European crime-markets
at cross-roads:

Extended and extending
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European crime-markets at cross-roads: Extended and extending criminal Europe
Petrus C. van Duyne, Jackie Harvey, Almir Maljević, Miroslav Scheinost, Klaus von Lampe (eds.)


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The Cross-Border Crime Colloquium is an annual event since 1999. It brings together experts on international organised (economic) crime to discuss the latest developments in empirical research, legislation and law enforcement, with a special geographical focus on Western, Central, and Eastern Europe. The Colloquia aim at building bridges in three respects: between East and West Europe, between scholars and practitioners, and between old and young. The Cross-border Crime Colloquium, so far, has been organised nine times:

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# Table of contents

**Petrus C. van Duyne**

Crime-markets are forever: from the criminal mushroom market to the crime-money scenario

1

**Klaus von Lampe**

Organised crime research in Europe: development and stagnation

17

**Jon Spencer**

Media constructing organised crime concepts in an extended criminal Europe: Trafficking women for sexual exploitation

43

**Anja Logonder**

Who is “Yugo” in “Yugo-mafia”? A comparative analysis of the Serbian and Slovene offenders

63

**Miroslav Scheinost and Simona Diblikova**

Criminal conspiracy from the perspective of the Czech Republic: The legal framework, definition, prosecution, and offenders

97

**Anna Markovska and Colleen Moore**

Stilettos and steel toe-caps: Legislation of human trafficking and sexual exploitation, and its enforcement in the UK and the Ukraine

121

**Darko Datzer, Almir Malertić, Muhamed Budimlić, Elmedin Muratbegović**

Police corruption through eyes of bribers: The ambivalence of sinners.

151

**Georgios A. Antonopoulos**

The cigarette smuggling business in Greece

177

**Tom Vander Beken and Kristof Verfaillie**

The vulnerability of economic markets to crime in 2015

201

**Brendan Quirke**

EU Fraud and new Member States. The case of the Czech Republic

221

**Konstantin Pashev**

Cross-border VAT fraud in an enlarged Europe

237

**Maarten van Dijck**

Finding the needle: shifting responsibilities in the fight against money laundering and the financing of terrorism

261

**Jackie Harvey and Siu Fung Lau**

Crime-money records, recovery and their meaning

285
Vesna Nikolić-Ristanović and Sanja Ćopić
Money laundering: possibilities and problems in the law enforcement in Serbia

Petrus C. van Duyne and Stefano Donati
In search of crime-money management in Serbia

Thomas Schulte and Martin Boberg
‘Criminal Money Management’ as a cutting EDGE between profit oriented crime and terrorism
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Crime-markets are for ever
From the criminal mushroom market to the crime-money scenario

Petrus C. van Duyne

The mushroom and nutmeg market scenario

Mushrooms are a mysterious product of nature, whether for good or bad. They can be nutritious as well as mortal, healthful and sought-after but also mysterious. Some types grow in mysterious circles, which in England are known as ‘fairy rings’. This denotation sounds sweet, but does not capture the dark side of the fungus which seems to be what it is not. Actually, what we see –the stem and the hat– are not the real fungus at all. That is the invisible mycelium, essential for the recycling of nature, and mysteriously emerging at unexpected places. The old Dutch population saw this dark side of the mushroom better and called these circles ‘witch rings’ (heksenkring), evil and magic. And that has not changed in modern times. Indeed, at present many still consider them magic, others evil, because they are magic. Not in the sense of the old times of witchcraft, but in the modern sense, because of the magic of creating effects in the mind with mild hallucinations.

That is not new: the old witches knew that also. What is different is that these old witches did not traffic magic mushrooms, because there was no market in such products. That is a recent phenomenon and for some time a licit and lively trade in magic mushrooms developed in the Netherlands. This was much resented by the authorities, because of that ‘magic’, mild hallucinatory effect. In the Netherlands magic mushrooms could be bought in so-called ‘grow shops’, together with equipment and manuals for cannabis growing. This was also a thorn in the authorities’ flesh, particularly of Christian Democrats preaching a return to ‘norms and values’. Indeed, drug policy and Christianity are deeply connected: drugs are an evil to the soul (Van Duyne and Levi, 2005: ch. 1-2). Hence, the smouldering resistance against the present state of affairs was politically mounting and any voice raised against the blind-alley anti-drug policy, raised by some mayors struggling against ‘drug tourism’, was smothered. Then in the summer of 2007, a young French woman –allegedly under the influence of a magic mushroom–involuntary rushed to the aid of the authorities: she jumped from an Amsterdam bridge and drowned. The tragic incident received wide media attention and gave prohibition-
ists in Parliament a majority for criminalising magic mushrooms. With this political support, the Christian Democratic Minister of Health felt confident enough to cast aside a contrary medical expert report warning against criminalising magic mushrooms: he duly introduced a bill against trafficking of magic mushrooms and, alongside, also against selling cannabis growing equipment. Medical and psychiatric professionals protested in the media against this rough treatment of their expert report, but they were not heeded. The experts should have known better: the prohibition history of the drug markets is not expert or 'evidence based', but framed in a firm belief system. Indeed, expert opinions and their statistics never win from belief systems. Eighty years ago, the death of a well-known actress in London because of cocaine use was also sufficient to clamp down on the cocaine market, though at that time it was still really tiny. Are we witnessing a similar scenario becoming reality, again?

This volume is about crime-markets in Europe. It is also about scenarios, as a method for mental-political mapping and strategic decision making. It is therefore relevant to think of a future crime-market scenario. For this reason it is relevant to elaborate a scenario developing out of the penal mushroom policy. Let us therefore follow the article of the medical experts, who indicated that magic mushrooms are just a product of nature: “Do you want to asphalt the whole of nature?” they exclaimed exasperated. That is a far-away scenario, though the automobile lobby is diligently working on it. A more likely scenario is an underground market of magic mushrooms. Some will grow them at home and others will comb parks and woods for their precious fruits. That will be countered by arming the foresters with new powers against anybody suspected of gathering mushrooms while new ‘mushroom detective squads’ are established. Visitors in woods and parks are no longer considered as innocent walkers and the foresters get orders to pay attention to ‘suspicious walks’ and to inspect the bags of anyone leaving a park or wood. Because eating the wrong mushrooms can be lethal, an illegal expertise develops (giving advice is also penalised). Advisers on internet become chased and websites giving advice on how to prepare magic mushrooms are shut down by a new Europol Mushroom Squad.

This is not the only scenario. In their comment the experts pointed at a nutmeg scenario. Nutmeg also has psycho-active potentials. So why would youngsters not make a shortcut and plunder mom’s spice rack? Indeed, it is a matter of time before drug pioneers have invented a nutmeg extract, forcing the authorities to intervene again by resorting to criminal law measures and creating another crime-market: the criminal psycho-active nutmeg market.

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1. Risicoschattingsrapport betreffende paddo’s (psilocine en psilocybine), Coördinatiepunt Assessment en Monitoring nieuwe drugs (CAM), Den Haag, 2007
2. E. Pennings and F. De Wolff, NRC-Handelsblad, 17 juli, 2007
3. Unless the statistics are fabricated to lend support to such a belief system. See: Courtwright (1982) on US addiction statistics and Van Duyne (1994) on the FATF drug money figures.
Before one considers this a too unlikely scenario, one should consult the erratic history of the drug markets (Van Duyne and Levi, 2005). That history demonstrates that the authorities do not merely fight illegal drug markets and their accompanying ‘organised crime’ entrepreneurs. The authorities are –in a distorted way– their very corner stone by first creating and then fighting illegal markets. Of course, this interaction in market creation is not drug specific. Human smuggling and trafficking (the illicit migration and sex-service market) can also be approached from this angle. One may wonder whether we are not at cross-roads by expanding crime-markets in Europe.

Side-markets and market players

As is known from the economy, markets never come alone, and so with crime-markets. Any (illegal) industry entails many surrounding commercial activities, which constitute the (criminal) ‘side-market’ phenomenon. The adjective ‘side’ does not indicate something of minor importance. Actually side-markets may even develop larger proportions than the basic market itself. Naturally, the most important side-market of the crime-economy is the law enforcement market. Of course, crime must precede law enforcement, but once established the law enforcement market will never go away, targeting, defining and chasing ever new objectives. It is a colossal market with an international momentum of its own. Think of the anti-drug market, the anti-money laundering and terrorist financing markets or the international ‘organised crime’ market. This does not imply that for each kind of criminal conduct a flourishing law enforcement market comes into being. For example, the enforcement market surrounding fraud, economic and environmental crime never succeeded in obtaining the scale and the longevity of the anti-drug market, even if the financial damage exceeds most other forms of profit oriented crime.

Not all side-markets are formed by penal-law enforcement agencies. Some are ‘civilian’. For example, the drug market is surrounded by many medical, human science and treatment markets. An interesting side-market supposedly overarching all this is the research market, neatly divided in (overlapping) disciplines. The participants are supposed to hover ‘objectively’ above the sublunary world of crime and cops, aiming to describe detachedly ‘reality-as-it-is’. ‘Organised crime’ is one of the present main markets, and researchers have carved out a corresponding research market.

This organised crime research market has been succinctly described by Klaus von Lampe in his chapter “Researching organised crime: development and stagnation”. The marketing aspects of this sector look really convincing: it has specialised journals, centres for research, some of which are ‘government embedded’ like the Dutch Research Centre of the Ministry of Justice. Very importantly, there are research funds to be obtained,
either at national or European level. Particularly important has been the funding by the European Union through its 6th Framework Programme. Under this Programme practical as well as fundamental research has been carried out. Unfortunately, the EU research fund market did not prove to be a stable one: the 7th Framework Programme narrowed the funding formula and thereby market opportunities. Instead it reoriented it funds on the competitiveness of the European industry. Organised crime research proposals were downgraded accordingly.

Against this background it remains to be seen how the organised crime research market will develop. After all, it is not a very large market and a substantial part of its output concerns all kind conceptual hair-splitting. Therefore, there is a danger of conceptual and empirical saturation, while law enforcement customers hardly buy these ‘products’. Why should they? Law enforcement has its own financial market dependency on politics. And politicians are not waiting for detailed ‘cold’ scholarly analysis, but ‘warm’ emotive (short) stories and grim threat images as delivered by Europol (OCTA 2006; 2007). In addition, as the author remarks, in the face of a shortage of sound empirical data and proper theoretical underpinning, the various approaches “merely reproduce existing assumptions and perceptions”. For any market, whether licit, criminal or intellectual, saturation is lethal. Therefore the author poses three challenges:

- maintaining innovative continuity,
- access to empirical data (the fuel of the research engine) and
- keeping intellectual independence upright.

Given the preponderance of governmental funding of research, the latter challenge is important, as much of the common assumptions and perceptions are implicit components of the authorities’ Weltanschauung or more mundane political interests. Doing research funded from that perspective would entail the continuation of scientific saturation under governmental funding, which is often the hallmark of scientific ‘mainstream’ works. No economist would advise such a market policy.

A powerful side-market is the media market in the field of organised crime interacting closely with policy makers, law enforcement and researchers (Van Duyne, 2004). This is a very old market (Stephens, 1988) serving all those who are yearning for attention and recognition, if not fame – criminals and policy makers alike. It is very much a market with prices for timeslots and square centimetres in news papers. Space is scarce and ministers of Justice or Public Prosecutors must compete for attention to ‘organised crime’ with disasters and family tragedies. The most valuable media timeslots and square centimetres are those in which there is a confluence of interests and emotions. This is elaborated by Jon Spencer in his chapter on the media constructing ‘organised crime’ concepts, particularly concerning women trafficking. This is a subset of the problem of illegal human migration, also one of the authorities’-made markets: the criminalisation
of realising one’s desire to find a better life elsewhere. In defining this market, identifying the victims and the perpetrators, the media play an important role. It succeeds in that effect by confirming imageries known to the public, such as ’organised crime’. This adds coherence to the human trafficking narrative: if the trafficking is large, it must be organised, affecting innocent victims (sexually exploited girls). This contrasts with the many trespassing income-seekers entering voluntarily into the illegal sex market.

The author’s analysis of cases as they appear from the files on the one hand, and the ways they are reported in the media on the other hand, reveals the difference between sex employment with ’minor coercion’ (the findings in the criminal file) and the ’Sex Slave Ring’ imagery (the news paper screaming headlines). To underline the seriousness it helps if the sex employment organisers and the victims are from some sinister Eastern European countries like Albania or Moldavia. This again adds to the even more sinister ’transnational organised crime’ association. Naturally, this sells.

This compares badly with the other side of the coin: the truths which do not sell so well. These concern the ’motivators’ (push and pull factors) in the countries of origin and the more or less usual organisational measures for running one’s illegal business. For example, most organisational measures concern risk reduction. Therefore it is hardly surprising that crime-entrepreneurs prefer to engage relatives to non-family associates for sensitive aspects of the smuggling enterprise. And if there is an extended family one has an extended ’family organisation’. This human factor –’human, all too human’– does not find its place in the media side market, which has a large impact on the imagery of the main crime markets and on the law enforcement market.

It would be an exaggeration to attribute this inflated crime imagery to the media and authorities alone. Some criminal organisers also participate in this media interaction and indulge in broadcasting their fame, or what they consider as such. From the perspective of a criminal risk manager it may seem foolish, though there is also be a rational background for being known as a ’tough guy’. If one wants to establish and maintain a proper criminal market position one has to become known and respected for being strong (potential of violence), ’criminally’ honest and reliable. It is the formula the mafia seeks to uphold (Gambetta, 1993). Of course, a combination of these features can help, though one can doubt the positive correlation between such a reputation and criminal longevity. A negative correlation between reputation and age can certainly be observed with the alleged ’members’ of the ’Yugo-mafia’ as described by Anja Logonder in her chapter on organised criminals in Serbia and Slovenia: Who is ’Yugo’ in the ’Yugo’ mafia? She reveals different images as far as the Serbs and Slovenes are concerned.

The violent reputation of ’Yugos’ –mainly Serbs– was established in the 1970s and has been fostered well after the break-up of the Republic of Yugoslavia. Not primarily in their own country (that came later), but abroad where they moved in search of better paid (criminal) work. In the previous socialist republic they were kept short by the
State Security Service, employing their talents for the ruthless execution of covert ‘political jobs’, for example against political enemies abroad. These assignments were frequently carried out with much bravado, which became part of the hallmark of these criminals. The most infamous and characteristic example was the international bank robber Arkan. The wars accompanying the break-up of Yugoslavia consolidated and extended this use of criminals, many of whom became rich (Judah, 1997). With the breakdown of the rule of law they could ostensibly display their criminal wealth (no laundering needed), being photographed with guns in their belt or hands. The media loved them as much as they loved the media, warming themselves in the attention of the press and television-shows.

What has remained of these flashy criminals, living up to their own clichés? Most are dead or incarcerated. Some consider a more bourgeois entrepreneurial life, being no longer interesting for television shows. In the end, only the media seem to have gained from these flamboyant crime-entrepreneurs and their lethal life style.

In contrast to the Serbian media crime market, the Slovenian fellow criminals had little to offer on the side-markets of violence and media. Though their basic crime-market functioned properly, there were no hit men, public shootings or exciting crime bosses eager to present themselves in talk shows. Of course, they displayed their criminal wealth but avoided creating a criminal side-market based on short-sighted demonstrations of fearlessness in order to market their reputation. Actually, the Slovenian crime-entrepreneurs down-sized to the size of their small country, displaying as much introvert personality traits as their compatriots. “Crime-markets never come alone”, was the opening sentence of this section. The Slovenian crime-market landscape demonstrates that this thesis has no absolute validity.

‘XL’ enforcement, management and sinners

Despite the given circumstance that crime-markets and its operators are part of society, the usual rhetoric is about fighting this phenomenon. From the angle of criminal market interactions, as set out in this volume, it would be more appropriate to look at all this crime and crime fighting from a market management point of view. Even if it is the correct businesslike stand, there is an inherent tension: ‘organised crime’ and everything within its orbit is considered big and threatening. It is a kind of emotive wrapping which has always been indispensable in selling the fight against the organised crime-market politically. However, managing such worries, there is the underlying human reality at the sublunary level mainly revealing banalities of ‘human all too human’. This is discrepancy, which legislators and law enforcers seek to disguise by dressing the phe-
nomena in ‘big size’ garments, like thin youngsters, wearing a too large hunter’s outfit to impress: ‘XL’.

The chapter written by Miroslav Scheinost and Simone Diblikova about the Czech Republic’s legal framework and the underlying reality in terms of offenders, prosecution and convicting, illustrates this XL discrepancy. The authors provide a description of the important changes to the Criminal Code, Criminal Procedure Code and the Czech Police Act adopted in 1995. Of course, a definition of ‘organised crime’ was adopted too. And what did these legal OC hunters in ‘XL’ green jackets bring home? The authors are realistic and avoid all sorts of sportsman’s yarn. They give a sober account of the yield under the conspiracy clause (a kind of OC-definition): 472 prosecutions, 18 convictions (4%) and no mafia around. True, the description of some of the cases demonstrate organisational cross-border ramifications, which is not surprising in cases of immigrant smuggling and human trafficking. The authors also concede that while in a number of cases the criminal conspiracy clause did apply, there were doubts whether it “was appropriate at all for the level of organisation and extent of criminal activity”. Indeed, taking off the ‘organised crime wrapping’ of the penal law merchandise revealed a much smaller product.

Problems in penal law crime-market management is not only due to wearing a too big suit and having too high expectations. Sometimes the relevant crime-market is really complicated, as is the case with human trafficking for sexual exploitation. If we abstract from ‘media wrapping’, as elaborated by Jon Spencer in an earlier chapter, Anna Markovska and Colleen Moore make clear how competing conceptualisations about forced or voluntary prostitution, legislation, know-how and priority setting play a role too. The authors compared the UK and the Ukraine in this respect. It is an interesting comparison, as the latter is a source country while the UK is a destination country for those hoping for a better life or lured by void promises and subsequently being forced to provide sex services under duress. Managing this market is difficult, as legislation is rather new, knowledge and experience has to be built up and conflicting interests related to the victims have to be harmonised (protection of witnesses versus removing illegal immigrants). While prosecution is getting under steam, in the UK as well as in the Ukraine, these common problems have to be solved. A problem not shared with the UK appears to be wide-spread corruption in the Ukrainian law enforcement which impedes effective prosecution (Osyka, 2001; 2003).

With the phenomenon of corruption we arrive at another law enforcement layer to be managed: the sinning authorities themselves. This is elaborated in the chapter on corruption in Bosnia-Herzegovina by Darko Datzer, Almir Maljević, Muhamed Budimlić and Elmedin Munatoğeović. As a matter of fact, while describing police corruption, they also describe a common disease, which is shared by every layer of the population. Giving bribes is considered an aspect of a citizen’s daily life: sometimes irksome when it
concerns a service one is entitled to, often practical when one can mitigate or avoid a fine for a traffic offence or speed up procedures. It is valuable that the researchers direct their attention to the citizen’s side of corruption, not only as victim, but also as perpetrator. Who are those citizens who do not object to corruption, but either resign to it or prove to be an active instigator, thereby sustaining an illegal exchange market of services, favours and gifts? Based the responses to their questionnaires they came to a meaningful categorisation the citizens’ attitude to corruption: the ‘flexible sinners’, (second highest educational level) tolerant towards small gifts but rejecting gratuities; the ‘true sinners’, (low education) having few objections against corruption; the ‘guardians of the state’ (higher education) taking a strong stand against corruption and the group of older and lowest educated citizens who—being used to a lifelong state of corruption—had become ‘adaptive sinners’.

There is no shortage of anti-corruption programmes in Bosnia & Herzegovina: three programmes were proclaimed since 1999, all with a high declarative value, size ‘XL’. All top-down—from the highest level of corruption—and all failed. With so many complacent sinners in a small country with a long corruption history, the authors have good reasons to fear that it will remain a hostage of its past: the market of corrupt exchanges will continue.

If moral crusaders hold the view that the illegal market place is populated by ‘sinners’, most commit their sins against their own health and against the Tax Service. The latter makes a profit from unhealthy habits by taxing the substances consumed. Tobacco is one of these sinful consumer goods, which are enjoined while the state takes its cut. The biblical call: “Who is without sin throws the first stone”, should certainly not be addressed to the state in the first place. This applies to the previous studies on the Belgian, Dutch, Estonian and German illegal cigarette market, published in previous Colloquium Volumes, and by Hornsby and Hobbs (2007), as well as to the chapter on the Greek cigarette smuggling business by Georgios A. Antonopoulos. Granted, the tax burden on tobacco products in Greece is not as draconian as in the UK, one of the favoured destination countries of cigarette smugglers. Still the tax is high enough to further a thriving contraband market, either for transit or for the Greek customers. It is very much a ‘normal’ market with normal sinners: bootlegging students and housewives, illegal migrants alongside (or in the service of) larger organisers. Also for the Greek cigarette market, upperworld and underworld interact or even co-mingle if required, though corruption, like violence, is not an inherent part of this crime-market (nor of any other market). To put it at its most banal: “You do what you have to do”.

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4 See www.cross-border-crime.net
Vulnerable to organised business crime: 2015 and now

Can criminology be a relevant futurology discipline? That depends on what aspects of the criminal market developments. Yes, I have already outlined a mushroom and nutmeg crime scenario, which is based on concrete parameters. But fuzzy aspects will lead to fuzzy future studies. ‘Organised crime’ is such a fuzzy aspect. To say something about the future developments of ‘organised crime’ is tantamount to forecasting the fuzziness of fuzziness. That is something one can sell only at political level, as did Europol with its OCTAs 2006 and 2007. But as far as real crime-markets are concerned, one should heed the policy of the insurance industry to determine what is real. Is organised crime or its future real? Not as far as the insurance industry is concerned: one cannot get an insurance against ‘organised crime damage’. But one can get insurance policies against all sorts of other damages from crime, the vulnerabilities of which are real enough to trade with. Of course, to recognise vulnerabilities one has to project these against all sorts of scenarios in which they may become real. Therefore, the vulnerability approach of crime and scenarios studies are closely connected as demonstrated in the chapter on the vulnerability of economic markets to crime in 2015 by Tom Vander Beken and Kristof Verfaillie.

The authors apply their complex scenario study to the infringement of intellectual property rights in Europe in 2015 and give four potential scenario outcomes. European 2015 intellectual property rights enforcement can take place within a resistance factor mode, headed by the private sector; the fortress Europe mode with a strong role of the authorities; the sieve, with a weak public involvement and the public sector plugging the holes; and finally a fragmentation vulnerability scenario, in which lack of coherence is compensated by massive investments in security technology and artificial intelligence to the disadvantage of human intelligence.

Whatever vulnerability scenario becomes real, whether one could rather delete the redundant phrase ‘organised crime’ (unless recognised by the insurance industry), the approach sharpens the mind and forces one to make dynamic driving circumstances and context variable explicit. This does not mean that scenario studies should only look ahead: extrapolation from a carefully analysed present and past is just as important. Such an analysis of a present situation of enforcement and an economic criminal sector is provided by the following two chapters. The first concerns EU fraud and the new Member States, illustrated by the case of the Czech Republic. Though the author, Brendan Quirke, does not say so verbatim, reading his chapter after the preceding scenario chapter, the reader may involuntarily look for a scenario name of this policy of putting an anti-fraud structure in place. It would be surprising if the first flash would not be: the bungling-fragmentation scenario. The bungling ranges from flaws and delays in the ratification of the essential convention to not reproducing the Polish experiment of
posting OLAF officials locally. The last omission was not only due the Czech government but also to ‘Brussels’. The fragmentation of the information exchange in a relatively small country like the Czech Republic, was another remarkable finding. As these human ‘mishaps’ are so common, the reader may feel a desire to see Vander Beken’s and Verfaillie’s scenario methodology to be complemented by a standard ‘bungling’ scenario.

Is such a scenario recognizable in the next chapter on VAT fraud, written from a Bulgarian perspective by Konstantin Pashev? From his description one may deduce some elements. In the first place, it is an old but selectively recognised problem in the legal markets. In terms of the old fashioned ‘organised crime’ lingo: it is form of highly sophisticated organised crime, though rarely mentioned as such. The author complains that in the mainstream literature one hardly find references (Aronowitz et al., 1996). In the second place, historically it evolved within a well-tried scenario in the BENLUX countries, which was extended to the whole EU in 1993, despite grave warnings (Van Duyne, 1993). In the third place, while the vulnerabilities were recognised (given the regular concern expressed by the European Commission), the VAT system was (or had to be) extended to the new Member States together with its defects. Outside the fiscal authorities there is hardly any debate.

The fiscal damage due to VAT fraud is colossal, in Bulgaria as well as in the other Member States, which is mainly caused by the so-called carrousel-fraud. This consists of exporting, importing and re-exporting of shipments of goods and reclaiming/evading VAT with every circle, while bogus companies went bankrupt or were missing (missing trader scheme). This implies an international network of cooperating or conspiring firms and a complacent licit market. The author observes a discrepancy: while the tax evasion literature focuses mainly on individual tax evasion, the organised crime literature pays no attention to the economics and organisation of VAT fraud.

**Crime-money management at cross-roads**

Human conduct belies the wisdom of many proverbs, like “riches alone make no man happy”. Perhaps it is just a proverb to console losers. Those who chase money, by legal or criminal means, have other proverbs in mind, like “money makes the world turn round”. However, this proverb applies to an ever growing group of people who chase other people’s money: the ‘crime-money hunters’. They are tasked to make sure people do not get happy from crime-money. However, judging from the steadily growing volume of publications, legislation, conventions, and frequently updated recommenda-

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5 Only recently was organised VAT fraud mentioned in Europol’s OCTAs. The Organised Crime Situation Report 2004 of the Council of Europe was still silent on this subject.
tions, together with an absence of rejoicing performance indicators, one can surmise that this crime-money pursuit does not make all involved really happy. Nevertheless, particularly on this junction of private and public law enforcement one finds one of the most thriving side-markets.

The closing chapters of this volume on crime-money and related money-laundering reflect aspects of this unhappiness, though it is not all sadness as documented in the paper of Maarten van Dijck. As a matter of fact, the FATF has no reasons for unhappiness at all. It is the only unofficial organ with a global and uncontested reach, with a capacity to force its ‘recommendations’ on any government, while being unaccountable to no super-ordinate authority (Stessens, 2000). As Van Dijck remarks: “One [country] after another were bent at the knee and lined up with the regulatory proposals of the FATF”. Perhaps money does not make happy, but power certainly does.

The author observes that the financial service sector will remain under strong pressure from the side of the FATF, which is predictable: who has unaccountable power will never let the reins slip from his hands. Being a realist, the author thinks criticism against the FATF is merely a rearguard action and advises compliance with the mainstream. Instead of grudging, he finds plenty of reasons to be happy. He argues: accept the ‘finding the suspicious financial needle in the haystack’ and continues to explain that we should realise that all this is part of an ethical movement towards a more ethical ‘corporate citizenship’. This is good for ‘reputation’. As a good reputation is the foundation of trust in the financial market, the financial sector should be happy to be seen to comply with the anti-money laundering global regime, irrespective of the expenses or whether it is cost effective. It is a proper marketing tool to evoke the image of trust.

This is a lofty appeal, but nevertheless, the financial sector has still no reasons to be happy, as can be deduced from the elaboration in the chapter written by Jackie Hanney and Siu Fung Lau. They do not stand alone. If the truth of the anti-laundering pudding is in the eating, and the eating consists of recovered criminal assets, the authors and other researchers (Van Duyne and Soudijn, forthcoming; Gelemerova, forthcoming) only found a tiny pudding. This compares badly with elevated financial expectations as they were put forward and fostered during the past two decades by the FATF in conjunction with the authorities. Has the financial market been deceived, this time not by crooks?

Not satisfied with this anti-laundering haute cuisine dish, the authors made a thorough attempt to decipher the ingredients of this pudding. In less metaphoric terms: they scrutinised the underlying databases of confiscated assets in the UK. The outcome of their analysis looks like a lining-up of discrepancies between the various databases. From this display the reader may deduce his impression of the degree of indifference prevailing within the responsible agencies and Home Office. Woe betides the bank which would manage its suspicious transaction records in a similar way! Apart from that
unhappy state of affairs, the authors also addressed the final truth of the crime-money pudding: how threatening is the observed criminal money-management compared with the usually proclaimed threat image: the threat to the integrity of the financial system and other economic domains? The answer looks quite reassuring and in line with observations in the Netherlands (Van Duyne, 2003): the crime-money is mostly spent on the nice things of life without much display of the commonly expected financial sophistication. Of course, sophisticated operations do occur, but too infrequent to justify a related laundering scenario. Though this should be reassuring, it is noteworthy that the authorities are not happy with this outcome: it may undermine the foundation of their control system and thereby their acquired power.

The world of criminal money-management still knows many regions with unfulfilled tasks, such as in the Western Balkans, for example Serbia. As a rule the first tasks to be completed concerns the anti-laundering legislation and the organisational blueprint for the financial intelligence unit. Serbian efforts of putting into place or updating the relevant regulations are described by Vesna Nikolic-Ristanović and Sanja Ćopić. By enacting three laws the Serbian legislator fulfilled its international obligations: the new Law on the Prevention of Money Laundering and related changes in the Criminal Code and Criminal Procedural Code. A new and improved definition of money-laundering was adopted, this time covering acquired assets from all forms of crime, including fiscal and economic criminal offences. Ambiguity still surrounds the concealment of illegally acquired social property and social capital, which was not adopted in the Criminal Code.

In addition to criminalising money-laundering, the new law also widely extended the categories of ‘obliged persons’ who must report unusual transactions, raising concerns about the unmanageable flow of reports to the FIU. This concern was not heeded, except for the Privatisation Agency: while all and sundry has a reporting obligation, this agency dropped from the table again. Against the background of all the improvement efforts and in view of the incomplete privatisation (the main battle of social property and capital still has to begin), this omission is remarkable.

Of course, if legal life of the book is not perfect, so is the life of law enforcement, whether in Serbia or elsewhere. Petrus C. van Duyne and Stefano Donati set out to search for crime-money management in Serbia and arrived at sobering conclusions. As there is only a handful of prosecutions and hardly any conviction, the authors had to comb through every database they could find. Naturally, they could not invent money-laundering cases where the prosecution cupboards were empty. But they found so much financial imbalance between (household) expenditure and money outflow (to Cyprus among others) on the one hand, and income and imported goods on the other hand, that they wondered how the deficits were to be bridged. In the absence of restoring this imbalance, they though it more plausible that this outcome was indicative for
an extensive underlying black economy. For example, Serbia should be covered by a mountain of Cypriot raisins, if the outflow of two billion euros (2003-2005) was for the payment of real goods. This reverse flow of goods did not exist.

Predictably, the authors had to cope with database inconsistencies. As we have seen in the chapter on the UK, this is not unique for Serbia. On the one hand, police data indicated that the extent of economic and financial crime should be extensive, while on the other hand, according to the figures of Tax Service Serbian tax compliance would be the highest in Europe west of the Ural: < 1% of GDP, even better than Switzerland! The output of the Serbian FIU was equally astonishing: of the almost 350,000 transaction reports (2002-2005) 0.2% qualified as suspicious. The authors could not make a connection with the subsequent phases of prosecution, let alone trial, either for the predicate crime or money-laundering.

The authors concluded that the outcomes and their ‘groping in the dark’ was not due to legislative but to a fundamental human void: lack of curiosity – and not only among the Serbian authorities. The chapter by Harvey and Fung Lau contains a telling quote from a senior official of the Home Office: “There is no need to understand the data” and, more information is “not required anywhere else in the Home Office”. If this is a basic attitude of leading officials, one may wonder whether the adage ‘evidence based policy making’ is more than just a new incantation (Van Duyne and Vander Beken, forthcoming)

Though this intellectual inertia may be deplorable, the last chapter demonstrates a counternovement. The chapter returns to the theme with which this introduction started and which was also elaborated by Vander Beken and Verfaillie: scenario approach to crime-markets, here ‘criminal money management’ or ‘money-laundering’.

The scenario method applied to criminal money-management has to process a multitude of variables: for example, political, social, cultural variables and the plausibility of certain positions on each of them, projected against the likely developments (or stagnation) on other variables. To process this all is a mentally complex process, which requires computer support and subsequent simplification. In this project the reduction was from 43 scenarios to three: ‘The Rift’, ‘European Highway’ and ‘Pragmatism on the Rise’. The ‘Rift’ represents the potential outcome of a scenario of social and economic polarisation between rich and poor (also internationally), compounded by a moderate law enforcement growth remaining behind criminal developments. This has an impact on options choices made in the criminal money management market.

Will the presented scenarios come true? As a matter of fact, scenarios are not drawn up for subsequently leaning back to see what is going to happen. They evoke people to look for alternatives after having tried to fill in the blanks of the typical scenario ques-

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6 ‘Money laundering’ was considered a concluding construction, not an observable human conduct.
tion “What if . . . ?” Indeed, we have to think through questions like: “What if we continue with the present European crime market . . . ?” Or: “What do people in the crime-markets do if we expand our regulatory and penal law control system to fend off each and every sin against ‘the system’ . . . ?” This does not answer the question whether European crime-markets are at cross-roads now: by hindsight that may be the case at every junction. One rather looks for the consequences of directions to be taken after these cross-roads, when Europe takes another step in the process of extension.
References


Organised crime research in Europe: development and stagnation

Klaus von Lampe

Introduction

The study of organised crime has emerged as a field of research in its own right over the past 30 to 40 years. While American scholars dominated the scene from the 1960s through to the 1980s, Europe can make a claim to have recently become the centre of organised crime research. Based on a systematic though certainly not exhaustive review of the academic literature, an attempt is made to identify some key trends regarding the institutionalisation and funding of organised crime research as well as regarding research topics and methodology. Critical challenges for future research will also be addressed. The basic argument is that while the richness of empirical studies distinguishes the European research arena, conceptually and theoretically few substantial advances have been made. In the future efforts need to be undertaken to ensure the continuity and political independence of organised crime research. This will require, inter alia, a reform of the funding schemes of the European Union.

The study of organised crime as an academic discipline

An academic discipline constitutes itself through a self-referential system comprising such elements as specialised journals, professional associations, university courses, and text books. By this measure the study of organised crime has evolved at least into a separate sub-discipline within the broad field of criminology and the social sciences. There are three journals with an exclusive or major focus on organised crime: *Trends in Organised Crime*, the journal which is affiliated with the International Association for the Study of Organised Crime (IASOC), *Crime, Law and Social Change* with the longest tradition and the highest prestige among the three journals, and *Global Crime* which was previously published under the name “Transnational Organised Crime”. It is interesting...
to note that at the time of writing two out of the three journals have editors based in Europe. A shift of weight from the U.S. to Europe is also discernible with regard to the professional associations in the field. IASOC, traditionally dominated by American scholars, has a growing European membership and for the first time in its history it is headed by a European president, Dina Siegel from the Vrije Universiteit Amsterdam. The other major association of organised crime researchers is a genuinely European creation although its membership has expanded to other parts of the world: the Standing Group Organised Crime of the European Consortium for Political Research (ECPR). The e-Newsletter Organised Crime issued by the Standing Group is also an important publication platform apart from the three journals. Finally, in all modesty, the Cross-border Crime Colloquium group and the series of books produced by this group, including the present volume, cannot be left unmentioned in this context.

Courses on organised crime have regularly been taught in criminology and criminal justice programme in the United States for decades, with European universities now following suit. A number of textbooks are available of which the ones by Howard Abadinsky (2007) and by Jay Albanese (2007) have the longest tradition, with the first editions dating back to the 1980s, although the first organised crime texts appeared as early as the mid 1970s, most notably Frederic Homer’s underrated “Guns and Garlic” (Homer, 1974; see also Pace and Style, 1975). An indicator of the increased importance of organised crime as a subject in European criminology curricula is the recent publication of European textbooks, or textbook-like introductory volumes on organised crime (Ignjatovic, 1998; Johansen, 1996; Wright, 2006).

While scholars interested in organised crime are scattered all across the continent, certain centres of research activity have emerged in Europe since the 1990s. Some of these research centres are institutionally independent, like the Centre for the Study of Democracy (CSD) in Sofia, Bulgaria. Some are integrated into governmental structures, such as WODC in the Netherlands and the Council for Crime Prevention (Brå) in Sweden; some are affiliated with universities, such as CIROC in the Netherlands, Transcrime in Italy, Ghent University’s Institute for International Research on Criminal Policy (IRCP), and the office of TraCCC in Tbilisi, Georgia, a research institute with headquarters at George-Mason-University in Virginia. Some universities have become centres of organised crime research not by virtue of formal structures but because of continuous research by scholars, including PhD students, with a specialisation in organised crime studies, namely Cardiff University in Wales, Tilburg University in the Netherlands, and the University of Leuven in Belgium. Several supranational research and documentation centres, finally, like the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) in Lisbon, the United Nations Office on

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2 TraCCC moved from American University, Washington D.C., to George-Mason-University in 2007.
Drugs and Crime in Vienna, or the Geneva based International Organisation for Migration (IOM) have made significant contributions to the study of organised crime in specific areas, such as drug trafficking, human trafficking and human smuggling.

**Funding of organised crime research at national level**

A variety of funding schemes have shaped the study of organised crime in Europe. Government funds have played an important part, not only with regard to the research done by governmental bodies such as WODC and Brå, but also through the commissioning of research projects. Relevant studies which fall in this category include projects funded by the Home Office, such as Pearson and Hobbs’ (2001) and the Matrix Knowledge Group’s (2007) investigations of drug traffickers in the UK, and the literature review on drug trafficking produced by Nicholas Dorn, Michael Levi, Leslie King and others (2005). The German police agency Bundeskriminalamt (BKA) has likewise funded significant research, including an exploratory study of police perceptions of organised crime (Rebscher and Vahlenkamp, 1988) and a study on the logistics of organised crime (Sieber and Bögel, 1993). The famous Van Traa Commission of the Dutch national parliament and the resulting report on organised crime in the Netherlands, drafted by four scholars (Fijnaut, Bovenkerk, Bruinsma and van de Bunt, 1998), should also be mentioned in this context.

National research foundations and councils have likewise been a source for funding organised crime research in Europe (see for example Pütter, 1998), although one might wonder how many research proposals have been rejected because of the lack of expertise of reviewers, just as in any other area of research with a strong interdisciplinary and policy orientation. Doctoral grants form a third important funding scheme on the national level. In fact, it seems that most of the empirical research in the area of organised crime is currently being undertaken by PhD students. Indeed, some of the most remarkable studies of recent years have been PhD projects, namely the interview-based studies of Colombian cocaine traffickers by Damian Zaitch (2002) and of Finnish professional criminals by Mika Junninen (2006), and Letizia Paoli’s (2003b) work on Cosa Nostra and ‘Ndrangheta. It could be argued that this tells as much about the quality of doctoral students as it tells about the deficits of established research institutions.
Research funding at European level

On the supra-national level the Council of Europe deserves credit for financing the first study on organised crime in Europe (Mack and Kerner, 1975; see also Kerner 1973). Overall, however, the European Union, through various programmes, can claim to have provided by far the most funds. Smaller funding programmes such as Falcone (see for example van de Bunt and van der Schoot, 2003) and AGIS (see for example Savona, Lewis and Vettori, 2005) made several, mainly policy oriented research projects possible. The same is true for the 6th Framework Programme. Under the 6th Framework Programme, two major projects in particular were financed with amounts of close to 500.000 Euros each, which might make them the two most expensive EU-funded research projects on organised crime to date: “Improving Knowledge on Organised Crime to develop a common European approach” (IKOC), coordinated by Ernesto Savona at the Transcrime Institute, and “Assessing Organised Crime” (AOC), coordinated by Petrus C. van Duyne at Tilburg University. It remains to be seen to what extent the 7th Framework Programme, launched in 2007, will support research on organised crime, but there is grounds for profound pessimism. Ignoring critique voiced in the drafting process, the 7th Framework Programme does not address the issue of crime in any systematic and coherent way. Instead, crime related topics are spread across several themes, primarily Theme 8 “Socio-Economic Sciences and the Humanities” and Theme 10 “Security”. It does not appear that the authors of the Programme were really concerned with improving security through an improved knowledge base of (organised) crime. In the last instance it seems that the emphasis is on subsidising large corporations in the declared interest of “strengthening the scientific and technological bases of Community industry”.

This becomes evident in the fact that the security theme does not fall in the domain of the Directorate-General for Research, but in that of the Enterprise and Industry Directorate-General. EU-Commissioner Günter Verheugen, in an interview, justified this decision with a statement effectively negating the need for fundamental criminological research and knowledge-based criminal policy-making on the European level: “Research should not be an end in itself. (. . .) The topic of security research (. . .) supports the implementation of European security policy and also has a significant influence on the competitiveness of the relevant industry and on the overall competitiveness of Europe”. Accordingly, in the first round of calls, proposals did not attain the necessary scores \textit{inter alia} because the referees felt industry interests were not sufficiently promoted. In one case the evaluation noted that “(t)he

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4 Austria Innovative Special, Security Research, Federal Ministry of Transport, Innovation and Technology, Austria, online at: http://www.austriainnovativ.at/downloads/AI_02a07_e.pdf (last viewed: 04.12.2007).
claimed reinforcement of the competitiveness of European industry is not sufficiently demonstrated”. The evaluation of another project on the improvement of strategic crime analysis through better use of existing law enforcement databases criticised that, although “potential exists both for new knowledge and technology development”, “no reinforcement of the EU industry as a whole is expected”. While the lack of transparency makes it difficult to discern which direction the implementation of the 7th Framework Programme is taking, as of now it seems that significant modifications are necessary to insure a continuity of research on organised crime on the European level.

The three grand themes of the study of OC

There are three grand themes addressed in the European academic literature under the broad heading of ‘organised crime’: the meta level of the discourse on organised crime, the level of empirical manifestations of organised crime, and the level of counter measures.

Meta level: the construction of ‘OC’ as a social problem

Quite a lot has been written in Europe about the construction of ‘organised crime’ as a social problem.

The concept of ‘organised crime’, that much seems clear, is an American invention which has been transferred to a heterogeneous crime landscape and which has gone through modifications and reinterpretations across time and space (von Lampe, 2005a). A number of European authors have examined how the concepts of ‘organised crime’ and ‘transnational organised crime’ gained prominence in Europe and elsewhere (see for example Edwards and Gill, 2002; von Lampe, 1999; 2001; Luczak, 2004; Massari, 2003; Woodiwiss, 1990; 2003). Two recurring themes can be found in this literature.

There is, on the one hand, the issue of myth and reality and the apparent discrepancy between the certainty with which the concept is used in public discourse and the weak underlying knowledge base. On the other hand, there is the political dimension, the instrumentalisation of the threat image of ‘organised crime’ for legitimising new law enforcement measures and the associated infringement of civil liberties. It has been argued that the concept of ‘organised crime’ was uncritically adopted by the Europeans, that it serves political and institutional interests and reproduces historical threat imagery rather than contributing to a better understanding of the social reality of crime (Albrecht, 2002; Van Duyne, 2004; Hobbs, 2004; Kuschej and Pilgram, 1997). While this argumentation has some merits, it cannot be ignored that research in this area is fragmented and that, with very few exceptions, there have been no methodologically
rigid studies on the process of constructing ‘organised crime’ as a social problem, comparable, for example, to Savelsberg and Brühl’s (1994) study on the economic-crime debate in Germany. Most of the literature is essayistic and eclectic, and there is a tendency towards hedging conspiracy theories when it comes to explaining the political career of the concept of ‘organised crime’. It seems safe to say, therefore, that future researchers will find sufficient opportunities to significantly broaden, deepen, and revise current wisdom.

**Empirical manifestations of ‘organised crime’**

There is a slow but steadily growing body of empirical literature on organised crime worldwide. Yet, it seems that most of the recent work in the field has originated in Europe, with the Netherlands being the most productive country. In order to obtain a better understanding of the course the study of organised crime is taking, it is helpful to sort the literature by central research topics or basic dimensions. In fact, when describing the object of the study of organised crime, one should speak about a number of different empirical phenomena which are examined in a rather loose conceptual context which is provided by the umbrella term ‘organised crime’. These phenomena include ‘organised criminals’ as an implicitly distinct category of offenders, the activities these individuals are involved in, the associational patterns through which they are connected, the power structures that subordinate these individuals and collectives to common or particular interests, and the relations between these individuals, structures and activities on the one hand, and the legal spheres of society on the other. These main facets of the fuzzy overall picture are not equally addressed by European researchers (see von Lampe, 2006b; von Lampe et al., 2006).

**Individual Offenders**

Individual ‘organised’ offenders, for one, are hardly ever in the focus of attention. This is in stark contrast with other fields of criminology, and with the gangster and mafioso stereotypes dominating public imagery of ‘organised crime’. Frank Bovenkerk’s examination of the personality of mafia bosses, drawing on gangster biographies, remains the only work specifically dealing with this issue to date (Bovenkerk, 2000). A biographical approach is also taken by Claudio Besozzi in his more general analysis of illicit entrepreneurs (Besozzi, 2001). Others have addressed psychological aspects in broader discussions of illegal markets and criminal collectives (Canter and Alison, 2000; Van Duyne, 2000).

In the future it can be expected that the emphasis on associational structures will become less prominent and that the study of organised crime will move closer to mainstream criminology by incorporating the human factor in the analysis of criminal struc-
ORGANISED CRIME RESEARCH IN EUROPE

This assumption is based on the notion that approaches aiming at explaining ‘organised crime’ by the structure of criminal organisations, be it networks or organisations in the narrow sense of the word, tend to underestimate the importance of individual skills and characteristics for the creation and shaping of associational structures, and collective activities for that matter. To paraphrase a popular motto (see Coles, 2001), it may not be who you are but who you know that counts in ‘organised crime’, however, who you know may depend to a considerable degree on who you are and what social skills you have for getting to know the people you need to know to be a successful, networked criminal.

Criminal Activities

‘Organised crime’ is associated with a wide range of criminal activities. Especially where ‘traditional organised crime’ is not an issue, as is the case in most European countries, specific types of crime or illegal markets frequently provide the frame of reference for scientific exploration, in contrast to studies focussing on ‘criminal groups’ or geographical areas.

Drug trafficking has traditionally received the most attention (see for example van de Bunt, Kunst and Siegel, 2002; Dorn, Otte and White, 1999; Gruppo Abele, 2003; Gruter and van de Mheen, 2005; Pearson and Hobbs, 2001; Zaitch, 2002). Recently, however, the cigarette black market has emerged as a favourite object of study (Antonopoulos, 2006; 2007; Van Dijck, 2007; Van Duyne, 2003b; Hornsby and Hobbs, 2007; Janssens et al., 2008; von Lampe, 2003b; 2005b; 2006a; 2007; Markina, 2007). Other areas of crime explored by empirical research in Europe include, for example, human trafficking (Antonopoulos and Winterdyk, 2005; Obradovic, 2004; Spencer et al., 2006), trafficking in stolen motor vehicles (Gerber and Killias, 2003; Sieber and Bögel, 1993), alcohol smuggling (Johansen, 2005), illegal waste disposal (Gruppo Abele et al., 2003; Massari and Monzini, 2004), credit card fraud (Levi, 2003), fencing (Sund et al., 2006; Weschke and Heine-Heiß, 1990), black labour (Van Duyne and Houtzager, 2005; Carlström and Hedström, 2007), and money laundering (Van Duyne, 2003a, 2007; Suendorf, 2001).

Patterns of Criminal Association

It appears that the question ‘How organised is organised crime?’ explicitly or implicitly guides most researchers in the field. The dispute over Donald Cressey’s (1969) interpretation of the American Mafia as being synonymous with organised crime and similar in structure to a government and a large corporation (see for example Albini, 1971; Smith, 1975; Anderson, 1979; Reuter, 1983; Potter, 1994), has not been confined to the re-

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5 For a pioneering study in this respect see Morselli and Tremblay (2004).
search community in the United States. The distancing from Cressey’s ‘bureaucratic
model’ is a central component in the overall line of reasoning of quite a number of
European authors as well. Indeed, there is something of a consensus that the predomi-
nant structural pattern of criminal cooperation in Europe is characterised by webs of
personal relations which are flexibly used by offenders for the commission of crimes.
Cooperation, according to the existing empirical studies, typically occurs either on a
contractual basis, i.e. in the form of supplier-consumer or ephemeral employer-
employee relations, or on a partnership basis in pairs or small groups with little overall
horizontal or vertical integration (Bruinsma and Bernasco, 2004; Van Duyne, 2003b;
Johansen, 2005; Junninen, 2006; Gruppo Abele, 2003; Kleemans and Van de Bunt,
1999; von Lampe, 2003b; Paoli, 2003a; Pearson and Hobbs, 2001; Ruggiero and
Khan, 2007; Zaitch, 2002).

