

**Modtagne uddrag af italiensk anti-mafialovgivning mv.**

**Decree-Law No. 8 dated January 15, 1991, converted and amended by Law No. 82 dated March 15, 1991**

**New provisions concerning kidnapping for ransom and protection of witnesses as well as protection of – and sanctions applicable to – collaborators of justice**

( ... O M I T T E D ... )

**CHAPTER II**

**New provisions for the protection of collaborators of justice**

**Article 9.(1)** (*Conditions for the applicability of the special protection measures*). 1. In compliance with the provisions of this Chapter, special protection measures may be applied to persons who engage in conduct or are under the circumstances set forth in paragraphs 2 and 5, in order to ensure their safety and, if necessary, provide them with assistance.

2. The special protection measures shall be applied when the ordinary protection measures the police authorities - or the Ministry of Justice/prison authority in case of persons who are imprisoned or detained - may directly adopt appear to be inadequate and when it also appears that the persons for whom the measures are proposed are in serious and impending danger as a consequence of their cooperative conduct, as specified in paragraph 3 in relation to offences committed for purposes of terrorism or subversion of the constitutional order or included among those referred to in Article 51, paragraph 3 *bis*, of the Code of Criminal Procedure.

3. Cooperation or the statements made during criminal proceedings are important for the application of the special protection measures. Said cooperation and statements must be inherently reliable. In addition, they must be new or complete or must appear to be extremely important for the development of investigation activities concerning structural features, arms supply, explosives or assets, the organization and the internal or international links of criminal organizations of mafia- or terrorist/subversive type, or concerning the objectives, purposes and operational methods of said organizations.

4. If the special protection measures set forth in Article 13, paragraph 4, are inadequate in relation to the serious and impending danger, they may also be applied through the drawing up of a special protection programme specified in Article 13, paragraph 5.

5. The special protection measures as per paragraph 4 may also be applied to those persons who steadily cohabit with the persons mentioned in paragraph 2 as well as, under specific circumstances, to those who are exposed to serious, impending and concrete danger because of the relations

maintained with those persons. The simple relationship based on kinship, affinity or marriage shall not cause, in the absence of steady cohabitation, the application of measures.

6. In determining the dangerous situations, in addition to the significance of the cooperative conduct or the importance and quality of the statements made, also the type of reaction of the criminal group in relation to which cooperation is provided and statements are made shall be taken into account and it shall be assessed with specific reference to the force of intimidation the local group avails itself of.

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(1) *Article replaced by Article 2 of Law No. 45 of February 13, 2001.*

**Article 10. Central Commission for the drawing up and implementation of the special protection measures (1) - 1. (2)**

2. A Central Commission for the drawing up and implementation of the special protection measures shall be set up by decree of the Minister of the Interior, in agreement with the Minister of Justice, after having heard the Ministers concerned (3).

*2 bis.* The Central Commission shall be composed of a State Secretary to the Ministry of the Interior, who shall act as its Chairman, two judges/prosecutors and five officials and officers. The members of the Commission other than the Chairman shall preferably be chosen among those who have gained specific experience in the field and who have knowledge of the current trends of organized crime but who do not work in offices which carry out investigation activities, preliminary investigations into facts or proceedings concerning organized crime of the mafia- or terrorist/subversive type (4).

*2 ter.* In addition to the proposal referred to in Article 11, all the acts and measures the Central Commission receives, the acts and measures of the Commission itself, except for the essential abstracts and the activities carried out for the implementation of the protection measures, shall be considered confidential information. The provisions for the filing and circulation of classified documents, classified as confidential in proportion to the contents of each document, shall apply to the acts and measures of the Commission, except for the essential abstracts which have to be sent to authorities other than those responsible for the implementation of the protection measures (4).

*2 quater.* The Central Commission shall avail itself of the Office for the Coordination and Planning of Police Forces which shall act as secretariat and perform all the preparatory work. As to the preparatory work, the Commission may also avail itself of the Central Protection Service as per Article 14 (4).

*2 quinquies.* Stay of enforcement of the measures of the Central Commission through which the special protection measures are implemented, though urgent or provisional as per Article 13, paragraph 1, shall not be allowed at the judicial stage, as per Article 21 of Law No. 1034 dated December 6, 1971 and subsequent amendments or as per Article 36 of Royal Decree No.642 dated August 17, 1907 (4).

*2 sexies.* The order for precautionary stay, issued as per Article 21 of Law No. 1034 dated December 6, 1971 and subsequent amendments or as per Article 36 of Royal Decree No.642 dated August 17, 1907, shall be effective for a period not exceeding 6 months in relation to the measures of the Central Commission modifying or revoking the special protection measures, though urgent or provisional as

per Article 13, paragraph 1. In said order, the judge shall fix, also *ex officio*, the hearing to discuss the merits of the application which must take place within the four following months; the ordering part of the judgment shall be filed with the court within seven days from the date of the hearing. Judicial time limits are reduced by half (4).

2 *septies*. During the prescribed period for lodging the appeal with the court and while the application is still pending, the measure mentioned in paragraph 2 *sexies* shall be suspended until the judge decides otherwise at the precautionary stage or when examining the merits (4).

2 *octies*. The judges/prosecutors who are members of the Central Commission cannot be judges in the proceedings involving the persons -no matter their position in the proceedings- in relation to whom the Commission has decided on the application of the protection measure with their participation (4).

3. (5).

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(1) *Heading introduced by Article 3, para. 1, subpara. a) of Law No. 45 of February 13, 2001.*

(2) *Paragraph repealed by Article 3, para. 1, subpara. b) of Law No. 45 of February 13, 2001.*

(3) *Paragraph replaced by Article 3, para. 1, subpara. c) of Law No. 45 of February 13, 2001.*

(4) *Paragraph inserted by Article 3, para. 1, subpara. d) of Law No. 45 of February 13, 2001.*

(5) *Paragraph repealed by Article 3, para. 1, subpara. e) of Law No. 45 of February 13, 2001.*

#### **Article 11. (1) Proposal for inclusion**

1. The Central Commission mentioned in Article 10, paragraph 2, shall decide on a case-by-case basis on inclusion in the special protection measures as well as on their contents and duration, upon proposal by the public prosecutor whose office is investigating or has investigated into the facts specified in the statements made by the person who is presumed to be exposed to serious and impending danger. When it is the Anti-Mafia District Bureau that investigates or has investigated into the facts and when at its head is a deputy Anti-Mafia district public prosecutor and not the Anti-Mafia district public prosecutor, the proposal shall be put forward by the former.

2. When the statements as per paragraph 1 concern proceedings for any of the offences set forth in Article 51, paragraph 3 *bis*, of the Code of Criminal Procedure, in relation to which a number of offices of the public prosecutor carry out connected investigations as per Article 371 of said Code, the proposal shall be put forward by one of the investigating offices, in agreement with the others, and be communicated to the National Anti-Mafia Public Prosecutor; in case of failure to reach an agreement, the National Anti-Mafia Public Prosecutor shall settle the dispute. The proposal shall be formulated in agreement with the public prosecutors general concerned attached to the Courts of Appeal, in conformity with Article 118 *bis* of the implementing, consolidating and transitional rules of the Code of Criminal Procedure, approved by Legislative Decree No. 271 dated July 28, 1989, when the situation emerged in the previous period concerns proceedings for offences committed for purposes of terrorism or subversion of the constitutional order.

3. The proposal may also be put forward by the Chief of Police – Director-General of the Public Security Department, after having heard the State public prosecutor's opinion which, if appropriate, may be given in agreement with the other authorities entitled as per paragraph 2.

4. In the absence of the circumstances mentioned in paragraph 2, the authority putting forward the proposal may request in any case the opinion of the National Anti-Mafia Public Prosecutor and of the public prosecutors general concerned attached to the Courts of Appeal when it believes that the information and data concerning organized crime available to the National Anti-Mafia Public Prosecutor or the public prosecutors general for the exercise of their functions, as per Article 371 *bis* of the Code of Criminal Procedure and of said Article 118 *bis* of the relevant implementing, consolidating and transitional rules, may be useful to the Central Commission for its decision.

