

COOPERATION WITH GOVERNMENT ENTITIES

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Being here is for me a real pleasure and I have the honor to illustrate, though in summary, the institutional placement of the Guardia di Finanza and the subsequent cooperation profiles with the other actors at national level with which our Corps interacts in the daily performance of its tasks of combating economic and financial crime.

Particular attention will be paid to the analysis of collaboration between the Guardia di Finanza and the public entities working in the framework of fiscal revenues, whose protection represents one of the most relevant, as well as one of the traditional intervention sectors of the Institution I belong to.

To fully address the issue, however, it is essential to define what the Guardia di Finanza is and to make clear what tasks, in detail, the same national law system entrusts to it: once these points are clarified, of course you will be able to more easily identify the dynamics that bring the Corps to cooperate with other bodies belonging to the sphere of public administration and not only, as we shall see.

As a necessary premise it must first be noted that the Italian legal system and regulatory framework falls within the so-called civil law systems, and it is thus characterized by a codified legislation.

This has a strong impact on the legal regime of taxation, which, under the Constitution of the Republic, must be strictly subject to the provisions contained in the written rules, both in terms of the relations between Revenue Authorities and taxpayers, and in terms of co-operation with other sovereign jurisdictions.

Therefore, the Italian tax system provides for a direct taxation which is progressive for natural persons and proportional for legal persons, and in addition to it, there are a regional tax on productive activities and other minor local additional taxes.

There is also a set of indirect taxes, including the most relevant one, which is the Value Added Tax (VAT) deriving from the EC.

In the current year, during the period January-July 2012 the fiscal revenues show a variation trend of +4.7%, an increase compared to the same period last year, due to the increase of direct taxes by 5% and indirect taxes by 4.2%.

These amounts are, however, significant but still insufficient, especially compared to the estimates of the actual gross domestic product resulting from the economical-productive Italian fabric, part of which escapes the tax levying, resulting in a negative impact on the Country system and the State budget.

It is for this reason that the fight against tax evasion and tax avoidance is an essential goal fixed by the Government, by requesting the Financial Administration for increased commitments and efforts and by introducing ever more effective rules.

So this is, in a brief outline, the context in which the Guardia di Finanza operates. It is useful to start by saying that the Guardia di Finanza is in its own right part of the Italian financial Administration, and it is a police Corps with a military structure, having powers of intervention at national level and it is placed under the direct authority of the Minister of Economy and Finance.

And it is the Minister himself, through the General Directive for administrative action, who determines the primary targets towards which the operational activities of the Corps shall be oriented to achieve the goals set out in the economic policy by the Government.

The Guardia di Finanza is thus a police Corps which is fully part of the financial Administration, boasting historical origins dating back to the establishment, in 1774, of the Light Troops Legion of the Piedmontese State, a selected unit tasked with suppression of smuggling and border surveillance of the Savoy State. The Guardia di Finanza was thus born as a tax police: then, over time, the legislator of the unified State, through various legislative measures, has fully defined its tasks, lately qualifying the Corps as the sole law enforcement agency, at national level, having general competence on economical and financial

matters, whose mission is to protect, both in terms of revenues and expenditure, the budgets of local authorities, of the State and of the European Union.

At this point I must touch on the task that the legislator entrusted to the Guardia di Finanza. Among the Guardia di Finanza's tasks there are prevention and suppression of violations of direct and indirect taxes, customs and excise, national and EU public expenditure, irregularities in the financial and securities markets, crimes concerning currencies, securities, valuables and means of payment, including financial and capital movements, and, finally, protection against all forms of counterfeiting and piracy.

Besides these tasks comes the Corps's traditional commitment in the fight against drug trafficking and organized crime, especially through an approach aimed at identifying the wealth of Mafia-like organizations and proposing the issue of seizure measures provided for by the juridical system.

The Guardia di Finanza, thus, is able to combat economic and financial illegality through a cross-cutting approach, not just making tax evasion emerge, but widening the sphere of investigations in order to also identify the other offenses. I refer, for example, to the fight against tax evasion and social security contributions evasion, to the intensification of STRs for anti-money laundering purposes, to the controls on the use of cash and on cross-border movement of capital, to the investigations contrasting fraud in the area of public expenditure, to the protection of markets and competition, and the countering of illegal gambling, the fight against counterfeiting and the protection of the "made in Italy".

This is an outstanding feature, because this unitary way to deal with operational issues in the various institutional sectors connotes especially the Guardia di Finanza and enhances its role as an investigative body with specialized responsibilities.

