COMPARATIVE ANTIMATIA LEGISLATION

EXTRA-UE LAWS

MEXICO

Federal Law against Organized Crime with reference to Art. 416 bis ITALIAN ANTIMAFIA LEGISLATION CRIMINAL CODE Pursuant to the Political Constitution of the United Mexican States, legislation on organized crime is the exclusive responsibility of the Federation. Art. 10 The purpose of the Federal Law against Organized Crime is to establish rules for the investigation, prosecution, sanctioning, and enforcement of sentences for crimes committed by any person who is part of organized crime. Its provisions are of public order and apply throughout the national territory.

Art. 20 When three or more persons organize themselves to carry out, on a permanent or repeated basis, conduct that, by itself or in conjunction with others, has the purpose or result of committing one or more of the following crimes, they shall be punished for that act alone, as members of organized crime groups: Terrorism and Terrorist Financing, Crimes against Health, Knowingly using counterfeit currency and currency alteration, Operations with illicitly obtained resources, Stockpiling and Trafficking of Arms, Human Trafficking, Organ Trafficking, Corruption of persons under 18 years of age or persons lacking the capacity to understand the meaning of the act and/or resist it, Sex tourism of persons under 18 years of age or persons lacking the capacity, Exploitation of prostitution of persons under 18 years of age or persons lacking the capacity, Assault, Trafficking of persons under 18 years of age or persons lacking the capacity, Vehicle Theft, Human Trafficking Crimes, Kidnapping Crimes, Hydrocarbon Crimes, Environmental Crimes.

Federal Law against Organized Crime with reference to Art. 416 bis ITALIAN ANTIMAFIA LEGISLATION CRIMINAL CODE <u>Art. 20 Bis</u> Up to two-thirds of the penalties provided for in Art. 40 of this law shall be imposed on those who conspire to commit the conduct indicated in Art. 20 of this Law and agree on the means to carry it out. To prove the conduct indicated in the preceding paragraph, existing confessions or testimonies must be corroborated with other data or evidence obtained through the instruments contemplated in Title 2, Chapters 1, 2, 6 e 7 of this Law, as well as those indicated in Art. 269, 270, 271, 272, 273, 274, 275, 276, and 289 of the National Code of Criminal Procedure.

<u>Art. 20 Ter</u> The penalties contained in Art. 40 shall also be imposed. This Law prohibits anyone who, knowingly aware of the general purpose and criminal activity of a criminal organization, intentionally and actively participates in its illicit activities or other activities of a different nature when they know that their participation contributes to the achievement of the criminal purpose. NOTE: Regarding the term "knowingly," it is well established law that this element is very difficult to prove since it necessarily implies proving a circumstance that corresponds to the psyche of the active subject.

Federal Law against Organized Crime with reference to Art. 416 bis ITALIAN ANTIMAFIA LEGISLATION CRIMINAL CODE Art. 30 Conduct that could constitute common law crimes referred to in Sect. V, VI, and VII, as well as those related to crimes against public health in the form of drug dealing, all of which are attributable to persons involved in organized crime, shall be investigated, prosecuted, and, where appropriate, prosecuted in accordance with the provisions of this Law, provided that the agent of the Federal Public Prosecutor's Office exercises the power of attraction or original jurisdiction, respectively. In these cases, the federal judicial authorities shall be competent to hear such crimes, which shall be classified and punished in accordance with the criminal system of the applicable federal entity in the cases of sect. V, VI, and VII of Art. 20 of this Law, or in accordance with the legislation applicable in the cases of drug dealing crimes against public health, referred to in Sect. IV of Art. 20 of this Law. The crimes of organized crime, as well as those indicated in Art. 20, 20 Bis, and 20 Ter of this Law, shall merit official preventive detention.

