishment of the most serious violations should be accompanied by a mitigation of the burden placed on the generality of operators. Appropriate remedies could be introduced during the preparation of the Consolidated Anti-Money-Laundering Law, either by supplementing the Government's delegated powers or by direct legislative amendment.

The decision to enhance the role of the control authorities is certainly endorsable. Their specific competences and the flexibility of their organization can make verification of irregularities and the application of sanctions speedier and more effective. Further steps in this direction would be desirable, aimed at giving the FIU the power to propose sanctions for failure to report suspicious transactions and simplifying the complex sanction procedure for violations of the limits on the use of cash.[20]

3.6 Confiscation of property

There is increasing awareness that the confiscation of property acquired with the proceeds of criminal activity must be a prime objective of the State in its action to combat crime. Only by attacking their economic power can we stop criminal organizations from being self-fueling and using the illegal proceeds of crime to penetrate the legal economy.

"Equivalent confiscation" and "enlarged confiscation" are valid tools for attacking assets of illegal origin. The former makes it possible to seize property of equivalent value to the profit of

[20] Under the current procedure (Legislative Decree 56/2004), the FIU submits an opinion to the Ministry for the Economy, which imposes sanctions after consulting the Commission contemplated by Article 32 of the Consolidated Law on Foreign Exchange. The draft decree implementing the Third Directive eliminates the opinion of the FIU from the procedure.

crime even if not originating from crime, while the latter, inverting the burden of proof, requires the accused to demonstrate the provenance of his assets when they are disproportionate to his declared income or activity.[21]

However, the provisions on seizure and confiscation are numerous and not always coordinated. Moreover, they do not take account of the difficulty that confiscation may involve in an advanced economic and financial environment, where it is often necessary to intervene on innovative and complex financial instruments.

Furthermore, seized assets that will be confiscated should be managed in a way that will not only preserve them but also generate income and increase their value. The current system does not offer adequate solutions on this point. The experience of other countries, such as the United Kingdom, shows that centralized administration of the assets in ad hoc organizations can ensure economically better results than can be obtained with fragmented management.

The provisions therefore need to be rationalized.

On more than one occasion the Chairman of the Antimafia Committee of the Italian Parliament, Francesco Forgione, has denounced the shortcomings of the management of seized assets whose confiscation under criminal law is pending.[22] A committee set up at the Ministry of Justice, on which the Bank of Italy and the UIC are represented, is currently examining this problem, among others. It is necessary to continue on this path of action.

4. THE PLANNED CHANGES IN THE APPARATUS TO COMBAT MONEY LAUNDERING

As I mentioned, in February the Ministry for the Economy and Finance began a consultation on a draft legislative decree transposing the Third Directive into Italian law.

It is certainly right to proceed with a general reordering of the current provisions and to give the competent supervisory authorities a larger role in issuing regulations and verifying compliance.

Transposition of the directive has also provided the occasion to propose a rationalization of the tasks of the authorities involved, in various capacities, in the prevention and suppression of money laundering. However, the draft decree, confirming provisions now de facto outdated, continues to entrust the Ministry with powers of “supervision and direction” of the overall activity to prevent money laundering and the financing of terrorism. In addition, it establishes that the Minister

[21] Equivalent confiscation is envisaged by Article 322-*ter* of the Penal Code when direct confiscation of the profit of crime is impossible because the proceeds have been lost or transferred irrecoverably. Enlarged confiscation was introduced by Article 12-*sexies* of Decree Law 306/1992.

[22] In Polìstena in March and, most recently, in Bari at a conference organized by the National Association of Magistrates and the Association of Criminal Lawyers.

may avail himself of the Financial Security Committee, thus extending to money laundering the incisive powers with which that Committee was entrusted by law on a temporary and exceptional basis in order to face the emergency of the fight against international terrorism.

The proposed solution raises doubts.

In particular, the decision to give the Ministry powers of direction over all the authorities and administrations concerned cannot be endorsed. It conflicts with the internationally recognized autonomy and independence of financial intelligence units. As far back as 1998, the European Central Bank, reviewing a law on the reorganization of the UIC, observed that in light of the need to ensure the UIC's independence the Ministry's powers of "supervision" of the fight against money laundering had to be interpreted narrowly, so as not to imply governmental interference in the work of the UIC.