Two challenges emerge in this situation. The first challenge is to develop a suffi-
ciently concise terminology to adequately capture the variation and fluidity of patterns
of criminal association. The paucity of concepts, which is mirrored in the frequent use
of ambiguous phrases like ‘loosely structured’ or ‘network like’ translates into a lack of
analytical clarity. The second challenge lies in the application of network analytical
tools. What would seem an obvious choice in instances where no form of structural
integration of offenders exists, to examine offender relations in terms of networks, has
considerable limitations of which the problem of missing and incomplete data may be
the most crucial one. Missing data influence network analysis more than traditional
statistical analyses (Knoke and Kukliniski, 1982; Robins, Koskinen and Pattison, 2008),
and data are particularly likely to be missing in the case of criminal networks where
researchers seldom know about all relevant individuals beforehand, and even if they do,
they may not be able to obtain the required information on all of them (Sparrow,
1991). Proceeding with the analysis “in terms of what is known” (McAndrew, 2000:
62) may make sense for some network analytical approaches, but not for all. Criminal
network analysis is also limited by the lack of depth of the available information. Often,
data do not consistently go beyond merely stating that some form of contact exists
between a given pair of actors. This level of information is only sufficient for certain
research questions, such as the one addressed by a Swedish study which, based on co-
offending data, explored the reach of criminal contacts of a set of drug traffickers. The
study revealed that the 127 individuals convicted in connection with serious drug of-
fences in Stockholm county in 2003, had been in contact, directly or indirectly, with at
least 7,000 other individuals suspected of criminal involvement, which the authors took
as evidence for the existence of a widespread criminal milieu (Korsell et al., 2005). In
other studies, network analysis has proven valuable for sorting through data sets involv-
ing large numbers of actors, especially in the initial phase of data analysis (see for exam-
ple Giannakopoulos, 2001). Otherwise, the greatest value of the network concept
seems to be that it forces researchers to adopt a bottom-up approach in the description and analysis of offender structures independent from popular imagery and constructs (Klerks, 2003; von Lampe, 2003a). Henner Hess’ classic study of the Sicilian Mafia (Hess, 1970), in which he breaks down the world of Cosa Nostra into different types of dyadic ties, is a good example for such a down-to-earth research strategy. However, there is a certain danger of falling into the other extreme by failing to acknowledge durable, vertically and horizontally differentiated offender structures where they indeed exist. At the moment it seems that the analysis of criminal networks using the tools of network analysis is still in an infant state in Europe, and that the apparent limits of this methodology have not yet been tested in practice, despite the popularity the idea of criminal network analysis has gained in recent years (Bruinsma and Bernasco, 2004; Klerks, 2003; McAndrew, 2000).

**Overarching Power Structures**

Above the micro-level of entrepreneurial offenders and offender collectives, overarching structures can be found which claim control over a given territory, such as a town or region, or an illegal market or illegal-market level, in furtherance of particular or common interests. The American scholar Alan Block has coined the term ‘power syndicate’, as opposed to ‘enterprise syndicate’, for this kind of criminal structure (Block, 1983: 13). In Europe, phenomena falling into this category have for the most part been identified and studied in Southern Italy (Gambetta, 1993; Hess, 1970; Paoli, 2003b) and in Russia (Varese, 2001). An interesting question which has recently been raised is to what extent these territorially based groups have the capacity to migrate and to reproduce their position of power, which may extend also to the legal economy, in areas or even countries outside their traditional sphere of influence (Varese, 2004; 2006).

The fact that ‘power syndicates’ with roots in countries other than Italy and Russia have not received a similar degree of attention may be due to the fact that they simply do not exist, or have ceased to exist. But it may also be that ‘hegemonic order’ where it is confined to the underworld and does not extend into the legal spheres of society, is simply less often recognised as such by researchers (Hobbs, 2001; Hartmann and von Lampe, 2008).

**Illegal-Legal Nexus**

The individuals, structures, and activities associated with ‘organised crime’ do not exist in a social vacuum. Rather, they are tied in with their surroundings in different ways.

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6 See also the presentation by Kelly Hignett (“Sowing the Seeds of Organised Crime: Methods of ‘Mafia Transplantation’ in East Central Europe”) at the annual meeting of the European Society of Criminology in Tübingen, 2006.
One aspect is the “social embeddedness of organised crime” (Kleemans and van de Bunt, 1999) in certain social strata, milieus, or ethnic communities. Anomie theory has been one obvious choice to explain this connection with regard to migrant communities (Bovenkerk, 1998) whereas concepts and theories from social and cultural anthropology have been applied to indigenous ‘organised crime’ phenomena like the Sicilian Mafia (Cottino, 1999; Hessinger, 2002). Not all ‘organised crime’, however, is necessarily (sub-) culturally rooted. Research on cigarette smuggling and on a wide range of other areas of crime in Germany, the Netherlands and Belgium suggests that to a considerable degree offenders involved in illegal market activities do not have a wider criminal background and apparently start their criminal careers fairly late in life (Van Dijck, 2007; Van Duyne, 2003b; Janssens et al., 2008; Kleemans and van de Poot, 2008; von Lampe, 2005b).

Many discussions of the links between the illegal and legal spheres of society are framed in the concept of corruption. One associated image is that of ‘organised criminals’ neutralising law enforcement through bribing and intimidating police officials, prosecutors and judges. Another image depicts ‘organised criminals’ in alliance with political and business elites. Relatively little empirical research has been done in these areas, and most of the literature refers to conditions in Southern Italy and Eastern Europe with few specifically addressing the dimension of ‘organised crime’ (see for example Center for the Study of Democracy, 2004; Galli, 1994; Maljevic et al., 2006; Newell, 2006; Paoli, 2003b; Varese, 2001).

Corresponding to the infiltration of government there is a concern about the infiltration of the legal economy by ‘organised crime’. This may take the form of legal businesses falling under the control of criminal groups, legal businesses and criminals establishing collusive links, or criminal networks forming within the legal business sector (Dorn et al., 2007; Paoli, 1995; Ruggiero, 2000). Finally, in extension of the regulation of illegal markets, criminal groups may provide quasi-governmental functions such as debt collection, conflict resolution and protection from competition, for legal businesses (Gambetta, 1993; Skoblikov, 1999; Varese, 2001; Volkov, 2000).7

**Countermeasures**

The third major thematic area defining the study of organised crime, apart from the meta-level of the construction of ‘organised crime’ and the empirical level of ‘organised crime’ phenomena, concerns the countermeasures taken against ‘organised crime’. For the most part, countermeasures have been adopted in the form of modified and newly

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7 For an attempt to measure the prevalence of ‘power syndicates’ and their impact on legitimate businesses on a country-by-country bases using a combination of statistical and survey data, see van Dijk (2007).
introduced material and procedural criminal law (Paoli and Fijnaut, 2006), institutional changes in law enforcement and the criminal justice system (Pütter, 1998; Segell, 2007), and administrative law (Huisman and Nelen, 2007; Köbben, 2002). These measures, and especially their legal ramifications, have been described in great detail. However, relatively little research has been conducted on their implementation and the effectiveness with regard to reducing and preventing ‘organised crime’. The major weakness appears to be the lack of a clear understanding of the nature, extent, and developmental trends of ‘organised crime’ as independent variables. For the most part, the literature relies on prima facie plausibility, and on politically and media induced imagery regarding the reality of ‘organised crime’. Or it applies criteria which have nothing to do with the crime situation as such, but rather with bureaucratic effectiveness or civil rights issues (see for example Kinzig, 2004; Vettori, 2006a).

Some efforts have been made by scholars to tackle the deficiencies in the existing knowledgebase on ‘organised crime’, which are becoming apparent not only in the evaluation of countermeasures, but more generally in the areas of criminal policy and intelligence led policing. One undertaking has been to make better use of existing statistical data, especially in cross-national perspective, on particular areas of crime, namely human trafficking (Di Nicola and Cauduro, 2007), or on organised crime in general (Vettori, 2006b). This endeavour is closely linked to the Transcrime Institute in Italy and the IKOC project. Another undertaking, mainly associated with the Ghent University’s Institute for International Research on Criminal Policy (IRCP), aims at utilising a broader range of data for the purpose of proactive assessments of ‘organised crime’ in the form of risk analysis and scenario building (Black et al., 2001; Vander Beken and Defruytier, 2004; Vander Beken et al., 2004; Verfaillie and Vander Beken, forthcoming).

Without being able to go into any detail here, it seems that all of these approaches seek to activate and combine information from different sources, and to draw meaningful inferences from this information within one methodological framework. However, this is without solving the fundamental problem of the lack of a sound empirical and theoretical underpinning (von Lampe, 2004). No matter how elaborate the methodologies, in essence they merely reproduce existing assumptions and perceptions held by those involved in the respective studies, to be found in the fragmentary literature, or gleaned from group discussions of experts (in the case of scenario building).

An alternative direction has been proposed by the “Assessing Organised Crime” project. Without developing a comprehensive conceptual and theoretical framework, the project has outlined a mechanism, the New European Common Approach
(NECA), not only for a more effective use of existing law enforcement data for strategic crime analysis, but also for the future integration of strategic crime analysis and scientific research. The idea behind NECA is that the existence of a sufficient knowledge base for valid and meaningful assessments of ‘organised crime’ cannot simply be pretended. Instead, it needs to be systematically built in the medium and long run (Assessing Organised Crime Research Consortium, 2007; Van Duyne, 2007; von Lampe 2005c).

**Empirical research and theory building**

The study of ‘organised crime’ is fundamentally no different from any other area of social science research in that it is faced with the problems of finding good data, and has to meet manifold challenges in meaningfully describing, systematising and explaining what social phenomena have been observed.

**Collecting data on ‘organised crime’**

All means of data collection common in sociological research can be and have been utilised in the study of ‘organised crime’: observations, interviews, and text analysis.

Participant observations have been rare, but one of the earliest European studies, Anton Blok’s exploration of the Mafia in a Sicilian Village (Blok, 1974), falls in this category. So does a yet unpublished PhD-project in Poland, which has become the subject of a book by the investigative journalist Jürgen Roth (2005). For the purpose of writing a doctoral thesis Aneta M. took on a job in a bar serving as a meeting place of the Polish underworld. This case illustrates the dangers attached to such an endeavour. Roth alleges that because of pressure exerted by criminal circles, Aneta M. was unable to obtain her doctoral degree from the University of Szczecin, Poland, where she had been based while conducting her research. A daring approach was also taken in a study of smuggling and corruption in Georgia, where researchers posed as smugglers for the purpose of participant observation and covert interviewing (Kukhianidze, Kupatadze and Gotsiridze, 2004).

For a long time, interview-based studies in the area of organised crime meant studies drawing primarily or exclusively on expert accounts, primarily police investigators (Kerner, 1973; Mack and Kerner, 1975; Rebscher and Vahlenkamp, 1988; Sieber and Bögé, 1993). In recent years, however, a growing number of research projects has been using offender interviews as one prominent source among others (see for example Johansen, 2004; Ruggiero and South, 1995), or as the primary data source. Some studies, especially those with the largest sample sizes, involve incarcerated offenders or indi-
Organised crime research in Europe

Individuals, namely informants, otherwise under the control of the criminal justice system (see for example Dorn, Otte and White, 1998; Kinzig, 2004; Pearson and Hobbs, 2001; Matrix Knowledge Group, 2007). Some studies have used both incarcerated and non-incarcerated offenders (see for example Junninen, 2006; Ruggiero and Khan, 2006; Zaitech, 2002), while some studies exclusively rely on non-incarcerated offenders (see for example Antonopoulos, 2006; Hobbs, 1995; 1999; 2001; Hornsby and Hobbs, 2007). These latter studies contradict the commonly held notion that ‘organised criminals’ are unapproachable for research purposes.9

Text analysis is most frequently used in the study of organised crime in connection with official and media reports (see for example von Lampe, 2006a), but also where criminal files and investigative files form the primary data base (see for example Van Duyne, 1996; 2003b; Herz, 2005; Hess, 1970; Kinzig, 2004; von Lampe, 2005b; 2007; Suendorf, 2001). With the increasing computerisation of police work, the study of organised crime can be expected to routinely involve the analysis of electronically stored data (see for example van Duyne, 2003a; Korsell et al., 2005).

Systematisation

No attempt is made here to comment in any detail on the different ways European researchers have been systematising their areas of study.10 However, it seems that the most valuable categories and classifications have been proposed and elaborated by North-American authors. This may be a reflection merely of the chronology of research efforts. Perhaps under different circumstances it would have been Europeans coming up with the very same concepts first. These classifications include the dichotomies of predatory and market based crime (Naylor, 2003), of “power syndicates” and “enterprise syndicates” (Block, 1983), and of economic and non-economic criminal structures (Haller, 1992), and the distinction between purely market-based criminal relations, criminal networks ties, and transactional links within criminal organisations (enterprises) (Smith, 1994).

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9 See also the special issue “Interviewing ‘Organized Criminals’” of the journal Trends in Organized Crime (11:1, 2008).

10 For a more in-depth analysis of some of the major European organised-crime literature, see von Lampe et. al., 2006.
Explanation

Likewise, it seems that the most influential theoretical propositions, though fragmented, may be, originate in North America rather than in Europe. When one thinks of global approaches to explaining ‘organised crime’ one is immediately reminded of Robert K. Merton’s anomie theory which is closely linked to the American experience of immigrant criminal groups (Merton, 1957). More focussed theoretical propositions aim at explaining the emergence of illegal enterprises on the basis of transaction cost economics (Smith, 1994), and the structure of illegal organisations under conditions of illegality (Reuter, 1983; Smith, 1994; Southerland and Potter, 1993). These theoretical approaches have been reflected in the European research literature more or less extensively and some propositions, especially Peter Reuter’s, have been confirmed, though mostly on a rhetorical level rather than in the form of rigorous testing. This is particularly problematic as Reuter developed his hypotheses through investigations of crime phenomena, namely illegal gambling and loan sharking, in what seem to be manifestations that are quite specific to the situation in the United States and particularly New York City (Reuter, 1983).

There is probably only one theoretical approach originating in Europe which has gained some general significance: Diego Gambetta’s notion of mafia-like associations thriving as industries of protection in low-trust social environments (Gambetta, 1993). Just as this proposition has been tested in different social contexts (Hill, 2003; Varese, 2001), the subject of ‘organised crime’ in all its facets needs to be explored in different historical and socio-geographical settings in order to be able to develop and test hypotheses and theories through comparison. Europe seems to be an especially promising arena for comparative research given the patchwork character of its criminal landscape, when one looks, for example, at the uneven prevalence of drug markets (EMCDDA, 2006; United Nations, 2007). Unfortunately, there is hardly any funding available for basic research, including cross-national comparative studies, as a result of the ill-conceived goals of EU research policy.

Concluding remarks

In this short chapter only a rough and inevitably sketchy outline of the state of organised crime research in Europe could be given. From a global perspective it appears that a shift of weight has taken place over the past 20 years from North America to Europe in terms of the number and diversity of empirical research projects, but also in terms of the reality of organised crime. Following the fall of the Iron Curtain a myriad of new manifestations of criminal structures and illegal markets have emerged in ever-changing
ORGANISED CRIME RESEARCH IN EUROPE

patterns. They have been the object of numerous, mostly descriptive studies. However, the opportunities for comparative research and theory building presenting themselves from the patchwork character of the crime landscape in the new Europe have not yet been systematically exploited. This is to a large degree a problem of the ill-conceived goals of EU research policy which generally puts economic interests ahead of ‘enlightenment’, and in the area of ‘organised crime’ specifically favours the reproduction and reinforcement of threat imagery over empirically grounded theory building.

There are three major challenges defining the future of organised crime research in Europe. The first challenge is to ensure continuity of innovative research in order to go beyond merely reproducing and responding to the clichés appearing in the media and in political debates in irregular intervals. Continuity means, first of all, an ongoing research process which contributes to a cumulative body of knowledge. It also means that a network of researchers can grow to combine resources, to connect different countries, different areas of specialisation within the field of ‘organised crime’, and different academic disciplines. Continuity of research, in addition, means that relations of trust can develop between researchers and practitioners. This is particularly important in this security sensitive area of study and in many instances it is the precondition for data to become available for scientific analysis.

The access to data is the second major challenge in the study of organised crime. While researchers have been innovative and persistent in their efforts to obtain information from offenders and law enforcement sources, from victims and from experts, these successes cannot be taken for granted. Training of young researchers, further development of methodologies, and an increasing receptiveness to the needs of research on the part of law enforcement agencies and politics seem to be the keys to more and better organised crime research in the future.

The third major challenge, finally, is to maintain or win independence from outside influences. The most substantial influence-taking which is currently hampering the study of organised crime takes place in connection with the 7th Framework Programme, among others through the non-funding of basic research and through the strings attached to research grants. The themes, problems and research questions addressed in calls for research proposals typically reflect certain interests and ideologically shaped preconceptions which constrain the research process and partly predefine research outcomes. Under the headlines of ‘organised crime’ and ‘terrorism’ there is a continued fixation on socially marginalised and foreign based offender populations, and on technocratic solutions to prevent and curb crime. Research taking place within these confines cannot be expected to produce meaningful results. Against the background of the political dimensions of ‘organised crime’, independence of research is particularly important. The independent study of organised crime, in a sense, is a critical reflection of socio-political conditions and potentially an important facet of the control
by civil society of non-legitimised power. This may be more obvious in Southern Italy
and in Eastern Europe, but in essence it is no less true for the rest of Europe.
References


Canter, David; Alison, Laurence (eds.), *The social psychology of crime: Groups, teams and networks*, Aldershot: Ashgate, 2000


Cottino, Amedeo, Sicilian cultures of violence: The interconnections between organised crime and local society, *Crime, Law and Social Change* 32(2), 1999, 103-113


Giannakopoulos, N., Criminalité organisée et corruption en Suisse, Berne: Haupt, 2001


Hartmann, A. and K. von Lampe, The German underworld and the Ringvereine from the 1890s through the 1950s, Global Crime, 9(1+2), 2008, 108-135


Homer, F.D., *Guns and garlic: Myths and realities of organised crime*. West Lafayette, Indiana: Purdue University Press, 1974


Kinzig, J., Die rechtliche Bewältigung von Erscheinungsformen organisierter Kriminalität, Berlin: Duncker and Humblot, 2004


Kukhianidze, A., A. Kupatadze, R. Gotsiridze, Smuggling through Abkhazia and Tskhinvali region of Georgia, Tbilisi: TraCCC Georgia Office, 2004


Lampe, K. von, Organised Crime: Begriff und Theorie organisierter Kriminalität in den USA. Frankfurt am Main: Peter Lang, Frankfurter Kriminalwissenschaftliche Studien Nr. 67, 1999


Obradovic, V., *Trafficking in women in Bosnia and Herzegovina*, Sarajevo: The Embassy of the United States of America, 2004


Roth, J., Aneta M.: Gejagt von der Polenmafia. Frankfurt am Main: Eichborn, 2005


Skoblikov, P.A., Vzyskaniye dolgov i kriminal, Moscow: Yurist, 1999


Varese, F., How mafias migrate: The case of the 'Ndrangheta in Northern Italy. Law and Society Review 40(2), 2006, 411-444

Verfaillie, K., T. Vander Beken, Interesting times: European criminal markets in 2015, Future, forthcoming


Woodiwiss, M., Organised crime USA: changing perceptions from Prohibition to the present day. Brighton, UK: British Association for American Studies, BAAS Pamphlets in American Studies 19, 1990


Media constructing organised crime concepts in an extended criminal Europe
Trafficking women for sexual exploitation

Jon Spencer

Engaging with the problem

There is a considerable body of academic literature that discusses trafficking for sexual exploitation (see for example: Schloendart 1999, Chapkis 2003, Weitzer 2007, Goodey 2004 and O’Connell Davidson 2006) and official reports (see for example Home Office UK 2007 and UNODC 2006). There are a number of debates within the literature concerning the definition and nature of prostitution (Weitzer 2007 and O’Connell Davidson 2006), and the relationship between prostitution and ‘trafficking’ (O’Connell Davidson 2006 and Goodey 2004). There is an exploration of the relationship between trafficking for sexual exploitation, prostitution and political anxieties (see for example O’Donnell 2006 and Weitzer 2007). Some writers are sceptical of the scale of ‘sex trafficking’ problem and take a non-abolitionist position in relation to prostitution (O’Donnell 2006 and Weitzer 2007). Weitzer (2007) argues that the some of the academic writings are skewed and form the basis of a ‘moral crusade’ rather than an understanding of the ‘issue’ that is based on methodologically sound social science research. He argues that:

“...My analysis demonstrates that the crusade’s core claims regarding both trafficking and prostitution are generally quite dubious, yet activists have met with remarkable success in getting their views and demands incorporated in government policy, legislation, and law enforcement practices.”
(Weitzer 2007:447)

The media have also been an important variable in the social construction of the problem of trafficking for sexual exploitation. By investigating how the media report criminal cases it is possible to understand the response of policy makers and practitioners. The media is selective in the cases it promotes for public consumption; such cases being decided by a series of complex and mutually rewarding relationships. Harcup and

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1 Director Anglo-Baltic Criminological Research Unit, School of Law, University of Manchester.
O’Neill argue that: “. . . the media . . . may also be responsible for the prominence of many apparently manufactured stories that have little relation to actual events.” (Harcup and O’Neill 2001:277) and Romer, Jamieson and Aday (2003) conclude that television news programmes do have an influence on where viewers both perceive the locations of crime and who are the likely perpetrators. Dowler (2003) contributes to the discussion by exploring media consumption and its relationship to the fear of crime, although providing a more speculative conclusion than some other writers by noting the differential effects of different types of television programmes. These relationships between journalists, media managers (public relations) and other agencies such as the police interact to develop the ‘news stories’ so that they have a fit with contemporary news values. These stories also draw together other social anxieties and at times provide either a sense of society in decline or a society under threat.

Recently in the UK there has been a growing concern in the media about immigration, particularly after the enlargement of the EU in 2005 and 2008. An element of this concern focuses on those migrants entering the UK from Central and Eastern European countries such as Poland, Lithuania and Romania. One of the anxieties about migrants is evidenced by a concern with human trafficking (Green and Grewcock 2002), particularly of women into the sex industry. Human trafficking is a complex area, with definitional problems (Kelly 2005) and considerable difficulties in estimating the numbers of people who are trafficked as opposed to smuggled or facilitated (see for example Goodey 2003 and Salt 2000). As Hagan and Palloni (1999) have argued the media response to migration establishes a link between migration and crime and this can be easily identified in the UK with media reports in relation to human trafficking. Included in these reports of trafficking crimes are either direct or indirect references to organised crime, so the circle is squared by bringing together migration, trafficking and organised crime. In the next section we shall explore two recent high profile cases in the UK to underline how the reporting of trafficking is linked to migration and organised crime.

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2 For the purposes of this chapter, the definition contained in the UN Protocol to Protect Women and Children is used. Thus, trafficking is defined as being the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat, or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.
Identifying the victims and the villains

In attempting to define human trafficking crimes Coster van Voorhout (2007) argues that human trafficking offences are usually defined as being:

“... undertaken by organised crime groups that transfer women and girls illegally from their home to a country in which they are forced into prostitution, the escort branch, sex entertainment, web cam sex, or pornography.” (Coster van Voorhout 2007:44)

However, as Coster van Voorhout (2007) argues immigration crime associated with labour exploitation is much more complex than being simply about the activities of organised crime. Different jurisdictions across Europe define and treat the crime differently and the European Council Framework definition is also viewed as being highly problematic. The lack of an agreed definition and policy approaches to trafficking result in a failure to achieve harmonisation of policy at the EU member state level, and as Coster van Voorhout (2007) argues, harmonisation is ‘crucial’:

“... because it (a) avoids that traffickers can make use of gaps in the criminal legislation of other countries or other types of legislation, and (b) enables unique measures for an effective combat.” (Coster van Voorhout 2007:46-47).

It needs to be noted that effective combat may not be the outcome of enhanced cooperation. However, as Green and Grewcock (2002) argue there are similarities of responses to the problem of illegal immigration by EU member states that include the use of

“... increasingly restrictive immigration policies that exclude refugees, a policy emphasis on border protection, increased use of armed forces or military methods of border policing, increasing levels of cooperation between state agencies, a focus on trafficking and smuggling as an aspect of transnational organised crime, analogous to drugs or terrorism and a desire to externalise border controls.” (Green and Grewcock 2002:89)

So, whilst there may be legislative gaps, there appears to be a congruence of policy and practical response to the perceived problem of illegal immigration. Furthermore, the response also includes the concept of organised crime as being a crucial factor in the commission of illegal immigration and this is particularly highlighted in the cases of human trafficking.

The role of the media and the formation of public attitudes have a long history of scholarship and research (see Dowler (2003) for a review of the research; Van Duyne, (2004) concerning organised crime). Therefore, it is important to understand the rela-
The public’s perception of victims, criminals, deviants, and law enforcement officials is largely determined by their portrayal in the mass media. Research indicates that the majority of public knowledge about crime and justice is derived from the media. Therefore, it is imperative to examine the effects that the mass media have on attitudes toward crime and justice.” (Dowler 2003:109)

Romer et al. (2003) also provide considerable evidence that there is a significant relationship between fear of crime and television news coverage at a local and national level. However, it is not simply from news reports, television, internet and print based, that individuals glean their understanding of crime and organised crime. It is also culled from other forms of media constructions, especially popular fiction whether it is film based such as ‘The Godfather’ series of films or the more socially explicit ‘Pulp Fiction’ and ‘LA Confidential’; literature based, for example the writing of Ian Rankin or television based programmes such as the recent ‘Sopranos’ series. UK statistics for television viewing indicate that eighty-eight per cent of the population watches television at least once a day with ninety-three percent of those watching news programmes. Drama programmes had a high rate of viewing across all age groups, and especially younger adult viewers (Social Trends ONS on line 2008). So, it would seem that many people construct their understanding of ideas and concepts, such as organised crime, by bringing together news reports and other elements of popular culture.

News reports are reflexive in that they utilise such constructions when reporting the news and so we see a constant flow of re-affirming definitions and ideas between news, popular culture and public attitudes. The conflation of different constructions of organised crime and human trafficking are also utilised in official reports:

“Human trafficking is often carried out by organised crime groups who exploit loopholes in policy and legislation to enable them to carry out their businesses.” (Home Office and Scottish Executive 2007:91)

And:

“Human trafficking is linked to a broader spectrum of criminality and is often carried out by organised crime groups. It is a high profit crime.” (Home Office and Scottish Executive 2007:90)

And:

“Although violence and force are often encountered in trafficking cases, evidence suggests that in the initial stages the vast majority of victims are recruited by deception . . . Additionally, some victims of organised crime gangs end up in prostitution.

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4 Ian Rankin is the author of the Scottish based Rebus novels that have as a central character a locally based organised crime boss Big Ger Rafferty. However, many countries have their own ‘home grown’ thriller writers using the genre as a means of social comment.
as a result of “debt-bondage” arising from money paid to the gangs to facilitate their illegal entry in to the UK.” (Home Office and Scottish Executive 2007:15)

These quotes demonstrate how organised crime is linked to issues of human trafficking and how organised crime is seen to be engaged in high profile and high profit forms of criminality. However, we should not accept these constructions as being an accurate representation of the structure or activities of organised crime (for example see van Duyne 2003 and 2006a, Hobbs 1998). So, the villains are constructed as being members of organised crime gangs with trans-national affiliations.

There are also a number of constructions applied to the victims of human trafficking, generally the victims are female, young and presented as being innocent. They are seen to be victims of the manipulations of the ruthless and exploitative organised crime members “… victims are coerced, deceived or forced into the control of others who cruelly and inhumanely seek to profit from their suffering” (Home Office and Scottish Executive 2007:2). Against this background, as Matthews (2005) noted, it is understandable that there has been a change in the construction of the prostitute from offender to victim with the men who use prostitutes being seen as offenders. Goodey (2004) argues that this is a relatively new development:

“With trafficked women, until very recently bracketed in the same category as illegal immigrant and ‘undesirable other’, their treatment as victims of crime, rather than complicit offenders, is a new development. Traditionally, trafficked women have been responded to as illegal immigrants, as being associated with a criminal underworld, and as prostitutes, and, therefore, as women who have fallen outside the range of acceptable female behaviour.” (Goodey 2004:32)

However, O’Connell Davidson (2006) is slightly more sceptical than Goodey, suggesting that prostitution is still viewed in a highly negative manner:

“…it seems that despite the extensive attention paid to rights violations in the sex industry and a raft of new international protocols and declarations, national laws, and policy initiatives designed to combat such abuses, very little progress has been made in terms of promoting or protecting the human or labour rights of those who prostitute.” (O’Connell Davidson 2006:6)

In relation to migrant women in general there is a contradictory process that constructs the migrant as trespasser, as outsider and so viewed as being a net drain on the UK’s resources and as placing local communities and services under severe pressure. The Daily Mail claimed in 2007 that Eastern European migrants were ‘… swelling the population of English Towns by 10 pc” (Daily Mail 2007a) and at times migrant women are seen as being scheming enough to take advantage of their status even when they are no longer migrants:
“Dark-haired Angela, 31, works long hours as an office supervisor but she still relies heavily on child benefit from the state to make ends meet. Every week, she puts Martina and Alan in the back of her blue Renault Clio and drives the five minutes journey to the cash point at her local bank. There, she draws out the £33-a-week put into her family account by the British government. It totals £1,650 each year. Yet this young Polish mother does not live in Britain. Her home is thousands of miles away in Lubin, a town near the picturesque city of Wroclaw in south-west Poland and close to the German border.” (Daily Mail 2007b)

Migrant female prostitutes experience a form of double jeopardy. Not only are they an ‘outsider’ as a migrant but their status as a victim is not automatic, usually having to be negotiated and traded (O’Connell Davidson 2006). Therefore, migrant women who are involved in the sex industry are either constructed as being ‘legitimate’ victims and to be so defined have to present themselves as trafficked women or they are seen as accomplices and removed to their country of origin if possible. So, victimhood is constructed by how the victim negotiates her experience with law enforcement and how she defines her experiences within the sex industry in order to negotiate her status. It is to an investigation of a number of UK based cases that we now turn to further explore the relationship between the media and the utilization of organised crime and victim constructs.

Infamous Cases?

There are numerous press reports in relation to human trafficking cases but since the introduction of the Sexual Offences Act 2003 there have only been 48 prosecutions for Human Trafficking (Hansard 2008) and those prosecutions have decreased year on year. In 2006 the UK government established the United Kingdom Human Trafficking Centre (UKHTC), the aim of the UKHTC is to combat and reduce human trafficking. The UKHTC was established after ‘Operation Pentameter’, a police led operation which discovered some 88 ‘potential victims’ of human trafficking. The UKHTC provides a focal point in relation to human trafficking, demonstrates the ‘political will’ to stop trafficking and a link between government and the media in publicising cases. It is this relationship between state and the media in the area of human trafficking and organised crime that concerns us here. To explore this relationship further and to understand how the criminals and victims are constructed three cases will be discussed.

In 2005 Vullnet Ismailaj, with others, was convicted of offences of trafficking for sexual exploitation. The defendant was not in the UK legally, he had arrived in the UK from Albania and his lack of legal status and his Albanian origins were all utilised as a means of increasing the sense of external threat; that trafficking is a ‘foreign activity’,
MEDIA CONSTRUCTING ORGANISED CRIME CONCEPTS

one undertaken by non-UK criminals. The circumstances of the offences were that Ismailaj along with two other men had been involved in the recruitment of women, mainly from Lithuania, to work in the UK as prostitutes. Ismailaj had paid the transport costs for the women, however, the women paid him the bulk of their earnings and they were required to work in a manner they did not want – for example with drunken clients and when they were menstruating. Ismailaj was observed by the police driving women to brothels in London and Birmingham to work. On one occasion two of the victims reported that they had been introduced to another man by Ismailaj and were told that this man was to be their new boss. Ismailaj, the police alleged, was paid money by other brothel and massage parlour owners for women, however, on this occasion, as detailed in the official court report, the victims objected to being made to work apart from each other and ‘packed their bags’ (Westlaw 2008a). The account of the offences committed by Ismailaj suggests that he was involved in recruiting and providing prostitutes to massage parlour and brothel owners which he did for money. However, the victims were all consenting prostitutes and do not fit the definition of having been trafficked as set out in the UN Protocol. At the original hearing Ismailaj was sentenced to eleven years, he appealed and on appeal the prison term was reduced to nine years. The appeal court ruled that

“... the women had come to the United Kingdom for the purposes of prostitution and had not been corrupted in any way. They had been coerced by reason of the conditions in which they were required to work. There had been a high degree of planning and organisation and there was some evidence of threats and restriction of the women’s liberties and the confiscation of their passports.” (Legislation on Line 2008)

The case was widely reported in the media. The headline in the Times was ‘Illegal Migrant jailed for Sex-Slave Ring’ (Times on line 2008a). The newspaper report claims that Ismailaj ran an ‘organised and sophisticated prostitution empire’ (Times on Line 2008) and that he had amassed a fortune of over £300,000 which had been remitted back to Albania. However, it is clear form the appeal judgement that the case was considered to have only a small element of coercion:

“... the victims of these offences were not only adult prostitutes, but they came to this country for the purpose of carrying on a trade as prostitutes. The coercion to which they were subjected was extremely minor...” (Legislation on Line 2008)

The newspaper reporting of the Ismailaj cases suggests that there are links to criminal networks in Albania and that Ismailaj was a ‘ring leader’ and that the operation was a form of transnational organised criminality. However, whilst it is clear that Ismailaj was involved in organising and providing prostitutes there is little in the official accounts of the case that suggest he was in charge of an empire or ran a sex slave ring. Essentially
Ismailaj recruited prostitutes and either found ‘new bosses’ for them and he was paid for his efforts or he drove women to work at various locations.

One of the most notorious and widely reported cases was that of the Demarku brothers who were convicted of human trafficking for sexual exploitation offences in 2005. The circumstances of the offences were that the brothers were organising and running a number of brothels. Many of the women who were working at the brothels were from Central-Eastern Europe. The brothers were charged with trafficking offences and there was evidence that they lured women to the UK and then held them against their will, making them work as prostitutes. The brothers received long jail sentences (Westlaw 2008). Once again the case had a number of news values including the coercion of the victim and the Albanian ethnicity of the brothers. In reporting the case The Times described the brothers in the following terms:

“Agron, the ringleader, who was described as an “intelligent and resourceful man” and Flamur, the firm’s “money man”, were both jailed for 18 years Xhevair and Bedari, said to be junior partners.” (Times On Line 2008b).

The Guardian reported the case in similar terms:

“Four brothers and a friend who ran a family empire trafficking eastern European women into Britain for prostitution were jailed yesterday. The Albanian gang forced their victims to work round the clock in seven West London vice dens.” (The Guardian 2008b)

These two cases outlined above were concerned the trafficking of women into the UK, or once women had arrived to the UK knowing that they were going to be involved in prostitution.

The third and final case to be outlined is the one that concerned the raid on The Cuddles Massage Parlour in Birmingham. Cuddles was a massage parlour which acted as a front for a brothel. Initially it was claimed that nineteen women had been ‘freed’ from sex slavery (Daily Telegraph 2008a). The victims were reported to be of Eastern European origin and there claims that the women were locked into the brothel to work and escorted back to the premises where they were staying. The Times (2008c) quoting a police officer involved in the raid construct the operation as one against human trafficking:

“We went to the property to execute a warrant in human trafficking, and intelligence suggests the girls were brought into the country under false pretences, sold on and held against their will in the massage parlour. These girls could be subject to violence, sexual assaults and forced to work as prostitutes.” (The Times on Line 2008c)

Cuddles was presented as being part of an organised trans-national sex crime syndicate that exploited women through trafficking. The police raid took place in October 2005. The keeper of the brothel, the maintenance man and the woman who owned the
brothel appeared before the courts in August 2006. The brothel keeper received a prison sentence of two years, the sentence being passed for possessing a fire arm and the woman brothel manager and maintenance man were given community based non-custodial sentences. In early 2007 two other defendants were jailed for 40 months and 28 months respectively: Kinga Andrea Borcsok, and Atilla Makai procured women to work in brothels through the internet and met them and introduced them to brothel owners, they recruited women to work in Cuddles. This was a breach of the 2003 Sexual Offences Act and they both served prison terms for offences of human trafficking for sexual exploitation. However, Atilla Makai appealed against his 40 month sentence on the basis that he was essentially only procuring women to work in brothels in the UK and that the women knew when they were recruited, the type of activity they would be engaged in. The appeal against sentence was allowed and the term reduced to 30 months (Westlaw 2008b).

The other outcome of the Cuddles raid was that the majority of the women who were ‘working’ at the premises were removed as they were in the UK illegally. So, the raid on Cuddles that initially rescued nineteen women was nothing more than a raid on a brothel that resulted in a relatively small scale prosecution and the expulsion of those ‘rescued’ women who were illegally in the country.

### Making Sense of it all

The press reports of the case studies above have three common themes; the perpetrators are all ‘foreign’, and in many cases are Central-Eastern European with a particular focus on Albania; the cases are all concerned with the sex industry and finally they are presented using the signifiers of ‘organised crime’. Many of the cases outlined could be defined as ‘serious criminality’ as many are concerned with forms of sexual offending, violence or possession of weapons.

#### Managing facilities

The similarities between the cases cited are the following. First each case concerns the sexual exploitation of women through managed prostitution or rather, prostitution facilities. The defendants in all of the cases were involved in the management of brothels and women all were ‘entrepreneurial’ in as much that they had to manage the brothel as a business to ensure continued viability. In the Ismailaj case the Court of Appeal recognised that the women had all come to the UK for the purposes of prostitution and that they had been openly recruited to work in the brothels that Ismailaj managed. Essentially Ismailaj’s criminality can be analysed not only in moral terms but also in terms of business and economics. In order to ensure a lucrative business Ismailaj was
required to maintain a supply of women prepared to work in the sex industry. Data from interviews conducted with law enforcement personnel during the AGIS Illegal Movement of People Across Borders Project\(^5\) indicates that the need by brothel managers for women to work in the ‘off-street’ sex industry (brothels and escort services) can be met from either migrant women or locally resident women. However, the locally resident women will enter legitimate and safer forms of employment if such opportunities exist in their local area. Consequently, in areas of high employment it was evident that there was a greater influx of migrant women to meet the demand for women to work in the ‘off-street’ sex industry than in areas of more restricted employment opportunities. Therefore, to understand the structure of the ‘off-street’ sex industry and where it is probable that migrant women will be engaged in greater numbers, we need to analyse and understand the structure of the female labour market. The case of *Cuddles* indicates a similar finding: a significant number of foreign national women who were deported after the raid because of their lack of legal status as migrants.

All of the defendants, except those in the *Cuddles* case had resorted to some form of coercion, in the Ismailaj and others case it was acknowledged but not viewed as being at the ‘serious’ end of the scale, whereas in the case of the Demarku family there was a high level of physical violence and threat. What is apparent from an analysis of each of the cases is that those convicted utilised the ‘weapons’ of intimidation and threat common within the realms of serious criminality. All of the defendants can be defined as serious violent offenders. In attempting to interpret the activities of these criminals we need to pay attention to what van Duyne has to say: “Naturally, the illegality determines the entrepreneurial risks in terms of law enforcement intervention” (Van Duyne 2006:180)

In general the ‘off-street’ sex industry is not overly policed. With only one of the UK’s forty two police forces having a separate ‘Vice Squad’, the sex industry is policed through those strategies that are aimed at violent, serious and organised crime. However, the recruiting of women from other EU countries or bordering countries requires time and investment and the maintenance of links with other crime entrepreneurs. This results in potential problems as Van Duyne notes:

“... fellow criminals may become police informants. In general the criminal trader operating in a basically hostile environment has an information risk problem. The criminal trader has a dilemma in finding the right balance between information concealment and information dissemination. Concealing too much information about who he is and what he has to offer limits the scale of his business. Disseminat-

\(^5\) This research was undertaken with financial support from the AGIS Programme European Commission Directorate General Justice, Freedom and Security.
ing too much information puts him in danger of the law and jealous fellow criminals.” (Van Duyne 2006:181)

One of the intrinsic problems with the ‘off-street’ sex industry is that, law enforcement will always have a watchful eye on the criminal traders. It is a relatively high risk ‘business zone’ and this may go some way to explaining why it is that the ‘off-street’ sex industry appears to attract illegal migrants or migrants from significantly poorer regions of the EU member states. It was suggested by the data in the AGIS Illegal Movement of People Across Borders Project that the sex industry is highly visible, and is resource intensive in terms of requirements, for example premises and workers, and has a number of attached risks. That means that once criminals have made money they tend to diversify into other areas of serious criminality but with lower risk. Consequently, the relatively risky ‘off-street’ sex industry is not one that is highly contested between criminal interests.

It is also an industry where there are high levels of demand. Van Duyne highlighted four risks to the criminal trader. One of them concerns attracting customers’ attention. However, there can be no open advertising for their illicit goods. In the sex industry this is different: in the ‘off-street’ sex industry there is a lot of advertising in local newspapers and across the internet. Recruitment of ‘reliable staff’ poses additional difficulties, as indicated earlier. In the sex industry this is a problem in terms of recruiting women.

In this regard the use of information and communication media are problematic as they leave either a ‘paper’ trail or a human trail and finally human error, either through behaviour that draws attention to the individual or the jealous ex-colleague who tells all (van Duyne 2006). The victim of human trafficking is a very real risk for the crime entrepreneur as they can provide significant amounts of information and report on a serious offence (Van Duyne 2006). The Daily Telegraph reporting on changes to the nature of the off-street sex industry claimed that:

“The gangs are moving hundreds of women out of the “overt” sex industry – massage parlours and other brothels – and into the “covert” industry, because it is more lucrative, to increase their control over the victims, and to make it more difficult for police to find them.” (Daily Telegraph 2008b)

Using Van Duyne’s analysis this management strategy described above would be about risk minimisation and profit maximization in what is an openly hostile environment. So, the activities of policing may have a direct bearing on the means by which those managing brothels re-structure the off-street sex industry to protect investment, reduce risk elements and resource costs. As Matthews (2005) comments the structure of off-street prostitution has significantly changed over the past decade with:

“...enormous growth nationally in the number of massage parlours, saunas, escort agencies, gentlemen’s clubs, hostess clubs, lap-dancing venues as well as women working from private flats... in many urban centres in England and Wales, we have
a form of quasi-legalisation in which a growing number of brothels are allowed to operate virtually undisturbed” (Matthews 2005:891)

So, it may not be as the Daily Telegraph claims that canny criminals are moving their operation to avoid detection and apprehension but rather, a significant shift in the policing approach to off-street prostitution that allows for a more liberalised market.

The evilness

The second similarity between the cases outlined above is that each of them is presented as being a large organised crime structure. The media reports use terms such as ‘evil empire’, to describe the criminal business activity and by inference making a moral judgement on those who are involved. Again in order to suggest the scope of the activity another report claimed ‘Britain’s biggest people smuggling and sex-trafficking empires’, and the use of the word empire being a key feature in determining the scale of the operation. Often officials are quoted, especially those from law enforcement who are seen to be able to provide a rational evaluation of the situation. So as one policeman said “...a highly sophisticated gang, one of the most sophisticated I’ve come across in 29 years in the police force” underlines the serious nature of the criminality and provides an ‘informed’ assessment of the organisation of the criminal enterprise. It is this construction of human trafficking as a highly organised crime that makes links to the popular constructions of organised crime.

Many of the reported cases also highlight the ‘family’ link between the offenders. So there are “...family trafficking empire[s]”, and as one report stated: “Four brothers and a friend ... ran a family empire trafficking Eastern-European women into Britain for prostitution ...” This press report constructs the idea that the ‘empire’ is run by four brothers and a close family friend who is trusted and loyal. This has similarities to the mafia style organised crime constructions often utilised in popular fiction. A press report of the Demarku case brings this image of a family firm into sharper definition:

“Agron, the ringleader, who was described as an “intelligent and resourceful man” and Flamur, the firm’s ‘money man’ ... Xhevair and Bedari, said to be junior partners.” (Times On Line 2008b).

The allocation of roles, Agron as the ringleader, who used his intelligence and resources in a wily and criminal way was supported by Flamur, the ‘firm’s money man’. In many of the reported cases the issue of money is also critical with allegations of considerable sums of money being remitted back to the country of origin. The men are all constructed as being cunning in the way they have managed to return a large part of their ‘profits’ to their home country. The many press reports comment on the seizure of documents, bank books and papers that evidence the large sums of money made through prostitution. Once again these topics of reporting make direct links to the idea
of organised crime with money laundering processes and larger family ties in other
countries thus making the activities trans-national.

The foreignness

The third element of commonality between many of the reported cases is the ‘foreign-
ness’ or ‘otherness’ of the criminals. So those convicted with Ismailaj were of Albanian
origin as were the Demarku family. Both were reported to have Lithuanian links and
the two convicted of organising the women to work at Cuddles were Hungarian.

However, what is not reported or commented upon is that these criminals originate
from the areas of Europe which have less buoyant economies and where the opportu-
nities for improvement in living conditions are significantly limited. For Albanian peo-
ple legitimate access to the UK is not easy due to the perceived problem of immigra-
tion which makes the entry for many illegal. Once here illegally there are usually two
main choices: find work that will be unpleasant, poorly paid and exploitative, or engage
in criminal activities that are similarly unpleasant if apprehended, go to jail and be de-
ported.

‘Foreignness’ provides an opportunity to recruit women from the country of origin
and provide the routes and means of illegal entry into the UK. This is a simple exploi-
tation of contacts and the desire by some women to enter the UK and work in off-
street prostitution. This is viewed as a better life than the one experienced in their own
country. In understanding why women are prepared to migrate for the purposes of
prostitution it is necessary to first acknowledge the link between poverty and prostitu-
tion and second that the decision to turn to prostitution may also act as an impetus to
the decision to migrate, as – one may speculate – prostitution in their own country is
less rewarding as well as less anonymous. Both decisions are in some ways dependent
on each other. Edlund and Korn (2002) provide an economic model of prostitution
and argue that:

“The marriage market cost is linked to whether potential spouses know that the
woman has prostituted herself . . . One way to reduce the risk is to migrate, and . . .
our model predicts that prostitution will be linked to high levels of migration and to
the extent that domestic and foreign prostitutes co-exist, foreign prostitutes would
be cheaper. . . “ (Edlund and Korn 2002:211)

So, a decision to enter the sex industry can be seen as a rational solution of a dilemma.
It requires a woman to try and protect her personal reputation in order to enhance her
marriage prospects in her country of origin where there are meagre prospects of a de-
cent income. Hence, those factors which encourage women to engage in prostitution
are driven by economics. It is interesting to note that the countries of origin of many of
the women, and those convicted of human trafficking offences, are in the poorer parts
of Europe. However, there is little evidence that the criminal groups referred to in the
press reports are trans-national or thoroughly organised across borders. The criminal
groups fit more comfortably within what Hobbs (1998) has described as local serious criminality (see also Fijnaut 2000).

“The connection between sets, the relationships that lie at the core of serious crime groups, can be based on familial, interpersonal, geographic or commercial sets, and often a combination of some or all of the above.” (Hobbs 1998:417)

The cases of media reports concerning trafficking for sexual exploitation are not great in number and tended to be more visible at the time when prosecutions were more prevalent. So, the three outlined in this chapter may not be representative due to the untypical nature of sex trafficking offences and the small number of cases, but they provide a window into how the media construct and report such cases. All of the cases discussed in this chapter meet the conditions as defined by Hobbs (1998) of serious local organised crime. The offenders can all be defined as members of serious crime groups and furthermore that there is a connection between different groups, so that the owner of Cuddles had a connection with the Hungarian couple who were recruiting and introducing women. This was simply a commercial relationship; the origin of the women and the ethnicity of the recruiters was immaterial. In the Demarku case there was a strong family relationship, probably because this minimises the risks to the criminal enterprise as defined by Van Duyne (2006). The familial relationships are also good for business inasmuch that they reduce costs. However there was also an element of the interpersonal in the Demarku and Ismailaj cases, they were joined by a long standing friend where presumably loyalty and mutual interests were not in question. Finally there was a geographic link and whilst it is not possible to know from the information to hand whether they worked together because of their geographical links (country of origin) and area of UK residence or whether they worked together because they 'happened' to live in the same area; what is apparent is that the structure of these ‘organised crime’ groups fit into the model proposed by Hobbs (1998) and the strategies to avoid the threats as defined by Van Duyne (2006) are also evident. Indeed, if we sum up these entrepreneurial conditions, there is little of well thought-out sophistication: it is ‘human, all too human’.

**Conclusion**

There are number of conclusions that can be drawn from an analysis of press reports that focus on human trafficking and prostitution. First, the organised crime construct is frequently utilised to describe the activities of criminal groups. The construct most frequently employed is that of a familial gang. However, on closer inspection it is apparent that these so called ‘gangs’ are relationship ‘sets’ (Hobbs 1998) that function at a number of different levels but primarily they are locally based rather than trans-
nationally organised forms of criminality. The trans-national element of the criminal activity gains impetus from the relationship between migration and prostitution. The push and pull factors that drive migration and prostitution are never fully addressed in press coverage as this would make the short-hand organised crime construct harder to utilise. Instead of simply projecting the case within a simple and tested imagery, the problem would have to be understood in a much more complex and multi-layered manner. Instead of a fixed mould, the relationships between different elements of the criminal enterprise would have to be understood to change and diversify over time.

