

Legislative Decree No 195 of 19 November 2008 – Amendments and integrations to currency legislation, implementing Regulation (EC) No 1889/2005

Having regard to Articles 76 and 87 of Italy's Constitution,

Having regard to the Consolidated Currency Act, as per Decree of the President of the Italian Republic No 148 of 31 March 1988,

Having regard to Legislative Decree No 322 of 6 September 1989 on the rules governing Italy's National Statistic System and the reorganisation of Italy's National Institute of Statistics,

Having regard to Decree-Law No 167 of 28 June 1990, converted, with amendments, into Law No 227 of 4 August 1990, and in particular, Article 3 thereof on the obligation of both Italian residents and non-residents to declare physical transfers, to and from foreign countries, of money and transferable securities,

Having regard to Directive 91/308/EEC of the Council of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering,

Having regard to Legislative Decree No 125 of 30 April 1997 laying down rules concerning cross-border circulation of capital in implementation of Directive 91/308/EEC,

Having regard to Legislative Decree No 153 of 26 May 1997 on the integration and implementation of Directive 91/308/EEC on money laundering,

Having regard to Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 on the modification of Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering,

Having regard to Legislative Decree No 196 of 30 June 2003 on Italy's Personal Data Protection Code,

Having regard to Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community,

Having regard to Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and/or for financing terrorism,

Having regard to Legislative Decree No 109 of 22 June 2007 laying down provisions to prevent, counter and repress the financing of terrorism and the activity of Countries that threaten peace and international security, implementing Directive 2005/60/EC,

Having regard to Legislative Decree No 231 of 21 November 2007 on the implementation of Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, and of Directive 2006/70/EC laying down its implementing measures for Directive 2005/60/EC,

Having regard to Law No 34 of 25 February 2008, laying down provisions for the fulfilment of obligations deriving from Italy's membership of the European Community (2007 Community Law), with special reference to Article 15,

Having regard to Decree-Law No 112 of 25 June 2008, ratified, with amendments, by Law No 133 of 6 August 2008 laying down urgent provisions for economic development, simplification, competitiveness, stabilisation of public finance, and fiscal balance,

Having regard to the preliminary Decision of Italy's Council of Ministers, adopted at the Meeting session of 19 September 2008,

Following consultation with the relevant Commissions of the Chamber of Deputies and of the Senate of the Italian Republic,

Having regard to the Decision of Italy's Council of Ministers, adopted at the 19 November 2008 Meeting session,

Upon proposal of Italy's Minister for Foreign Affairs – European Policy, and Minister of Economy and Finance, in agreement with Italy's Ministers of Foreign Affairs and of Justice,

Italy's President of the Republic

ISSUES

the present Legislative Decree:

Article 1 - Definitions

1. For the purposes of this Decree, the following definitions apply:

- a) "relevant authorities": Italy's Customs Agency (*Agenzia delle Dogane*), Ministry of Economy and Finance, Financial Information Unit, and *Guardia di Finanza*, each for the respective responsibilities outlined in the present Decree;
- b) "personal data": first and last names, place and date of birth, citizenship, state and municipality of residency, tax identification number (*Codice Fiscale*); or, in the case of

subjects other than physical persons: official name, legal headquarters, tax identification number (*Codice Fiscale*) or VAT registration number;

c) “cash”:

1) currency (banknotes and coins that are in circulation as a medium of exchange);

2) bearer-negotiable instruments including monetary instruments in bearer form such as traveller’s cheques, negotiable instruments (including cheques, promissory notes and money orders) that are either in bearer form, endorsed without restriction, made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery; and incomplete instruments (including cheques, promissory notes and money orders) signed, but with the payee's name omitted;

d) “financing of terrorism”: the activities defined by Article 1(1)(a) of Legislative Decree No 109 of 22 June 2007;

e) “money laundering”: the activities defined under Article 2(1)-(2)-(3) of Legislative Decree No 231 of 21 November 2007;

2. The Minister of Economy and Finance may, by own decree, amend or integrate letter c) of paragraph 1.

Article 2 - Objectives

1. The measures laid down in the present Decree aim, in implementation of Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005, to counter the introduction of the proceeds of illegal activities into the economic and financial system, so as to protect harmonious, balanced, and sustainable development of economic transactions and the correct functioning of the domestic market; as well as to coordinate the provisions laid down in the aforementioned Regulation with the regulation established by Italy’s Legislative Decree No 231 of 21 November 2007 in order to institute an adequate system of surveillance on cross-border movement of cash.

