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Legislative Decree No. 186/2026: new developments regarding asset forfeiture measures.

On October 31, 2026, Legislative Decree No. 186 of September 25, 2026, entered into force. This decree, implementing Directive (EU) 2024/1260, introduced significant changes regarding asset forfeiture measures, the main features of which are summarized below.

Expansion of the Scope of Extended Confiscation.

The decree amends the provisions on extended confiscation pursuant to Article 240 *bis* of the Criminal Code, applicable to money, property, and other assets for which the convicted person cannot account for the origin—even if they are the owner or have access to them—whose value is disproportionate to their income or economic activity.

Article 2 of Legislative Decree 186/2026 expands the list of offenses to which this security measure applies, adding: i) incitement to engage in pedophilia and child pornography under Article 414-*bis* of the Italian Criminal Code; ii) the unlawful possession, distribution, and installation of equipment, devices, or computer programs intended to damage or disrupt a computer or telecommunications system pursuant to Article 635 *quater*.1 of the Italian Criminal Code; iii) aggravated computer fraud pursuant to Article 640 *ter,* paragraph 2, of the Italian Criminal Code. The same article also codifies, as a limitation on its application, the principle of temporal correlation: the measure applies only where "*the temporal correlation between the time of acquisition of the assets and the time of commission of the criminal act*" is established.

Introduction of the new Articles 240 ter and 240 quater of the Italian Criminal Code

The decree introduces Articles 240 ter and 240 quater of the Italian Criminal Code, concerning "*confiscation of equivalent value of instrumental assets in specific cases*" and "*confiscation of assets from third parties in specific cases*".

The first provision stipulates that, in the event of a conviction or plea bargain for certain crimes—including money laundering (Article 648 *bis* of the Italian Criminal Code), the use of money, property, or benefits of illicit origin (Article 648 *ter* of the Italian Criminal Code), and offenses committed for the purpose of terrorism or subversion of the constitutional order—assets or other benefits available to the offender shall be confiscated in an amount equivalent to the value of the assets instrumental to the offense, if it is not possible to confiscate the latter. In determining their value, the judge takes into account the seriousness of the offense and the economic and financial circumstances of the convicted person.

Article 240 *quater* of the Italian Criminal Code provides, in strictly defined circumstances, that when the proceeds, proceeds, or profits of the crime are to be confiscated and "*the defendant does not have assets of equivalent value at his or her disposal, even through a third party*", the judge may confiscate assets transferred to third parties not involved in the crime for the purpose of evading the measure, provided it is established that the third party, at the time of the transfer, was aware of the defendant's intentions.

Further Amendments to the Criminal Code.

Article 2 of the decree also amends the forfeiture measures provided for specific crimes. With regard to criminal association (Article 416 of the Penal Code), a new paragraph provides that, in the event of a conviction or plea bargain, if the association is aimed at committing offenses punishable by imprisonment of not less than four years, the property that was used or intended to be used to commit the offense, as well as that which constitutes the proceeds, price, or profit thereof, shall be subject to confiscation, and confiscation by equivalent value shall be ordered when direct confiscation is not possible. For mafia-type criminal organizations, paragraph 7 of Article 416*bis* of the Italian Criminal Code now expressly provides for confiscation by equivalent value.

As for crimes against the individual, confiscation pursuant to Article 600*septies* of the Italian Criminal Code extends to property used or intended for the commission of the principal offenses of sexual exploitation of minors and human trafficking; Similarly, for money laundering, reuse of proceeds, and self-laundering, Art. 648 quater of the Italian Criminal Code now includes among the assets subject to forfeiture those instrumental to the commission of the offense.

Provisions Regarding Pre-Confiscation Sales.

The decree introduces a new Article 151 bis into the Consolidated Law on Judicial Costs (Presidential Decree No. 115/2002), dedicated to "*sale prior to confiscation*".

