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THE DESTINATION AND ADMINISTRATION OF CONFISCATED ASSETS. A COMPARATIVE ANALYSIS

1. *Preamble: the destination and administration of confiscated assets in their original size*

As is now well known, confiscation consists of the perpetual coercive removal of property of illegal origin from the person who disposes of it and its transfer for the benefit of State property. The definitive removal of the asset in question from its natural economic circuit therefore entails its insertion in another context free from criminal conditioning.

Originally - but in some States this still happens today - the destination of the goods could only entail their destruction (for goods intrinsically dangerous to society), or their attribution to the indistinct patrimony of the State Treasury. In more detail, confiscation could entail a direct transfer (for example, confiscated properties conferred to State property) or an indirect transfer (for example, through the sale of the confiscated goods).

This traditional model involves a general allocation to the general budget of the State without it being possible to assign a specific use to the confiscated assets. It is therefore not possible to link the destination of such assets - or, more frequently, their economic value - to specific works, given the principles of the unity and universality of the state budget, which attributes to national parliaments the political decision on the distribution of general taxation among the economic initiatives decided on at that level from time to time.

2. *The emerging need to restrict the destination of the confiscated goods and properties*

Only in more recent times has the idea emerged of putting the confiscated asset to good use, giving its destination a "symbolic" character. In this way, not only is the general-preventive function of the confiscation highlighted, but also the compensatory-restoration function. In fact, on the one hand, the risk of "recapture" of the goods and property by their original owners is contained, thus preventing the risk of a further criminal infiltration and, on the other hand, the role of NGOs in social contexts characterized by high criminality is clearly strengthened.

The management and destination of the goods therefore become themselves instruments in the fight against crime, also from a preventative perspective. Moreover, the economic resources illegally acquired by criminals are thus returned to the territories

that have suffered most from the social repercussions of criminal activities. This use, therefore, represents a fundamental instrument in contrasting criminal activity, since it aims both to weaken the social roots of such organizations and to promote a greater and more widespread consensus of public opinion towards the repressive intervention of the State in order to restore legality.

In fact, the use of confiscated assets for social purposes represents, as many European documents underline, a fundamental instrument for affirming the rule of law against crime. For example, the Italian legislator has been aware of this since 1996[1], when it regulated, in its anti-mafia legislation, the regime for the execution of final confiscation orders, introducing a restriction on the destination of assets for specific uses; this destination does not consist of a generic assignment to public bodies active in the field of justice, public order and civil protection, rather a specific assignment for "social purposes". Thus, in Italy, agricultural land confiscated from the mafia is allocated to voluntary associations active in the education of young people and the destination of real estate to communities operating in the field of therapeutic recovery for drug addicts. In relation to the Netherlands, the social destination of confiscated assets was clear in a case where a boat previously used for drug trafficking was transferred to a sailing school. The restriction on specific uses, therefore, takes on high symbolic value for the purpose of clearly demonstrating to the community that "*crime does not pay*"[2].

The European Union legislator followed in these footsteps by providing in the text of Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 the right for Member States to consider the adoption of measures allowing the use of confiscated assets for purposes of public or social interest. Recital 35 of the Directive[3] clarifies that such measures could include, for example, the use of such assets for law enforcement and crime prevention projects as well as other projects of public interest and social utility.

However, the original text of the Directive did not include a provision for which the assets acquired by the State were to be used for social purposes. It was the[4] LIBE Committee of the European Parliament that proposed amendments to the original text, which expressly provide for the "possibility of using confiscated property for social purposes". This possibility should be implemented, first of all, through far-sighted and prudent management of the assets already during the seizure phase: in fact, the reason for this amendment underlines that it would be appropriate for Member States to define "in greater detail the management of the assets *also* [non-textual italics] after the confiscation order, through their use for social purposes".

Moreover, the transposition of the social purpose of the goods is, as highlighted above, merely optional. Among the Member States participating in this research project, this type of destination is currently explicitly provided for under Italian, French and

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[1] By Law No 109 of 7 March 1996.