2. The aim of said measures is to identify, through obligation to declare, the movement of cash entering or exiting the European Community. The measures also extend to the movement of cash between Italy and the other EU Countries.

3. Surveillance is also carried out through coordination and exchange of information between relevant authorities, via information technology aids.

4. Information may also be collected and used for statistical purposes, in the context of respective responsibilities and according to the terms and conditions established by the present Decree.

Article 3 - *Obligation to Declare*

1. Any natural person entering or leaving the Country and carrying cash of a value equal to or greater than EUR 10,000 shall declare that sum to Italy's Customs Agency. The obligation to declare shall not have been fulfilled if the information provided is incorrect or incomplete.

2. The declaration, which shall conform to the model annexed to the present Decree, can be, alternatively:

a) transmitted electronically, prior to crossing the border, according to the terms and instructions published on the website of Italy's Customs Agency. The individual making the declaration shall carry a copy thereof and the registration number assigned to it by the Customs' electronic system;

b) submitted in writing, at the moment of entry or exit, to the Customs Office at/near the border, which shall provide a copy of the declaration along with a confirmation of its receipt by the Office. The individual making the declaration shall carry copy thereof along with the confirmation of receipt;

3. Paragraph 1 also applies to transfers of cash, to and from foreign countries, through the mail or equivalent. The declaration, which shall conform to the model form annexed to the present Decree, shall be submitted to a post office (*Poste Italiane s.p.a.*) or to providers of delivery services in accordance with Legislative Decree No 261 of 22 July 1999 upon sending or within 48 hours of receipt. In determining the 48-hour deadline, Sundays and public holidays are to be excluded.

4. Post offices and providers of delivery services referred to in Legislative Decree No 261 of 22 July 1999 which receive the declaration shall provide a receipt to the individual submitting the declaration, and shall transmit the declaration electronically to Italy's Customs Agency within seven days.

5. The provisions of the present Decree do not apply to transfers of postal money orders or promissory notes, or to post/bank/cashier's cheques drawing on or issued by banks or post offices (*Poste Italiane s.p.a.*) that bear the name of the payee and are marked as "non-transferable", without prejudice to the application of Article 49 of Legislative Decree No 231 of 21 November 2007, and subsequent amendments.

6. Italy's Minister of Economy and Finance may, by own decree, amend the model form annexed to the present Decree.

Article 4 - Powers of Verification and Official Notification of Violation

1. Customs Agency officers shall verify any violations to the present Decree by exercising the powers and faculties attributed to them by: Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008; Decree of the President of the Italian Republic No 43 of 23 January 1973; Article 32(6) of Decree-Law No 331 of 30 August 1993, ratified, with amendments, by Law No 427 of 29 October 1993; and Article 28(1)(a) of the Decree of the President of the Italian Republic No 148 of 31 March 1988.
2. *Guardia di Finanza* officers shall verify any violations to the present Decree by exercising the powers and faculties attributed to them by: Legislative Decree No 68 of 19 March 2001; Article 28(1)(a) of the Decree of the President of the Italian Republic No 148 of 31 March 1988; Law No 4 of 7 January 1929; and fiscal laws, whereby applicable.
3. The officers belonging to the *Nucleo Speciale di Polizia Valutaria* (special branch of *Guardia di Finanza*) shall also exercise the powers attributed to them by Article 25 of the Decree of the President of the Italian Republic No 148 of 31 March 1988.
4. For the purposes of the official notification of any violations to the present Decree, the provisions under Article 29(1)-(2)-(3)-(4) of the Decree of the President of the Italian Republic No 148 of 31 March 1988 shall apply, whereby compatible.
5. Copy of the official notifications issued by *Guardia di Finanza* officers shall be transmitted to Italy's Customs Agency.
6. The official notifications shall be registered alphabetically by name, maintained for a ten-year period, and electronically transmitted to Italy's Ministry of Economy and Finance within seven days from the date of the official notification for the purposes of penalty proceedings as per the present Decree.
7. In the event that, during the course of the verifications prescribed by the present Article, facts and situations emerge that could be connected to money laundering and/or the financing of terrorism, also for amounts of cash lower than the threshold established by Article 3, Italy's Customs Agency shall maintain such information, along with the personal data of the individual involved and the data relevant to the means of transport used, and shall provide such information and data to Italy's Financial Information Unit (FIU), which shall execute its relevant institutional mandate.