5. Also through its Chairman, the Central Commission may either exercise the power as per paragraph 4 or request the opinion of the National Anti-Mafia Public Prosecutor and of the public prosecutors general concerned attached to the Courts of Appeal when it believes that the proposal had to be put forward by the State public prosecutor in agreement with the other public prosecutors' offices and this did not happen. In the last mentioned case and if the National Anti-Mafia Public Prosecutor and the public prosecutors general believe that the circumstances referred to in paragraph 2 occur, besides giving their opinion, they shall inform the Public Prosecutor General attached to the Court of Cassation of the reasons for the request.

6. In the cases set forth in paragraphs 2, 3, 4 and 5, the National Anti-Mafia Public Prosecutor and the public prosecutors general concerned attached to the Courts of Appeal may obtain copies of documents as well as data or information from the judicial authorities which carry out investigations or deal with proceedings connected to or linked with the same cooperative conduct.

7. The proposal for inclusion in the special protection measures shall contain useful information and elements to assess a serious and impending danger to which the persons mentioned in Article 9 are or may be exposed as a consequence of the choice to cooperate with justice made by those persons who made the statements. The proposal shall contain the possible protection measures adopted or ordered to be adopted, and the reasons for their being inadequate shall be pointed out.

8. In the case specified in Article 9, paragraph 3, the State public prosecutor's proposal, or his opinion if the proposal is put forward by the Chief of Police – Director-General of the Public Security Department, must contain specific reference to the contribution given by the statements.

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(1) *Article replaced by Article 4 of Law No. 45 of February 13, 2001.*

## **Article 12. Undertaking of obligations**

(1) 1. Whoever has been proposed for inclusion in the special protection measures (2) shall provide the authority making the aforesaid proposal with a complete and detailed certification concerning his personal circumstances, his family and assets and liabilities, any obligations pursuant to the law or to decisions rendered by authorities or to legal contracts, any pending criminal, civil or administrative proceedings, his educational degrees and professional qualifications as well as any authorizations, licences, concessions and any further permissions he has been granted. He shall also appoint a general agent or special agents for any activities to be carried out.

2. The special protection measures shall be undersigned by the persons concerned who shall personally undertake to:

- a) comply with the provisions for their safety and actively cooperate in the enforcement of the measures;
- b) undergo interrogations, tests or any other investigative procedure, including the drafting of the report describing the contents of cooperation;
- c) discharge all duties prescribed by the law as well as any obligations they have undertaken;
- d) make no statements to subjects other than judicial authorities, the police or their defence counsel concerning facts that are in any way related to the proceedings in which they cooperated or are cooperating and neither meet nor contact, in any way or through anybody, persons engaged in criminal activities or collaborators of justice, except when duly authorized by the judicial authorities because of serious reasons related to their family life;
- e) specify in detail all the assets they own or control, directly or through a third person, and other things of value directly or indirectly available to them, and, immediately after their inclusion in the special protection measures, deposit the money representing the proceeds from illegal activities. The judicial authorities shall immediately seize said money, assets and things of value (3).

3. The provision of paragraph 2, subparagraph e) shall not apply to the persons mentioned in Article 16 *quater*, paragraph 2 (3).

3 *bis*. When undersigning the special protection measures, the person concerned shall establish his domicile in the place which is the seat of the Central Commission referred to in Article 10, paragraph 2 (3).

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(1) *Heading inserted by Article 5, para. 1, subpara. a) of Law No. 45 of February 13, 2001.*

(2) *The words «proposed for inclusion in the special protection measures» replace the words «proposed for inclusion in the special protection programme» by virtue of Article 5, para. 1, subpara. b) of Law No. 45 of February 13, 2001.*

(3) *The original paragraphs 2 and 3 are replaced by paragraphs 2, 3 and 3 bis of Article 5 para. 1, subpara. c) of Law No. 45 of February 13, 2001.*

#### **Article 13. (1) - Contents of the special protection measures and adoption of provisional measures**

1. The Central Commission mentioned in Article 10, paragraph 2, shall decide - by a majority of its members, provided that at least 5 of them are present at the session - on the proposal for inclusion in the special protection measures. In case of an equal number of votes, the Chairman's vote shall prevail. In cases of particular seriousness and when there is a request from the authority entitled to put forward the proposal, the Commission shall decide, even informally and in any case not after the first session following the request, on a provisional protection plan after getting information, if necessary, from the Central Protection Service mentioned in Article 14 or through it. In addition to the elements set forth in Article 11, paragraph 7, the request shall contain a brief description of the facts in relation to which the person has showed his intention of cooperating and of the reasons for which his cooperation is believed to be reliable and particularly significant; it shall also specify the circumstances proving the particular seriousness of the danger and the urgency to take measures. The measure by which the Commission decides on the provisional protection plan shall cease to be effective if, after 180 days, the authority entitled to put forward the proposal as per Article 11 has not transmitted it and the Commission has not decided on the implementation of the special protection measures in compliance with the usual procedure. The Chairman of the Commission may order the

continuation of the provisional protection plan for the time necessary for the Commission itself to examine the proposal. When particularly urgent situations occur because of which it is not possible to wait for the decision of the Commission and until the decision is taken, upon justified request from the competent provincial public security authority, the Chief of Police – Director-General of the Public Security Department may authorize said authority to use the appropriation referred to in Article 17, specifying its contents and purposes. In case of implementation of the provisional protection plan, the Commission's Chairman may request a report from the Central Protection Service on the capability of the persons concerned to comply with the obligations set forth in Article 12.

2. In order to determine whether it is necessary to implement any of the protection measures and, if so, to identify the measure which is more appropriate, the Commission may get specific and detailed information on the preventive or safety measures already adopted or adoptable by the police authority, the prison authority or other bodies as well as any other element which may be useful to assess a serious and impending danger in relation to the characteristics of the cooperative conduct.

3. In order to exclusively establish the presence of prerequisites for the implementation of the special protection measures, the Central Commission may also hear the authorities which put forward the proposal or opinion and other judicial, investigative and security bodies; it may also use the documents transmitted by the judicial authority as per Article 118 of the Code of Criminal Procedure.

4. The contents of the provisional protection plan as per paragraph 1 and of the special protection measures the Central Commission may implement when it does not act through the drawing up of a special programme shall be established in decrees provided for by Article 17 *bis*, paragraph 1. In addition to protection measures which have to be enforced by the police authorities competent on a territorial basis, the special protection measures may, in particular, include technical security devices, the adoption of necessary measures for transfers to places other than those of residence, ad hoc interventions aimed at promoting social reintegration, the use, in compliance with the rules of the Prison Department, of specific custodial methods in institutions or specific transfer and surveillance methods.

5. If the Central Commission decides on the implementation of the protection measures through the drawing up of a special programme, provided that the appropriate circumstances occur, the programme shall be drawn up taking into specific account the situations concretely outlined and may include, in addition to the measures mentioned in paragraph 4, the transfer of non-detained persons to places under protection, special methods for the filing of documents and communications to the information technology service, measures for personal and economic support, change in personal identification data in compliance with Legislative Decree No.119 dated March 29, 1993 and subsequent amendments, measures intended to promote the social reintegration of the person who cooperates and of the other persons protected and exceptional measures which might be necessary.