Federal Law against Organized Crime with reference to Art. 416 bis ITALIAN ANTIMAFIA LEGISLATION CRIMINAL CODE <u>Art. 40</u> Without prejudice to the penalties applicable to the crime or crimes committed, the following penalties shall apply to members of organized crime. In the cases of crimes against public health; operations with illicit proceeds referred to in: Section I - human trafficking referred to in Section VI - kidnapping referred to in Section VII- and crimes committed in connection with hydrocarbon theft referred to in Section IX of Art. 20 of this Law: anyone who has administrative, management, or supervisory functions in relation to organized crime, from twenty to forty years in prison and a fine of five hundred to twenty-five thousand days, or anyone who does not have the aforementioned functions, from ten to twenty years in prison and a fine of two hundred fifty to twelve thousand five hundred days.

For the other crimes referred to in Art. 20 of this Law: a) Anyone who has administrative, management, or supervisory functions, from eight to sixteen years in prison and a fine of five hundred to twenty-five thousand days, or anyone who does not have the aforementioned functions, from four to eight years in prison and a fine of two hundred fifty to twelve thousand five hundred days; b) In all cases referred to in this article, the objects, instruments or proceeds of the crime shall also be confiscated, as well as the property owned by the convicted person and those in respect of which he acts as owner, if he does not prove the legitimate origin of said property.

General Law on Electoral Crimes with reference to Art. 416 ter ITALIAN ANTIMAFIA LEGISLATION CRIMINAL CODE

It should be noted that this law regulates Article 73, Section XXI, paragraph a) of the Political Constitution of the United Mexican States, regarding electoral crimes. This regulation is of public order and of general observance throughout the Republic and aims to establish criminal offenses, sanctions, the distribution of powers, and the forms of coordination between the different levels of government. It also aims to protect the proper development of the electoral public function and the popular consultation referred to in Art. 35, Section VIII of the Constitution.

<u>Art. 2</u> For the investigation, prosecution, punishment, and all matters related to the procedure for the crimes provided for in this Law, the criminal procedural legislation in force in the Federation and the federated entities, Book One of the Federal Penal Code, and other national criminal provisions issued by the Congress of the Union shall apply, as appropriate. This code establishes electoral crimes in its Section 7.

<u>Art. 7</u> A fine of fifty to one hundred days and imprisonment of six months to three years shall be imposed on anyone who (...) III. Engages in proselytizing or objectively pressures voters on election day inside polling stations or in the place where voters are lined up, in order to sway them or force them to abstain from casting their vote; (...) VII. Solicit votes for pay, the promise of money, or other compensation, or through violence or threats, pressure another person to attend campaign events, or to vote or abstain from voting for a candidate, political party, or coalition, during the election campaign, on election day, or in the three days prior to the election. If the conduct specified in the preceding paragraph is committed by a member of a public security agency, the penalty provided for in this article shall be increased by up to one-third. Similarly, anyone who threatens to suspend social program benefits, either for not participating in campaign events or for the casting of votes in favor of a candidate, political party, or coalition; or for abstaining from exercising the right to vote or for committing not to vote for a candidate, political party, or coalition; shall be sanctioned; VIII. Request or order evidence of the meaning of one's vote or violate, in any way, a citizen's right to cast their vote in secret; (...)

<u>Art. 9</u> A fine of one hundred to two hundred days and imprisonment of two to six years shall be imposed on any party official or candidate who pressures or induces voters to vote or abstain from voting for a candidate, political party, or coalition (...)

National Code of Criminal Procedures with reference to Law 175/2010 BAN ON CARRYING OUT ELECTORAL PROPAGANDA FOR PERSONS SUBJECT TO PREVENTIVE MEASURES

Although this Prosecutor's Office is unaware of the nature and scope of the surveillance measures indicated by Italy, the precautionary measures provided for in Art. 137 and 138 of the National Code of Criminal Procedure are mentioned, emphasizing that these do not include a prohibition on electoral propaganda. Their purpose is to provide care, safety, and integrity to the persons involved in the reported incident, since sometimes during the investigation, risky situations may arise. Art. 137 Protective Measures:

The Public Prosecutor's Office, under its strictest responsibility, shall order, with reasons and justification, the application of appropriate protective measures when it deems that the accused represents an imminent risk to the safety of the victim or the injured party. The following protective measures are considered: I. Prohibition on approaching or communicating with the victim or offended party; II. Restriction on attending or approaching the victim's or offended party's home or place of residence. III. Immediate separation from the home; IV. Immediate return of personal items and identification documents of the victim that the likely perpetrator had in his or her possession. V. Prohibition on engaging in intimidating or harassing behavior toward the victim or offended party or persons associated with them; VI. Surveillance at the victim's or offended party's home; VII. Police protection of the victim or offended party; VIII. Immediate assistance by members of law enforcement agencies to the home where the victim or offended party is located or is located at the time of request; IX.-Transfer of the victim or offended party to temporary shelters or shelters, as well as their descendants, and X.- Reentry of the victim or offended party to their home, once their safety has been safeguarded. Within five days following the imposition of the protective measures provided for in Sections I, II, and III, a hearing must be held in which the judge may cancel them, or ratify or modify them by imposing the corresponding precautionary measures. In the event of noncompliance with the protective measures, the Public Prosecutor's Office may impose any of the enforcement measures provided for in this Code. In the application of these measures in the case of gender-based crimes, the General Law on Women's Access to a Life Free of Violence shall apply as a supplement.

National Code of Criminal Procedures with reference to Law 175/2010 BAN ON CARRYING OUT ELECTORAL PROPAGANDA FOR PERSONS SUBJECT TO PREVENTIVE MEASURES

Art. 138 Precautionary Measures for the Restitution of the Victim's Rights

To guarantee reparation for damages, the victim, the injured party, or the Public Prosecutor's Office may request the judge to issue the following precautionary measures:

I. Seizure of assets, and II. Freezing of accounts and other securities held within the financial system.

The judge will order precautionary measures, provided that the evidence presented by the Public Prosecutor's Office and the victim or injured party indicates the potential for reparation of the damage and the likelihood that the defendant will be responsible for repairing it. On the other hand, the Italian side's argument could be related to the disqualification of rights provided for in Article 24, sections 12 and 13 of the Federal Penal Code. However, this would be a definitive sanction.

National Code of Criminal Procedure with reference to Art. 18 Legisl. Decree 159/2011 DECEASED PERSON

<u>Art. 327</u>, Section IX of the National Code of Criminal Procedure provides that the death of the accused results in the dismissal of the case.

<u>Art. 328</u> has the effect of an acquittal, terminates the proceedings in relation to the accused in whose favor it was issued, prohibits further criminal prosecution for the same offense, and terminates all precautionary measures that may have been issued. However, in the case of forfeiture of assets (more on this later), the process may continue even if the person found to be the subject of a criminal investigation dies.

Federal Penal Code with reference to Law 575/1965 ANTI-MAFIA LEGISLATION PERSONAL PREVENTION MEASURES Although the scope of this provision is unknown, the rules for authorship provided in the Federal Penal Code (Articles 13 and 14) apply in Mexico.

<u>Art. 13</u> The following are considered authors or accomplices of the crime: I. Those who agree or prepare its commission. II. Those who commit it themselves; III. Those who commit it jointly; IV. Those who carry it out using another; V. Those who maliciously instruct another to commit it; VI. Those who maliciously assist or assist another in its commission; VII. Those who, after its execution, assist the offender in fulfilling a promise made prior to the crime; VIII. Those who, without prior agreement, intervene with others in its commission, when the result each person achieved cannot be determined. The perpetrators or accomplices referred to in this article shall each be liable to the extent of their own culpability.

<u>Art. 14</u> If several offenders take part in the commission of a specific crime and one of them commits a different crime without prior agreement with the others, all shall be liable for the commission of the new crime, unless the following requirements are met: I. The new crime does not serve as an appropriate means to commit the principal crime; II. The former is not a necessary or natural consequence of the latter, or of the agreed means; III. They did not know beforehand that the new crime was going to be committed; and they were not present at the commission of the execution of the new crime, or that having been committed, they have done everything in their power to prevent it.