Article 5 - Collaboration and Exchange of Information

1. Italy's Customs Agency and *Guardia di Finanza* shall exchange information collected in accordance with the present Decree with their counterparts in other EU Member States, should facts or situations emerge showing that sums of cash are connected to activities of money laundering and/or financing of terrorism.
2. Should facts and situations emerge showing that sums of cash are the proceed of fraud or any other illicit activity harmful to the financial interests of the European Community, the information referred to in paragraph 1 shall be transmitted by Italy's Customs Agency and *Guardia di Finanza* to the European Commission.
3. Italy's Customs Agency and *Guardia di Finanza* shall exchange information gathered in accordance with the present Decree with their counterparts in third-party countries, in the framework of mutual administrative assistance. Italy's Customs Agency and *Guardia di Finanza* shall communicate any such exchange of information with third-party countries to Italy's Ministry of Economy and Finance, which shall notify the European Commission, should the aforementioned be of any particular interest for the implementation of Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005.
4. The exchange of information referred to in the present Article shall comply with the provisions of national and Community regulations for protection of personal data that govern the transfer of data abroad and on condition of reciprocity, also with regard to information confidentiality. The provisions of Article 9(3)-(4) of Legislative Decree no 231 of 21 November 2007 shall apply.

Article 6 - Seizure

1. In the event of violation of the provisions established by Article 3, the cash transferred or attempted to be transferred, in the amount equal to or greater than EUR 10,000, shall be seized by Italy's Customs Agency or *Guardia di Finanza*, first and foremost in the form of banknotes and coins having legal tender and, whereby unavailable or insufficient, in the form of easily and readily converted negotiable instruments payable to the bearer.
2. The seizure shall be carried out up to a limit of:
 - a) Thirty percent of the amount exceeding the threshold under paragraph 1 of the present Article, whereby not exceeding EUR 10,000;
 - b) Fifty percent of the amount exceeding the threshold under paragraph 1 of the present Article, in all other cases.

2-*bis*. The cash money seized shall serve as the primary guarantee, above all other forms of credit, for the payment of relevant fines.

3. The limit referred to in paragraph 2 shall not apply whereby:

- a) the object confiscated is not divisible;
- b) the perpetrator of the violations verified is unknown;
- c) due to the nature and the entity of the cash transferred or attempted to be transferred, the related value in EUR is not easily determined at the moment of seizure.

4. In the cases referred to in letters b) and c) of paragraph 3, should the perpetrator of the violations be identified, or, the value in EUR of the seized money be determined, the amounts exceeding the limit indicated in paragraph 2 shall be returned to those entitled to the said amounts.

5. Interested parties may file an appeal against seizure to Italy's Ministry of Economy and Finance within ten days of the date of seizure. The Ministry of Economy and Finance shall rule on the appeal by way of reasoned order within sixty days from the date of receipt of the appeal and of the relevant notification of violation.

6. The interested party may obtain from Italy's Ministry of Economy and Finance the restitution of the cash seized, after lodging a security at the Provincial Treasury of the State or providing a guarantee issued by bank/insurance company or financial intermediary authorised to issue guarantees to the Public Administration. As a guarantee of payment of fines, the bail or guarantee shall be in the amount equal to the maximum fine plus expenses.

