



FREEDOM LEGALITY AND RIGHTS IN EUROPE

“FOLLOW THE MONEY”

Exporting Falcone method in Europe





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Introduction

Mafia groups invest huge amounts of money in Europe that come from illegal activities: from drug and arms trafficking, the illegal disposal of toxic waste, human trafficking and exploitation, to sophisticated financial crimes. This money ends up in the legal economy thanks to money laundering through business activity and the acquisition of real estate. The money of mafia groups passes to bank accounts of various “*prestanome*”, people who are not directly involved in the criminal organization but allow their identity to be used to cover for the financial transaction, often in exchange for some personal benefit. Many of the frozen bank accounts awaiting seizure are found in large banking groups located in the 28 countries of the EU or in the so-called “Third Countries”. The majority of investigations that attempt to track down the presence of mafia groups in Europe, following traces left by the movement of money, start from the anti-mafia investigation and prosecution service of the principal cities of Italy and end in the banking institutions of important European capitals. And often they stop there. The investigative report “Follow the money” is a journey in the so-called “Falcone method”, a method conceived and tested by the Sicilian magistrate killed by Cosa Nostra on 23 May 1992 in Capaci (Palermo). The goal of this report is to understand the procedure followed by the magistrates who use these investigations on the financial level of mafia business in Europe. The research that follows analyzes the business of Italian mafia groups done abroad, seen through European institutional reports, ongoing and concluded criminal investigations, and meetings with magistrates and investigative departments that follow the flow of money in Italy and Europe. In particular, the investigations coordinated by the National Anti-mafia Directorate, in conjunction with Eurojust, and by the Anti-mafia Investigative Directorate (conceived and founded by Falcone) and today reference point for Europol in Italy. The report, created in the setting of the project “TIE, Tackling Illegal Economies”, mostly deals with these two areas of intervention to understand the fate of the financial investigations of mafia groups in Europe and highlight the urgency of the situation on one hand and the innovations and strong points on the other. Furthermore, it aims to understand where the confiscated money of the mafia in Europe is destined, and also considering the new European directive.





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Organized crime in Europe

*“Here are an estimated 3600 organised crime groups (OCGs) active in the European Union (EU). These groups are becoming increasingly networked in their organisation and behaviour characterised by a group leadership approach and flexible hierarchies. International trade, an ever-expanding global transport infrastructure and the rise of the internet and mobile communication have engendered a more international and networked form of serious and organized crime. There is an increased tendency for groups to cooperate with or incorporate into their membership a greater variety of nationalities. This has resulted in an increased number of heterogeneous groups that are no longer defined by nationality or ethnicity”*¹. European Union’s law enforcement agency, which was created to support all Member States of the European Union to counteract organized crime and terrorism., i.e. Europol, describes the presence of organized crime in Europe in this way. In the annual report “Socta” – Serious Organized Crime Threat Assessment – the agency notifies the increase of the phenomenon in many Member States of Europe and in the so called third countries. The force of mafias is growing in Spain, in Bulgaria, in Great Britain, in Germany, in Austria and it continues to play a key role in the economic and social life of Italy. These are criminal groups that are particularly active in the following criminal activities: drug, cocaine, cannabis, synthetic drugs and heroin, human and weapons trafficking. However, they are also specialized in Community fraud, financial and commercial crimes, often using sophisticated techniques, such as in the counterfeiting of goods and products of all kinds, in cyber crimes and obviously in money laundering deriving from criminal activities. Organized crime has always shown a tendency to expand its radius of action towards new areas, more profitable businesses, relationships that would strengthen its authority. Since the beginning of the 20th century, Cosa Nostra, which is one of Italy’s most dangerous criminal organization, had spread to the US and later to Canada, Central and South America and finally in South Africa and has recently spread to the Balkan area and Eastern Europe. In the same way the ‘ndrangheta, the mafia that was born in Calabria which is a region in the South of Italy, can rely on a

¹Europol SOCTA Report 2013





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wide branched network with international projection. Meanwhile the detention of important leaders of Camorra far away from Campania, which is another region in the South of Italy where this mafia group was born and has established itself historically, confirms the existence of established roots in the UK and in Spain in particular. On the other hand, the Russian and Georgian mafias seem to be very active in unlawful businesses that they manage along with other criminal organizations from Eastern Europe and Italy and which have the monopoly on sectors like weapon trafficking, smuggling offences and cyber crime. The widening of the financial markets, the increasing deregulation of the movement of capitals, the mass deployment of new technologies and the computerization of financial systems have been growth promoters for the legal economy of course, but also for the illegal economy. Organized crime, in fact, has been able to use these global opportunities to their own advantage². “Mafias have always been able to exploit geopolitical changes in the European context and benefit from them more profitable criminal businesses – explains the Anti-mafia Investigative Direction. Only 24 hours after the fall of the Berlin Wall, a boss from the Reggio Calabria area was intercepted by the DIA while he was giving orders to his lieutenant to invade the Eastern Germany. “*What do I have to buy?*”, asked the man. “*Buy everything*”, ordered his boss. When they stopped him, armed forces found two billion and six hundred millions of Italian lire in cash in the affiliated member’s car. “However, there have been also more recent and less known cases – explains the Anti-Mafia Intelligence – the geopolitical and economical fragmentation of some countries of Eastern Europe, like Jugoslavia, has initiated, in the past years, a new phase of international smuggling of cigarettes by mafias of the Balkan area and of South of Italy like Sacra Corona Unita and Camorra³. From an historical point of view, the mafias that are active in Europe differ from each other in two organizational ways: vertical and horizontal. In the vertical organization, there is a chain of command which rules the organization. On the other hand, in the horizontal organization, there is a network of mafia clans connected to each other without a chain of command: each gang deals with its own business, being still involved though in a system of shared values⁴. In the past years, as Europol shows in the report submitted: “Criminal groups often choose a shared leadership or a