Second, the use of ethnicity as a definer of organised crime is prevalent: essentially the management of prostitution is viewed as being a ‘foreign’ criminal activity. There is no detailed reporting on the economic structure of the ‘off-street’ sex industry. It may be that this is the one area that is possibly less contested among criminal groups as there are ‘rich pickings’ for all. Furthermore for a migrant who may not be in the country legally, the off-street sex industry is only lightly policed thus reducing the chances of apprehension and deportation. It is therefore a less risky form of criminal enterprise where there are a number of threats, all of those mentioned by Van Duyne (2006b), and also the potential hazard of deportation and loss of assets if apprehended.

Third, there is a strong link between government constructions of the problem and those of the press. This suggests that either government has very little understanding of the issue or that there is a symbiotic relationship between press, law enforcement and government that constructs the problem in a particular manner – one that is common to all participants. It is a shared imagery with a common language (Van Duyne, 2004). There also appears to be a lack of knowledge or a failure to implement the findings of criminological research that provides a model of how crime is organised. An application of criminological knowledge in this area would suggest that a detailed understanding of the off-street sex industry would provide good forms of intelligence that would indicate areas where there is more probability of a thriving ‘off-street’ sex industry. The variables concerned are: its economic variations, its geographic differences and for example regions where there are greater concentrations of transient people. It is here that you would expect to find a greater concentration of foreign national women working in that industry. It is here that the understanding of how crime is organised would also prove to be beneficial.

Finally, an application of criminological knowledge in the way outlined above would prevent the construction of human trafficking as a problem focused on the sex industry only. There is a considerable movement of people across borders to facilitate other labour market requirements, especially in the highly casualised and less regulated employment sectors. There is no doubt that at a local level there are some very serious levels of criminality, some of which is involved in the sex industry. However, the use of organised crime motifs to understand such criminality does little to ensure an effec-
tive engagement with the problem and a protection of victims. What is required is a much more effective analysis of locally based crime structures and how crime is organised at the local level.
MEDIA CONSTRUCTING ORGANISED CRIME CONCEPTS

References

BBC (2008)
Coster van Voorhout, Jill E.B., “Human Trafficking for Labor Exploitation: Interpreting the Crime”. Available at SSRN:
http://ssrn.com/abstract=1083639

Daily Mail (2007b) £1m of child benefit paid out a month - to mothers in Poland Daily Mail. September 21st 2007

Daily Telegraph (2008a) ‘Sex slaves’ rescued in massage parlour raid
Accessed 21st March 2008

Daily Telegraph (2008b) Sex trade moves its modern-day slaves into the suburbs.
Accessed 26th March 2008


EUROPEAN CRIME–MARKETS AT CROSS–ROADS


Hobbs, D., Going down the glocal; the local context of organised crime. The Howard Journal 1998 vol. 37, no. 4: 407–422


O’Connell Davidson, Will the real sex slave please stand up? Feminist Review, 2006, no. 83: 4–22


60
MEDIA CONSTRUCTING ORGANISED CRIME CONCEPTS


Salt, J., Trafficking and human smuggling: A European perspective *International Migration* Special Issue 2000/1


Times On Line (2008a) *‘Illegal Migrant jailed for Sex-Slave Ring’* (2005)
http://www.timesonline.co.uk/tol/news/uk/article517854.ece. Accessed March 10th 2008


Times On Line (2008c) *19 ’sex slaves’ rescued in raid on massage parlour*

Westlaw (2008a) R.-V-Demarku (Agron) [2006] EWCA Crim 2049
Westlaw (2008b) R. v Makai (Atilla) [2007] EWCA Crim 1652


Who is ‘Yugo’ in ‘Yugo-mafia’?
A comparative analysis of the Serbian and Slovene offenders

Anja Logonder

Introduction

Former Yugoslavia is both close enough to maintain the interest of others and distant enough to sustain otherness and mysteriousness. The attraction of the hidden and the notorious is also sustained by the so-called Yugo mafia. The Yugo-mafia as a danger to Europe is mentioned side by side with Italian, Russian, and Turkish mafia, Chinese triads, and South American cartels. Its members are notorious for their cruelty, mercilessness, cold-bloodedness, fearlessness, and readiness to use firearms (see: Van San and Snel, 2004: 196; Bovenkerk et al., 2003: 30). As Stefan, an inmate, has confirmed while serving a prison sentence in Switzerland, their readiness to use violence instils fear even with other prisoners: “If you are relocated to Regensdorf you have to punch the first inmate who wants anything in the face without prior warning. Even if the other is two meters tall or a Yugo knifer and who is going to make mincemeat of you afterwards... There, it is not like here the director who governs, but those who call the shots, the Yugo-mafia and the drug-Columbians” (Maeder, 2002).

But Yugoslavia, Yugoslavs, and ‘the Yugoslav’ no longer exist. The Socialist Federal Republic of Yugoslavia broke up in 1992, in 2003 its self-proclaimed successor the Federal Republic of Yugoslavia changed its name and later broke up too. In spite of that, the criminals from former Yugoslavia remain to be labelled Yugoslav – as part of the Yugo-mafia, as Yugoslav gangsters or as Yugoslav ‘organised criminals’. It is not

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1 I would like to take this opportunity to thank Dr Božo Repe and all my interviewees for our extensive discussions, as well as everyone else who shared their experiences on organised crime with me for their honesty. In particular, I would like to express my gratitude to Dr Matjaž Jager.

2 The author is Criminal Inspector at the General Police Directorate, Ministry of the Interior, Slovenia. The views expressed are purely those of the author and may not in any circumstance be regarded as stating a position of the General Police Directorate or the Ministry of the Interior.
said explicitly, from which existing states of the former Yugoslavia these people come: Slovenia, Croatia, Serbia, Montenegro, Macedonia, or Bosnia and Herzegovina.³

This chapter therefore raises the question: Who is the ‘Yugo-mafia’? It also examines whether its members in fact bear enough resemblance to be given a common label. Can it justifiably be used independently of recent history? Or is it a remnant of the past, combining differences that are actually too big? To answer the question, I carry out – within the limits of this chapter – a comparative analysis of the Slovene and Serbian offenders described as “organised criminals” by experts in studies, reports, interviews and presentations (see for example Organised Crime Situation Reports 2004: 54; Organised Crime Situation Report 2005: 64; Nikolić–Ristanović, 2004: 685–694; Bovenkerk, 2003). Involved in crime groups they engage in selling prohibited goods and services and in racketeering (see Bovenkerk, 2003: 46). I will compare the offenders at home and abroad, both before the break-up of former Yugoslavia and afterwards. In this comparison I will mainly focus on their lifestyles and activities and in particular on their use of reputation and violence.⁴ At the same time, I will identify the factors that influence their choices and the extent of their criminal activities.

My examination also draws on the characteristics and situation of the Slovene and the Serbian nations. I divide them into the following three periods: the time of communism; the time of war(s); and the time after the war(s). When writing on their backgrounds, I do not wish to avoid the (scientifically researched and perceived) national characteristics. Having said that it is impossible to sidestep the often negative attitude towards the notion of the national character, its unpopularity, and the fact that “to introduce it into scientific literature almost means risking one’s good name” (Musek, 1990: 163).⁵ Nevertheless, Bovenkerk, Zaitch, Siegel, Van San and Snel (Bovenkerk et al., 2003; Van San and Snel, 2004) have already observed the influence of national or ethnic stereotypes on the activities in crime groups where they can become self-perpetuating. Many outspoken people have succeeded in living up to the stereotypes. And stereotypes spring precisely from the perceived image of the character of an ethnic or national group. A ‘national character’, I believe, should also not be overlooked because the “feeling of a national origin is one of the essential components of a person’s personal identity” (Musek, 1990: 164). However, it is crucial to keep in mind that “interpersonal differences within each nation greatly exceed the differences between the members of different nations” (ibid.).

³ Some writers also do not make it clear whether they are using the term (former) Yugoslavs for the inhabitants of the Socialist Federal Republic of Yugoslavia, existing up to the year 1992 or perhaps for the inhabitants of the Federal Republic of Yugoslavia existing between 1992 and 2003.

⁴ For more on the significance and various aspects of the use of reputation and violence in crime, see e.g. Gambetta, 1993; Zaitch, 2002a; Zaitch, 2002b: 261–270; Bovenkerk et al., 2003.

⁵ Naming the national character among the causes is often seen as politically incorrect.
Method of research

To be able to carry out a relevant comparison of the Slovene and Serbian offenders, I conducted interviews with seven Slovene experts on organised crime. I interviewed a former head of the Organised Crime Division, a representative of State prosecution, three university lecturers and authors of works on organised crime, and two representatives of the Slovene Police (henceforth Police representative one and Police representative two). I have quoted some of their answers literally, while others stimulated me to analyse these topics deeper. I also carried out various informal conversations with individuals who were, or have been linked to, (organised) crime in one way or another. Furthermore, I looked for visual and textual materials relating to the offenders in Slovenia and Serbia. I consulted newspaper and scientific articles, books, documentaries, films, and television interviews. For the purpose of this chapter I translated the sources published or broadcasted in languages other than English, into English. While writing on the Serbian crime of the 1990s, I found the illustrative works by Aleksandar Knežević and Vojislav Tufegdžić particularly useful. They interviewed a number of the most noticeable Serbian criminals for their non-fiction book Kriminal, koji je izmenio Srbiju (The Crime that Changed Serbia) (1995: 25). Filmed interviews also make a part of Janko Baljak’s documentary Vidimo se u čitulji (See You in the Obituaries)6. Baljak explains: “I always had to explain to viewers in the West that the main characters in the film are not impersonators but real criminals. They often found it difficult to comprehend this.” (Trbic, 2000) The criminals’ statements given verbatim without any authorial comment reveal the sensual and emotional insights of the interviewees (see Kanduč, 2006: 208), the myth and/or the realities. At the same time, the statements reflect a certain mindset and mood of the time.

As mentioned above, I focussed on the members of crime groups described by experts as ‘organised criminals’, who engage in selling prohibited goods and services and in racketeering, i.e. the activities that are also traditionally conceived as organised crime (see Bovenkerk, 2003: 46). Since my wish is to ‘capture’ the experiences of the offenders, I let them speak in their own words as much as possible. For ‘language is more than a means of communicating about reality: it is a tool for constructing reality’ (Spradley, 1979: 17). This is why there is a great number of quotations in the chapter, as I believe the text would be poorer without them.

A word on the terminology relating to the notions of nation and ethnicity. “In South Slavic languages, the word ‘narod’ means both ‘people’ and ‘nation’”. Thereby, the “‘nation-state’ is attached to a specific ‘nation’, or ‘people’, conceived as an ethnic population,” writes Bette Denich (1993). She goes on: “The equation between ‘people’ and ‘nation’, contained within the single word ‘narod’ provides no allowance for

6 Screenplay: Aleksandar Knežević and Vojislav Tufegdžić.
nationhood detached from ancestry. To further define the ‘state’ as an attribute of a ‘nation’ means that there is also no way to separate the issue of control over the state from ancestry, or from what is encompassed under the term ‘ethnicity’” (ibid.). To avoid the general conceptual confusion with the notions of citizenship, nationhood, and ethnicity, and the relationship among them, I use the terms in a simplified form as used by former Yugoslavs in their own languages. I relate the terms nation and ethnicity to the individuals’ origins.7

Crime in and from the Socialist Federal Republic of Yugoslavia

Organised crime simply didn’t exist in Yugoslavia. Things like bank and post robberies, fraud, and usury didn’t exist. But that had nothing to do with Yugoslavia itself. There’s generally less organised crime in undemocratic regimes for very obvious reasons.

(An anonymous writer on the Croatian web forum: www.forum.hr)

Serbs, with the exception of those living in Bosnia, were first united in the second half of the Twelfth Century, having had shaken off Byzantine influence. Their conquests in the following two centuries included Macedonia, Albania, Epirus and Thessaly. The decisive defeat against the Turks in 1389 at Kosovo Polje was followed by the Turk occupation of the whole Serbian territory by 1459. The uprising against the Turks began in the Nineteenth Century. With the help of Russian interventions independence was regained, followed by the declaration of the Kingdom of Serbia in 1882. The Kingdom annexed Kosovo and northern Macedonia in the Balkan Wars of 1912 and 1913, which gave it a new drive for its attempts to unite south Slavs.

Slovenia followed a different course of development. Its geographic position between the Alps and the Adriatic Sea made the territory of the present-day Slovenia even more exposed. Over and again it has been a passageway and a border, but also a bridge between different cultures, nations, and states. Bigger or smaller parts of the present-day Slovenia were under the sovereignty of various rulers in the second millennium. Among them were the Counts of Gorizia and the Counts of Celje, the Venetians, the French, and in particular the Habsburgs. The latter ruled over the majority of the present-day Slovene ethnic territory between the end of the Thirteenth Century up until the end of World War I.

7 As a rule, I do not emphasize ethnic variety.
The common Serbian and Slovene history began in 1918 when Serbs joined together with Slovenes and Croats into the Kingdom of Serbs, Croats, and Slovenes. The kingdom was renamed Yugoslavia in 1929. After World War II, Serbia, Croatia, and Slovenia became three of the six republics of the newly-formed Socialist Federal Republic of Yugoslavia under communist leadership, with Marshal Josip Broz Tito as president. The federal government had its seat in the capital of Serbia, Belgrade.

Up to 1991, through the ideas of brotherhood and unity, Yugoslavia brought together almost 24 million inhabitants in six officially autonomous republics: 2 million inhabitants lived in Slovenia, almost 5 million in Croatia, 4.4 million in Bosnia and Herzegovina, almost 10 million in Serbia, 0.6 million in Montenegro, and 2 million in Macedonia. Yugoslavia joined together East and West: different languages (Serbian in Serbia, Slovene in Slovenia) and religions: Islam and Christianity (Orthodox in Serbia, Catholic in Slovenia), Cyrillic alphabet (in Serbia), and Latin alphabet (in Slovenia). It consisted of parts of the former Ottoman Empire (Serbia) and the former Habsburg Empire (Slovenia). Interestingly, a stereotype that was popular already in the 1920s said: “In Yugoslavia it is thus: The Serbs rule, the Croats debate, and the Slovenes work” (Sundhausen, quot. in Arola). In comparison to other communist countries, Yugoslavia remained relatively open in relation to the outside world.

On the extent of organised crime in the 24-million Yugoslavia, a journalist of the Croatian newspaper Vestnik Željko Peratović wrote: “In the time of former Yugoslavia, organised crime didn’t exist. It was still a totalitarian state, and it didn’t permit any kind of organised opposition.” (Arena 6, 2004). However, federal and republic state security services of the time carried out smuggling and trafficking and the federal state security service – the federal SDB, execut ed professional murders. Yugoslav authorities hid any activities of the sort, and called any such hints of their existence ‘lies and false insinuations’. This was also the reason for the ban on the film Young and Healthy Like a Rose (1971) about the life of a young delinquent that state security services lead from cheating and murders to arms smuggling, drug dealing and political assassinations. The character finishes the film with the words “I am your future!” Its Belgrade film director Jovan Jovanović explained the ban as follows: “During the period of Titoism the Association of Partisans was very strong. They were not willing to accept that beside Tito’s youth there were also criminals and drug addicts in Yugoslavia, that there was a different population. The film showed exactly that, it showed a real image. They didn’t want to admit that the SDB recruited these very criminals to be paid murderers. They didn’t want to admit that this kind of crime was going to spread around former Yugoslavia

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8 The SDB (in the then existing Serbo-Croatian language meaning Služba državne bezbednosti and in the Slovene language Služba državne varnosti (SDV)) was preceded by the UDBA, in existence between 1946 and 1966. Alongside the federal SDB, eight more SDBs existed – six republic SDBs and two regional.
like a sort of cancer, and that a wide-ranging criminalisation was about to take place.” (Pavlović, 2006).
In the following chapters I look into the criminal situation in Serbia and Slovenia.

Crime in and from Serbia until 1991 and the influence of state security services

In the 1970s and 1980s, Belgrade, the capital of Serbia and Yugoslavia, was an important cultural centre. It was famous for its literature, film and theatre festivals, and excellent music. At the same time it was known as one of the safest European capitals, with a high proportion of solved serious criminal offences (see Knežević and Tufegdžić, 1995: 251). In the 1960s, 1970s, and 1980s, many Serbs (among them criminals) moved to Western European capitals in search of better-paid work (or easier criminal targets). Their emigration was facilitated by easy cross-border movement, which was not the case with other Eastern European countries. Serbian criminals renowned abroad for using violence, committed mostly property crimes, frauds and other criminal activities which (regularly) involve physical violence. The criminal groups they formed were strengthened by exploiting long standing friendship ties. Their reasons for leaving Yugoslavia and their lifestyle abroad, which was often attention-seeking, was described by a Serbian criminal. At that time he was involved in frauds and violent acts: “In Germany we had to be resourceful as best as we could, but we didn’t do the washing-up or dig canals . . . I had the best time when we celebrated Giska’s release from prison . . . According to my calculations, but others paid too, we opened 150 bottles of ‘Don Perignon’. My share was about 50.000 German marks.” (Lopusina, 1998)

Those engaging in criminal activities abroad tried to remain ‘clean’ at home at the same time. One of the reasons was the tendency of the SDB (State Security Service with its seat in Belgrade) to hire those operatives that did not commit criminal offences in Yugoslavia (Spasić, 2002: 213). The federal SDB, which from 1972 to the break-up of Yugoslavia was mostly headed by Slovenes (see Vasović, 2002), hired predominantly Serbian operatives, and when it was unavoidable also those from Sarajevo (Spasić, 2002: 240). The strongest were, however, those from Belgrade: “They meant something in Munich, Frankfurt, Stuttgart, Hamburg, Amsterdam,” writes Božidar Spasić, a former head of the Fight Against Extreme Terrorist Emigration Unit of the federal SDB (2002: 204). When collaborating with the SDB, these operatives proved reliable and fearless. “Never did one of them call me half-way to say he couldn’t do it, that he was scared,” says Spasić (Knežević and Tufegdžić, 1995: 9). On the recruitment he writes: “There were various types of people among our collaborators. We hired big-time criminals, petty thieves, unspecified individuals with a tendency towards crime” (Spasić, 2002: 213). Assassinations and other acts of fighting against political emigration they carried
out for the SDB were intentionally carried out in a cruel manner. In addition to guns they also used knives, axes, bombs, acids and strangling (see for example Lončar, 2004). Such acts did not only send messages to other enemies of Yugoslavia who wished to act against its unity and interests, they also contributed in Western Europe to the reputation of Yugoslav criminals as violent and merciless. The reputation was furthermore likely strengthened by terrorist attacks that were carried out by members of anti-Yugoslav emigrant organisations in Western Europe, which often cost human lives (see Sajovic, 2006: 73-74). Moreover, it was supported by property destructions and thefts, well-covered in the media. Through them, the SDB called attention to its own omnipresence, omniscience and the intention to punish anything with anti-Yugoslav tendencies. There was also media coverage of daring actions by Serbian criminals and their escapes, among the latter that of Arkan’s in the Netherlands, Sweden, Belgium, and Germany. They were probably assisted by the SDB. Those with the protection of secret services (and to some degree also those with the ‘protection’ of the police) could also be more daring and striking in their lives and actions, without having to pay a higher cost for it. I presume this is what Arkan was aware of when during a bank robbery in Germany he took off his mask and smiled directly into the security camera (Vučičević and Kraljević, 2000).

Some of them asked the federal SDB to provide them with protection against the police, or grant them clemency, money, passports, or driving licences in return for their services. But a lot of them, claims Spasić, cooperated with the SDB mostly for patriotic reasons: “As we at the SDB expected to be handed the bills for the completed tasks, they brought us transport tickets as an excuse to ask for travel expenses. And even then they felt uncomfortable.” (2002: 65). Giška, who was sentenced a couple of times abroad, explained this relationship: “In my youth, the most important thing was to be of use to the communist state, to cross the border to fight the Ustaše and political emigrants. That was the dream of every Belgrade waif.” (Knežević and Tufegdžić, 1995: 26). Collaboration with secret intelligence services was therefore perceived as honourable, unlike collaboration with the police that nobody wanted to admit. “Everybody wants to work for the ‘de-be’, but not many can, and even fewer are offered to. I can’t blame these guys, as it’s honourable to help the country where, among others, you live. Guys also see it as honour,” said Giška, involved in fraud and violent acts, later on (ibid.: 124). Since cooperation with the SDB was seen among criminals as a sign of prestige and influence, they used their (fictional or true) credentials relating to the SDB operations to raise their reputation. In this regard Arkan was no exception. He paraded with his guns, reportedly given to him by the SDB. He also claimed that he got a personal expression of gratitude from Stane Dolanc, a former Home Secretary and one of the most influential Yugoslavs.
Crime in and from Slovenia until 1991 and the influence of state security services

In the 1970s and 1980s, Ljubljana, the capital of Slovenia, was seen as a safe city, just like Belgrade, with a high proportion of solved criminal offences. Groups of criminals that according to today’s criteria would be classified as organised criminals were few before 1991. The onset of crime therefore, as in Serbia, significantly coincided with the changes in the economic and social systems and their (in)direct consequences. But as in Serbia, there were smuggling and trafficking organised by the SDB in Slovenia before that as well. The Slovene state security supposedly had the task of arms dealing in Yugoslavia, at least some of the time. It also organised cigarette and pure alcohol smuggling and trafficking (see Simoniti, 1998: 30), but the dynamics of the Slovene SDB smuggling and trafficking and its participation in it remain much less known than the operations of the federal SDB.\(^9\)

However, Slovene criminals of the time were not, like members of Belgrade underground, notorious for the carrying out of violent crimes. The Slovene SDB, unlike the federal SDB, did not perform the assassinations of ‘enemies’ abroad. Actually, the federal SDB preferred to hire Serbian and Bosnian criminals to commit assassinations and inflict physical harm abroad, rather than Slovene ones. The share of Slovenes active as criminals abroad before 1991 was also much smaller than that of Serbs.\(^10\)

The environment after the break-up of Yugoslavia

In 1980 Tito died after thirty-five years in power. With his death, Yugoslavia lost its firm, dictatorial leader with a personality cult, noticeable charisma and charm, and the federation started to fall apart. At the end of 1989 the annual inflation in Yugoslavia was 1500 per cent. In the same year the famous Yugoslav musician Goran Bregović said: “I think there will be war in Yugoslavia. It will be a stupid war.” (Liotta). On 25 June 1991 Croatia and Slovenia almost simultaneously proclaimed independence. After Yugoslav nations had lived in one state for more than forty-five years, Yugoslavia broke up after all. Slovenia, with the highest income per capita, the highest employment rate, and the lowest illiteracy rate, became an independent state for the first time. In the same year, 12,2% of the inhabitants of the nationally relatively homogenous country pro-

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\(^9\) I presume the (involuntary) memory of the power of former Slovene SDB remains too strong for people to start speaking about it.

\(^10\) Police representative one in the interview.
claimed themselves not to be Slovenes. A similar share of the inhabitants of Belgrade proclaimed themselves not to be Serbs.\textsuperscript{11}

The summer of 1991 saw the first conflicts on the territory of former Yugoslavia with Serbian participation. The shortest war was the ten-day war in Slovenia. Longer and much more tragic were the wars and armed conflicts in Croatia, Bosnia and Herzegovina, and Kosovo. Thus, for many the term ‘to balkanize’ (‘to break up (as a region or group) into smaller and often hostile units’; Oxford English Dictionary) materialised itself and confirmed that former Yugoslavia belonged to the Balkans indeed. The words of a former Yugoslav Secretary of Defence Veljko Kadijević from 1991, on the possible secession of Yugoslav nations, also came true. “I assure you that in that case in Yugoslavia there will be blood up to the knees,” said Kadijević (Pirjevec, 2001: 47).

Following the break-up of Yugoslavia, five new states were established on its former territory: the Republic of Slovenia, the Republic of Croatia, Bosnia and Herzegovina, Former Yugoslav Republic of Macedonia, and the Federal Republic of Yugoslavia. The Federal Republic of Yugoslavia was later renamed the State Union of Serbia and Montenegro, which in 2006 split up into two states, the Republic of Serbia and the Republic of Montenegro. In the meantime, the former republic of Serbia saw the visionary words of the main character of the film Young and Healthy Like a Rose come to life. Crime, together with violence, in war-time Serbia rose rapidly. Serbia's leaders had connections with war crimes, trafficking, smuggling, extortion, and assassinations. Beside the representatives of the then-existing administration, the power was now in hands of war profiteers and criminal groups. A Serbian journalist wrote: “Such is the elite of vice from which Milošević constituted his elite cartel: cheaters, unprincipled jerks, greedy newcomers (dođosi), heroin dealers, murderers on the go . . . heroes . . . tough men from the Belgrade streets ( . . .)” (Vasić in Greenberg, 2006: 105).

\textsuperscript{11} In Serbia and Metohija 65,9\% inhabitants proclaimed themselves to be Serbs, in Serbia without Metohija 79,9\%. 
Crime, criminals and lifestyle in Serbia during and after the wars

When Yugoslavia hit the rocks, the Serbian communist leader Slobodan Milošević fanned the still existing undercurrent for a Great Serbia. Encouraging military action, he reminded Serbian people of Serbian myths, “the most important medium for the ‘imagination’ of a community” (Assmann, quot. in Šuber, 2006). Milošević pointed in particular at the heroic battles and the defeat against the Turks in 1389. Serbs should look up to their ancestries, they should take hold of the arms and fights for old glory: “It was never in the spirit of the Serbian and the Montenegrin peoples to succumb before obstacles, to quit when one has to fight, to be demoralized in the face of hardship” (Vaknin, 2001). “If we don’t know how to work, at least we know how to fight,” he stereotypically reminded his people in the Serbian parliament four years later (Vreme, quot. in Silbert, Little, 1996; 141). The masses wanted blood and shouted in approval: “We want arms!”

More than half of reservists, however, did not heed the call of the Serbian army at the beginning of the war, so the authorities had to send paramilitary groups to Croatia and Bosnia. Among them were street gangs, football hooligans, and criminals, some of whom were released from prison for that purpose. In the occupied territories some became rich by devious means. Meanwhile in Serbia itself, being under international sanctions, the (adventurous) crime-entrepreneurs supplied people, who were dependent on the black market and grey economy, with fuel and cigarettes. The established smuggling channels continued to function after the war, only the smuggled goods changed. They were replaced by smuggled drugs (see Anastasijević: 5).

The war, that brought about the collapse of the formal and informal control within the economy, also encouraged criminal activities among those who were conformist prior to the war. Namely, “war thus becomes a school of crime, a university of hooliganism and worse, whose bitter fruit may well be tainted in the years after the war” (Hamon, quot. in Jamieson, 1998: 484). In addition to the war, or because of it, Serbia in the 1990s went through hyperinflation, a collapse of the economy, a significant increase in unemployment, wide-ranging criminal activities of the state security service, direct connections among the executive branch of power, justice, the police, and (organised) crime which by now had become widespread (see Anastasijević: 2, 4, 13; Hajdinjak, 2004: 48-50; Andreas, 2004: 4, 7; Judah, 2000; Pirjevec, 2003: 161, 210).
Crimes went without punishment, and a transition to gangster capitalism took place. Capitalists became gangsters and gangsters became capitalists. Of the Serbian population at large few became rich, and lots of them became poor. The state tolerated, encouraged, and collaborated in crime. Criminals received the protection of the police and the police received their money in return. Sometimes the functions of both overlapped. The police were often bribed, powerless or inefficient. Most of the murders were never solved. Even if the police did their job, the arrested criminals were set free by politicians or bribed judges (see Judah, 2000). No wonder they felt much stronger than the (legal) system. Some of them, among them Arkan, were influential enough to take up places in the national Assembly. The latter built himself an ostentatious villa in Dedinje, an upmarket Belgrade neighbourhood inhabited by diplomats and high-ranking politicians, including Tito and later Milošević. With this, he symbolically confirmed the politicisation of crime and the criminalisation of politics (see also Knežević and Tufegdžić, 1995: 261).

Such turbulent political, economic, and social conditions in the world of distorted values and insufficient or absent control were used by a number of people. They took the opportunity to engage in crime and thus escape the dull monotony of everyday life, in which there were few legal possibilities by which to rise above the average and improve their economic situation. Most often they engaged in criminal activities organised by others. The performance of criminal acts was facilitated by the attitude towards violence that changes in the time of war. In her memoir, Balkan Express, Slavenka Drakulić writes about life in Croatia during the war. A national-guard volunteer reveals how he has become used to death, the dead and to killing:

- “Have you got used to everything?”
- “Yes, I have. You change into a machine. You function like a machine. You think like a human being, but you act like a robot. You have to. Because if there are emotions left in you . . . there . . . in war . . .” (Drakulić, 1993: 113).

A 26-year-old professional murderer Damir said “I hope that the conflict will go on for a long time yet. What would I do in peacetime? I don’t know how to do anything but fight . . . Last year a journalist suggested that I go with him to Paris. The poor Frenchman . . . All I could have done was to become a gangster or a hired killer.” (Ugrišić, 1998: 197).

Manslaughters and murders after the war thus remained part of some people’s lifestyles and survival. They still had weapons from the war. They still nurtured the relativity of the prohibition of killing from the war, along with its rationalization, and a feeling of the worthlessness of human life (see Nikolić-Ristanović, 1998: 476). “Nowadays, there’s an abundance of weapons, and to kill a human being is the easiest. It’s like killing a fly,” explained a famous Belgrade offender Iso Lero (ibid.: 40). Crimes that were rare up to that time now became rife. Hired killers killed in broad daylight, on the
roads, in the streets, in hotels, in restaurants. It is not, however, insignificant that some of them did not shoot their victims once or twice, but riddled them with bullets.\footnote{The change was confirmed in 1993 by Jugoslav Pantić, the director of the Belgrade burial centre. He stressed that victims used to be shot by one or two shots, and even then usually in the leg. Now they were regularly “hit by a full clip load aimed at the head or chest” (Judah, 1997: 257).}

The most noticeable Serbian offenders of the 1990s, and the first years of the new millennium, whose interviews were published (see for example Knežević and Tufegdžić, 1995; Tarlač, 2004) or broadcast (see for example Vidimo se u čitulji, 1995; Interview with Kristijan Golubović, 2004), were, however, often the criminals who had already been well known delinquents abroad in the 1970s and 1980s. As remarked above, these noticeable offenders had a wide choice of motivated aids willing to execute the criminal activities which they organised. However, even the most noticeable Serbian offenders were driven by profit as well as in some criminal activities by hedonism and thrill – excitement, novelty, and challenges amongst others. Their accounts emphasise the desire for adventure and escape from the boring routine of everyday life.

“The commoners are the ordinary people who live one, how would I call it, one normal life. And we call them ‘the commoners’, because what we experience in one day, they don’t experience in their entire life time,” said a member of the Belgrade underground, twenty-year-old Bane (Vidimo se u čitulji, 1995). And the possibilities to lead an exciting life in Belgrade were many, as he claimed: “Belgrade is one and only, it’s difficult to compare it to other European cities. Every week there’s a new chance to prove yourself, new experiences” (Bane quot. in Knežević and Tufegdžić, 1995: 224).

For this reason they stayed involved in criminal activities, since: “I know that when I leave Belgrade the way it is, even if only for five days, I’ll simply die of boredom” (Knežević and Tufegdžić, 1995: 176).

These noticeable criminals claimed to be living for the present moment, typical of the Gottfredson and Hirschi’s member of an organised crime group. One of them noted: “It’s better to live one day like a human being than the whole life like a wretch” (ibid.: 43). And another one said, “I’ve got a feeling I’m gonna die tomorrow and that’s why I have to do everything today” (Tarlač, 2004). But they were not afraid of that possible tomorrow, as they also explained. “See you in the obituary,” was their greeting.

They emphasized friendship, looked up to American-Italian gangsters and quoted characters from mafia films. They met in the best Belgrade hotels, gyms, discos and bars, and showed off what they earned with their criminal activities. Since “if you don’t show you’ve got money, it’s as if you didn’t have it” (Knežević and Tufegdžić, 1995: 108). They were aware that the absence of the rule of law made showing off of their wealth unproblematic in the short run.
Their attitude towards violence, just like their showing off of possessions, also did no short-term harm to them. Violence was an integral part of the criminal activities in which they engaged, part of the plan to gain political power or, more frequently, to increase their income and their influence on the criminal groups. Violence was also productive in terms of reputation building. The members of crime groups did sports, often martial arts and especially boxing, and used their behaviour and image to arouse aggressive associations on purpose. They showed off their muscles, naked chests, knife scars, shooting wounds, and large tattoos. They had their photos taken with pistols in their hands or behind their belts. They boasted about taking part in actions they hadn’t taken part in. “A tenth of the known members of the underground boasted about their parts in an action, while those who really did it kept silent like graves,” write Knežević and Tufegdžić (1995: 25).

Dorde Božović Giška
A criminal linked to SDB's fight against »emigrant extremists« who later became a commander of the paramilitary Serbian Guard

The most noticeable criminals were highly aware of the advantages of such a reputation: “If you’re well-known, it’s easier. It’s crucial to make sense of marketing and not to make mistakes at the start” (ibid.: 4). The point, thus, was not whether a story was true, but what it can result in, as Van San and Snel maintain in the study on Yugoslav criminals in the Netherlands (2004: 205). Since, “(w)hen you achieve reputation, you
can strike big deals, negotiate, have others do jobs for you” (*ibid.*: 222). They chiefly
exploited their reputation for violence and the fear springing from that. And it is fear
that is the most advantageous in the short run.

Drawing attention to themselves, they also appeared in television talk shows, gave
interviews – and threatened each other in them. They hired PR specialists and released
‘exclusive’ news to the media, which regularly published them, often in romanticized
versions. In the mid-1990s, a Serbian director Janko Baljak was making a documentary
Vidimo se u čitulji (“See You in the Obituaries”). Most of the notorious members of
the Serbian underground were willing to record interviews for the film. Baljak writes
that “the cooperation in the film suddenly became a question of prestige, and it almost
turned out that those absent from the film were not socially respected Serbian crimi-
nals” (Burić, 2004). 13

![IDOL TO A GENERATION OF YOUNG GANGSTERS: ALEKSANDER KNEŽEVIĆ OR ‘KNELE’, DIED IN BELGRADE’S HYATT HOTEL, MARCH 1992](image)

The criminals assured themselves visibility and recognisability, and became more popu-
lar than politicians, musicians, and sportspeople, achieving fame similar to the one typi-
cal of show-business celebrities. “When I got out of jail, I realized that some of my
criminal friends had become Serb national heroes,” said Knele, known as the youngest
star of the Belgrade criminal underground (Leftist Studio B, 1996). In interviews the

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13 Ironically, the film was the most frequently illegally copied documentary film in Serbia.
offenders promoted themselves as “the last dons”, gods, born leaders, Robin Hoods, legends, as extraordinary, and exceptional. Accordingly, one of them said: “I’m no (ordinary) criminal for you, I’m the biggest criminal in Belgrade” (Milošević). Such statements brought them the craved-for fame and a higher position in the criminal circles, where their rule was the following: “Who’s gonna be the Godfather in Belgrade? Sure, the one who promotes himself” (Knežević and Tufegdžić, 1995: 174). The most frequently quoted criminal in the newspaper was Kristijan Golubović, whose successful marketing strategies earned him the title of the king of marketing. “Kristijan’s here! Everybody on the floor!” he exclaimed in a jam-packed Belgrade disco, after one of his aides shot into the ceiling (ibid.: 199). He told a journalist: “That’s my DNA. I was born to become the biggest, to become the don of the Serbian underground.” (Tarlač, 2004).

The imaginary helped them create the real (see Gambetta, 1993: 129). Just as Totò Di Cristina ordered a murder modelled on the one he saw in The Godfather, the noticeable Serbian criminals relied on the images created by others in gangster films and books (see Gambetta, 1993: 135). To boost their image, attractiveness, and fearsome reputation, they wore dark glasses (see Gambetta, 1993: 135), and used the vocabulary and gestures of the imaginary gangsters. They then adapted these images to fit their cultural environment so as to appear sufficiently real. Like the Sicilian Mafiosi, they craved for a mythological reputation. They succeeded in capturing the imagination of the outsider and the insider (compare Gambetta, 1993: 141), and introduced the imaginary into the real. Their (firm) image and reputation, however, lost none of their realness (see Gambetta, 1993: 46, 144).

From a long-term view and taking into account their lifestyles and operating principles, level of violence in the weakened country and then the gradual improvement of the situation in Serbia, it is, however, not surprising that most of the noticeable criminals from the 1990s are either in prison or, more often, dead. The latter include all the members of the Serbian underground, who took part in Baljak’s documentary, except for Kristijan Golubović. When they died, the members of their crime groups paid for whole-page obituaries, which were signs of prestige, as well as a way of calling attention to themselves or to their friendship with the deceased (see Nikolić, 2006: 24). The obituaries included testimonials like these: “The last farewell to the king Pablo Escobar” (Nikolić, 2006: 24), and “You strolled the asphalt, the asphalt took you – Teča” (Radović).

However, there is also a more pragmatic or more ‘rational’ side to the lives of these Serbian offenders. Their sensationalist image was often more thoroughly thought out than it seems to have been and fit into the broadened tolerance margins of Serbian people. The adventurous activities the criminals boasted of were often only the more notorious section of their present criminal activities or memories of their old crimes. At
the same time, they denied other criminal activities – the true sources of their high incomes and lucrative businesses, and called any suggestions of the sort false. In reality they managed to adapt their main criminal activities to the demands and the environment. Whereas in the 1970s and 1980s they had carried out (armed) robberies, hold-ups, and assassinations in Western Europe (for secret services or for themselves), during the war in Serbia they organised the smuggling of arms, petrol, and cigarettes. After the war, they started organising trafficking of drugs, smuggling of stolen cars, contraband goods, and people. They also organised extortion and kidnapping. Their activities were organised in clan-based groups with influential leaders that they formed together with long-term friends. Cooperation based on friendships from childhood enabled a high degree of trust. Risks were also minimised through collaboration with civil servants or through bribes. A considerable share of the large profits was invested into real estate and legal activities. Caught in the lawless period before the rise of capitalism, they were also themselves caught between crimes for profit and the adventurous and notorious image of the old style mobster. Much to their own undoing.

The lives and functioning of the surviving criminals gradually started changing in 2003. In March 2003, the Prime Minister Zoran Đinđić was murdered. He played an important role in the revolution of 5 October 2000 that threw Milošević from power, and in 2001 also had an important part in the extradition of Milošević to the International Criminal Tribunal for the Former Yugoslavia in The Hague. After Đinđić’s death there was a period of calm among crime groups as they kept a low profile for a while, waiting to see if the conditions in the country were going to change. The Serbian government declared a state of emergency. The Serbian police launched a wide investigation, confiscated 50,000 pieces of weaponry, and arrested and questioned about 12,000 people. A government report claimed there were 5,560 criminal complaints filed against 3,946 people for 5,671 criminal offences (Nikolić-Ristanović, 2004: 689). Nevertheless, the still existing influence of criminal circles on the judiciary system is revealed by the following: during the long-lasting criminal law proceedings against the accused, two important witnesses were murdered, the third fled the country, a prosecutor resigned, and another one was sentenced for giving information to the criminals (Anastasijević).

The disruption of the strongest criminal networks in Serbia was taken advantage of by new, smaller criminal groups. Their functioning was described by the documentary film director Baljak in 2004 with the following words: “As opposed to the people from my film Vidimo se u čitulji . . . from the beginning of the 1990s, new crime groups changed their conduct and PR, and became rather uninteresting for documentary treatment” (Baljak). But between them14 and the remnants of the old groups there are still “skirmishes” for the control over their spheres of interest and work.

14 I am grateful to the Police representative one for pointing this out to me in the interview.
Today, Serbia is moving towards EU membership, but still has to fight a high rate of unemployment and corruption. Even though it has appropriate criminal procedural and substantive legislation in place, it still lacks complete independence of the judicial system, and faces other unsolved problems originating from the 1990s. An increasing number of criminals have started considering initiatives in legal operations, Kristijan Golubović among them. Answering the question whether he would take part in privatisation, and buy businesses, he said: “That’s what interests me. Private business, meaning legal business, absolutely legal business, without trespassing the law. Paid taxes . . .” (Interview with Kristijan Golubović, in prison, 2007). His answer suggests that “the king of marketing” is changing his reputation for violence into a reputation of trustworthiness, which also points to the changes in the Serbian state and society.

Next, I wish to consider the similarities and differences between the lifestyles and functioning of the Serbian offenders described above and the lifestyles and functioning of Slovene offenders. I also look for motives for these differences and similarities.

“My friends told me to move to Slovenia. They said that life is peaceful there,” said Kristijan Golubović (Tarlač, 2004).

### Crime and criminals in Slovenia during and after the war

*If I got places, sir, it was because I made myself fit for ’em. If you want to slip into a round hole, you must make a ball of yourself; that’s where it is.*

(George Eliot, The Mill on the Floss)

The Republic of Slovenia ceased to be part of Yugoslavia and proclaimed its independence on 26 June 1991. At the independence ceremony the then president Milan Kučan reminded Slovenes: “With birth we are given the right to dreams. With work we are given the right to bring life and dreams closer together. We reject violence in all its forms and purposes in relation to people, nations, and their states.” (Kučan). The next day the ten-day (independence) war began in Slovenia, taking sixty-one human lives. This short violent time span was too short and too few people were involved to make the population change their perceptions of violence, as happened in Serbia. It was too short to erode the prohibition of killing, so that there was no rationalisation of such action or a feeling of the worthlessness of human life. The war did not inflict interna-

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15 As has been seen, the members of crime groups in Serbia in the 1990s wanted to be notorious for violence in the first place.
tional sanctions on Slovenia, cause hyperinflation, a (significant) increase in unemployment or the expansion of the black market. It did not establish direct links among the executive branch of power, justice, the police, and crime, neither were prisoners set free. In short, the war did not undermine the power of the state or caused the collapse of the formal and informal control. Slovenia thus succeeded in remaining one of the safest countries.

In comparison to Serbia, there has been significantly less (organised) crime in Slovenia already since the 1990s. While Serbia was struggling with the wars, the collapse of the economy and of the rule of law, and in their aftermath, a long period of transition, the Slovene economy started developing after only a short period of transition. Inflation fell relatively quickly, social tendencies were set in the direction of the advancement of democracy, and politicians emphasised Slovenia’s place in Europe and its separation from the Balkans. Better circumstances in the country offered each individual more legal opportunities to rise above the average and improve their economic situation, which made the organisation of crime-for-profit less attractive. In addition, the costs of criminal offences—in terms of likelihood to get caught—were higher due to the more successful formal and informal control.

The offenders in Slovenia whom experts describe as ‘organised criminals’ have mostly engaged in drug trafficking, the smuggling of persons, arms, and explosives, as well as stealing and smuggling cars. Some are organised hierarchically, but more frequently they form loose and flexible networks. They adapt to specific circumstances and, as necessary, combine forces particularly with the offenders from the neighbouring countries and the other countries of the territories of the former Yugoslavia. They are profit oriented and aim to avoid risks, from both the state as well as from criminal competitors. They are involved in corruption and often use legal commercial structures to shield and facilitate their illegal activities. It is becoming increasingly common for them to take the advantages of legal businesses to cover up their illegal activities (Dobovšek, 2006: 36). Just like other subjects in the capitalist environment they show a highly entrepreneurial spirit (see Kanduč, 2006: 198).

Consequently, their attitudes to using violence in Slovenia have been markedly different from those in Serbia. This can be illustrated by the fact that in Slovenia there is no known case of an organised crime group or its members taking revenge on an infiltrator after an operation had been completed. This is even the case when there have been criminal sanctions meted out to individual members. While the use of weapons became an everyday phenomenon in Serbia, the members of Slovene crime groups also avoided committing murders. It is estimated that between 1996 and 2000 organised criminal groups in Slovenia murdered between one and eight people a year (1996-8, 1997-8, 1998-2, 1999-1, 2000-1) (see Organised Crime Situation Report 2000, 2001: 80).
Professional murderers carrying out killings rarely came from the territory of Slovenia. “In my work, I cannot recall a single example, among those categorized as paid murders, which would be committed by a Slovene national or citizens of other countries permanently residing in Slovenia. They were always citizens of other states of former Yugoslav republics who came to Slovenia to commit the crime and left it afterwards,” said Drago Kos, the first head of the Organised Crime Division, in 2002 (Praprotnik, 2002). Among them were most frequently, former or still active, members of police or special army units. They were well trained, experienced in killing (see Praprotnik, 2002), and they did not shoot more times than was necessary.

The limited extent of serious violence in Slovenia since the beginning of the 1990s until today, however, does not only result from a stronger state. It is also the result of the adjustment of crime groups to the small size of Slovenia. With no big cities, with a small number of foreigners, and strong ties among the inhabitants, Slovenia is a place where “everybody knows one another, all criminals know one another, all police officers know one another” (a former head of the Organised Crime Division in the interview). A specific example of the influence of the smallness of the country and of the conspicuousness of an individual of a “non-ex-Yugoslav” nationality is given to me by a former head of the Organised Crime Division in an interview:

“A powerful member of a Georgian organised crime group tried to settle in Slovenia, but he could not stay on for more than a year or two . . . he became too visible . . . he became the subject of police attention and found it increasingly hard to work, so he left Slovenia.”

The kind of violence that these offenders nevertheless use in Slovenia is mostly targeted at other criminals and often intended to create and reinforce reputation, but not as overwhelming as in Serbia. To exploit the notoriety for violence, members, like those in Serbia, evoke aggressive associations, stimulated by their looks, drawing attention to their physical fitness. Police representative one says:

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16 Well-known murders among these murders primarily had the aim of building up and reinforcing reputation (Police representative one in the interview).
17 It has to be added, however, that their escape to another state on the territory of former Yugoslavia made it more difficult for law enforcement authorities to discover them.
18 Home-grown professional murderers in Slovenia are rare, even though compulsory military service until 2003 exposed a lot of individual to weaponry and trained them to use it.
19 Nevertheless, quite a number of the members of Slovene crime groups originate from the other territories of former Yugoslavia. They seek help for their crime activities through their contacts in their countries of origin. However, in nationally relatively homogenous Slovenia most of its immigrants have also come from other republics of former Yugoslavia. Consequently, these criminals taking in consideration the conditions in Slovenia do not stand out as prominently as most ‘non-ex-Yugoslav’ nationals. Also Slovene citizens of Slovene origin often establish criminal links with the inhabitants of other parts of former Yugoslavia – their collaboration is assisted by the knowledge of the languages, geographic closeness, and the established (Central) Balkan Route joining them.
20 A noticeable exception is bars racketeering.
“These boys frequent gyms a lot . . . , consuming anabolic steroids to increase muscle mass . . . ”

At the same time, however, these offenders have not shown muscles to the press, they have not appeared with their naked chests, showing their cuts and bullet wounds. We have not seen them carrying pistols. In other aspects, too, Slovene criminals remain less visible in comparison to criminals in Serbia. They do not appear on television talk shows, they do not cooperate on documentaries, they do not give interviews or do not spread ‘exclusive’ news via their lawyers. They are not more famous than politicians, musicians, and sportspeople. They do not present themselves to the public as the last dons, gods, born leaders; they do not pay for their colleagues’ huge obituaries. And their messages are not addressed to the society as a whole but rather to other offenders or their chosen victims. In general, they ‘speak’ significantly less than their Serbian counterparts in the 1990s and later. But, on the other hand, their ‘silence’ is just as telling.

They, principally, do their best to preserve their reputation for trustworthiness and reliability. Furthermore, they put less spotlight on the present, on the “here and now”, on short-term pleasures that were predominant in the Serbian members of the 1990s. But Slovene and Serbian members are similar in one aspect. Like Serbian members, many members of crime groups in Slovenia spend money and invest it in status symbols. In view of this, there are no big differences in the lifestyles and functioning of the Serbs or other members of various nationalities in Slovenia, with the exception of Albanians, who live highly inconspicuously. Police representative one elaborates on the differences between the lifestyles of the members of crime groups of various nationalities in the following words:

“There are no big differences between Croats, Bosnians, and Serbs, who all like bragging about their money, they love big cars, they go to restaurants, spend money, live luxuriously, have fun. On the other hand, Albanians hide their wealth more . . . The money they get follows certain paths, it is collected, and they help each other, they look after one another.”

