

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

COMPARATIVE ANTIMAFIA LEGISLATION

UE LAWS

NETHERLANDS

Netherlands criminal code with reference to Art. 416 bis ITALIAN GENERAL ANTIMAFIA RULE

As the situation in the Netherlands historically is different, the Dutch legal system provides no legal definition of a “mafia organization” as in art. 416 bis CP with corresponding specific criminalization. Mafia is not a specific criterium in the Netherlands criminal code. It is incapsulated in the provisions regarding criminal organisations (art 140 Netherlands Criminal Code). This provision criminalizes participation in an organization whose aim is to commit serious crimes, with specific provisions for leaders. Evidence needs to be delivered for involvement of participation in an organization, not necessarily the individual committing of specific crimes. There must be some kind of organization, with members showing some degree of structure and cooperation. The maximum penalty is 6 years imprisonment for participants to be increased with a third for founders, leaders and directors (art. 140 par. 3 WvSr). Participation includes giving (monetary) support, as well as raising funds or individuals for the benefit of the organization.(art. 140 par. 3 WvSr). In the Dutch legal system no minimum penalties exist. In addition, separately punishable are participation in a criminal organization with a terrorist intent (art. 140 a Dutch CP/ maximum penalty: 15 years of imprisonment for participants and life imprisonment for founders, leaders and directors) and participation in an organization that aims to traffick drugs (art. 11b Opium Act/Maximum penalty 8 years/ to be increased with a third for founders, leaders and directors and also here participation includes giving (monetary) support, as well as raising funds or individuals for the benefit of the organization).

Netherlands criminal code with reference to Art. 416 bis ITALIAN GENERAL ANTIMAFIA RULE

Art. 140 WvSr is interpreted broadly by case law and, according to experts, provides a sufficient basis in the Netherlands for contrasting criminal - and power structures, including mafia-like structures.

The article is often the starting point of a criminal investigation. Usually however, prosecution will be based on the specific other crimes that the investigation discovers, in order to streamline the prosecution. Since the Netherlands has a principle of opportunity, prosecutors also decide the scope of a prosecution. If a prosecutor were to prosecute for participation in a criminal organization, he/she would usually assess beforehand the trial ramifications. For instance, if -as often is the case- a criminal organization consists of members from all around the world, the prosecutor would limit the amount of names in the indictment to prevent so called fishing expeditions by lawyers on trial, but rather concentrate the debate on specific points.

With reference to Art. 416 ter ITALIAN GENERAL ANTIMAFIA RULE

As no legal definition of mafia organization per se exists in the Dutch legal system, neither a specific electoral offence related to mafia organizations exists. However, the Electoral law (Kieswet) does provide the offence of art. Z4 (bribing or forcing a voter to give a proxy, to cast his vote in a certain way). The Dutch Penal Code contains an article on bribing voters (art. 126 WvSr), performing fraudulent acts at elections (art. 127 WvSr). These acts self evidently can also be committed by criminal (mafia) organizations.

With reference to Law No. 175 of 2010 ITALIAN GENERAL ANTIMAFIA RULE BAN ON CARRYING OUT ELECTORAL PROPAGANDA FOR PERSONS SUBJECT TO PREVENTIVE MEASURES

General: in the Dutch legal system the preventive (personal and asset centered) measures as they exist in the Antimafia Code in Italy, aimed at a certain category of people legally deemed to be a danger for public security, do not exist. However, municipalities usually are equipped with bureaus of integrity that can issue conditions for permits etc. There are also screening agencies to prevent criminal organizations from obtaining valuable positions in society.

Preventive personal measures are provided for in the Dutch legal system but usually do not start at the request of a prosecutor.

With reference to Law No. 175 of 2010 ITALIAN GENERAL ANTIMAFIA RULE BAN ON CARRYING OUT ELECTORAL PROPAGANDA FOR PERSONS SUBJECT TO PREVENTIVE MEASURES

The civil code does attribute prosecutors to request civil measures, also regarding persons (such as guardianship or measures aimed at the financial situation of a person), but in practice usually municipalities, child protecting agencies, mental health institutions or other government agencies are tasked with that. The prosecutors office will only exercise those legal powers if no other agency is willing or able to do that. also has competences regarding legal entities, such as companies. In those cases prosecutors DO exercise powers such as dismantling, oversight etc. As an example: prosecutors have with regard to outlaw motor gangs specifically and successfully requested the dismantling of organizations such as hells angels etc.

However, a regulation as provided for in Law no. 575 art. 5 bis 1. has no specific equivalent in the Netherlands.