² “I confini globali della società criminale”, Monica Massari

³ Interview/ III department of Anti-mafia Intelligence called “Dia”, july-september 2014, Rome

⁴ “Mafie e globalizzazione”, U. Santino, Di Girolamo, Trapani, 2007, pp. 241





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flexible hierarchy. The fact that, at the moment, many criminal groups opt for the “executive group” approach is an important quality change which highlights the efforts made by the group, the complementarity of their skills and a stronger collaboration among the leaders”. “The simplest structure of this approach – the report goes on as follows – has two leaders in office”, however, there are also groups that have wider leading groups, so called “core groups”, main groups. These: “ They lead bigger criminal groups which are relatively more steady and cohesive. They are made up of people that have the same nationality, the same ethnical or linguistic identity or are related to each other through family”. “Mafia bosses – as we read in the report – “can operate more easily, regardless of geographical borderlines and they cannot be easily associated with specific regions or centres of gravity”. This is globalization, which mafia groups have soon benefited from in a positive way to enhance their “business”⁵. The groups that operate in Europe are often groups which have leaders of different nationality, maybe initially connected to specific areas but which later are able to export their own know-how to wherever the circumstances allow them to. “In spite of this – as we finally read in the report – ethnical, linguistic and historical links remain the key factors to build bonds of trust and more often establish the core which controls the wider branches of criminal networks”. The new millennium and the globalization process of the markets and financial affairs have changed the nature of the relationship between the areas and the world – explains the President of the Anti-Mafia Commission, Francesco Forgione, who is the one of the leading academics of the phenomenon of ‘ndrangheta in Italy and worldwide⁶. Mafia settlement routes have replaced those of the old migration with drugs and movement of capitals, in order to establish themselves in new markets and more importantly, in tax havens which have contaminated the world of global capitalism. Some countries, in fact, play the role of a free zone for all kinds of trafficking and movement or submersion of criminal assets in order to reinsert them in the legal economy and in the speculative finance of the European and American countries. In order to understand the economic and criminal force of the mafias in Europe it will be sufficient to have a look at the presence of the ‘ndrangheta in Germany, before and after the massacre of Duisburg, “which has represented a real breakthrough in order

⁵ Europol SOCTA, Report 2013

⁶ Mafia Export, Francesco Forgione, Dalai Editore, 2009





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to understand the strength and pervading phenomenon of the mafias in Europe”⁷. Germany has been one of the countries in which the ‘ndrangheta has concentrated the majority of its economical interests. In November 2006, the “Berliner Zeitung” quoting a report by the services of Intelligence (Bnd) wrote that the mafias use the Federal states to invest the proceeds of their profitable trafficking of drugs and weapons. Besides purchasing shares in the Frankfurt Stock Market, they have made investments of billions of euros in chains of hotels and restaurants in Eastern Germany and in holiday homes over the Baltic sea. According to the Bnd report, the ‘ndrangheta has purchased Gazprom shares, the Russian monopoly holder of gas and shareholder of the North Europe Pipeline, which is the company in which former prime minister Gerhard Shroder is part of the top management. Moreover, according to Bnd, two clans of ‘ndrangheta (one mafia gang from Cirò and another from Corigliano) are believed to be involved in the trafficking of weapons with criminal groups from Albania. Warnings had already been given in 1993, when Wolker Gehm, who was the General Director of the Anti-Criminal section of Federal Police at the time, had noted that Italian mafias had increasingly started using the Federal Republic of Germany as their field of action⁸. On the other hand, in Spain, there are the logistics bases of Cosa Nostra, Camorra and ‘ndrangheta which manage the drug trafficking routes South America and North Africa. Proof of the force of this drug trafficking network in Spain is give by numerous detentions, like the one of Alessandro Pannunzi, so called “prince” of international drug trafficking (who was arrested in April 2004) or the one of Salvatore Zazo, from the Mazarella clan – Zazo from Naples and fugitive Paolo Di Mauro from the Contini clan, who were stopped in Barcelona in April 2010 during the operatio led by Group 5 of Organized Crime Unit of Police in Catalogna and of Italian agents. Here in Spain, as many reports on the international drug trafficking show, tha mafia bosses have a very important basis which develops into a reinvestment of money laundering, which comes from this trade, in real estate, chains of restaurants and other activities connected to laundering of capitals⁹. A quarter of 500 euro notes existing in Europe circulate in Spain, for a total amount of 47.464 million euros, which are nearly 60% of the value of the

⁷ Interview/ III department of Anti-mafia Intelligence called “Dia”, july-september 2014, Rome

