

**LEGISLATIVE DECREE N. 109 of 22 June 2007**

***Measures to counter terrorist financing and the activities of Countries that threaten peace and international security, also in application of EU Directive 2005/60/EC***

THE PRESIDENT OF THE REPUBLIC OF ITALY

[ . . . ] Having acquired the opinions of the Commissions of the Chamber of Deputies and the Senate, respectively; [ . . . ]

ISSUES

The following Legislative Decree:

***Article 1***  
***Definitions***

1. For the purposes herein, the following definitions shall apply:
  - a. “Terrorist financing” shall mean: “Any activity that aims, through any means, to collect, supply, mediate, deposit, hold or disburse funds or economic resources, in any way undertaken, wholly or in part, for the purpose of committing one or more criminal acts of terrorism or favour the commission of one or more criminal acts of terrorism covered by Italy’s Criminal Code, regardless of whether such funds or economic resources were actually used to commit said criminal acts”;
  - b. “Community Regulations” shall mean: “(EC) Regulation 2580/2001 of 27 December 2001, and Council Regulation 881/2002 of 27 May 2002, and subsequent amendments, as well as regulations issued pursuant to Articles 60 and 301 of the EC Treaty, adopted to prevent, combat and suppress international terrorism and the activities of Countries that threaten international peace and security, also pursuant to UN Security Council Resolutions”;
  - c. “Funds” shall mean: the financial activities and services of any nature, owned also through a third natural or legal person, including:

- i. Cash, checks, monetary credit, bills of exchange, payment orders or other payment instruments;
- ii. Deposits with financial institutions or other agencies, bank account balances, and loans and debt securities of any kind;
- iii. Marketable government and private securities as well as financial instruments as defined in Article 1(2) of Italy's Consolidated Law on Finance (*TUF – Testo unico delle disposizioni in materia di intermediazione finanziaria*, a.k.a. *Testo Unico della Finanza*), pursuant to Legislative Decree n. 58 of 24 February 1998;
- iv. Interest, dividends or other income and value increase generated by such activities;
- v. Credit, right to compensation, guarantees of any kind, securities and other financial commitments;
- vi. Letters of credit, bills of lading and other documents indicating ownership of assets;
- vii. Documents showing any form of participation in financing or financial resources;
- viii. Any other instruments for export financing”;

d. “Economic resources” shall mean: “Assets of any kind, tangible or intangible, movable or immovable property, including any accessories, parts and income, which are not funds but can be used to obtain funds, goods or services, owned also through a third natural or legal person”;

e. “Freezing of funds” shall mean: “The prohibition, as per Community regulations and ministerial decrees under Article 4, of the movement, transfer, modification, use and management of or access to funds, in such a way as to modify their volume, cost, collocation, property, possession, nature, purpose or any other change allowing for the use of funds, including portfolio management”;

f. “Freezing of economic resources” shall mean: “The prohibition, as per Community regulations and ministerial decrees under Article 4, of the transfer, provision and/or use of financial resources to obtain, in any way, funds, goods or services, including, sale, leasing, renting or constitution of guarantee rights”;

g. “Designated subjects” shall mean: “Physical persons, legal persons, groups or entities defined as being subject to fund freezing based on Community regulations and ministerial decrees under Article 4”;

h. “Anti-Money Laundering Law” shall mean: Legislative Decree n. 143 of 3 May 1991, as amended by Law n. 197 of 5 July 1991 and subsequent amendments.

*Article 2*  
*Purpose and Scope*

1. This Decree establishes measures to prevent use of financial systems for the purpose of terrorist financing and freezing funds and economic resources so as to combat terrorist financing and activities of Countries that threaten international peace and security pursuant to United Nations Resolutions and European Union decisions.
2. This Decree shall not apply to economic sanctions on Third Countries, including arms embargos.