6. The measures for economic support mentioned in paragraph 5 shall in particular include, unless the person concerned is able to deal personally with all or some of them, housing and costs for transfers, health care costs when it is not possible to make use of ordinary public infrastructure, legal aid and the maintenance allowance if the person is not in a position to work. The amount of the maintenance allowance and of the additional sums for dependants who are unable to work shall be fixed by the Central Commission and cannot exceed a sum of five times the State allowance set forth in Article 3, paragraphs 6 and 7, of Law No. 335 dated August 8, 1995. The maintenance allowance may be modified on a yearly basis taking into account the consumer price index for blue- and white-

collar worker households recorded by ISTAT [translator's note: National Institute for Statistics]. By motivated act, the Commission may supplement the maintenance allowance only when particular circumstances occur which influence the maintenance needs closely related to the protection requirements of the person subject to the protection programme, after having heard, if necessary, the authority which put forward the proposal, the National Anti-Mafia Public Prosecutor or the public prosecutors general concerned, as per Article 11. The act shall be included in the case file by the trial judge at the request of the defence counsel of the persons against whom the statements made by the collaborator of justice are used. The judge, again at the request of the defence counsel of the persons stated above, shall include in the case file the breakdown of costs borne for the person subject to the protection programme. Legal aid costs shall be determined by the judge after having heard the Bar association of which the defence counsel is a member.

7. In the report as per Article 16, the Minister of the Interior shall specify the total number of persons and the global amount of costs borne in the six-month period for the economic support to the persons subject to the protection programme and, ensuring confidentiality in relation to each single person concerned, he shall also specify the amount of supplements to the maintenance allowance – if any – and the reasons for them.

8. For purposes of social reintegration of collaborators of justice and of other persons protected, keeping the job or the transfer to another place or office shall be guaranteed, in compliance with the procedure which, ensuring confidentiality and anonymity of the person concerned, shall be specified in an ad hoc decree issued by the Minister of the Interior, in agreement with the Minister of Justice, after having heard the other Ministers concerned. Specific support and social reintegration measures - intended for minors included in the special protection measures - shall also be defined.

9. The judicial authority may, by motivated act, authorize the persons mentioned in Article 16 *quater*, paragraph 2, to meet in consideration of important family reasons.

10. In order to ensure safety, confidentiality and social reintegration of the persons under the special protection programme pursuant to paragraph 5 and who are not imprisoned or detained, the use of a fictitious identification document shall be allowed.

11. The authorization to issue the fictitious identification document mentioned in paragraph 10 shall be given by the Central Protection Service - specified in Article 14 - which shall request the authorities entitled to issue the document - which cannot refuse - to prepare the document, see to the relevant registration, as provided for by the law, and perform all the other relevant tasks – if any. The provisions concerning exemption from liability shall apply as per Article 5 of Legislative Decree No. 119 dated March 29, 1993. At the Central Protection Service a restricted register is kept containing the time frames, the procedure and the grounds for the authorization to issue the document.

12. The public prosecutor or the judge may authorize the person who has been examined or questioned to establish his domicile with a trusted person or at a police office in order to receive any communications or notifications, whenever it is necessary to ensure specific protection.

13. When the proposal or request for inclusion in special forms of protection is made in relation to persons who are imprisoned or detained, the prison authority shall commit said persons to institutions or divisions of institutions able to ensure specific protection. The prison authority shall also make provision prior to the putting forward of the proposal and upon request of the State public prosecutor

who gathered or is about to gather the cooperation statements or the report describing the contents of cooperation as per Article 16 *quater*.

14. In the cases as per paragraph 13, imprisonment shall be ensured together with confidentiality in relation to the person concerned also with the specific methods referred to in the decree provided for by Article 17 *bis*, paragraph 2, and provision shall be made to subject the person in question to penitentiary measures, in particular organizational measures, aimed at preventing him from meeting other collaborators of justice and ensuring that the truthfulness of the statements is not endangered. During the drawing up of reports and, in any case, until the drawing up of the report describing the contents of cooperation is concluded, it shall be forbidden to question the person making the statements for investigative purposes, as provided for by Article 18 *bis*, paragraphs 1 and 5, of Law No. 354 dated July 26, 1975 and subsequent amendments. The person in question shall be forbidden, for the same period of time, to have contacts - by mail, telegram or phone - with or meet other collaborators of justice, unless otherwise authorized by the judicial authority for reasons related to protection or family life.

15. Non-compliance with the provisions of paragraph 14 shall imply that the statements made before the public prosecutor and the judicial police after the date on which violation occurred will not be admissible in trial, except when there is impossibility of repetition of the act.

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(1) *Article replaced by Article 6 of Law No. 45 of February 13, 2001.*

#### **Article 13 *bis*. (1).**

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(1) *Article repealed by Article 7 of Law No. 45 of February 13, 2001.*

#### **Article 13 *ter*. (1).**

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(1) *Article repealed by Article 7 of Law No. 45 of February 13, 2001.*

#### **Article 13 *quater*. (1). Revocation and modification of the special protection measures**

1. The special protection measures shall have a time limit and, though urgent or provisional as per Article 13, paragraph 1, may be revoked or modified depending on how impending and serious the danger is, on the appropriateness of the measures adopted as well as on the conduct of the persons concerned and on the compliance with the obligations undertaken pursuant to the law.

2. The special protection measures may be revoked because of the failure to comply with the obligations undertaken pursuant to Article 12, paragraph 2, subparagraphs b) and e) as well as the commission of offences proving that the person again belongs to the criminal underworld. Facts which may be evaluated in order to revoke or modify the special protection measures are: failure to comply with the other obligations undertaken pursuant to Article 12, commission of offences proving that the danger which was a consequence of the cooperative conduct has changed or ceased, explicit renunciation of the measures, refusal to accept appropriate job or business offers, the unauthorized coming back to places the person had been transferred from, any action implying the disclosure or



spreading of the new identity, of the place of residence and of the other measures implemented. The evaluation in order to revoke or modify the special protection measures, in particular when they are not implemented by means of a special protection programme, shall primarily take into account the time elapsed from the beginning of cooperation as well as the phase and instance of the criminal proceedings in which the statements were made and the dangerous situations as per Article 9, paragraph 6.

3. In the act by which the Commission includes the person in the special protection measures, the Central Commission shall specify the time limit during which checks on modification or revocation must be carried out; it shall not exceed 5 years and shall not be less than 6 months. If the time limit is not specified, it shall be of 1 year from the date of the act.

4. The Central Commission is in any case obliged to carry out the checks as per paragraph 3 whenever the authority which put forward the proposal requests to do so with a statement of reasons.

5. The modification or revocation of the special protection measures shall not affect the applicability of provisions of Article 147 *bis* of the implementing, consolidating and transitional rules of the Code of Criminal Procedure, approved by Legislative Decree No. 271 dated July 28, 1989.

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(1) *Article inserted by Article 8 of Law No. 45 of February 13, 2001.*

#### **Article 14 (1) Central Protection Service**

1. The Central Protection Service shall be responsible for the implementation and the determination of enforcement modalities of the special protection programme approved by the Central Commission. The Central Protection Service shall be set up, within the framework of the Public Security Department, by decree issued by the Minister of the Interior, in agreement with the Minister of the Treasury, Budget and Economic Planning who shall determine the staff and funding of the Service, even departing from the laws in force, after having heard the authorities concerned. The Central Protection Service shall be structured into two divisions. Each division shall have different and autonomous staff and structures, the former dealing with collaborators of justice, the latter dealing with witnesses. The Chief of Police –Director-General of the Public Security Department shall coordinate the relations between *Prefetti* [translator's note: the representative of the Government in each province] and police authorities in implementing the other types of special protection measures set forth in the decrees referred to in Article 17 *bis*, paragraph 1, which shall be determined by the *Prefetto* of the place of current residence of the collaborator of justice, also by using unusual funds authorized, as per Article 17, by the Chief of Police – Director-General of the Public Security Department.

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(1) *Heading inserted by Article 9 of Law No. 45 of February 13, 2001, which also replaced para. 1 and repealed para. 2.*

**Article 15 (1) Change of personal identification data. Legislative reference -** 1. Within the framework of the special protection programme, the change of personal identification data may be authorized - by decree issued by the Minister of the Interior, in agreement with the Minister of Justice - ensuring confidentiality also in administrative acts.