⁸ “Fratelli di sangue”, Nicola Gratteri and Antonio Nicaso, Mondadori, 2010

⁹ Press agency, Europa Press, april 2010





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currency circulating in the whole country¹⁰. For years, they have kept their significant profits from ‘ndrangheta in Switzerland, Austria and other countries of Central Europe. Many clans of ‘ndrangheta, like those of Mazzaferro and Di Giovine, have sourced, in particular weapons and narcotics from Switzerland. With England, instead, it is said that they may have had connections with clans that would trade drugs with Turkey and Pakistan. The Balkan area, with countries like Spain and Portugal, is not the only one to have been chosen by international organized crime as a basis of reinvestment of illicit capitals coming from criminal affairs like drug trafficking and weapon smuggling. Mafia bosses have also established their business in the Netherlands, where the logistic bases of the camorra gangs (Clan Gionta, Nuvoleta from Marano, Sarno Licciardi and Di Lauro from Naples) and the gangs of ‘ndrangheta (clans of Mancuso Limbadi, Morabito.Palamara-Bruzzaniti from Africo and from Strangio gang, from the province of Reggio Calabria) but also some clans coming from Puglia (like Madonella from Bari and the Scarci clan from Taranto) have set up between Amsterdam and Rotterdam. The port of Rotterdam, which is the biggest in Europe, has been specially watched for years in Europe by the Anti-Mafia Intelligence, and not only the Italian one. As many reports against drugs can demonstrate, container tanks of drug traffickers of ‘ndrangheta with quantities of drugs from South America arrive in this port¹¹. In May 2008, an important anti-mafia operation allowed the Dutch authorities to intercept 44kilos of cocaine coming from Venezuela and destined to a clan in Italy and on that occasion Italian investigators declared: “The Netherlands have become the crossroads of drug routes”. Some years after the detention of important fugitives like Sebastiano Strangio (arrested in March 2006 in Amsterdam) and Giuseppe Nirta (brother in law of the killer of the massacre of Duisburg and drug trafficker) it became obvious to the police forces of these countries the numerous critical issues related to the Dutch area, as a destination chosen by ‘ndrangheta in particular, for their international criminal affairs. In neighbouring Belgium, and in particular in Brussels, there are families of organized crime Cosa Nostra, some clans of Camorra, originating from Naples and in the area between Anversa, Brussels, Charleroi, Gand and Genk, there are many clans of ‘ndrangheta. Cosa Nostra and ‘ndrangheta are also present in Luxembourg and in the Principality of Monaco. In Bulgaria, Slovenia, Croatia and Serbia – as noted by

¹⁰ “Fratelli di sangue”, Nicola Gratteri and Antonio Nicaso, Mondadori, 2010

¹¹ www.emcdda.europa.eu





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international reports related to criminal organizations in Europe¹² there are active clans of camorra, 'ndrangheta and criminal clans from Puglia which are all in contact constantly with the Eastern European clans, involved, especially in smuggling of goods, in the management of drug trafficking and illegal trade of weapons but – as noted by Dia – also involved in reinvestment of capitals through sport betting, money transfer and other activities related to money laundering¹³.

Money laundering and illegal capitals

The presence of the mafias in Europe was studied by many research centers. The most detailed and reliable analysis was held by Transcrime, the Joint Research Centre on Transnational Crime and the “Centro interuniversitario di ricerca sulla criminalità transnazionale” of the “Università Cattolica del Sacro Cuore in Milan and of the “Università degli Studi di Trento”. More recent researches tried to provide the point of view of civil society and of the European institutions on criminal infiltration in Europe, and especially on its business, on the risks and on strategies to prevent and stop its economical growth. In Italy, where public prosecutor's offices start the greatest part of investigations on Italian and International mafias, the “Direzione nazionale antimafia” has an essential coordination role. “The National public prosecutor's office – explains the head of the National Anti-Mafia Division, Franco Roberti – got a more and more important role in the international cooperation. It contracted over 50 Memorandum of Understanding to promote the exchange of information and the cooperation about financial investigations and letters of request¹⁴. In particular, trough the Memorandum of Understanding signed with Eurojust, the European coordinative structure, Italian institutions can constantly increase the information on mafias in Europe and contribute to boost their data base, currently one of the richest in EU”. The latest report by Transcrime presented a detailed analysis on the presence of Italian mafias abroad and especially on the business with foreign criminal organizations. In particular, the report highlights that

¹² Europol, SOCTA, Report 2013

¹³ Interview/ III department of Anti-mafia Intelligence, DIA, july-september 2014, Rome

¹⁴ Interview with Franco Roberti, National Anti-mafia Prosecutor, july 2014, Rome





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“The investments which were found can change depending on the Countries and on the type of mafia. In general, the economical sectors concerned seem to be the same of the Italian business: construction and real estate, food service, trade and import-export, agricultural industry, gambling houses and casinos, tourism, goods transportation, breeding and last but not least, finance”. The countries that register economic investments in the legal economy by Cosa Nostra, are in particular, according to the Transcrime Research Center, Germany, Spain, Romania, Switzerland, and France¹⁵. There is also abundant signalling done by Holland, Albania, and Greece. The international reports by the principal European institutions responsible for the opposition and monitoring of criminal phenomena in Europe highlight an increase in criminal activity and of the reinvestment of illicit capital also for countries like Great Britain, Belgium, and recently Switzerland, Romania, and Turkey. Specifically, with regard to Cosa Nostra, in the documents consulted by the research center, 269 references to 44 foreign countries have been recorded (that is, seen in official documents) with an average of 6.1 references per country. The presence of Cosa Nostra abroad seems principally due to the strategic role of some countries in illicit trafficking and to the presence of fugitives. The Camorra has registered a total of 276 references in 46 different countries, with an average of 6 references per country. The presence of the Camorra is due to the three already mentioned factors of mafia presence abroad. The strategic role of some countries in illegal activity and the presence of fugitives holds a significant weight, while the stable mafia presence appears determinate in some specific cases. In Europe, we can see a presence of extreme significance in Spain (84 references). Followed by Holland (24), Germany (20, and Great Britain (14)¹⁶. With regards to the ‘Ndrangheta, there are many references to them (486 total), in 50 countries (an average of 9.72 references per country). The results of the analysis support the hypotheses that see the ‘Ndrangheta as the mafia with the largest international mafia presence. The presence of the Calabrian mafia is strongly connected to the principal factors of mafia presence abroad: strategic role in illegal markets, stable mafia presence of fugitives. In Europe, the countries that registered the majority of references for this criminal organization are Germany (93), Spain (37), Holland (37), Switzerland (26), Belgium (24), and