*Article 3*  
*Financial Security Committee*

1. Pursuant to international obligations, Italy assumed to fight both terrorist financing and the activities of Countries that threaten international peace and security, as well as fund-freezing measures established by the United Nations and the European Union, a Financial Security Committee (*Comitato di Sicurezza Finanziaria*), hereinafter referred to as the “Committee,” is set up at Italy’s Ministry of Economy and Finance. The Committee will draw on available human, financial and equipment resources, without incurring any new or greater burden on the State Budget.
2. The Committee is composed of twelve members, chaired by the Director General of the Treasury or acting director.
3. Committee Members shall be appointed via Minister of Economy and Finance decree, on the basis of designations made by the Minister of the Interior, the Minister of Justice, the Minister of Foreign Affairs, the Governor of *Banca d'Italia*, a representative from *CONSOB* (Italy’s Stock Exchange Commission), one from *Unità di Informazione Finanziaria* (Italy’s Financial Intelligence Unit – FIU) and one from *ISVAP* (Istituto per la vigilanza sulle assicurazioni private e di interesse collettivo - Italy’s Insurance Companies Supervisory Authority). The Committee also includes a representative (director) from the Ministry of Economy and Finance as well as an officer from *Guardia di Finanza*, a high-ranking officer from *DIA – Direzione Investigativa Antimafia* (Antimafia Investigations Directorate) and one from *Carabinieri*, and a representative from the *DNA – Direzione Nazionale Antimafia* (National Anti-Mafia Directorate). The Committee Chair may invite representatives from other bodies and institutions, including representatives of intelligence and security services, depending on agenda items. In order to perform its fund-freezing duties, the Committee is aided by a representative from *Agenzia del Demanio* (public institution in charge of State property). Within the performance of its tasks related to combating the proliferation of weapons of mass destruction, the Committee is furthermore integrated with two representatives designated by the *Ministry for Economic Development* and the *Customs Agency*, respectively.
4. The Committee’s functions and procedures are regulated via decrees issued by the Ministry of Economy and Finance upon Committee’s proposal. Pursuant to such decrees, categories of documents,

created for and/or however made available to the Committee are not subject to the law regulating the right of access to administrative documents referred to in Art. 24(1)(a) and (2) of Law dated 7 August 1990 “New provisions on administrative procedure and right to access to administrative documents”. In any case, the Committee members shall not receive any emolument, compensation or reimbursement.

5. The authorities represented within the Committee shall communicate all and any information without any exemption pertaining to the existing secrecy laws. All information acquired by the Committee is covered by official secrecy under Article 6(1)(a) and by Article 7 of Law n. 121 dated 1 April 1981. As in the provisions of Article 7 of Italy’s Consolidated Law on Banking (*TUB – Testo Unico Bancario*) under Legislative Decree n. 385 of 1 September 1993, and Article 4 of Italy’s *TUF* under Legislative Decree n. 58 dated 24 February 1998.

6. The judicial authorities shall provide the Committee with all and any information deemed as useful for the purposes of this Decree.

7. The Committee, by its own decision, shall identify further data and information pertaining to its own mandate, which the Public Administration is required to transmit to the Committee. The Committee may request that inspections be carried out by its represented bodies, consistently with their respective powers.

The Committee Chair may transmit data and information to the Executive Committee for Intelligence and Security Services and to the Heads of the Intelligence and Security Services for coordination activities to be carried out by the Prime Minister under Article 1 of Law 801 of 24 October 1977.

8. The Committee may request from the *Agenzia del Demanio* all and any necessary or useful information regarding its activities under Article 12.

9. The Committee may establish relations with similar organisations in foreign countries for the sake of vital international coordination, without prejudice to the official secrecy obligations under paragraph 5 above.

10. The Committee shall propose designate individuals or entities to competent international authorities of both United Nations and European Union. Whereby, based upon the acquired information described in the previous paragraphs, sufficient elements exist to propose appointments to the competent international authorities of both United Nations and European Union, as well as the risk that funds and economic resources to be frozen may be dispersed, hidden or used to finance terrorist activities, the Committee Chair shall alert the public prosecutor as per Article 2 of Law n. 575 dated 31 May 1965, and subsequent amendments.

11. The Committee is in charge of assessing applications for exemptions from fund freezing by relevant parties, pursuant to Community regulations or decrees under Article 4.