7. The cash seized pursuant to the present Article shall go into the fund referred to in Article 61(23) of Decree-Law No 112 of 25 June 2008, ratified, with amendments, by Law No 133 of 6 August 2008.

8. Upon conclusion of the sanction proceeding, the cash seized but not claimed for the payment of any fines imposed shall be returned to those entitled who file a petition within five years of seizure.

Article 7 - Option of Immediate Payment of Fine

1. The subject of an official notification of violation may request settlement of the offence in the form of a reduced fine equal to:

- a) Five percent of the cash money exceeding the threshold referred to in Article 3 whereby the non-declared excess is lower than or equal to EUR 10,000;

- b) Fifteen percent of the cash exceeding the threshold referred to in Article 3 whereby the non-declared excess is lower than or equal to EUR 40,000.

1-*bis*. The amount paid shall however be not lower than EUR 200.

1-*ter*. Payment of the fine can be made to Italy's Customs Agency or *Guardia di Finanza* upon notification of violation, or to Italy's Ministry of Economy and Finance pursuant to paragraph 4, within ten days from the moment of notification. Requests for reduced fines received by *Guardia di Finanza*, with evidence of any payments already made, shall be sent to Italy's Customs Agency.

2. Italy's Customs Agency and *Guardia di Finanza* shall provide the Ministry of Economy and Finance, together with a copy of the official notification of violation, with the request to pay a reduced fine, or, in the case of simultaneous payment, evidence that payment has been made.

3. The reduced payment settles the offence. In the event of simultaneous payment, the seizure shall not take place. If payment is made within ten days from the official notification, the Ministry of Economy and Finance shall see to returning the seized amounts within ten days of receipt of the evidence of payment.

4. The terms and conditions of payment of the amounts referred to in paragraph 1 are established by decree issued by Italy's Minister of Economy and Finance, upon consultation of the *Guardia di Finanza* and the Customs Agency, to be adopted within one hundred and eighty days from the date on which the present Decree enters into force. Until the date on which the decree issued by the Minister of Economy and Finance enters into force, the terms and conditions currently in force shall apply.

5. Settlement in the form of a reduced fine shall be precluded in the following cases:

- a) The amount of cash exceeding the threshold referred to in Article 3 exceeds EUR 40,000;
- b) The subject of the official notification of violation has already made use, as to the violation referred to in Article 3, of the immediate payment of fine option within five years preceding the receipt of official notification of the offence in question.

6. In the event that any of the required conditions are not satisfied, the immediate payment of fine option shall be null and void, even if payment has been accepted by the notifying authorities. The amounts received shall then be held in guarantee and, whereby a fine is imposed, shall be applied.

Article 8 - Analysis and Levying of Fines

1. Anyone who does not avail himself/herself of the option provided for by Article 7 may submit a written defence and documents to Italy's Ministry of Economy and Finance, as well as request to be heard by the latter, within thirty days from the date of receipt of the official notification of violation.
2. The Ministry of Economy and Finance, having heard the opinion of the Commission referred to in Article 1 of the Decree of the President of the Italian Republic No 144 of 14 May 2007, shall determine, by way of own reasoned decree, the amount due for the violation and shall consistently order payment.
3. The Decree referred to in paragraph 2 shall be adopted by the Ministry of Economy and Finance within the peremptory deadline of one-hundred and eighty days from the date of receipt of the official notification.
4. The Administration may require technical assessments from appropriate bodies and agencies, which must comply within forty-five days of receipt of the written request.
5. In the event that a hearing is requested, in accordance with paragraph 1, or in the event that technical assessments are required, as per paragraph 4, the timeframe established in paragraph 3 shall be extended by sixty days.
6. Failure to issue the above Ministry of Economy and Finance decree within the timeframe indicated in paragraph 3 implies the automatic settlement of the obligation to pay any amounts owed for the violations referred to in the official notifications.
7. The above Ministry of Economy and Finance decree may be appealed before the Court of the place in which the violation was committed, in accordance with and within the timeframe established by Article 22 and following articles of Law No 689 of 24 November 1981. Judgement is regulated by Article 23 of Law No 689 of 24 November 1981.
8. The Ministry of Economy and Finance decree imposing the fine shall by all rights be an enforcement order. Article 18(6) of Law No 689 of 24 November 1981 shall apply.