With reference to Law No. 575 of 1965 ITALIAN GENERAL ANTIMAFIA RULE PERSONAL PREVENTION MEASURES

No similar measure exists in the Netherlands.

With reference to Art. 6 of Legisl. Decree No 159 of 6.9.2011 ITALIAN GENERAL ANTIMAFIA RULE

See answer above. In addition, the Dutch criminal law provides the public prosecutor in article 509hh with the competence of issuing a preventive behavioral measure ('gedragsaanwijzing'), violations of which is separately punishable. This competence can include prohibition to enter certain locations or mandatory treatment or light forms of house arrest.

With reference to Art. 6, paragraph 2 SPECIAL PS SURVEILLANCE WITH PROHIBITION OF RESIDENCE

See answer above. On that basis, a prosecutor can issue a prohibition to be in a certain area or. Assistant prosecutors can also issue a temporary prohibition to be at home in cases of domestic violence. With respect to organised crime, a mayor of a municipality also has a legal competence to close a premises or business, when it is connected to serious organized crime (usually that competence is used in cases of drugs dealing, extreme violence or illegal prostitution). Also, in addition to the above mentioned, conditional sentencing by a judge is often used as a basis to prevent further crime, but that requires a verdict.

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

Preventive personal measures as provided for in the Italian Antimafia Code are not provided for in the Dutch legal system. Consequently, a regulation as provided for in art. 6 paragraph 3 of Legislative Decree No 159 of 6.9.2011 does not exist in the Netherlands as such. However, the measure of obligation to reside in and not leave the municipality of residence may be imposed by the Public Prosecutor in a criminal proceeding in case of fear of recurrence. This measure is valid until an irrevocable judgement has been issued.

Furthermore, the measure may also be inflicted by the mayor on the basis of administrative law (APV and Wet MBVEO) and is used for instance in case of persistent nuisance. Apart from this the measure can only be imposed as a special condition in a sentence by a judge in penal proceedings.

**With reference to Art. 16 of Legisl. Decree No 159 of 6.9.2011 ASSET-RELATED PREVENTIVE MEASURES ENTITIES
SUBJECT TO THE LAW**

In the Netherlands until 2024 a proposal for a criminal property confiscation Bill has been pending. The proposal allowed for seizure and confiscation without prior conviction. The proposal introduced a civil procedure to confiscate property of criminal origin without a prior conviction for an offence and was more based on common law than on the Italian model. Unlike in the Italian system the assets did not have to belong to an identifiable person falling within one of the categories mentioned in the anti-mafia code. That is, an identifiable person deemed dangerous. This proposal was withdrawn when the Confiscation Directive (2024/1260) of the EU Parliament and Council was adopted on May 24, 2024. The EU Directive has to be implemented on November 23, 2026.

Dutch law provides for extensive possibilities to identify and trace assets related to criminal offences and –in terms of the directive- to freeze and confiscate these objects. Despite Dutch legislation being largely in line with the confiscation directive, additional regulation is required.

**With reference to Art. 16 of Legisl. Decree No 159 of 6.9.2011 ASSET-RELATED PREVENTIVE MEASURES ENTITIES
SUBJECT TO THE LAW**

A proposal for a bill to implement the directive is currently pending in the Netherlands. It is in the early so called consultation phase. In practice, prosecutors make use of that so called abstract money laundering suspicions. A prosecution on such a basis does not require a specific other crime as basis; it can be constructed in abstracto as long as the evidence leads to the conclusion that criminal origin is the only reasonable explanation for the difference in concrete wealth (assets) and official income of a person.

With reference to Art. 18 Legisl. Decree 159/2011 DECEASED PERSON

In the proposal bill to implement the Confiscation Directive in the Netherlands, a procedure has been proposed that in case of impossibility to continue a criminal proceeding due to for instance the death of the suspect, nevertheless his assets may be seized and expropriated. In this case there is a relationship with a concrete criminal offence and a person suspected of it, since these proceedings follow a criminal prosecution of the accused that could not be pursued due to certain circumstances (as for instance the death of the persecuted person). In contrast, the confiscation of assets exists separate from the criminal prosecution of a suspect.

With reference to Art. 18 Legisl. Decree DECEASED PERSON

The proceedings of confiscation are not against any particular person, nor do they result in the conviction of any person.

The Dutch bill proposal proposes to add the expropriation / laps to the state. (*vervalleilverklaring aan de staat*) and confiscation to Titel IIA of the first Book of the Dutch Penal Code that contains Measures)

In practice, the Netherlands prosecution service usually takes the position that a person that accepts an inheritance of criminal assets commits on itself the crime of money laundering. To give an example: if a crime boss dies and leaves all his assets to his daughter, that daughter can be prosecuted for money laundering if she chooses to accept the inheritance.