12. The Committee shall propose to the competent international authorities of both United Nations and European Union the de-listing of subjects, also upon their own application(s).

13. The Committee shall set forth proposals for adoption of decrees under Article 4.

14 Administrative procedures shall be concluded before the Committee within 120 days.

#### *Article 4*

##### *Measures for direct implementation of UN Security Council resolutions to counter the financing of terrorism and the activities of Countries that threaten international peace and security*

1. In order to implement freezing measures established by the UN Security Council Resolutions under Chapter VII of the UN Charter to counter and suppress the financing of terrorism and the activities of Countries that threaten peace and international security, pending European Union adoption of the relevant legislation, without prejudice to penal measures undertaken by judicial authorities, the Minister of the Economy and Finance and the Minister of Foreign Affairs, upon request from the Financial Security Committee, may order the freezing of funds and economic resources held by natural persons, legal persons, entities, and groups, designated pursuant to the criteria and procedures established by the above resolutions of the UN Security Council or one of its Committees. Such decree shall identify, on the basis of the provisions laid down in the resolutions, freezing exemptions.

#### *Article 5*

##### *Effects of freezing funds and economic resources*

1. Frozen funds may not be subject to any transfer, provision or use.

2. Frozen economic resources shall not be transferred, handled or used to obtain funds goods or services in any manner, except for the procedures established by Article 12 below.

3. Any acts committed in violation of paragraphs 1 and 2 of the said Article shall be null and void.

4. It is prohibited to make funds and economic resources directly or indirectly available to or on behalf of designated subjects.

5. It is prohibited to deliberately participate in activities directly or indirectly aimed at circumventing freezing measures.

6. Fund freezing shall become binding upon entry into force of Community regulations – i.e. on the day following the date of publication in the Official Gazette of the Italian Republic of the decrees under Article 4 above.

7. Fund freezing shall not prejudice the effect of any seizure or confiscation of funds or economic resources executed under criminal or administrative proceedings.

8. Fund freezing and omission or refusal to perform financial services in good faith and in compliance with this Decree shall not entail any responsibility for natural or legal persons, groups or bodies, their directors or employees, unless there is evidence that the freezing measures were caused by negligence.

### *Article 6* *Public Records Offices Duties*

1. State administrative offices and other public records offices holding information on frozen economic resources shall give notice to the *Ufficio Italiano dei Cambi* and the *Nucleo Speciale Polizia Valutaria of Guardia di Finanza*.

2. As set out under paragraph 1, the Committee shall establish agreements with administrative offices and other public records offices.

### *Article 7* *Notification Obligations*

1. The subjects indicated in Article 2 of Legislative Decree n. 56 of 20 February 2004 shall:

a. Within 30 days of the entry into force of Community regulations or decrees under Article 4, or whereby following such date, within 30 days of the date of withholding of funds and economic resources, notify the *Ufficio Italiano dei Cambi* of measures applied under this Decree, indicating the subjects involved, as well as the amounts and nature of the funds or economic resources;

b. Notify the *Ufficio Italiano dei Cambi* of the operations, reports, and any other information available that can be traced back to the listed subjects;

c. Notify the *Ufficio Italiano dei Cambi*, on the basis of the information by it provided, of the operations, reports, and any other information available that can be traced back to the subjects in the process of being listed, consistently with the Committee indications.

2. For economic resources, notifications under paragraph 1 shall also be forwarded to the *Nucleo Speciale Polizia Valutaria* of *Guardia di Finanza*.

**Article 8**  
***Reporting Obligations***

Abrogated by Legislative Decree n.231/2007

**Article 9**  
***Banca d'Italia Tasks***

Abrogated by Legislative Decree 231/2007

**Article 10**  
***Ufficio Italiano dei Cambi Tasks***

1. *Ufficio Italiano dei Cambi (UIC – Italy’s FIU)* tasks – defined by the laws established to prevent financial markets from being used for money laundering purposes – also aim to counter the financing of terrorism. *UIC* also monitors implementation of financial sanctions adopted by the European Union and/or the Decrees under Article 4 aimed at activities performed by the countries that threaten international peace and security.