If the seized property is at risk of deterioration or if its custody entails significant financial burdens, its sale may be ordered. The judge notifies the public prosecutor and the party concerned, who may request a hearing within a fifteen-day deadline; This is followed by a hearing in chambers pursuant to Article 127 of the Code of Criminal Procedure, and the judge issues an order, which may be appealed pursuant to Article 322*bis* of the Code of Criminal Procedure. An appeal does not suspend enforcement, unless the judge, where the sale could result in serious and irreparable harm, orders otherwise by a reasoned decree. The precautionary restraint does not cease to apply but is transferred to the proceeds of the sale.

Amendments to the Anti-Mafia Code.

The decree amends paragraph 5-*ter* of Article 40 of Legislative Decree No. 159/2011 and introduces Article 40-*bis*. Paragraph 5ter now allows the court—if it is not required to revoke the seizure and upon request by the judicial administrator, the ANBSC, or the interested party—to order the sale of seized assets that cannot be administered without the risk of deterioration or significant economic losses; movable property that is worthless, unproductive, objectively unusable, and non-transferable may instead be destroyed or demolished.

The new Article 40 *bis* introduces a separate set of rules governing pre-confiscation sales, which were previously absent from the Anti-Mafia Code and are analogous to those in the Consolidated Law on Judicial Costs. The encumbrance is transferred to the proceeds of the sale, which are paid into the Single Justice Fund and set aside until the confiscation order becomes final; if confiscation does not occur, the proceeds are returned to the rightful owner with accrued interest. In the event of an appeal, the Court of Appeals may suspend enforcement if the sale could result in serious and irreparable harm to the party concerned.

Amendments to the Code of Criminal Procedure.

Article 3 of the decree amends Articles 371 *bis* and 430 of the Code of Criminal Procedure and introduces the new Article 536 *bis* of the Code of Criminal Procedure. Article 371*bis* of the Code of Criminal Procedure expands the prerogatives of the National Anti-Mafia and Anti-Terrorism Prosecutor, who may also exercise coordination powers in identifying assets subject to forfeiture. In Article 430 of the Code of Criminal Procedure, concerning supplementary investigative activities following the decree ordering the trial, the new paragraph 1 *bis* allows the public prosecutor to carry out activities aimed at identifying assets subject to mandatory confiscation, in the cases provided for by law.

Finally, Article 536 *bis* of the Code of Criminal Procedure provides that, when confiscation by equivalent value is to be ordered, "*the judge, in the conviction judgment, shall specifically identify the assets of equivalent value subject to forfeiture or determine the sum of money of equivalent value to be forfeited*", thereby bringing forward to the sentencing phase what was previously deferred to the enforcement phase.

Further amendments to the Civil Code and special laws.

Article 5 of the decree introduces Article 2635 *quater* of the Civil Code, pursuant to which, notwithstanding Article 2641, paragraph 3, of the Civil Code, in the event of a conviction for corruption between private individuals and incitement to corruption between pri-

vate individuals (Articles 2635 and 2635 *bis* of the Civil Code), confiscation is always ordered, even in the cases referred to in Article 240, paragraph 1, of the Criminal Code: the confiscation of property used or intended for the commission of the offense and of property constituting the proceeds or profits thereof—which is generally optional—thus becomes mandatory. Articles 6–9, on the other hand, adapt the special provisions governing confiscation: i) regarding narcotics (Presidential Decree No. 309/1990); (ii) regarding immigration (Legislative Decree No. 286/1998); (iii) regarding environmental matters (Legislative Decree No. 152/2006).

Finally, on the preventive front, the new Article 24 *bis* of Legislative Decree No. 159/2011 requires that the temporal correlation between the acquisition of assets and the manifestation of a threat to society be established and justified, thereby transposing the criterion developed for extended forfeiture into preventive forfeiture.

Management of the portfolio of seized crypto-assets.

Articles 12–14 of the decree fill a regulatory gap regarding the seizure and custody of crypto-assets. Seizure is carried out by transferring the crypto-assets and, where possible, the related means of access—including private cryptographic keys—to the Single Justice Fund; if this is technically impossible, any other procedure suitable for ensuring that the proceeding authority has exclusive custody and control of the asset shall be used.

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