Slovenes and Montenegrins behave similarly to Croats, Bosnians, and Serbs. The eye-catching lifestyles of Slovene, Croat, Bosnian, Serbian, and Montenegrin criminals, however, are not comparable to the very conspicuous lifestyle of the Serbian criminals of the 1990s in Serbia. Rather, they are, at most, more like the higher profile lifestyles of the members of criminal networks in Western European countries, as known from ethnographic studies (see for example Zaitch, 2002 b and Junninen, 2006). This is predominantly the case, because, unlike other European countries, Slovenia has no big cities,21 offering a great choice of exciting and exclusive day- or nightlife venues that

21 The capital of Slovenia has about 300.000 inhabitants.
usually attract the criminals. Neither can Ljubljana be compared to the unforgettable Belgrade with its splendour and temperament. However, one of the central meeting-points for the offenders, both in Slovenia and Serbia, remain bars.\textsuperscript{22, 23}

**Exploiting a reputation abroad**

**Serbian criminals exploiting their reputation**

Crime groups from Serbia are geographically widely spread all over Europe. The Serbian offenders engage in trafficking and smuggling but also often in crime against property and crime activities that (on a regular basis) include the use of violence (see for example Bovenkerk et al., 2003: 30). “Gangsters from the former Yugoslavia (Croats, Bosnians and especially Serbs) have impressed the authorities and underworld alike with their ability and willingness to use lethal power,” observe Bovenkerk, Siegel in Zaitch (Bovenkerk et al., 2003: 30). Writing about their activities in The Netherlands, they add: “Yugo gangsters are now widely sought by Amsterdam drug entrepreneurs to act as score settlers and debt collectors” (2003: 30). Bovenkerk, Van San, and Snel believe that the offenders of Yugoslav nationalities suit such activities precisely because of their reputation for violence. “One reason for the special interest in this Yugo-scene in the Netherlands is that the ‘establishment’ of organised crime in Amsterdam has discovered that its reputation of violence is for hire (Bovenkerk, Siegel and Zaitch, 2003),” notes Bovenkerk (2003: 50). That is why, Van San and Snel assume, “The alleged violence among Yugoslav delinquents is not so much a reflection of reality, but rather a myth used instrumentally by Yugoslav delinquents themselves to establish a position on the criminal scene – as doorkeepers, bodyguards, money collectors or other so-called ‘specialists in violence’” (2004: 195). To reinforce their reputation for violence, criminals occasionally refer to the history and culture of violence in former Yugoslavia (\textit{ibid.}). The creation and exploitation of the reputation is facilitated by the exotic images of wild Yugoslavia and Serbia. The West saw Yugoslavia as a compilation of the stories of partisans, communism, Marshal Tito, political assassinations, gangster score-settling, underground operations, and secret police. Yugoslavia also stands for

\textsuperscript{22} The victims of two of the most widely reported murders in Slovenia – the reported members of the Montenegrin mafia in Slovenia Veselin Jovović – Veso and Mišo Vujičić – were also killed in bars. Mišo Vujičić had been shot at in the garden of a Ljubljana restaurant, in a Ljubljana hotel and eventually killed in a coffee bar of a hotel.

\textsuperscript{23} As a Police representative one told me in an interview: “I can name five, ten people off the cuff, and my operatives can give you even more details about their whereabouts, as well as the times and places they meet. But that's not enough. On the basis of merely that we cannot get the approval for clandestine operation, nor can we lodge a criminal complaint.”
Balkan butchery, for the dramatic and the different, as Lord Owen pointed out: “In ex-Yugoslavia our norms of honour don’t exist, it’s part of the culture. It’s so widespread that you won’t be at all surprised when you realise that X or Y is a liar, here people live with a culture of lies” (Ugrešić, 1998: 68). The reputation for the untamed and the fearless is preserved by Serbia, which is recognised abroad by Milošević, the Hague Tribunal, and wars (see Pantić, 2006). People remember the media images of the dead, of rape victims, robberies, brutality, and the disrespect for the Tribunal and the law. What have stuck in people’s minds are chaos, irrational savagery, and people with a strange culture. Serbs have a reputation for being a violent nation, supported by the memories of battles, and the cult of heroes. They also have a reputation for arrogance, hedonism, and a devotion to traditionalism and nationalism. Images like these underpin the view of Serbs as an unusual nation, a nation that no-one except for Serbs themselves can understand (Volčič, 2005: 167-168); a nation so mad and irrational that sometimes even Serbs themselves cannot understand.

Serbs often accept their otherness and the stereotypes about themselves and Yugoslavs that the West creates. The stereotypes have become a marketable advantage of Serbian artists, journalists, politicians, and criminals abroad, occasionally also of “everyone else” when they adjust to their images and adapt to what is expected from them – violence, passion, sexuality, music, and death (see Volčič, 2005: 168-170). The stereotypes about Serbs and Yugoslavs are also made the most of by the Serbian offenders when entering criminal circles abroad or when strengthening their positions in them. Helping them may also be the exploitation of the reputation of the most notorious members of the Belgrade underground of the 1990s (see Van San and Snel, 2004: 205), and the most well-known Serbian members of the European city undergrounds of the 1970s and 80s. These members used exaggerated images of themselves and maintained the character of the infamous, rich, and different criminal. They wanted to fit the images that others had of them – and to fit the images they had of themselves. And their notoriety was readily believed exactly because it was exaggerated. The stereotype and reputation for fearlessness became a self-fulfilling prophecy for the Serbian criminals. Or, as Gilles Deleuze put it, “If you are caught in another’s dream, you are lost”.24

Slovenian criminals exploiting their reputation

Unlike Serbs, Slovenes are generally not well recognised in a great part of Europe because of their smallness, a short history of independence, and a lack of the media coverage of Slovenia. The reputation of Slovenia is perhaps most recognisable by its absence. Violence and fearlessness are also not the daily images known from the underground in Slovenia or the nevertheless existing stereotypes of Slovenes known to the other peo-

24 For more on that and Yugoslavia, see Žižek, 1992.
WHO IS ‘YUGO’ IN ‘YUGO-MAFIA’?

... of former Yugoslavia. They ascribe to Slovenes the characteristics that are fundamentally different from the stereotypical images of Serbs. The typical Slovene stereotypes are those usually ascribed to women: industriousness, diligence, meticulousness, and tidiness, weakness, indecisiveness, pettiness, quarrelsomeess, and enviousness (see Puhar, 1992: 58). The real macho man comes from the south, so it is claimed. Slovenia is thus seen as being governed by the ‘feminine principle’, the more southern nations by the masculine principle.

The reputation for violence and fearlessness is furthermore not supported by the researched ‘character’ of the Slovene nation. According to the results of a psychological study, Slovenes appear to be productivity-oriented, hard-working, and diligent (Musek: 6-7). But they also appear to be rather introvert, which is particularly noticeable in comparison to the other, more extrovert peoples of former Yugoslavia, especially the Mediterranean part of its population (ibid.: 7). Introversion also turns the relatively high rate of aggression of the Slovenes towards themselves (ibid.). This is, according to experts, the reason for a relatively high percentage of suicides in the Slovene society. The Slovene psychologist Anton Trstenjak gave a personal view on the issue: “We are self-aggressive. This is what makes us markedly different from Serbs and Bosnians, who are mostly hetero-aggressive. They’ll sooner attack or kill others, not themselves; the quotient of murders is the highest there, in Slovenia it’s the suicides” (1991: 73).

Additionally, Slovenes do not seem to ascribe a high importance to the role of groups, as is the case with the (organised) criminals as well as with other former Yugoslav nations. Ugrešić explains: “Yugo-man, the male inhabitant of the former Yugoslavia, hardly exists in the singular. He is rarely an isolated instance, a person, an individual, he is most frequently a group of men. . . . The male group is his natural habitat, without it he flounders and expires like a fish on dry land” (1998: 114).

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25 The types of stereotypes ascribed among the nations of the former Yugoslavia are illustrated by the following joke: In former Yugoslavia, a practical joker left drawing pins on the chairs of the republic delegates during a break. When the Serbian delegate sat on the drawing pin, he jumped up again, and swore about who had had the guts to make fun of the representative of a nation with centuries long statehood traditions in the Balkans. The Croatian delegate blamed the Serb, and the Slovene delegate remained sitting on his chair because order should be preserved. The Macedonian delegate put the drawing pin in his pocket, having found out it could be useful. The Montenegrin delegate was not present at the session because it was in the morning. The Bosnian delegate is not mentioned in the joke, because he never left the hall during the break, as he was sleeping all the time.

26 For more on that, see Puhar, 1992: 57-58.

27 However, the evidence showing that ‘Slovenes’ and ‘murderers’ are not two at first sight unrelated concepts dates back to the years after 1945. During those years from 14,000 to 18,000 political opponents, and ‘class’ and military enemies were killed by Slovenes in Slovenia, among which there were mostly Slovene citizens, but also foreigners – POWs and civilians of Croatian, Serbian, Bosnian, Albanian, German, and Italian nationalities (see Pučnik, 1998: 45; Šturm, 1998: 73).

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Slovenes thus belong among the relatively individualistic, less group-focused, and less cooperative nations. “They are the most creative when they’re left alone. They don’t like to do projects in groups,” said a Slovene poet Ifigenija Simonović (Eichenwald, 1999). The Slovene reluctance to cooperate is furthermore evident in mutual aggression: they like opposing and they fulfill their ambition and their need to win recognition by thwarting the success of others (Musek, 1990: 10). The Slovene self-destruction is therefore twofold: firstly, it is directed towards oneself as a person, secondly, it is directed towards oneself as a nation. The (stereotypical) image of Slovanes thus mismatches the stereotypical image of (organised) criminals. The latter, however, corresponds to the stereotypical imagery cherished by Slovanes of the more southern peoples of former Yugoslavia: both, namely, incorporate physical strength, manliness, mercilessness, daringness, ingenuity, domination over women, and hedonism. But, having said that, is it at least possible for the Slovene perpetrators abroad to (ab)use the reputation of Yugoslavs and Serbs, of Yugoslav and Serb offenders? Can they use this reputation in order to establish and strengthen their positions in criminal circles, since they obviously lack their own reputation for violence and fearlessness? And do they use it?

A Slovene, Igor Korshich, vividly describes his own experience with the reputation of Yugoslavs during his stay in Paris: “A Parisian friend of mine . . . told me with immense enthusiasm how her grandmother, who was looking after her, specifically forbade her to be in my company, since we were all supposed to be gangsters . . . Villains, particularly literary ones, have always been incomparably more interesting and liked than well-behaved guys. That can be understood. And exploited. . . . Naturally, I knew what she expected from me when my Parisian sweetheart invited me to see the Yugoslav comedy Feather Collectors. In such a case it would have been both silly and cruel to start giving explanations and making points like, ‘My darling, you’re mistaken, I’m not a Balkan man, we’re introvert in the Alpine way, serious, and we want to keep our European manners.” (2000). Korshich thus makes clear how a Slovene can make good use of the Yugoslav reputation for the untamed, different, and “criminal” in everyday life, too. I would argue that, because of the lack of knowledge of former Yugoslavia, Slovanes could also make use of a similar reputation of the Serbs. Namely, “(former) Yugoslav” is still often a synonym for “Serbian”, and “(former) Yugoslav” is, ipso facto, also “Slovene”.

However, unlike Serbs, Slovanes do not seem to exploit the (former) Yugoslav reputation in foreign criminal circles. On the territory of former Yugoslavia, Slovene citizens (but of different national origins: Slovenes, Croats, Serbs, Bosnians, Macedoni-

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28 An important issue to consider here is whether we more easily ascribe ‘organised’ crime activities to those nations whose stereotypical images correspond more closely to the stereotypical image of (organised) criminals.
ans, and Albanians) perform as well as organisers of illegal activities. They are involved in, for example, drug dealing or the trafficking of ingredients for their illegal production; the trafficking of people and high-duty goods; illegal production and trafficking of weapons and explosives; or vehicle stealing. In Western Europe Slovene citizens as members of crime groups mostly act as go-betweens. Their Slovene citizenship facilitates their cross-border movement and attracts less attention from the police in comparison to other inhabitants of former Yugoslavia. They are, however, not among the geographically widely spread and dominant national crime groups. Security authorities in Europe have also not recorded any prominent Slovene crime groups or Slovene members in crime groups abroad as ‘organised crime’. 29

Similarly, Slovene offenders are not known for committing property crimes or activities that require fearlessness and readiness to use firearms. Among those gangsters from former Yugoslavia who have impressed the authorities, Bovenkerk, Siegel and Zaitch likewise only mention Serbs, Croats, and Bosnians, but not Slovenes (see Bovenkerk et al., 2003: 30). Whereas the Serb criminals adapt their appearances to what is expected from them, Slovene offenders, despite a possibility to ‘borrow’ reputation for violence and fearlessness of their own, shy away from doing so. Slovenia thus remains a transit country of “small fry”.

**Conclusion: the deceptive umbrella of “Yugo-mafia”**

The article confirms the influence of social, economic, political and even geographical conditions on the development of crime in Serbia and Slovenia. The harsh hand of communism (i.e. the state as authority) in both former Yugoslav republics played an important role in hampering the development of crime groups. On the other hand, however, the state played an ambiguous, even dubious role in consciously tolerating, encouraging or organising certain forms of crime through its state security services at home and abroad.

In 1991 the paths of Serbia and Slovenia parted significantly in terms of historical, political, economic, and social developments. Serbia entangled itself in long-lasting and (self) destructive wars, whereas Slovenia strived for the speedy establishment of an independent and strong state. Better circumstances in Slovenia offered each individual sufficient alternatives to organising crimes for profit: there were sufficient legal opportunities to succeed economically. The costs of crime were also higher in Slovenia because of more successful (in)formal control.

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29 I am grateful to the Police representative one for pointing this out to me in the interview.
The change of environment therefore also amplified the differences in the functioning of Serbian and Slovene offenders. Both started off with their given environments (see van Duyne, 2006: 182) and adapted to their socio-cultural characteristics and economic opportunities. The Serbian upperworld created the underworld, and they functioned hand in hand. Criminal dare-devils from the Serbian underworld, however, challenged other criminals with their behaviour, who reacted in a hostile way to the hostile environment. Conversely, Slovene criminals made use of criminal mimicry (see van Duyne, 2006: 186) and carefully avoided challenging the state and other criminals. From a criminal commercial perspective, Slovene crime entrepreneurs were organised with greater sophistication and lived longer due to their better risk management.

All were described as ‘organised criminals’ in expert studies, reports, and media; they indeed organised crimes for profit, but also kept up different images of themselves. The Slovene ‘organised criminals’ kept ‘silent’ and their Serbian counterparts glorified themselves (see also van Duyne, 1996: 8). The Slovene ‘organised criminals’ displayed businesslike behaviour and acted as crime-entrepreneurs, while Serbian ‘organised criminals’ oscillated between crimes for profit and the adventurous way of acting the stereotypical gangster.

Receiving large profits from lucrative criminal activities, the Serbian criminals in the 1990s as members of organised crime groups spent their wealth to live their lives to the full and sometimes to the very end, in search for recognition, fame, reputation for violence, and while proving they were ready for it. On the other hand, the Slovene criminals involved in crime for profit kept a significantly lower profile, especially building on their reputation for reliability. They avoided visible violence and used other methods to exert influence instead, such as corruption. The Serb and Slovene offenders also differed in their use of violence abroad. Even though both groups could use it, only the criminals from Serbia actually made abundantly use of it. And with pleasure.

However, the depiction of Serbia versus Slovenia leaves some unanswered questions. Why did the erstwhile Yugoslavian state security not hire Slovenes for executing daring operations such as assassinations and robberies abroad? In addition, it does not answer why overseas Slovene criminals, alone or cooperating in groups did not engage in the organisation of property crimes and activities that depended on instrumental violence for their success. They could, namely, just like Serbs, exploit the ethnic reputation for violence and fearlessness of Yugoslavs (or Serbs). Which foreigner would notice the difference? I do not wish, however, to negate reputation as a highly successful means of marketing illegal services. On the contrary, it can decisively contribute to

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30 It is interesting to notice that (some) media appearances of the members of crime groups in Serbia are perhaps especially valuable because they make explicit what other members elsewhere in Europe do not dare to say due to their assimilation into their new environments.
the success of a criminal, while it can also answer the question why so many engage in
criminal career.\textsuperscript{31} It is fun!

Of course, the ‘Yugo’s’ are not the only criminal entrepreneurs whose main in-
strument is related to it is reputation: the ‘honour’ of an Italian mafia boss is similarly
propped up by violence or the reputation thereof, just as is that of the Yugs. Com-
parative research on the operations, conditions for success and the surrounding socio-
economic and legal landscape would be fruitful. I expect that clearer and more com-
prehensive observations of the members from former Yugoslavia criminal networks
living abroad compared with other crime-entrepreneurs operating abroad will shed
light on the lives and functioning of offenders of different nationalities. It will also shed
light on the effects of nationality as a behavioural variable in criminal interactions: what
does it do to fellow criminals and victims? The main objection to a single (Yugoslav)
nationality is not its political and historical inappropriateness that authors artificially
reinforce; rather, it is the fact that umbrella terms like the “Yugo-mafia”, “Yugoslav
gangsters” and “Yugoslav (organised) criminals”, despite some similarities, lose explana-
tory power by combining incomparable differences. If Yugoslavia proved to be an
unworkable and artificial construction, so are the concepts coined under the heading of
‘Yugo’. If it has no empirical foundation, it is nevertheless as real as ‘beauty’, which is
real in the eye of the beholder.

\textsuperscript{31} Such a view also neglects the fact that reputation is not only the cause or encouragement to
the criminal activities, but also their result. The activities of the members of crime groups,
namely, reproduce stereotypes and stereotypes reproduce them. However, we should also not
ignore the question of the extent to which the criminals also produce the stereotypes.
References

Akcija Carina zaupno. Accessible at:
http://www.carina.gov.si/si/aktualno_in_zanimivo/anonimni_telefon_carina_zaupno/?type=98

Anastasjević, D., *Organised crime in the Western Balkans*. Accessible at:


*Arena 6*: Ratni zločini i organizirani kriminal. Political (TV) programme, Forum za jugoistočnu Evropu, 2004

Arkan the Terrible. Interview of Richard Carleton with Željko Ražnatović Arkan, May 1999

Arola, J., *The Slovene society and its history*. Accessible at:
http://www.valt.helsinki.fi/agathon/2611_2.htm#7388

B. N., *Crime in the Balkans: Europe is afraid*. Accessible at:

Baljak, J., *Otmice*. Accessible at:
http://www.denislatin.com/arhiva_gosta.php?id=21&PHPSESSID=0fe0521909c6ac01712e4990c956e


Burić, A., Filmski hroničar srpske propasti. *Bosanskohercegovački dani nezavisni news magazin*, 19 March 2004. Accessible at:

*Demografska istorija Srbije*. Accessible at:
http://sr.wikipedia.org/sr-el/Демографска_историја_Србије

http://condor.depaul.edu/~rrotenbe/aeer/aeer11_1/denich.html


Drakulić, S., Balkan Express: Fragmenti z druge strani vojne. Maribor, Rotis, 1993


Interview with Kristijan Golubović. Author Stevo Grkinić, Televizija Palma Plus, 2004

Interview with Kristijan Golubović, in prison. Televizija Palma Plus, 2007


Kanduč, Z., *Kriminologija: (Stranjpoti vede o (stranjpoteh). Ljubljana, Inštitut za kriminologijo pri Pravni fakulteti, 1999


Lepa sela lepo gore. Film, scenarist Srđan Dragojević, 1996


Miko, K., Imamo alpski značaj in balkansko dušo. *Delo*, 8 August 2006


Mlad i zdrav kao ruža. Film, scenarist Jovan Jovanović, 1971


Nikolić-Ristanović, V., Organised crime in Serbia - media construction and social reaction, In: G. Meško, M. Pagon and B. Dobovšek (eds.), *Policing in Central and Eastern Europe: Dilemmas of contemporary criminal justice*. Ljubljana, Faculty of Criminal Justice, 2004


Pantić, B., Raki vs exit : Comment changer l’image de la Serbie ? *Le Courier des Balkans*, 6 April 2006. Accessible at:
Passas, N., Global anomie, dysonemie, and economic crime: Hidden consequences of neoliberalism and globalization in Russia and around the world. *Social Justice*, 2000, no. 2, 16-44

Patterson, P. H., On the edge of reason: The boundaries of balkanism in Slovenian, Austrian, and Italian discourse. *Slavic Review*, 2003, no. 1, 110-141


Radovič, Z., *Dendy iz male barve*. Accessible at: http://www.fojnel.co.yu/Mart/02Kolumnne/Kolumnne.htm

Radovič, Z., *Dendy iz male barve*. Accessible at: http://www.fojnel.co.yu/Mart/02Kolumnne/Kolumnne.htm


Šuber, D., Myth, collective trauma and war in Serbia: a cultural-hermeneutical appraisal. *Anthropology Matters Journal*, 2006, no. 1

Tarlač, G., Moj prijatelj Legija. *Mladina*, 17 May 2004


http://www.sensesofcinema.com/contents/00/11/baljak.html


Vasović, S., Dolga roka Udbe. *Mladina*, 5 August 2002

Vidimo se u čitalki. Documentary film, scenarist Janko Baljak, 1995


http://arhiva.glas-javnosti.co.yu/arhiva/2000/01/18/srpski/F00011702.shtm


Zivkovic, M., Stories Serbs tell themselves: Discourses on identity and destiny in Serbia since the mid-1980s. *Problems of Post-Communism*, 1997, no. 4, 22-29


http://dictionary.oed.com/cgi/entry/50016905/50016905se5?single=1&query_type=word&queryword=balkanize&first=1&max_to_show=10&hilite=50016905se5 ("Balkan", Oxford English Dictionary)

Criminal conspiracy from the perspective of the Czech Republic:
The legal framework, definition, prosecution, and offenders

Miroslav Scheinost and Simona Diblikova

Organised crime in the Czech Republic

In the Czech Republic (and before that in the former Czech and Slovak Republics) the phenomenon of organised crime has been a topic of discussion since the beginning of the 1990s. This was the time from when the expert, and later also the lay public gradually became aware of the penetration of this serious form of crime, or more exactly, the manner in which the crime was committed, representing as it did, a relatively new phenomenon on the domestic crime scene. From the beginning, organised crime was commonly conceived as something imported from outside and was thus associated with the influx of criminal groups from abroad, chiefly from the Balkans, the states of the former Soviet Union, Italy, but also from other countries such as China and some of the Arab states. The penetration of foreign organisations undoubtedly took place, but when it came to ‘domestic’ forms and manifestations of organised crime, a certain belief prevailed that organised crime was foreign to the Czech environment, including the criminal environment. The risk that domestic forms of organised crime might emerge and develop was rather underestimated and thus lacked due attention. This clearly was connected to confusion over the definition and legal ambiguity in approach to organised crime. In any case, certain criminal activities of Czech offenders, which clearly bore the typical characteristics of organised crime, such as transactions with light heating oils in the first half of the nineties, were not viewed as such. This is despite the fact that this criminal activity showed clear signs of a high degree of organisation: the structure of groups of offenders, including the division of activities; the concentration on large profits gained by the offenders together with the use of violence. The amount of tax evasion, or the damage caused to the state, was estimated at CZK 3.7 billion. In 1993

1 Miroslav Scheinost is the director of the Institute for Criminology and Social Prevention, Simona Diblikova is a researcher of the same institution.
and 1994, the press reported 176 investigated firms, 13 murders, and 17 missing persons in connection with this form of criminal activity. Nevertheless, these cases were presented instead as economic, not organised crime.²

The risk that organised crime represents only came to be understood gradually as more information was brought into the open by law enforcement bodies, as well as by criminological research. Media pressure and public concern (even if often aroused by sensational articles and superficial information) also played a role in raising awareness, as did pressure from the international community, which in the mid-1990s intensified its approach to organised crime, at that time designated as one of the global threats to the contemporary world. This international effort resulted in the adoption of several important documents (for example the Global Action Plan to Fight International Organised Crime, adopted at the international conference in Naples in 1994), and its ensuing undertakings, which the Czech Republic was obliged to set about fulfilling (for example the Pre-Accession Pact on Organised Crime between European Union (EU) Member States and the Candidate Countries of Central and Eastern Europe and Cyprus, based on the EU Action Plan to Fight Organised Crime from 1997 and signed by the Czech Republic in 1998, and also the Council of Europe Convention on the Laundering, Search, Seizure and Confiscation of the Proceeds from Crime signed by the Czech Republic in 1995). The first government concept (legislation) to fight organised crime was adopted in 1996 and subsequently updated in 1997 and in 2000. The Czech Government approved the new Concept to Fight Organised Crime in 2008.³

In its first phase, the approach to organised crime in the Czech Republic focused on formulating the necessary legal instruments and on measures designed to prevent its penetration from abroad. To begin with, criminal sanctions were tightened for crimes committed in an organised group for selected types of crime, and some new types of crime were specified (for example helping people to cross the state border illegally, the illegal production and possession of radioactive materials, procuring and soliciting prostitution, trafficking in children and the like).

Important changes to the Criminal Code, Criminal Procedure Code and the Czech Police Act were adopted in 1995 under Act No. 152/1995 Coll. Certain new provisions were incorporated in the Criminal Code, for example participation in a criminal conspiracy, provisions on effective repentance, immunity from prosecution for an undercover agent, the possibility of sentencing the perpetrator of a crime committed to the benefit of a criminal conspiracy, and above all, the definition of criminal conspiracy. In

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³ Plan for the fight against organised crime, Czech Government Resolution no. 64/2008 of 23 January 2008
order to improve protection for persons involved in criminal proceedings against organised crime the Criminal Code was supplemented by the provision on the anonymous witness, thereby making it possible to conceal their actual identity, but without special witness-protection programmes. There were also certain options enabling the criminal prosecution of organised crime (the temporary suspension of initiation of criminal prosecution, the replacement of mail consignments, the option in criminal proceedings to request data that are usually subject to banking secrecy, the provisional seizure of assets or their confiscation at the request of a foreign court for legal assistance). The possibility of interception of communications had already been incorporated in the Criminal Procedure Code in 1990; in 1995, this provision was partly amended.

The amendment to the Czech Police Act expanded the scope of special police investigation procedures and means to include the use of undercover agents and the pretence transfer of an asset. Act No. 61/1996 Coll., on measures against the legalisation of the proceeds from crime, was adopted. Two criminal law instruments should be mentioned in connection with this Act: concealing the origin of an asset under the Criminal Code and the possibility of freezing funds in a bank account under the Criminal Procedure Code (if evidence indicates that the funds in the account will be used in committing a crime, or were used to commit a crime or represent profit from criminal activity).

These changes, which were adopted in 1995 and 1996, established the appropriate legal basis for the detection, investigation and prosecution of organised crime and were comparable to the legislation applied in most other European countries.4

After some discussion on the effectiveness of these instruments, amendments were made in and after 2001 and new provisions introduced, namely the special Act No. 137/2001 Coll., on the protection of witnesses. The amendment to the Criminal Procedure Code incorporated in this norm, with effect from 1 January 2002, certain provisions making it possible to use information obtained through police operative means as evidence in criminal proceedings (under stipulated conditions). Also included in the Criminal Procedure Code was a definition of operative investigative means, including agents, and conditions for their use, all of which were specified in greater detail. The amendment to the Criminal Code in 2002 introduced the specific crime for money laundering (Section 252a), i.e. the crime of legalising the proceeds from crime.5

It is evident that the process of adapting the relevant Czech legal norms has not ended with these latest amendments; nevertheless, it may be stated that Czech law in this regard complies with international standards. Ways will obviously be sought to

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4 See Cejp, Martin et al : Organizovaný zločin v České republice (Organised crime in the Czech Republic) III., IKSP, Prague 2004
5 Ibid.
improve the effectiveness of the legal measures used to counter organised crime, and these will obviously take into account the UN Convention on Combating Organised Crime, which the Czech Republic signed and will probably also ratify after finalising the issue of criminal or administrative liability of legal entities (administrative liability is the path most likely to be chosen)\(^6\). The key question obviously remains of the balance to be struck between, on the one hand, the extraordinary powers and means needed to effectively fight organised crime, and on the other hand the limits of a state respecting the rule of law, requirements for the protection of personal privacy and civil liberties, and also the demands for democratic control over these extraordinary measures.

**The concept and legal definition of criminal conspiracy**

If we were to define organised crime as a criminological category (being aware that literature and individual authors offer dozens and perhaps hundreds of criminological definitions for this phenomenon), we might consider organised crime to be as follows:

- The carrying out of organised criminal and accompanying activities in the form of primarily profit-yielding activities usually integrated in society’s supply and demand structure, to which are linked concealment and security activities;
- The supplier of these activities is a structured and hierarchical group (organisation) created for the purpose of gaining a profit from criminal activity and which functions on the principle of a division of functions and tasks.

A feature of the higher level of organised crime's development (developed organised crime) is the separation and isolation of organisation leaders from the perpetration of crime, the internationalisation of activity, diversification of profit-yielding activities, the monopolisation of markets and territories, legalisation of proceeds from crime, and, finally, the capacity of the organisation to recreate itself and infiltrate official social structures.\(^7\)

The UN Convention against International Organised Crime does not define organised crime as such as a phenomenon, or a manner of committing a crime, and focuses instead on defining the supplier of subject, i.e. the organised criminal group. This it defines as a structured group of three or more persons existing for a certain period of time and acting in concerted conduct for the purpose of committing one or more serious crimes, or crimes designated under the Convention, in order to gain direct or indirect financial or other material benefit. A serious crime means behaviour representing a

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\(^6\) See annex to the Czech Government Resolution no. 64/2008, Plan of tasks to implement the Concept of the fight against organised crime, task no. 8: Submission of the principles of the Act to introduce administrative liability of legal entities

\(^7\) See Cejp, M. *et al.*: Organizovaný zločin v České republice (Organised crime in the Czech Republic) III. Prague, IKSP 2004
crime punishable by a prison sentence of at least four years or a stricter sentence. A structured group means a group that is not randomly created in order directly to commit a crime and which does not need to have formally defined functions for its members, continuation of their membership or a developed structure.

Article 1 of the Council of the European Union’s Joint Action of 21 December 1998 on the punishability of involvement in a criminal organisation in EU member states, stipulates that a criminal organisation shall mean: an organised community established for a certain period of time, or two or more persons operating so as to commit crimes which are punishable by imprisonment or detention order for a minimum of four years, or even stricter sentences, whether these crimes are the result of or the means to obtain material benefit, or “unfair influence on the activity of public authorities”.

The legal definition of the term criminal conspiracy, which in Czech law is the definition or designation for organised crime, was adopted in the Czech Republic in 1995 by the provisions of Section 89 paragraph 20 (now paragraph 17) of the Criminal Code. Criminal conspiracy is a community of several persons with an internal organisational structure, separation of functions and division of activities, which is focused on the systematic perpetration of intentional crime. The statutory element of obtaining profit was deleted following the amendment effective from July 2002. A separate body of a crime “Participation in a criminal conspiracy” was created in Section 163a.

Criminal conspiracy may be considered as one of the forms of aiding and abetting and it should therefore be distinguished from an organised group, which in Czech criminal law is defined as a lower level of organised crime. In order to prosecute the offender it is therefore necessary to prove beyond doubt each of the aforementioned elements of criminal conspiracy.

**Prosecuting criminal conspiracy**

The definition of criminal conspiracy (Section 89 paragraph 17 of the Criminal Code) and the prosecution of participation in criminal conspiracy (Sections 163a-163c of the Criminal Code) have featured in the Czech Criminal Code since 1995. However, for a certain period of time these provisions remained virtually unused. It was not until the end of the 1990s that the number of persons prosecuted under paragraph 163a began gradually to rise.

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8 UN Convention against international organised crime, document no. A/AC.254/L.230/Add.1
The Institute for Criminology and Social Prevention has been conducting research into organised crime continuously since 1993; in the research phase, which has just been concluded it focused, among other things, on the application of the provision concerning participation in criminal conspiracy. In part of the research we made it our goal to amplify the information hereto obtained on the character, manifestations, structures and offenders that make up organised crime in the Czech Republic, and to evaluate the application of the provision on criminal conspiracy in the practice of law enforcement bodies, or alternatively to define the problems that prevent its greater effectiveness.

The figures contained in the following table show that this provision is not commonly applied in practice, even if the numbers of prosecuted persons are gradually rising.

**Table 1**

*Section 163a Participation in criminal conspiracy*

*Persons prosecuted, charged and convicted between 1999 – 2004*

<table>
<thead>
<tr>
<th></th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prosecuted</td>
<td>36</td>
<td>42</td>
<td>75</td>
<td>97</td>
<td>96</td>
<td>126</td>
<td>472</td>
</tr>
<tr>
<td>Charged</td>
<td>36</td>
<td>40</td>
<td>59</td>
<td>94</td>
<td>96</td>
<td>117</td>
<td>442</td>
</tr>
<tr>
<td>Convicted</td>
<td>1</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>5</td>
<td>10</td>
<td>18</td>
</tr>
<tr>
<td>Prosecution discontinued</td>
<td>0</td>
<td>2</td>
<td>11</td>
<td>2</td>
<td>0</td>
<td>6</td>
<td>21</td>
</tr>
<tr>
<td>Suspended</td>
<td>0</td>
<td>0</td>
<td>5</td>
<td>1</td>
<td>0</td>
<td>3</td>
<td>9</td>
</tr>
</tbody>
</table>

*Source:* Ministry of Justice, organisation and supervision department, information technology department, selection from the database

The 472 persons prosecuted for participation in a criminal conspiracy during the monitored period form only a small proportion of the overall number of persons prosecuted in the Czech Republic; the proportion is approximately 0,03-0,1% (the total number of persons prosecuted during this period ranged between 92,958 – 110,808). The number of persons actually convicted by the courts for participation in criminal conspiracy (18) is understandably far lower. Over the six years that were monitored, on average only one person in every 26 prosecuted was convicted, or just under 4% (3,8%). The proportion of persons actually convicted, compared with persons charged with participation in criminal conspiracy, is only slightly higher (4,1%).

State Prosecutor’s Offices against almost 92% of suspects brought charges; the remaining cases were settled by suspension or discontinuation of the criminal prosecution.
Analysis of charges

As the main method of our research we chose to analyse charges brought by the State Prosecutor’s Office for cases of criminal conspiracy between 1999 and 2004.

Based on judicial statistics, a total of 64 charges were requested from State Prosecutor’s Offices. The subsequent examination led for various reasons to these being reduced as the file reference numbers were wrongly stated in the statistics, some cases had been transferred elsewhere, 10 cases had been requalified, dismissed or disqualified for separate hearing, and some for various reasons could not be provided for analysis. In all, we therefore obtained a sample of 34 charges.

District State Prosecutor’s Offices brought charges in 33 cases; one charge was brought by the Regional State Prosecutor’s Office. These all involved cases brought for participation in a criminal conspiracy, which however does not mean that the court always accepted this legal qualification and the case thus adjudicated. It should also be stated that the research did not include large cases with a high media profile which have been prosecuted and tried in recent years as criminal conspiracy (this refers particularly to two cases where organised groups penetrated the police, or the judiciary), as these had yet to be concluded in the period under investigation (and judicially these cases are still not entirely settled even today).

For what purpose were the analysed criminal conspiracies most commonly created? General statistics mapping our designated period show that the great majority (every year) involved the organising of illegal migration, followed by procuring and soliciting prostitution and trafficking in people for purpose of sexual intercourse and drug-related crime. To a lesser extent, criminal organisations focused on theft and unlawful business activity.
Table 2
Section 163a Participation in criminal conspiracy
The most frequent concurrence of offences according to number of cases settled against persons between 1999 and 2004

<table>
<thead>
<tr>
<th>Year</th>
<th>Crime</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>Section 171a illegal crossing of the state border</td>
<td>24</td>
</tr>
<tr>
<td></td>
<td>Section 204 procuring and soliciting prostitution</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td>Section 246 trafficking with people for sexual relations</td>
<td>9</td>
</tr>
<tr>
<td>2000</td>
<td>Section 171a illegal crossing of the state border</td>
<td>26</td>
</tr>
<tr>
<td></td>
<td>Section 247 theft</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>Section 118 unlawful business activity</td>
<td>5</td>
</tr>
<tr>
<td>2001</td>
<td>Section 171a illegal crossing of the state border</td>
<td>45</td>
</tr>
<tr>
<td></td>
<td>Section 187 illegal production and possession of narcotic and psychotropic substances and poisons</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>Section 118a promoting drug abuse</td>
<td>6</td>
</tr>
<tr>
<td>2002</td>
<td>Section 171a illegal crossing of the state border</td>
<td>89</td>
</tr>
<tr>
<td></td>
<td>Section 247 theft</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>Section 187, Section 187a illegal production and possession of narcotic and psychotropic substances and poisons</td>
<td>4</td>
</tr>
<tr>
<td>2003</td>
<td>Section 171a illegal crossing of the state border</td>
<td>82</td>
</tr>
<tr>
<td></td>
<td>Section 204 procuring and soliciting prostitution</td>
<td>14</td>
</tr>
<tr>
<td></td>
<td>Section 246 trafficking in people for the purpose of sexual intercourse</td>
<td>4</td>
</tr>
<tr>
<td>2004</td>
<td>Section 171a illegal crossing of the state border</td>
<td>115</td>
</tr>
<tr>
<td></td>
<td>Section 204 procuring and soliciting prostitution</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>Section 187, Section 187a, Section 188 illegal production and possession of narcotic and psychotropic substances and poisons</td>
<td>6</td>
</tr>
</tbody>
</table>

Source: Ministry of Justice, organisation and supervision department, information technology department, selection from the database

In our sample of 34 charges, the vast majority (76%, 26 cases) also involved the illegal crossing of the state border pursuant to Section 171a (i.e. organised illegal migration), in two cases trafficking in women (Section 246) and procuring and soliciting prostitution (Section 204). Equally numerous were the theft of motor vehicles and trafficking in them, which was on one occasion qualified as fraud (Section 250) and once as theft (Section 247). On one occasion we came across drug trafficking (Sections 187, 188) and copyright violation (Section 151 – production and promotion of pirated CDs). One case involved the abuse of a public official’s duties under Section 158 (this referred
to the unauthorised legalisation of residence for foreigners), and finally there was one case, which involved unlawful business activity under Section 118 (this referred to arranging work abroad). We can thus state that the scope of activity in criminal conspiracy from our inquiries overall faithfully matches the statistical facts, with the exception of the smaller representation of the illegal production and possession of drugs.

The proven duration of criminal activity most often ranged from one to two years (14 cases), followed by criminal conspiracy lasting up to one year (in 10 cases).

The procedural issues that we monitored also involve data on custody. In the six-year period, custodial-prosecuted persons comprised 78% of all prosecuted persons (369 of 472). Just under half of these were subsequently charged, which makes up 36% of all prosecuted persons. The monitoring of the length of custody failed to confirm fully the hypothesis on protracted criminal proceedings for complex cases involving organised crime because, as the data in Table 3 show, the majority of people spent 4-8 months in custody, or up to one year. A certain reduction in the length of time spent in custody can clearly be detected.

**Table 3**

**Numbers of custodial prosecuted persons and length of custody under Section 163a between 1999 and 2004**

<table>
<thead>
<tr>
<th></th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taken into custody</td>
<td>27</td>
<td>28</td>
<td>73</td>
<td>83</td>
<td>75</td>
<td>83</td>
<td>369</td>
</tr>
<tr>
<td>- Of which charged</td>
<td>17</td>
<td>21</td>
<td>11</td>
<td>40</td>
<td>21</td>
<td>58</td>
<td>168</td>
</tr>
<tr>
<td>Custody</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>&lt; 2 mths.</td>
<td>0</td>
<td>3</td>
<td>17</td>
<td>1</td>
<td>2</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>2 - 6 mths.</td>
<td>7</td>
<td>3</td>
<td>35</td>
<td>19</td>
<td>22</td>
<td>15</td>
<td></td>
</tr>
<tr>
<td>6 mths - 1 year</td>
<td>7</td>
<td>16</td>
<td>5</td>
<td>36</td>
<td>28</td>
<td>48</td>
<td></td>
</tr>
<tr>
<td>1 year - 2 years</td>
<td>13</td>
<td>6</td>
<td>14</td>
<td>22</td>
<td>23</td>
<td>18</td>
<td></td>
</tr>
<tr>
<td>&gt; 2 years</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>5</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
</tbody>
</table>

*Source: Ministry of Justice, organisation and supervision department, information technology department, selection from the database*

*Note. Change in the statistical recording of the length of custody from 2002*

In the majority of analysed cases only some of the members of a criminal conspiracy were in custody (20 cases); in the second most common situation (10 cases) all persons charged were prosecuted at liberty. The same number of instances was recorded where everybody was taken into custody, or where some were already serving a sentence for a
previous crime (both four cases). It was not possible to extract more detailed information, particularly as concerns the length of custody, from the materials available.

In our sample, the period between the detention of offenders and the bringing of charges ranged from three months to three years. The average length of pre-trial proceedings was thus one year and eight months, which roughly breaks down as follows: in one third of the cases, the most frequent period was one year (six cases), followed by approximately the same periods from 10 months to one and a half years (10 months, 11 months (two cases), one year and two months (two cases), one year and three months and one year and seven months). One third of the cases were prepared for proceedings before the court very quickly, given the scale of the cases, i.e. in roughly half a year; for the remainder, on the other hand, the time taken to prepare charges was more than two years.

We conducted quite a detailed analysis of the means of evidence. In each case, evidence included witness testimonies and materials from house searches (with one exception). In an absolute majority of cases an expert opinion or the involvement of an expert was ordered; more often than not two or more expert opinions were demanded. If the file only contained a single opinion this was always phonoscopic or involved computer expertise. The latter was generally the most frequently ordered form of inquiry. Incriminating materials also included documentary evidence and, in our opinion crucial, interception records. In many cases, especially for criminal conspiracies behind the illegal crossing of the state border, monitored telephone conversations provide a precise picture of the scale, personal relations, planning, and lucrativeness of the criminal activity. Evidentiary materials obtained by means of legal assistance from abroad played a significant role. On the other hand, confessions by the accused (always by some, not all) and testimonies of the accused against each other were relatively infrequent. Also rare was the use of operative investigative means – surveillance of persons and things (nine cases), and in particular the use of an agent (only one case). This is despite the fact that the possibility to use this institute in criminal proceedings for crimes committed to the benefit of a criminal conspiracy is specifically adopted in the law and the activity of most competent Czech police departments is directly linked to the detection of organised crime.

**Characteristic structures of organisations**

It is obviously pertinent to ask why cases of the illegal crossing of the state border are so predominant in the prosecuted cases of criminal conspiracy. One explanation, apart from the frequency of this criminal activity, which is still relatively high in the Czech Republic, is that for groups involved in organising the illegal crossing of state borders it
is quite easy to prove the elements required by the statutory definition of criminal conspiracy in Section 89 paragraph 17 of the Criminal Code. For groups organising illegal migration, the organisational structure and division of functions is evident and the continuation in criminal activity is also generally possible to prove.

The usual structure of such a group (organisation) involved in organising illegal migration can be seen from the following chart, which describes the structure of one such group:

*Section 163a - Participation in criminal conspiracy
Section 171a - Organising and facilitation of the illegal crossing of the state border*

**Figure 1**

This group (16 persons were charged, of which four were foreigners) organised the illegal crossing of the state border between the Czech Republic and Slovak Republic and the subsequent transport of migrants through the Czech Republic, where they were then handed over to other groups or their transport was arranged to Germany and Austria. The refugees came from the Balkans and Asian countries. They were transferred from the intermediary, who arranged contact with another, similar group operating in Slovakia. A sign of higher level organisation, apart from a clear division of labour, covering up for activities, concealment measures and also competition with other groups, was the link to two police officers, who passed information to the group on the state of the border’s security. Criminal activity was also documented lasting one-and-a-half years and which brought the group profits of in the order of millions.

This case demonstrates that groups involved in organised illegal migration under Section 171a share clearly defined elements, which the law requires for the legal qualification of criminal conspiracy.

By way of comparison, we can offer the structure and characteristics of a group that organised the trafficking in women and operated prostitution.
This group was predominantly comprised of Bulgarian citizens. It was involved in supplying women from Bulgaria and the Ukraine for prostitution in cross-border nightclubs in the Czech Republic, but also for their transfer to Germany. Czechs in the group only performed a supporting role (operating nightclubs, barmen, drivers or carriers). A specific feature of this organisation was the activity of a “recruiter”, who was responsible for recruiting women through his wife and other assistants while serving a prison sentence of ten years in the Czech Republic for procuring and soliciting prostitution and the illegal possession of firearms. Also part of the group was a lawyer, who provided legal aid and communication within the group, including in prison.

A relatively developed structure and penetration into government bodies is evident from the following case, which involved the illegal entry of migrants to the Czech Republic, their provision with forged and fraudulently altered documents and the subsequent illegal transit across the state border to Germany.
In this group the key figure was a foreign national from Libya, who in agreement with foreign unidentified organisers arranged the flights of migrants from Asia to Ruzyně airport. The actual organisation of flights to Prague was carried out by two other foreigners (both from Syria together with the wife of one of them – a Czech). Illegal entry to the Czech Republic was handled at the airport by two members of the Foreigners’ Police together with an employee of ČSA (Czech Airlines), while the liaison and hand-over of money (the migrants paid USD 2,000 per person) was arranged by the wife of one of these policemen. A policeman from another department of the Czech Police was responsible for covering up for the group. A Czech national provided the foreigners with forged and fraudulently altered documents. Another level of the group contained people supplying accommodation in the Czech Republic (two), smuggling of people across the border to Germany (two) and transport carriers together with the transport organiser (five); all of these were Czech citizens.

In this case, which demonstrates a highly developed division of labour and comprehensive scale of “services” provided to the migrants, a very serious fact is the active involvement of several police officers, one of whom was even from a specialised department of the Czech Police, and the division of tasks between them – apart from
illegal entry to the Czech Republic also covering up for the group at a higher level. Persons with previous convictions appeared in five cases in this group, but they always operated at a lower level (transport carriers, accommodation-providers, people smugglers).

In this group, a total of 19 persons were prosecuted, of whom three were foreigners and three were women. A characteristic feature was the relatively advanced age of the members (the three key figures – the organiser, the senior police officer at the airport and the forger of documents were, at the time charges were brought, aged between 32 and 38. Only two members were under 30 (both at an executive level); one charged person was aged 40 and one 61; the others were aged between 30 and 40.

A different perspective is offered by a group composed exclusively of Czech citizens, which was involved in trafficking in women and the procuring and soliciting of prostitution. This organised the recruitment of women and girls in the Czech Republic, their transport to France and the operation of prostitution in France.

Section 163a – Participation in a criminal conspiracy
Section 246 – Trafficking in women
Section 204 – Procuring and soliciting prostitution
Section 231 – Restriction of personal liberty
Section 176 – Forging and fraudulent alteration of a public document
Section 187 – Illegal production and possession of narcotic and psychotropic substances and poisons
Section 185 – Illegal acquisition and possession of firearms
Section 171 – Obstructing the enforcement of an official decision

This group is distinctive for its less-developed structure and division of labour, which is still evident, however, when the function of the three-person leadership is compared with the other persons charged. Altogether, nine persons were charged, most of them were relatives (members of two extended families). The age of those charged ranged from 20 to 44, although only two of the offenders were below the age of thirty, and both of them operated at an executive level. The three organisers were aged between 32 and 35 (one man and two women). These basically managed the group’s activity and in addition took part in seeking and recruiting the women. They also fraudulently altered travel documents. Other members of the group were responsible for recruiting women, their transport to France and back, and the organising of prostitution on the spot; others procured drug (pervitin), which were administered to some of the enlisted women. With regard to the women, of whom some were younger than 18, violence was also used and free movement restricted. According to data contained in the indictment, some members of the group used the same drug themselves.
On the one hand, this group was characterised by a certain directness and coarseness of behaviour (with one exception, all the members of the group had previous convictions), contact with the drug scene, the attempt to influence or intimidate witnesses, concurrent offences and family relationships between members, which are typical characteristics for the less-developed phase of organised crime. On the other hand, the group was able to carry out relatively extensive activity as it did not deliver the girls in France to local organisers and operators but instead relied on its own members to organise prostitution on the spot.

On the basis of the files we also formulated the term "willing victims", referring to cases of the illegal crossing of borders by migrants who paid to be brought across, and for trafficking in women who knew, or at least were aware that they would be involved in prostitution. We were particularly interested in the nationality of these 'victims': the women in our cases included Czechs, Russians and Bulgarians, which corresponds to the common structure of women engaged in prostitution in the CR documented by the police and relevant NGO’s knowledge; among refugees the spectrum was broader; in general it can be stated that these were refugees from Asia, the Balkans and what is termed the third countries. Regarding the latter, the highest numbers came from China (nine cases), Vietnam (eight cases) and India (seven cases), followed by refugees from Sri Lanka (five cases), Armenia and Afghanistan (four cases each).