2. [Abrogated by Legislative Decree n. 231/2007].

3. [Abrogated by Legislative Decree n. 231/2007].

4. *UIC* shall collect financial information and data on designated subjects, funds, and economic resources subject to freezing, as well as facilitate the circulation of the lists of designated subjects and subsequent amendments.

### *Article 11*

#### *Nucleo Speciale Polizia Valutaria Tasks*

1. Pursuant to existing measures to prevent the use of the financial system for money laundering purposes, the *Nucleo Speciale Polizia Valutaria* of *Guardia di Finanza* tasks also aims to counter the financing of terrorism as well as implement the financial sanctions adopted by the European Union and/or the Decrees under Article 4 aimed at activities performed by countries that threaten international peace and security.
  
2. The *Nucleo Speciale Polizia Valutaria* of *Guardia di Finanza* shall draw up, within 60 days of receipt of the communication under Articles 6 and 7, a detailed report on the typology, legal status, patrimony and use of assets, as well as existence of contracts underway, including unregistered or unwritten contracts. The report shall be transmitted to the Committee, as well as *Agenzia del Demanio*, and *UIC*. In the case of immovable and moveable property, company or enterprise ownership, the *Nucleo Speciale Polizia Valutaria* of *Guardia di Finanza* shall transmit a synthesis of the above report to the relevant offices, so as to enter the freeze measure in the relevant public register.
  
3. In compliance with the procedures under Article 137 and subsequent articles of Italy's Civil Procedural Code, the *Nucleo Speciale Polizia Valutaria* of *Guardia di Finanza* shall inform designated subjects that the concerned economic resources have been frozen and put under *Agenzia del Demanio* control, also specifying prohibition of use thereof and the envisaged sanctions in case of prohibition violation.
  
4. Without prejudice to Italy's Criminal Procedure Code and other laws currently in force, *Guardia di Finanza* officers, in conducting their inspections under Article 3(7) and executing the tasks described in the present Article, shall avail themselves of the rights and powers as per Legislative Decree n. 68 of 19 March 2001 and currency regulations referred to in Italy's Anti-Money Laundering Law.
  
5. The *Nucleo Speciale Polizia Valutaria* may delegate execution of the activities described in the present Decree to other *Guardia di Finanza* divisions.

### *Article 12*

#### *Agenzia del Demanio Tasks*

1. Without prejudice to the measures set out by Legislative Decree n. 385 of 1 September 1993, containing Italy's Consolidated Law on Banking (*Testo Unico Bancario*) and Legislative Decree n. 58 of 24 February 1998, providing Italy's Consolidated Law on Financial Intermediation (*Testo Unico Finanziario*), the *Agenzia del Demanio* shall see to custody, administration, and management of frozen

economic resources. Whereby, in the context of criminal or administrative proceedings, seizure or confiscation measures are adopted for frozen economic resources, the ordering authority shall however see to their management. Pursuant to Law n. 575 of 31 May 1965 or Article 12-*sexies* of Decree n. 306 of 8 June 1992, ratified with amendments by Law n. 356 of 7 August 1992, *Agenzia del Demanio* competence shall be maintained whereby confiscation measures are definitive and whereby freezing measures, and seizure and confiscation acts are revoked.

2. Based upon the elements factually and legally resulting from the report transmitted by the *Nucleo Speciale Polizia Valutaria* of *Guardia di Finanza* and all and any other available information, the *Agenzia del Demanio* shall see, either directly or through appointment of a custodian or administrator, to performing the activities under paragraph 1. To such end, the *Agenzia del Demanio* may perform day-to-day activities either directly or through the appointed administrator. The Committee's approval is instead required for all extraordinary activities.

3. The *Agenzia del Demanio* shall appoint and relieve custodians and administrators. Administrators are selected amongst public administration officials with proven technical skills – pursuant to Article 53 of Legislative Decree n. 165 of 30 March 2001 – and, in the case of agencies and businesses, also amongst lawyers and chartered accountants. In the case of frozen firms or enterprises, administrators shall never be married partner(s) or children to the designated subjects or partner(s) cohabitating with them over the past five years.