¹⁵ Transcrime, “Gli affari delle mafie in Europa”, 2007-2013

¹⁶Sources: UNODOC, FATF, EUROPOL, EUROJUST, OLAF





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France (21). Albania (16) and Turkey (13) hold an important position as well. “The report presented by Transcrime,” comments the National Anti-mafia Prosecutor, Franco Roberti, “is currently, in our opinion, the most reliable and rigorous, for the method used and for the sums, not exaggerated, that it has supplied. Sums that, although lower than other reports,” explains prosecutor Roberti “are anyways very meaningful, seeing as they concern exact numbers”. And inside the report (which is available for download in its entire version at www.transcrime.it) particular attention is dedicated exactly to the pervacity of the criminal organization called the ‘Ndrangheta. Data confirmed also by the Italian and European anti-mafia intelligence. “It is still the Calabrian mafia,” affirms the DIA, the reference point of Europol in Italy “which is the most aggressive and most dangerous criminal organization. Its ability to root itself in different European countries, thanks to a familial structure and the capacity to move without making itself noticed, with a detailed and invisible infiltration, is the part that makes the Italian and European authorities with whom we have continual contact for international cooperation worry the most”¹⁷. Mafia groups, Italian and international, analyzed in international reports and in the report of the European Anti-mafia Commission¹⁸ are dedicated to international trafficking of drugs, arms, human beings, and to the illegal disposal of toxic waste and other “deviant finance”¹⁹. “It is difficult,” explain the researchers of Transcrime, “having an exact economic estimate for the accumulated wealth by the clans thanks to this illicit activity. In the last resolution of the European Parliament on 23 October 2013²⁰, it was calculated that the countries of the EU lost 670 billion euro due to the criminal economy. It is a rough estimate but it was, indeed, inserted in an official document,” comments the anti-mafia prosecutor Franco Roberti, “it attests the awareness on the part of the European institutions, as much as the damage estimated that mafia groups can cause to the European economy”. It is yet again the report put together by the research center Transcrime that attempts a qualitative economic analysis on the earnings of the Italian mafia abroad, through the monitoring

¹⁷ Interview/ III department of Anti-mafia Intelligence called “Dia”, july-september 2014, Rome

¹⁸ European Antimafia Commission Report, 2103

¹⁹ Antimafia National Department Report, 2013

²⁰ Interview with Franco Roberti, National Anti-mafia Prosecutor, july 2014, Rome





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of criminal investigations and case studies that analyze a trend of some things, as if they were “criminal companies” with a budget and numerous tax evasion strategies, fraud and other criminal characteristics that allow the mafia groups to make illicit profits from apparent legale activity, made with capital of illegal origin.

“Follow the money”

Following the money trail: they also did it in the last operation launched by the prosecutor’s office of Reggio Calabria in Switzerland. Here, as the arrest warrants issued by the Calabrian prosecutor shows, a criminal organization operated in the Swiss city of Frauenfeld, capital of the Swiss canton Thurgau. In the investigations it emerged that the organization, linked to the local mafia of Fabrizia (Vibo Valentia) and to Mazzaferro of Marina di Gioiosa Ionica, was in practice a clone cell that functioned in the “Calabrian model” of origin, and was closely linked with the organization back home. A way to establish a settlement that in the last years has been described in some anti-mafia operations, for example “Crimine” which confirmed the existence of a top-down structure in the Calabrian mafia as well, different from that of Sicily’s Cosa Nostra, but with a “control room” that authorizes the birth of local operations of the ‘ndrangheta and follows from Calabria the business of northern Italy as in the rest of the world. A model, like that of the ‘ndrangheta, that repeats itself in every country of the EU in which it is reproduced. It happened like this in Switzerland as well, where a logistical base for Calabrian clans has already existed for years. As shown in the pages of the investigation “Helvatia”, launched 21 August and coordinated by the prosecutor Nicola Gratteri, “in the course of the meetings, the boss Antonio Nesci explained how to conduct the illicit activities, in particular to the young people who were put in charge of drug trafficking (“whoever wants to work can work, there is “work” in everything: extortion, cocaine, heroin! 10 kilos, 20 kilos a day, I’ll bring you it personally!,” reads in the interception). From Switzerland the bosses also deal with the business in Calabria and vice versa, they decided on and spoke of homicides and extortion (“if we must speak of killings, of extortion, we’ll get together those three, four, five, as I’ve always said”, the interception reads). The presence of the ‘ndrangheta and its affairs in this





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area of Switzerland had already been documented in the annual report of the Italian National Anti-mafia Directorate, thanks to the investigative results of other investigations in the north of Italy, in Germany and, indeed, again in Switzerland. Some years earlier, another important investigation put the spotlight on Helvetian nation. The 2008 operation “Three Towers” led by the Luino carabinieri (VA) allowed the retracing of a series of suspicious financial transactions made between Italy, Spain, and Switzerland by subjects of the clan Ferrazzo di Mesoraca²¹. Within the companies involved they uncovered a leading role for two Swiss financial companies with headquarters in Zurich: the WFS AG and the PPF GmbH. As you can read in the judicial documents “these two companies officially engaged in the collection of capital from Swiss and international clientele (directly or through intermediaries), in other words effectuating trading transactions on request by the above-mentioned clientele”. In reality the two companies were real and true shell companies solely used as cover for financial transactions that handled and laundered criminal assets of the Calabrian clans. To better conceal the origins of the illicit money, the system that was centered at WFS and PPF was based on total managerial confusion and on the use of a “*prestanome*”, numbered accounts and offshore companies. The investigations did indeed find various other companies, mostly registered in fiscal paradises like the Virgin Islands²², with which the two Swiss financial companies carried out frequent cash exchanges. Highlighted most of all by the Italian anti-mafia intelligence were those numerous investigations from Italy to Switzerland which required international cooperation, rogatory letters and information requests through the Justice Ministry; not only regarding the ‘ndrangheta bosses. In February 2012, the DDA of Bari, at the request of the local operative center DIA, with an application for international judicial assistance, asked for the sequester of diverse bank accounts connected to financial transactions made in Switzerland and San Marino to members of a mafia association operating in Puglia. And again in Switzerland, in September 2013 a preventive measure on assets according to the Legislative decree 159/2011 was requested by the Dia, signed by the director of the D.I.A, for association with a mafia-type criminal organization, for a person that showed obvious imbalance in declared income and goods possessed.