Article 9 - Penalties

1. Violation of the provisions referred to in Article 3 is punishable by means of an administrative sanction (fine), for a minimum of EUR 300:
 - a) Ten-Thirty percent of the amount transferred or attempted to be transferred exceeding the threshold referred to in Article 3, whereby such value does not exceed EUR 10,000;

- b) Thirty-Fifty percent of the amount transferred or attempted to be transferred exceeding the threshold referred to in Article 3, whereby such value exceeds EUR 10,000.

2. For the purposes of applying the fines referred to in paragraph 1, the following articles shall apply: Article 23(1) and (3), Article 23-*bis*, and Article 24 of Decree of the President of the Italian Republic No 148 of 31 March 1988.

Article 10 - Annual Report

1. *Guardia di Finanza*, pursuant to Article 5(3) of Legislative Decree No 231 of 21 November 2007, and Italy's Customs Agency shall submit to the Financial Security Committee, by 30 March of every year, analytical reports on their respective activities aimed at preventing and verifying violations referred to in the present decree.

2. The reports referred to in paragraph 1 shall contain, at the very least, the number of violations of Article 3, the total number of official notifications of violation as per Article 4, the amount of cash seized as per Article 6, the quantity of information exchanged as per Article 5, and the total amount of immediate payments as per Article 7.

3. The Financial Security Committee shall utilise the information referred to in paragraphs 1 and 2 to draw up a report for the Minister of Economy and Finance, in accordance with Article 5(3)(b) of Legislative Decree No 231 of 21 November 2007.

4. The report referred to in paragraph 3 shall be an integral part of the report the Minister of Economy and Finance shall present to Parliament pursuant to Article 5(1) of Legislative Decree No 231 of 21 November 2007.

Article 11 - Data for Informational and Statistical Purposes

1. The Bank of Italy shall compile and publish statistics related to the balance of payments and to Italy's investment position abroad, and shall contribute to the compilation of the balance of payments and the investment position abroad of the European Union and the Euro Area. For statistical purposes regarding the compilation of the balance of payments and other financial and monetary indicators to be used for economic analysis, operators residing in Italy, as defined by Council Regulation (EC) No 2533/1998 of 23 November 1998, are required to submit necessary data and information within the set deadlines and by means of the transmission means established by the Bank of Italy by way of own official provision.

2. Without prejudice to the provisions laid down in special laws, for the statistical purposes referred to in paragraph 1, the Bank of Italy may request information and data

from banks and other financial intermediaries relatively to their own activities. The deadlines and means of transmission for the information collected in accordance with the present paragraph will be established by Bank of Italy provision.

3. The data and information referred to in paragraphs 1 and 2 can also be acquired for the statistical purposes referred to in paragraph 1, on the basis of *ad-hoc* conventions with public administrations, agencies, and bodies.

4. The information and data referred to in paragraphs 1 and 2 shall be treated in accordance with national and Community provisions for statistical reporting of balance of payments and compliantly with regulations on the protection of personal data. The information and data referred to in paragraphs 1 and 2 shall be considered confidential until publication. Confidentiality may not be invoked against judicial authorities whereby the information requested is necessary for investigations or proceedings related to violations sanctioned by criminal law.

5. For the statistical purposes referred to in paragraph 1 and compliantly with the regulations aimed at protecting statistical confidentiality and with the relevant national and Community provisions for personal data protection, information, statistical data and elaborations may be provided by the Bank of Italy to the National Statistic System agencies, the European Commission, the European Central Bank and ESCB national central banks, and other national and international public bodies, as well as, subject to reimbursement for costs incurred, to research entities and other operators.