It should also be noted that the Guardia di Finanza employees, as members of a police force, act in accordance with the criminal law, and in particular with the Code of Criminal Procedure. This allows the Corps to conduct criminal investigations on its own initiative or under the direction of the Public Prosecutor, in the economic and financial police areas, if behaviors constituting a criminal offense are identified.

In general, we can say that the sector regulation divides tax crimes into two main areas:

Crimes relating to tax returns, such as:

- fraudulent misrepresentation by using invoices or other documents for non-existent transactions;
- fraudulent misrepresentation by other devices;
- misrepresentation;
- omitted declaration (tax return);

Crimes related to documents and payment of taxes, such as:

- Issue of invoices or other documents for non-existent transactions;
- concealment or destruction of accounting records;
- omitted payment of certificated withholding taxes;
- omitted VAT payment;
- undue tax compensation;
- fraudulent subtraction to tax payment.

The penal tax offenses are often closely interrelated and investigated in connection with other criminal offenses such as money laundering, bankruptcy fraud, corruption, bribery, fraud against the State and conspiracy.

The investigations against these economic and financial crimes in Italy are usually assigned to the Guardia di Finanza.

For the set of features considered so far, the Italian system, characterized by an exclusive and incomparable structure, could not be classified in any of the four standard models provided in the report on Domestic Cooperation prepared by the OECD in the framework of the TFTC Group dialogue held last June in Rome during the Second Forum on Tax and Crime.

Having defined at this point that the operational segments in which the Guardia di Finanza is engaged, it is now possible to identify the institutional actors the Corps cooperates with. In other words, the tasks of the Guardia di Finanza necessarily determine the other institutions with which it cooperates.

An ideal first division can be made, on the basis of what has been said so far, between the so-called “administrative” sphere of the economic and financial police and the sphere which is instead connected to the criminal context.

As I mentioned earlier, the Guardia di Finanza fully cooperates with the judicial authority, representing a qualified partner thanks to the professionalism accumulated over time in the areas of economic and financial police activity: but this is not about governmental cooperation because in Italy the judiciary power is an autonomous Authority and it is independent from the executive (and legislative) powers, from which it enjoys safeguards provided by the Constitution.

Therefore cooperation between the Guardia di Finanza and the judicial Authorities is implemented in the forms and ways set forth in the Code of Criminal Procedure, which recognizes within certain limits a margin of initiative to the judicial police, but at the same time it qualifies and identifies the prosecutor and, ultimately, the Judicial Authority as the dominus of prosecution and pre-trial investigation, which is the procedural phase of choice of the police forces.

In this context, it should be certainly stressed that the Guardia di Finanza interacts and collaborates with a diverse audience of Judicial Authorities, and in particular:

- Ordinary Criminal-Judicial Authorities, including specialized structures appointed to the investigation on organized crime (District Anti-Mafia Directorates and National Anti-Mafia Prosecutor, with which the Corps interacts through the specialist component - Central Service for Investigations on Organized Crime);
- Judicial Accounting Authority, which the Corps assists in executing the inquests for liability arising from loss of revenue.

Moving on to the "administrative-governmental" sphere of economic and financial police, particular interest arises about the large number and diversity of institutional actors with whom the Corps cooperates in the performance of its duties.

It is worth it to point out that in some cases memoranda of understanding between the Guardia di Finanza and the organizations with which it cooperates have been concluded in order to identify and "procedurize" the exchange of information flows, the activations of checks, request for information, etc. ..

Among the actors with whom the Corps cooperates we find first of all the other law enforcement agencies having general competence (State Police and Carabinieri). In this field, a Decree issued by the Minister of the Interior on April 28 of 2006 regulated the so-called

“specialty division” between the various bodies, clarifying the operational specificity of the Guardia di Finanza regarding the needs of economic and financial security of the Italian State and of the European Union. In addition, measures such as the law n. 121 of 1981, established central structures in which all the law enforcement agencies participate, and whose task is to ensure the proper functioning of the “security” system as a whole, in a unitary and coordinated way, but at the same time fully respecting the specific capabilities of each entity.

Specifically, it is the Office for Coordination and Planning of the Department of Public Security, which is responsible for the classification, analysis and evaluation of the information provided by the police forces and for disseminating these information to the operational branches of the aforesaid police forces, as well as overall planning and operational coordination. On the other hand, in the field of investigations on drugs works the Central Directorate for Anti-drugs Services, having coordination and information exchange functions. This Directorate was established within the Department of Public Security and it is also composed of members of Guardia di Finanza, State Police and Carabinieri.

The fight against organized crime is rather the prerogative of the Antimafia Investigative Directorate, and the three law enforcement agencies (Guardia di Finanza, Carabinieri, State Police) take part to it as well.