²¹ Court of Milan, 2008; DIA report, 2008

²² Ibidem





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Switzerland for decades has been chosen as a privileged place of investment and money laundering. Now, on the other hand, it appears that a “new deal” is making the country come out from the shadow zone in which the business affairs of mafia groups are often “hidden”. A “new deal” also highlighted by the anti-mafia prosecutor Franco Roberti who affirms “big steps forward have been made by countries like Switzerland and Romania” compared to the opposition of banking secrecy and some other elements that in the past made quasi “fiscal paradises” for the bosses²³. Last 24 September, on the other hand, 300 operations against organized criminality were carried out in 260 cities in 34 countries (28 EU + 6) with 1027 arrests. Operation Archimedes, coordinated by Europol, presented to The Hague by the chief of police Alessandro Pansa - representing the Italian presidency of the EU- and by the director of Europol Rob Wainwright, was defined as “the largest frontal attack against criminality” in Europe. And--as Wainwright explained-- it is the biggest assault on criminality in Europe and represents a milestone, for the capacity working together demonstrated. The size of the operation hadn’t been seen before and the result, with thousands of arrests, is a rebuke also for the criminal groups that feel untouchable”. The operation touched more branches of criminality, from drug trafficking and goods, to illegal immigration, fraud, and illegal finance²⁴.

²³ Interview with Franco Roberti, National Anti-mafia Prosecutor, July 2014, Rome

²⁴ Reuters, Sep 2014, reporting by Thomas Escritt



The route of mafia groups in Europe and their affairs

But what procedure do the financial investigations in Europe follow? How do you apply the “Falcone method” in the 28 countries of the EU? A story is told by the numerous investigations completed these years by the intelligence services and magistrate with the fundamental work of the investigation and judiciary of the international structures of coordination. Investigations conducted thanks to a network of supranational entities created in the time of the European Union²⁵. “The magistrates of connection” in the various European countries built the first support structure conceived to follow European investigations. Soon after, in 1998 the European judicial network was realized. It envisaged the creation of points of contact in every member state “that have the duty to facilitate the judicial cooperation between the member states especially in the actions against the forms of grave criminality”. Finally, at current center of judicial activity, there is Eurojust since 2002, unique among the three structures to have at its use the statute of European agency, and therefore the ability to legally act as a supranational organization. It is located in The Hague (The Low Countries) where 27 national members operate with various duties, from investigative assistance, to the collaboration with the national authorities, to the promotion, the coordination and even the diffusion of information. Eurojust also has the duty to facilitate: international (European) arrest warrants, conflicts of jurisdiction, and the execution of the international instruments of cooperation. This structure - as the national anti-mafia prosecutor, Franco Roberti explains - “is destined to further evolution after the approval of the Lisbon Treaty (2007) that looks to the creation of a European Prosecution, with the figure of a European prosecutor (again everything to be defined, comments the prosecutor) with powers therefore to launch investigations and to combat crimes that damage the financial interests of the European Union”.²⁶ Next to these entities is the OAF, instituted in 1999, a European investigative service that works in the sector of fraud, corruption, and other illicit cases of this nature. To strengthen and complete these international entities against mafia groups in the EU, there is Europol: a structure

²⁵ “Dizionario Enciclopedico delle mafie”, Narcomafie, Turin, 2013

²⁶ Interview with Franco Roberti, National Anti-mafia Prosecutor, July 2014, Rome





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already envisaged in the Treaty of Maastricht in 1992, which has its own particular organization that works coordinating itself under an investigative profile in Europe. The field of investigations is vast: it goes from narcotrafficking, to forgery, to human trafficking, to terrorism, to clandestine immigration, to the fight against money laundering and cybercrime. “Our objective ,” explains the operating point manager of Europol in Italy “is to reduce the property of mafia-like criminal organizations. To do it “we follow the money”, using every investigative instrument allowed in Italy: we find proof, clues, and we put red flags up on hypothetical goods or illicit capital present abroad. Often the owners, clearly are not the bosses but are “the prestanome”, people who supply their identity, also financial, to move money around and/or deposit it. Italian law, in our opinion, is the most complete for this type of investigation, except for the crime of self-laundering that hasn’t yet been introduced in our judicial system, but the investigations that go on in other EU countries don’t always allow us to bring forth banking and financial checks to find the proof of laundering or other financial crimes committed by clans in EU²⁷. It is the “Falcone method”, explains the Anti-mafia Investigative Directorate, which we are trying to use and export in Europe in these years . The mafia groups’ objective is profit, the money, so following the money of the bosses, they explain, is to go straight to the source, straight to the bosses, to the clans that pollute the European Union and global economy with violence and determination. It doesn’t only regard Italian mafia groups, on the contrary. We see significant activity from Eastern mafia groups, the Georgian one in particular, Russian mafia groups, Chinese ones and other countries that work in collaboration with the traditional mafias, like the Camorra, ‘ndrangheta, e Cosa Nostra, often supporting each other economically in “joint venture” one with the other. Following the trail of these money streams is always more difficult in a globalized market and with new technological frontiers that have opened in the last decades, but it is our main objective. The mafias have become globalized but the instruments of the investigators have also gotten better. On the other hand, they are still a step behind: an attempt to make the laws of diverse countries harmonized and similar still remains. For example, the offence of mafia association, thanks to which we are able to better hurt the Italian mafias for years is present in this form only in Italy. For anti-mafia investigations this is still a big limit but we are optimists, the

²⁷ Interview/ III department of Anti-mafia Intelligence called “Dia”, july-september 2014, Rome





