

The background of the slide is the flag of the European Union, featuring a blue field with twelve yellow five-pointed stars arranged in a circle. The text is centered over this background.

# COMPARATIVE ANTIMAFIA LEGISLATION

EXTRA-UE LAWS

BELGIUM

## **Belgian Penal Code with reference to Art. 416 bis ITALIAN GENERAL ANTIMAFIA RULE**

Art. 324 Bis: *Criminal organization-Constituent elements*: more than 2 people, organization established over time, concerted manner, crimes and offenses punishable by level 3 or higher penalties, obtaining financial benefits.

Art. 324 Ter adds use of intimidation, threats, violence, fraudulent maneuvers, or corruption, or commercial structures to facilitate or conceal the offenses. *Penalties*: participants → imprisonment from 1 to 3 years and/or a fine of €100 to €5,000; decision-makers → imprisonment from 5 to 10 years and/or a fine of €500 to €100,000; leaders → imprisonment from 10 to 15 years and/or a fine of €1,000 to €200,000.

Art. 325: *Prohibition of the following rights for a term of 5 to 10 years (or for life if sentenced to imprisonment of 10 years or more)*: 1) holding any public office, job, or function 2) eligibility for election 3) wearing any decoration or title of nobility 4) serving as a juror, expert, instrumental witness, or certifier in legal acts; testifying in court other than to provide simple information 5) being called to the functions of guardian, substitute guardian, or curator, except for their own children; also acting as judicial administrator of the property of a presumed absent person or as administrator of a person who is protected under art. 492/1 of the Civil Code 6) manufacturing, modifying, repairing, selling, possessing, carrying, transporting, importing, exporting, or transiting a weapon or ammunition, or serving in the armed forces.

## **Belgian Penal Code, Law of February 10, 1999, Law of July 4, 1989, Specific regulations with reference to Art. 416 ter ITALIAN GENERAL ANTIMAFIA RULE**

There are laws in Belgium that address the corruption of political representatives. Below are the key elements of this legal framework:

### Art. 246 to 252 of the Belgian Penal Code:

- *Passive corruption* (the act of a person holding a public office soliciting, accepting, or receiving)
- *Active corruption* (the act of directly or indirectly offering, promising, or granting a public office holder an offer, promise, or benefit of any kind, for themselves or for a third party, so that they adopt one of the behaviours referred to in art. 247) *Penalty:* 6 months to 5 years and/or a fine of €100 to €100,000  
(Art. 247: the penalty varies depending on the act or influence sought and whether it was carried out or not)

Art. 248: when the acts covered by art. 246 and 247, §1 to 3, involve a police officer, a person holding the status of judicial police officer, or a member of the public prosecutor's office, the maximum penalty is doubled from the maximum penalty provided by art. 247 for the acts.

### Law of February 10, 1999, on the suppression of corruption:

This law strengthened the provisions of the Penal Code regarding corruption and extended the scope of offenses to include national and foreign political representatives.

### Law of July 4, 1989, on political parties:

This law provides for measures of control and transparency in the financing of political parties in order to prevent corruption.

### Specific regulations:

There are also specific regulations for certain sensitive areas, such as public procurement, to prevent corruption.

## **Belgian Penal Code with reference to Law 175/2010 BAN ON CARRYING OUT ELECTORAL PROPAGANDA FOR PERSONS SUBJECT TO PREVENTIVE MEASURES**

No similar measure exists in Belgium, except within the framework of accessory penalties (Art.s 31 to 33bis of the Penal Code), which include: 1) the prohibition of holding any public office, job, or function; 2) the prohibition of eligibility for election; (...)

Convictions rendered by the court as referred to in the preceding paragraph may also impose on the convicted persons the permanent or 20 to 30 year prohibition of voting rights.

## **With reference to Law No. 575 of 1965 PERSONAL PREVENTION MEASURES**

No similar measure exists in Belgium.

## **Law of July 20, 1990 with reference to Art. 6 of Legisl. Decree 159/2011 SPECIAL PUBLIC SECURITY SURVEILLANCE**

There are no measures quite similar in Belgium, but it is possible to restrict a suspect's movements in certain cases. Alternative measures to pre-trial detention are mainly governed by the *Law of July 20, 1990*. Art. 16 of the Law of July 20, 1990, on Pre-trial Detention: The investigating judge can decide to execute an arrest warrant against a member of a criminal organization (among others) before that person appears in court for trial. (...) The investigation judge also decides whether this arrest warrant should be executed either in a prison or through detention under electronic monitoring. The execution of detention under electronic monitoring, which requires the permanent presence of the person at a designated address, except for authorized movements, takes place in accordance with the terms set by the King (...).