Another group prosecuted was relatively few in numbers, but the offenders charged were in no way operating at an executive level. The group was involved in theft, or the fraudulent obtaining of passenger cars, and their export abroad, specifically through Poland to Belarus.
The group obtained automobiles either by theft or fraud. In the latter case, this was when a hired car was declared stolen and handed over to the group. The group’s organiser was a fifty-one year-old Ukrainian with no previous conviction who ordered the theft, arranged the vehicle’s quick transport before its delivery to the smuggler, organised false powers-of-attorney and other documents for drivers. The vehicles were usually delivered at the Polish-Belarus border to an unidentified client. Another member of the group (47 years old, Polish, with one conviction for fraud) arranged false documents and number plates through another member (Czech, 40, previous conviction) and also obtained suppliers of cars, who hired them, delivered them to the group and then announced they had been stolen. The other two persons charged (Czechs, 31 and 38 years old, both with previous convictions) sought and hired drivers – car smugglers (remuneration of USD 300 per journey).

In this case only the core of the group was charged, i.e. those members who organised the activity, arranged liaisons and performed “qualified” work. The indictment did not include the prosecution of rank-and-file car smugglers, of whom there are 14 in the file, and neither were those persons who actually stole the cars identified. Nor were persons prosecuted who perpetrated insurance frauds; finally, the client/clients abroad were not identified.

The case is typical for having a broad circle of fellow-workers and accomplices in organised criminal activity who are either hired for individual actions, such as executive perpetrators, or become single “suppliers” of certain goods (in this case automobiles).
The case is also typical for the difficulty in ascertaining and identifying foreign contacts and clients (or in other cases the suppliers).

A working conclusion can be made that in Czech judicial practice the provision on criminal conspiracy is chiefly applied in prosecuting organised crime in cases where the statutory elements of criminal conspiracy are relatively conspicuous; on the other hand, some prosecuted cases give the impression that instead of criminal conspiracy they rather concerned an “ordinary” organised group.

For more complex cases it is undoubtedly more difficult to prove the statutory elements of criminal conspiracy. This probably applies particularly for cases of economic crime, which were at a minimum in the examined sample. It is interesting to consider the opinion of those experts (police officers, state prosecutors, judges) surveyed as part of the research into economic crime, which the IKSP completed in 2003. This group was asked whether in their practice they have come across a case of economic crime, which could be characterised as criminal conspiracy. The results of this are shown in Table 4 below.

<table>
<thead>
<tr>
<th>Profession</th>
<th>Yes, several times</th>
<th>Yes, once</th>
<th>No</th>
<th>Don’t know</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judges (n=105)</td>
<td>13%</td>
<td>9%</td>
<td>77%</td>
<td>1%</td>
<td>100%</td>
</tr>
<tr>
<td>State Prosecutors (n=82)</td>
<td>23%</td>
<td>17%</td>
<td>59%</td>
<td>1%</td>
<td>100%</td>
</tr>
<tr>
<td>Police officers (n=32)</td>
<td>61%</td>
<td>10%</td>
<td>23%</td>
<td>6%</td>
<td>100%</td>
</tr>
</tbody>
</table>

Source: Scheinost, M. et al, Výzkum ekonomické criminality (Research into Economic Crime), IKSP, Prague 2004

It is obviously possible to speculate on whether this involves a subjective opinion of the respondents which need not necessarily portray the true state of things, and also whether and to what extent the cases of economic crime represent organised crime in the sense of its criminological definition. Cases of economic crime usually do not involve any offer of goods or services (which, although illegal are real); the subject of assault is not a ‘client’ but is harmed by a direct attack, without having been offered anything (in the form of services or goods); a typical form of behaviour is fraud or embezzlement (in various forms); often it is not necessary to create new criminal structures, but existing and legitimate structures are used instead; offenders do not have to create an organisation but work within a system of mutual benefit and counter-services.
and the like. Van Duyne calls this form of crime “organising crime”. This problem of theory and definition obviously has practical consequences, especially as concerns the possibilities for investigating and prosecuting these forms of crime. The existing wording of the Criminal Code (just like the definition of an organised criminal group contained in the UN Convention on Combating International Organised Crime) may make it possible to prosecute such forms of crime as criminal conspiracy, but to prove the statutory elements is generally difficult. Of those cases analysed by us of prosecuted criminal conspiracy between 1999 and 2004, there were only two cases involving economic crime (the illegal production and distribution of pirated CDs and the illegal organisation and procurement of work in the USA); both of these gave reason to doubt whether they did not rather involve an organised group, or a lower level of organised crime.

Offenders

Organised crime is by its nature a group activity, meaning that several offenders always take part in an activity, a fact that is naturally also reflected in the number of those charged, which markedly exceeds the number of individual cases. Moreover, the analysed materials almost always clearly show that the person prosecuted is only one of those that participated in the criminal activity. Those termed ‘unestablished persons’ are not prosecuted i.e. they are offenders whose existence and involvement in crime is evident but whom it was not possible to identify and track down, persons prosecuted abroad, sometimes persons moving on the periphery of an organisation whose concrete participation and culpability would be difficult to prove and so forth.

The number of members of groups prosecuted as a criminal conspiracy ranged from five to 37 people; most often offenders associated in numbers from five to eight (as in four cases); on three occasions the group was made up of 11 or 13 members. It should be pointed out, though, that the prosecuted number of persons in most cases did not cover the entire actual size of the organisation.

Almost all the analysed cases prosecuted as criminal conspiracy had international reach, or the activity and contacts of these groups went beyond the borders of the Czech Republic, which especially for cases prosecuted under Section 171a (organising of illegal migration) is logical.

For cases of organised illegal migration it is entirely characteristic that the prosecuted organisation/group always comprises a sort of cell whose activity covers one section of the route for illegal migrants. It is thereby de facto integrated into an international division.

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of the labour of broader criminal structures. This does not mean that “our” groups would be integral parts of a sort of unified large international super organisation and that they would be directly subordinate to a higher or unified “international centre”. It rather means that in return for payment these groups are responsible for a certain section of the route and a certain type of service, i.e. their involvement in the international chain takes place on an “economic basis”; as such they operate relatively independently as “sub-contractors” and their activity consists of supplying concrete services.
### Table 5

Section 163a Participation in criminal conspiracy

Persons prosecuted, charged and convicted between 1999 – 2004

<table>
<thead>
<tr>
<th>Sentences imposed</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total Persons prosecuted</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Women</td>
<td>36</td>
<td>2</td>
<td>75</td>
<td>97</td>
<td>96</td>
<td>126</td>
</tr>
<tr>
<td>Juveniles</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total Persons charged</strong></td>
<td>36</td>
<td>40</td>
<td>59</td>
<td>94</td>
<td>96</td>
<td>117</td>
</tr>
<tr>
<td>Of which women</td>
<td>4</td>
<td>5</td>
<td>6</td>
<td>5</td>
<td>5</td>
<td>8</td>
</tr>
<tr>
<td><strong>Age</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>15 – 17</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>18 – 19</td>
<td>3</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>20 – 24</td>
<td>4</td>
<td>13</td>
<td>10</td>
<td>18</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>25 – 29</td>
<td>9</td>
<td>14</td>
<td>14</td>
<td>31</td>
<td>25</td>
<td>32</td>
</tr>
<tr>
<td>30 – 39</td>
<td>12</td>
<td>9</td>
<td>30</td>
<td>28</td>
<td>40</td>
<td>47</td>
</tr>
<tr>
<td>40 – 49</td>
<td>7</td>
<td>3</td>
<td>3</td>
<td>11</td>
<td>15</td>
<td>22</td>
</tr>
<tr>
<td>&gt; 50</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>3</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td><strong>Total Persons convicted</strong></td>
<td>1</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>5</td>
<td>10</td>
</tr>
<tr>
<td>Of which women</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>Age</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>15 – 17</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>18 – 19</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>20 – 24</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>25 – 29</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>30 – 39</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>2</td>
<td>5</td>
</tr>
<tr>
<td>40 – 49</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>&gt; 50</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

| **Sentences imposed** |      |      |      |      |      |      |
| **Unconditional**    | 1    | 0    | 0    | 0    | 5    | 7    |
| Up to 1 year         | 0    | 0    | 0    | 0    | 0    | 0    |
| From 1 to 5 years    | 1    | 0    | 0    | 0    | 3    | 7    |
| From 5 to 15 years   | 0    | 0    | 0    | 0    | 2    | 0    |
| Over 15 years        | 0    | 0    | 0    | 0    | 0    | 0    |
| **Conditional**      |      |      |      |      |      |      |
| Punishment imposed in conjunction with: |      |      |      |      |      |      |
| **Ban on activity**  | 1    | 0    | 0    | 0    | 0    | 0    |
| Financial sanction   | 0    | 0    | 0    | 0    | 0    | 0    |
| Other sanction       |      |      |      |      |      |      |

Source: Ministry of Justice, organisation and supervision department, information technology department, selection from the database
As concerns the composition and characteristics of the prosecuted offenders in our study, the total number of prosecuted persons was 417. Of this number, 32 were women (7%), and of these women ten were foreign nationals.

Of these 417 prosecuted persons 330 were persons prosecuted under Section 163a – participation in criminal conspiracy (of whom 25 were women, i.e. 7%, and of these eight were foreigners). Others were prosecuted either for crimes committed to the benefit of criminal conspiracy under Section 43 of the Criminal Code (or under Section 88 paragraph 2 of the Criminal Code, for example for organising the illegal crossing of the state border and as members of an organised group), and for crimes linked to the activity of criminal conspiracy (theft, aiding and abetting, forgery and the fraudulent alteration of public documents, procuring and soliciting prostitution), or for a ‘secondary’ separate crime (for example the illegal possession of firearms, the illegal production and possession of narcotic and psychotropic substances and poisons and the like).

Of these 330 charged under Section 163a, 97 were foreigners, i.e. 29.7%. This is quite a high percentage, greatly exceeding the proportion of foreigners in the total number of known and prosecuted offenders. However, this corroborates the basic thesis on the international interconnection and international reach of organised crime’s activities. It should also be taken into account that particularly as concerns contact persons – mediators of contacts and links abroad, to foreign suppliers or clients and groups – it is often precisely these people that it is not possible to identify and apprehend.

In all, the foreign offenders were citizens of twenty states, which represent quite a broad spectrum. The majority came from Vietnam (22) and Slovakia (13); here we used as our basic data the place of birth as the charges did not always make clear whether the relevant citizen was from the Slovak or Czech Republic. Bulgarian citizens comprised nine persons, from China and Armenia there were eight offenders, from Poland, Yugoslavia and India there were five. Other countries of origin of offenders included Afghanistan, Syria, Moldavia and Ukraine (each having three). Offenders also came from Romania, Russia, Belarus, Iran, Pakistan, Sri Lanka, and Libya. Those prosecuted also included a Swedish national who was an Iraqi by origin, and a Pole who was a Vietnamese by origin. Of interest is the fact that from Russia and the Ukraine the offenders comprised only individuals, which does not corroborate the general opinion of experts on the multiplicity of activities and offenders of organised crime in the Czech Republic coming from these countries. Several hypotheses could be formulated to explain this, but verification would require further study. We may assume – on the basis of official Police statistics – that offenders from Ukraine and Russia are more often prosecuted not as members of the criminal conspiracy but as individuals due to the fact that it is more difficult to prove the constituent elements needed by the appropriate provision of the Penal Code.
Generally, however, even this relatively limited sample of cases confirmed the findings on the internationalisation of organised crime. Of those groups that formed the subject of analysis, only just under one quarter (eight groups) comprised only Czech offenders.

With regard to the age range of the prosecuted offenders, it generally applies that criminal activity committed, as part of a criminal conspiracy, is not weighted towards either the very young or the more advanced in age. Offenders below the age of 20 and over 50 are equally rare. The vast majority of offenders are between 20 and 30 years of age, which more or less corresponds to the nature of criminal activity that was analysed (see the predominance of organised illegal migration) and the level of organisation of the prosecuted groups (with some exceptions and despite some signs of a higher level of organisation, the prosecuted cases represent only a relatively lower level of development of organised crime moving towards multi-layered, sophisticated structures). Older offenders could be found more usually among foreigners. In most cases the available records did not make it possible to determine the education of offenders; the university education of offenders was recorded in only two cases. As for professions, if these were mentioned at all in the records, they were generally unemployed and self-employed.

Conclusions

The results of our analysis of the available documents makes it possible to say that the frequency in which the provision on criminal conspiracy is used is gradually rising, although it is applied chiefly in cases where it is relatively easy to prove the elements of criminal conspiracy required by law. A ‘mercenary objective’ is no longer a statutory element of criminal conspiracy; nevertheless, the profit acquired illustrates the extent and danger to society of this higher form of joint crime.

It was also used more often in simpler cases, with some of the analysed causes giving cause to question whether the application of the provision on criminal conspiracy was appropriate at all for the level of organisation and extent of criminal activity, and whether instead the subject was an ‘ordinary’ organised group (this is supported by statistics demonstrating the substantial difference between the number of persons prosecuted for participation in criminal conspiracy and the number of persons actually convicted under this provision). As far as sentencing is concerned, unconditional sentences of imprisonment predominate, but these are mostly sentences of between one and five years. It is a paradox that, despite the overwhelmingly profit-oriented character of

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11 Criminal conspiracy may nevertheless have another objective (e.g. political destabilisation, spreading ethnic or religious intolerance, apartheid, and the like).
Criminal conspiracy and the large profits of the prosecuted groups, or persons, not a single financial penalty was imposed during the monitored period. This represents a certain contradiction – on the one hand the provision on criminal conspiracy is not used as widely as it could be, but on the other hand cases are sometimes prosecuted whose gravity clearly does not quite match this qualification. The relatively low number of prosecutions brought for drug-trafficking cases is surprising.

The analysis also showed that overall neither the length of custody, nor the length of pre-trial proceedings depart from the usual indicators. We can consider as typical the relatively high proportion of prosecuted persons in custody (78% of prosecuted persons), which testifies to justified concerns about the influencing of witnesses, avoidance of prosecution or continuation in crime for the prosecuted offenders. On the other hand, fewer than half of custodially-prosecuted persons are then charged, which indicates the prosecution is not effective.

In relation to the above, stated it transpires that the most effective tool for detecting and documenting criminal activity perpetrated as part of a criminal conspiracy remains the use of interceptions. Despite the ongoing discussions on the extent and justification of their use, interceptions appear to be an essential tool for detection and providing evidence in cases of criminal conspiracy, also in view of the fact that other options, or extraordinary means allowed by our legal regulations are used far less. It may be considered significant that there are extremely few examples of confessions by the accused and testimonies by the accused against each other, which to a certain degree can be considered a characteristic of the continuing tradition and indication of the internal norms of organised crime.

Anyway, and despite reservations on the gravity of certain cases prosecuted as criminal conspiracy, the analysis carried out demonstrates the undisputed organised nature of some criminal activity in the Czech Republic. Certain cases prove a higher level of organisation, greater division of labour and, in some cases, also indications of middle-management elements. It is quite common for criminal activities to have international reach; concealment is employed, use of legal aid and co-operation with official structures, communication via mobile telephones using code names and nicknames, switching mobiles and numbers, creating covers for captured migrants and the like.

Offenders are generally young, although not very young, people – in the group cores or leadership there are often persons over the age of 30. These offenders take advantage of the opportunities offered by contemporary society, the nature of relationships, demand for a certain type of goods and services and easy international contacts. Quite a large number (where these data were included in the charges analysed) refer to persons with previous convictions; it may be assumed that offenders with previous convictions appear more often at the lower, executive level of an organisation. Cases where criminal conspiracy comprises people joined by family bonds and depending on
larger family clans point to an elementary, relatively lower level of organised crime. Nevertheless, even these groups are able to carry out extensive and well-organised activity. The criminal activity that they perpetrate in this manner does not require large or specialised qualification; it should obviously be taken into consideration that the prosecuted cases of criminal conspiracy contained in our research sample represent very probably only a certain section of criminal activity perpetrated in an organised way, which obviously limits the interpretative value of the findings.

The picture of organised crime derived from the analysis of prosecuted cases of criminal conspiracy during the relevant period does not correspond to the media image of “mafia” and large international organisations. It is given by the nature and extent of the examined cases. Even so, it demonstrates the undoubted organised nature of criminal activity or its part in the Czech Republic, with significant international reach and the use of procedures characteristic for organised crime.

References


Cejp, M. a kol.: Organizovaný zločin v České republice (Organised crime in the Czech Republic) III. Prague, IKSP 2004

Concept of Combating Organised Crime, Czech Government Resolution No. 64/2008 of 23 January 2008


Statistics of the Czech Ministry of Justice

UN Convention Against International Organised Crime, document no. /AC.254/L.230/Add.1
Stilettos and steel toe-caps
Legislation of human trafficking and sexual exploitation, and its enforcement in the UK and the Ukraine

Anna Markovska and Colleen Moore

Introduction

In recent years, trafficking in human beings has thrived as a lucrative criminal enterprise, and although not a new phenomenon, governments, enforcers and lobbyists have escalated their actions to combat it. The Ukraine has become one of the leading suppliers of human beings in the global human trafficking market. At the same time the United Kingdom has become a popular destination country in Europe. Both countries have sought to respond through legislation and more focused policing methods. However, the scale and nature of trafficking in human beings for sexual exploitation (TfSE) is escalating in both countries. There are difficulties in attempting comparative research. Culturally, historically and legally The Ukraine and the UK do not share many common traditions, but in relation to recent legislation on trafficking and its implementation, some shared themes can be identified. It is not straightforward to contrast legal or social policy implementation or processes in different countries, but without attempting to make comparisons, we may preclude some deeper grasp of the issues.

The authors have attempted to examine the responses of the Ukraine and the UK, but acknowledge that contrasting legal definitions and legislation has problems due to different interpretations and applications of the law. Who or what drives particular legislation? Who implements it? Who ensures that legislation is effective and who is accountable? The defendant’s right to a fair trial must be ensured, whilst ensuring that the complainant is suitably represented in all cases. Difficulties arise in many trafficking cases, due to the questionable ‘victim status’ of the complainants. In addition, justice has to be seen to achieve parity and political approval. The final hurdle in this debate, relates to polarised perspectives on the business of prostitution itself. The vast majority of women in all levels of prostitution do not choose to be in the profession for any reason.

1 The authors would like to thank Nicky Padfield, Petrus C. van Duyne and Olga Biletska for their very helpful comments on earlier drafts of this paper. The faults that remain are all ours.
2 The authors are lecturers in Criminology at Anglia Ruskin University, Cambridge, England.
3 This is the acronym that has been adopted by the Home Office in the UK.
other than to escape poverty, and would arguably prefer another type of employment, if available. There exists a tension between the level of support and legislative response directed towards ‘rescuing’ the ‘internationally-trafficked, foreign’ prostitute and the ‘locally-cultivated’ sex worker. The trauma suffered by trafficked prostitute women is magnified against that of ‘prostitution’ per se, as containing ‘shocking abuse’, devastating health implications, physical abuse and post-traumatic stress disorder, which is also true for many women globally who have been trafficked from one street corner to another. The impact of this polarised perspective is apparent in the legal discussions before and during trials.

Those concerned about the horrors of trafficking and sexual exploitation may be blinkered to some of the other effects (or indeed, intentions) of related legislation. Support measures (crack-downs) that are presented as mechanisms to cull people-trafficking, may confirm the public’s perceived fears of immigrant as ‘other’, which can add to the moral panic that is popularised through the media and political agenda. Much of what is known about TfSE is contested. Subsequently, major disagreements within the anti-trafficking, lobbying world have developed. Although activists may be seeking similar ends, they often have distinct agendas, both politically and ideologically (Ditmore, 2005; Miko, 2005). Despite their common interest, activists and lobbyists may hold diametrically opposed views about whether prostitution itself is inherently trafficking in persons.

Unreliable and uncorroborated assertions have led to confusion as to even the scale of trafficking in the world. For example, the UN has estimated that between 700,000 and 2 million women are trafficked across international borders annually (up to 4 million, including domestic trafficking), the majority of which are exploited for sexual purposes (UNPFA, 2008). According to the International Organisation of Migration (IOM) around 500,000 women are sold annually to local prostitution markets and “100,000 individuals have been trafficked from the Ukraine for various forms of exploitation since 1991” (IOM, 2007). Pyshchulina (2005) has suggested that “420,000 women have been trafficked [from the Ukraine] in the last few years alone” and the US Department of State (2004) maintains that between 600,000 and 800,000 people worldwide are trafficked across borders each year. Many of these estimates have been queried (Jordan et al, 2005, di Nicola, 2007) due to the absence of valid research or

4 See, for example Rogers, (2008) “The Shocking Truth About the Vice Trade: Girls of fourteen working as sex slaves” in The Daily Mail, 25th January, 2008 or Hickley, M. (2008) “Hundreds of girls rescued from traffickers in Britain are snatched back and forced into prostitution” in The Daily Mail, 4th January 2008, which suggests that “up to 25,000 women and girls are trapped in a modern form of slavery – smuggled into the country, threatened with violence and forced to work as prostitutes.”


6 All numbers in this paper are in European decimal notation.
evidence therein. Statistics about trafficking are unreliable, due to the clandestine nature of the activity, but also because many countries cannot maintain accurate data (Jordan et al, 2005; di Nicola, 2007). What statistics do exist are ‘slippery’, due in part to the variability of the definitions used to identify who constitutes a ‘trafficked-person’ and the criminal networks that are responsible for the trade. In addition, in this chapter, statistics illustrating cases and prosecutions in the Ukraine and the UK must be acknowledged as limited, due to differences in recording procedures, interpretations of seriousness and of ‘success’. International researchers report large numbers of unrecorded cases and dramatic increases in recent years. Indeed, TFSE is not amenable to traditional forms of data collection or social research (Kelly, 2000) although Kelly has estimated that up to 4,000 women had been trafficked into the UK by 2003. To sum, there are still no accurate estimates available either nationally or internationally (di Nicola, 2007).

The trial processes and subsequent sanctions imposed that follow the much-hyped ‘crack-downs’ on human trafficking in the Ukraine and the England & Wales are difficult to interpret. Pakes, (2004) has pointed out the importance of ‘pre-trial justice’, the relative secrecy in which it often takes place and the far-reaching nature of the decisions that can be made at that stage. Available conviction data does not offer insight into ‘plea-bargaining’ or subsequent convictions on ‘lesser’ charges applied to the defendant at the prosecution stage (Lewis, 2008). Nor do they provide information on the impact that the proceedings had on the victims. In the UK, the first Operation Pentameter in 2006, ‘freed’ 88 women and teenage girls from brothels and massage parlours leading to 232 arrests (Avenall, 2008; BBC, 2007). However, many ‘released victims’ are deported, despite the government’s assurance that they intend to ratify the Council of Europe Convention on Action Against Trafficking in Human Beings (the “Council of Europe Convention”), which they signed in March 2007. The Convention advocates (inter alia) that each signatory ‘shall adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery’ (Chapter III, Article 12.1); and that each signatory shall provide in its internal law a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim. These articles are relevant because deportation remains one the main ways that victims of trafficking can be returned to their

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7 Operation Pentameter; Operation Pentameter 2; Operation Radium (Cambridgeshire)
8 Operation Pentameter 1 (P1) was a police-led, multi-agency campaign against trafficking for sexual exploitation. It was the first operation of its kind and involved police and partners across the United Kingdom. Its primary aim was to rescue victims of trafficking for sexual exploitation (TFSE). Preparation began in 2005 and the live operational phase ran between February and May 2006. In total, 88 women were rescued as a result. The operation was intended to shift the policing focus from victim escapees (reactive) to active identification/rescue (proactive). (Avenall, 2008)
countries of origin from the various countries they have been transported to. Out of 46 cases considered in one Ukrainian study, 16 of the women were repatriated (Shvab, 2007). Furthermore, despite pledges of co-operation, through Interpol and Europol, there is arguably little evidence of close working-relationships – especially with the countries where levels of police and judicial corruption are so closely aligned with the levels of sexual exploitation therein. Law enforcement officers in the Ukraine and the UK complain about delays and inadequate responses from international organisations, such as Interpol (Shvab, 2007).

In the following sections, we will evaluate the impact of recent legislative changes in the UK and the Ukraine on human trafficking for sexual exploitation. We contrast and compare them, whilst acknowledging the difficulties in equating two very different countries. We also highlight differences between the UK and Ukrainian legal systems, including sentencing, victim support and repatriation. Although the definitions of ‘trafficking’ within the two countries are now relatively coherent, differences in data collection, analysis and the respective legal systems make it complicated to determine the reality, both for trafficked individuals and traffickers. The Ukraine has been identified as a country with an endemic level of corruption, which adds further complexity. This chapter also considers the possible impact of corruption within law enforcement agencies on the treatment of traffickers.

**Definitional and national ‘translations’ of trafficking in women**

Crossing borders in the twenty-first century, other than for reasons of tourism, is often an attempt to improve quality of life (Spencer, 2007). Spencer (2007) has provided a useful analysis of the gaps that remain in our capacity to disentangle many of the issues that surround trafficking. Despite the recent surge of interest in and research on trafficking and immigration, there still exists a dark area, when it comes to distinguishing between: migrant workers; willing trafficked-migrants; smuggled migrants; unwilling trafficked victims and victims of sexual exploitation (Ditmore, 2005; Kempadoo, 2005; Anderson and O’Connell Davidson, 2003). Judgements are further muddied by the entrenched attitudes that societies and governments exhibit towards sex-workers, which promote the idea that prostitution is a social problem. The position of the prostitute woman as a ‘problem’ to society has been well documented, and aligned with political and social policy developments (see Scott, 2005 for a very good analysis). Despite this, the demand has magnified along with its provision, and the clientele that clearly endorse and capitalise on prostitution.

The way women are viewed in relation to sex work attributes to a general ambiguity. A woman who willingly becomes a prostitute is barely tolerated, and she is rarely
viewed as a ‘real’ or ‘innocent’ victim, regardless how she is treated by her customer, pimp or trafficker. Sex-workers have been portrayed as victims (of circumstance, predators or drugs), yet they are still characterised (at least through many legal battles) as untrustworthy, disreputable and suspicious. This problem is augmented further when women involved in sex work are called as witnesses in legal trials. Through the underground nature of their trade, sex-workers are associated with all kinds of illicit behaviour, as well as sex, which, in turn, can be used against them should they report further victimisation. Further complexities that affect sex work in the 21st Century can be identified in the economic transition experienced in the former Soviet Union and Eastern Europe, adding to the conditions in which prostitution and human trafficking can flourish (Miko, 2005; Surtees 2008). Many people have been attracted by the opportunities of a better life abroad, providing traffickers with lucrative exploitative prospects.

Numerous definitions have been proffered to aid in our understanding of what constitutes human trafficking\(^\text{10}\), and they can shift in emphasis (Di Nicola, 2007; O’Connell Davidson, 2003; Kelly, 2000). TISE has been addressed separately in many countries. However, defining such trafficking is further complicated by the fact that such ‘abuses’ can vary in severity, covering a continuum of experience (Anderson, 2007). Between those transported and forced to work under threats of violence or death, and trafficked people who are complicit in their arrangements lie an endless realm of accounts and experiences (Anderson, 2007). This definitional conundrum is further complicated, in that often the ‘definers’ are those who provide victim services or enforce the law (Spencer, 2007), frequently operating from polarised (and sometimes contested) perspectives. In addition, the judgement of ‘innocent’ or ‘engaged’ (Ditmore, 2005, Anderson, 2007) can be arbitrarily applied, depending on the (re)actions of the police, the prosecutors or immigration officials. Relying on legal definitions, can limit research directions and prevent the research community from producing new and helpful knowledge (Di Nicola, 2007). As researchers, we aim to go beyond official definitions, whilst still bearing them in mind in order to unravel what happens in practice.

England and Wales, and the Ukraine have adopted distinct ‘definitions’ of human trafficking, which we will contrast. In 1998, the Ukraine became the first country of the Former Soviet Union to make human trafficking a separate criminal offence. Changes were made to the existing Criminal Code, introducing article 124-1.\(^\text{11}\) This


\(^{11}\) Article 124-1, 1998 defined trafficking in human beings as “an open or secret capture of a human being, committing him or her to any other illegal contract concerning legal, or illegal, consensual or otherwise, crossing of the Ukrainian state border, or without crossing, for further sale or other transfer with the aim of sexual exploitation, use in the pornography indus-
Ukrainian definition of human trafficking was inconsistent with contemporary international developments as there was no clear legal definition within the article. For example, the law did not accommodate for different types of human trafficking. Article 124–1 mentioned ‘sexual exploitation’, ‘pornographic industry’, ‘servitude’ and ‘exploitation of labour’ with little contextualisation. In order to begin the criminal investigation according to article 124–1, it was necessary to establish the intention of sexual exploitation, or similar crimes.

A new Criminal Code was adopted in the Ukraine in April 2001, introducing Article 149, “Trafficking in human beings or other illegal agreements about humans”. Under this legislation, a conviction will result in imprisonment of between three and eight years. Part II of Article 149 makes provision for actions “committed against a minor, or several persons, or repeatedly, by previous arrangement between a group of persons, using one’s official position or by a person on whom the victim was financially or otherwise dependent”. Upon conviction, this crime is punishable by imprisonment of between five and twelve years. Part III of Article 149 makes the provision for those previously outlined actions “which have been committed by an organised group or which have been connected to illegal trafficking of children abroad or failing to return them to the Ukraine”. Upon conviction, this crime is punishable by imprisonment of between eight and fifteen years. Amendments to Article 112 “Under Investigation” transferred the authority for the investigation from Prosecutor’s Office to the police. The Ministry of Internal Affairs is now responsible for investigating criminal cases and, where appropriate, cases are passed on to the Office of Prosecutor General. The case is admitted to court if the prosecutor is satisfied that “there is sufficient evidence to substantiate the charges brought against a suspect, and that the correct procedures have been followed” (Lucenko, et al., 2005). This rule can prove problematic, as when the prosecutor is not satisfied, the case is returned to the police for ‘additional investigation’ which in reality is rarely possible.

Since 1999, the Ukraine has arguably made a number of serious attempts to legislate against TFSE and to establish a coordinated response to the problem. However, the first wide-ranging programme adopted in 1999, and the comprehensive approach that fol-

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12 Article 149, 2001 defines trafficking in human beings as “the sale or other paid transfer of a human being and committing him or her to any other illegal contract concerning legal or illegal, consensual or otherwise, crossing of Ukrainian state border, for further sale or other transfer to another person (persons) with the aim of sexual exploitation, using in pornographic industry, taking part in criminal activities, servitude, adoption for commercial purposes, using in armed conflicts, exploitation of labour”.

13 Or with the goal of taking organs or tissues for transplantation from the victims, or forced donation, or if these actions have caused grave consequences.

14 Under Article 124-1, The Prosecutor General of The Ukraine was the only department to authorise and conduct criminal investigations in trafficking cases.
Stilettos and steel toe-caps

allowed in 2002, failed to attract funding to support the initiative. Consequently, it failed to provide coordinated and practical responses to trafficking, thus leaving the laws ‘without teeth’. It might also be argued that the main drivers of the adoption of the human trafficking legislation in the Ukraine were non-governmental organisations (NGOs) working on behalf of women’s interests, and politicians keen to introduce legislation to comply with international conventions. Parallels may be drawn with the establishment of Ukrainian money laundering legislation, where non-compliance may damage a country’s reputation and business interests.

In 2002, the Ukrainian Cabinet of Ministers established an action plan to address trade in human beings. It also addressed the issue of cooperation between agencies in the country. In 2003, the question of rehabilitative centres for the victims of trafficking reached the agenda of the Cabinet of Ministers, and in 2004, the Ukraine ratified the United Nations Convention Against Transnational Organised Crime and its Protocols (see footnote 15), which it had signed in 2001. To ensure compliance with international legislation the Ukrainian national legislation has been adjusted. However, whilst the Palermo Protocol described both domestic and international trafficking, the Ukrainian side focused on the facilitation of movement across the Ukrainian border for the purpose of exploitation, identifying the concept of trafficking in the context of organised crime (Lucenko, et al, 2005).

By February, 2006, both the UK and the Ukraine had ratified the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. So far, England and Wales has passed three separate pieces of legislation relating to trafficking in human beings: section 145 of the Nationality, Immigration and Asylum Act, 2002 legislatates against “Traffic in prostitution”; section 57, 58 & 59 of the Sexual Offences Act, 2003 has legislated against “trafficking into the UK –”, “trafficking within the UK –”, and “trafficking out of the UK – for sexual exploitation” respec-

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15 Article 3 of the UN Protocol, 1996 stipulates that: “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring, or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at the minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or removal of organs”.

16 Until 2002, there was no specific human trafficking law. Prior to the enactment of the Nationality, Immigration and Asylum Act 2002 prosecuting authorities could proceed against traffickers by using laws criminalising some of the constituent elements of trafficking, such as kidnapping, assault, rape, or immigration offences like facilitating illegal entry (Gilbert, 2007).

17 Available to view online at http://www.opsi.gov.uk/Acts/acts2002/ukpga_20020041_en_1

18 Available to view online at http://www.opsi.gov.uk/Acts/acts2003/ukpga_20030042_en_1
EUROPEAN CRIME–MARKETS AT CROSS–ROADS

tively; and section 4 of the Asylum and Immigration Act, 2004\(^{19}\) has legislated against “ Trafficking people for exploitation” generally. All of these newly defined crimes carry a maximum penalty, upon conviction on indictment of fourteen years imprisonment. In the years since these pieces of legislation have been passed the scale and response to TiSE by the police and media\(^{20}\) has far surpassed the scale of successful convictions or prevention strategies. There is also recent evidence that the focus on trafficking and exploitation has diverted attention away from some of the other effects of such intensive policing, such as speedy deportations of illegal immigrants who refuse to testify against their traffickers.

The two countries in question have approached the definition and legislative focus from very different perspectives. In the Ukraine, the emphasis has been on contractual agreements, the age of the victim, number of victims and abuses of ‘trust’. In contrast, the UK has chosen to identify ‘trafficking’ and its specified intent (prostitution or exploitation) as the main area of focus. Already, these variable approaches highlight the problems that arise when attempting to contrast the process and outcomes of these charges, as played through the system. Even after identifying numbers (of prosecutions, trial or convictions), the type of case involved, the relevant legal issues and the measure of ‘success’ will vary due to the different classifications of what constitutes ‘trafficking’ itself within each country.

The Ukraine: scale and nature of human trafficking for sexual exploitation

In The Ukraine in 2007, 454 and 267 victims of sexual and labour exploitation were identified, respectively (IOM, 2007). This data may not be a true interpretation — indeed, most likely it is an under-representation. It is noteworthy, that 34% of the victims were men, and that the proportion of men claiming to be the victims of trafficking has increased from a level of only 16% in 2004.\(^{21}\) Anecdotal evidence suggests that most of the victims of slave labour come from Russia, where recruiters often claim to be able to provide well-paid work in Moscow. Shvab (2007; see footnote 23) suggests that in the

\(^{19}\) Available to view online at http://www.opsi.gov.uk/ACTS/acts2004/ukpga_20040019_en_1#pb1-11g4

\(^{20}\) News stories, such as the following, “Police, launching an operation to liberate women forced into prostitution, revealed there were up to 100 brothels in the county, many operating as “sex prisons” for women lured from abroad with false promises of a better life. Six victims of the evil trade have already been rescued, including a pregnant 16-year-old from Uganda, and have told of a grim existence, threatened with swords and baseball bats by their captives and too terrified to try to escape” (Cambridge Evening News, 17th, August, 2007).

\(^{21}\) Men are more likely to be the victims of labour exploitation and it has been suggested by one Ukrainian NGO that 70% of new cases of trafficking is of this type.
majority of trafficking cases, the recruiters are often acquaintances or friends and know the victim well. Some recruiters specifically target those in difficult financial circumstances (Shvab, 2007). “A friend of my older sister offered me a job in Moscow to earn ‘lots of money’. I didn’t ask how much money would earn or what I needed to do”, explained one victim of trafficking (Ibid).

Levchenko (2007) maintains that in recent years the merchandise of human trafficking in the Ukraine ‘got younger’. More women aged 15 to 19, are trafficked to work in the sex industry, suggesting an increasing problem with trade in children (Ibid.). In addition, the ‘workload’ of recruiters seems to have changed significantly during the last few years, in order for the business to be more profitable (Levchenko, 2007). Now, as well as finding their victims and preparing all the necessary official papers, recruiters appear to have expanded their remit to that of ‘trafficker’: moving the victims abroad and transferring them to the buyers for payments. Shelley (2007) cites an American example where a Ukrainian was in charge of a significant trafficking network in Los Angeles, including recruiters, entrepreneurs and managers. Levchenko (2007) has also suggested that the relaxation of the visa regime for citizens of the EU, Canada and the USA in 2005 will contribute to increased levels of sexual exploitation in disadvantaged children. Law enforcement agencies have already identified cases of child sex tourism in the Ukraine with the perpetrators coming from France, Sweden, the USA and elsewhere (Ibid). It seems that the predictions were correct, and the UK is experiencing similar trends, since the accession of many central and eastern European countries into the EU.

**Legislative Response in The Ukraine**

Although attempts have been made to improve the legislation in The Ukraine, a number of problems still persist. Shvab (2007) has identified problems with Article 149. Firstly, trafficking was only considered to be a crime if undertaken outside of Ukrainian borders. Without proof of ‘recruitment’, ‘transfer’, or ‘crossing the state boarder’ the crime could not be proven. Those who helped the traffickers to ‘recruit’, apply for a passport or to buy travel tickets for the victims, could be considered merely as witnesses, thus avoiding prosecution. The main perpetrators of the crime usually reside abroad, leading to difficulties relating to prosecution in the Ukraine. In particular, Shvab (2007) notes lengthy waiting-periods for confirmation on the perpetrators’ iden-

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22 More ‘victims’ aged 30 to 50 are trafficked to provide servile, domestic work, and to work in illegal factories.

23 Shvab (2007) conducted some major research on the issue of human trafficking, analysing a sample of criminal cases on trafficking, discussing the problems with the different criminal justice agencies involved, and victims of trafficking.
eties from Interpol, resulting in the commencement of the trial without important information from abroad. Frequently, in extra-national cases, the legal action was not even considered under article 149. Instead, Article 302 of the Criminal Code of The Ukraine “Establishing and running of the place to sell sexual services and soliciting” was applied. Similar results have been identified in the UK, with defendants pleading guilty to charges that carry much reduced penalties upon conviction. Further difficulties have arisen through the necessity to prove the ‘transfer-for-payment’ of the victim from one individual to another. Even with proof of payments, such as Western Union receipts, it can be difficult to prove intention of monies exchanged. One officer working on trafficking cases commented that the majority of judges understand the definition of ‘paid transfer’ literally, and demand the receipts in cases where the victim was present during ‘the transfer’ (Shvab, 2007). Such examples illustrate that there are some significant obstacles to achieving satisfactory outcomes, even when a substantial case has made it as far as the prosecution stage.

Proving the intention of exploitation of another individual is also problematic. Shvab (2007) has highlighted that the majority of regional courts in the Ukraine have failed to pursue any cases under charges of trafficking with the aim of exploitation. Most cases opened concern the transportation of people under false documents, or the absence of appropriate licenses. Apart from the problems with the law and its application, Shvab (2007) has also identified concerns with the pre-trial investigation stage. The main problem is the absence of adequate resources\textsuperscript{24} and problems with international cooperation. In the Ukraine, the majority of defendants prosecuted under Article 149 tend to be ‘recruiters’, and they normally present the weakest link in trafficking cases. As mentioned before, the main perpetrators often live abroad, requiring official requests for information, with associated delays. It is possible that the Ukrainian judiciary may not have appropriate experience of trafficking be able to deliver the appropriate sentence in all cases. Also, corruption may complicate individual cases. Interestingly, Shvab (2007) mentioned that both the police and victims of trafficking identified the corruption of judges as a possible obstacle to a fair trial, potentially leading to complications in sentencing. Not surprisingly, no specific examples were specified.

**Prosecution and sentencing in the Ukraine**

In the Ukraine, the Prosecutor General’s Office is responsible for: ensuring the legality of investigation; approval for the detention of suspects; the protection of the rights of all participants, including suspects, witnesses and victims. It is difficult to prove cases under Article 149, and such cases are not encouraged by the Office of Public Prosecutors,

\textsuperscript{24} One Head of Department mentioned that his department received 10 litres of petrol for the three months of the investigative work (Shvab, 2007).
instead, prosecutions are steered under Article 303, part 2 on Prostitution and Pimping. These findings are corroborated by Lucenko, (2004) who found that in the period from 2001-2004, and Shvab (2007) in 2007, that Ukrainian prosecutors have avoided using the human trafficking legislation to prosecute offenders, which may be preferable to no conviction at all.

Table 1.

Numbers of cases in which the defendants were charged and the articles of the Criminal Code of the Ukraine (connected to prostitution) in 2002

<table>
<thead>
<tr>
<th>Type of offence committed</th>
<th>Article of the Criminal Code of the Ukraine</th>
<th>Convictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maintaining brothels and procuring</td>
<td>210, part 1</td>
<td>5</td>
</tr>
<tr>
<td>Establishing or maintaining brothels and procuring</td>
<td>302, parts 1 &amp; 2</td>
<td>105</td>
</tr>
<tr>
<td>Prostitution, coercion or recruiting into the business of prostitution (1)</td>
<td>303</td>
<td>53</td>
</tr>
</tbody>
</table>


Further obstacles are encountered due to the fact that Ukrainian legislation permits only two months to complete the required pre-trial investigation. Given this time frame, it can be almost impossible to collect sufficient evidence to build a successful case. Law enforcement officials who fail to comply with the deadlines can be subject to reprimand, so there is “fear among prosecutors of losing a case because of too little evidence” (Pyshchulina, 2005). The success rate is usually determined according to the number of cases opened in any given period. As we know, human trafficking cases are often complex cases with multiple victims, involving a number of officers using different indicators. Therefore, success rates may not reflect the effectiveness of the department. Low conviction rates for sexual offences are common in most jurisdictions, so the Ukrainian decision to focus on other sexual offences may be based on utilitarian considerations.
Table 2. Human trafficking criminal cases 1/01/2003- 31/12/2003

<table>
<thead>
<tr>
<th>Category</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Criminal cases opened in 2003</td>
<td>104</td>
</tr>
<tr>
<td>Criminal cases opened before 2003 and pending</td>
<td>130</td>
</tr>
<tr>
<td>Criminal cases brought to court 2003</td>
<td>59</td>
</tr>
<tr>
<td>The number of cases completed in 2003 with the offenders convicted (verdicts)</td>
<td>11</td>
</tr>
<tr>
<td>Criminal cases under investigation by the end of 2003 (unfinished)</td>
<td>20</td>
</tr>
<tr>
<td>Criminal cases closed under art. 6 of Criminal Procedure Code in 2003</td>
<td>6</td>
</tr>
<tr>
<td>Criminal cases dropped under art. 206 of Criminal Procedure Code (adjourned in 2003)</td>
<td>80</td>
</tr>
<tr>
<td>Total number of people under investigation</td>
<td>160</td>
</tr>
<tr>
<td>Total number of victims</td>
<td>413</td>
</tr>
</tbody>
</table>


Table 2 demonstrates that the total number of human trafficking cases (opened and pending) in 2003 was 234, only 59 reached the court, and less than 5% of these cases resulted in a conviction. In the first six months of 2003, seven people were convicted under the old Article 124, and 13 were convicted under the new Article 149 (see footnote 12). However, Lucenko (2004) points out that the actual number of cases is unclear, and (as in later examples from England and Wales) it is difficult to ascertain under which article these cases have been prosecuted. By focusing on convictions in the region of Lugansk from 2000-2003, Lucenko et al (2004) has drawn attention to suspicions of court leniency towards offenders. In 2002, out of 19 criminal cases filed in Lugansk, 16 reached the court and only eight resulted in conviction. None of the convicted had charges complying with those proposed by Section 149 of the Criminal Code. In all cases, the appeal successfully challenged the original terms of sentencing ranging from one to five years imprisonment, to two to three years of suspended sentence (Ibid). Shvab (2007) considers an example of a case where the judge originally sentenced a trafficker to eight years imprisonment, but upon appeal significantly reduced the terms. Such outcomes left police investigators involved to question the decision of the appeal, as well as to suggest corruption and bribery as a possible explanation. Court leniency may be an indication of corruption although the evidence is difficult to gather. Despite this low conviction rate in both countries, and the problems associated with variable definitions and prosecution charges, successful convictions of TfSE still appear proportionately higher in England and Wales than in the Ukraine.

It seems that there is a series of events that contribute to these trends. Firstly, the pre-trial investigation is often not conducted properly due to the lack of resources and

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25 It is not possible to disaggregate cases of human trafficking from those involving sexual exploitation at this stage.
qualifications (such as specific training on the issues of trafficking), then, when the case reaches court, the judges may have their own agenda either in terms of indicators of the successful work of the criminal justice agencies, or reclassifying the offence to make sure that the case prepared is sound and stands a strong chance of conviction. The victim’s willing participation is also crucial to a fair trial. It is thus important to understand why victims often do not want to cooperate with the authorities to achieve this judicial goal and sometimes neglected part of the process.

The position of the victim

The treatment of victims and witnesses in the Ukraine is regulated by legislation concerned with “Protection of victims of crime and witnesses during criminal investigations” adopted in 1994. Unlike in England and Wales, victims of crime have a formal right to obtain protection during any criminal investigation. The law is rather declaratory, however, and may be difficult to implement in practice, due to the financial cost involved. Research conducted by Anti-Slavery International (2002) suggests that “mechanisms for witness protection are hardly developed in general . . . and more often applied to court officials, not witnesses or trafficked persons”. Moreover, Shvab (2007) has highlighted further problems for victims of trafficking, relating to disrespect from the general public and the investigative teams, who confuse stereotypes about people who willingly work in the sex industry with those who have been trafficked.

There is a long tradition of criminalisation of the sex industry in The Ukraine. Prior to the implementation of the Criminal Code of 2001, prostitution was not considered a criminal offence in the Ukraine. However, despite protests from many agencies, Part 1 of Article 303, “Prostitution or committing or introducing the individual to the Business of and Coercion or Enticement into Prostitution” allowed for prosecution of anyone systematically involved in prostitution. Changes introduced in 2006 removed ‘criminal’ responsibility for individual involvement in prostitution. It is important to emphasise the role of the decriminalisation of prostitution in the Ukraine. Shav’s (2007) study suggested that prior to 2006 many traffickers used the criminal standing of prostitution to prevent their victims from going to police. To comply with international law, the Ukraine introduced changes to the Criminal Code, 2001 and ‘reversed’ its decision to use criminal sanctions against prostitutes. From 2006, prostitution has been considered under the Administrative Code of The Ukraine under ‘administrative’ misdemeanours. Criminal charges cover such aspects of prostitution as soliciting, introducing

\[26\] It was considered under the same categories as youthful antisocial behaviour and drinking alcohol in public places.

somebody to prostitution and coercing them to work as a prostitute, which is broadly similar to the UK.

In addition, Shvab (2007) identified lack of confidentiality and minimal qualifications of the prosecution lawyers as potentially damaging for victims. Experienced lawyers are often comparatively expensive, thus only available for the defence of the traffickers, who have the means to pay and very often the victims are not aware of the help provided by NGOs. As table 3 demonstrates, since 2007, law enforcement agencies have begun to inform victims about the activities of NGOs in the country, with the result that in that year, 237 victims applied for help.

Table 3. Victims of trafficking who asked for help from different organisations

<table>
<thead>
<tr>
<th>Organisations</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>International migration organisation</td>
<td>95</td>
<td>108</td>
<td>42</td>
<td>45</td>
<td>86</td>
<td>66</td>
<td>16</td>
</tr>
<tr>
<td>Non-governmental organisations</td>
<td>129</td>
<td>205</td>
<td>440</td>
<td>552</td>
<td>727</td>
<td>824</td>
<td>786</td>
</tr>
<tr>
<td>Law enforcement agencies</td>
<td>30</td>
<td>15</td>
<td>28</td>
<td>9</td>
<td>9</td>
<td>16</td>
<td>14</td>
</tr>
</tbody>
</table>

(Source: International Organisation for Migration, 2008)

NGOs may be best equipped to assist the victims of trafficking, as in the Ukraine the enforcement agencies are comparatively poorly-funded and often not sufficiently trained to deal with assisting victims. The NGOs working on projects financed by either international organisation or governments may be better positioned to provide legal consultation, including funding prosecution lawyers. Another potential explanation of poor take-up is the low level of trust in the law enforcement agencies, as well as high levels of corruption (KIIS, 2007). A number of these issues are not specific to the Ukraine, and may resonate in the UK, as many victims bring with them entrenched stereotypes of their homeland criminal justice agencies. Such stereotypes include: threats from traffickers; a reluctance to discuss personal details; a long and arduous judicial process; the excessive length of the trial; the absence of trust in the police; a lack of understanding of victims’ rights, indeed that they are the victims at all; unwillingness to

28 In one case the victim was informed about the dates for her trial through the village council. Although the trial process is necessarily transparent, the stigma that is often attached to the status of the victim is very difficult to bear. These issues are also volatile in the UK, where it is now a crime under the Sexual Offences Act, 2003 for the name of a victim in a sexual offence-related trial to be divulged.