2. The provisions of paragraph 1 shall be implemented in compliance with Legislative Decree No. 119 dated March 29, 1993 and subsequent amendments.

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*(1) Article replaced by Article 10 of Law No. 45 of February 13, 2001.*

**Article 16. Report by the Minister of the Interior.** (1) - 1. The Minister of the Interior shall submit every six months a report to the Parliament concerning the protection measures (2), their effectiveness and general implementation modalities, without making any reference to the names of the persons concerned.

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*(1) Heading inserted by Article 11, para. 1, subpara. a) of Law No. 45 of February 13, 2001.*

## **CHAPTER II bis.**

### **Provisions concerning the protection of witnesses (1).**

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*(1) Chapter (including Articles 16 bis and 16 ter) inserted by Article 12 of Law No. 45 of February 13, 2001.*

**Article 16 bis. (1) Application of the special protection measures to witnesses.** - 1. If the necessary conditions occur, the special protection measures mentioned in Articles 9 and 13, paragraph 5, shall be applied to those persons who, in relation to the offence(s) on which they testify, are exclusively victims of crime, or persons who can report circumstances about the facts, or witnesses, provided that no preventive measure has been ordered against them or that no procedure for the application of said measure is under way, in compliance with Law No. 575 dated May 31, 1965. For the purposes of this Decree, these persons are referred to as "witnesses".

2. The statements made by witnesses may not have the characteristics mentioned in Article 9, paragraph 3, but they must be reliable and refer to offences other than those indicated in paragraph 2 of the same Article.

3. The special protection measures shall apply, if necessary, to those who steadily cohabit or live together with the persons mentioned in paragraph 1 as well as, if the necessary conditions occur, to those who are exposed to a serious, impending and concrete danger because of the relations maintained with those persons.

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*(1) See note of the heading of Chapter II bis.*

**Article 16 ter. (1) - Contents of the special protection measures.** - 1. Witnesses to whom the special protection programme is applied shall be entitled to:

- a) protection measures until the danger to themselves and their family members has ceased;

b) support measures, even after the termination of protection, aimed at ensuring a personal and family living standard not below the standard existing before the programme started, until they become self-sustaining;

c) capitalization of the costs of assistance, as an alternative to assistance;

d) keeping of their job - under paid leave - at the Civil Service office they belong to if they are employed as civil servants, until they find a permanent job, including at another Civil Service office;

e) payment of a sum of money for loss of income, agreed upon with the Commission, due to termination of their or their family members' employment in the place of origin, provided that they did not receive compensation for the same reasons, in compliance with Law No. 44 dated February 23, 1999;

f) subsidized loans aimed at their and their family members' full social and economic reintegration.

2. The measures shall be implemented until the risk has actually ceased, regardless of the phase and instance of the criminal proceedings in which the statements were made by the protected persons.

3. If the special protection programme provides for the permanent transfer to another place, the witness shall have the right to obtain that the real property he owns be acquired to the State property, on payment of the equivalent sum at market price. An administrator appointed by the Head of the division competent for witnesses of the Central Protection Service shall be responsible for the transfer of property. He shall be chosen among experienced lawyers or graduates in economics and business management registered on their respective rolls.

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(1) *See note of the heading of Chapter II bis.*

## **CHAPTER II *ter*.**

### **New provisions concerning the sanctions applicable to collaborators of justice (1)**

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(1) *Chapter (including Articles 16 quater to 16 nonies) inserted by Article 14 of Law No. 45 of February 13, 2001.*

**Article 16 quater. (1) Report describing the contents of cooperation.** 1. To be granted the special protection measures as per Chapter II and benefit from the provisions of Articles 16 *quinquies* and 16 *nonies*, the person who showed his intention of cooperating shall give the State public prosecutor, within 180 days from the manifestation of said intention, the information he has which may be useful

to reconstruct the facts and circumstances in relation to which he is interrogated as well as other more serious and socially dangerous offences he knows of and to identify and apprehend their perpetrators along with the necessary information which may lead to the detection, seizure and confiscation of money, assets and any other thing of value directly or indirectly available to him or, to his knowledge, to other members of criminal groups.

2. The information referred to in paragraph 1 concerning the detection of money, assets and other things of value shall not be requested when the intention of cooperating has been showed by witnesses.

3. The statements made pursuant to paragraphs 1 and 2 shall be documented in a report called "report describing the contents of cooperation", drawn up in accordance with the procedure as per Article 141 *bis* of the Code of Criminal Procedure, which shall be included in full in a case file kept by the State public prosecutor before whom the statements were made and, in the form of an abstract, in the file mentioned in Article 416, paragraph 2, of the Code of Criminal Procedure concerning the proceedings to which the statements directly and respectively refer. The report shall be secret as long as the above-mentioned abstracts are kept secret. Its publication shall be forbidden as per Article 114 of the Code of Criminal Procedure.

4. In the report describing the contents of cooperation, the person making the statements shall state, *inter alia*, that he does not have information and data - admissible in court - concerning other facts or situations even not connected to or linked with those reported, which are particularly serious or which show, in any case, how dangerous some individuals or criminal groups are to society.

5. In the report describing the contents of cooperation the person shall mention the interviews for investigative purposes which may have taken place.

6. The information and data as per paragraphs 1 and 4 shall be admissible in court and, as provided for by Article 194 of the Code of Criminal Procedure, may be the subject for testimony. In particular, they shall not include information and data the person inferred from rumours or similar situations.

7. The special protection measures provided for by Chapters II and II *bis* cannot be granted, and if granted they must be revoked, if the person concerned does not make the statements as per paragraphs 1, 2 and 4 within the time limit established in paragraph 1 and if they are not documented in the report describing the contents of cooperation.

8. The provision of paragraph 7 shall also apply when the statement referred to in paragraph 4 turns out to be untruthful.

9. The statements as per paragraphs 1 and 4 made before the public prosecutor or the judicial police after the time limit established in paragraph 1 cannot be assessed for the purpose of ascertaining the facts against persons other than the declarant, except for cases of impossibility of repetition of the act.

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(1) See note of the heading of Chapter II *ter*.

**Article 16 *quinquies* (1) - Extenuating circumstances in case of cooperation.** 1. The extenuating circumstances provided for by the Criminal Code and special provisions in case of cooperation

concerning the offences set forth in Article 9, paragraph 2, may be granted only to those who, within the time limit as per paragraph 1 of Article 16 *quater*, have undersigned the report describing the contents of cooperation provided for by the same Article.

2. The judge shall, also *ex officio*, verify that the report describing the contents of cooperation has been drawn up within the prescribed time limit.

3. If cooperation is provided during the trial, the judge may grant the extenuating circumstances as per paragraph 1 also in the absence of the report describing the contents of cooperation, although it is necessary to draw it up within the time limit established for the effects provided for by Articles 16 *quater* and 16 *nonies*.

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(1) *See note of the heading of Chapter II ter.*

**Article 16 *sexies*.** (1) - **Inclusion in the case file of the report describing the contents of cooperation and copies - in the form of abstracts - of registers concerning interviews for investigative purposes in case of interrogation or examination of the collaborator of justice - 1.** When the collaborator of justice must be interrogated or examined as a witness or a defendant in connected proceedings or as a person charged with an offence linked with the offence for which the trial is being conducted in the case provided for by Article 371, paragraph 2, subparagraph b) of the Code of Criminal Procedure, the judge, at a party's request, shall order that the report describing the contents of cooperation as per Article 16 *quater* be included in the public prosecutor's case file but only in relation to the parts concerning the defendants' responsibility.

2. In the case as per paragraph 1 the judge, at a party's request, shall also order the inclusion in the case file of a copy, in the form of an abstract, of the register kept by the prison governor containing the name of the prisoner or of the person detained, the name of the person who conducted the interview for investigative purposes, the date and time of its beginning and end as well as a copy, in the form of an abstract, of the register as per Article 18 *bis*, paragraph 3, of Law No. 354 dated July 26, 1975 and subsequent amendments, only in relation to the parts concerning the interviews for investigative purposes which took place with the collaborator of justice.