Art. 35 of the same law provides for conditional release as an alternative to pre-trial detention.

The investigating judge can, on their own initiative, at the request of the Public Prosecutor's Office, or at the request of the accused, release the person on the condition that they comply with one or more conditions, for a period determined by the judge, up to a maximum of three months.

**With reference to Art. 6, par. 2 of Legisl. Decree 159/2011 SPECIAL PS SURVEILLANCE WITH PROHIBITION OF RESIDENCE**

No similar measure exists in Belgium.

**With reference to Art. 6 par. 3 of Legisl. Decree 159/2011 SPECIAL PS SURVEILLANCE WITH OBLIGATION TO STAY**

No similar measure exists in Belgium.

**Belgian Penal Code, Anti-Money Laundering Law with reference to Art. 16 Legisl. Decree 159/2011 ASSET-RELATED PREVENTIVE MEASURES ENTITIES SUBJECT TO THE LAW**

Key elements of Belgian legal framework on criminal asset confiscation:

Art. 42: Special confiscation applies to: 1) property that constitutes the object of the offense and those that were used or intended to commit it, when the property belongs to the convicted person; 2) property produced by the offense; 3) financial benefits derived directly from the offense, the assets and values substituted for them, and the income from those invested benefits.

Art. 43 Quater: the financial benefits referred to in §2, the assets and values substituted for them, and the income from invested benefits found in the estate or in the possession of a person may (...) be confiscated, or that person may be ordered to pay an amount that the judge deems corresponds to the value of those assets.

Anti-Money Laundering Law: Belgian anti-money laundering legislation also strengthens confiscation powers. Under the law on the prevention of the use of the financial system for money laundering and terrorist financing, assets derived from illegal activities can be seized and confiscated.

## **With reference to Art. 18 Legis. Decree 159/2011 DECEASED PERSON**

As per art. 16.

## **With reference to Art. 20, Legis. Decree 159/2011 SEIZURE**

As per art. 16.

## **With reference to Legis. Decree 159/2011 CONFISCATION**

Key elements of Belgian legal framework on criminal asset confiscation:

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

No similar measure exists in Belgium.

**Law of march 26, 2003 + Reform of february 4, 2018 with reference to Art. 110, Legisl. Decree 159/2011 AGENCY FOR ASSETS SEIZED AND CONFISCATED ANTIMAFIA LAWS**

The Belgian equivalent of the ANBSC is the COIV - OCSC (Central Office for Seizure and Confiscation). The OCSC is a component of the Public Prosecutor's Office without legal personality, headquartered in the Brussels-Capital administrative district. It operates under the authority of the Minister of Justice.

The OCSC's missions include:

Managing data related to seizures and confiscations

Involvement in management measures taken by prosecutors and investigating judges (e.g., the sale of seized objects)

Managing seized cash in partnership with ING Bank

International function: The OCSC is the Belgian office for asset recovery. It maintains links with similar foreign institutions and is also a member of the CARIN network.

**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 equivalent in Belgium.

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

Unlike in Italy, where specific procedures target municipal or provincial councils in cases of links with organized crime, Belgium does not have an automatic dissolution mechanism related to such links.

## **Art. 35, art 3tbis of the Penal Code with reference to Art. 84, Legisl. Decree 159/2011 COMMUNICATION AND INFORMATION OF THE ANTI-MAFIA DOCUMENTATION**

No equivalent exists in Belgium; however, when a company is dissolved, this penalty is published (at the expense of the convicted party).

Art. 35 of the Penal Code: dissolution may be ordered by the judge when the legal entity was intentionally created for the purpose of carrying out the punishable activities for which it is convicted, or when its purpose was intentionally diverted to carry out such activities. When ordering dissolution, the judge refers the case to the competent court to handle the liquidation of the legal entity.

Art. 37bis of the Penal Code: the publication or dissemination of the decision at the expense of the convicted person may be ordered by the judge in cases determined by law.

## **With reference to PROVISIONS OF THE CRIMINAL CODE NOT INCLUDED IN THE ITALIAN CRIMINAL CODE**

No similar provision was found.