With reference to Art. 20, Legisl. Decree 159/2011 SEIZURE

Seizure in the context of the Directive refers to seizure for confiscation. This concerns the seizure of objects to prove illegally obtained advantage, or in view of forfeiture or removal from circulation (art. 94 par. 1, 2 Dutch Criminal Procedural Code “Wetboek van Strafvordering/WvSv”). In addition, the seizure of objects is possible for the purpose of preserving the right of recourse for a fine, confiscation measure or compensation measure to be imposed for a crime (art. 94a par. 1, 2, 3 WvSv)

With reference to Art. 20, Legislat. Decree 159/2011 SEIZURE

In addition, the seizure of objects is possible for the purpose of preserving the right of recourse for a fine, confiscation measure or compensation measure to be imposed for a crime (art. 94a par. 1, 2, 3 WvSv)

The Dutch Code of Criminal Procedure contains a regulation allowing for the sale of seized object before a final decision on forfeiture, deprivation of the object or imposition of a compensation measure.

To implement the Directive, the regulation in the code of Criminal Procedure will be extended. The proposed bill provides that this regulation can also be applied in respect of objects that are rapidly depreciating and whose costs of maintenance is disproportionate. Provision is made for notifying the garnishee and other known interested parties of the intention to sell and their right to be heard. In addition, a complaint procedure is introduced against the proposed sale. The complaint procedure can suspend the sale.

With reference to Article 24, Legislative Decree 159/2011 CONFISCATION

In the international context the term confiscation is used for as an umbrella term for the final deprivation of property ordered by a judge in connection with a criminal offence. Also the Confiscation Directive departs from that conceptional framework.

With reference to Article 24, Legislative Decree 159/2011 CONFISCATION

In the Netherlands, European-law obligations to confiscate have so far taken shape through the additional penalty for forfeiture (art. 33a WvSr), the measure to take objects out of circulation (art. 33c WvSr). The Confiscation Directive provides for an expansion of confiscation measures.

Forfeiture is regulated in art. 33a of the Dutch Penal Code. To implement the Directive, the proposal bill expands the circle of objects subject to forfeiture. This covers first of all objects whose value corresponds to the proceeds of crime. In addition, objects belonging to a person other than the convicted person become liable to forfeiture if these objects belong wholly or partly to that person with the manifest purpose of hindering or preventing the forfeiture or recovery of these objects. And the person who knew or could reasonable suspect this.

Two new measures leading to the final deprivation of property are introduced in the Dutch Penal Code to implement the Directive, leading to the final deprivation of property; the lapse of property to the State (*vervalvenverklaring aan de staat*) and the confiscation of property. The measure lapse to the State relates to objects that would have been eligible for forfeiture if a suspect would have been convicted for an offence. The lapse to the State of the objects in question may be ordered by separate court order at the request of the public prosecutor in situations where criminal prosecution initiated cannot be continued due to certain circumstances such as the death of the suspect.

With reference to Article 24, Legislative Decree 159/2011 CONFISCATION

The measure of confiscation relates to seized items that are immediately or immediately derived from crime. It is an important extension of the existing legal tools against criminal money flows. This measure allows the removal from public circulation of large sums of money, expensive cars and other luxury items of criminal origin, without the need for criminal prosecution and in respect of a criminal suspect. This measure can additionally be applied in case objects are found that are suspected to have a criminal origin, for example a large sums of cash found in a suitcase at the airport. Since the owner of the cash is often not known, he cannot be prosecuted. However confiscation of the money can be claimed in such cases. Confiscation may be ordered by a separate court decision at the request of the public prosecutor. This procedure can be initiated without a criminal charges being brought against a suspect and is conducted separately from criminal proceedings. The lapse to the State and confiscation of objects have in common that objects lapse to the State without a conviction of an accused for an offence. They are thus proceedings, there the focus is not the person (ad personam) but an object (ad rem).

In the case of lapse to the State there is a relationship with a concrete criminal offence and a person suspected of it, since these proceedings follow a criminal prosecution of the accused that could not be pursued due to for instance the death of the accused.

With reference to Article 24, Legislative Decree 159/2011 CONFISCATION

Property confiscation (lapse to the State and confiscation of objects) occurs separate from any criminal prosecution of a suspect. It is not directed against any particular person, nor does it lead to the conviction of any person.