6. Failure to comply with the provisions under paragraph 1 shall be punished by means of a fine ranging from 500 EUR to 10,000 EUR. Criteria for imposing fines are established by Bank of Italy provisions. The Bank of Italy, having verified an offence and evaluated the explanations presented by the interested parties within ninety days of the date of official notification of the offence, and having considered the entirety of the information obtained, shall apply penalties by way of own reasoned provision. The provisions under Law No 698 of 24 November 1981 are compatible and shall apply, with the exception of Article 16.

7. Without prejudice to special laws, failure to comply with the provisions under paragraph 2 shall be punished with a fine ranging from 500 EUR to 10,000 EUR. The procedure established by Article 145 of Legislative Decree No 385 of 1 September 1993 shall apply.

8. For the verification of the violations referred to in paragraphs 1 and 2, the Bank of Italy may request collaboration from other authorities.

Article 12 - Amendments to Regulations Currently in Force

1. Paragraph 4 of Article 5 of Law No 7 of 17 January 2000 is replaced by the following: "The threshold established by Article 1(2) of the present Law may be changed by way of Minister of Economy and Finance decree".
2. In Article 5 of Legislative Decree No 125 of 30 April 1997 the words: "3(1), 5(3), and 5-ter(2)" shall be deleted.

Article 13 - Repealed Regulations

1. The following articles shall be repealed:
 - a) Articles 3, 3-*bis*, 3-*ter*, 5(3), and 5-*ter* of Decree-Law No 167 of 28 June 1990, ratified, with amendments, by Law No 227 of 4 August 1990 and subsequent amendments;
 - b) Articles 21 and 40 of Decree of the President of the Italian Republic No 148 of 31 March 1988;
 - c) Article 4(5) of Legislative Decree No 322 of 6 September 1989;
 - d) Articles 4 and 6 of Legislative Decree No 125 of 30 April 1997.

Article 14 - Coordination Rules

1. In Article 5(8-*bis*) of Decree-Law No 167 of 28 June 1990, ratified, with amendments, by Law No 227 of 4 August 1990 and subsequent amendments, for: "Article 3", the following shall be intended: "Article 3 of the present Decree" and for: "money and transferable securities", the following shall be intended: "cash".
2. In Article 29(2) of Decree of the President of the Italian Republic No 148 of 31 March 1988, for: "Article 30", the following shall be intended: "Article 30 of the present Decree."
3. For violations of Article 21 of the Decree of the President of the Italian Republic No 148 of 31 March 1988, already verified on the date the present Decree goes into effect, the provisions of Title II of the same Decree of the President of the Italian Republic No 148 of 31 March 1988 shall apply.

4. For violations of Article 3 of Decree-Law No 167 of 28 June 1990, ratified, with amendments, by Law No 227 of 4 August 1990 and subsequent amendments, already verified on the date the present Decree goes into effect, the provisions of Article 5-ter of Decree-Law No 167 of 28 June 1990, ratified, with amendments, by Law No 277 of 4 August 1990 and subsequent amendments, shall apply.

Article 15 - Financial Provisions

1. The implementation of the present Decree shall not create any new or increased burden on public finances.
2. Italy's Public Administrations shall carry out the tasks derived from the provisions of the present Decree by means of the human resources, instruments, and funds available as per legislation currently in force.

Article 16 - Entry into Effect and Validity of the Provisions

1. The present Decree shall enter into effect the day following its publication in the Official Gazette of the Italian Republic.
2. The provisions of the present Decree shall be valid starting from 1 January 2009.

The present Decree, bearing the seal of the Italian State, shall be recorded in the Official Collection of Regulatory Acts of the Italian Republic. It is mandatory for all to observe and enforce it.

Rome, 19 November 2008

NAPOLITANO

Berlusconi, President of the Council of Ministers
Ronchi, Minister of European Policy
Tremonti, Minister of Economy and Finance
Frattoni, Minister of Foreign Affairs
Alfano, Minister of Justice

Witnessed by the Keeper of the Seal: Alfano