29 Relating to revenge, making details public, etc.
spoil a ‘relationship’ with traffickers in case the victim wants to travel abroad in the future, which further complicates their status as a ‘victim’; and the long tradition of criminalisation of prostitution in The Ukraine. Interestingly, several law enforcement officers interviewed by Shvab (2007) also suggested that compensation received by the victims from the traffickers may be an obstacle to conviction, as the victim may withdraw the case even when offered a comparatively small reward. Despite these issues, the number of human trafficking criminal cases registered by the Ministry of Internal Affairs cases filed under the Human Trafficking law continues to rise (Lucenko, 2004; Matiyashchek, 2004 and IOM (2007) which suggests that the government is achieving some measure of success.

**Figure 1.**
Number of criminal cases filed in the Ukraine under Article 124 of the old Ukrainian Criminal Code and Article 149 of the New Criminal Code.

Changes introduced to Article 149 in 2006 might help explain the rise in the number of reported cases from 376 in 2006 to 504 in 2007. These changes include a number of significant issues. Firstly, the physical transportation of an individual *outside* of the boarders of the Ukraine is no longer a precondition for the definition of trafficking. So, the law now permits trafficking cases within the country to be heard. There are also improvements related to the actual definition of trafficking (including the definition of recruiting, transporting, hiding, transfer to another person and receivership of a person).
In addition, it is helpful that the term ‘exploitation’ is now defined, and that trafficking in small children and underage children has been differentiated.

The UK: The scale and nature of human trafficking for sexual exploitation

As already suggested, there are widely varying estimates as to the scale and nature of TfSE. As a result, a wide and ambiguous range of figures can be found in research reports around the world, with little regard paid to the estimation criteria used to gather them (Van Dijck, 2005, cited in di Nicola, 2007). Added to this, are the difficulties that arise when attempting to understand official statistics and information relating to offender and victim characteristics. Nonetheless, there is a consensus that, from the information available, trafficking into the UK occurs on a scale that merits serious attention by the authorities.

Most thriving businesses escalate due to demand, and TfSE appears to be one of the biggest growing ‘organised criminal’ industries30 (Roberts, 2006). What constitutes ‘organised crime’ is contested, however. As Spencer (2007) illustrates, ‘gangs’ may be small family affairs, and the costly national response to the ‘transnational threat’ may be mis-directed. The IOM (2005) conducted research on the question “Is trafficking in human beings demand driven?” and found a causal link between labour-protectons and trafficking: “In both sex and domestic work, the absence of effective regulation is one of the factors that help to create an environment in which it is possible and profitable to use un-free labour” (Anderson & O’Connell Davidson, 2005). The UK is primarily a destination country for victims of sexual exploitation, rather than a transit country in trafficking routes (as in the case of The Ukraine), which suggests that there is an existing demand for their services there.

Not a great deal of research exists which focuses on the expansion through demand-debate. However, Anderson and O’Connell Davidson (2005) have suggested that “personal characteristics, including linguistic capacities can matter a great deal to those who buy sex . . .” This premise was corroborated during a recent trial in England, where the Latvian complainant described all of the men she was sold for sex with as being Russian or Latvian-speaking. In the area in which she had been put to work, there is a large and growing Eastern European migrant population, which facilitated meeting demand. The complainant claimed to have been trafficked for sexual exploitation within England, after having come to England legally, to find legitimate work. Here we find again the

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30 According to police and lawyers, up to 80% of ‘off street’ prostitution– in massage parlours, peep shows and brothels – in places such as Glasgow and London, involve women from Eastern Europe and the Baltic states.
backgrounds with which such migration has been connected, (poverty, lack of sustainable livelihoods, structural inequities in society and gender discrimination) though they are not necessarily causes in themselves. However, they do exacerbate vulnerability of marginalised and disadvantaged groups (Sanghera, 2005). In her statement to the police, the complainant stated that she had initially been sold as a sex worker in Latvia, when she was eighteen years old (eight years previously). Such revelations can further confuse the decision-makers\textsuperscript{31} in the legal process, as during the cross-examination of witnesses, their ‘character’ comes under close scrutiny. If it is revealed that they have had previous convictions, previous encounters with the law, or that they have attempted to conceal something that may be relevant to their case (such as having previously worked as a prostitute), they can be discredited, and in some cases, this can mean that the case is dismissed. For example, in 2005, during a trial where the complainant failed to acknowledge her past, the presiding judge stated “she dishonestly and persistently stuck to her assertion [that] she had never previously been a prostitute, but there has now been incontrovertible evidence that her assertion is wholly untrue”. Directing not guilty verdicts, he said because the Russian (complainant) had been proved a liar on that point, it would be difficult to be sure she was telling the truth on other issues. This case illustrates the precarious position that a woman who has a history of sex work can find herself in, should she complain about her working conditions. In this case, because she had previously worked as a prostitute –about which she lied– she was not believed when she claimed she was trafficked and forced into prostitution against her will.

Added to these problems are other potential obstacles to successful outcomes for the trafficked-exploited person, such as: their age, their status within the country (which may be undocumented), their colleagues or peers who may be engaging in illegal activities (Sanghera, 2005), and language barriers during police questioning. All of these additional issues can be barriers to justice. Furthermore, there is a considerable gap that exists between the demand-driven phenomenon and the intervention strategies proposed (rescue, repatriation, rehabilitation and prevention, as well as exploration into options for legal employment) within England and Wales. When a woman is identified as a potential victim of TfSE, she is faced with a range of disagreeable prospects, such as testifying against her trafficker and making police statements, which may implicate a wide range of other people, and result in criminal charges for herself and in deportation. She is transformed simultaneously into both a victim and a criminal (Sanghera, 2005).

Many women choose to ‘disappear’ or opt for immediate deportation, only to return and take up sex work in alternative and possibly safer environments. These issues highlight further the problems that can be associated with successful prosecutions of traffickers, when the ‘victim’ was once a willing prostitute, but is now unwillingly working in certain, undesirable conditions.

\textsuperscript{31} Such as the jury.
In England and Wales there are a handful of refuges where women seeking support can turn. Since 2003, the Poppy Project, funded by the UK Government\textsuperscript{32} has, offered thirty-five beds to ‘suitably’ abused women. There are a number of criteria that women must agree to before they are given refuge at the Poppy Project, namely that they are encouraged to co-operate with the authorities (agree to testify against their abuser, give information to law enforcement agencies for intelligence purposes or agree to be a witness in court) (Poppy Project, 2008). They have to have been trafficked to the UK, and forced to work as a prostitute in the UK in the three months prior to the date of referral. According to the English Collective of Prostitutes\textsuperscript{33}, “the fear of arrest and being detained and deported is the single biggest obstacle to coming forward”; a fear that will arguably be aggravated by criteria posited by the Poppy Project. These fears are comparable to those expressed in the Ukraine, as cited earlier in the chapter. One victim in The Ukraine is recorded as stating “The traffickers told me that if I go to the militia they would first open a criminal case against me, as I was a prostitute. And only after that would they think about the traffickers themselves. But who is going to seriously listen to me if I am myself a criminal?” (Shvab, 2007).

Appalling levels of violence mean that women often deny they have been trafficked when ‘recovered’ in raids by the police or refuse to disclose their experiences. This applies particularly when, in contravention of Home Office guidelines on gender, they are questioned by men, using male interpreters (Roberts, 2006). In October, 2005, when ‘Cuddles’, a Birmingham massage parlour was raided, police discovered 19 women, six of whom were illegal immigrants, who they transferred to Yarl’s Wood immigration removal centre to face deportation within days. Immigration officials claimed that none of the women indicated that they were trafficked into the UK (Roberts, 2006). It is not surprising that the women failed to disclose their circumstances in such an intimidating environment.

If the women were not trafficked at all, those cases should not be made with human trafficking in [other] discussions. Adams (2007) has expressed concern for the very motives underlying government scrutiny, suggesting that trafficking “is being used to target and deport immigrant sex workers.” There is little evidence that a distinction is made between genuine victims and immigrant sex workers – especially since so few make it to court, and to date, no information pertaining to the status of the 88 ‘rescued’ victims through Operation Pentameter 1 has been forthcoming. The Poppy Project has claimed that although 99% of women who are trafficked tend to be refused stay in the UK, about 80% of women win their cases on appeal (Hibbert, 2007). This figure, however, is based on those women who admit to having been trafficked, pursue their

\textsuperscript{32} The Government pledged £2.4 million over 2 years in 2006.
\textsuperscript{33} BBC News, 2\textsuperscript{nd} October, 2006, “A Tiny Drop in the Ocean”, accessed at http://news.bbc.co.uk/1/hi/uk/5365412.stm

138
cases and have the support of the Poppy Project. Therefore the data seems not to include those women who are deported quickly, and who do not fit the Poppy Project selection criteria.

**Discussion of legal responses to trafficking & related offences in England & Wales and the Ukraine**

Following the first Operation Pentameter\(^34\) in 2006 in the UK, 232 arrests were made, of which 134 resulted in charges.\(^35\) It has not been made public what specific charges were brought following these arrests. By examining national judicial statistics published through the UK Ministry of Justice for 2005 and 2006, it is possible to identify some trends relating to specific crimes. For example, there were 33 and 43 “Trafficking for Sexual Exploitation” crimes recorded, respectively in 2005/6. Bearing in mind that some charges recorded in 2004 may not reach court until later, there still exist a large incongruity between arrests and subsequent convictions (12 and 15 respectively) under identifiable categories. Furthermore, appeals can alter published criminal statistics from year to year. As a result, it is very difficult to present a complete picture of the success or otherwise of criminal procedure relating to TfSE to date. It is hoped that by highlighting these difficulties, it will become possible to address them in the future.\(^36\) Based on such confusing information, it is difficult to appreciate how the allocation of police activity, publication of statistics and prevention programmes can be effective.

The majority of police forces in England and Wales have limited knowledge of, and thus give restricted attention to, trafficking,\(^37\) and there is a danger that this unintentionally creates a climate of toleration for trafficking of women into and within the UK. Styles of policing reflect ‘cultural, religious, economic, political and historic realities’ (Fairchild & Dammer, cited in Pakes, 2003) and comparing police activity or ‘success’ in either country can be problematical. In addition, as in the Ukraine, establishing ‘intent’ to traffic, until the crime is committed is problematical (Sanghera, 2005: 16).\(^38\) Even when police and prosecution services successfully bring a case to trial, all kinds of barriers exist to conviction, as demonstrated above. In 2006, 43 charges of Trafficking for sexual exploitation were brought in the UK, but only 16 made it to court under

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\(^{34}\) See footnote 7 for more information.

\(^{35}\) Ministry of Justice, 2007.

\(^{36}\) When the authors requested more comprehensive data from police in the UK, under the Freedom of Information Act, we were informed that such information is not held on local police systems (email correspondence, Cambridgeshire Constabulary, 2008). We are still pursuing the data.

\(^{37}\) The government in the UK have pledged to address this deficit in 2008 (Avenall, 2008).

\(^{38}\) Although through Pentamaeter 1, one trafficked-girl was intercepted and rescued by police and never reached her destination.
these charges. It is possible that some of the trafficking charges were discarded, at the pre-trial stage, to align with guilty pleas or stronger evidence relating to exploitation of prostitution\(^{39}\), and this may explain why the convictions relating to convictions for procuration or exploitation of prostitution (as shown in figure 2) have risen slightly from 23 in 2004 to 39 in 2006. Comparable data for the Ukraine is not available after 2002.

**Figure 2.**
Convictions for ‘procuration’ in the Ukraine and England & Wales

![Convictions for 'procuration' in Ukraine (2002) & England & Wales (2002-6)](image)


Defendants may be more likely to admit to ‘procuration’ or keeping a brothel than trafficking charges, due to the more lenient sanctions that can be imposed. Even with evidence of coercion as an aggravating factor, the minimum sentence upon conviction of ‘causing, inciting or controlling prostitution for gain’ is between two years minimum and seven years maximum. In contrast, a conviction under ‘Trafficking for sexual exploitation’ will receive a sentence of between two to 14 years, depending upon aggravating factors. Clearly, the message here is that trafficking for sexual exploitation is a much more serious offence than sexual exploitation, despite the fact that the ‘victims’ may be experiencing comparable levels of victimisation. Discussions relating to these

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\(^{39}\) Such as Causing or inciting prostitution for gain (*Sexual Offences Act 2003 Sec 52, 24/18*). Controlling prostitution for gain (*Sexual Offences Act 2003 Sec 33A (53.24/19)*. Keeping a brothel used for prostitution (*Sexual Offences Act 1956 Sec as added by Sexual Offences Act 2003 Sec 55*).
incongruities are beginning to emerge in the Appeal Courts in the UK, and will be considered later in the chapter.

Factors that can determine ‘success’ at court

The authors have witnessed some of the factors that can lead to the collapse of cases in England and Wales. This is without the judicial and official levels of corruption that are manifest in The Ukraine. In the first place, translation issues can pose enormous problems for all parties involved. If a witness is interviewed during police questioning in her mother-tongue, her translated words will be closely scrutinised by the prosecution and the defence. Any flaws in translation can potentially render her testimony invalid, which can hinder a fair trial. Furthermore, the length of time that cases take to get to trial can have serious implications for the witnesses, especially those who choose to return home or are deported. Travelling back to the UK months later, facing their trafficker and rapist, re-living their ordeal under rigorous cross-examination, whilst trying to recover, can all be debilitating and contribute to illness, post traumatic stress and worse. If the victim has a history of drug use or prostitution, previous convictions or any other ‘bad character’ background, there is anecdotal evidence that her testimony may be discredited and even discarded. Financial difficulties can be compounded by further risks, especially when witnesses are denied access to services in the UK. The Poppy Project has evidence of cases where women still at risk from their traffickers have sought legal advice and been told they will not receive legal aid. In one case, the Project was made aware of a woman who was forced to continue being exploited in the sex industry in order to pay for her asylum claim, further jeopardising her claim as she was still in contact with her pimps / traffickers (Poppy Project, 2006). Victims’ identities are not always sufficiently protected through the use of protective measures in court because these are ad-hoc and not used systematically. The decision to employ them is a judicial one and the Judge is not required to consider a victims’ particular vulnerability as a victim of trafficking. In addition, unlike in the Ukraine, there is currently no link between a victim’s willingness and ability to testify in court and their on-going protection in the UK – witnesses may therefore testify without any protective measures yet still face being removed from the UK to their country of origin, potentially facing reprisals (Poppy Project, 2006). Such a situation is far from desirable, especially considering the weight that the government in England & Wales is currently attaching to TfSE.

40 Such as testifying with an alias, using protective screens or video-links, not releasing victim’s names to the media.
Although the UK government’s action plan says the Crown Prosecution Service regards human trafficking cases as a priority, there have been only 67 convictions\(^{41}\) so far for trafficking under the Sexual Offences Act 2003, and these are difficult to pinpoint in official statistics, possibly due to publication dates\(^{42}\). The Joint Parliamentary Committee on Human Rights (2006) has stated that there have been too few prosecutions under existing laws, and even the Under-Secretary of State has highlighted the fact that there have been no convictions to date for forced labour under the Asylum and Immigration Act 2004 (Coaker, 2007). Furthermore, it was announced that under Operation Radium [see footnote 7], which was launched in August 2007, that 20 arrests had already been made in connection with TFSE. None of those arrests have resulted in a trial to date (June 2008), four people have since been charged with trafficking offences, and are awaiting trial. If there really are 25,000 ‘sex slaves’ working in massage parlours and brothels\(^{43}\) in the UK, those conviction figures are derisory.

**Figure 3.**

Successful prosecution rate for trafficking for sexual exploitation cases

![Graph showing successful prosecution rate](source: Levchenko, (2007); Svab (2007) (The Ukraine) & Home Office & Ministry of Justice (2007) UK.)

\(^{41}\) Vernon Coaker, UK Parliament, November 26\(^{th}\) 2007. This figure does not tally with data released from the Ministry of Justice that specifically relates to TFSE. Even if the 11 noted but unofficial convictions for 2007 are included (MacShane, 2007) official statistics in UK only show 38 convictions for TFSE.

\(^{42}\) Parliamentary discussion took place prior to publication of statistics.

\(^{43}\) As suggested by MacShane, in UK Parliamentary discussion, November 26\(^{th}\) 2007.
Figure 3 compare cases brought, trials and convictions in England and Wales with broadly comparable data from the Ukraine. The graph shows that, despite the growing number of criminal case opened and reaching the court, the number of cases completed and the offenders convicted is still comparatively low in both countries. Only of 13% of recorded criminal cases in 2006 in the Ukraine resulted in successful conviction, compared with 35% in England and Wales in the same year. In the Ukraine, 26% of cases that reached the courts resulted in a conviction, compared with 94% in England and Wales. As a source country, the Ukraine is likely to have a comparatively high incidence of human trafficking, as the recruitment stage of the trafficking process is undertaken within the country. This does not explain the relatively low conviction rate, however. Furthermore, there are difficulties, as mentioned previously in how such crimes are defined in the two countries.

In the Ukraine, it has not been possible to discover the sanctions imposed following all of the convictions. Did the judges follow the letter of the law and impose recommended terms of sentencing, or did an appeal process successfully convert it to a suspended sentence, as described earlier in this chapter? The authors cannot address this question at present. In England and Wales, sentencing guidelines recommend a maximum imprisonment length of 14 years and it appears that the full sentencing range is being administered upon conviction, depending upon aggravating factors included in the case. Furthermore, appeals seeking for sentence reduction have been denied (see R. v Maka [2005],) where the Appeal Judges noted the increasing and degrading nature of human trafficking, which had echoes of slavery). Some appeals have resulted in an increase in sentence (see R. v Plakici [2004]). In the case of Plakici, it should be noted that the appeal took place after the implementation of the Sexual Offences Act (2003), which gave judges more specific direction. However, recently sentences have also been reduced on appeal, as in the case of R v Roci, R v Ismailaj [2005] and R. v Makai [2007]. In Makai [2007], the Appeal Judges conceded that one of the effects of activities associated with prostitution is that women are forced “to work alone and make their own arrangements to work, a position at odds with any other sector of lawful employment”. This solitary work can itself evoke many negative repercussions, which can be addressed somewhat by working with an ‘agent’ or facilitator (trafficker). The judges went on to suggest that “women’s vulnerability is likely to be compounded by legislation which compels a prostitute to work alone rather than in a regularised sector”. The judges considered that the traffickers in this case had been helping women find work that was dangerous for foreign women alone to undertake. Further, they observed that the appellant’s level of criminality was low in other areas, and that the offence was a

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44 See Gilbert’s (2007) useful discussion of Maka and Plakici for more information regarding these cases.
45 Or see R. v Kizlaite, R. v Axhami [2007]
“reflection of the economic realities of intra-community migration and an inconsistent legal approach to prostitution”. These mitigating factors contributed to a sentence reduction from 40 to 30 months for the appellant. The message from this appeal decision is somewhat at odds with the image of the trafficker as an evil exploiter. Although the judges’ decision may have been appropriate in this case, the potential of the trafficker as a ‘facilitator / helper’ may benefit from a more detailed examination, if it is to be considered as a mitigating factor in some cases.

In March 2007, the Home Office in England and Wales, and the Scottish Executive published the UK Action Plan on human trafficking. The plan recommended a number of proposals, such as closer scrutiny of internal trafficking, including British women and girls who “may have been lured into prostitution, but from which they cannot escape due to the use of violence or coercion” (Home Office, 2007). To date, the authors have found no evidence to suggest that this has become a priority for any police target or has resulted in prosecutions. Instead, offences involving illegal immigration receive the greatest attention. This has precipitated problems when it comes to identifying trafficked persons and protecting their human rights. Practitioners (such as social workers, NGOs, or police) often do not imagine that people legally entitled to be in the UK could possibly have been trafficked (Skrivankova, GAATW, 2007), leading to too strong a focus on the immigration status of trafficked persons. In addition, the plan announced the establishment of a new UK Human Trafficking Centre (UKHTC) which aimed to become a central point for the development of expertise and operational co-ordination in relation to the trafficking of human beings. It was stated that the UK would not sign the Council of Europe Convention until they were clear that they were in a position to ratify. There are some recent documented plans that the UK government intends to ratify by the end of 2008 (Avenall, 2008), but the convention entered into force in February 2008, without the UK as a party.

A sticking point for the UK in the Council of Europe Convention has been Article 13, which obliges states to provide a recovery and reflection period of at least 30 days where there are reasonable grounds to believe that a person is a victim of trafficking. Such a period shall be sufficient for the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities. During this period it shall not be possible to enforce any expulsion order against him or her. This provision is without prejudice to the activities carried out by the competent authorities in all phases of the relevant national proceedings, and in particular when investigating and prosecuting the offences concerned (Chapter III, Article 13.1). During this (30 day period), the victim should be offered opportunity to

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46 The first European treaty in this field, which sets out measures not only to prevent trafficking in human beings and to prosecute the traffickers but also to give real protection to victims of trafficking and safeguard their human rights.
recover from the violations they have experienced and decide whether or not to co-operate with the authorities. The ‘reflection period’ should be unconditional – bearing no relationship with the victim’s decision or refusal to co-operate with the authorities. Article 13 stipulates that the competent authorities are not permitted to implement enforcement measures such as deportation during this period. 30 days is arguably not long enough to recover sufficiently, and some have recommended that the Government should grant a longer period, such as 3 months (Home Office, 2007). Not much mention is made of the victim’s wishes in this decision – whether she would prefer to return, stay or wait a while to reflect, which again suggests that the victim’s position is not a priority. Even less information is available in the UK regarding the status of the victims following their identification by the authorities. Further, Article 14 of the Council of Europe Convention recommends issuing renewable residence permits\textsuperscript{47} to victims of trafficking. Currently victims who give evidence have no guarantee that they will receive the right to remain in the UK even though as a result of co-operating they may have placed themselves and their family at increased risk of retaliation and harm from traffickers (Amnesty International UK, 2007).

**Conclusions**

We have analysed the experiences of two different countries, one operating as a source for the traffickers, and another as a sink for the women trafficked; one with a tradition of justice through fair trials, and the other with a demonstrable tradition of a corrupt judiciary. Shelley (2007) suggested that in some countries, “massive corruption undermines the capacity of the legal system to combat trafficking because police, border and customs officials have been bought off by the traffickers and smugglers”. In the Ukraine, low conviction rates and lenient sentencing may partly be explained by endemic corruption at various levels of law enforcement, combined with prejudice against prostitutes, often the victims of trafficking. The number of cases reaching the courts in both countries raises questions about the level of protection afforded to such victims, the lack of ‘unconditional’ secure accommodation for witnesses and victims, lack of trust in the authorities (law enforcement officers in particular), and finally inadequate training of law enforcement officers in this area.\textsuperscript{48} Official statistics seem to suggest that successful prosecutions are difficult to achieve, due, in part to the prosecution criteria

\textsuperscript{47} The ‘victims’ personal circumstances to be taken into consideration include, but are not limited to, their safety, health and family situation. States must set a length compatible with Article's purpose and that permits must be ‘renewable’.

\textsuperscript{48} This point has been highlighted in the UK, and plans to provide comprehensive training for police officers have been prioritised (Avenall, 2008).
used, and a very complicated trial process, which often relies on co-operation from individuals and bodies overseas.

These difficulties are compounded by disagreements *between* human rights campaigners: from those who would make the sex industry more illegal and prosecute and punish men involved as clients and otherwise\(^\text{49}\), to the Human Rights Caucus, which seeks to separate sex work and trafficking, and to define trafficking based on working conditions.\(^\text{50}\) In England and Wales and in the Ukraine, the public’s understandable concern for victims of trafficking may be being exploited to promote a moralistic and dangerous crusade against prostitution. “... anti-trafficking measures are still being used to justify a raft of measures which are aimed at suppressing sex work in general” (International Collective of Prostitutes, 2008).

Questions also arise relating to crossing borders. Kapur (2005) suggests that an unhelpful division has been presented, which separates the worlds, where the problem exists ‘over there’, where the occupants themselves are in need of rehabilitation, recovery and civilisation (cited from Mohanty, 1991). She continues “both governmental and non-governmental initiatives reinforce the images presented in the media that promote stereotyped construction of the trafficked victim as foreign, innocent and ignorant” (cited from Doezema, 2001). If so much of the responsibility lies with the economic devastation in some countries and opportunities that have arisen through the opening of borders, then what use can backward-looking legislation do in the overall picture? A much more fundamental and holistic approach is necessary, if we are to cul the market that *demands* such a business as trafficking in humans. This highlights further issues, relating to the role of men, per se, which has largely been “ignored, both as agents of positive change and as buyers of sexual services . . . and seldom discussed in trafficking contexts” (Abraham, 2001).

Further challenges exist in eroding the prejudices and polarities that exist between (smuggled) women who ‘choose’ prostitution, and are ‘guilty’ (and undeserving of human rights protection), and the (trafficked) woman who is ‘innocent’ (Anderson, 2007). Clearly, workers, migrant or not, cannot be divided into two entirely separate and distinct groups. Violence, confinement, coercion, deception and exploitation can and do occur within both legally regulated and irregular systems of work, and within legal and illegal systems of migration (*ibid*). Trafficking does not have to take place across international borders: one does not need to be ‘illegal’ in order to be trafficked, as one does not need to be a ‘prostitute’. Traffickers as men (and women) are represented as ‘other’, as ‘agents of evil’ and simultaneously, conjure up images that vilify corrupt

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\(^{49}\) Some even sought to include prostitution and other sex work in the definition of trafficking in human beings (Ditmore, 2005).

\(^{50}\) Also joined by sex workers and those advocating sex workers rights, who recognise sex work as a form of work, and who seek to improve conditions, and affording legal recognition to the sex industry.
governments, single out alien criminal gangs and highlight the helplessness of the vic-
tims. Such images, and the dichotomous understanding on which it has been con-
structed, fails to comprehend the complexities within the nature of trafficking and its
weaknesses. "The focus of anti-trafficking initiatives at the domestic, regional and in-
ternational level is rarely on providing women-who-move with human rights – the
tools that are critical to fighting abuse, violence and harm [that] they may experience in
the course of movement" (Kapur, 2005). Instead, the focus remains firmly on detec-
tion, identification of suitable victims and fitting culprits.

The migrant (sex) worker is thus cast as a transgressor, incomprehensible, and exist-
ing completely outside the framework of liberal democracy, defined as a threat to the
nation-state and as backward, uncivilised and dangerous (ibid). Simultaneously, the
trafficker is cast as evil, opportunistic and exploitative. A more explicit distinction must
be made between the sexual exploiter and the facilitator/travel arranger. Not all
women who are moved around the world are exploited in prostitution and not all
sexually exploited women are moved around.

Although the issues discussed in this chapter relate to two very different countries,
many of the problems experienced therein are shared. Definitional and legal terminol-
ogy can be difficult to interpret for law enforcement agents, victims and even judges.
Laws relating to TiSE are still relatively new in many countries, which can result in
tentative or inappropriate uses of them initially. Appeals provide jurists with a clearer
understanding of the application of the law. Though the disparity in sentences that are
available for these offences are marked and recent appeals in the UK have demonstrated
that the situation is far from satisfactory in terms of clarification of gravity of actions. It
is hoped that the next few years will provide a much more supportive framework for
understanding the complicated nature of the application of legislation relating to traf-
ficking in humans for sexual exploitation.
**References**


King, E., “Woman raped in people trafficking racket, court told”. In: *Wisbech Standard*, 1st April, 2008


Lewis, P, Woman smuggled baby into UK ‘to qualify for housing priority’. In: *The Guardian*, Saturday April 12th, 2008


Poppy Project, Home Office and Scottish Executive: Tackling Human Trafficking – Consultation on Proposals for a UK Action Plan, Response from the POPPY Project, April 2006

Roberts, Y., “Raped, beaten and helpless: UK’s sex slaves”. In: The Observer, Sunday April 2 2006

Safety First Coalition, Briefing from the Safety First Coalition: Criminal Justice & Immigration Bill 2008, Aspects relating to prostitution, accessed online at: www.allwomencount.net/EWC%20Sex%20Workers/CJ&IBLordsBriefing.htm


Scott, J. G., How modern governments made prostitution a social problem: Creating a responsible prostitute population. The Edwin Mellen Press, 2005


Svab, I., Putannya rozsliduvannya ta rozhladu v sudah sprav s torguvli ljudmu. [Questions of investigation and hearing of the human trafficking cases in courts]. Kiev: KLGZ, 2007


Police corruption through the eyes of bribers
The ambivalence of sinners

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Introduction

One might find talking about corruption tedious: so much has been written about it, yet so little improvement has been made. It is exactly because of the latter that corruption still deserves discussion and research. This is especially true for Bosnia and Herzegovina (hereinafter B&H). There are good reasons for addressing the issue of corruption in B&H, some of the most important being the tangible effects on everyday life, such as higher cost of living or increased poverty (Transparency International, 2006). The political effects of corruption include distorted legitimacy of government, selectivity in law enforcement and implied insecurity of citizens, and last but not least, the artificially created inefficiency of governmental institutions. It can be argued that these are at least as detrimental as the above mentioned economical impact, or may be even worse. The importance of the latter is considered even more significant, bearing in mind the country’s ultimate intention to become part of the European Union, and corruption is marked as one of the biggest obstacles in that regard (Council of Ministers B&H, 2004; Commission of the European Communities, 2007).

The question addressed in this chapter is not whether corruption exists in B&H. That is a rhetoric question: corruption is omnipresent, penetrating all segments of society. Therefore, researching corruption is not merely a matter of updating with what is currently happening in the world of the academic state of the art and the policy discourse. It is also engaging in what the people of B&H experience as a matter of daily life. And part of this daily life experience of corruption happens in the interaction with the police. For this reason this chapter will be devoted to police corruption which has been researched in the first nation-wide research project conducted under the title “Overtly about Police and Corruption”. Some of the results of this project will be

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2 The research project was financially supported by the Open Society Fund Bosnia and Herzegovina and carried out by researchers of the Association of Criminalists in Bosnia and Herzegovina. The full report in English can be downloaded from the web-site:
presented in the following sections.

The project encompassed several stages during which legal international anti-corruption obligations applicable to the country were analysed (UN and Council of Europe legal instruments):\(^3\) the compliance of the national legislation with international obligations related to the definition of corruption; the anti-corruption organisational structure of the police; police powers in fighting corruption and research in the field of corruption assessed;\(^4\) official statistics on corruption screened and evaluated and a survey of the police and citizens.

Official statistics indicate a high level of corruption within the police forces, a finding confirmed by surveys (Maljević et al., 2006). The study also reveals that B&H has to harmonize its legislative framework in order to effectively tackle the issue of widespread corruption (ibid.). But, having an improved normative framework would not per se produce any change. The implementation of laws was and remains the weak side of the anti-corruption policy. In a society accustomed to lack of accountability and informal ties (ESI, 2004), transparency and integrity is in need of intensive promotion, because otherwise any anti-corruption effort will remain completely ineffective and regulations a dead letter. Thus, a survey of feelings and attitudes of the public can contribute to a better understanding of social climate in the country and could point at new priorities in anti-corruption activities.

From the exploratory findings presented in this chapter the authors will examine how the citizens of B&H view the level of corruption in their country, and especially how corrupt, to their opinion, police seems to be. Although one could research corruption in any public institution, examining police corruption as a specific case is both important and practical because the police are often seen as a “crucial barometer of a healthy society” (Punch, 2000:301). Therefore, it can be argued that what the public feels about the police serves as a good indicator of what the public feels about authorities in general.

B&H: the political system

B&H is a small country, situated on the Balkan Peninsula, with a population estimated at 3.85 million. With a territory of 51,209 sq km, it shares borders with Croatia, Montenegro and Serbia, and has a small exit to Adriatic Sea. Per capita income in the country is $3,815 (2006 estimate), and the unemployment rate is among the highest in Europe, reaching 31,1% in 2007 (Agency for Statistics of Bosnia and Herzegovina, 2008).

\(^3\) The analysis based on 12 international legal instruments.

\(^4\) The analysis based on 80 domestic legal instruments.
B&H has had its current constitutional structure since the end of the war in 1995. According to the Constitution of B&H (which is actually Annex IV of the Peace Agreement, a document that formally marked the end of the war), B&H consists of two entities, Federacija Bosne i Hercegovine (populated predominantly by Bosniaks and Croats), Republika srpska (populated predominantly by Serbs), and Brčko Distrikt Bosne i Hercegovine (no predominant ethnic group), each having a high level of autonomy, a separate administration and their own criminal justice system. Furthermore, the Federation of B&H consists of ten cantons, again with a high level of autonomy. This decentralized territorial-administrative setting leaves state-level institutions fragile, “with no real authority over the entities” (ICG, 2007). In reality, there are still three different (ethnic) establishments, influencing virtually every decision made at any level, causing decision making to be a complex and slow affair. Ethnicity still plays a key role in the political life, diverting attention from the real, every-day problems of ordinary citizens to ethnocentric debates; making the country’s move towards economic progress and stability a matter of very small steps. The war with its nationalistic-chauvinistic features produced insecurity and fear, which became deeply embedded in people’s minds and this is still visible today. This has caused a very strong tendency of the voters to stick to the parties who promote most aggressively the interests of the ‘nation’ they belong to. With the rule of law considerably weakened many politicians turned criminals having perfect opportunities to continue their criminal (and corrupt) activities unpunished (Kutnjak Ivković and O’Connor Shelley, 2005; Devine and Mathisen, 2005).

In the institutional structure of post-war B&H the High Representative of International Community plays a special role: he has the authority to facilitate all activities connected with civil aspects of the Peace Agreement. Since his formal introduction into political life in 1996, he has used his powers extensively, although this trend has decreased since 2006 (International Crisis Group (ICG), 2007).

The legacy of the war is not the only problematic issue in B&H. From the beginning of the nineties, B&H, as former socialist country, has undergone major political and economical changes as well. The transition of the political system from communist, one-party model to a democratic, multi-party system, although formally introduced in 1990, in reality still proceeds very slowly. The system of checks and balances in a country not used to democratic control, simply does not work (European Stability Initiative (ESI), 2004). B&H officials do not feel that they should be held accountable, while transparency and responsibility are still considered only exotic imports from the West. Therefore, the vast majority of decisions made by the decision-makers are much more a result of compromises between their particularistic ethnic considerations, rather than a response to people’s real needs.

Meanwhile, as a result of country’s ultimate intention to become a part of the
European Union (EU), the B&H authorities are negotiating with the EU representatives, the signing of the so-called Stabilisation and Association Agreement (a tool to become a part of the EU). The main obstacles in that regard are constitutional and police reform. Constitution of B&H is a part of (Dayton) Peace Agreement, the document that brought peace into the country, but against high costs: the present territorial-administrative setting is a precedent in Bosnian history. Apart from this, it resulted in a setting in which the entities have more powers than the state itself. The EU, however, does not want to negotiate the accession procedures with two entities separately, but only with one central government. This means that the need for the constitutional reform is the most debated political issue in Bosnia and Herzegovina at the present time. In its essence it would entail the transfer certain responsibilities from the level of the entities to the state.

One of the issues strongly related with the constitutional reform is the reform of police. At this stage, every entity has its own police force. In itself this should not be a major problem: there are many other countries with a complex constitutional and corresponding police structure. The real problem, however, is the willingness of the different police units of the entities to cooperate. This has far reaching consequences for security, not only within the country but in the region as a whole (see for example Maljević, 2005). It is therefore understandable that the EU made it very clear that the major priority of security should ensure that the police structure must be integral and functional.

The overall corruption profile

Since the end of the war, corruption has been recognised as one of the most acute problems. As early as 1997, the European Commission’s Customs and Fiscal Assistance Office (CAFAO) reports on extensive corruption, fraud and diversion of public funds in B&H. Soon after that, in his USAID sponsored report, Stephen Mansfield writes that “bank fraud, customs fraud, tax fraud, procurement fraud, bribery, extortion and an active organized crime network severely undermine economic and democratic reforms. The losses resulting from fraud and corruption appear massive, yet cannot be quantified accurately due to the lack of transparency in government and business operations.” (cited in Office of the High Representative(OHR), 1999: 9).

Diversion of monetary help to the government(s) of B&H raised another survey, conducted by United States General Accounting Office (GAO, 2000). In his testimony, Associate Director of the Office asserts that crime and corruption are endemic in the country and even threaten the peace.
The situation was recognised as being ripe for an anti-corruption strategy which was introduced in 1999, and coordinated by the Office of the High Representative. It was a comprehensive approach, addressing the system as well as the individual, to further the reduction of corruption. However, the World Bank’s “Anticorruption in Transition” surveys from 2000 onwards, which constantly showed high levels of both state-capture and administrative corruption in the country, demonstrated that the strategy produced little in the way of tangible results. Furthermore, at the request of the governments of B&H, the World Bank conducted in 2001 the Diagnostic Survey of Corruption. This survey pointed again at the high level of corrupt practices within all levels of society. As regards the corruption pattern, the survey reports

“(a) high level of public concern with corruption, (b) low level of public trust in the governments, (c) state capture and conflict of interest, (d) public administration inefficiencies reflected in widespread bribery in public offices, (e) distorted business environment and (f) a significant burden on poor households, exacerbating poverty and inequality” (2001: 12).

The local prominent corruption watch-dog and research role is played by the local branch of Transparency International, which became active in 2001. In its Corruption Perception Index designed to approximate the level of corruption across the nations, Transparency International ranks B&H in 2007 on 84-94th place, out of 179 countries covered. In its recent National Integrity Study, Transparency International reports that B&H still faces “serious corruption challenge” (2006:15). An area perceived as heavily corrupted is the public administration, both at municipal and higher level, the highest officials included. Especially ‘attractive’ are public funds, companies and privatisation processes, which are often mismanaged and riddled with high ranking corrupt officials (ibid.). Such pervasive corruption within all levels of executive branch is, according to the Transparency International, enabled by the support of the criminalised political elites.

In its recent study, the World Bank (Anderson and Gray, 2006) recognised some progress regarding corruption reduction in B&H, but still observed the presence of a highly dangerous state-capture with top officials as actors. For example, Dragan Čović (head of one of the leading nationalistic parties), although sentenced for serious abuse of office, still plays a significant role in the political life of the country. He even actively participates in recent debates concerning constitutional and police reform.

This brief overview of the situation in the field of corruption in B&H reveals that the level of corruption in B&H was, and still is, dangerously high. It is rampant in all segments of life, in all of its forms: “bribery, nepotism, embezzlement, diversion of

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public funds, tax fraud, illegal rent seeking, kick-back schemes, and the like.” (Devine and Mathisen, 2005: 1). However, it seems that public sector corruption dominates the B&H “corruption landscape”. This gloomy picture of the corrupted society underlines the necessity of a more determined, all social aspects encompassing approach. If any success is to be achieved a broadly supported massive public rejection of corruption must be aimed at.

The roots of corruption: the legacy of the past . . .
and the story continues

As in any country, corruption is certainly not a unique phenomenon in B&H. It has, however, some specific features due to the unique historical context in which B&H developed. One of the deeply rooted causes of corruption in B&H may be the absence of democratic tradition, whose main feature is accountability. In this country all important decisions used to have been imposed from above (ESI, 2004), while over the past 120 years, the administration tended to act ineffectively and self-oriented. It is no surprise that today’s B&H is still burdened with weak public institutions, a situation strongly amplified by the war. Little surprise that decision-makers still living in this tradition, do not feel obliged to be held accountable.

History has done little to further another course. During the Austria Hungary era (which gained power over B&H at the end of the nineteenth century), the administration adapted to the Austrian empirical tradition. This entailed no general public accountability, as the public servants were appointed by the Austrian authorities. A small entrepreneurial class emerged, but it was too weak to gain ‘ownership’ of the economic and political life of the country. In this regard little has changed after the First World War when B&H became a part of Kingdom of Yugoslavia, with an authoritarian regime and a corresponding political decision-making characterised by an absence of accountability to the local population (ibid.).

While B&H was a part of Yugoslav federation (after the World War II), its socialist philosophy deeply pervaded every aspect of life. Transparent decision making and accountability were considered exotic terms. The communist’s regime main feature was the one-party political system, where no consequences in terms of “electoral defeat” for corrupt or otherwise illegal behaviour of public servants could be drawn. There was no mechanism which could empower citizens to pressure the governors to be held accountable for their work. There was no separation of powers, given that both political and economic institutions were communist party driven. The political culture in which “the [communist] party is the natural organ of rule” (ESI, 1999), allowed the party to infiltrate all other (public) institutions. It is therefore no surprise, that in “a career to
political power, individuals may move regularly between party positions, executive offices and management boards of socially owned enterprises” (ibid.), ignoring any kind of liability. The citizens felt disempowered and apathetic. The whole environment fostered the image of public servant who is not being held accountable for errors.

Therefore it was to be expected that widespread corrupt practices enfolded in the Yugoslav era too, where ‘ordinary citizens would regularly solicit corrupt transactions in order to speed up the workings of a bureaucracy which had few incentives for efficient operations (Devine and Mathisen, 2005: 8). The whole ‘Yugoslav’ period of B&H existence is therefore characterized by weak democratic institutions and values, non-transparent decision-making and low economic development (ibid.).

The war of 1992-1995 ensured the continuity of the ‘non-liability’ climate. At the eve of Yugoslav federation, the leading nationalist parties in B&H “became the successors to the communist party, taking over its tools of social and economic control. War-time conditions allowed them to construct still more authoritarian power structures, through their monopoly on violence and their control of informal economic activity” (ESI, 1999: 2). Inheriting the attitude in which ‘loyalty counts’ leading parties controlled (and still do) the administration, economy and the military by influencing the processes of appointments and dismissals (ICG, 2007).

As stated above, today’s political life is characterized by large number of competencies on the local level, as well as ethnicity as a key component in the political life of the country. The fragmented administrative organisation and the diversion of attention to ethnically coloured issues, fosters the climate in which politicians –while in power– do not feel they need to be bothered by legitimacy and efficiency. Instead, they indulge in endless debates on highly abstract concepts of ‘nation’, ‘ethnic identity’, and the like. While hardly, if at all, focusing on their real mandate, of which its most important aspect should be the economic problems of ordinary citizens. It is therefore safe to deduce that issues characterising the country traditionally –lack of accountability and passivity of the public– still remain the dominating feature of the B&H political life.

Previous findings of public’s police corruption related attitudes

Although much has been investigated in the field of corruption in B&H, the majority of research refers to international organisations or governmental financed surveys, but not to academia. Nevertheless the findings of these studies may shed valuable insights into how the public in B&H perceives the corruption and related phenomena. In order to gain a detailed overall picture of the magnitude of police corruption and especially how the public feels about it, a brief overview the main findings of some of these studies will be presented here.
One of the first nation-wide investigations of the public's perceptions of the authorities and their integrity was that of the World Bank (2002), dealing with the citizens' assessment of local institutions' performance. This report indicates high level of public distrust of the police, marking corruption as the second biggest problem in providing a secure environment for citizens (World Bank, 2002).

Based on a public poll from August 2001, the International Crisis Group (2002) reports, that over eighty percent of the general public considers corruption to be present within B&H police forces.

The Governance Perception Survey (2003), supported by the United Nations Development Programme, dealt with citizens', business representatives' and civil servants' perception of good governance, whereby transparency, impartiality, professionalism and efficiency were regarded as major dimensions. The sub-sample of citizens again indicated a high concern about accountability and impartiality of the authorities (which are essentials of corruption-free governance), ranking them as the most important dimensions of good governance. Unfortunately, the survey did not address the citizens' own role in the process, but serves as valuable insight data as to what the public feels to be important of the work of governmental bodies.

Recently a number of studies dealing exclusively with corruption have been conducted employing different approaches and methodologies. One is the often cited World Bank's Diagnostic Surveys of Corruption (2001), in which different samples of respondents have been employed. Almost 100 percent of the respondents in this study stated that corruption in B&H exists and 60% that is very widespread. In the context of this chapter it is interesting to note that the police are perceived to be moderately corrupt (ranked 13 out of 19 institutions offered, whereby a score of one means most corrupt), and that every tenth respondent admitted to having bribed someone in order to receive some service (health care, education, police, and the like) in an advantageous way. From the perspective of this article, it is also interesting that the public minimises or ignores its own role in corrupt situations, ranking the role of citizens' education on this matter at eleventh out of twelve offered measures to reduce corruption. Preferring administrative or penal measures to educational measures indicates that public does not considers its behaviour as equally important or as culpable as the conduct of those who take bribes. The survey reveals that approximately every fifth respondent would not complain about poor public services, illustrative of the passivity of citizens habituated to the aggravating combination of inefficient public institutions and corruption related practices, as a response to cope with its shortcomings.

During the last decade, the frequently cited Transparency International conducted a great number of studies dealing with different aspects of corruption, the most important one being the Corruption Perception Study. Although its focus is foremost on perceptions and not actual experiences, it provides highly valuable data on the roots of corrup-
tion, consequences and its magnitude. Its 2004 edition for B&H reveals some very useful data on public attitudes regarding the harm from corruption. According to this study corruption has been recognised as the second biggest problem in the country. Moreover, the police was recognised as the second most corrupt institution in the country. The importance of the latter is even more significant having in mind that the questions referred to respondents’ actual experience with corruption, not to its perceptions. Noteworthy is the respondents’ attitude towards their own role in corruptive situations: as much as 37% consider bribe receivers exclusively responsible, and only 6% bribe givers. The majority (slightly over 50%), however, reveals a socially more acceptable attitude, considering both sides equally culpable. Around 20% of the respondents share the opinion that corruption can be functional, be it a necessary evil which has a positive side, or an alternative choice for a more efficient solution of any kind of a problem with an inefficient service provider. Finally, faced with the hypothetical situation of paying a bribe to a public official, on average every fifth respondent said they would agree with it, and even every fourth respondent said they would bribe a policeman to avoid paying a traffic violation tax.

Based on the findings from these studies, we hypothesize that citizens in B&H tend to condemn corruption in general, but at the same time tend to minimize or ignore their role in the process.

The importance of the present study

Field research of corruption in B&H has been rather rare and not specific enough. The continuous work of Transparency International and the World Bank\(^6\) has been related to the public administration, i.e. towards almost all providers of public services. On the other hand, police corruption specific research\(^7\) was implemented on a cantonal, rather than on state level and was based on police officers as respondents only and took no account of the attitudes, experiences and views of the citizens of Bosnia and Herzegovina.

This study aims to fill that gap. It aims to examine the B&H citizens’ perception of police corruption extent in comparison to other important public institutions. Moreover, by examining citizens’ attitudes toward integrity and honesty (in the context of police corruption) it aims at exploring whether the B&H citizens could be clustered in more or less homogeneous groups, the result of which would be a valuable insight into

\(^{6}\) For publications on corruption-related research of these organisations see list of the references.

\(^{7}\) One of the rare valuable studies is that of Kutnjak Ivkovic & O’Connor Shelley, 2005.
how the public feels about police corruption and in which direction the anti-corruption programmes should go.

By screening and analysing attitudes and views of the B&H citizens, the study especially aims to explore the dynamics of bribery, focusing on its active side. ‘Active side’ refers here to the bribe givers’ side in corruptive interaction (i.e. citizens), not necessarily to the initiator of a bribe.\(^8\) This active side has received less attention than the receiver’s side. The reason for this one-sidedness is that it is (erroneously) deemed trivial that the community at large could actually contribute to the magnitude and forms of corruption (Withrow and Dailey, 2004). Consequently much of the attention is devoted to the public officials as bribe takers,\(^9\) but very little to the bribers themselves.

This chapter also aims to contribute to the body of knowledge regarding the system of values in the B&H society. The findings could help the authorities to recognise the urgency of the sensitisation of the public towards corruption as well as the need for educating the public about it. Furthermore, by identifying what sections of the public are especially lenient towards corruption, the findings could help to design a more group-specific anti-corruption programme. Finally, on the institutional level the findings could help police management to design anti-corruption policies within their departments, with special attention devoted to codes of conduct, an area heavily under-addressed in B&H.

From the methodological point of view, employing citizens as respondents in police corruption research is surely nothing new (Kutnjak Ivković, 2003). But, employing the so called scenario approach to analyse their own integrity rather than the integrity of the police officers, might be considered a novelty. Careful wording of questionnaires, more recent data and more advanced statistical procedures in analysing the data are the next main advantages of the present study.

**Methodology**

For the purpose of the survey, the Association of Graduated Criminalists developed two questionnaires, one for police officers and the other for citizens. Structurally, the questionnaires had a set of common questions, together with a set of citizens-specific and a set of police-specific questions. Content wise, the questionnaire was composed of socio-demographic variables as well as of the variables related to experiences with,\(^8\)

\(^8\) In fact, it is plausible to assume that the receiver of the bribe will often take an initiative, especially in structural corruption social climate (Höffling, 2002).