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(1) *See note of the heading of Chapter II ter.*

**Article 16 *septies*.** (1) **Extension of deadline and review of judgments - 1.** The public prosecutor general attached to the Court of Appeal in whose district the judgment was rendered is obliged to request the review of the judgment when the extenuating circumstances envisaged by the Criminal Code and special provisions on cooperation in relation to the offences referred to under Article 9, paragraph 2, have been applied as a consequence of false or non-disclosure statements or when the person who benefited from said extenuating circumstances commits, within 10 years from the final judgment, an offence for which the arrest *flagrante delicto* is mandatory.

2. Review is allowed when the circumstances as per paragraph 1 occur and the offence mentioned in that paragraph proves that the person concerned still belongs to the criminal underworld.

3. When the person who benefited from the extenuating circumstances as per paragraph 1 was granted any of the alternative measures to detention provided for by Article 16 *nonies*, the public prosecutor

general requesting the review shall inform the competent Surveillance Court [translator's note: Court supervising over serving of sentences] and surveillance judge of the request for the purposes of the measures as per paragraph 7 of Article 16 *nonies*.

4. In the review process, the provisions of Title IV of Book IX of the Code of Criminal Procedure shall apply. If the request for review is granted, the judge shall reverse the judgment and determine the new punishment.

5. During said process, the judge, at the public prosecutor's request, may order the application of precautionary measures provided for by the law.

6. When the circumstances mentioned in paragraph 1 emerge before the judgment has become irrevocable, the documents showing said circumstances shall be forwarded to the public prosecutor attached to the judge who rendered the judgment or, if the documents of the proceedings have already been forwarded to the appellate judge, to the public prosecutor attached to the judge who has to decide on the appeal. If the judgment has been rendered on appeal, the documents shall, in any case, be forwarded to the public prosecutor attached to the Court of Appeal which rendered the judgment. Within 30 days from receipt of documents and pursuant to Article 175 of the Code of Criminal Procedure, the public prosecutor may request the extension of deadline to lodge an appeal only in relation to the part of the decision concerning the application of the extenuating circumstances mentioned in paragraph 1.

7. Punishments for false allegations shall be increased by one third up to one half when the culprit has committed the offence in order to benefit from the extenuating circumstances as per paragraph 1 or from alternative measures to detention or protection measures or special protection measures as per Article 16 *nonies* and Chapter II. Punishments shall be increased by one half up to two thirds if one of the benefits has been obtained.

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(1) *See note of the heading of Chapter II ter.*

**Article 16 *octies*.** (1) - **Revocation or replacement of pre-trial detention as a consequence of cooperation.** - I. Pre-trial detention cannot be revoked or replaced with another less serious measure for the mere fact that the person against whom it has been ordered adopts or has adopted the cooperative conduct for which the extenuating circumstances provided for by the Criminal Code or special provisions are granted. In these cases, revocation or replacement may only take place if, during the ascertainties carried out in relation to the existence of precautionary requirements, the judge dealing with the case, after having heard the National Anti-Mafia Public Prosecutor or the public prosecutors general concerned attached to the Courts of Appeal, has not gathered elements from which present links with organized crime of mafia- or terrorist/subversive type can be inferred and has ascertained that the collaborator of justice, if subject to special protection measures, has complied with the obligations undertaken according to Article 12.

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(1) *See note of the heading of Chapter II ter.*

**Article 16 nonies. (1) – Alternative measures to detention.** - 1. Release on parole, special permissions to leave the prison and house arrest as provided for by Article 47 *ter* of Law No. 354 dated July 26, 1975 and subsequent amendments, shall be ordered - upon proposal of, or after having heard the public prosecutors general concerned attached to the Courts of Appeal, pursuant to Article 11 of this Decree, or the National Anti-Mafia Public Prosecutor - in relation to persons convicted of offences committed for purposes of terrorism or subversion of the constitutional order or of any of the offences mentioned in Article 51, paragraph 3 *bis* of the Code of Criminal Procedure, who provided, even after their conviction, forms of cooperation for which granting the extenuating circumstances contained in the Criminal Code or in special provisions is allowed.

2. In their proposal or opinion, the public prosecutors general or the National Anti-Mafia Public Prosecutor shall include any useful information on the characteristics of the cooperation provided. Upon request of the Surveillance Court or surveillance judge, they shall attach a copy of the report describing the contents of cooperation to the proposal or to the opinion and, in case of a person subject to special protection measures, the relevant implementation order.

3. The proposal or opinion mentioned in paragraph 2 shall also include the evaluation of the conduct and of the social dangerousness of the convict, specifying, in particular, if the latter ever refused to be questioned or examined or to be subject to any other investigative procedure during criminal proceedings in which he cooperated. They shall also specify the other elements which are significant to ascertain repentance, also in relation to the present links with subversive or organized crime.

4. After receiving the proposal or the opinion mentioned in paragraphs 2 and 3, the Surveillance Court or surveillance judge, if it/he thinks that there are the conditions as per paragraph 1, considering the importance of cooperation and provided there is repentance and there are no elements from which it can be inferred that links with subversive or organized crime exist, shall adopt the measure mentioned in paragraph 1, even departing from the laws in force, including those concerning the maximum punishments as per Article 176 of the Criminal Code and Articles 30 *ter* and 47 *ter* of Law No. 354 dated July 26, 1975 and subsequent amendments. The measure shall be specifically accompanied by a statement of reasons if the authorities mentioned in paragraph 2 of this Article have expressed an unfavourable opinion. Measures departing from the maximum punishments may be adopted only if, within the time limit established as per Article 16 *quater*, the report describing the contents of cooperation has been drawn up - as provided for by the same Article - and, except in case of special permission to leave the prison, only after serving at least one fourth of the sentence inflicted or, in case of convicts serving a life sentence, after serving at least 10 years' imprisonment.

5. If the cooperation provided after the conviction concerns facts other than those which caused the conviction, the benefits as per paragraph 1 may be granted departing from the laws in force only after the first instance judgment has been rendered in relation to the facts for which cooperation was provided, in accordance with the requirements in Article 9, paragraph 3.

6. The procedure to implement the measures mentioned in paragraph 4 shall be established after having heard the authorities responsible for the safety and protection of the persons concerned; such authorities may also be in charge of notifications, communications and enforcement of the orders issued by the Surveillance Court or surveillance judge.

7. The modification or revocation of measures shall be ordered *ex officio* or upon proposal or opinion of the authorities mentioned in paragraph 2. In urgent cases, the surveillance judge may order, by motivated decree, the precautionary suspension of measures. The suspension shall cease to be effective if, in case of measures for which the Surveillance Court is competent, said Court does not intervene within 60 days from receipt of documents. For purposes of modification, revocation or precautionary suspension of measures, particular importance is attached to the forms of conduct which, as per Articles 13 *quater* and 16 *septies*, may lead to the modification or revocation of the special protection measures or to the review of judgments which granted any of the extenuating circumstances in case of cooperation.

8. When measures such as release on parole, assignment to extramural work, special permissions to leave the prison or any other alternative measure to detention pursuant to Title I, Chapter VI, of Law No. 354 dated July 26, 1975 and subsequent amendments, are adopted in relation to persons subject to special protection measures, the Surveillance Court or surveillance judge of the place where said persons have established their domicile in accordance with Article 12, paragraph 3 *bis* of this Decree, shall have jurisdiction.

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(1) See note of the heading of Chapter II *ter*.