Leaving the strictly police framework, it should be clarified that the Guardia di Finanza closely cooperates with various departments, including:

- the Ministry of Infrastructures and Transports, with particular regard to the monitoring of the work on the procurement and implementation of approved projects, both in economic and financial terms and as regards the regularity and transparency of procedures;
- the Ministry of Economic Development, with reference to the identification and implementation of appropriate initiatives to pursue an effective administrative action in the sectors of the products' safety, prize contests, and of price discipline, aimed at protecting competition and consumers,

But also - often through the specialized component of the Corps - with single branches of government bodies, such as:

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- the Department for European Affairs at the Prime Minister's Office, which The Guardia di Finanza relates to for the prevention and prosecution of fraud related to the contributions allocated by the EU;
 - the Department of Information and Publishing of the Prime Minister's Office, the National Agency for investment promotion and enterprise development SpA - INVITALIA, as well as with the Department of Public Function of the Prime Minister's Office.

Particularly important is also the collaboration, which for some time has been established between the Corps and the managing body of the social security (INPS) and local authorities (regions, provinces, municipalities) with whom there are special arrangements which provide ways of cooperation structured for the continuous exchange of information relevant to put on local taxes as well as for the acquisition of elements to be used for the recovery of evaded fiscal taxes.

Moreover, in virtue of its specific tasks, the Guardia di Finanza cooperates, often through memoranda of understanding, with the vast majority of the institutions responsible for the supervision and regulation of the various sectors of economic and financial life of the Country.

I refer in particular to:

- Bank of Italy and the Financial Intelligence Unit operating within it;
- CONSOB, independent authority whose objectives are the protection of investors and the efficiency, the transparency and the development of the securities market;
- ISVAP, supervision body with jurisdiction over the parties operating in the insurance sector in which the Corps works primarily through the specialized component - Special Unit Currency Police (the same can be said, in general, as for ISVAP and COVIP);
- COVIP, which deals with controls on intermediaries handling the "pension funds". About it, the Guardia di Finanza, usually upon request by COVIP, collaborates in the acquisition and processing of data, news and information relevant to the exercise of the supervisory functions;
- Authority for the protection of personal data, with which The Guardia di Finanza cooperates in ascertaining the violations of regulations on the processing of personal data;
- Authority for Electricity and Gas, with which the Guardia di Finanza collaborates to conduct investigations towards the

- operators of works of public utility in the fields of electric energy and gas;
- Authority for the Supervision of Public Works, which the Corps works with for the ascertainment of violations of the rules in public works matters;
- Authority for Communications, with which the Corps cooperates in investigating violations of regulations in the sector;

Having mentioned the collaboration of the Guardia di Finanza with institutions such as the Bank of Italy - FIU, allows me to introduce an additional topic, concerning the mechanism of monitoring financial transactions, in which the Guardia di Finanza takes part, along with Authorities external to the financial Administration.

In fact, the whole system of prevention implemented by Italy for the protection of the capital market has been recently reformed with the transposition of the EU Directive 2005/60/EC dated 26 October 2005. The measure, which has received the appreciation of Financial Action Task Force (GAFI), streamlined the complex regulatory framework into one single text.

In particular, the Decree:

- redesigned the overall structure through a new institutional layout, consisting of the Minister of Economy and Finance, the Financial Security Committee, the Supervisory Authorities, the Guardia di Finanza, including the establishment of the Financial Intelligence Unit at the Bank of Italy;
- modified the control system, providing that surveillance must be carried out individually by each single authority on the basis of their institutional responsibilities (Bank of Italy, Consob, ISVAP), whereas for the professionals the supervision is entrusted to the Ministry of Justice;
- In particular the Decree has: explicitly granted enhanced control powers in this field to the Guardia di Finanza which, in collaboration with the Bank of Italy, may carry out specific inspections regarding the subjects that do not fall within the exclusive supervision of the Central Bank (such as, e.g., the money transfers).

The protagonists of the conceived device are various institutional actors, among which there is an ongoing **constant flow of information** that allows a reactive response to counter the illicit dynamics typical of money laundering.