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EU is taking steps forward in this direction”. But how is a financial inquest born? The investigations of this nature on “the bosses’ treasures” are often born in Italian by the signalization conforming to laws on the prevention of money laundering (231/2007- and directive 2005/60/CE) made by the FIU (Financial Intelligence Unit) the national structure tasked with preventing and combatting laundering and terrorist financing that carries out its functions in autonomy and independence, thanks to the human and technical resources, financial means, and instrumental goods of the Bank of Italy. The structure sends, around every 20 days red flags for suspicious banking transactions (“suspicious” in the opinion of some established parameters by the FIU) to the Finance Police and to the Anti-mafia Investigative Directorate (for that which regards a connection to the criminal organizations). The percentage of signalling that is sent by Dia, in this time period, is 10% and only 4% comes under investigation by the anti-mafia intelligence. The Dia acts, when necessary, thanks to specific focus for the investigations that start in Italy and end in another European country and European databases like AROs- National Asset Recovery Offices (a registry of the goods present in each country). Another contribution in Europe is given by the GAFI (o FATF, Financial Action Task Force) which has as a mission the study of the phenomenon of money laundering. 34 states and two territorial organizations (The European Commission and Gulf Cooperation Council) participate²⁸. It was the GAFI which wrote 40 recommendations, presented for the first time 7 February 1990 and updated in 2010, to give directions towards a better fight against laundering in the various European countries. These recommendations don’t have legal power but are an important foundation in the fight, the legal face in the fight against money laundering in the EU. In the system of signalling that gives the path to the investigations on the Italian mafias abroad the national prosecutor Roberti adds: “This system, after the first years in which it worked a few times and poorly, has decidedly improved in time and today we have, thanks also to technological progress, a greater circulation of information, that keeps the UIF and the GAFI, and other enforcement agencies called on to help in this way, in contact, and most of all the the red flags have increased. The red flagging of financial transactions have increased from 12,500 in 2007 to 65,000 in 2012 and 2013 for a new value of around 84 billion

²⁸ “Economia, riciclaggio in un’ottica antimafia” on Atlante delle mafie, Ciconte, Sales, Forgione, Rubbettino, 2014





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euros. “The financial investigations move on from this type of signalling and from this system of international cooperation but can also come from-- he points out--the Italian magistrates of the Dda- other offences, like financial and bankruptcy ones. Once a clue has been found that brings the suspect of a financial crime to mafia origin, the antimafia intelligence - they explain -launches the investigations with specialized units and the instruments already mentioned like AROs or other focus between other countries, joint intelligence bilateral agreements (like the Task Force between Italy and Germany, born after the massacre of Duisburg in the summer of 2008). Once the good or illegally accumulated capital has been located in another country the difficulties are often connected to the judicial system and laws of that country. In many countries of the EU, for example, the burden of proof is reversed: it isn't the subject under investigation that has to prove the legal nature of the money or good possessed, but the investigators. And this procedure makes it very difficult to find the necessary proof to pass from the investigative inquiries to the judicial entities responsible for those under investigation and suspected of laundering money (which is administrative as well as penal) and of money laundering of mafia capital in particular. From the recommendations of the GAFI have additionally come, in the direction against money laundering, numerous conventions. From the most noted in Palermo in 2000 on transnational international crime (the only in which an attempted unitary definition of organized crime was attempted, to that of Varsavia in 2005 dedicated to money laundering and to the seizure of goods, and to the numerous European directives in the field (91/308/CEE; 2001/97/CE; 2005/60/CE). 5 February 2013, finally, the European Commission adopted two proposals aimed at strengthening the EU laws currently applicable against money laundering and the transferring of funds, in the field of the fight against the mafia. It concerns the draft of EU Directive IV that introduces a series of innovations: greater transparency, some signalling requirements to professionals and commercial workers, and a greater commitment by security agencies. The European directive just approved - comments the Dia²⁹ - is a step forward in the harmonization and cooperation between the member countries also with regards to financial investigations, even though like for many other directives it will help us pay attention and stimulate the implementing regulations in every country and their internal paths. As for the essential international

²⁹ Interview/ III department of Anti-mafia Intelligence, DIA, july-september 2014, Rome





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cooperation, the majority of the international anti-mafia inquiries, after a first investigation in Italy, are sent to Europe through procedures such as the letter rogatory. Those tools connect the Ministries of Justice of European Countries. In case of positive outcome of the letter rogatory, the first step is requisition, the second the confiscation of the illicit assets. If the request is done in Italy, the assets taken away from the Mafias in Europe come back to Italy and are brought to the «Fondo unico di Giustizia» (FUG). «The FUG is managed by a company that acts on behalf of the State – they explain at the «Direzione nazionale antimafia » - and the assets are shared by the Ministry of Interior, the Ministry of Economy and the Ministry of Justice. It should be taken into account that only a few part consists in current assets – around 2 billions euros – and only a modicum consists in negotiable instruments, liquid assets or financial assets ». This is the itinerary of the assets shielded in giant bank groups abroad resulting of illegal activities of Mafias and then re-invested in all Europe: from Spain to Germany, through Belgium, Switzerland and Eastern Europe. “Furthermore – they explains the DIA investigators – it is not easy to follow the development abroad of the Mafias' financial activities. In the latest years, for example, the money transfer, the sport and online betting and Bitcoin have become new frontiers of the financial expansion of mafias in Europe. And those phenomenons are even harder to prevent”³⁰. In the last few years the Italian National Anti-Mafia Division (DNA) has developed connections with Judges and Judicial Officers from Belgium, the Netherlands, Germany, France, United Kingdom, Spain and the United States of America who are in Italy.³¹ Through the time the Italian authorities have also been sending rogatory letters to the mentioned judicial officers who have demonstrated their deep interest and commitment to the cause by speeding procedures and calling for action from their respective national authorities. As a result of such cooperation several meetings have been taking place aiming to share own experiences, best practices and information. Belgium, the Netherlands and Germany have been the most active in this process which has created awareness and led to a better understanding of the presence of Italian criminal organizations, such as the “ndrangheta” especially, onto their national territories. In particular the Duisburg’s massacre has clearly shown to countries such as Germany and the