Federal Penal Code with reference to Art. 6 of Legisl. Decree 159/2011 SPECIAL PUBLIC SECURITY SURVEILLANCE

It could be related to the protective measures listed in the preceding paragraphs.

Federal Penal Code with reference to Art. 6, par. 2 of Legisl. Decree 159/2011 SPECIAL PS SURVEILLANCE WITH PROHIBITION OF RESIDENCE

It could be related to the protective measures listed in the preceding paragraphs.

Federal Penal Code with reference to Art. 6 par. 3 of Legisl. Decree 159/2011 SPECIAL PS SURVEILLANCE WITH OBLIGATION TO STAY

It could be related to the protective measures listed in the preceding paragraphs.

Federal Law on Organized Crime with reference to Art. 16 Legisl. Decree 159/2011 ANTI-MAFIA LEGISLATION ASSET-RELATED PREVENTIVE MEASURES ENTITIES SUBJECT TO THE LAW

<u>Art. 29</u> When there is reasonable evidence to reasonably presume that a person is involved in organized crime, in addition to the seizure provided for in the National Code of Criminal Procedure, the agent of the Federal Public Prosecutor's Office may order the seizure of said person's assets, as well as those of which the person acts as the owner. It is the responsibility of their holders to prove the legitimate origin of said assets, in which case they shall order the lifting of the measure.

<u>Art. 30</u> When there is reasonable evidence to establish that there are assets owned by a person involved in organized crime, or that the person acts as their owner, in addition to the seizure provided for in the National Code of Criminal Procedure, the agent of the Federal Public Prosecutor's Office, under his or her responsibility, may seize them, providing reasons and justifications for his or her actions.

If their legitimate origin is proven, the seizure must be ordered to be lifted immediately and the assets handed over to the appropriate party.

Art. 31 The seizure of assets referred to in this Law may be carried out at any stage of the criminal proceedings.

National Code of Criminal Procedure with reference to Art. 20, Legisl. Decree 159/2011 SEIZURE

Only assets that are instrumentalities, objects, or proceeds of crime may be seized. In this regard, both the National Code of

Criminal Procedure and the Federal Law against Organized Crime contain provisions regarding the seizure of assets.

<u>Art. 229</u> Seizure of assets, instrumentalities, objects, or proceeds of crime.

Instruments, objects, or proceeds of crime, as well as assets that bear traces or could be related to the crime, provided they are directly related to the scene of the crime or where they were found, shall be seized during the investigation to ensure they are not altered, destroyed, or lost.

For such purposes, specific controls shall be established for their protection, which shall, at a minimum, take into account the nature of the asset and the danger of its preservation.

Art. 230 Rules on the Seizure of Assets

The seizure of assets shall be carried out in accordance with the following:

I. The Public Prosecutor's Office, or the Police assisting it, shall prepare an inventory of each and every one of the assets to be seized, signed by the accused or the person involved in the investigation. In their absence or refusal, the list shall be signed by two eyewitnesses, preferably not members of the Police, and when this occurs, who have not materially participated in the execution of the act;

II. The Police shall take the necessary measures for the proper preservation of the crime scene or discovery, and of any evidence, traces, or vestiges of the criminal act, as well as any instruments, objects, or proceeds of the crime seized; and III. The seized assets and the corresponding inventory shall be made available to the competent authority as soon as possible, in accordance with applicable provisions. It must be reported whether the seized assets are evidence, physical evidence, objects, instruments or proceeds of the criminal act.

Federal Law Against Organized Crime with reference to Art. 20, Legisl. Decree 159/2011 SEIZURE

<u>Art. 29</u> When there is reasonable evidence to reasonably presume that a person is involved in organized crime, in addition to the seizure provided for in the National Code of Criminal Procedure, the agent of the Federal Public Prosecutor's Office may order the seizure of said person's assets, as well as those of which the person acts as the owner. It is the responsibility of their holders to prove the legitimate origin of said assets, in which case they shall order the lifting of the measure.