## **Book II *quater***

### **Final and transitional provisions (1)**

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(1) Heading inserted by Article 17 of Law No. 45 of February 13, 2001

**Article 17 Costs.** (1) - 1. The yearly expenditure resulting from the application of Chapter II and II *bis* (2) - 10,250 million lire starting from 1991 - shall be borne by reducing the appropriation under chapter 6856 of the 1991 estimates of expenditure of the Ministry of the Treasury, within the framework of the 1991-1993 budget, and using for that purpose the funds under the title "Further provisions against organized crime".

2. The Minister of the Treasury shall be entitled to introduce, by decree, the necessary changes in the estimates of expenditure.

3. The costs as per para. 1 shall be included in the estimates of expenditure of the Ministry of the Interior for an amount of 6,250 million lire, under the title "Public safety", and for an amount of 4,000 million lire, under the title "High Commissioner for the coordination of the activities against mafia-type criminal offences".

4. The financial measures referred to in Chapter II and II *bis* (3) shall be kept confidential and exempted from audit; at the end of each financial year the Chief of Police - Director-General of the Public Security Department and the High Commissioner shall submit a report to the Minister of the Interior concerning the criteria and use of the aforementioned funds. The Minister of the Interior shall authorize destruction of said report.

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(1) *Heading inserted by Article 18, para. 1, subpara. a) of Law No. 45 of February 13, 2001.*

(2) *The words "of Chapter II and II bis" replace the words "of this chapter" by virtue of Article 18, para. 1, subpara. b) of Law No. 45 of February 13, 2001.*

(3) *The words "in Chapter II and II bis" replace the words "in this chapter" by virtue of Article 18, para. 1, subpara. b) of Law No. 45 of February 13, 2001.*

**Article 17 bis.** (1) - **Criteria to determine implementing provisions.** - 1. The contents and implementation modalities of the special protection measures established and enacted - even temporarily - by the Central Commission as well as the criteria applied by the Commission during the preparatory, drawing up and implementation phases of said measures shall be specified in one or more decrees issued by the Minister of the Interior in agreement with the Minister of Justice, after having heard the National Committee for Public Order and Security and the Central Commission referred to in Article 10, paragraph 2.

2. The Minister of Justice, in agreement with the Minister of the Interior, shall issue a decree to establish the necessary conditions and modalities for application of the regulations concerning the treatment of prisoners, provided for by Title I of Law No. 354 dated July 26, 1975 and subsequent amendments and by Title I of the relevant enforcement rules approved by Presidential Decree No. 431 of April 29, 1976 and subsequent amendments, to persons who were granted the special protection measures and to those who cooperate or have cooperated in the way provided for by the Criminal Code or by special provisions in relation to the offences as per Article 9, paragraph 2.

3. In agreement with the Ministers of Finance, Treasury, Budget and Economic Planning, Justice and Defence, the Minister of the Interior shall issue decrees to adopt rules governing the procedure to deposit and transfer money, assets and other things of value in compliance with the obligation undertaken by collaborators of justice as per Article 12, paragraph 2, subparagraph e) of this Decree as well as rules governing the procedure to use money, sell and use assets and other things of value as provided for by Article 12 *sexies*, paragraphs 4 *bis* and 4 *ter*, of Decree-Law No. 306 dated June 8, 1992, converted and amended by Law No. 356 dated August 7, 1992 and subsequent amendments.

4. The decrees mentioned in paragraphs 1, 2 and 3 as well as the one mentioned in Article 13, paragraph 8, shall be issued in compliance with Article 17 of Law No. 400 dated August 23, 1988.

5. The Council of State shall express its opinion about the draft rules referred to in paragraphs 1, 2 and 3 within 30 days from the request, after which the rules may, in any case, be adopted.

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(1) *Article inserted by Article 19, para. 1, of Law No. 45 of February 13, 2001.*

**Article 18.** (1) **Entry into force.** - 1. This Decree shall enter into force on the day following that of its publication in the *Official Journal* of the Italian Republic and shall be presented to Parliament for conversion.

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(1) *Heading inserted by Article 20 of Law No. 45 of February 13, 2001.*

1. The provisions set forth in Chapter II, II *bis* and II *ter*, except those of Article 16 *quinquies*, of this Decree shall also be applied to those persons who have already showed the intention of cooperating prior to the coming into force of Law No. 45 dated February 13, 2001.

2. With regard to the persons referred to under paragraph 1, the report describing the contents of cooperation shall be drawn up within 180 days from the coming into force of Law No. 45 dated February 13, 2001 pursuant to Article 16 *quater* of this Decree.

3. The provisions set forth in paragraph 1 and 2 above shall also apply when the cooperative conduct has been adopted in relation to offences other than those committed for purposes of terrorism or subversion of the constitutional order or provided for by Article 51, paragraph 3 *bis* of the Code of Criminal Procedure but included among those mentioned in Article 380 of said Code.



# Instruments for prevention and Fighting organized crime

18 MAGGIO 2017

CASERTA

SCUOLA DI ALTA FORMAZIONE DELLA POLIZIA DI STATO  
per la prevenzione ed il contrasto al crimine organizzato





- Since 1982, Italy has established an effective legal regime in the fight against organized crime, and has introduced several innovative provisions into its criminal code which have significantly influenced the fight against criminal organizations.
- The Law n. 646, better known as the “Rognoni – La Torre” was adopted on 13 September 1982. This law introduced article 416-bis into the Italian criminal code.
- The second crucial novelty of the Law of 13 September 1982 was the introduction of preventive measures on assets (i.e. seizure and confiscation), the main purpose of which was to recover illicitly gained assets (NCBC)



*Not only the law ....*

PIO LA TORRE paid with his life personal commitment against mafia, being murdered on 30 April 1982





# And many other events occurred in Italy

- .....12 marzo 1992, murder of Salvo Lima
- 23 maggio 1992, Capaci 's massacre
- 19 luglio 1992, massacre of D'Amelio street -
- 17 settembre 1992 murder of Ignazio Salvo -
- 14 May 1993, attempt of massacre in Rome in Fauro street
- 27 maggio 1993 Massacre in Florence, Georgofili street
- 27 July 1993, Massacre in Palestro street, Milano
- 28 luglio 1993, bombs at San Giovanni in Laterano,
- 28 July 1993 bombs in San Giovanni al Velabro Cathedral, Rome
- 15 September 1993, murder of Pino Puglisi phater
- 31 October 1993, attempt of massacre at Olympic Stadium in Rome
- 23 November 1993, kidnapping and murder of Giuseppe Di Matteo
- 14 aprile 1994 attempt of murder to Totuccio Contorno ...