4. In executing his/her functions, the administrator shall act as a public official and perform his/her duties compliantly with *Agenzia del Demanio* guidelines. He/she shall provide financial statements and final accounting reports on his/her activities and express, whereby requested, assessment on whether productive activities can be continued or resumed.

5. The administrator and the custodian shall operate under *Agenzia del Demanio* direct supervision.

6. Insurance coverage is provided against job-related risks for administrator, custodian, and staff of the *Agenzia del Demanio*.

7. In the case of frozen businesses conducting entrepreneurial activities, the Committee shall express binding judgment on whether the related activity is to be pursued, thus authorising the opening of special bank accounts in the name of the proceeding. The Committee shall also express binding judgments in the case of real estate requiring extraordinary maintenance interventions.

8. Expenditures required for conservation and administration of frozen assets shall be borne by *Agenzia del Demanio* or by the administrator upon withdrawal of the needed sums at any title. Whereby frozen assets are not sufficient to cover payment of necessary expenditures, the required amounts shall be provided through funds allocated in the *ad-hoc* State Budget item as per Article 15, upon right for *Agenzia del Demanio* to be refunded of the disbursed sums by the owner(s) of frozen assets in the event of revoked freezing measures, as per Article 1(274) of Law n. 311 of 30 December 2004.

9. Upon consultation with the Committee, the administrator compensation shall be established by *Agenzia del Demanio*, taking into account the commercial value of the property being administered, the work performed, professional or local fees, and services provided. Upon consultation with the Committee, the custodian compensation shall be established by *Agenzia del Demanio*, taking into account the work performed, as well as professional or local fees, and services provided. Payments of such compensations shall be covered by management expenditures. Should funds in the abovementioned bank account(s) prove insufficient to cover payment of such expenses, *Agenzia del Demanio* shall see to them in compliance with paragraph 8, with no reimbursement right.

10. Payments under paragraph 9 shall be effected prior to drafting of the final report. In relation to the duration of the administration or custodianship and for other justified reasons, *Agenzia del Demanio* shall grant, upon administrator or custodian's request and consultation with the Committee, advances on the final compensation.

11. Every three months *Agenzia del Demanio* shall provide the Committee with a detailed report on assets status and activities performed.

12. In the event of delisting or authorisation for exemption from freezing of economic resources, the Committee shall request the *Nucleo Speciale Polizia Valutaria* of *Guardia di Finanza* to inform the entitled party in accordance with Article 137 and subsequent articles of Italy's Civil Procedural Code. Such communication requires the entitled party to resume possession of the formerly frozen assets within 180 days, and also inform him/her of provisions set out by paragraphs 13 and 14 listed below. The Committee shall also request the *Nucleo Speciale Polizia Valutaria* to inform the *Agenzia del Demanio*, which, in turn, shall see to returning economic resources to the entitled parties. Whereby specifically requested by the *Agenzia del Demanio*, the economic resources shall be returned upon assistance by the *Nucleo Speciale Polizia Valutaria*. In the case of immovable and moveable property, companies or businesses, such communication shall be transmitted to relevant offices so as to ensure cancellation of the freeze measure from the public register.

13. Following the withdrawal of freeze measures and until the release of economic resources, the *Agenzia del Demanio* shall see to managing such economic resources: a) in compliance with the procedures set out under paragraphs 8 and 9, within the 180-day term as of notice under paragraph 12 above; b) upon expiry of the 180-day term as of notice, pursuant to paragraph 12 above, with charges on the entitled party.

14. Whereby, within eighteen months following the notice under paragraph 12 above, the entitled party does not withdraw the economic resources for which the return was ordered, the *Agenzia del Demanio* shall see to their sale. Regulations pursuant to Presidential Decree (DPR) n. 189 of 13 February 2001 shall apply on registered movable and immovable property.

15. Upon expiry of the 18-month deadline as of notice under paragraph 12 above, real estate and company property are then acquired by the State and managed, mainly for social purposes, compliantly with Law n. 575 of 31 May 1965 and subsequent amendments.