The draft decree implementing the directive also conflicts with Senate Bill 1366 presented by the Government on 5 March 2007 concerning, among other matters, the reorganization of the tasks of the authorities responsible for supervising the financial markets. In fact, the bill envisages the incorporation of the UIC into the Bank of Italy and, in that context, specifically regulates the institutional position and the tasks of the organization entrusted with performing the function of financial intelligence unit, observing the guarantees of independence and autonomy required by the international provisions. The bill also takes account of the observations of the International Monetary Fund in its recent evaluation of the measures to prevent money laundering in Italy.

The new apparatus contemplated by the Government's bill also includes a committee, established at the Ministry for the Economy, in which the competent supervisory authorities and the investigative bodies are to coordinate their action on an equal footing.

The action proposed in the bill is to be judged positively and could constitute the occasion for relaunching the national Financial Intelligence Unit. I trust that the draft decree that the Ministry is preparing to submit to the Council of Ministers to implement the Third Decree will be brought into line with the approach taken in the bill.

5. **CONCLUSIONS**

To conclude, with the completion of the long testing period, it appears that the legislation to counter money laundering and the financing of terrorism is proving sufficiently effective. The assessment obviously takes account of the fact that no instruments are capable of definitively rooting out these pathological phenomena, but only measures more or less capable of hindering criminal organizations, reducing their profitability, augmenting their riskiness and increasing their operating costs.

There nonetheless remains considerable scope for improving both rules and operating procedures.

In the first place all the measures required to encourage the use of electronic means of payment instead of cash and other anonymous instruments must be adopted. At the same time it will be necessary to impose strict controls on all the persons authorized by the directive approved by the European Parliament at the end of April to provide retail payment services in the Internal Market.

The coordination of the different authorities making up the anti-money-laundering apparatus can be made more effective by adopting the organizational changes that – as I have recalled – have been proposed by the government as part of the bill on the reform of Italy's regulatory authorities. In particular, the Financial Intelligence Unit could be strengthened by the planned merger of the UIC into the Bank of Italy.

While respecting the separation of roles between the supervisory authority and the unit entrusted with the prevention and repression of money laundering, the UIC merger is likely to bring major synergies in terms of information and controls. In fact the Bank would come to have the powers of control over all the financial intermediaries entered in the general list referred to in Article 106 of the Consolidated Law on Banking and responsibility for keeping the lists of loan and financial brokers. As regards the latter, of which there are about 120,000, I draw attention to the need for a thorough revision of the current legislation in view of the difficulty of cataloguing, managing and controlling them. Increasing the effectiveness of controls means making intermediaries accountable, imposing stricter requirements for access to the activity and entrusting responsibility for keeping the lists to special professional bodies.[23]

The changes contained in the Government's bill should be implemented as rapidly as possible to ensure that the uncertainty inevitably present in periods of reorganization does not hinder or delay the prevention and repression of money laundering.

The Bank of Italy undertakes to enhance the activity of the Financial Intelligence Unit and strengthen its operational capacity, in terms not only of human resources but also of its technical and IT endowments.

The first objectives to be pursued include shortening the time needed for the financial analysis of suspicious transactions, enhancing the fact-finding process before the start of subsequent investigations, and identifying more streamlined and effective forms of collaboration with judicial and other authorities involved in the fight against crime.

[23] The most common and regulated activity abroad is that of loan brokerage, over which powers of control are normally entrusted to supervisory authorities.

As for sanctions, it is necessary to plan a comprehensive reorganization by granting a mandate to the Government with well-defined guidelines for intervention. The Lettieri Committee can address this issue for the purpose of preparing the Consolidated Law on Money Laundering, which should therefore do more than just bring together the existing provisions. It seems better to rely on severe repressive measures, based on ex post control, rather than weigh down all operators indistinctly with excessively onerous obligations.

These are extremely demanding objectives that all the authorities involved must pursue, collaborating effectively and making the maximum effort to obtain satisfactory results.

ANNEXES

ACTION TO PREVENT MONEY LAUNDERING: RESULTS

1. Since 1997, in over nine years of activity, the Financial Intelligence Unit has received more than 57,000 reports of suspicious transactions, of which nearly 3,000 in connection with alleged financing of international terrorism; about 2,000 were dismissed directly (see table).