In fact, in the follow-up procedure of suspicious transactions appear:

- The Office of Financial Information (the Italian FIU), which receives the appropriate reports from the parties responsible for them, carrying out financial analysis. To this end, the Financial Intelligence Unit - an independent unit within the Central Bank - has direct access to the so-called "Register of Accounts." This is a database managed by the Tax Authority, containing information on the relationships in place or terminated at the banking and financial intermediaries. This wealth of information is extremely useful for the analysis of suspicious transaction reports, as well as allowing an improvement of international cooperation through the exchange of information with foreign FIUs;
- The Guardia di Finanza, with particular reference to the Currency Police Special Department, which is the "entry and sorting point" of reports that are conveyed to the Corps for their investigation. On this point it should be emphasized that the FIU works closely with the Guardia di Finanza, which, receiving 97% of all of suspicious transactions reports, has a wealth of information enabling it to initiate and carry out complex investigations on money laundering and tax evasion. In addition, the Corps, as mentioned above, may conduct inspections to a broad audience of financial intermediaries as delegated by the same FIU;
- the Anti-Mafia Investigative Directorate (DIA), which receives 3% of the reports, carries out the investigations on organized crime matters;
- the Judicial Authority if, at the end of the analyses, situations emerge amounting to a crime and, in particular, the National Anti-Mafia Prosecutor, when there are connections with organized crime.

Nothing remains now but to deal with the issue of the Guardia di Finanza's cooperation with the institutions responsible for the management of the tax revenues.

In such a context, it should be stated that this mechanism is unique at international level. In fact, the national system includes, in addition to the Guardia di Finanza, which is an investigative body specialized in the inquiries and prosecution of violations that cause a loss of revenue resulting from tax levying, also:

- The Department of Finance, which is responsible for the management of tax policy and plays the functions of directing the overall tax system, of designing its development, of fiscal policy strategy, direction and control of agencies, companies and economic entities that make up the financial administration and which are entrusted with the operational functions. In detail, the Department takes care of the production of rules, issues

interpretation directives on tax legislation and coordinates the activities of agencies, which ensure the enforcement of the tax system towards taxpayers;

- the Revenue Agency (“Agenzia delle Entrate”), which will soon encompass also the Territory Agency. It deals with the assessment of direct and indirect taxes. This is a non-economic public body that carries out its official duties relating to the management of the tax, ensuring the highest level of tax compliance, through assistance to taxpayers and recovery of tax evasion and tax avoidance. Its strategic role at the service of citizens and in defense of the tax legality is to ensure the recovery of resources for the entire community, acting with a full managerial and operational responsibility. Furthermore, in order to further improve the quality of inspection interventions of the Corps, in the presence of doubtful or non-consolidated regulatory interpretations or in any case of possible failure to recognize the tax effects of transactions considered as elusive or abusive, the Corps shall make a technical and operational comparison with the competent branches of the Revenue Agency before establishing violations, in order to identify shared operational and functional solutions for subsequent assessment. It should, however, be noted that this type of comparison is not always necessary, unless the specificity of the case suggests, anyway, to do so, as in cases where the material facts, on which the violations are based, have been established in the context of criminal investigations, and their reconstruction and legal classification has already been defined in specific acts of investigation and has been taken by a court as a basis for the setting of the criminal proceedings;
- the Customs Agency - which will soon encompass the Autonomous Administration of State Monopolies - which deals with the assessment of customs duties and excises. The Agency carries out control, ascertainment and audit activities on the movement of goods and the internal taxation related to international trade, to guarantee full compliance with Community legislation. In particular, it verifies and monitors trade, production and consumption of products and natural resources subject to excise duty; also, it counters other forms of extra-fiscal offences (for example, in the fight against counterfeiting).
- the State Property Agency, which is responsible for the management of properties owned by the State. It is an economic public body with legal personality and having a wide regulatory, administrative, patrimonial, organizational, accounting and financial autonomy. Its task is to rationalize and develop the use of public real estate property.

- The Territory Agency which, as mentioned before, will soon merge into the Revenue Agency. This is a public institution with legal personality and wide autonomy, capable of delivering cadastral, cartographic and real estate Registration services, as well as managing the creation and update of the integrated Registry of real estate properties existing on the national territory and the integration of cadastral activities with those attributed to local entities.

The tax collection, however, is performed by Equitalia Spa, a company with fully public share capital (51% owned by the Revenue Agency and 49% by INPS).

Within this organizational mechanism, the Guardia di Finanza arises as a police Corps having a legislatively established general competence to carry out administrative and criminal investigations on all the economic and financial violations.

Drawing together the threads of what so far said, we can definitely state that the Guardia di Finanza is the investigative structure of the Financial Administration, aiming at ensuring proper compliance with the provisions relating to the income and expenditure of the State budget. In order to fulfill these tasks, as we have seen, the law gives the Guardia di Finanza's investigators wide powers of investigation both in judicial police and tax and currency police matters.

