



REPUBLIC OF SAN MARINO

PARLIAMENTARY DECREE no. 164 of 23 September 2021

**We the Captains Regent
of the Most Serene Republic of San Marino**

*Having regard to the provisions of Article 5, paragraph 3 of Constitutional Law no. 185/2005 and of Article 11, paragraph 2 of Qualified Law no. 186/2005;
Having regard to Decision no. 20 of the Great and General Council adopted on 15 September 2021;
Hereby promulgate and order the publication of:*

**RATIFICATION OF THE AGREEMENT BETWEEN THE GOVERNMENT OF THE
ITALIAN REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF SAN MARINO
CONCERNING THE RECOGNITION AND ENFORCEMENT OF JUDICIAL DECISIONS
ON SEIZURE AND CONFISCATION AND THE USE OF CONFISCATED ASSETS**

Single Article

The Agreement between the Government of the Italian Republic and the Government of the Republic of San Marino concerning the recognition and enforcement of judicial decisions on seizure and confiscation and the use of confiscated assets (Annex A), signed in Rome on 26 May 2021, shall be fully and completely enforced as of the entry into force of the Agreement, in accordance with the provisions of Article 12 thereof.

Done at Our Residence, on 23 September 2021/1721 since the Foundation of the Republic

THE CAPTAINS REGENT
Gian Carlo Venturini – Marco Nicolini

**THE MINISTER OF
INTERNAL AFFAIRS**
Elena Tonnini

Annex “A” to Parliamentary Decree no. 164 of 23 September 2021

Agreement between the Government of the Italian Republic and the Government of the Republic of San Marino concerning the recognition and enforcement of judicial decisions on seizure and confiscation and the use of confiscated assets.

The Government of the Republic of San Marino and the Government of the Italian Republic (hereinafter referred to as the “Parties”);

Intending to improve the effectiveness of existing judicial cooperation through international instruments in force;

Having regard to Chapter III of the Convention on Friendship and Good Neighbourhood between San Marino and Italy concluded on 31 March 1939;

Recalling, in particular, the European Convention on Mutual Assistance in Criminal Matters signed in Strasbourg in 1959, the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime signed in Strasbourg in 1990 and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism signed in Warsaw in 2005;

Confirming, in particular, the commitment to facilitate mutual recognition and enforcement of decisions on seizure and confiscation of direct and indirect illicit proceeds, so that the requested Party recognises and enforces, in its territory, final confiscation measures issued by the judicial authority of the requesting Party, also for the purpose of sharing the confiscated assets or the proceeds of their sale between the Parties;

Desiring, to this end, to conclude an Agreement for the adoption of all measures necessary to recognise and enforce the decisions on seizure and confiscation and to share the confiscated assets or the proceeds of their sale between the Parties;

Hereby agree on the following:

Article 1
(Definitions)

For the purposes of this Agreement,

- (a) “seizure” means any precautionary measure issued by the Judicial Authority (including, for Italy, seizure referred to in the Code of anti-mafia laws and prevention measures under Legislative Decree no. 159 of 6.9.2011) whereby the proceeds, products and instrumentalities of crime or values equivalent to such proceeds, products and instrumentalities or, in any case, assets

deriving, either directly or indirectly, from illicit activities and the profits thereof are removed from the owner or holder;

- (b) “confiscation” means any final measure issued by the Judicial Authority (including, for Italy, confiscation referred to in the Code of anti-mafia laws and prevention measures under Legislative Decree no. 159 of 6.9.2011) whereby the proceeds, products and instrumentalities of crime or values equivalent to such proceeds, products and instrumentalities or, in any case, assets deriving, either directly or indirectly, from illicit activities and the profits thereof are removed from the owner or holder and are coercively transferred to the State;
- (c) “cooperation” means any form of assistance that is necessary to recognise and enforce in the territory of a contracting Party a seizure or confiscation order issued by the Judicial Authority of the other contracting Party;
- (d) “assets” means assets of any kind, which, according to what established by the Judicial Authority of the requesting Party, are the proceeds or product of a crime; are equivalent to such proceeds or product, in whole or in part; are the instrumentalities of a crime; are considered to be derived, either directly or indirectly, from illicit activities or to be the profits of such assets.

Article 2

(Measures subsequent to recognition and enforcement)

The requested Party that, while providing appropriate and necessary cooperation, takes possession of seized or confiscated assets, following the recognition and enforcement of a seizure or confiscation order issued by the competent Authority of the other Party, takes all necessary measures to prevent the dissipation of such assets. To this end, the requested Party contacts the Authorities of the requesting Party to obtain information on the risks of dissipation of assets and to agree on how best to enforce the seizure or confiscation measures and to decide whether to appoint a person in charge of managing the seized or confiscated assets in case of companies, businesses, company units, shares or other assets that require to be managed due to their nature or use.