<u>Art. 30</u> When there is reasonable evidence to establish that there are assets owned by an individual involved in organized crime, or that the individual acts as their owner, in addition to the seizure provided for in the National Code of Criminal Procedure, the agent of the Federal Public Prosecutor's Office, under his or her responsibility, may seize them, providing reasons and justifications for his or her actions. If their legitimate origin is proven, the seizure must be ordered to be lifted immediately and the assets handed over to the appropriate party.

<u>Art. 31</u> The seizure of assets referred to in this Law may be carried out at any stage of the criminal proceedings.

Political Constitution of the United Mexican States with reference to Legisl. Decree 159/2011 CONFISCATION

Confiscation is a penalty prohibited by Article 22 of the Political Constitution of the United Mexican States. However, the same article contemplates the concept of asset forfeiture, which may be applied in some cases of offenses related to organized crime:

Art. 22 The penalties of death, mutilation, infamy, branding, whipping, beating, torture of any kind, excessive fines, confiscation of property, and any other unusual and significant penalties are prohibited. All penalties must be proportional to the crime punished and the legal right affected. The application of a person's property shall not be considered confiscation when ordered to pay fines or taxes, nor when ordered by a judicial authority to pay civil liability arising from the commission of a crime. Nor will confiscation be considered the seizure ordered by the judicial authority of assets in the case of illicit enrichment under the terms of Art. 109, the application in favor of the State of seized assets that cause abandonment under the terms of the applicable provisions, or those assets whose ownership is declared extinct in a sentence. The forfeiture action will be exercised by the Public Prosecutor's Office through a civil jurisdictional procedure independent of the criminal one. (...) It will be applicable to assets of a patrimonial nature whose legitimate origin cannot be proven and which are related to investigations arising from acts of corruption, cover-up, crimes committed by public officials, organized crime, vehicle theft, illicit proceeds, crimes against public health, kidnapping, extortion, human trafficking, and crimes related to hydrocarbons, petroleum products, and petrochemicals. Any person who considers themselves affected must be guaranteed access to adequate means of defense to demonstrate the legitimate origin of the asset subject to the procedure. As a result, the National Forfeiture Law regulates the aforementioned Article 22.

Political Constitution of the United Mexican States with reference to Legisl. Decree 159/2011 CONFISCATION

<u>Art. 3</u> Forfeiture of title is the loss of a person's rights in relation to the assets referred to in this Law, declared by a court ruling, without any consideration or compensation for the owner or for anyone who claims or acts as such, or for anyone who, for any reason, possesses or holds the aforementioned assets.

<u>Art. 7</u> The forfeiture of title action shall apply to those assets of a patrimonial nature whose legitimate origin cannot be proven, in particular, assets that are the instrument, object, or product of unlawful acts, without prejudice to the place where they were committed, such as: (...)

<u>Art. 8</u> The forfeiture of title action shall be exercised through a civil, patrimonial, and oral judicial process, using a special channel, and shall apply to the assets described in the previous article, regardless of who holds them or who acquired them. The exercise of the asset forfeiture action is the responsibility of the Public Prosecutor's Office. The asset forfeiture process will be autonomous, distinct, and independent from any criminal proceedings from which information relating to the facts supporting the action was obtained, or from any other proceedings initiated prior to or simultaneously.

<u>Art. 13</u> The death of a person found to be subject to an investigation or criminal proceeding does not extinguish the action for forfeiture of ownership given its nature, so the consequences and effects thereof still exist against the heirs, legatees, successors in title and any other similar figure that alleges rights over the assets that are the object of the action.

With reference to Art. 25, Legisl. Decree 159/2011 SEIZURE AND CONFISCATION OF AN EQUIVALENT VALUE

No equivalent regulatory provision was found in Mexican legislation.

Organic Statute of the Attorney General's Office with reference to Art. 110, Legisl. Decree 159/2011 AGENCY FOR ASSETS SEIZED AND CONFISCATED ANTIMAFIA LAWS

There is no similar body in Mexico. The agency described in Italian law could find similar powers in both the Special Prosecutor's Office for Asset Forfeiture and the Institute to Return Stolen Property to the People (INDEP): Organic Statute of the Attorney General's Office. <u>Art. 69</u> Powers of the Head of the Special Prosecutor's Office for Asset Forfeiture.