[2] On this topic see Communication from the Commission to the European Parliament and the Council of 20 November 2008 titled *Proceeds of organised crime: ensuring that "crime does not pay"*, in document COM(2008)766 def.

[3] In substantially identical terms, it was thus also taken from recital 47 of Regulation 2018/1805

[4] This is the Committee on Civil Liberties, Justice and Home Affairs For a review of the amendments produced by the Committee on Civil Liberties, Justice and Home Affairs on the text of the proposal for Directive 42/2014/EU, see A.M. MAUGERI, *L'*actio in rem *assurge a modello di 'confisca europea' nel rispetto delle garanzie CEDU?* in *Dir. pen. cont. - Rev. trim.*, 3/2013, p. 252 ff.

Romanian legislation; it is only partially envisaged in Belgium and the Netherlands, while it is completely absent in Germany where confiscated assets are generally assigned to the *Bundesland* where the court that first decided on confiscation is placed.

3. *The opportunity to set up Central Coordination Offices for the administration of confiscated assets*

The management of confiscated assets undoubtedly relates to the stage of the enforcement of judgments. This function is generally[5] carried out by the public prosecutor's office, within which there is usually an "execution office" expressly dedicated to this purpose.

The social use of the confiscated goods and properties requires a monitoring activity, in relation to the fact that the goods and properties assigned are effectively employed, at least for a significant period of time, for the purposes indicated by the Judge, in compliance within those specifically provided for by law. This is the only way to be sure that such goods and properties do not become available to criminal organizations or that there is no diversion from the purposes for which they were assigned. However, such monitoring necessarily involves the organisation of a qualified administrative service dedicated thereto.

Article 10 of Directive 2014/42/EU provides for the possibility that the management of confiscated assets may also be carried out by an authority other than the judiciary: for example, a central authority (Asset Management Office - AMO) or a network of offices responsible for acquiring the management of confiscated assets and accompanying them up to the stage when the final confiscation is enriched with specific elements relating to its destination. Regulation 2018/1805/EU (hereinafter "the Regulation") of the European Parliament and of the Council of 14 November 2018 seeks to request[6] the establishment of such authorities or offices in Member States where they do not yet exist.

This choice has its origins in two orders of reasons.

Firstly, the aim is to increase the percentage[7] of cases of execution of final confiscation orders even in countries where there is a certain rate of ineffectiveness in the execution of sentences[8]. In fact, a national authority could monitor criminal proceedings in which preventive seizures have taken place, urging those within its jurisdiction to execute final confiscation orders as ordered by the judiciary.

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[5] There is an exception, in the Belgian case, where the Court refers the execution to the Department of Finance, which opens an asset investigation into the financial assets of the convicted person, when the confiscation concerns an amount due in excess of €10,000.

[6] Recitals 47 of the Regulation stipulates that "*Each Member State should consider establishing a national centralised office responsible for the management of frozen property, with a view to possible later confiscation, as well as for the management of confiscated property. Frozen property and confiscated property could be earmarked, as a matter of priority, for law enforcement and organised crime prevention projects and for other projects of public interest and social utility"*.

[7] According to the latest data published by the European Commission (*Europol, Does Crime still pay? Criminal Asset in the EU*, 2016), in the EU alone, illicit proceeds amount to approximately 110 billion euro per year. Only 2.2% of this amount is seized, while 1.1% reach final confiscation.

[8] On the subject see, albeit in a more general perspective, *L'ineffectivité des peines*, edited by M. Danti-Juan, Paris, 2015; L. EUSEBI. *Politica criminale e riforma del diritto penale*, in *Democrazia e diritto*, 2000, 2, p. 114 ff.; as well as, with specific reference to the pecuniary penalty, see, L. GOISIS, *L'effettività (rectius ineffettività) della pena pecuniaria in italia, oggi*, in *Dir. pen. cont.* November 13, 2012.