\(^9\) See e.g. Datzer and Muratbegović and Maljević and Budimlić, 2007:293-302; see also Kutnjak Ivković and O’Connor Shelley, 2005.
opinions about and perception of police corruption. The results presented here are those collected by means of the questionnaire developed for citizens.

The questionnaire was distributed by researchers in a total of 17 urban areas in Bosnia and Herzegovina deploying the so-called stratified random walk sampling method where the respondents were stratified based on age and gender. The areas were selected based on population size, following the logic that where there are numerous opportunities and beneficiaries of corruption, it will indeed occur more frequently than in areas where such opportunities are less likely to occur. The latter, at least theoretically, implies more respondents basing their perceptions and attitudes on actual experience with corruption, rather than on influence from the media, and the like. The sample included 1187 respondents and the survey itself was conducted in the autumn 2005.

Respondents willing to fill in the questionnaire were informed that the Association is doing research into both the issue of corruption in police and the reaction of the whole police organisation to the issue of police corruption. In order to avoid any misunderstanding on the side of respondents ‘corruption’ was defined on the cover page of the questionnaire in accordance with the civil law convention on corruption (Council of Europe, ETS No. 174) as: "requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof". They were asked to read the questionnaire carefully and offer their open and honest answers. They were also instructed not to identify themselves by any means on the questionnaire as the survey was anonymous. Respondents had 45 minutes at their disposal to fill in the questionnaire in the presence of one of the researchers.

As the result of stratification the sample consisted of respondents that were on average 32,8 years old (Std=13,044) (See Table 1). As far as the gender is concerned 54,3% of the respondents were male and 45,7% female.

<table>
<thead>
<tr>
<th>Age</th>
<th>Freq.</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 18</td>
<td>14</td>
<td>1,2</td>
</tr>
<tr>
<td>18-25</td>
<td>506</td>
<td>42,7</td>
</tr>
<tr>
<td>26-35</td>
<td>251</td>
<td>21,2</td>
</tr>
<tr>
<td>36-45</td>
<td>189</td>
<td>16,0</td>
</tr>
<tr>
<td>46-55</td>
<td>132</td>
<td>11,1</td>
</tr>
<tr>
<td>56-65</td>
<td>73</td>
<td>6,2</td>
</tr>
<tr>
<td>&gt; 66</td>
<td>19</td>
<td>1,6</td>
</tr>
<tr>
<td>Total</td>
<td>1184</td>
<td>100,0</td>
</tr>
</tbody>
</table>

Table 1. Age structure of the sample
In examining the attitudes, the aim is to go beyond the manifest side of corruption, by exploring what the underlying factors beneath their attitudes are and to interpret them. For that purpose, factor analysis will be applied. Furthermore, the views of citizens in relation to various aspects of integrity will be assessed. This part of the analysis is descriptive and is based on individual variables’ loadings to the factors identified in the previous analysis. Finally, by applying an objective classification analysis, the intention is to explore how the public tends to cluster in regard of their attitudes to (police) integrity.

**Results**

Since the chapter deals with the citizens’ attitude towards police integrity, the complex task of screening their attitudes and views can be presented in a more understandable manner by dividing the results into three sections. The first will deal with citizens’ views on the extent of corruption and their attitudes towards it; the second will deal with their integrity issues, and the third with clusters of respondents based on their socio-demographic and attitudinal characteristics.

**Analysis I – Citizens “the guardians of the state”?**

In order to give some existential validity and credibility to the data that will be presented later, as well as to illustrate the citizens’ views of police corruption, it is useful to present several findings about the citizens’ personal experience with both police and police corruption. For example, 42.7% of all respondents have had ‘police contacts’ because of a minor offence whereas only 3.1% of the respondents had such contacts due to a criminal offence. When asked whether they have ever been in a situation where they wanted to bribe a police officer or where they actually bribed a police officer, a total of 23.6% of the respondents admitted having done so and knew that others had done so too, whereas 47.8% of the respondents stated that they never did it personally but they knew a person who had done it. In response to the question about the ways in which citizens are trying to bribe police officers 70.6% said it is being done by offering money, 19.6% through acquaintances/connections and some 4.9% by offering favours/services in return.

Against the background of direct and indirect police corruption experience, how do citizens perceive the magnitude of corruption within the B&H police forces? The answers were measured on Lickert scale, ranging from one, meaning not at all present, to five, meaning extremely present.
As can be deduced from the Table 2, the public perceives the police to be a public institution heavily affected by corruption. Compared with other 14 institutions of public service, citizens perceive the police to be very to extremely infected with corrupt practices. This finding does not correspond with the expected role of police as public servants who work in cooperation with the public, which is a philosophy underlining recent activities in relation to police reform (Police Restructuring Commission of Bosnia and Herzegovina, 2004). Since the citizens are obviously not satisfied with the current state of police performance, this finding would also imply that public would support more conservative views on police integrity.\textsuperscript{10}

### Table 2.
How much are bribe and corruption present in listed state institutions?

<table>
<thead>
<tr>
<th>Institution/public sector</th>
<th>Mean</th>
<th>Ranking</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police</td>
<td>4.21</td>
<td>1</td>
</tr>
<tr>
<td>Universities</td>
<td>4.19</td>
<td>2</td>
</tr>
<tr>
<td>Hospitals</td>
<td>4.01</td>
<td>3</td>
</tr>
<tr>
<td>Judiciary</td>
<td>3.87</td>
<td>4</td>
</tr>
<tr>
<td>Trade</td>
<td>3.86</td>
<td>5</td>
</tr>
<tr>
<td>Patient clinics</td>
<td>3.70</td>
<td>6</td>
</tr>
<tr>
<td>Export</td>
<td>3.48</td>
<td>7</td>
</tr>
<tr>
<td>High schools</td>
<td>3.32</td>
<td>8</td>
</tr>
<tr>
<td>Forestry</td>
<td>3.27</td>
<td>9</td>
</tr>
<tr>
<td>Banking sector</td>
<td>2.92</td>
<td>10</td>
</tr>
<tr>
<td>Industry</td>
<td>2.91</td>
<td>11</td>
</tr>
<tr>
<td>Building sector</td>
<td>2.88</td>
<td>12</td>
</tr>
<tr>
<td>Agriculture</td>
<td>2.55</td>
<td>13</td>
</tr>
<tr>
<td>Pension funds</td>
<td>2.45</td>
<td>14</td>
</tr>
<tr>
<td>Social insurance</td>
<td>2.45</td>
<td>15</td>
</tr>
</tbody>
</table>

Table 2 shows citizens’ expectations of how the police would handle an attempt to bribe. This was operationalised through the question “Which types of giving or receiving a bribe, as well as corruption would a police officer have to report?” The answers given ranged from one, meaning ‘absolutely all’ to five, meaning “they are authority and do not have to report anything”.\textsuperscript{11}

\textsuperscript{10} These rankings however, do indicate that university education as well as medical sector might be the next public services to be surveyed.

\textsuperscript{11} 1. Absolutely all attempts, from asking for a connection, offering counter services to money; 2. Every impolite and exaggerated attempt to find a connection, offer counter services and money; 3. He should file a report against every offer of a bigger amount money or serious
It is clear from the figure that the majority of respondents have the appropriate attitude, but every twelfth would consider the situation or would rationalise failure to report. However, although varying in answers, the majority shows a disapproving attitude, implying that corruption is generally considered harmful and punishable.

**Analysis II – Citizens “the ambivalent sinners”?**

In a set of questions, respondents were asked to imagine themselves in a hypothetical situation in which they perform a role of a traffic policeman stopping a violator of a traffic regulation. In this ‘scenario’ a researcher tries to avoid the direct question, which could provoke socially desirable answers. The first hypothetical situation deals with speeding and the second with driving through a red traffic light. In the case of speeding, more than a fourth of the respondents (27%) would take the money from the offender, and in the case of driving through a red traffic light almost one fifth of the respondents (19.2%) would do the same.

As these findings clearly indicate some potential integrity problems on the citizens’ side as well as an ambivalent attitude, it was necessary to go deeper into the citizens’ forms of corruption; 4. It all depends on the person in question; 5. They represent authorities and they do not have to file a report about anything if they do not want to.

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12 See also Kutnjak Ivković and O’Connor Shelley, 2005, p. 19.
values and attitudes by looking at their integrity-related views. These views are measured on a five-point Lickert scale, consisting of thirteen items dealing with different aspects of integrity.\textsuperscript{13} For example, item 11 asks for the respondent’s opinion about the following statement: ‘It is absolutely acceptable for a police officer to use his position in order to achieve some personal gain if by doing that he does not jeopardise general safety of the community’. The answers ranged from one = I absolutely agree, to five = I absolutely disagree. For the ease of interpretation, variables 17, 21 and 23 were reverse coded.

To make the presentation of the analysis more readable, and to enable identification of the underlying elements that pervade citizens’ views on police corruption, a factor analysis was conducted first. The purpose of factor analysis is therefore exploratory and seeks to identify what variables group together and enable possible sub-concepts of integrity. To improve the interpretation, the factors were orthogonally rotated using the Varimax method.

As seen from Table 3, factor analysis using the Kaiser method (that retains factors with ‘eigenvalues’ greater than one) extracted three factors accounting for nearly 54% of variance. This finding is confirmed with scree plot, which, although not perfectly, reveals there are indeed three factors underlying our integrity scale.

### Table 3.

Factor analysis of the integrity items

<table>
<thead>
<tr>
<th>Component</th>
<th>Total Variance Explained</th>
<th>Extraction Sums of Squared Loadings</th>
<th>Rotation Sums of Squared Loadings</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Initial Eigenvalues</td>
<td>% of Variance</td>
<td>Cumulative %</td>
</tr>
<tr>
<td>1</td>
<td>3,902</td>
<td>30,018</td>
<td>30,018</td>
</tr>
<tr>
<td>2</td>
<td>2,044</td>
<td>15,721</td>
<td>45,739</td>
</tr>
<tr>
<td>3</td>
<td>1,063</td>
<td>8,174</td>
<td>53,913</td>
</tr>
<tr>
<td>4</td>
<td>.911</td>
<td>7,011</td>
<td>60,924</td>
</tr>
<tr>
<td>5</td>
<td>.826</td>
<td>6,350</td>
<td>67,274</td>
</tr>
<tr>
<td>6</td>
<td>.723</td>
<td>5,560</td>
<td>72,834</td>
</tr>
<tr>
<td>7</td>
<td>.666</td>
<td>5,126</td>
<td>77,960</td>
</tr>
<tr>
<td>8</td>
<td>.617</td>
<td>4,747</td>
<td>82,706</td>
</tr>
<tr>
<td>9</td>
<td>.600</td>
<td>4,612</td>
<td>87,319</td>
</tr>
<tr>
<td>10</td>
<td>.562</td>
<td>4,323</td>
<td>91,641</td>
</tr>
<tr>
<td>11</td>
<td>.522</td>
<td>4,017</td>
<td>95,659</td>
</tr>
<tr>
<td>12</td>
<td>.316</td>
<td>2,433</td>
<td>98,092</td>
</tr>
</tbody>
</table>

Extraction Method: Principal Component Analysis.

The rotated component matrix reveals particular variables’ loadings onto the factors. For interpretative purposes we set a cut-off point of 0.2 (relative to the sample size),

\textsuperscript{13} See Annex 1.
suppressing all variables that have loadings less than 0.2. Results are shown in the following (Table 4):

**Table 4.**

Factor loadings of police integrity concept (Rotated solution).

<table>
<thead>
<tr>
<th>Items</th>
<th>Factor 1 True corruption</th>
<th>Factor 2 Counters services</th>
<th>Factor 3 Gratuities</th>
</tr>
</thead>
<tbody>
<tr>
<td>It is absolutely acceptable for a police officer to use his position in order to achieve some personal gain if by doing this he is helping his family or friends</td>
<td>0.848</td>
<td></td>
<td></td>
</tr>
<tr>
<td>It is absolutely acceptable for a police officer to use his position in order to achieve some personal gain if it does not include property benefit</td>
<td>0.846</td>
<td></td>
<td></td>
</tr>
<tr>
<td>It is absolutely acceptable for a police officer to use his position in order to achieve some personal gain if by doing that he does not jeopardise general safety of the community</td>
<td>0.820</td>
<td></td>
<td></td>
</tr>
<tr>
<td>It is absolutely acceptable for a police officer to use his position in order to achieve some personal gain if his superior tolerates that</td>
<td>0.759</td>
<td></td>
<td></td>
</tr>
<tr>
<td>It is absolutely natural for people to be benevolent toward police officers and to manifest that feeling by giving them gifts or certain services for free</td>
<td>0.649</td>
<td>0.278</td>
<td></td>
</tr>
<tr>
<td>It is absolutely acceptable for a police officer to use his position in order to achieve some personal gain although the way to achieve the gain is illegal</td>
<td>0.613</td>
<td>0.228</td>
<td>0.229</td>
</tr>
<tr>
<td>If a weak and inexperienced police officer feels obligation of «returning the counter service» to someone who offers a «sign of appreciation», it is better for him not to accept any gift or service</td>
<td>0.771</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Small gifts or services for free will later on represent a burden for his normal work in a community</td>
<td>0.644</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A police officer can on his own distinguish what is a «sign of appreciation» and what is bribery</td>
<td>-0.599</td>
<td>0.204</td>
<td></td>
</tr>
<tr>
<td>Many police officers do not become «dependant on services» such as free restaurant meals or free car service, but sometimes some younger, inexperienced police officers do «fall into this trap»</td>
<td>0.492</td>
<td>-0.507</td>
<td></td>
</tr>
<tr>
<td>Gifts such as free meals in restaurant or free car services are not enough in order to make a police officer «dependant on the service»</td>
<td></td>
<td>-0.722</td>
<td></td>
</tr>
<tr>
<td>A police officer rejecting small gifts offered by citizens will, in his local community, be treated as a non-trustworthy person</td>
<td></td>
<td>0.713</td>
<td></td>
</tr>
<tr>
<td>Gifts as free meals in restaurants or free car services for police officers in B&amp;H are so present that it is impossible for any kind of reaction within society to abolish that</td>
<td>-0.926</td>
<td>0.426</td>
<td></td>
</tr>
</tbody>
</table>

The output makes it clear that the majority of variables load on factor one. The variables that load highly on factor one all seem to relate to non-complying (illegal) behav-
Police corruption through the eyes of bribers

...so we label factor 1 true corruption. Variables loading highly on factor two seem to relate to individual psychological attitude towards small gifts as signs of good relationship with police, which often informally imply counter service, so we label it counter services. Finally, variables that load highly on factor three seem to deal with gratuities as part of cultural normality. Therefore we label this factor gratuities. Factor analysis obviously indicates that the integrity scale has indeed three subscales, each dealing with different dimensions of integrity.

Table 5 lists means, medians and standard deviations for variables that loaded highly on the true corruption factor. As the table shows, the majority of respondents actually showed a disapproving attitude, resulting in means ranging approximately from 3.6 to 4.4. This means that the public predominantly rejects corruption, especially if it deals with a clear violation of legal rules (see variable 13\textsuperscript{14} mean and median). But, taking account of previous findings one would expect a harsher attitude towards all aspects of corruption and a more unanimous view on integrity.

\textbf{Table 5.}

Statistics of ‘true corruption’ factor variables

<table>
<thead>
<tr>
<th>Items</th>
<th>11</th>
<th>12</th>
<th>13</th>
<th>14</th>
<th>15</th>
<th>16</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mean</td>
<td>3.56</td>
<td>3.6</td>
<td>4.39</td>
<td>3.69</td>
<td>3.89</td>
<td>3.9</td>
</tr>
<tr>
<td>Median</td>
<td>4</td>
<td>4</td>
<td>5</td>
<td>4</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>Std. Deviation</td>
<td>1.22</td>
<td>1.118</td>
<td>0.878</td>
<td>1.129</td>
<td>1.14</td>
<td>1.071</td>
</tr>
</tbody>
</table>

Table 6 lists basic statistics for variables that loaded highly on factor three (counter services). Answers indicate that the majority of respondents generally do have disapproving attitude towards small gifts or free services to the police. Again, however, they tend to show indifference towards the statement that providing small gifts could affect police performance, obviously not viewing them as especially worthy of consideration.

\textsuperscript{14} Item 13: It is absolutely acceptable for a police officer to use his position in order to achieve some personal gain although the way to achieve the gain is illegal. For other items see Annex 1.
Finally, the findings presented in the Table 7 (presenting variables that loaded highly on gratuities factor) suggest that there is even greater dispersion of respondents’ scores when the smaller gifts or free meals in restaurants are considered. The public shows surprisingly high level of indifference, the latter especially true for the item number 23. It seems that reception of small gifts and gratuities are considered as not particularly harmful, even tending to be considered as part of everyday life.

### Table 7.

**Statistics of gratuities factor variables**

<table>
<thead>
<tr>
<th>Variable name</th>
<th>18</th>
<th>19</th>
<th>21</th>
<th>23</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mean</td>
<td>3,42</td>
<td>2,88</td>
<td>2,88</td>
<td>2,63</td>
</tr>
<tr>
<td>Median</td>
<td>4</td>
<td>3</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>Std. Deviation</td>
<td>1,295</td>
<td>1,294</td>
<td>1,196</td>
<td>1,176</td>
</tr>
</tbody>
</table>

### Analysis III – Classification of the sinners

In this part of the analysis the objective classification was conducted in order to reveal natural clusters within the data. The aim is to identify cluster groups of respondents based on homogeneity of their answers. The variables included in the clustering procedure are factor scores of tests of integrity, age, and education. This procedure will allow for the exploration of cluster groups’ properties in the sample, which could and should be used as guideline for future strategic planning regarding the group-specific anti-corruption campaigns.

---

15 Item 23: If a weak and inexperienced police officer feels the obligation of ‘returning the counter service’ to someone who offers a ‘sign of appreciation’, it is better for him not to accept any gift or service.
After several hierarchical (Ward’s method) trials were employed, the clustering procedure revealed four clusters which appear as a satisfactory solution. The results are shown in Table 8.16

### Table 8. Clusters

<table>
<thead>
<tr>
<th>Variable name</th>
<th>Cluster 1 mean scores</th>
<th>Cluster 2 mean scores</th>
<th>Cluster 3 mean scores</th>
<th>Cluster 4 mean scores</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age</td>
<td>23,95</td>
<td>24,56</td>
<td>36,33</td>
<td>45,22</td>
</tr>
<tr>
<td>Education17</td>
<td>2,72</td>
<td>2,58</td>
<td>4,14</td>
<td>1,92</td>
</tr>
<tr>
<td>Factor scores for component 1 (true corruption)*</td>
<td>0,14912</td>
<td>-0,42042</td>
<td>0,31258</td>
<td>-0,01117</td>
</tr>
<tr>
<td>Factor scores for component 2 (gratuities) **</td>
<td>0,52205</td>
<td>-0,59084</td>
<td>0,16790</td>
<td>-0,09228</td>
</tr>
<tr>
<td>Factor scores for component 3 (counter service) ***</td>
<td>-0,56381</td>
<td>0,312226</td>
<td>0,48496</td>
<td>-0,27677</td>
</tr>
</tbody>
</table>

* Minimum -3.54; maximum 1.74.

** Minimum -2.57; maximum 3.10.

*** Minimum -2.15; maximum 3.37.

The properties of individual clusters could be interpreted as follows:

**Cluster 1** counts for 319 (29.6%) of cases. This cluster group is the youngest and has the second highest educational level. They express the most benevolent attitude towards small gifts or services the public provides to the police, obviously not considering the morality of such action particularly blameworthy. At the same time they express the strongest disagreement with gratuities, viewing them as something that can be eradicated. We therefore label these citizens as ‘flexible’ sinners.

**Cluster 2** is the largest and counts for 321 (27%) of all cases. They are the second youngest group and have the second lowest level of education. They tend to have the most benevolent attitude towards true corruption, as well towards gratuities. These citizens deserve to be labelled as ‘true sinners’.

**Cluster 3** counts for 248 or 20.9% of cases. This is a middle-aged group, and has the highest level of education. The respondents that clustered into this group tend to

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16 Since the factor scores are employed in the analysis, each factor score variable has the mean of 0 and a standard deviation of 1.
17 1. primary school; 2. secondary school; 3. student; 4. 2-year university graduate; 5. 4-year university graduate; 6. MA; 7. Ph D.
strongly reject both true corruption and small gifts or counter services. This is the group that shows the highest level of integrity. Respondents within this cluster are therefore labelled as ‘the guardians of the state’.

Finally, cluster 4 accounts for 190 or 16% of cases. This group of respondents is the oldest and has the lowest level of formal education. They do not show any attitude that could help label them more precisely. We assume that respondents falling within this category are actually those who, due to their lifetime experience given their age, intentionally provide socially acceptable answers. Since they do not distinguish themselves as ‘the guardians of the state’ we assume they are very adaptive and we therefore label them as ‘adaptive sinners’.

Discussion and conclusion

Corruption has been constantly referred to as one of the major impediments of B&H’s progress. Nevertheless research projects on corruption are relatively scarce, especially against the background of the huge extent and the forms within one of the most important public institutions: the police. Both pragmatic and scientific reasons speak in favour of studying corruption in B&H. This study aims to contribute to the existing literature and findings on police corruption.

Findings presented in this chapter suggest that B&H citizens show little awareness of the harmfulness of corruption. In the chapter it was hypothesised that although citizens tend to generally condemn corruption, at the same time they tend to minimise or ignore their role in the process. The results of the data analysis support this hypothesis: citizens of B&H do consider police as highly corrupt, yet if they were police officers themselves they would be willing to accept or ask for a bribe. Additionally, more than two thirds of the respondents admitted to either actually having offered a bribe to police or knowing someone who did it. This seems to be a clear indication of an integrity problem and an ambivalent attitude on the citizens’ side.

This conclusion was confirmed by the results of the factor analysis as well. ‘Scenario’ questions show there is a large proportion of respondents that shares ambivalent attitudes towards situational corruptibility. Findings suggest that contrary to the high level of public’s discontent with police integrity, they tend to approve corruption once they are in a position to take advantage of it.

Furthermore, although it was inappropriate to list frequencies for each of the variables to compose an integrity scale, even the summary of the exploratory findings presented here suggest that the public is far from being unanimous in its view on police corruption. A significant proportion of the respondents (on average one quarter) share the opinion that corruption could be a functional side of everyday police work. These
Police corruption through the eyes of bribers

findings are to a certain degree unexpected considering respondents’ almost unanimous disappointment with police performance and integrity (see Table 2), which suggests one could expect widely a shared condemnation of every dimension of corruption. There is clearly a certain part of the population who considers corruption almost as part of normality. The latter is especially true for small gratuities. The slippery slope perspective (Punch, 2000), however, suggest that corruption begins with small things: once the initial moral dilemma is solved if favour of corruption, the path to more serious corrupt activities is open.

Cluster analysis provided some additional interesting findings as well. In general, it could be stressed that younger people tend to have a more tolerant and benevolent attitude towards corruption. On the other hand, the highest level of corruption rejecting attitude can be found in the group of middle-aged respondents. Furthermore, the more educated people are the more likely they tend to label corruption as harmful, inappropriate social behaviour.18 Therefore, there is obviously a strong need for educating younger people, who obviously tend to view corruption as a recipe for success, and a need for education of public in general about the detrimental effects of corruption.

These findings are, unfortunately, not news. For a long time, the political climate of non-liability of both those who rule and those who are ruled in B&H has been fostered. Over the decades, Bosnian public servants have not been held accountable for their work on a regular basis: since there was no democratic electoral procedure, they did not worry about electoral defeat. Loyalty to the party was the only precondition for political or career in business. Disempowered citizens remained passive and apathetic, with no mechanisms that would allow them to produce any change.

Little has changed recently. Although formally having a multi-party system, B&H political life is coloured with nationalistic rhetoric that maintain the climate of fear and insecurity with only one reason: to (mis)rule as easily as possible. The “leadership disease” perspective (Van Duyne, 2001) suggests that apparent non-liability of top officials sends a dangerous message: with no exemplary ethical leadership exhibited by top leaders or servants, no honest behaviour can be expected from lower ranking officials or general public.

Although B&H is not unique in terms of an endemic presence of corruption and partitocracia (“major parties’ penetration of vast areas of state and society”, Newell, 2003), it is certainly not the Bosnian ‘speciality’. However, the lack of democratic tradition and war-time produced nationalism make B&H especially interesting. On the one hand, the post-war context allows nationalistic parties to proclaim themselves as natural

18 This result is in congruence with that of Kitschelt (cited in Manzetti and Wilson, 2007: 954), who “noted how the poor and uneducated, as opposed to more affluent and educated citizens, are less interested in politicians who promise public goods (as opposed to individualized ones) in the long term . . . They have basic needs that must be dealt with immediately”.

171
defenders of ethnic interests, hampering the development of true political pluralism. On the other hand, inherited communist philosophy of the ruling elite allows the leading parties direct or indirect control of the public administration. Finally, neglected and disempowered for decades, public seems to be well aware of current loopholes in the democratic processes. With the political climate fostering for generations corruption and clientelism, the public is very well aware of the unrealistic expectations for things to change suddenly. They are therefore predominantly concerned with immediate individual benefits. So it is no surprise that they too would involve in corrupt practices, guided by the premise and assuming that corruption cannot be eradicated anyway.

Having a third (in eight years) Anti-corruption Strategy going on in vain, B&H authorities continue to fail in achieving broader support in anti-corruption activities. Although explicitly presented by the government as one of the measures necessary for effectively tackling the issue of widespread corrupt practices, the authorities failed to fulfil this task: not a single campaign was organised by the authorities to support the promotion of accountability and honesty, or harmfulness of corruption (Transparency International, 2006). Moreover, the Government failed even to make the 2006 Strategy easily available: there is no on-line copy of it, nor are its goals and activities otherwise widely publicly promoted.

The other important feature of former anti-corruption strategies in B&H is that they were designed and implemented without serious surveying the situation in the field. The latter is considered as an important tool in raising awareness of the public and identifying corruption-prone areas (Langseth, 1999). These top-down approaches, insensitive to public opinion and their real feelings and needs, probably based on some anti-corruption models implemented elsewhere, could not have ended any different than the previous ones did: unsuccessfully.

It is trivial that no anti-corruption strategy can on its own or by just being there produce any change. Therefore a comprehensive approach is needed, addressing, among other activities, a strong involvement of public in corruption reduction, which can be only achieved if the people are informed about the true nature and consequences of corruption. This survey clearly underlines the necessity of the latter. We argue that by forgiving or encouraging the corrupt behaviour, the corruption-tolerance in B&H will become a built-in and sustained element of the social fabric, making any changes difficult to achieve. An anti-corruption strategy is likely to succeed only if it

19 The first was initiated by the Office of the High Representative in 1999; the second in 2004 by the B&H Council of Ministers, both being only a declarative, producing no visible output. The third was launched in March 2006, again at the highest state level, but to this day with almost no effects in seriously reducing corruption. For an assessment of (un)successfulness of anti-corruption strategies in B&H, see EPPU, 2006, and Commission of the European Communities, 2007.
POLICE CORRUPTION THROUGH THE EYES OF BRIBERS

takes into account a public service culture that supports transparent and integrity-based decision-making and implementation of those decisions. Hong Kong can serve as good example. It had to go long way from “entrenched and systematized corruption” (Meagher, 2005), to one of the corruption-clearest states in the world, and “from re-signed tolerance [of citizens] to extreme intolerance” of it (UNODC, 2004). It was no easy task, but slow and painstaking process (ibid.), yet resulting in great success (Quah, 1994; Meagher, 2005). B&H has, of course, a specific pattern of corruption, but some lessons from the Hong Kong’s experience could be drawn. Generally, public awareness campaigns suggest that workshops, seminars, and the like, as well as other forms of communication of the message of corruption wrongfulness can indeed produce change in people’s attitudes. Such campaigns could contribute to the greater knowledge on corruption harmfulness, as well as an awareness of self-involvement in law breaking acts.

Disseminating knowledge about corruption harmfulness, the authorities can expect public support in their anti-corruption activities and ultimately long-term success. Efforts that succeed to become owned and values by citizens themselves can finally bear fruit (Langseth, 1999). Furthermore,

“[t]he wider implications of broad participation are even more promising as a means of prevention – giving teeth to citizenship, generating broader consensus and even producing a workable social contract upon which to base reform and development priorities and programmes. This type of empowerment combined with other practical tools constitutes best practice in preventing corruption” (1999: 3).

On the contrary, failing to promote ethical values, honesty and integrity, strategy can achieve only partial or no success at all. Hence, future anti-corruption strategies in B&H should pay much more attention on sensitising the public regarding the harmfulness of corruption, and involving the public in more proactive ways in condemning and rejecting corrupt practices. Otherwise, all the anti-corruption efforts will remain futile. This will certainly be the case if the historically inherited leadership disease is not tackled. If that is not addressed, even in a formally democratic environment, the B&H public will remain the hostage of the past.
Annex 1. - The list of the items:

11. It is absolutely acceptable for a police officer to use his position in order to achieve some personal gain if by doing that he does not jeopardise general safety of the community;
12. It is absolutely acceptable for a police officer to use his position in order to achieve some personal gain if it does not include some tangible item;
13. It is absolutely acceptable for a police officer to use his position in order to achieve some personal gain although the way to achieve the gain is illegal;
14. It is absolutely acceptable for a police officer to use his position in order to achieve some personal gain if by doing this he is helping his family or friends;
15. It is absolutely acceptable for a police officer to use his position in order to achieve some personal gain if his superior tolerates that;
16. It is absolutely natural for people to be benevolent toward police officers and to manifest that feeling by giving them gifts or certain services for free;
17. Small gifts or services for free will later on represent a burden for his normal work in a community;
18. A police officer rejecting small gifts offered by citizens will, in his local community, be treated as a non-trustworthy person;
19. Gifts as free meals in restaurants or free car services for police officers in BIH are so present that it is impossible for any kind of reaction within society to abolish that;
20. A police officer can on his own distinguish what is a «sign of appreciation» and what is bribery;
21. Gifts such as free meals in restaurants or free car services are not enough in order to make a police officer «dependant on the service»;
22. Many police officers do not become «dependant on services» such as free restaurant meals or free car service, but sometimes some younger, inexperienced police officers do «fall into this trap»;
23. If a weak and inexperienced police officer feels obligation of «returning the counter service» to someone who offers a «sign of appreciation», it is better for him not to accept any gift or service.

Note: The list is enumerated 11-23 as it appears in the original questionnaire and the outputs of the analysis.
References


Council of Ministers BiH, BiH Medium Term Development Strategy-PRSP (2004-2007), Sarajevo, Author, 2004


Devine,V., and H. Mathisen, Corruption in Bosnia and Herzegovina-2005, Bergen, Chr. Michelsen Institute, 2005


European Stability Initiative (ESI), Reshaping international priorities in Bosnia and Herzegovina. Part One, Berlin, Author, 1999

European Stability Initiative (ESI), Governance and democracy in Bosnia and Herzegovina, Berlin-Sarajevo, Author, 2004

International Crisis Group (ICG), Policing the police in Bosnia: A further reform agenda. Balkans Report no.130, Sarajevo/Brussels, Author, 2002


Langseth, P., Prevention: An effective tool to reduce corruption, Vienna, UN Office of Drug Control and Crime Prevention, 1999

Maljević, A., D. Datzer, E. Muratbegović and M. Budimlić, Overtly about police and corruption, Sarajevo, Udrženje diplomiranih kriminalista u Bosni i Hercegovini, 2006
European Crime–Markets at Cross–Roads


Office of the High Representative (OHR), A comprehensive anti-corruption strategy for Bosnia and Herzegovina, Sarajevo, OHR, 1999

Police Restructuring Commission of Bosnia and Herzegovina, Final report on the work of the Police Restructuring Commission of Bosnia and Herzegovina, Sarajevo, Author, 2004

Punch, M., Police corruption and its prevention, European Journal on Criminal Policy and Research, 2000, 8, 301-324


Transparency International BiH, Corruption perception study- 2004. Bosnia and Herzegovina, Author, Banja Luka; Sarajevo, 2004


UNODC, UN Anti-corruption toolkit, 3rd Edition, Author, Vienna, 2004

UNDP BiH, Governance perception survey in Bosnia and Herzegovina, New York, Author, 2003


World Bank, Bosnia and Herzegovina diagnostic surveys of corruption, Washington DC, Author, 2001

World Bank, Bosnia and Herzegovina- Local Level Institutions and Social Capital Study, Washington DC, Author, 2002
Introduction

Historically, the Greek context has been related to the smuggling of tobacco and cigarettes since the nineteenth century. The smuggling of tobacco from Greece to Egypt had greatly affected taxation and precipitated the signing of the Greco-Egyptian commercial treaty in 1884 (Shechter, 2003). In addition, the Thessaloniki-Marseilles route was one of the main sea routes for the smuggling of Bulgarian tobacco into Western Europe at late 19th century (Hozić, 2004). During World War II black markets of a range of commodities including cigarettes existed in Athens and other Greek cities and towns. Moreover, as Gardikas (1958) suggests, in the 1950s the Greek police had a *modus operandi* file for smugglers in general including tobacco and cigarette paper smugglers. It is also interesting to note that one of the most photographed beaches in Greece, the Navagio Beach in Zakynthos (Zante), owes its name to the wreck of a ship that was transporting smuggled cigarettes from Turkey to Italy in 1983. Despite the above however, only mild concerns about cigarette smuggling were expressed in the beginning of the 1990s, when cigarettes were smuggled into Greece from Albania primarily by undocumented migrants, and serious ones in the mid-1990s, when the first truckloads of smuggled cigarettes were intercepted on the Greek-Bulgarian border.

Greece is an interesting and perhaps a unique context for the study of cigarette smuggling for a variety of reasons, many of which offer a competitive advantage to cigarette smugglers.

The smoking population in the country reaches 40% of the total population (European Communities & WHO, 1998). In addition, it should be noted that Greece is a country with a culture that supports tobacco consumption. It is interesting to note that in a study conducted on the effectiveness of health messages on cigarette packs as a way of informing smokers about risks in seven European countries, it was a minority of males in Greece only that “expressed irritation and hostility towards them, seeing them as invasive and pointless” (Devlin et al., 2005: 45).

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1 Senior lecturer in criminology, School of Social Sciences and Law, University of Teesside, UK. A substantial amount of data in this chapter were initially used for an article appearing in the *European Journal of Criminology*. 

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Greece is the ninth biggest tobacco producer in the world after China, India, Brazil, USA, Turkey, Zimbabwe, Indonesia and Italy as well as one of the top ten tobacco leaf exporters (Mackay and Eriksen, 2002; Onder, 2002). In addition, 120,000 families in the country are economically dependent on the tobacco business in one way or the other (ET3, 2007). Finally, the tobacco industry in Greece is so powerful that, as Var-davas and Kafatos (2006: 1486) note, lobbying against it “resembles mortals battling the demigods of Greek mythology”.

The tobacco industry views Greece as a financially healthy market and predicts a 10% increase in tobacco sales in the next 10 years (ET3, 2007), a period during which the large tobacco manufacturers see their shares being reduced in the western world (Nikogloù, 2007). In addition, Philip Morris considers Greece one of its top income markets (Philip Morris International Inc, 2005). In that respect Greece is a critical market for the tobacco manufacturers.

Greece is a country with relatively cheap cigarettes, much cheaper than countries such as the United Kingdom, Ireland, France and Sweden. A pack of the most popular international brand in Greece costs £1.89, whereas the same pack costs £5.23 in the United Kingdom, £4.75 in Ireland, £3.37 in France and £3.28 in Sweden (Tobacco Manufacturers Association, 2007; see Figure 1). However, the contraband market share is larger in Greece, according to Joossens and Raw (1998), than in the aforementioned countries.
Cigarette smuggling, and especially illicit street-level selling is ignored by the police. In 2002 and in the context of my doctoral research I interviewed a number of detectives in a Greek prefecture. The detectives suggested that members of the migrant community are involved in a range of illegal markets such as drug trafficking, theft of motorvehicles, human smuggling and trafficking among other criminal activities. Cigarette smuggling was not mentioned at all during the interviews. I also informally interviewed a retired police officer, who personally knew the captain of the ship smuggling cigarettes in 1983, as they were both corporals in the Greek army in the late 1960s. The officer met the captain in the mid-1980s and when the captain confessed his story the officer was anxious to learn whether he was transporting drugs:

“When I met him and he told me that he had some trouble with cigarette smuggling I was disappointed because I wanted to learn about drug trafficking. No one ever told us anything about cigarette smuggling”.

Research on Greece has shown that the demand for cigarettes in the country has historically been inelastic and not affected by price (see Hondroyiannis and Papapetrou,
EUROPEAN CRIME-MARKETS AT CROSSROADS

1997), something that has led to the characterization of Greek smokers in particular as irrational addicts (Cameron, 1997). For instance, although cigarette prices went up from 1 January 1997, cigarette consumption increased by 2% in 1997 compared to 1996 (Ktenas, 1998). This makes one at least wonder whether, and if so, the extent to which, needs for cigarettes are covered by the black market, since otherwise increases in the prices of cigarettes have been observed to lead to a reduction in consumption (see Lee et al., 2004; Gallus et al., 2006).

The low ‘tax consciousnesses’ among the Greek public, and the large informal economy in the country (The Economist, 2001) play a role. Consequently, cigarette smuggling may not only be supported by the smokers who consume contraband cigarettes, but also supported ‘morally’ by the smoking population in general. In relation to the above, one of the participants involved in cigarette smuggling in Greece and clearly identifying himself as a ‘service provider’ (Ruggiero, 1997: 27), noted :

“I am just selling cigarettes . . . if they don’t buy the cigarettes from me, they will buy them from the kiosk or the shop. What is the difference? . . . I will give them cheaper . . . I do good. Now that I am not in Greece people must have been looking for me . . .”

Greece neighbours three countries with large informal economies such as Albania, the Former Yugoslav Republic of Macedonia (FYROM) and Bulgaria, characterised by “embryonic mechanisms of state and social control” (Lambropoulou, 2003), and high (cigarette) smuggling rates (Tobacco Journal International, 2000; see also Anastasijevic, 2004). As Hozic (2002: 25) suggests, “the Balkans now . . . serves as a giant, semi-regulated (or at least government-protected) off-shore territory where products that would otherwise have difficulties entering European or western markets get recycled, laundered or refurbished, and then brought (back) into the West”.

There also appears to be a link between the cigarette black market in Greece and countries with significant black markets such as the Netherlands, Italy and Britain as well as important transit points for contraband cigarettes such as Cyprus and Montenegro (see, for example, Ta Nea, 2000).

As cigarette smuggling is not really experienced as a societal problem, it has attracted little academic attention in Greece thus far. The purpose of this paper is to fill this void and to provide an account of the cigarette smuggling business in Greece. This account is based on a range of sources including:

a. official statistics from the Hellenic Coast Guard (Limeniko Soma) and the Customs Authority (Teloniaki Ypiresia);

b. interviews with three Kurdish retired cigarette smugglers, a Greek retired procurer, a Greek retired bootlegger and two ‘runners’;

c. pre-trial reports from the Hellenic Coast Guard and the Greek police;

d. annual reports on ‘organised crime’ for the years 2004 and 2005 published by the Greek Ministry of Public Order (MPO);
THE CIGARETTE SMUGGLING BUSINESS IN GREECE

e. articles from high-circulation newspapers, financial and business newspapers, some
locally circulated newspapers and press releases from the Ministry of Mercantile Ma-
rine and the Bureau for Special Checks (Ypiresia Eidikon Eleghon – YP.E.E.); and
f. interviews with a number of customers of the cigarette black market.

‘Extent’ of the cigarette smuggling business

As of December 2007, aggregate data from all agencies concerned with cigarette smug-
gling in Greece refer to 2004 and 2005 only. It is interesting to note that these data are
not widely and readily available for research. In 2004 there were 415 cases of cigarette
smuggling, and 310,961,785 cigarettes were seized, which amounted to € 31,736,151
in evaded taxes. In 2005 there were 338 cases of cigarette smuggling, and 258,444,000
cigarettes were seized, which amounted to € 23,895,039 in evaded taxes (Customs
to 2004 there were 82 cases of cigarette smuggling known to the Coast Guard. The
largest number of cases per year and number of cigarette packs seized was in 2000,
which is in accordance with other countries such as Germany (von Lampe, 2005),
Netherlands (van Duyne, 2003) and the EU-15 as a whole (European Commission,
2004). From 1998 to 2004 39,941,392 packs of cigarettes were seized by the Hellenic
Coast Guard along with 299 packs of tobacco and 1,300 cigars that were seized in 2001
(Table 1).

Table 1.
Cigarette packs, sea vessels/vehicles by the Hellenic Coast Guard,
and evaded taxes, 1998-2004

<table>
<thead>
<tr>
<th>Year</th>
<th>Confiscated packs</th>
<th>Seized vessels &amp; vehicles</th>
<th>Evaded taxes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>1,253,844</td>
<td>3 &amp; 1</td>
<td>2,539,681,917 drachmas</td>
</tr>
<tr>
<td>1999</td>
<td>7,546,910</td>
<td>12 &amp; 12</td>
<td>6,636,685,753 drachmas</td>
</tr>
<tr>
<td>2000</td>
<td>16,808,420</td>
<td>20 &amp; 3</td>
<td>17,704,439,162 drachmas</td>
</tr>
<tr>
<td>2001</td>
<td>1,660,779*</td>
<td>3 &amp; 4</td>
<td>1,044,977,759 drachmas</td>
</tr>
<tr>
<td>2002</td>
<td>5,307,900</td>
<td>6 &amp; 13</td>
<td>€ 10,461,224</td>
</tr>
<tr>
<td>2003</td>
<td>4,959,786</td>
<td>4 &amp; 4</td>
<td>€ 11,240,608</td>
</tr>
<tr>
<td>2004</td>
<td>2,403,753</td>
<td>2 &amp; 12</td>
<td>€ 4,289,916</td>
</tr>
<tr>
<td>1998-2004</td>
<td>39,941,392</td>
<td>50 &amp; 49</td>
<td>€ 107,948,634,42</td>
</tr>
</tbody>
</table>

* In addition 299 packs of tobacco and 1,300 cigars were confiscated.
Source: Hellenic Coast Guard (2005)
The focus of this paper is an illegal market and, inevitably, illegal markets involve economic activities that are intended to go unnoticed and thus unrecorded in the official statistics. Some data are produced and indeed presented in this section; however, this reflects—as is the case with other law enforcement statistics—the intensity and success/failure of law enforcement operations rather than the actual extent of the illicit market.

Joosens and Raw (1998), who used data from the European Confederation of Cigarette Retailers and other sources, came to the conclusion that the cigarette black market in Greece represents about 8% of the total cigarette market in the country. In this research I also looked for evaluations as to the volume of the cigarette black market from people involved in the legal cigarette market in the country. According to the chair of the kiosk owners’ association, in the mid-1990s the consumption of smuggled cigarettes reached 85 million packs per year (see Zotos, 1996). I contacted the largest tobacco manufacturers having a share of the Greek cigarette market to ask them to provide their estimation of the extent of the cigarette black market in the country. Unfortunately, as of December 2007, no reply or acknowledgement was received.

**A typology of the ‘actors’ in the cigarette smuggling business**

Cigarette smuggling has been perceived as the business of ‘organisations’ similar to the companies involved in the legal tobacco trade. The chairman of tobacco giant British American Tobacco (BAT) suggested that “one of [the] biggest global competitors today, now in fourth place behind Philip Morris, [BAT] and Japan Tobacco, is a growing body of criminals who are turning the illicit trade in tobacco products into a lucrative global industry” (Milner, 2007: 28). Similar representations exist in the Greek media as well. The Greek media continuously talk about Mafias, Cartels and Lobbies involved in cigarette smuggling as well as the smuggling of other commodities (legal or illegal). Sensational newspaper titles such as ‘The Mafia of the Cigarettes’, ‘Mafia a la Greca’ or ‘The Cartel of the West Coast’ (see, for example, Tzathas and Giogiakas, 1997), can be regularly viewed. Contrary to the media representations that evolve around a Mafia perspective, the prime characteristic of the cigarette smuggling business in Greece is its heterogeneity. There are basically two types/sets of actors in cigarette smuggling in the particular context:

1. **Individuals**: The smuggling of cigarettes can be conducted by individuals, who are driven by the price disparities between Greece and a number of countries. For in-

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2 Cigarettes account for about 50% of the kiosks’ sales (see Christodoulou, 2006).
3 In the first half of 2006 Philip Morris, BAT, JTI, Imperial, Gallaher and House of Prince had a share of 75.7% of the (legal) cigarette market in Greece (Fintikakis, 2006).
T THE CIGARETTE SMUGGLING BUSINESS IN GREECE

stance, Greeks travel to Bulgaria to buy cigarettes among other commodities (Terzenidis, 2004), and the reason for this is the huge price disparities that exist between Greece and Bulgaria. Individuals involved in cigarette smuggling may be involved in cigarette smuggling into Greece and out of Greece. In my research I came across an individual who used to smuggle specific international brands from Greece to the former Yugoslavia in the late 1980s and early 1990s. Individual smugglers could also be labelled as occasional smugglers, presented with a one-off smuggling opportunity in a trip abroad such as the owner of a beach bar on a Greek island who bought a number of Cuban cigars during his holiday in Cuba, which he later sold in his legal business. On the other hand, some individual smugglers can be labelled as regular.

2. Networks: when it comes to large-scale smuggling networks are involved. Elsewhere (Antonopoulos, 2006a), there is a detailed account of the ‘labour division’ in the smuggling business although this does not mean that this division is rigid (especially in the lower levels of the business) and that an individual cannot be involved in more than one activity. For example, there is a degree of flexibility in the participation of Kurds in the ‘lower’ echelons of the cigarette black market in the sense that street-sellers sometimes may be acting as look-outs or as warehouse guards.

Similar to other illegal trades (see, for instance, Zaitch, 2003) there is a distinction between the ‘entrepreneurs’, those who have the capital to invest in the cigarette black market e.g. the procurers usually legal businessmen who buy cigarettes from tobacco manufacturers supposedly to export them to Balkan countries, and the ‘workers’ e.g. the street-sellers. As the retired procurer suggested, being involved in the business as an ‘entrepreneur’ (i.e. investing capital in the business) “... requires a lot of money and a lot of contacts. Not everyone can do this”. There have been instances of ‘entrepreneurs’ being involved simultaneously in cigarette smuggling and the smuggling of other commodities such as fuel and medicines (see To Vima, 2006).

**Foreigners and socio-economic marginalization**

Socio-economic marginalization is the common characteristics of those involved in the street-selling of contraband cigarettes. One of the participants’ statements in relation to his socio-economic situation and also of his Kurdish fellow migrants in Greece and their involvement in cigarette smuggling is quite indicative:

“It is not the most pleasant thing to do ... but there is nothing else I can do in Athens ... I have no papers, I have no passport, I have nothing ... I cannot open a business in my name ...”
“When Kurdish people come to Greece they have no job, they have no money, they have nothing . . . when I give them some work with cigarettes I help them. It is a big help you know . . .”.

In a sense the cigarette smuggling business in Greece reflects – to a considerable extent - the situation in the official Greek economy, as well as the situation in illegal markets in a variety of contexts that present alternatives to the lack of legitimate employment opportunities. This is evident in other countries as well. According to von Lampe (2003), a number of the Vietnamese guest workers, who became unemployed after the industrial and economic restructuring that took place in the early 1990s in East Germany, found some income in the street-selling of cigarettes. Moreover, in Canada some members of the Aboriginal communities are involved in cigarette smuggling due to the limited opportunity structures for Aboriginal people (Beare, 2003; see also Quassoli, 1999 for Italy). The involvement of people from the migrant community in Greece in the lower-level smuggling, e.g. as warehouse guards or other foreigners as captains and/or drivers leads to a higher risk of apprehension of these individuals. In particular, from 2000 to 2004 out of 287 suspects apprehended by the Hellenic Coast Guard for cigarette smuggling, 203 were non-Greeks (70.7% of the arrestees) (Hellenic Coast Guard, 2005; figure 2).

Figure 2.
Greeks and foreigners arrested by the Hellenic Coast Guard for cigarette smuggling, 2000-2004

Source: Hellenic Coast Guard (2005)

Relatively recently, for example, the Coast Guard of Patras arrested the members of the crew of a ship transporting 19,820,000 cigarettes. All member of crew were foreigners
Unfortunately, the above figures are not broken down by ethnicity/nationality. However, these figures do not of course present the actual representation of foreigners in the cigarette smuggling business in Greece, but the over-representation of foreigners in these positions of the business that are vulnerable to apprehension and specifically transportation of the merchandise. We can only agree with Ruggiero (2000: 22) in that “often the most remunerative positions within criminal economies are occupied by indigenous groups whereas the most poorly paid and dangerous tasks are entrusted to minorities”.