*In 25 MARZO 1995*



*Start gathering of signatures promoted by NGO LIBERA*

For the reuse of confiscated assets for social purposes



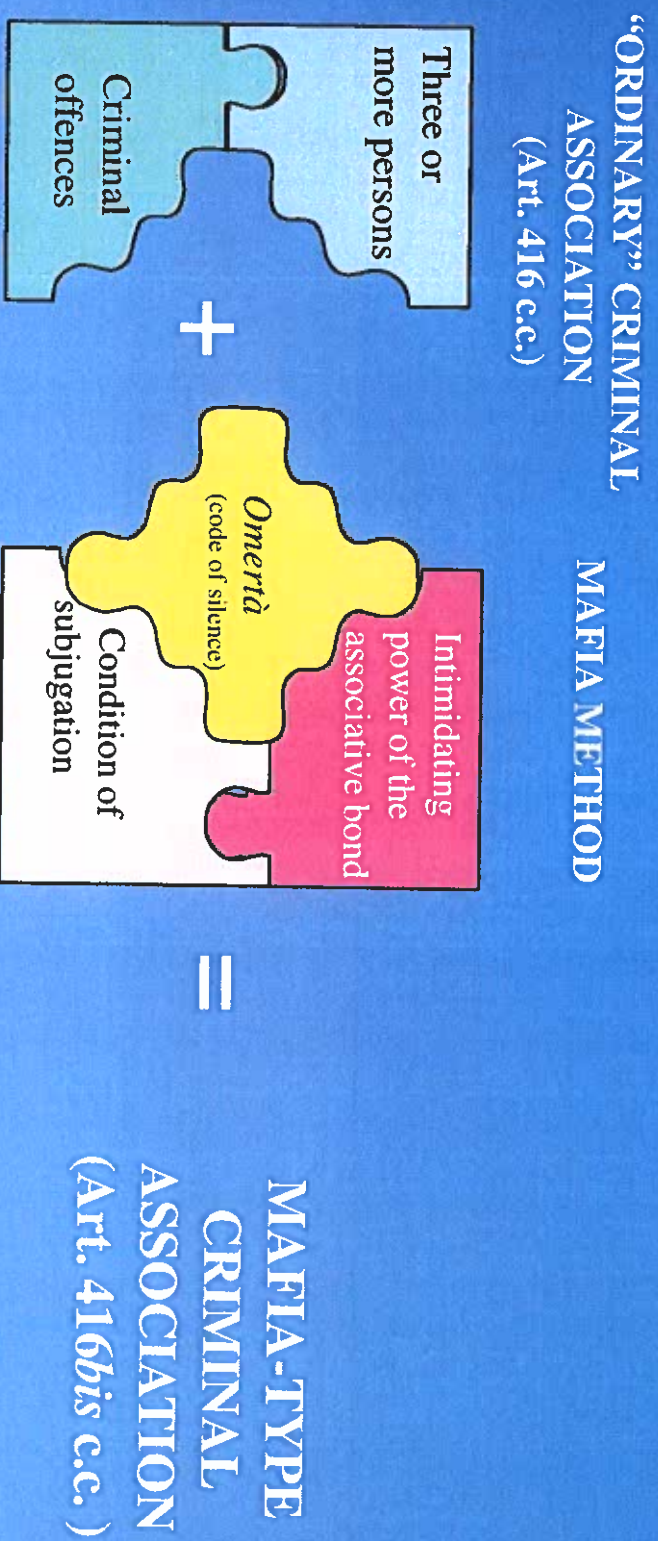
## The Italian legislation MAFIA TYPE ASSOCIATION the definition of the crime

- *According to article 416 bis of the Italian penal code criminalize the offence of being a member of 'a [criminal] association of a mafia type', the latter being defined as one where:*
- *those who belong to it making use of the power of intimidation of the obligations of membership, and of the state of subjugation and of the conspiracy of silence that derives from it, to commit*
- *1) crimes;*
- *2) to acquire, directly or indirectly, the management or control of economic activities, franchises, licences, contracts and public services;*
- *3) or to realise profits or unfair advantages for themselves or others or*
- *4) with the purpose of obstructing the free exercise of the [right to] vote or of procuring votes for themselves or others at elections.*



# NATIONAL ANTIMAFIA DIRECTORATE

## *The “Mafia method” as described in criminal law*



Under criminal law (Art. 416-bis of the Italian Criminal Code) the “Mafia method” is characterised by three factors, all of which are essential to prove the offence of Mafia-type criminal association.



# Evolution of Italian legislation against mafia: the procedure

- *Derogations to the ordinary procedural criminal code:*

- Duration of investigations (two years);
- special regime for interceptions;
- The use of special investigative techniques;
- The circulation of final judgments in other legal proceedings.



# THE Penitentiary LEGISLATION

- *The Special Penitentiary regime:*

- The cooperation with investigators from members of mafia type association;
- Special benefits ( during the trial and after the trial)
- The protection of state witness and their family



# THE LEGISLATION on Confiscation: Preventive Measures

## *The preventive measures system*

The “danger to society” aspect which allows for asset seizure and confiscation is now described in the fourth categories established by law (now art. 16 Legislative Decree n. 159/11):

- 1) Those suspected of belonging to Mafia-related groups, meaning those who may be held responsible for the offence provided for in article 416-bis of the Italian criminal code (“Mafia-type unlawful association”). The status of “suspected” implies the considerable probability (but not the certainty) of guilt;
  - 2) Those suspected of having committed a set of serious organized crime-related offences specified by law;
  - 3) Those living, also in part, of: i) illegal dealings; or ii) proceeds from criminal activity;
  - 4) Those suspected of having committed terrorism crimes.
- The new Decree also allows seizure and confiscation of assets irrespective of the personal preventive measures (art. 18)





# THE Judicial BODIES

## *The innovations on the judiciary :*

- the coordination of investigations (new function)
- the setting up of Italian DNA in 1992
- The setting up of DDAs in 1992
- The creation of Investigative Antinmafia Direction ( specialized police)



# DISTRICT ANTIMAFIA DIRECTORATE

## *Organisation and jurisdiction*

District Antimafia Directorates (DDAs) have jurisdiction over **criminal proceedings** for perpetrated or attempted “Mafia offences” as well as over **antimafia prevention proceedings**.

DDAs are made up of highly specialised public prosecutors designated by the District Antimafia Prosecutor after consulting the National Antimafia Prosecutor (*Art.102 Legislative Decree No. 159 of 6 September 2011 “Antimafia Code”*).





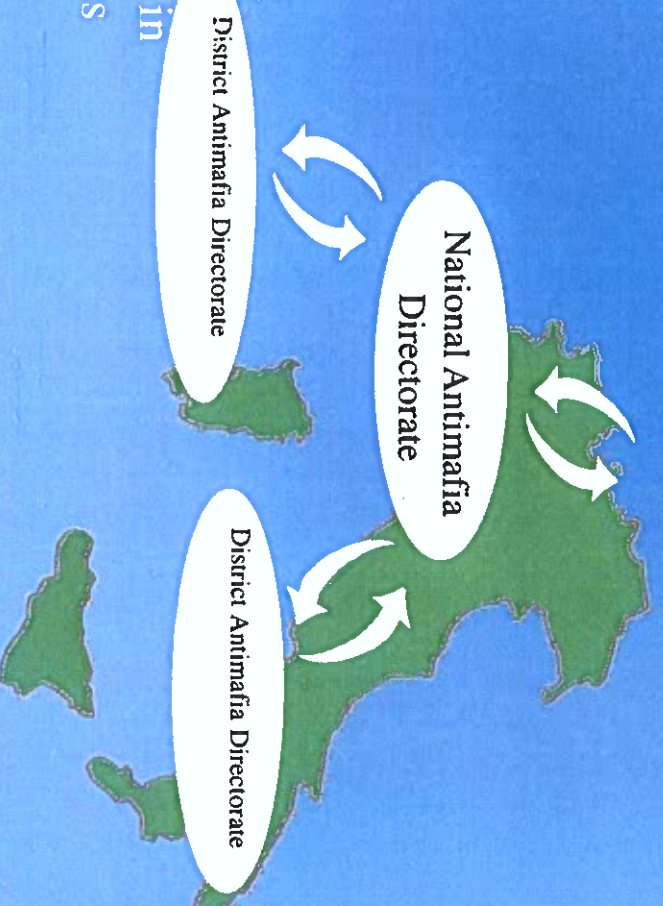
# NATIONAL ANTIMAFIA DIRECTORATE

## *Composition and jurisdiction*

Composed of members of the Public Prosecutor's Office – a judicial authority entrusted with the direction of investigations and the judicial police – the National Antimafia Directorate acts as the **central coordinating body** to ensure the effective organisation of investigations in connection with criminal proceedings for so-called “Mafia offences” referred to in Art. **51, para. 3-bis of the code of criminal procedure** – as well as with antimafia prevention proceedings conducted by District Antimafia Directorates.

This role is performed nationwide by the National Antimafia Prosecutor or, by virtue of delegation of authority, by DNA Assistant Prosecutors.

Therefore, the DNA does not directly carry out investigations but coordinates them, except in the cases for which it assumes responsibility.