Secondly, the intention is to establish a highly specialized authority capable of tackling and resolving the complex problems - of a legal, economic and social nature - that the management of certain confiscated assets causes.

The management of confiscated assets has become increasingly complex over time. In the past, it is true that the main form of confiscation concerned issues directly related to the crime and such things were easily manageable by the form of destruction or sale. The subsequent introduction of further forms of confiscation - such as extended and valuable confiscation - now extends to assets with a complex structure, which may not even be directly linked to criminal acts. For example, the profit from the crime of drug dealing or VAT fraud is easily manageable if money directly related to the crime committed is found. However, if such profit cannot be directly found and assets of equivalent value are confiscated - consisting, for example, of a building or a company - the management of such assets may take place in different forms from those mentioned above. In this regard, it should be borne in mind that a company is an organized set of goods and capital with the purpose of generating an income; the overall value of the company is therefore greater than the sum of the individual goods and capital contained therein. This value must therefore be preserved, also in view of the fact that it is functional to maintaining the employment of those who work for the company itself. Under these circumstances, the management of the confiscated property is therefore considerably more difficult as it requires the "dynamic" administration of the property and the creation of appropriate administrative structures is therefore necessary.

The purpose of the centralised offices referred to in Article 10 of the Directive is ultimately also to prevent the depreciation of the value of the assets seized[9] (and then confiscated), while providing administrative and legal assistance to the judicial authority.

The nature of this centralised office - if provided[10] - may in theory be judicial (Belgium[11]) or administrative (France[12], Italy[13], Romania[14]). In reality, beyond the formal data, the office carries out administrative functions that actually end up influencing the choices of the judge with regard to final confiscation orders. In reality, this structure has a double utility: it performs both administrative functions, especially in the phase of the execution of final confiscation orders, and tasks of assistance to the criminal jurisdiction, generally during the preliminary investigations. In this way, on the one hand, the aim is

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[9] On this topic, see recital 32 of Directive 42/2014/UE: "*Property frozen with a view to possible subsequent confiscation should be managed adequately in order not to lose its economic value. Member States should take the necessary measures, including the possibility of selling or transferring the property to minimise such losses. Member States should take relevant measures, for example the establishment of national centralised Asset Management Offices, a set of specialised offices or equivalent mechanisms, in order to effectively manage the assets frozen before confiscation and preserve their value, pending judicial determination*".

[10] Germany, for example, does not yet have such structures and has a decentralised approach.

[11] Central Office for Seizure and Confiscation. It is a member of the Public Prosecutor's Office, which carries out its tasks under the authority of the Ministry of Justice.

[12] AGRASC, Agency for the Management and Recovery of Seized and Forfeited Assets, established by Law no 768 of 9 July 2010.

[13] ANBSC, National Agency for the Management of Assets Seized and Confiscated from Organized Crime, established by Legislative Decree No. 4 of 4 February 2010.

[14] ANABI, Agenția Națională de Administrare a Bunurilor Indisponibilizate, established by Law No 318 of 11 December 2015.

to support the judicial administration of the assets already during the seizure phase and, on the other hand, to prepare the ground for their subsequent destination and management in the event that definitive confiscation is reached.

The set of functions described above must be properly regulated as it risks, in the abstract sense, constricting the rights of third parties. In fact, this centralised office is an auxiliary body of the criminal judge, but its subsequent role in the management and destination of confiscated property undoubtedly also makes it a "party" to the proceedings that may clash, for example, with the original owner or third parties who have rights over the confiscated property. There is therefore a risk that the performance of the auxiliary tasks of the jurisdiction will call into question the independence and third party status of the judge himself, in breach of the right to a fair trial required by the European Convention on Human Rights.

The centralised offices are bodies governed by public law and may be attached to the Ministry of the Interior (Italy), Justice (Belgium, Romania) or at the same time to the Ministry of Justice and Budget (France). The Netherlands has not set up a similar structure, but delegates the management of the confiscated assets to an existing structure of the Ministry of Finance[15].