Reports of suspicious transactions to the UIC

Year	Financial intermediaries	Non-financial operators	Financing of terrorism	Total	*of which: dismissed by the UIC*
1997	840			840	
1998	3,798			3,798	
1999	3,720			3,720	
2000	3,813			3,813	
2001	5,390		545	5,935	44
2002	6,569		912	7,481	18
2003	4,939		321	5,260	32
2004	6,519		294	6,813	108
2005	8,579		478	9,057	154
2006	9,646	238	443	10,327	1,586
Total	53,813	238	2,993	57,044	1,942

Nearly 90 per cent of the reports were made by banks.

In 2003 the Bank of Italy ran a campaign to increase the awareness of the banks that had never sent reports. From the responses received, it emerged that the nature of some banks' operations meant it was unlikely suspicious transactions would be intercepted at them. In particular, the reference here is to small mutual banks located in areas considered not to be at risk, to branches of foreign banks with customers of high standing and to banks with a limited volume of cash transactions.

In 2005 an awareness campaign was run aimed at investment firms, asset management companies and non-bank financial intermediaries entered in the special register referred to in Article 107 of the Consolidated Law on Banking.

The contribution made by non-financial entities was very small (see table).

Reports of suspicious transactions transmitted by new categories subject to the reporting obligation

Type of reporting entity	Number of reports received
Notary	172
Certified accountant	26
Accountant	13
Auditing firm	9
Real estate agency	5
Lawyer	3
Labour consultant	4
Auditor	2
Manufacture and marketing of valuables, dealing in same	2
Artisans manufacturing valuables	2
Total	**238**

As for the geographical distribution of the reports received, more than 40 per cent came from regions in the North-West; the remainder were almost equally distributed between regions in the North-East (about 17 per cent), the Centre (more than 20 per cent) and the South and Islands (about 22 per cent) (see table).

Distribution of reports of suspicious transactions by macro area

	2004	2005	2006	1997-2006
North-West Italy	40.1%	37.4%	38.5%	40.7%
North-East Italy	18.2%	16.2%	15.4%	16.7%
Central Italy	19.1%	25.7%	23.8%	20.7%
Southern Italy	18.4%	16.8%	18.1%	17.4%
Islands	4.3%	4.0%	4.3%	4.5%

From when it began operating the Financial Intelligence Unit has suspended 70 reported transactions in view of their seriousness; the transactions in question amounted to about €100 million in total. In all these cases the action taken by the Unit allowed the judicial authorities to sequester the sums involved. The suspension of suspicious transactions clearly has preventive power; closer coordination between the Unit and the judicial authorities might allow this instrument to be used more frequently.

On the basis of their findings, since 2001 investigative bodies have dismissed more than 9,300 reports and transmitted nearly 1,400 to the competent judicial authorities (see tables).

Reports of suspicious transactions transmitted to investigative bodies by the UIC

Year	Financial intermediaries	Non-financial operators	Financing of terrorism	Total	*of which: dismissed by the UIC*
1997	101			101	
1998	2,667			2,667	
1999	4,505			4,505	
2000	2,383			2,383	
2001	5,543		241	5,784	44
2002	5,759		1,194	6,953	18
2003	5,307		254	5,561	32
2004	6,796		333	7,129	108
2005	7,283		460	7,743	154
2006	10,984	118	462	11,564	1,586
Total	51,328	118	2,944	54,390	1,942

Outcomes of reports of suspicious transactions

Year	Taken up by the Antimafia Investigations Directorate	Dismissed by the investigative bodies	Being examined by the judicial authorities	Being examined by the investigative bodies *
1997	3	4	1	93
1998	150	115	42	1,447
1999	242	596	102	3,231
2000	151	189	145	1,629
2001	280	272	295	4,724
2002	206	986	340	5,403
2003	205	1,134	195	3,999
2004	147	1,634	98	5,151
2005	113	3,380	89	4,019
2006	88	999	87	8,882
Total	1,585	9,309	1,394	38,576

* Excluding 1,685 reports concerning the Unigold case but including 101 reports dismissed by the UIC but subsequently taken up by the investigative bodies.

2. Analysis of the reports of suspicious transactions concerning organized crime shows a conspicuous use of cash in the building and scrap metal sectors; reports on transactions involving waste disposal are on the increase. These are sectors where the risk of exploitation for the placement of the proceeds of criminal activities is high (see table).