³⁰30 Interview/ III department of Anti-mafia Intelligence, DIA, july-september 2014, Rome

³¹Report DNA, 2013, Rome





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Netherlands the violence and cruelty of the “*ndrangheta*” organization and it has also created awareness into their authorities and the urge of major actions against the operating of such criminals onto their territories. The Netherlands have gone steps further in their action by calling for an enhanced sharing of information with some of the Italian prosecutor’s offices; meanwhile German authorities have launched an investigative task force which has drawn a new map of clans and their dirty businesses onto German lands. Nineteen Italian state’s witnesses have reported about large investments into real estate, commercial and financial sectors in Germany made by *ndrangheta*’s affiliates. In Belgium the focus is on the seaport of Aversa (Antwerpen), which has proven of being an important point of a massive drug traffic often heading to Italy and involving people of different nationalities. France and Italy have been the place of several meetings between Italian and French Judges with the purpose of comparing legal procedures which are centralized in national divisions by both countries. In fact in France there’s a national body in charge of the requisition of foreign mafias’ assets and goods proving how strong the presence of such is on French territories. Spain and Italy have signed two *Memorandum* (one with the Special Anti-Mafia Prosecutor’s Office of Spain and the other with the Special Tax Office of Spain against Corruption and Organized Crime) in addition 189 rogatory letters regarding international drug trafficking have been issued and sent by several Italian prosecutor’s offices to different EU countries. Prosecutors say all rogatories received by the DNA have been forwarded to the Department of International Judicial Cooperation.





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The Balance of European Laws against Organized Crime

In Europe the Mafias wield a very complex financial architecture against several Anti-mafia fronts definitely lacking balance and coordination between them. In short this is why so far Falcone's method hasn't taken off in Europe. A report recently submitted by the DNA to the Italian Parliament's Anti-Mafia Committee of Inquiry tells all the phases, strengths and weaknesses of European cooperation set on this particular field in the last few years and it puts forward precise proposals for the coming semester of the European Presidency. Such proposals could be crucial and decisive for a new and more effective anti-mafia action as European Anti-mafia Committee has been asking for. In October 2013 a European Anti-mafia resolution against Organized Crime, corruption and money laundering has been approved, it passed with 526 votes in favor, 25 votes against and 83 abstentions. It's a historic watershed for Europe and its fight against the organized crime: "We've managed for the first time to take this serious fight to the attention of the European Parliament" said Sonia Alfano, President of the CRIM³² and she continues: "we ask for the introduction, into the legislations of all European countries, of laws against every affiliation of people to organized crime and against any vote exchange gaining material benefits. We ask for the applying of tough restrictions to jail permanence, as it is in Italy with the 41bis, for those who committed such crimes. We demands the abolition of banking secrecy, the exclusion from all European calls for services or proposals of any business company that has been judged and sentenced guilty of committing organized crime and/or affiliation with it and therefore for the confiscation of their properties as a precautionary measure. We ask to allocate confiscated properties to social purpose. We have laid down measures restricting eligibility and resulting in the resignation from public and governmental positions. We aim to introduce norms that facilitate the use of special investigative technics, especially onto those countries where legislation has not yet reached the standards. On the same line, the National Anti-mafia Prosecutor Franco Roberti affirms:" In the last few years the international cooperation has experienced good moments and critical ones. For example the Dutch government has established a specific Prosecutor in charge of cooperation with the Italian authorities and so well it has been

³² www.flarenetwork.org





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done by the italian-german task force created after the Duisburg's massacre³³. It's also in place an effective judicial cooperation with Switzerland, Romania and Serbia which have planted a system that look at the Italian National Anti-mafia Division as a model. In Italy we also have important exchanges con the Russian Authorities". At the same time he does not avoid critics to the cooperation system and affirms: "I'd like to see established what the Lisbon treaty affirms, that is a better balance among European legislations and the creation of a European Anti-mafia Prosecutor. Banking secrecy and tax heavens are still two huge weaknesses into the process of coordinating European action". At the same time he does not avoid critics to the cooperation system and affirms: "I'd like to see established what the Lisbon treaty affirms, that is a better balance among European legislations and the creation of a European Anti-mafia Prosecutor. Banking secrecy and tax heavens are still two huge weaknesses into the process of coordinating European action". Finding a balance among all European legislations is the essential need that has stood out from all prosecutors' words we have listened to along our journey. Despite politics has not yet adequately responded to the issue, the frontline players have anyway gone several steps forward. As our intelligence task force has expressed to the Parliament's Anti-mafia Commission, the 3rd Division of DIA plays an active role into some European investigative teams such as:

- CO.S.I.
- CATS (ex art. 36 UE treaty);
- LEWP (Law Enforcement);
- Cooperation group criminal law;
- Gruppo Genval; Europol and Focal Point about organized crime:
- ITOC- Italian organized crime - CO. italian;
- EEOC-Eastern European organized crime - CO. est europeee;

³³ Report DNA, 2013, Rome





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- COPPER-Albanian speaking criminal groups - CO. albanese;
- SUSTRANS-money laundering

In particular, the European Parliament resolution represents the first political step towards the following goals:

An European action plan against organized crime which could consider the crime of association to transnational organized groups; prevent the risks of criminal infiltration and corruption in Government procurements through the introduction of a strict control and the exclusion from the competitive public tenders in all EU of all economical actors convicted of organized crime, corruption and money laundering; the introduction of confiscated assets' models not based on conviction, especially when it can be proved that assets are the result of criminal activity or are used for criminal purposes creation of National structures committed to inquiring activities and to the contrast the Mafia and crime organizations, with the aim of developing, through Europol and the support of the Commission, an «anti-mafia operational network». This network, as they explained the Dia investigators during a hearing in anti-mafia Commission, intends to be the European version of the «Falcone's method»: the information coordination on crime organizations through many different inquiring centers, even at an European and International level. It would be an extraordinary occasion to bring into harmony within the European institutions the legislations about the participation in crime organizations and mafias, and to introduce the non conviction based confiscation. As organized the @ON seems to be a fundamental step in for the cooperation of the Police offices, with the aim of the constitution of an European Public Prosecutor's Office as anticipated by the already mentioned European Parliament Resolution. In last decades, few jurisdictions have taken into account an incisive law which could permit the requisition and consequently the confiscation of the assets with no penal conviction, as a preventative measure in case of dangerous actors and evidence of assets resulting of criminal activities. Thus, the absence of an European jurisdictional harmonization about requisition and confiscation prevents to tackle the assets belonging to Mafias and then re-invested into legal economies. Now the new European directive could





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make a breakthrough. In that sense, the head of Flare, Freedom, legality and right in Europe, Franco La Torre³⁴, wrote few significant remarks after the go-ahead of the directive on the importance of the achievement. He remarked:

1) The step forward is undeniable. We could have acts with legally binding effects for all member States which could regulate the confiscation in all the EU. This was not taken for granted. It was so difficult to convince the Member States about how worrisome was the menace of the crime organization within the EU and about how important are the measures such as the confiscation.

2) The vetoes such as those of UK that paradoxically has an advanced legislation on the topic, and Denmark. But even those of Germany, that has a contradictory approach: on one hand defender of the Austerity, on the other obstacle to the possibility to get back huge amount of money resulting of illegal activities.

3) Confiscation. There are different kind of confiscation: the one based on the amount of the illegal proceeds and the broader one intended for prevention. Undoubtedly, this latter represents one of the most important innovation since it permits to confiscate not just the assets resulting of the crime the offender was convicted for.

4) Non-conviction based confiscation. In my opinion, this case got the greatest veto. Unlike the European Parliament's recommendation, the final text is quite limited and does not take into account an actual confiscation, as traditionally intended, with no conviction since it applies just in case of disease or escape of the suspect. No reference is given about the death of the suspect, to the opportunity of simultaneous legal actions for non-conviction based confiscation, as for the Italian model of prevention or the British and Irish «action in rem» . A lost opportunity which hardly we will have the chance to discuss again.

5) Third-party. Another innovation consists in the possibility for the Member States to confiscate assets that the suspect transfer to another person if good-faith is missing.

³⁴ www.liberainformazione.org, Rome, 2014





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- 6) Requisition. Another important element, requisition permits a fast intervention when there is the risk that the suspect could hide the assets.
- 7) The social reuse of confiscated assets. This is not a mandatory device but just a guidance. It is based on the Italian case. Beside the reuse, the sell and the transfer are also possible, with a flexible approach since the Mafias could take the assets back
- 8) Mutual acknowledgment. The aim is to bring to harmony the EU legislation which could permit the cooperation, with the limit that this directive does not have direct effects on the previous that regulated the same topics and that is not yet fully implemented by the Member States.

At the end he adds: “We could and should have done so much more, considering the aggression and the enormous subtraction mafias realized in terms of common resources for development, but we want to underline, together with our satisfaction, the positive and in some cases, especially in terms of judicial system, revolutionary content of this Directive, whose comprehension is essential in order to contribute to a conscious struggle against mafias in Europe. This is a commitment we assume as Libera: we will inform and sensitise the European public opinion, to let it ask to its own governments and to European institutions not to look away while mafias steal resources which are fundamental for the UE development. We launch a plea to Italian Government, in order it to take all the necessary measures, during the semester of Italian administration, to facilitate the rapid adoption of the Directive by all the nations members of the UE, and to introduce an agenda with different initiatives, all suitable to further intensify the instruments we can use as contrast, from the general European Counsellor, to a Directive on Whistleblowing, from the Creation of a European Anti-Corruption Authority, to an Office for Monitoring, Requisition and Recycle of the properties belonging to corrupted and corruptors, not to forget a European Directive on the struggle to private corruption”.

To reach a superior level of legality and social justice in Europe, we still have to walk a long way, nonetheless we are making several interesting steps ahead. First of all through a recovered pivotal position of the European civil society which, from inside and outside its organization, is leading a “pressure” activity on European politics, and





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already delivering important results. Even the national anti-mafia counsellor, Franco Roberti, who guided us through this journey-report about the financial investigations and the antimafia European cooperation, is optimistic about the future of the struggle to organized crime. Without saving critics to the double level on which they had to act in these past years when dealing with this topic, he explained: “There is now a full awareness of the risk mafias represent for the European economy and society. Nonetheless such awareness doesn’t bear scrutiny: for example when directives are written, while the Italian system allows us to introduce measures to prevent requisitions, we clash with different sets of rules that don’t take them into account. The convention of Palermo of 2000 has been a milestone but it hasn’t been carried out in the same way in every internal organization in all the Nations involved. Besides, there are many difficult inquiring sides common to all Nations, as for example start under-cover investigations, leak policy, cooperating witnesses policy. And even more important I consider the cancellation of banking secrecy (Ocse 2009): how many times did we say “stop with tax heavens”, and then we discover, in the folds of the different conventions, the chance to oppose the banking secrecy, even with simple bureaucratic formulas as “It is not relevant for the inquiry”. This means that in many countries the banking secrecy has been dismantled only formally, but not actually. The international cooperation has a long path to go, but it’s the only possible way to hinder mafias and criminal economy progress in Europe”. This same opinion is shared by the antimafia investigative management who – with a touch of pride and a glossy shade in the eyes – when telling about the several bidirectional meetings with the investigative resources of other Countries, when talking about the refined technologies conceived to track illegal assets in UE Nations, comments “We are simply exporting Falcone’s method: *follow the money*”!