In some countries (France, Romania), the Central Authority responsible for the management of confiscated assets also deals with the identification of assets to be subjected to confiscation, in implementation of Article 9[16] of Directive 2014/42/EU. In order to carry out this specific mission of tracing the assets to be confiscated, the structure is equipped with investigative powers, so as to respond on its own to requests for mutual assistance or international cooperation from the CARIN network and the Asset Recovery Offices. Undoubtedly, this synergy of functions can be indicated as a model to be followed by other countries.

In some countries, however, the central authorities mentioned above are not the only points of reference for the management or destination of confiscated assets: in Italy, for example, they only manage confiscated assets in relation to certain offences (such as organised crime) or in the context of confiscation without conviction. In Romania, the central authority limits itself to managing assets with a value of more than 15,000 ron (about € 3,000), while in Belgium the a of systematic communication to the Central Office of final confiscation decrees is complained of.

3.1. The destination and administration of particular goods.

It is possible to classify confiscated assets in the following homogeneous categories: movable property and credits; dematerialised financial instruments; registered immovable or movable property; company assets organised for running a business; shares and quotas.

Some of these assets (in particular, movable property, credits and dematerialised financial instruments) are of a static nature and therefore, pending the final judgment ordering their confiscation, they can be kept passively at most through the mere performance of sporadic acts simply aimed at preventing their dispersion or deterioration. Other assets (such as companies or some real estate) have a dynamic nature that requires an active type of administration, i.e. the performance of complex management activity

[15] The "Dienst Domeinen", under the Ministry of Finance.

[16] "Member States shall take the necessary measures to enable the detection and tracing of property to be frozen and confiscated even after a final conviction for a criminal offence or following proceedings in application of Article 4(2) and to ensure the effective execution of a confiscation order, if such an order has already been issued".

for preserving and, if possible, increasing the value of the asset' as required by recital 32 of Directive 2014/42/EU[17].

It is the judge that passes the final confiscation order who decides at his/her discretion whether to use the confiscated assets for particular activities or to sell them. In these cases, we talk about the destination of the confiscated property which is normally requested by the administrative bodies - public or private - that can make a request either directly or through the National Authority for the seized and confiscated property.

In some legal systems, such as the Italian one, there is a tendency to avoid the sale of companies and properties that require dynamic management, favouring other forms of employment.

The methods of using real estate can be as follows:

- Use by the State for purposes of justice, public order or social protection or assigned to research organisations;
- Management for economic purposes by the National Authority for Confiscated Assets (e.g. leased data);
- Destination for social purposes carried out by charities;
- Assignment to local authorities (municipalities);
- Sale.

The ways in which companies can be used are as follows:

- Rental, if their business is viable;
- Sale as an undivided unit;
- Liquidation, with the consequent transfer of the individual assets contained in it.

When there is a risk of a public order problem or that goods sold by public auction may return to a criminal environment, some States have special administrative arrangements for selling them. In Belgium and Italy, it is possible to negotiate directly with the buyer in such cases, thus avoiding sale by public auction. This is covered by the Directive itself, in recital 35 which[18] expressly provides for the possibility of laying down special procedural rules in order to prevent criminal infiltration.

However, it should be noted that also in these cases, the maintenance of public order must be balanced against the protection of competition in the free market. In the Community legal order, public policy certainly constitutes a valid overriding reason in the general interest for restricting the free movement of goods or the principles of competition. There is no doubt, however, that public policy must be interpreted in a

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[17] Which provides that: "*Property frozen with a view to possible subsequent confiscation should be managed adequately in order not to lose its economic value. Member States should take the necessary measures, including the possibility of selling or transferring the property to minimise such losses. Member States should take relevant measures, for example the establishment of national centralised Asset Management Offices, a set of specialised offices or equivalent mechanisms, in order to effectively manage the assets frozen before confiscation and preserve their value, pending judicial determination"*.

