

Italy Implements EU Directives on Anti-Money Laundering and Fraud and Counterfeiting of Non-Cash Means of Payment

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On December 14 and 15, 2021, Italian Legislative Decree no. 184 (“Decree 184”) and Legislative Decree no. 195 (“Decree 195”, together the “Decrees”) entered into effect, amending the Italian Criminal Code (the “ICC”) with regard to anti-money laundering offenses and fraud and counterfeiting of non-cash means of payment. The amendments also concern the regulation of corporate liability under Legislative Decree no. 231 of June 8, 2001 (“Decree 231”).

The Decrees implement, respectively, Directive (EU) 2018/713 on combating fraud and counterfeiting of non-cash means of payment (such as debit and credit cards, e-wallets, payments via mobile devices and virtual currencies) and Directive (EU) 2018/1673 on combating money laundering by means of criminal law.¹

In particular, the Decrees introduce a new set of offenses related to non-cash means of payment that trigger corporate liability under Decree 231 and expand the scope of application of anti-money laundering offenses already included in the list of offenses triggering 231 liability. Companies must, therefore, assess whether it is necessary to update their organizational models adopted pursuant to Decree 231.

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¹ In February 2021 the European Commission opened an infringement procedure against Italy for failure to implement the directives by December 3, 2020.



1. The amendments to the regulation against fraud and counterfeiting of non-cash means of payment

Decree 184 expands the list of offenses that may trigger liability for companies pursuant to Decree 231, including, under the new **Article 25-octies.1** (“*Offenses relating to non-cash means of payment*”):

- *undue use and falsification of credit cards or payment cards* (Article 493-ter ICC), now applicable to all means of payment other than cash;
- *possession and distribution of equipment, devices or computer programs aimed at committing offenses regarding non-cash means of payment* (Article 493-quater ICC);
- *computer fraud* (Article 640-ter ICC) when it involves a transfer of money, monetary value or virtual currency.

Decree 184 also introduces corporate liability for any other offenses against public trust and against property provided in the ICC when having as object non-cash means of payment, unless the misconduct is already punished more seriously by Decree 231.²

In relation to the abovementioned offenses, Article 25-octies.1 provides for a maximum fine of €1,239,200 and the application of disqualifying measures under Article 9(2) of Decree 231.

2. The amendments made to the money laundering offenses

Decree 195 introduces various amendments to the ICC. In particular, it extends criminal liability for money laundering offenses when the property acquired, concealed or re-used derives from:

- minor criminal offenses (and not only serious criminal offenses), which are punished with imprisonment for a maximum of more than one year or a minimum of more than six months;
- non-intentional offenses (previously non-intentional offenses where relevant only in cases of acquisition or re-use of property deriving from criminal activity; on the other hand, concealment

or disguise of property was punished only when such property derived from intentional offenses).

Although Decree 195 does not expressly amend Decree 231, these amendments to money laundering offenses, which can trigger corporate liability pursuant to Article 25-octies of Decree 231³, potentially extend cases of corporate liability.

As a consequence, companies should assess and address the risk of committing minor criminal offenses or non-intentional offenses that are not relevant, *per se*, under Decree 231 but may lead to the commission of money laundering offenses (which are indeed relevant under Decree 231).

For example, the risk of committing the offense of negligent omission of safety measures in the workplace or non-intentional offenses against public health (such as negligent contamination of water or foodstuff and counterfeiting foodstuff).

Furthermore, companies should ensure that they have appropriate policies and procedures in place to prevent offenses that, although already relevant under Decree 231, could not trigger money laundering offenses under the previous regulation.

For example, some minor criminal offenses set out in Legislative Decree 152/2006 (the “Environment Code”) such as discharge of industrial wastewater (Article 137); unauthorized waste management (Article 256); pollution of soil, subsoil, surface water or underground water (Article 257); illegal traffic of waste (Article 259.); illegal distribution of profits and reserves pursuant to Article 2627 of the Italian Civil Code; and, lastly, workplace manslaughter and injuries under Article 589(2) and 590(3) of the ICC.

With respect to the definition of “*property*” that may be acquired, concealed or disguised and re-used, Italian case-law has clarified that cost savings may constitute profit deriving from criminal activity.

Decree 195 also:

- increases penalties for the acquisition or possession of property deriving from criminal activity when committed during professional

² Since the provision makes a general reference to “*any other offenses*” against public trust and property, the courts will need to assess whether the provision is compliant with the principle of legal certainty.

³ For the offenses set out in Article 25-octies, Decree 231 provides for a maximum fine of €1,529,000 overall and the application of disqualifying measures of up to two years.

activity;

- extends Italian jurisdiction to offenses of acquisition of property deriving from criminal activity and self-laundering when committed abroad by an Italian citizen, with no need to obtain the request to proceed from the Minister of Justice.

3. What to do next

In light of these developments, companies should consider updating their policies and procedures to ensure that they are appropriate to prevent the commission of the new offenses that may trigger liability under Decree 231.

In particular, companies should:

- ensure that any activity involving non-cash means of payment (such as online sales, use of electronic devices that allow payment with virtual money, Point Of Sale Systems, and credit/debit cards) is subject to robust anti-fraud controls to prevent liability under the new Article 25-*octies*.1 of Decree 231;
- assess internal policies and procedures to verify that they are appropriate to prevent money laundering offenses involving property deriving from the commission of minor criminal offenses or non-intentional offenses.

Companies obliged to comply with anti-money laundering and countering the financing of terrorism requirements should also consider reviewing and updating their procedures adopted pursuant to Decree 231 with regards to customer due diligence and assessment of suspicious transactions.

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