

# Italy strengthens fight against fraud to the European Union's financial interests

October 25, 2022

On October 4, 2022, the Italian Government approved the Legislative Decree No. 156 of October 4, 2022 (the “Decree”) amending the Legislative Decree No. 75 of July 14, 2020 (“Decree 75/2020”) – which implements Directive (EU) 2017/1371 (the “PIF Directive”) – on the “fight against fraud to the Union's financial interests by means of criminal law.”

In particular, the Decree, which was published in the Official Journal on October 22, 2022 and will enter into force on November 6, 2022:

- introduces the criminal offense of misappropriation committed by a foreign official, by extending the scope of Article 322-*bis* of the Italian Criminal Code (the “ICC”);
- amends the rules on confiscation of instrumentalities and proceeds from the criminal offense of smuggling, introducing the possibility of equivalent value confiscation;
- enables confiscation of instrumentalities and proceeds in case of undue receipt of disbursements from the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development;
- criminalises the attempt to commit VAT fraud, under certain circumstances.

If you have any questions concerning this memorandum, please reach out to your regular firm contact or the following authors.

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MILAN

**Pietro Fioruzzi**  
+39 02 7260 8214  
[pfioruzzi@cgsh.com](mailto:pfioruzzi@cgsh.com)

**Giulia Checcacci**  
+39 02 7260 8224  
[gcheccacci@cgsh.com](mailto:gcheccacci@cgsh.com)

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ROME

**Giuseppe Scassellati Sforzolini**  
+39 06 6952 2220  
[gscassellati@cgsh.com](mailto:gscassellati@cgsh.com)

**Paola Maria Onorato**  
+39 06 6952 2654  
[ponorato@cgsh.com](mailto:ponorato@cgsh.com)



## 1. The aim of the Decree

The Decree aims at further adapting domestic legislation, and in particular the criminal sanctions against **fraud to the EU's financial interests**, to the principles set forth in the PIF Directive, in order to ensure alignment with the other Member States.

The six articles of the Decree amend and supplement already existing Italian criminal provisions, although the PIF Directive had already been largely implemented by Decree 75/2020.

## 2. The amendments introduced by the Decree

The Decree introduces the following amendments:

- **Amendments to the ICC:** the criminal offense of abuse of office (Article 323 ICC) is included in the list of offenses under Article 322-*bis* ICC so to cover misconduct committed also by foreign officials (officials of international courts, EU institutions, international parliamentary assemblies, international organizations and officials of foreign states). In doing so and in compliance with the PIF Directive, the Decree transposes into domestic law the criminal offense of “**misappropriation**” committed by a foreign official when public assets are used contrary to the purpose for which they were intended (such cases could not fall within the scope of application of the criminal offense of embezzlement, pursuant to Article 314 ICC);<sup>1</sup>
- **Amendments to Presidential Decree No. 43 of January 23, 1973 (the Consolidated Customs Law, or “TULD”):** in order to comply with the PIF Directive and with Directive No. 2014/42/EU, the Decree amends Article 301 TULD<sup>2</sup> by introducing the possibility of equivalent value confiscation for the offense of smuggling, in

cases where direct confiscation is not possible;

- **Amendments to Law No. 898 of December 23, 1986** (concerning “*administrative and criminal sanctions in relation to Community aid in the agriculture sector*”): the Decree introduces **confiscation** (also of property of equivalent value) in case of a conviction (or a plea-bargain) for the criminal offense of undue receipt of subsidies, premiums, allowances, refunds, contributions or other disbursements from the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development, committed by providing false data or information;
- **Amendments to Legislative Decree No. 74 of March 10, 2000 (“Decree 74/2000”):** the Decree amends paragraph 1-*bis* of Article 6, Decree 74/2000 (previously introduced by Decree 75/2020) providing that the attempt to commit VAT fraud is a criminal offense. As a consequence, the attempt to commit fraud is now punished as a criminal offense, provided that “*the conduct is carried out in order to avoid VAT in cross-border fraudulent schemes, connected with the territory of at least another Member State of the European Union, and causes a total damage of at least EUR 10,000.000*”;
- **Amendments to Legislative Decree No. 231 of June 8, 2001 (“Decree 231”):** lastly, the Decree also amends Article 25-*quinqüesdecies* of Decree 231, concerning corporate liability for tax crimes, to align it with the mentioned regulatory changes relating to VAT fraud, when carried out in cross-border fraudulent schemes.

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<sup>1</sup> According to case law, the criminal offense of embezzlement can be applied only when money or other public assets are diverted for personal use or benefit of the public official. Conversely, the criminal offense of abuse of office occurs “*when there is a misappropriation for one's own profit that [...] is committed through an improper use of the public asset that does not result in its loss nor in a damage to the entity to which the asset belongs [...] or when the use of public money takes place in violation of accounting rules and it is aimed at satisfying not only undue personal interests, but also existing public interests*” (see Supreme Court of Cassation, Sec. VI, No. 36496 of September 30, 2020).

<sup>2</sup> Article 301 TULD provides that “*in cases of smuggling, the confiscation of the instrumentalities and proceeds from the criminal offense shall always be ordered.*”