[18] Which stipulates that: "*Member States should consider taking measures allowing confiscated property to be used for public interest or social purposes. Such measures could, inter alia, comprise earmarking property for law enforcement and crime prevention projects, and for other projects of public interest and social utility. That obligation to consider taking measures entails a procedural obligation for Member States, such as conducting a legal analysis or discussing the advantages and disadvantages of introducing measures. When managing frozen property and when taking measures concerning the use of confiscated property, Member States should take appropriate action to prevent criminal or illegal infiltration*".

restrictive sense, just as its protective measures must be proportionate, fit for the purpose and respectful of the right over the property[19].

The choice of the contractor may therefore lead to the exclusion of certain persons (e.g. the owner of the confiscated property and his family members) or give preference to certain categories of recipients (such as associations with social, educational purposes, etc.). This choice should, however, always be made in accordance with the principles of transparency, adequate publicity, equal treatment and proportionality[20].

National legislation in this area may also require harmonisation by the European legislator, in accordance with the principle of subsidiarity.

Almost all the national laws analysed provide for registered movable property and computer equipment being intended for public purposes, with primary use in the field of police activities. However, this is only possible for property confiscated in the context of particular offences (such as smuggling, drug trafficking and, more generally, transnational offences). Once confiscated (but in some legal systems already in the seizure phase), vehicles, boats and areas can be assigned to the police, generally respecting a constraint of purpose: that is, they must be used to fight against specific criminal activities that normally coincide with those that legitimize their confiscation.

The principle of subsidiarity in Belgian legislation is interesting, providing for the allocation of resources only if the police force does not already have sufficient assets at its disposal. This particular application of the principle of subsidiarity clearly fulfils the shared function of preserving the integrity of the financial allocations to the justice sector so that it can equip itself with adequate instruments for the achievement of its mission: in other words, it intends to prevent the police forces having a shortage of means to combat crime while waiting for the uncertain, future, allocation of goods.

Let us return to the question of the destination of real estate and companies. The Italian experience allows us to reflect on some specific problems of these goods. The management of the property - first in the seizure phase and then during confiscation - by the State allows, as mentioned, its detachment from the original criminal context. However, this detachment can have traumatic effects on the survival of the asset itself.

The phenomenon is known as a crisis of "legalization" of the criminal enterprise and implies significant costs that the judicial administrator (be it the National Authority or an administrator appointed by the judge) must necessarily face and that were previously illegally evaded. The costs may be, for example, those arising from the regularisation of employees hired "illegally", the payment of taxes due, the adaptation of workplaces to health standards; sometimes it is necessary to apply *ex novo* for the issue of planning permission for properties without it or administrative permits to carry out activities previously carried out unlawfully. In order to limit these expenses as much as possible while at the same time allowing the confiscated companies to return to legality, in some countries (Italy, France) the Government Legal Service may represent and defend the judicial administrator free of charge in disputes concerning relations relating to these particular assets.

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[19] See on public policy: CJEU, judgment of 14 October 2004, C-36/02 (*Omega Spielhallen*), § 36. On national security: CJEU, judgment of 2 October 2008, C-157/06 (*Commission v. Italy)*, § 32.

[20] For example, the Court of Justice ruled that a protocol of legality leading to the automatic exclusion of a candidate who fails to provide a declaration concerning situations of control, liaison and subcontracting with other companies does not comply with the principle of proportionality.

The hidden costs of the legalisation process are added to further "costs" deriving from the very beginning of the procedure, first of seizure and then of confiscation, e.g. the evident damage to the reputation of the same company as a result of the intervention of the criminal judiciary, which may result, for example, in the loss of continuity of bank credit. This explains why almost all seized companies are destined to go bankrupt[21], while for the remaining ones an assessment must be made as to whether it is appropriate to continue their economic activity or to liquidate them, which is necessary in many cases where, for example, the confiscated company has completely eroded net assets. Confiscated property may, on the other hand, have been built without planning permission and must therefore be demolished.