16. The provision establishing sale or acquisition of real estate and company property shall be communicated to the entitled party. Synthesis of the provision shall instead be transmitted to the relevant office so as to enter sale or acquisition in the public register. Sale proceeds shall be deposited by the *Agenzia del Demanio* in a blocked current account. If no claims are made within three months from the sale, the proceeds shall be reverted to the State.

17. If custody of the concerned economic resources implies deterioration risks and/or relevant expenditure, the *Agenzia del Demanio* shall see, upon communication to the entitled parties, to their sale at any time.

18. Coverage of charges provided for by this Article is regulated by Article 15 below.

*18-bis* Whereby the concerned economic resources are under Bank of Italy vigilance, upon Committee's advice, Articles 70, 98 and 100 of Legislative Decree n. 385 of 1 September 1993 (*TUB*) or Article 56 of Legislative Decree n. 58 of 24 February 1998 (*TUF*) shall apply. The Monitoring Committee may be composed of any members below the threshold of three. The administrative procedure for frozen funds shall last for a period of time deemed necessary unless Bank of Italy, once acquired advice from the Committee, undertakes early closure of the measures, without prejudice to the possibility to apply any of the provisions of the above mentioned legislative decrees (consolidated Laws).

Whereby possible, the following provisions of this Article shall apply: paragraph 2 (last sentence), paragraph 7 and paragraphs 11-17, except 13(a). Any competence pertaining to *Agenzia del Demanio* shall be excluded. These provisions shall also apply to intermediaries supervised by other Authorities, consistently with their respective sector discipline.

### ***Article 13***

#### ***Sanctions***

1. Unless accounting for offence, violations of Article 5(1), (2), (4) and (5) shall be punished via a pecuniary sanction not below half the value of the action itself and not above double the action value.

2. Violations of Article 7 shall be punished via pecuniary sanctions of EUR 500-25,000.

3. Verification of violations pursuant to paragraphs 1 and 2 and establishment of related sanctions are regulated by Title II, Chapters I and II, of the Consolidated Law on Foreign Exchange (*Testo Unico in materia valutaria – TUV*), pursuant to Italy's Presidential Decree (DPR) n. 148 of 31 March 1988 and

subsequent amendments, with the exception of Article 30. Provisions for establishment of sanctions pursuant to the present paragraph are not subject to advisory committee opinion as per Article 32 of the above Consolidated Law on Foreign Exchange.

4. Provisions establishing sanctions issued pursuant to this Article shall be transmitted to the Committee.

***Article 14***  
***Safeguarding instruments***

1. Local jurisdiction for appeals against the provisions established by this Decree is entrusted to the Administrative Tribunal of Lazio Region.

2. Whereby, over the appeal, the decision on whether upholding or rejecting it depends on access to acts under investigative or official secrecy, proceedings shall be suspended as long as the acts or their essential contents cannot be transmitted to the Administrative Tribunal of Lazio Region. Should the suspension exceed two years, the Administrative Tribunal of Lazio Region may establish a deadline by which the Committee is required to produce new elements so as to enable proper decision or revoke the appealed provision. Once the term has expired, the Administrative Tribunal of Lazio Region shall decide on the basis of available acts.

***Article 15***  
***Financial Coverage***

1. Any charges deriving from application of Article 12 that cannot be covered compliantly with the terms established in paragraph 8 thereof shall be paid, as of 2007, within the limits of available resources authorised by Article 22(2) of Law n. 29 of 25 January 2006. Italy's Minister of the Economy and Finance is entitled to consistently amend the State Budget via own decree.

2. Adoption of the remaining provisions set forth by this Decree shall not entail new or additional burdens on public finances.

***Article 16***  
***Provisional and Final Provisions***

1. Articles 1, 1-*bis* and 2 of Legislative Decree n. 369 of 12 October 2001, ratified with amendments by Law n. 431 of 14 December 2001, are repealed.
  
2. The Committee shall continue to execute its own tasks pursuant to repealed Article 1 of Legislative Decree n. 369/2001 until issuance of the appointing decree under Article 3(3) and in any case for no longer than 6 months following the entry into force of this Decree.