Fields in which organized crime is involved
(number of suspicious transactions)

Year of report to the investigative bodies	*2003*	*2004*	*2005*	*2006*	*Total*
1. Scrap metal working	-	-	-	81	81
2. Cross-border Community VAT evasion	-	112	146	199	457
3. Public financing	23	41	66	77	207
4. Building firms	-	-	26	188	214
5. Illegal activities by Chinese citizens	89	122	450	417	1,078
6. Improper use of pawn tickets	22	69	43	63	197
7. Irregularities in emigrants' remittances	65	61	60	205	391
8. Usury and unauthorized financial activity	342	371	383	413	1,509
9. IT fraud (phishing)	-	-	38	376	414
10. Waste disposal	30	14	16	11	71

A considerable increase occurred in reports on fraud at the expense of the tax authorities concerning VAT, most frequently in the fields of telephony, information technology, and trade in motor vehicles.

As regards swindles involving public subsidies, signs have emerged of organized crime's growing interest in connection with control of the territory.

Active collaboration with reporting intermediaries and that with investigative bodies has permitted the discovery of IT fraud, carried out by means of identity theft and phishing, which can only be carried out systematically on an international scale by criminal organizations with cross-border links.

Usury and the unauthorized provision of financial services, especially the granting of loans, are activities that have traditionally attracted large volumes of illegal capital. The improper use of pawn tickets, in addition to possibly underlying usury, can be an effective mechanism for the fencing of valuables of illicit origin.

The transfer of money abroad is often carried out in an unauthorized manner by persons not entered in the list of financial agents. The remittances of emigrants resident in Italy can also cover flows of funds deriving from illegal trafficking, not least in connection with clandestine immigration.

3. As part of the increasingly intense relationship with the judicial authorities, the UIC, in response to specific requests, has transmitted more than 1,100 reports. Of these about 500 were in connection with the activity of the District Antimafia Directorates and the Organized Crime Investigative Group of the Finance Police, and are therefore potentially linkable to organized crime environments.

Since 1997 UIC staff have carried out more than 50 technical advisory engagements for public prosecutors and District Antimafia Directorates, for the most part concerning money laundering and organized crime.

In the period 1997-2006 the Financial Intelligence Unit received 2,039 requests for information from its foreign counterparts concerning 5,538 persons; in turn it sent 234 requests concerning 565 persons. The exchange of information with foreign FIUs takes place over special transmission channels. The countries belonging to the Egmont group use the EGMONT SECURE WEB; at European level it is also possible to use the FUNET multilateral European system. These channels have made it possible to identify a large volume of bank balances and financial instruments (in the period 2004-06 more than €270 million and about $28 million) that, reported to the investigative bodies, have been sequestered by the judicial authorities.

Between 1997 and the end of 2006 the UIC carried out 430 inspections, which led to 117 reports to the judicial authorities of violations of the rules on intermediaries' customer identification and data recording. Inspections are used to verify the correctness of the reporting process established by intermediaries subject to the reporting requirement and their compliance with the obligation to identify, record and report suspicious transactions and to submit the aggregate data prescribed by anti-money-laundering legislation.

4. In the same ten years 1997-2006 the Bank of Italy also had intense relations with the judicial authorities and investigative bodies in the broader framework of activity to prevent and counter economic crime. The requests for information and documentation received from the judicial authorities numbered more than 5,000; Bank of Italy employees carried out more than 337 technical advisory engagements, including in connection with money laundering, and gave evidence in penal trials on about 780 occasions. In the same period about 360 reports were submitted to the judicial authorities concerning possible penal offences discovered in the performance of the Bank's supervisory duties.

As part of its ordinary inspections the Bank of Italy verifies the suitability of intermediaries' organizational arrangements and internal control procedures for anti-money-laundering purposes. This activity led between 1997 and 2006 to the finding of anomalies in the performance of customer identification and data recording obligations at 317 intermediaries out of the 1,940 inspected.

The agreements between the Bank of Italy and the National Antimafia Directorate are especially important in that they permit the exchange of information that facilitates the performance of their respective tasks. On the basis of a memorandum of understanding, possible cases of failure to report suspicious transactions found during on-site and prudential controls are transmitted to the UIC for further examination.

THE FINANCIAL STABILITY FORUM'S ACTIVITY REGARDING OFFSHORE CENTRES

Since its establishment in 1999 the Financial Stability Forum (FSF) has been concerned with promoting international financial stability through information exchange and international cooperation among authorities operating in the financial sector.