In order to make the procedure for the management of confiscated assets effective, it seems desirable to adopt further administrative procedures. We can cite those provided in the Italian legal system, even if they only refer to the confiscation of anti-mafia prevention and to extended confiscation.

In fact, in these cases, an assessment must first be made of the actual size of the company's assets confiscated and a detailed analysis of the existence of concrete possibilities for the continuation or resumption of business activities, and if the judgment is negative the liquidation of the company must be ordered.

If, on the other hand, the management of the confiscated property is to be continued, the Italian legal system in the above cases imposes the adoption of certain measures. In fact, to disconnect the company from the criminal economic fabric, the appointment of a judicial administrator may not suffice if the legacy of the previous management continues to remain, binding it to obligations undertaken in the past. The automatic suspension of ongoing contracts is then provided for in order to definitively sever ties with the past, postponing to a later stage the administrator's choice to continue or to terminate the contract (for example, supply or tender); this is however without prejudice to the possibility of temporarily executing, if authorised by the managing judge, the previous relationships where the suspension of the contract could result in serious damage to the company.

Something similar is also happening in French law, where there is provision for the suspension of ongoing civil enforcement proceedings and the initiation of new civil enforcement proceedings concerning the same assets is prohibited.

In Italy, to support the continuation of the economic activity of seized companies, qualified technical support is provided which, under the coordination of the Prefectures[22], contemplates the institution of a "permanent provincial table" composed of various representatives of the institutions with the purpose of assisting the judicial administrator. Not only that, since the seized companies often operate in very specialised economic sectors, the anti-mafia legislation provides the possibility for both the delegated judge and the Central Authority to avail themselves of the free technical support of entrepreneurs active in the same sector as those in which the seized company operates.

3.2. The destination and administration of assets allocated abroad

[21] According to an estimate by the Italian National Institute of Judicial Administrators, more than 90% of confiscated companies in Italy go bankrupt.

[22] In Italy, the "Prefettura" is the "Territorial Office of Government"; it has provincial competence and is governed by a Prefect who coordinates central and local public administrations in certain matters, such as, for example, that of public security.

The confiscation order is transmitted by means of a confiscation certificate according to the procedure established by articles 14 et seq. of Regulation 2018/1805/EU. In particular, Art. 28 of the cited Regulation provides that the management of confiscated assets be governed by the law of the State of execution, while Art. 30 establishes certain minimum rules for the destination of confiscated assets. Article 23(1) also specifies that only the authorities of the executing State are have jurisdiction to decide on the manner in which the confiscation order is to be executed and to determine the measures relating thereto.

During the phase of the mutual recognition of confiscation orders, the procedure for the distribution of confiscated goods and properties allocated abroad foresees[23] the transfer in the issuing State of the measure of the sums of money directly found or the proceeds of the sale of the confiscated goods and properties. However, only 50% of the excess of € 10,000 is transferred, while the remaining part is retained as a lump sum as compensation for the management costs incurred by the country of execution. However, this provision must now be integrated with that provided for by Article 29 of Regulation 2018/1805/EU, which will enter into force on 19 December 2020 and which implements Article 14 of the United Nations Convention against Transnational Organised Crime signed at the Palermo Conference of 12 - 15 December 2000. This latter article provides that "States Parties shall consider as a matter of priority, to the extent permitted by domestic law and if so requested, the return of crime-related proceeds or property confiscated from crime to the requesting State Party, so that the requesting State Party may compensate the victims of crime or return such proceeds or property to its rightful owners". The internal legislation of a Member State can therefore now guarantee a higher level of protection for the victim of the crime, compared to what is provided for by European law: in almost all legal systems, confiscated property belonging to the victim of the crime must be returned to the victim of the crime.

In fact, one of the possible uses of the proceeds from the sale of the confiscated property is the compensation of damages suffered by the victims of the crime or the civil parties to the criminal proceedings. This destination clearly serves a compensatory-reparatory purpose. Essentially, all countries provide for the possibility of allocating part of the funds collected from the sale of the confiscated assets to the restoration of the victims of the crime. Generally, however, there is a pre-deduction from these revenues of the charges incurred for the management of the assets before the sale. In Belgium, the State's claims are met before they are allocated to other entities.