The fact that there is no conviction for an offence in the case of lapse to the State and confiscation of objects, and no need for criminal prosecution in the case of confiscation, has the effect that a new procedure for imposing these measures must be provided for in Dutch law. As regards the design of law of the proceedings before the court, this proposal bill provides for a procedure in Council Chamber.

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

No similar measure exists in the Netherlands.

With reference to Art. 110, Legisl. Decree 159/2011 AGENCY FOR ASSETS SEIZED AND CONFISCATED ANTIMAFIA LAWS

There is no such agency in the Netherlands. The Dutch legal system provides for so called Agencies for the Confiscation of Assets (ARO's). The Dutch police ARO is based at the International Legal Assistance Center in The Hague.

With reference to Art. 110, Legisl. Decree 159/2011 AGENCY FOR ASSETS SEIZED AND CONFISCATED ANTIMAFIA LAWS

The Dutch ARO cooperates with ARO's in other member states, exchanging information at the request of those foreign ARO's or on its own initiative. Also, at the request of the ARO's in other member states, the Dutch ARO seizes items that are or may become subject of a freezing order or confiscation decision.

In doing so, the police ARO is supported by a judicial ARO within the National Prosecutors office for economic and environmental crimes and fraud ("Functioneel Parket") The judicial ARO advises on the seizure of criminal profits and ultimately their conversation.

Implementing the Directive, the ARO as part of the national police unit ("Landelijke eenheid van de politie") will be designated by ministerial regulation at the agency as referred to in article 5 first paragraph of the Directive. That regulation will include those tasks of the ARO, the deadlines for responding to requests from ARO's from other member states and grounds for refusal to provide information. The judicial ARO will continue to support the Police ARO and will be given a greater operational role in carrying out the duties of the police ARO.

With reference to Art. 110, Legisl. Decree 159/2011 AGENCY FOR ASSETS SEIZED AND CONFISCATED ANTIMAFIA LAWS

The provision of information by the ARO to an ARO in another Member State is done by the investigation officers employed by the ARO. The obligation to provide information from the ARO to the ARO of another Member State means that an investigation officer must be able to exchange information directly with an ARO in another Member State. To make this possible, a new title will be added to Book V of the Code of Criminal Procedure for an arrangement to this effect.

With reference to Decree-Law NO. 8 OF 1991 converted into Law 82/1991 KIDNAPPINGS FOR THE PURPOSE OF EXTORTION AND PROTECTION OF WITNESSES OF JUSTICE

No equivalent in the Netherlands other than the general provisions mentioned above.

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

No equivalent in the Netherlands.

With reference to Art. 84, Legislat. Decree 159 of 2011 **COMMUNICATION AND INFORMATION OF THE ANTI-MAFIA DOCUMENTATION**

In the Netherlands, the integrity of a person or company is assessed in a similar way as in Italy but based on a different system. The certificate of good conduct (**VOG**) is a certificate from the Ministry of Justice and Security showing that a person has not committed any offences relevant for the job or task he or she wants to perform. The relevant legislation concerns art. 28-39 of the Judicial Data and Criminal Records Act (“Wet Justitiële en strafvorderlijke gegevens”). For some positions a declaration of good conduct is required by law while for others it may only be desirable. Also certificates of Good conduct for legal persons (VOG RP) exist and may be required when entering into a contract or to join a trade association. Although the statement is not specifically aimed at mafia-related cases, it can serve as an indication of integrity and trustworthiness. In addition, the Dutch Public Administration (Probity Screening) Act, (**BIBOB Act**) (Law of 20 June 2002, Public Administration Promotion of Integrity Assessment Act/“Wet bevordering integriteitsbeoordelingen door het openbaar bestuur”) enables the administrative authorities to refuse or revoke permits as well as tenders and subsidies funded by the government if screening required by the Act has a negative outcome. The aim of the BIBOB is to prevent public authorities from unintentionally facilitating criminal offences by granting permits, licences, tenders or subsidies.

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

The BIBOB Act therefore gives public authorities an instrument with which to protect their integrity. In principle, the municipalities and other administrative authorities are competent to conduct screenings before granting licences, for example. The competent authority under the BIBOB Act is Bureau BIBOB (“Landelijk Bureau BIBOB”), a national agency that is part of Dienst Justis and resides under the Ministry of Justice and Security. Art. 3 par. 1 BIBOB Act, allows the administrative authorities to refuse to make a requested decision or to cancel a decision that has been taken if there is a serious danger that the decision could in part be used:

- a) to make use of proceeds obtained or yet to be obtained from criminal offences that have been committed;
- b) to commit criminal offences.

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

No similar provision was found.