Article 3

(Keeping, use and sharing of assets)

1. Until the requesting Party notifies the requested Party of the issuance of a confiscation order, seized assets remain in the possession of the requested Party, which keeps them and prevents their dissipation, while ensuring, as far as possible, that they produce profits.
2. In the absence of another agreement, in which the Parties take into account the quantity and quality of the cooperation provided, as well as its effectiveness, the sums obtained following the enforcement of the confiscation orders are allocated by the requested Party, after deduction of costs, interest and other charges, as follows:
 - (a) if the proceeds from the enforcement of the confiscation order do not exceed 10,000 Euro, this sum is entirely allocated to the requested Party;
 - (b) if the proceeds from the enforcement of the confiscation order are equal to or exceed 10,000 Euro, the requested Party transfers to the requesting Party 50 percent of such proceeds.

3. Unless otherwise agreed between the Parties, the assets deriving from the enforcement of the confiscation order are allocated by the requested Party as follows:
 - (a) the assets are sold, in which case the proceeds of the sale are allocated or shared in accordance with paragraph 2;
 - (b) where it is not convenient to dispose of the assets, they are transferred to the requesting Party, which may refuse such transfer, while indemnifying the requested Party against any charges and expenses;
 - (c) in the event that it is not possible to apply the provisions referred to in (a) and (b) above, the assets may be used otherwise, preferably for social purposes, on the basis of a specific agreement between the Parties.
4. By way of derogation from the provisions of the preceding paragraphs and Articles, in the event that the assets subject to the seizure or confiscation order are part of the State property or non-transferable property of the requested Party, the latter has the right to refuse to recognise and enforce said order, and in any case the assets continue to be available to the requested Party without having to pay anything to the requesting Party. In the event that the assets subject to the seizure or confiscation order are part of the State property or non-transferable property of the requesting Party, the latter is entitled to be returned the assets without having to pay anything to the requested Party.

Article 4

(Payment of shared sums)

1. Unless otherwise agreed between the Parties, the sums to be paid pursuant to Article 3 of this Agreement are paid in the currency of the requested Party by bank transfer or other means to electronically transfer funds.
2. The payment of such sums is made:
 - (a) to the treasury account of the State opened with the Central Bank of the Republic of San Marino, when the beneficiary Party is the Republic of San Marino; or
 - (b) to the Single Justice Fund, when the beneficiary Party is the Italian Republic;
 - (c) In the case of Article 7 of this Agreement, to the other recipient designated as being entitled by the beneficiary Party through a specific notification to the other Party.

Article 5

(Payment conditions)

Unless otherwise agreed, the requested Party that pays a sum of money in accordance with the preceding Articles of this Agreement shall not impose any conditions on the requesting Party regarding the use of such sum and, in particular, shall not require the requesting Party to share such sum with any other State.

Article 6

(Communication channels)

Any communication and transmission of acts and documents between the Parties takes place between the Ministry of Justice (Department of Institutional Affairs and Justice) for the Republic of San Marino

and the Ministry of Justice (Department of Justice Affairs - Directorate General of International Matters and Judicial Cooperation - Office I) for the Italian Republic, which assume the role of Central Authorities. These Authorities are competent to enter into the agreements provided for in the preceding Articles of this Agreement.

Article 7

(Restitution of assets to entitled parties)

The provisions of this Agreement do not apply to seized assets that are to be returned to the offended parties, injured parties and other parties entitled to restitution or damage compensation.

Article 8

(Processing of personal data)

Personal data transmitted under this Agreement are processed and, subsequently, deleted, in accordance with European Union law.

Article 9

(Compatibility with international and EU law)

This Agreement will be implemented in accordance with applicable international law and, as far as the Italian Party is concerned, with the obligations arising from its membership of the European Union.

Article 10

(Settlement of disputes)

Any dispute concerning the interpretation and/or application of this Agreement will be settled through direct consultations and negotiations between the Parties.

Article 11

(Transitional provisions)

This Agreement applies to requests for recognition and enforcement of judicial decisions on seizure and confiscation made in criminal proceedings registered after the entry into force of this Agreement.

Article 12

(Entry into force and termination)

- 1 This Agreement enters into force on the date of receipt of the second of the two notifications by which the Parties inform each other through diplomatic channels that their respective ratification procedures have been completed.

- 2 This Agreement may be amended at any time by written agreement between the Parties. Any amendment enters into force in accordance with the procedure set out in paragraph 1 and forms an integral part of this Agreement.
- 3 This Agreement is concluded for an unlimited period. However, either Party may terminate this Agreement at any time by notifying the other Party in writing through diplomatic channels. Termination takes effect six (6) months after the date of the above-mentioned notification. Termination is without prejudice to any procedures previously initiated, which are completed on the basis of the provisions of this Agreement.

In witness whereof, the undersigned, being duly authorised thereto, have signed this Agreement.

Done at Rome on 26 May 2021, in two originals in the Italian language.

For the Government of the Republic of San Marino
(signed by Massimo Andrea Ugolini)

For the Government of the Italian Republic
(signed by Marta Cartabia)