Where the request for confiscation relates to a specific item of property, the competent national authorities and the issuing authorities may agree that the confiscation shall take the form of a request for payment of a sum corresponding to the value of the property. This provision is present in all States which have ratified the 1990 Strasbourg Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime. Article 14 of this Convention - also incorporated in the cited EU[24] Regulation - allows the subversion, in cases of execution of requests for foreign confiscation, of the

[23] The provision is contained in Article 16 of Council Framework Decision 2006/783/JHA of 6 October 2006 and in Article 30 § 7 of Regulation 2018/1805/EU, which will enter into force on 19 December 2020.

[24] Art. 18 § 2 of the Regulation provides that "where a confiscation order concerns a specific item of property, the issuing authority and executing authority may, where the law of the issuing State so provides, agree that confiscation in the executing State can be carried out through the confiscation of a sum of money corresponding to the value of the property that was to be confiscated".

normal procedure followed in the national legal systems: usually, priority is given to the direct confiscation of the property, carrying out the confiscation of value only in cases where the property has been dispersed or is no longer traceable.

In short, only assets whose management is not critical - such as money, and assets that can be easily sold - can therefore be transferred from the State of execution to the foreign State of issue. It is also easy to take action against goods that can easily be sold on the market.

Regulation 2018/1805/EU states[25] that property other than money may be disposed of in an alternative way to its sale or transfer to the issuing State of the confiscation order; in fact, it is possible that the executing State may, in accordance with its national law and subject to agreement with the issuing State, decide on a different purpose, for example social purposes or public interest.

However, in the abstract sense, two orders of problems may arise for the destination of more complex confiscated assets (e.g. real estate or companies that cannot find a buyer). First of all, if the State of enforcement of the foreign measure does not have the particular legal instruments provided for in the most advanced laws of certain Member States and mentioned above in brief, there is a risk of their dynamic management being impossible. Secondly, there could be a disincentive for the forwarding of confiscation orders against these assets due to the high risk that, if they were not sold, operating costs would arise, the amount of which cannot be anticipated (for example, the maintenance of the buildings or their supervision), the restoration of which would be requested by the executing State from the issuing State pursuant to Article 31 of the Regulation.

The statistics reported in the Italian National Report seem to support the latter hypotheses, since cases of cross-border confiscation of companies and real estate are limited to only a few units.

4. Evolutionary perspectives: the lack of a uniform model in the current European legal framework.

The rules on the management and destination of confiscated property have not been harmonised at EU level and, as a result, the individual national laws differ from one another and are not homogeneous. Today, only some Member States - those where organized crime is particularly marked in the economic fabric - envisage the possibility of maintaining a particular bond of destination for purposes of public or social interest of the confiscated assets, as mentioned above. These countries have consequently set up centralised administrative bodies specialising in the administration, management and destination of confiscated assets. Article 10(3) of Directive 42/2014/EU only introduces a mere right for Member States to adopt such measures, without therefore providing minimum standards of implementation; similarly, Article 10(1) merely calls for "the adoption of the *necessary measures, for example through the establishment of centralised national offices, a series of specialised offices, or equivalent mechanisms, to ensure the proper management of frozen assets with a view to possible subsequent confiscation*".

The absence of harmonisation in this area undoubtedly makes the mutual recognition of confiscation orders issued by the authorities of a Member State requesting a special assignment of assets located in another Member State whose legislation does not provide for such assignment problematic. In fact, as we have just seen, Regulation 1805/2018/EU provides that the execution of the confiscation order be governed by the

[25] Art. 30 § 6, point (*c*), (*d*).

law of the State of execution, whose Authorities have sole jurisdiction to decide on the manner of its execution and to determine all the measures relating thereto.