In addition to those provided for in Art. 7 of the Organic Statute of the Attorney General's Office, the head of the Special Prosecutor's Office for Asset Forfeiture shall have the following powers:

I. Exercise the powers contained in the National Asset Forfeiture Law, as well as those that may be delegated to the head of the Attorney General's Office;

II. Request and carry out investigative acts and techniques related to the National Asset Forfeiture Law;

III.- Operate as a consultation body of the Institution in matters of domain extinction;

IV. Participate in national and international coordination strategies with counterpart agencies or those relevant to the exercise of their functions, notifying the head of the Special Prosecutor's Office for International Affairs in writing or through any means that guarantees its authenticity;

V. Design and establish methods and procedures for collecting, processing, analyzing, and classifying the fiscal, asset, and financial information obtained to generate records on matters within their jurisdiction;

Organic Statute of the Attorney General's Office with reference to Art. 110, Legisl. Decree 159/2011 AGENCY FOR ASSETS SEIZED AND CONFISCATED ANTIMAFIA LAWS

VI. Coordinate, with the Social Communication Unit, to ensure that the Attorney General's Office's special website is accessible to the public and contains notifications, notices, and information in accordance with the terms established by the National Asset Forfeiture Law;

VII. Request, in a reasoned and substantiated manner, from the agencies, entities, and organizations of the different levels of government, as well as from Administrative Units, individuals or legal entities, public or private, national or international, the information and documentation, as well as the investigative acts necessary for the exercise of their functions;

VIII. Ensure that agents of the Federal Public Prosecutor's Office register seized assets on Justici@Net within seventy-two hours, and in the case of organized crime offenses, within one hundred and forty-four hours, in both cases, from the date the seizure is issued; and

IX. Any other actions established in any other legal system applicable within their scope of jurisdiction.

Federal Law for the Administration and Disposal of Public Sector Assets

<u>Art. 20</u> For the purposes of this Law, the following definitions apply: (...) VI - The decentralized agency of the Federal Public Administration, called the Institute to Return Stolen Property to the People, as provided for in Title Six of this Law;

<u>Art. 78</u> To fulfill its purpose, the Institute shall have the following powers: (...) II - To administer, dispose of, and monetize the assets, property, or business that, upon instruction from a competent authority, are entrusted to it due to their special nature.

With reference to Decree-Law 8/1991 converted into Law 82/1991 KIDNAPPINGS FOR THE PURPOSE OF EXTORTION AND PROTECTION OF WITNESSES OF JUSTICE

No similar provision was found in Mexican legislation, except in the case of one of the hypotheses contemplated in Article 7 of the National Asset Forfeiture Law.

<u>Art. 7</u> The action for asset forfeiture shall be exercised with respect to the assets referred to in the following article, even when criminal liability has not been determined in the cases of crimes provided for in Section II of Article 22 of the Constitution. The exercise of the action for asset forfeiture shall be based on the information gathered by the Public Prosecutor's Office when the preliminary investigation was initiated, or in the proceedings leading to the respective criminal procedure, or both, when it is clear that the illegal act occurred and that the assets fall under the assumptions set forth in the following article, as well as the resolutions referred to in Art. 12 Bis of this Law. The death of the likely perpetrator(s) does not cancel the action for asset forfeiture.

With reference to Art. 143 TUEL Consolidated Law for Local Authorities DISSOLUTION OF MUNICIPAL COUNCILS FOR MAFIA INFILTRATION

No similar provision was found in Mexican legislation.

With reference to Art. 84, Legisl. Decree 159/2011 COMMUNICATION AND INFORMATION OF THE ANTI-MAFIA DOCUMENTATION

No similar provision was found, except in the case of a conviction in the criminal proceedings, where the existence and operation of the criminal organization has been recognized.

PROVISIONS OF THE CRIMINAL CODE NOT INCLUDED IN THE ITALIAN CRIMINAL CODE