

Italy Amends Its Criminal Code and Broadens Corporate Quasi-Criminal Liability to Tackle Crimes Against Cultural and Landscape Heritage

March 25, 2022

On March 23, 2022, Law No. 22 of March 9, 2022, concerning “*Provisions on criminal offenses against cultural heritage*”, came into force (the “Law”). The Law strengthens the criminal provisions punishing offenses against cultural and landscape heritage committed by individuals and introduces quasi-criminal sanctions against legal entities.

The amendments introduced by the Law follow Italy’s ratification in January 2022 of the Council of Europe Convention on Offenses related to Cultural Assets, signed in Nicosia on May 19, 2017.

In a nutshell, the Law:

- introduces new criminal offenses against the cultural and landscape heritage and consolidates in the Italian Criminal Code (the “ICC”) the criminal offenses previously included in Legislative Decree No. 42 of January 22, 2004 (the “Code on Cultural Assets”);
- extends to offenses against cultural and landscape heritage the quasi-criminal sanctions against legal entities provided for by Legislative Decree No. 231 of June 8, 2001 (“Decree 231”).

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

MILAN

Pietro Fioruzzi

+39 02 7260 8214

pfioruzzi@cgsh.com

Giulia Checcacci

+39 02 7260 8224

gcheccacci@cgsh.com

ROME

Giuseppe Scassellati Sforzolini

+39 06 6952 2220

gscassellati@cgsh.com

Paola Maria Onorato

+39 06 6952 2654

ponorato@cgsh.com



1. The new criminal offenses introduced by the Law

The Law consolidates into the ICC all the existing criminal provisions related to the protection of cultural and landscape heritage (some of which were originally included in the Code on Cultural Assets).

Moreover, the Law provides for (i) new criminal offenses; (ii) increased penalties; and (iii) an extension of corporate criminal liability (see below).

More specifically, the Law adds a new Section VIII-*bis* “*Crimes against cultural heritage*” into the ICC, which introduces the following new criminal offenses:

- **Theft of cultural assets** (Article 518-*bis* ICC);
- **Misappropriation of cultural assets** (Article 518-*ter* ICC);
- **Receiving stolen cultural assets** (Article 518-*quater* ICC);
- **Use of cultural assets deriving from a criminal offense** (Article 518-*quinquies* ICC);
- **“Laundering” of cultural assets** (*i.e.* whoever replaces, transfers or carries out any other activity to conceal the illicit origin of cultural assets deriving from offenses committed by others - Article 518-*sexies* ICC);
- **“Self-laundering” of cultural assets** (*i.e.* whoever uses, replaces or transfers cultural assets to conceal their illicit origin when deriving from offenses she/he committed - Article 518-*septies* ICC);
- **Forgery in private deeds relating to cultural assets** (Article 518-*octies* ICC);
- **Violations regarding sale of cultural assets** (Article 518-*novies* ICC);
- **Illegal import of cultural assets** (Article 518-*decies* ICC);
- **Illegal export of cultural assets** (Article 518-*undecies* ICC);

- **Destruction, deterioration, defacement, and illegal use of cultural or landscape assets** (Article 518-*duodecies* ICC);
- **Destruction and looting of cultural and landscape assets** (Article 518-*terdecies* ICC); and
- **Counterfeiting of artworks** (Article 518-*quaterdecies* ICC).

In addition, the new Article 518-*sexiesdecies* ICC sets out specific aggravating circumstances for the criminal offenses listed above, providing for an increased penalty from one-third up to one-half, if such criminal offenses: (a) cause a significant harm; (b) are committed in the exercise of a professional, commercial, banking or financial activity; (c) are committed by a public official or a person in charge of a public service, who is responsible for the preservation of cultural assets; or (d) are committed within the scope of a criminal organization.

The Law also introduces a new minor offense for the “*unjustified possession of instruments to detect metals contained in the ground*” (Article 707-*bis* ICC) .

Furthermore, it expands the scope of confiscation of money and assets whose possession cannot be justified by the offender pursuant to Article 240-*bis* ICC to the newly introduced criminal offenses of receiving, using, laundering and self-laundering of cultural assets, and provides for the possibility to carry out undercover operations in order to fight criminal offenses against cultural heritage (new Article 9(1), Law No. 146/2006).

2. The amendments to Decree 231

The Law also expands the list of crimes that may trigger liability for companies and other legal entities under Decree 231, including also:

- **Article 25-*septiesdecies*** (“*Criminal offenses against cultural heritage*”), which provides for the application of a maximum fine of € 1,394,100 and disqualification sanctions set out in Article 9(2) of Decree 231 for a term

of up to two years, in case one of the criminal offenses included in the new Section VIII-*bis* of the ICC (described above) is committed in the interest or for the benefit of a legal entity by one of its employees).

- **Article 25-*duodevicies*** (“*Laundering of cultural assets and destruction and looting of cultural and landscape assets*”), which provides for the application of a maximum fine of € 1,549,000, as well as for the permanent disqualification from exercising business activity if the company or one of its organizational units was used for the sole or prevalent purpose of enabling or facilitating the commission of these criminal offenses (Articles 518-*sexies* and 518-*terdecies* ICC).

In light of these amendments, companies that have adopted an organizational model pursuant to Decree 231 should update their existing protocols and procedures and carry out a risk assessment to take into account the new criminal offenses against cultural and landscape assets (especially companies operating in the real estate or building industry or those operating in the cultural sector – such as auction houses and companies specialized in the organization of artistic and cultural events).

CLEARY GOTTLIB