Because the enormous and rapid shifts in capital flows and the opaqueness of the corporate structures of banks and financial companies operating in offshore centres had given rise to financial crises in the 1990s, one of the first FSF working groups was devoted to the analysis of these jurisdictions. In April 2000 it published a report identifying major shortcomings in the regulation of offshore centres and in the cooperation between them and foreign authorities, capable of causing instability in the international financial system and as a remedy proposed stricter compliance by offshore centres with the standards laid down by the international sectoral bodies. The document also proposed that the IMF should launch a procedure for the evaluation of compliance with these standards and outlined a system of incentives, including provision for the supervisory authorities of the industrial countries to take account of offshore centres' acceptance of international standards when authorizing their intermediaries to operate in such financial centres.

Forty-two offshore centres were identified, divided into three groups according to the degree of development of their institutional frameworks and domestic prudential regulation. Between 2000 and 2004 the IMF performed a systematic evaluation in cooperation with the World Bank and other international sectoral bodies (the Basel Committee, the Financial Action Task Force, etc.). On the basis of the results of the assessments, technical assistance initiatives were organized as necessary.

In March 2005, after completing the assessments and judging the results favourably, the Forum decided to consider the list of 42 offshore centres to be obsolete and to concentrate its attention on the jurisdictions that still showed shortcomings with regard to the exchange of information and the adequacy of supervisory structures, drawing on the cooperation of the IMF, the international committees responsible for setting supervisory standards, and the countries' own authorities.

At present there are three jurisdictions subject to the activity of the Review Group.

MONEY TRANSFER ACTIVITY

Money transfer has become increasingly important in the panorama of payment services; it consists in offsetting transactions between financial operators linked together in various ways, on a worldwide basis and very rapidly. The business is carried out by way of a series of "virtual passages" involving point-of-sale operators (subagents), agents operating at national level and an international network.

Various actors are involved in the business; they can be classified from top to bottom as follows:

- the multinationals (or networks) that manage the system;
- their agents operating in each country, which in Italy, due to the reserve on financial activity, must be financial intermediaries;
- subagents (or locations), which act as points of sale and in Italy are financial agents entered in a register kept by the UIC.

More specifically, the general register kept under Article 106 of the Consolidated Law on Banking contains 32 financial intermediaries that belong to international circuits, such as Western Union and Moneygram. To engage in such activities it is therefore necessary to satisfy requirements concerning legal form, minimum capital (€600,000), exclusive corporate purpose, the integrity of shareholders, and the integrity, experience and independence of corporate officers. The UIC has limited powers of control. The business is highly concentrated. The two top-ranking intermediaries (Finint and Angelo Costa, which both belong to the Western Union circuit) and Poste Italiane S.p.A. (for the Moneygram circuit) account for 70 per cent of the value of remittances and 80 per cent of their number. Both in absolute terms and on a per capita basis the remittances sent by Chinese, Filipino and Senegalese customers are much larger than the average and more than proportional to their share of the total immigrant population.

The number of financial agents that these intermediaries use is very large owing to the wide mesh of the requirements to enter the market and the possibility of combining the activity with others of a commercial nature (telephony, internet, food shops, supermarkets, etc.). At 31 December 2006 the register kept by the UIC contained 38,200 financial agents, of which 50 per cent operated in the money transfer sector.

The financial intermediaries and their agents are subject to the anti-money-laundering provisions. They are required to identify customers, record transactions in the single computerized archive (*archivio unico informatico* – AUI) and report suspicious transactions.

Checks on unauthorized money transfer activity and compliance with the anti-money-laundering obligations are made by the Finance Police, which carried out some 410 investigations in 2006. In particular, 524 suspected violations were reported to the judicial authorities, of which 80 per cent concerned unauthorized agency activity, 10 per cent unauthorized financial activity and the remaining 10 per cent suspected cases of omitted identification.

The number of suspicious transactions reported to the UIC was 838 in 2005 and 796 in 2006. A total of 1,801 persons were reported in 2005 and 715 in 2006; the total amounts reported

were €86 million in 2005 and €13 million in 2006. Most of the persons reported were Chinese and Senegalese.

The total value of emigrants' remittances in 2006 was about €4,450 million; China and Romania received more than one third of the remittances. The total number of remittances in 2006 was 10.3 million and the average value was €400.

The distribution of remittances by Italian province of origin shows Milan and Rome to be out in front with more than 10 per cent each.

The statistical data do not permit an analysis of the origins of remittances; a large part probably comes from activities in the underground economy, which lends itself to evasion of tax and labour law and the rules on social security contributions and exchange controls, but also from illegal activities. Some recent investigations by the Finance Police were able to find, for three intermediaries, the source activities of funds making up remittances.