In particular, the Guardia di Finanza performs, within the directives of the Minister, investigations having an administrative nature countering tax evasion and tax avoidance, conducting inspections and audits on taxpayers. To give some figures to the contribution from the Corps in this field, we can simply highlight that in 2011 the Guardia di Finanza performed over 30,000 inspections, equal to approximately 80% of the total inspections carried out by the entire national financial administration.

Furthermore, the Italian law entrusts the members of the Corps, under the direction of the Public Prosecutor, with the execution of criminal investigations in relation to tax crimes and criminal offenses related to them.

The Guardia di Finanza alone performs, within the Financial Administration, also the functions of currency Police, working in the areas of service regarding cross-border movements of capital, financial intermediation, usury, regulation of means of payment, financing of terrorism, the protection of savings and the fight against the offenses

covered by the consolidated banking and finance laws, and by the rules regulating insurance activities.

The law also provides for the legitimacy of the Corps to promote and develop initiatives for international cooperation with foreign counterpart bodies in order to counter the economic and financial offenses, also taking advantage of its officers seconded at numerous overseas locations; also the Revenue Agency can make use of such officers' help, in order to oppose the international tax offenses.

Such a mutual support, explicitly required by law, allows me to outline at my best the intense activity of operational and information integration that all the structures of the Financial Administration I have just described daily put into place.

In fact, each of these bodies of the fiscal Administration, within the sectors and the limits of its competence functions, constantly performs tax assessments aimed at maximizing the recovery of tax revenues, and to this end must produce the most intense and effective coordination and communication action with the other components of the system.

Sharing of fiscal and administrative information finds its full realization above all in the database of the Tax Registry, which allows real-time transmission of data on each taxpayer and any action on him.

Moreover, the Revenue Agency and the Guardia di Finanza have formed a number of working groups to share information about phenomena of tax evasion and tax fraud, profiles of suspicious individuals and methods of auditing and investigation. These working groups have had the aim of developing joint programs to combat tax evasion and maximizing the benefits of synergies between the two structures.

It is worth it to point out that also other bodies of the State, which do not have responsibility in tax matters, are required by law to report to the Guardia di Finanza any fact which might amount to a breach of taxation. This makes the Guardia di Finanza represent a collector, able to provide all the tax bodies with information from other government judicial sectors and that are relevant for tax purposes.

In fact, in our country, sharing of data and information arising from criminal investigations is also very intense, although within the limits imposed by the Code of Criminal Procedure: in this, once again, the role of a link between the criminal investigation and the administrative tax context is played, without any doubt, by the Guardia di Finanza, since it, holding both investigative powers, both in criminal and tax law,

is the liaison between the judicial authorities and the Tax ones.

Indeed in Italy, as already stated, the action of a criminal investigation is directed solely by the Prosecutor of the Republic, who, for the crimes of economic-financial nature, makes use, for investigations, of the Guardia di Finanza, as a police with prevalent competence in this area. At the Offices of the same Prosecutor of the Republic the Guardia di Finanza members are often posted, in order to assist the prosecutor in the management of such investigations.

In case the operators of the Fiscal Agencies responsible for inspections and/or audits, in the course of their activities, should make assumptions of crime, they must necessarily report it to the Prosecutor of the Republic.

In particular, Revenue Agency has the obligation to report to the Public Prosecutor, offenses identified in the course of its action to combat evasion, but without being able to be delegated to carry out the further police investigation, which is a prerogative of the Guardia di Finanza Corps, which later the Public Prosecutor, the owner of the investigation, will entrust with any judicial police investigations.

At the end of the criminal investigation, if it is not already resulted from an inspection or tax assessment, the State Prosecutor authorizes, as a rule, the Guardia di Finanza to use for tax purposes the findings made in criminal cases, in order to define the responsibilities emerging in the field of taxation. The results of this investigation are then communicated to the Revenue Agency for administrative activities of assessment and subsequent levying of the evaded tax.

It is thus a strictly codified mechanism and it is highly effective and efficient in the transmission and sharing of information.

In this organizational mechanism, as it has often been pointed out, the Guardia di Finanza stands as a police Corps with legislatively established general competence, to investigate all economic financial violations.

You can easily understand, then, as the Italian organization is not framed in predetermined templates, where the different actors involved in the fight against tax evasion and tax and financial crimes interact: this structure, thanks to the valuable contribution and to the institutional positioning of the Guardia di Finanza, ensures the circulation of information between the different fiscal bodies and the sharing of the same knowledges from the administrative sector to the

penal one and vice versa, so that an effective contrast is systematically realized against elusive and criminal phenomena, ever more insidious and characterized by marked transnational profiles.