# THE NEW COMPETENCE IN THE TERRORISM FIELD

The LAW 17 aprile 2015, n. 43

- Conversione in legge, con modificazioni, del decreto-legge 18 febbraio 2015, n. 7, recante misure urgenti per il contrasto del terrorismo, anche di matrice internazionale, nonché proroga delle missioni internazionali delle Forze armate e di polizia, iniziative di cooperazione allo sviluppo e sostegno ai processi di ricostruzione e partecipazione alle iniziative delle Organizzazioni internazionali per il consolidamento dei processi di pace e di stabilizzazione. (15G00060).....





# The role of DNA

## NATIONAL ANTIMAFIA DIRECTORATE

*The Functions of impulse of the National Antimafia Prosecutor (Art. 371-bis para 2 c.p.c.)*

With the aim to effect the coordination of the inquiries, to grant the functionality of the judicial police and to assure the completeness and timeliness of investigations, the National Antimafia Prosecutor guarantees the connection with the District Antimafia Directorates.

The National Antimafia Prosecutor also performs functions of impulse as regards the district prosecutors and the other prosecutors of the District Antimafia Directorates.

*National Antimafia Prosecutor*



*District Antimafia Prosecutor*



*District Antimafia Prosecutor*





## NATIONAL ANTIMAFIA DIRECTORATE

*areas of responsibility*

The National Antimafia Prosecutor performs functions of coordination and impulse with regard to **criminal proceedings** for the offences referred to in Art. 51, para. 3-*bis* of the Italian code of criminal procedure. Such offences are:

Criminal association for the purpose of illicit trafficking in narcotic drugs or psychotropic substances



Mafia-type association

Criminal association for the smuggling of foreign tobacco products

Kidnapping for ransom

Organised activities for illicit waste trafficking  
(Art. 260 Legislative Decree No. 152 of 3 April 2006)



Reduction to or maintenance in slavery or servitude; trafficking in persons; purchase and alienation of slaves (Articles 600, 601, 602 Italian Criminal Code)

Criminal association to commit the offences under Articles 600, 601, 602 Criminal Code and 12, para. 3-bis, Legislative Decree No. 286 of 25 July 1998



Criminal association to commit the offences of counterfeiting, alteration or use of trademarks or distinctive signs or of patents, models and designs (Art. 473 Criminal Code); introduction into the State and commerce of falsely marked products (Art. 474 Criminal Code)

Offences committed under the circumstances referred to in Art. 416-bis of the Italian Criminal Code or for the purpose of facilitating the activity of criminal associations provided for in the same article.





## NATIONAL ANTIMAFIA DIRECTORATE

*Jurisdiction over prevention proceedings*

In addition to criminal proceedings for so-called “Mafia offences”, the National Antimafia Prosecutor performs his coordination and impulse functions also in connection with **antimafia prevention proceedings** primarily aimed at seizing and confiscating illicitly amassed wealth. This jurisdiction is assigned to District Antimafia Directorates.

The prevention system is one of the main instruments to target organised crime finances significantly impacting on the assets of both domestic and foreign criminal organisations.





## The role of DNA

### NATIONAL ANTIMAFIA DIRECTORATE

#### *Responsibilities on specific matters*

On account of the activities carried out to combat organized crime, the National Antimafia Directorate:

- ☐ is a member of the Committee for Financial Security, set up in the framework of the strategies to counter international terrorism;
- ☐ is a member of the National Agency for the Administration and the Allocation of Assets Seized and Confiscated from Organized Crime;
- ☐ is a member of the Central Commission set up pursuant to article 10 of law no. 8 of 15.01.1991 for the definition and application of special protection measures for witnesses and collaborators of justice;
- ☐ is a member of the Coordination Committee for the High Supervision of Major Public Works for its specific responsibilities regarding the prevention and countering of mafia attempts to infiltrate public procurement;
- ☐ receives copies of incoming and outgoing letters rogatory;
- ☐ has access to the national data bank of antimafia documentation.







## The necessity of a multidisciplinary approach

- The last slides refers to so called ancillary competences of DNA: among other the DNA is a member of the Coordination Committee for high supervision of major public works.
- From this point of view the Italian DNA has supported actively several initiatives increasing the capacity of the Committee for coordination of high-level surveillance of large public works (*CASGO*).
- The first area concerns the so called INTERDITTIVE ANTIMAFIA: type of measures introduced by art. 10 sexies law 575/65 currently newly defined in the book II° L. D. 6 settembre 2011, n. 159, «codice delle leggi antimafia e delle misure di prevenzione (artt. 83, and 84);



## The antimafia «interdittive»

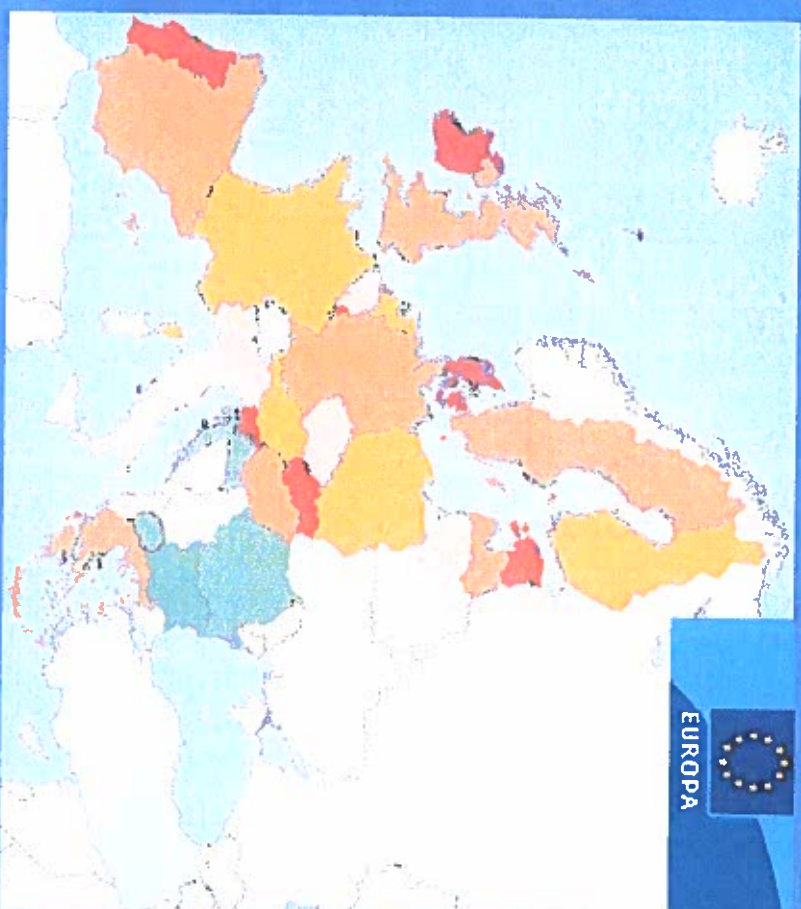
- The possibility to stipulate public contracts with the PA is subordinated to the acquisition of specific documents to be issued by the competent Prefettura:
  - on the absence of preventive measures or previous convictions (confirmed in second grade) although not final (**the antimafia communication**).
  - on the absence of legal situations ( based on coercive measures, decree for trial, proposal for preventive measures) which are demonstrative of an attempt of infiltration in the company ( **the antimafia information**).





## NATIONAL ANTIMAFIA DIRECTORATE *Responsibilities at EU level*

It participates with two prosecutors designated as contact points in the **European Judicial Network** which was set up by the Joint Action adopted by the European Union Council on 29 June 1998 in order to permit information exchange between the national judicial authorities, providing rapid, non-bureaucratic and informal assistance.



In view of its responsibilities, it was designated as **national correspondent for Eurojust (Art.9, Law no.41 of 14 March 2005,)**, a body created to enhance the struggle against serious forms of crime, pursuant to the EU Council Decision 2002/187/JHA of 28 February 2002.



# Thank you for your attention!

Filippo Spiezia  
National Member for Italy  
Eurojust