**Women in the cigarette smuggling business**

Illegal markets and ‘organised crime’ are seen as the context of primarily male involvement, although there has been some published work on the active involvement of women in specific illegal markets (e.g. Dunlap et al., 1994; Zhang et al., 2007) as well as on women as consumers of illegal markets (e.g. Murphy and Arroyo, 2000). The cigarette smuggling business is perhaps the only illegal market in Greece in which there is an observably high participation of women. This is the case with middle-aged to elderly women from countries of the former Soviet bloc. There are a number of hypotheses in relation to the participation of women from the former Soviet bloc countries in this market:

- the ‘chivalry’ hypothesis (Heidensohn and Gelsthorpe, 2007), implying for example that women will be less critically observed in such a relatively ‘legitimate’ – compared to other – illegal market;
- women from several countries of the former Soviet bloc constitute the majority of the migrant population from these countries. For instance, the majority of Russian (62%) and Ukrainian (74%) migrants in Greece are women (ESYE, 2001) with the imbalance being even larger when it comes to migrants with a residence permit (80% of Russian and 80% of Ukrainian migrants) (Mediterranean Migration Observatory, 2004).

These two hypotheses must be viewed in the context of the role of women from the former Soviet Union. Women were seen as ‘workers’ perhaps to the same extent as men, and given that they are middle-aged to elderly, it means that they have been brought up in an environment in which women were expected to work. Moreover, given the relatively few opportunities for migrants –female and of older age– to be involved in those licit economic activities that are open to migrants, such as agriculture, fishing, construction, generally hard physical labour or to be involved in the sex industry, one can expect these women to enter a ‘semi-legitimate’ (illegal) market. Irrespective of this hypothesis, all should be viewed in relation to the high participation of men
from the former Soviet Union in the cigarette black market as well as the general socio-economic marginalisation of migrants in Greece.

Finally, it should be mentioned that although there is no participation of Greek women in the street-level selling of contraband cigarettes, there is participation of some Greek women as owners of shops that are used as ‘warehouses’ for small to medium quantities of cigarettes and as a re-fuelling point for some street-sellers or as ‘runners’. One of the ‘runners’ for the bootlegging scheme bringing cigarettes from Greece into the UK I interviewed is female.

Cigarette smuggling and the legal sector

A decade ago Savona (1997: 2) noted that “the traditional distinction between illicit and legitimate activities, with reference to organised crime, is becoming less evident in the modus operandi of organised criminals”. This is also evident in the cigarette smuggling business. It is suggested that large tobacco companies sometimes encourage cigarette smuggling as a way to stimulate consumption and eventually increase their market share in a period in which sales, as mentioned earlier, are reduced especially in the western world (Nikoglou, 2007). This occurs at the expense of domestic producers (Schapiro, 2002) while it may result in the displacement of competitors from specific contexts (see Collin et al., 2004). In addition, tobacco companies ‘exploit’ the issues of cigarette smuggling to put pressure on governments to reduce or not to increase taxation on cigarettes (Joossens and Raw, 1995). When increased taxation was imposed on the very cheap Greek brands in 2005, the tobacco manufacturers concerned reacted negatively because they viewed cheap cigarettes as the only means of defence against – among others – cigarette smuggling (Korfiatis, 2005). The Greek tobacco companies have specifically suggested that “cheap cigarettes limit smuggling” (Dimitrelis, 2004: 69).

The only information obtained in relation to a possible involvement of the tobacco manufacturers in cigarette smuggling in Greece derives from the retired procurer. During the interview, I asked him whether the manufacturers know that truckloads of cigarettes bought by individuals with the intention to export them are to be introduced in the black market. What he revealed was that the tobacco companies are not interested in the area of distribution of cigarettes, and that individuals in the tobacco companies involved do have knowledge of the cigarette smuggling business.

Other legitimate businesses such as warehouses, importation/exportation companies, shipping and logistics companies, airlines based in Greece and other European countries are also involved (see Lambropoulou, 2000; Kathimerini, 2005). Off-shore and fictitious companies primarily in Cyprus but also in countries of the former Soviet
THE CIGARETTE SMUGGLING BUSINESS IN GREECE

Union are used for the issuance of necessary documentation. Finally, legal ‘gambling schemes’, the Athens stock market, the property sector, exchange bureaus, and other businesses are used as money launderettes (Ta Nea, 2002; Moros, 2002).

Corruption and the cigarette smuggling business

There have been numerous references in the Greek media, as well as in the accounts provided by the participants in this study that customs officers employed in the supervision of the borders with Bulgaria and FYROM were bribed to facilitate the importation of contraband cigarettes in Greece. They are alleged to participate actively in the transportation. Indeed, customs officers are extremely vulnerable to bribery and generally corruption not only because they are not well paid (just as other public officials) but also because they have “direct discretionary access to tangible wealth” (Velkova and Georgievski, 2005: 66). This led to the following measure: the importation and/or exportation of merchandise subjected to Special Consumption Tax including cigarettes and other tobacco products has not been allowed through the customs of Doirani and Niki on the Greek-FYROM border since 2005, due to the extended phenomena of smuggling (Ta Nea, 2007).

The participants of the research that were actively involved in cigarette smuggling suggested that police officers and coast guards in Piraeus, Patras and Thessaloniki were bribed to allow warehouses for medium to large quantities of smuggled cigarettes to exist and to turn a blind eye when coming across larger quantities of smuggled cigarettes by sea. In some instances, coast guards and police officers are actively involved in the operations of cigarette smuggling networks. The most striking example was the participation of some members of the Underwater Demolition Team of the Greek armed forces (Omada Ypovrichion Katastrofon-OYK in Greek), who reportedly were transporting smuggled cigarettes from open waters to specific locations assisted by police officers who ensured that the area for the embarkation of the merchandise was clear (Ta Nea, 2002b).

The Kurdish participants in this research, who were involved in cigarette smuggling in Greece, also mentioned that on the street-level some (non-uniformed) police officers exploit their position to extort money from street-sellers. Finally, there have been reports in the Greek press in relation to judges in Northern Greece (and a public prosecutor in Bulgaria), co-operating with cigarette smuggling networks (Lambropoulos, 2004). The procurer’s account summarises the importance of corruption for large-scale cigarette smuggling:

“Can one do such big business without giving any money to such people [public officials]? Everyone is bribed . . .”
'Peripheral' and 'core' sources

There is a range of sources of contraband cigarettes. Some of these sources are exploited less often and it would be plausible to argue that they are exploited only 'peripherally'. Others constitute the 'core' (primary) sources of smuggled cigarettes and continuously feed the market with (large quantities of) merchandise. It is important to note that the cigarette smuggling business in Greece, just as the cigarette smuggling business in general, takes advantage of the in-transit system, which temporarily suspends taxes and duties. It should also be noted that the smuggling schemes provided below may not be present at a given time but have appeared at some point in the Greek context. It is also important to note that the schemes below concern Greece as a destination country:

'Peripheral' (secondary) sources

- Legal cigarette warehouses, convenience stores kiosks, and other retail outlets are burgled, and owners and/or employees of the premises are robbed of cigarettes (money and other commodities).
- Greek ships travelling abroad are supplied with large quantities of cigarettes that exceed by far the needs of the ship's crew. The cigarettes are then imported back to Greece to be introduced in the black market (Politis, 2002).
- Cigarettes (and other tobacco products) are ordered on the internet and are sent by the post or transported by courier services in a number of small shipments primarily for personal consumption without the payment of taxes. This is a relatively new way of smuggling cigarettes into Greece and the information we have about this is limited to the cases appearing in the Greek media (see, for example, Kyriakopoulos, 2004).

'Core' (primary) sources

- Smuggled cigarettes are shipped from Russia and Ukraine. This route has been identified as one of the major cigarette smuggling routes by ship (see, for example, Joossens and Raw, 1998). Cigarettes in containers may also be transported from Turkey, Cyprus and Malta. Sometimes the cigarettes are uploaded in smaller vessels that can reach less busy ports or beaches throughout Greece.
- Cigarettes were smuggled from Albania by speedboats and even luxury sea vessels (see Linardou, 2002a) especially until 1998.
- Smuggled cigarettes are imported from Bulgaria, FYROM, Romania and Turkey by truck. There are however, four different ways of cigarette smuggling by truck. The first is smuggling cigarettes from the former Soviet Union (reaching Bulgaria by ship) and then forwarding them to Greece. The second involves smuggling...
cigarettes produced in Bulgaria and FYROM into Greece. The third involves Greeks going directly to tobacco companies in Greece and requesting to buy a large amount of cigarettes (usually a truckload) in order to export them to other Balkan countries. The necessary documents are issued (including proof of exportation, the truck leaves Greece and returns back into the country supposedly without merchandise (‘keno fortiou’). There are of course cases in which there is a diversion of cigarettes, with the merchandise not getting out of Greece at all.

- Cigarettes produced in Greece are supposedly exported to Albania, and the necessary documents mentioned before are issued. However, when ships leave Greek waters, cigarettes are loaded to speedboats (euphemistically called ‘sfeenes’ on the job) and return to Greece to be introduced in the local black market.
- Cigarettes produced in Greece are supposedly exported to Bulgaria and Romania by ship. However, the ships change route and cigarettes are transported onto small vessels (usually speedboats) in small ports and beaches of the prefecture of Attica, Salamina, Evia, Peloponnese, Santorini, Crete or even in Northern Greece, and specifically in the prefecture of Chalkidiki or the small island of Samothraki. This usually happens in the winter months as the vast majority of the small ports and beaches are not busy (see Kathimerini, 2006).

The above leads to the conclusion: Greece’s enforcement can be compared with a big sieve, through which the contraband cigarettes slip continuously.

**Counterfeit cigarettes**

There have been two cases highlighting Greece as a counterfeit cigarettes production country. In 2005 the Greek police discovered a factory of counterfeit cigarettes in Thessaloniki. According to police officials, the factory had been operating for six months. There were 2.3 million cigarette packs found with health signs in English and French, which made the authorities assume that these packs were intended for the British and French black markets (Tsigganas, 2005). The second case involves investigations being made in the country, which revealed that counterfeit cigarettes were produced in Greece and sent to Italy for packaging before they were introduced to Western Europe black markets (JTI, no date). However, counterfeit cigarettes of ‘international’ and ‘Greek’ brands were produced in factories in Southern Bulgaria, Macadonia, and Egypt and which were also transported in Greece by trucks and ships (see Kyriakatiki Eleftherotypia, 2001).

According to the retired procurer interviewed, counterfeit cigarettes constitute an extremely small share of the Greek black market. None of the participants in this study was ever involved in some way or another in the smuggling of counterfeit cigarettes.
Cigarette smugglers also know that the Greek smoking population is used to a standard in the quality of the tobacco traded, and that the smokers in the country being irrational addicts (Cameron, 1997), will not stop because of the price when it comes to buying cigarettes. Obviously, a number of them will buy contraband if they want/have the opportunity but they will try to avoid counterfeit cigarettes. It is interesting to note that all of the cigarette black market customers I have interviewed suggested that they would not buy counterfeit cigarettes (ισιγαρα μαιμους) as “they cannot be smoked”.

Selling contraband cigarettes

There is an ‘open’ and a ‘closed’ market for contraband cigarettes in Greece. ‘Open’ markets are those on the street and other public places. In Athens the open market for smuggled cigarettes exists in specific streets in the central business district or in public markets (laikes agora) in specific areas throughout the whole city. Open markets for contraband cigarettes also exist in Piraeus and Thessaloniki centre in public markets and the western suburbs of the city. It is not known why open markets do not exist in other Greek cities and towns, although such markets (though smaller in extent) existed in large Greek cities such as Patras, Heraklion and Larissa in the mid-1990s (see Zotos, 1996). The distribution of cigarettes in the context of the open market takes place in these specific locations because this affects the sales. Street-selling spots are situated in very busy areas, which have a general “shopping atmosphere” (Ghosh, 1994: 13), are close to important transportation nodes such as bus terminals and metro stations, and consequently are ideal places for the convergence between street-sellers and potential buyers. In Athens, for instance, the street-level market is situated in the central business district, on streets with busy bus terminals, near the central market (e.g. Varvakeios market), and between the major metro stations of Omonoia and Monastiraki (see map 1).
Map 1. Contraband cigarettes street–selling spots, Athens

Since cigarette smugglers, just as other illegal marketers, “are prevented from marketing their products” (Paoli, 2002: 66) at least in the same way or to the same extent as legal marketers, the positioning of the street-level market in a busy commercial area is an imperative. The fact that the contraband street-sellers operate only during the day when the legal market is in operation supports the above arguments. In addition, the situation with the street-level market in the middle of the legal market also shows the relative legitimacy or status of tolerance of the cigarette black market in the country.

The ‘closed’ market in contraband cigarettes is not highly observable and is based in houses, apartments and other storing places or in legitimate shops. There is a closed market in smaller cities and towns. The ‘closed’ market involves legitimate outlets, shops that are involved in the selling of legal cigarettes (e.g. kiosks, haberdasheries etc.) or ones that are not involved in the selling of legal cigarettes (e.g. CD shops). Many of these shops have a very specific clientele consuming specific Greek and international brands. The closed market is not confined in specific areas of the city but is largely dispersed geographically. A buy in the closed market takes place either after an arrangement between a street-seller or a pusher and the potential customer. Many times this arrangement is carried out in the public space where selling and buying in general takes place such as public markets. A buy is also made after an introduction of a new customer by a known closed market customer. Regular customers may even have the merchandise delivered by telephone order. In popular holidaymaker destinations such
as Corfu the selling of cigarettes by sticks can be observed, something that— as far as we know—is not apparent in Athens or Thessaloniki.

**Violence and the cigarette black market in Greece**

Violence in the higher levels of the black market in cigarettes, and in the area of street-selling is extremely rare. It is hypothesized that this may be one of the reasons why cigarette smuggling, even in its most obvious form of street-selling, is tolerated by the public and the police. This is not, of course, to suggest that violence is completely absent from the trade. Instances of violence among street-sellers have been noted in an effort to secure a territory of selling in the busy areas in which the open market is set. Moreover, there are individuals (from Greece or countries of the former Soviet Union), usually with an “imposing physical presence”, to use a phrase by Hobbs et al. (2002: 357), who are subcontracted because of their ‘bodily capital’ to engage in the protection of the interests of cigarette smuggling business from primarily Albanian and Russian extortion gangs. Some of these individuals particularly from the countries of the former Eastern bloc are amateur wrestlers. The general absence of violence from the cigarette smuggling business can be attributed to the fact that violence jeopardises the market by attracting unnecessary attention on the part of law enforcement agencies, as well as the fact that extortion gangs are themselves actively involved in cigarette smuggling (Linardou 2002b). However, there are fights among groups from the former Soviet Union with conflicting interests, including cigarette smuggling-related interests in specific areas of Athens such as Menidi where there is a high concentration of migrants from the former Soviet Union.

**Discussion, conclusions and recommendations**

The purpose of this study has been to contribute to the understanding of the social organisation features of the cigarette smuggling business in Greece. There are a number of issues for discussion deriving from this study:

*The ‘uniqueness’ of the Greek context in the study of cigarette smuggling.*

Due to the position of cigarettes/tobacco/smoking in the public social consciousness, and simultaneously the ‘low tax consciousness’ (Vavouras and Karavitis, 1997) among the public, Greece constitutes a suitable geographical landscape in which the black market in cigarettes flourishes. These factors, apart from making Greece an interesting context for the study of the particular phenomenon, offer competitive advantages to
The cigarette smuggling business in Greece

(perspective) cigarette smugglers. Cigarettes constitute a commodity that is heavily consumed in the country, and cigarette smugglers are largely seen as ‘service providers’ (Ruggiero, 1997).

The official view on cigarette smuggling.

The Annual Report on Organised Crime in Greece for 2004 published by the Greek Ministry of Public Order suggests that “from the cases that were examined it appears that Greece mainly constitutes a transit and not the destination country for smuggled cigarettes” (MPO, 2005: 19). It also suggests that the quantities of contraband cigarettes intercepted by the relevant law enforcement agencies are destined for the black markets of North European countries such as the United Kingdom, where the tax is high compared to other countries (MPO, 2005). Contrary to these official claims this research has shown that Greece is also a destination (as well as a source) country for contraband cigarettes. Although, Greece is indeed a transit country for smuggled cigarettes, with links to other important contexts for the cigarette smuggling business in general, this perception coincides with other official perceptions relating to the over-simplistic link between high taxes and prevalence of smuggling (see, for example, EUROPOL, 2003).

‘Entities’ involved in cigarette smuggling in Greece.

In contrast to the Greek media continuously referring to the Mafia, the Cosa Nostra, the Lobby and the Cartel when it comes to the cigarette smuggling business in Greece, and generally suggesting that this trade is managed by strong, hierarchical and rigid organisations, the contraband cigarette market is facilitated by individuals, small groups with varying coherence and, in case of large-scale smuggling, networks. Perhaps this is more evident in the Greek context that is primarily based on the social networks of which an individual is a ‘member’, and to a much lesser extent on social class and impersonal groups (Ioakeimidis, 2003). This is a common feature of illegal markets: shifting networks are more common than hierarchical organisations (Reuter, 1983; Potter, 1994).

Profile of a cigarette smuggler.

The data also indicate that there is not a profile of a cigarette smuggler, and that this largely depends on the position/level the smugglers operates in, their function in the cigarette black market, as well as their goals and motivations. I have come across a holidaymaker and a student smuggling small quantities of cigarettes, a legal business owner (the procurer interviewed) as well as socially and economically marginalised migrants (see Antonopoulos, 2007). The differences in the background of individuals involved in cigarette smuggling in Greece brings us to another related issue: the socio-economic position of marginalised migrants/ethnic groups in Greece, and its effect in migrants
becoming involved in cigarette smuggling. The rigid legal framework of migration in Greece since the early 1990s provided for the exclusion of migrants (undocumented and documented), their marginalisation in the Greek society and the lower echelons of the labour market. This brought about their criminal, racist and financial victimisation by the Greek state and public, and in consequence pushed a number of them to crime including participation in illegal markets. We are not in the position to know the exact effect the legal framework has had on this process but it is evident that the strict legal framework of migration in Greece must have at least some influence (see Antonopoulos 2006b).

The role of the legal sector.

Of great importance to this study is the role of the legal sector in the cigarette smuggling business. What this study has shown is that the legal and illegal sectors are beneficial to each other and that there is indeed a great difficulty in distinguishing between the ‘underworld’ and the ‘upperworld’ (van Duyne, 2003: 306). Perhaps to an extent, the notion of the ‘underworld’ when it comes to the cigarette smuggling business in Greece (and elsewhere) is a result of the misunderstanding mentioned earlier, namely that high taxation and smuggling rates are somehow correlated, that cigarette smuggling is to be attributed only to the differences of the level of taxation imposed on tobacco products by the governments, and that tobacco manufacturers are ‘victims’ of this taxation as well.

Corruption.

Although corruption is perceived as an indispensable element of illegal markets, it is not always part of the cigarette smuggling process. Large-scale smuggling may be in need of bribing law enforcement officials that come into adversarial contact (Levi and Naylor, 2000). However, smuggling schemes also involve smaller quantities distributed in small and closed circles of customers, which reduces the possibility of an adversarial contact between smuggler and law enforcement official. Moreover, previous research of Van Duyne (2003), Von Lampe (2002; 2005; 2007) and Van Dijck (2007) confirm that corruption is not an indispensable aspect of illegal markets. Corruption is a business expense, and like every other business costs entrepreneurs will only pay if it is really necessary.

Contraband vs Counterfeit.

Recently, there has been a discussion in Greece over the quality of the merchandise sold in the cigarette black market. In fact there has been an identification of contraband and counterfeit or ‘fake’ cigarettes on the part of the media and the public. Specifically, it
has been suggested that contraband cigarettes of ‘ambiguous quality’ including high levels of cadmium, arsenic and other toxins, may cause respiratory and other health-related problems to smokers. It is my opinion that cigarettes in general, irrespectively of whether they are legal or contraband, can cause severe health problems. What this research shows however, is that contraband cigarettes are initially destined for the legal market in Greece via outlets such as shops and kiosks or destined for the market of other countries in the Balkans. The cigarette black market is a form of illegal market in which the status and source of the commodity are initially legal and it is the evasion of taxes which makes transportation, storage and trading of the commodity illegal (see von Lampe, 2002; MacKenzie, 2002). Counterfeit cigarettes constitute, according to the participants in the market, an extremely small share of the Greek black market. Thus, largely the only difference between the legal and (the bulk of) contraband cigarettes in Greece is their price, with the legal cigarettes providing for an additional burden for the customers’ pocket and contraband cigarettes providing for the same level of harm to the health of Greek smokers as the legal ones.

The role of violence.

Violence, in contrast to the cinematographic and media representations of illegal markets, does not occupy a central part in the business but is a sign of “market dysfunction and instability” (Pearson and Hobbs, 2001: 42). Although violence is present in the cigarette smuggling business in Greece, it does not constitute an integral part in the market. Similar to other illegal markets, which inevitably have profit-making as their primary goal, the dominating force is business itself “rather than some cosy, familiar macho world of hard men . . . ” (Hobbs, 1995: 27).

Further research on the cigarette smuggling business in Greece is recommended. Specifically, on all forms of cigarette smuggling, their features and elements, the characteristics of the individuals involved and their specializations, the inter-relationship between the cigarette smuggling business and the legal sector, the role of corruption and violence as well as the dynamics of this illicit trade.
References

Cameron, S., Are Greek smokers rational addicts? Applied Economic Letters, 1997, 4(7), 401-402
ET3, Kapnisma: I Apolofsi pou Skotoni, ET3, 22 March, 2007

European Communities & WHO, Highlights on health in Greece. Copenhagen, WHO, 1998


Gardikas, K., Egnmatologia. Athens: Delagrammatikas, 1958


Griffiths, H., Smoking guns: European cigarette smuggling in the 1990’s, Global Crime, 2004, 6(2), 185-200


Hellenic Coast Guard, Cigarette Smuggling. Unpublished statistics, 2005


Hondroyiannis, G. and E. Papapetrou, Cigarette consumption in Greece: Empirical evidence from cointegration analysis’, Applied Economic Letters, 1997 4(9), 571-574


Ioakeimidis, P. K., I Amfilegomeni Simasia tis Pareas, Ta Nea, 25th July, 2003, p.6

Joossens, L and M. Raw, Smuggling and cross-border shopping of tobacco in Europe’, British Medical Journal, 1995, 310, 1393-1397


Kathimerini, Oi Ypothesis Trion Teloneion stis Eisaggelikes Arhes, Kathimerini, 9 December, 2005

Kathimerini, Treis Ntalikes me Fortio Lathrea Tsigara. Kathimerini, 18 January 2006
EUROPEAN CRIME-MARKETS AT CROSS-ROADS

Korfiatis, C., Karelia Anantion Alogoskoufi, To Vima, 8 May, 2005, p.D10
Kyriakatiki Elefherotypia, Me Dyo Arithmous Kovoun to Vichas stous Lathremporous Tsigaron [They Discourage cigarette smugglers with two numbers], Kyriakatiki Elefherotypia, 21 January, 2001
Kyriakopoulos, K., Lathrea Tsigara Meso Internet, Elefherotypia, 22 June, 2004
Lambropoulou, X., Oi Valkanikoi Diavloi ton Lathreon Tsigaron. To Vima, 20 August, 2000, p.A31
Lampe, K. von, Provisional situational report on trafficking in contraband cigarettes. Sixth Framework Programme, 2005
Linardou, G., Plio-Fantasma. Elefherotypia, 4 May, 2002a
Linardou, G., I Koza Nostra tis Dytiikis Octisis’, Elefherotypia, 21 July, 2002b
Mediterranean Migration Observatory, Statistisk data on immigrants in Greece: An analytic study of available data and recommendations for conformity with EU standards. Athens, MMO, 2004
THE CIGARETTE SMUGGLING BUSINESS IN GREECE

Milner, M., Illicit trade in tobacco costing billions, Says BAT Chairman’, *The Guardian*, 27 April, 2007, p.28


MPO, *Annual report on organised crime in Greece, 2004*. Athens, MPO, 2005


Politis, S., Hanonte 500 Di se Lathrea Kafima, Tsigara kai Pota. *Ta Nea*, 8 June. 2002


Ta Nea, I Autokratoria tou Bokan, *Ta Nea*, 10 October, 2000

EUROPEAN CRIME-MARKETS AT CROSS-ROADS

Ta Nea, Ta Thymata Odigisan sto ‘Ksyroma’ tis Nychtas. Ta Nea, 12 July, 2002b, p.N18

Ta Nea, Teloniaki sto Edolio gia Lathremporio Tsigaron pros Skopia’, Ta Nea, 24 April, 2007

Terzenidis, K., Mazikes Ekdromes sti Bulgaria, Makedonia tis Kyriakis, 18 April, 2004, p.62

The Economist, Economic Indicators. The Economist, 3 February 2001, p.136


To Vima, Paradikastiko Kykloma kai sti Thessaloniki’, To Vima, 24 September, 2006

Tsigganas, T., Paranomi... Kapnoviomichania. Kathimerini, 13 August 2005


Vardavas, C.I. and A. Kafatos, Greece’s tobacco policy: Another myth?” (Correspondence), Lancet, 367 (6 May 2006), 1485-1486


Zotos, G., Pano Apo 40 Dis in Forodiafygi, To Vima, 13 October 1996

200
The vulnerability of economic markets to crime in 2015

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Since the plotters were flexible and resourceful, we cannot know whether any single step or series of steps would have defeated them. What we can say with confidence is that none of the measures adopted by the U.S. government from 1998 to 2001 disturbed or even delayed the progress of the al Qaeda plot. Across the government, there were failures of imagination, policy, capabilities, and management (...)

The most important failure was one of imagination. We do not believe leaders understood the gravity of the threat (National Commission on Terrorist Attacks Upon the United States, 2004: 9).

Introduction

One of the major critiques regarding ‘organised crime’ assessments is that they are no more than a description of previous law enforcement activities. Reports on how many criminal groups have been identified and how much crime these groups have committed are considered to be poor instruments for decision makers (Vander Beken, 2004). Now more than before, criminal policymakers intend to assess what lies ahead. When dealing with all sorts of crime, European policymakers want to be informed about coming challenges and threats so that they can take appropriate preventive action and target their reactive response better. In 2001, a European Union (EU) action plan introduced a risk assessment methodology (Black et al, 2001) to improve the reporting on European organised crime (Council of the European Union, 2001). This theme was taken up again in the announcement of the establishment of a ‘European Organised

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This approach has been subject to various sorts of critiques, challenging the (lack of) conceptualisation of “organised crime” and the methodological base of the whole assessment process (see for example van Duyne, 2007). This chapter only focuses on the critique specifically related to the limited future-oriented nature of the existing approaches. Crime assessments in general and so-called organised crime assessments in particular, mainly report on the past (how many criminals/groups have been identified? what kind of crimes do these criminals/groups commit?), rather than on challenges for the future (Verfaillie, Vander Beken and Defruytier, 2006).

In this chapter, based on a study for the European Commission, it is argued that scenario planning might be an interesting methodological tool with which to introduce future oriented and more proactive and anticipating aspects in assessment reports, illustrated with an application of this technique to the vulnerability of economic markets in Europe (Verfaillie and Vander Beken, 2006).

**Policymaking and (organised) crime: uncertainties and questioning assumptions**

The introduction of prospective elements into assessments of complex forms of crime like organised crime, and policymakers’ intention to take preventative measures and to prepare for coming challenges related to organised crime, is hindered by two main obstacles (Williams and Godson, 2002; von Lampe, 2004):

1. uncertainty about the dynamics of this phenomenon and the nature of the challenge or threat posed by it;
2. the assumptions that guide policymakers’ planning process when dealing with such phenomena.

Analysis of organised crime policy documents in the EU suggests that the European reports and analyses of this phenomenon are inadequate to aid strategic planning due to an information deficit that does not allow statements about the ‘seriousness’ of the organised crime threat (Levi, 2003; Vander Beken, 2004; van Duyne, 2006). The information gathering process on which European analyses are based is disparate, lacks transparency, is without engagement of Member States, and often comes about under po-

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3 This paper is based on a study for the European Commission: Project Organised Crime Outlook (OCO) - A Method for and Assessment of Likely Future Trends in Organised Crime in the EU, co-financed by the European Commission (JAI/2004/AGIS/177) – Promoter Prof. dr. Tom Vander Beken (Ghent University) – Partners: the Swedish Council for Crime Prevention, the Slovenian Office for the Prevention of Corruption and the Belgian Ministry for Justice (Service for Criminal Policy)
The vulnerability of economic markets to crime in 2015

Despite this information deficit, organised crime in Europe is believed to be on the rise, highly dynamic and flexible, operating on a global scale, opportunistic and targeting the social and commercial structure of the European Union (see for example Part 1. Background of the EU Millennium strategy on the prevention and control of organised crime, Council of the European Union, 2000). Consequently, more (and often invasive) measures are deemed necessary to tackle organised crime. As such, European reports and analysis tend to reflect the assumptions and activities of policymakers and law enforcement agencies rather than the dynamics of the phenomenon itself. The European approach of organised crime is thus at risk of becoming a self-fulfilling prophecy: policymakers make assumptions about organised crime and wield these assumptions to legitimise a number of measures taken to deal with it (Vander Beken, 2005a). Criminal organisations, however, seem to react in flexible, often unpredictable ways, and manage to shield off governmental efforts (Van Calster, 2006). Therefore, and unfortunately quite often, policymakers’ assumptions about the nature and the dynamics of the phenomenon turn out to be invalid. The increasingly stronger legislative instruments and investigative powers they introduce, thus seem unsuccessful to tackle organised crime.

Organised crime assessments and the strategic planning process developed by governments and security forces to deal with organised crime are thus on the one hand faced with great uncertainty about the (dynamics of the) phenomenon at hand. On the other hand, rigid assumptions seem to prevail when measures are taken and strategic plans are developed to deal with organised crime. These observations are important. What they suggest is that the development of pro-active organised crime assessments should focus on methodologies that can (i) support strategic planning and priority setting in uncertain conditions and (ii) provide a different knowledge base and put policymakers’ assumptions about organised crime in perspective. Based on literature review of future-oriented studies, we therefore argue elsewhere (Verfaillie, Vander Beken and Defruytier, 2006 and Verfaillie and Vander Beken, forthcoming) that the assessment of organised crime might benefit from the use of scenario studies. Before we advance this claim by means of a concrete scenario study of the vulnerability of economic markets to crime in Europe, we will first outline our argument regarding the application of scenario studies in the field of organised crime assessments.

Scenario thinking and (organised) crime assessments

Scenario thinking can be linked to different schools of thought and embraces a wide range of methodologies and objectives (Bradfield et al., 2005; Chermack, 2007). As such, it is not a new way of thinking (see for example Garrett, 1993; Schoemaker,
Scenario studies have been developed and applied in many fields, including the field of crime and criminal justice (Dator and Halbert, 1996; Hartikainen and Mannermaa, 1996; National Intelligence Council, 2004; Wagner, Bobert and Beckmann, 2005; Wagner, Boberg, Beckmann and Schulte, 2006, Schulte, Boberg and Vander Beken, 2008). Despite this tradition, the use of scenario studies in the field of (organised) crime assessments is not self-evident. In the European public security sector, the actual use of scenario thinking in the strategic planning process is relatively new (Vander Beken, 2005b), probably as the concept of strategic management and planning has a somewhat more recent past in most European (continental) criminal justice administrations. Contemporary policing and the control of (organised) crime in Europe, however, increasingly involve priority setting, strategic planning and the use of strategic planning tools (Garland, 2001, Gorr and Harries, 2003). Policymakers and law enforcement agencies are increasingly looking for ways to improve these processes.

We cannot elaborate on these issues here. We can however be more specific as to why and how scenario studies could be used as meaningful tools for the assessment of organised crime in Europe. We should therefore return to the aforementioned issue of perspective: the way policymakers, law enforcement officials, and scientists assess organised crime and the strategies they develop to tackle organised crime. Their assessments and the strategies they propose depend on their perspective on the dynamics of organised crime.

Williams and Godson (2002) distinguish and discuss different perspectives or models of organised crime (political, economic, social, strategic, and composite or hybrid models), and point to the importance of these models for the assessment of organised crime. Based on these models, which cover both the attributes of the environment of organised crime and the attributes of the actors involved in organised crime, they extrapolate from them contingent propositions about the kinds of developments, innovations or changes we might see in organised crime in the future. According to Williams and Godson, organised crime developments can not be predicted. Consequently, all policymakers can do is assess future developments, both in terms of a knowledge base (what is currently known about the dynamics of organised crime) and in terms of the dynamic, normative issues of what constitutes organised crime (the way organised crime is defined). The issue of perspective therefore bears important consequences. Different perspectives or models imply different theories of change, i.e. different assumptions about the mechanisms or dynamics of organised crime. Different perspectives or models thus imply a different perspective on the evolution and future of organised crime. Hybrid models are based on different assumptions about the dynamics of organised crime than economic models. The focus of a hybrid perspective thus reveals a different future than the one depicted by an economic model. The perspective that is used to
analyse organised crime defines our perspective on the future of organised crime and this finding is important for law enforcement purposes. Perspectives have consequences for the information sources that should be taken into consideration for the assessment of organised crime. Different perspectives on organised crime imply different perceptions of the future, i.e. different possible directions in crime and crime definition, which implies different intelligence gathering methodologies and strategies to tackle or prepare for these phenomena.

In other words, depending on the claims made about the dynamics of organised crime, policymakers, law enforcement officials, and scientists will gather and analyse information sources (and dismiss others) that allow them to make plans and prepare for coming threats and challenges. These assumptions, (scientific) perspectives and (legal) definitions of organised crime are crucial, since they structure the effort to analyse, plan, control and prepare for organised crime.

We argued that assessments and strategic planning in the field of organised crime need to be informed differently precisely because of this issue (and importance) of perspective and the limits it poses for strategic planning. The scenario thinking methodologies that we reviewed (Schwartz and Oglivie, 2004; Scearce and Fulton, 2004; Shell International 2003; Lindgren and Banhold, 2003; Centraal Planbureau, 2003) have the potential to inform and structure the assessment of organised crime differently. In this line of work, scenarios are described as plausible alternative worlds or narratives about how the future might unfold. In the construction of storylines, decision makers’ perspectives, assumptions and choices regarding organised crime can be explicated and confronted or amended with information sources other than the more traditional (law enforcement) data. The inclusion of different or non-traditional sources of information can be obtained through a different scope of analysis, i.e. a contextualisation of organised crime. As such, scenario studies can deal with strategic risks and opportunities in a very different manner than traditional organised crime assessments. Scenario studies provide and structure information as to how the future environment(s) of organised crime might unfold. Organised crime scenario studies are thus based on the assumption that criminal activity and its development should be seen in context. (Organised) criminal activity is not an isolated phenomenon but an aspect of society as a whole. In that respect, organised crime assessments should not be based on law enforcement data alone. Many political, socio-economic, technological, and environmental developments can be relevant to the understanding of organised crime activity. Scenarios can demonstrate the relevance of societal trends in organised crime developments, given that the stories and future worlds are constructed on a knowledgebase that can render intelligible interplay between crime and contextual changes in a non-deterministic and reflexive way.

In sum: assessing and planning for organised crime requires a contextualisation of organised crime in order to amend decision makers’ knowledgebase with non-
traditional information sources, and to shift their focus towards developments, mechanisms and environments conducive or vulnerable to organised crime. We will now develop these claims further and make them more concrete by means of a scenario study on the future of the vulnerability of economic sectors in the EU to illustrate how other information sources, contextualisation of organised crime dynamics, can inform the strategic planning process in a different reflexive way.

The vulnerability of economic sectors in the EU in 2015

The scenario study we report here is based on a scenario methodology developed by Scearce and Fulton (2004). Based on this framework we wrote general, plausible, exploratory narratives, situated in the European Union in 2015, about the vulnerability of economic sectors.

The first phase of the scenario construction process, i.e. the search for a relevant focal issue to guide information gathering and the consistent development of the storylines, was kept general and open: “What could the future look like for the vulnerability of economic sectors in the EU in 2015?”

In the second phase, we gathered and analysed information and data that can shape influence or have an impact on the vulnerability of economic sectors in the EU. This information was retrieved from extensive literature review⁴ and focus groups with a variety of experts.⁵ The storylines of the various scenarios are based on the insights from these information sources.

In a third phase, the information from the literature review and the focus groups is synthesised and combined to create scenarios. This reiterative process resulted in scenario foundations (two ‘critical uncertainties’ – Scearce and Fulton, 2004), i.e. issues or driving forces which seem highly relevant to the vulnerability of legitimate economic sectors in the EU. The issue of intellectual property rights and the regulation of the economic markets are the two key uncertainties that are at the basis of the four different scenarios or future worlds. Both key drivers are most uncertain and important when it

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⁴ The literature review focused on authoritative EU policy documents regarding organised crime (e.g. The Hague Program); law enforcement data and scientific analysis of criminal markets and criminal market dynamics in the EU (e.g. European Union Organised Crime Reports, Fijnaut and Paoli (2004); Castells (1998)); analysis of political, social, economic and technological trends (cf. European Commission Forward Studies Unit (1997; 2004)).

⁵ Three brainstorm sessions were conducted in the course of this project. The first one was conducted in Brussels with 6 members of the European Commission. A second brainstorm session was held in The Hague with 8 strategic analysts from Europol. The third brainstorm session was held in Ghent with 7 academic staff members of the penal law and criminology department of Ghent University.
THE VULNERABILITY OF ECONOMIC MARKETS TO CRIME IN 2015

comes to defining or significantly changing the nature or direction of the vulnerability of economic sectors in the EU.

What could the future look like for the vulnerability of economic sectors in the EU?

The first key uncertainty that was selected for its general relevance and great impact on the vulnerability of economic sectors in the EU is the enforcement of intellectual property rights (IPR). Intellectual property rights refer to the rights securing the ownership over an intellectual creation, which is of vital importance for economic growth and innovation in our contemporary knowledge-based economies. Currently, the enforcement of intellectual property rights is high on the European political agenda (European Commission 2005). Several international bodies and authorities (Interpol, World Intellectual Property Organisation (WIPO), World Trade Organisation (WTO), World Customs Organisation (WCO), World Health Organisation (WHO), OECD, International Chamber of Commerce (ICC), the European Commission) have issued reports and communications, warning of the negative economic and social impact of intellectual property crime, i.e. the counterfeiting or pirating of goods sold for profit without the consent of the rights holder (Interpol, 2005), on the EU region. The nature of these pirated and counterfeit goods poses a problem, not only in economic terms (loss of employment, tax, and sales revenue, economic growth and innovation, market destabilisation), but to the health and safety of consumers in the EU as well. The current political focus on intellectual property rights and the problem of counterfeiting and piracy as such is not new within the EU. The last ten years the EU has taken several important initiatives to ensure enforcement of intellectual property rights. The question remains to what extent these measures will be put into practice. Will intellectual property crime remain an important policy issue in the future? The outcome of this debate,

6 Even though exact assessments of the values involved in intellectual property crime remain difficult, statistics of custom operations in the EU show that counterfeiting and piracy pose a serious threat to the economic sectors. In two recent communications (IP/05/1247 and MEMO/05/364), the Commission highlights that customs now seizes over 100 million articles per year and that the amount of seizures in 2004 increased by almost 100% compared to 1998.

7 The Customs Regulation (Regulation (EC) No 3295/94), allowing border control of imports of fake goods; Green Paper on Combating Counterfeiting and Piracy in the Single Market (1998); Directive 2004/48/EC, which harmonises the enforcement of intellectual property rights in the EU; Council Regulation (EC) No 1383/2003 of 22 July 2003, improving the mechanisms for customs action against counterfeit or pirated goods and the extension of Europol's powers to cover piracy and counterfeiting; Action Plan of the Commission to combat counterfeiting and piracy (IP/05/1247 and MEMO/05/364); EU's Enforcement Strategy (MEMO/04/255) focussing on third countries in order to effectively protect EU right-holders in case their IPR are violated and exploited in third countries. Equally important in this regard is the “Agreement on Trade-Related Aspects of Intellectual Property Rights” (TRIPS).
if and how intellectual property rights will be safeguarded, is crucial to the issue of vulnerability of the legitimate economy and its sectors.

The second important, yet uncertain key driver is the regulation of economic sectors. This uncertainty refers to the way the protection of economic sectors in the EU is organised. Since the Dublin Declaration (2003), it is generally accepted that reducing and preventing the penetration of the economic sectors by organised crime requires the close cooperation of public and private sectors. What is uncertain however, is the nature of these cooperative schemes. The motivations to engage in partnerships, and the conceptualisation of these partnerships, the role each partner is given, are all significant for the kind of results that could be obtained. All four scenarios are therefore based on a variety of public-private partnership schemes that help regulate and protect the economic sectors. So even though in all of the worlds the economic sectors are regulated by both the public and the private sector, the emphasis or regulation authority is always in the hands of one of the partners. The worlds therefore range from worlds in which the economic sectors are forced to deal with the organised crime threat themselves, and in this effort they are backed up by government to scenarios in which the government takes initiative and is authoritative in the protection of the economic sectors.

In the scenarios the two key uncertainties are combined. **Resistant Sectors** is an EU in which the private sector was forced to take the lead to prevent and reduce organised crime penetration of the legitimate economy, and policies to safeguard IPR are effective. **Fortress Europe** combines effective IPR enforcement with strong public involvement in the protection of the economic sectors. **Sieve** pictures an EU characterised by a weak enforcement of IPR policy, and a private sector taking the lead in the regulation of the economic sectors in the EU. **Fragmented Vulnerability** is a scenario that combines ineffective IPR enforcement, and an authoritative public sector concerning the protection of the legitimate economy.

**Resistant Sectors**

In December 2009, European policy makers kick off the *Prague Programme*, the third multi-annual programme to set new priorities for the further development of the area of freedom, security and justice. The Prague Programme succeeds the Hague Programme (2004), of which the adoption and implementation of the various actions suffered a considerable setback. In a Communication (2009) on the evaluation of the Hague Programme, the Commission points out that the past five years the EU’s strategic concept on tackling organised crime remained a ‘dead letter’, because the necessary preconditions to successfully implement the variety of organised crime control measures were never created. Consequently, the knowledge as well as the gathering and analysis of information on organised crime in the EU remained poor. Research programmes for the development of crime proofing and vulnerability studies were abandoned. The
launch of the ‘European Criminal Intelligence Model’ was postponed. Governments themselves failed to come up with strategies to deal with the challenges and criminal opportunities brought forth by the rapid technological evolutions and the globalisation of (organised) crime phenomena. Driven by cost considerations they engaged in public-private partnerships in an attempt to reduce the societal impact of the violation of intellectual property rights by criminal groups. In this context, the economic sectors, including a booming private security market, took the initiative to decrease the vulnerability to the threat of organised crime. This private security complex no longer focuses on organised criminals as such but invests in situational prevention and defensive measures. Transparency and accountability standards were raised to thwart money laundering and corruption. New technological applications shield the legitimate economy from more digital penetration strategies by criminal organisations. However, new threats are lurking and have drawn the attention of the private security firms. In 2012, in this scenario, MacAfee’s annual report on organised crime warns of the threat and the economic costs of highly technological, large-scale identity fraud in the EU. The defensive strategies of the economic sectors, together with the digitalisation of daily life, is giving rise to an organised crime situation within the EU in which successfully exploiting economic criminal opportunities now entirely depends on the ability to obtain or create legitimate identity, be it as a consumer or as a business. The past decade, the enforcement of intellectual property rights has known a similar trend. European policy makers have long recognised the threat of piracy and counterfeiting, and the importance of global and properly balanced intellectual property right enforcement mechanisms. When preliminary evaluation reports in 2015 show a decline in the number of intellectual property violations in the EU this too is due to private sector activities.

Governments and intergovernmental organisations failed to make considerable efforts to tackle intellectual property crime putting the burden of safeguarding intellectual property rights entirely on the shoulders of the rights holders. The rights holders have developed successful and cost-effective intellectual property strategies as part of their business strategies and massively and successfully launched civil and criminal proceedings against violations of intellectual property. Also the knowledge about intellectual property crime was improved: both businesses and consumers were made more aware of the impact of piracy and counterfeiting. Information and best practices are efficiently and globally exchanged among businesses.

In 2015, the vulnerability of economic sectors is reduced in many respects due to the efforts made, for the most part, by the private sector to safeguard intellectual property rights, and to protect itself from organised crime involvement. With the efficient global safeguarding of intellectual property rights, a private security complex has limited the profits that organised criminals can obtain through the violation of trademark, patent and copyright. As a result, the impact of intellectual property crime (IPC) on the
legitimate economy in the EU has shown a sharp decrease. Legitimate businesses no longer suffer major sale revenue losses, employment opportunities and consumer confidence remain unaffected, and indirectly, important health and safety risks were reduced. Furthermore, the reduction of IPC related profits poses a problem for organised criminals who used these revenues to fund other criminal activities, such as illegal drug, and arm trade, and terrorism.

Over the past decade, the private sector has also taken the lead in the development of strategies that reduce the vulnerability of the economic sectors from organised crime involvement. These strategies have focused on elimination of loopholes in the legitimate economy and the protection of private interest, and are therefore primarily aimed at the prevention of money laundering and various manifestations of fraud in the private sector. Because the legitimate economy now heavily relies on information and communication technology and e-commerce, the strategies applied to reduce the vulnerability of economic sectors were given a digital or technological edge, and strongly focus on the protection of data. Most important in this regard, was the progress made in the fight against identity theft, one of the biggest threats to the economic sectors this past decade.

**Fortress Europe**

December 2008. A large number of deaths in the EU, caused by the use of counterfeited medicines, catapult the issue of intellectual property crime to the top of the European political agenda. An outraged public now demands why the various measures and action plans to combat counterfeiting and piracy were never properly executed. European policy makers quickly respond: an independent investigative committee is appointed and considerable financial and human resources are allocated to support immediate and large-scale action against criminal organisations involved in intellectual property crime. When the investigative committee releases its final report (2010), the EU takes to heart its conclusions and drafts a new action plan (2011–2013) to enable a prompt implementation of the proposed recommendations. The legal framework regarding the protection of intellectual property rights in the EU is revised, updated and extended: custom authorities receive more competences to fight piracy and counterfeiting, governments are stimulated to ratify new international treaties, accede to and implement the available bi-lateral and multi-lateral agreements and more and harsher penalties for intellectual property crime are put in place. Information exchange is improved as well: third countries, businesses, consumers, and public services are better informed about the extent and the nature of the problem.

The private sector is perceived as a privileged partner that can aid the concrete realisation of the EU’s intellectual property rights enforcement strategy. Especially in the field of digital piracy, where organised criminals manage to wield new technologies to
THE VULNERABILITY OF ECONOMIC MARKETS TO CRIME IN 2015

produce high quality forgeries, and manage to spread these products on a massive scale, cooperation with the private (security) sectors is indispensable and bares fruit. Both the EU and its strategic partners (for example India) have improved the intelligence gathering processes of their customs and law enforcement services, and have linked, and in some cases even merged, their intelligence systems and databases. Most important is that in the context of the negotiations concerning the financial framework for 2014–2020, the EU provided the necessary financial guarantees to ensure effective implementation of intellectual property crime related measures.

Also remarkable is the attention devoted to the role of third and developing countries. More than before, the EU now attempts to proactively influence these countries’ policies and practices on organised crime in general and on intellectual property rights in particular, not only through legal agreements, information exchange and intensified cooperation, but with the use of small military interventions, used to dismantle manufacturing, transport and storage facilities.

The release of the report of the investigative committee on counterfeiting and piracy coincides with the final evaluation of the measures taken in The Hague Programme (2005–2009). The measures proposed in the field of intellectual property rights are therefore no coincidence but are based on the achievements made under this programme and follow the lines set out in the strategic concept on tackling organised crime. Due to its flexible nature The Hague Programme, allowing for the annual identification of strategic priorities and its well-developed partnership approach, the EU was able to face a great deal of organised crime challenges in the EU. Realising most of its objectives the programme furthermore managed to render visible the area of freedom security and justice by closing the gap between policy and practice.

The investments and the changes made by the public sector to ensure an effective enforcement of intellectual property rights and the measures taken to protect the economic sectors from organised crime involvement, with the implication of the private sector in this process, has rendered the legitimate economy in the EU less vulnerable. Strong laws, regulations and procedures, a global network of international partners, and public–private partnerships are the pillars of a global policy that was developed to enforce intellectual property rights.

Now that the violation of these rights has become less attractive to criminal groups, intellectual property has become an even more powerful driver for economic growth and job growth, foreign sales and export, and has increased its share in the EU gross domestic product. The protection of trademarks and brands has a positive effect on the market competition, restoring consumer confidence and brand loyalty. Notwithstanding the fact that the digitalisation of organised crime and the increased mobility of offenders continue to pose a problem for the vulnerability of the economic sectors in the EU, the public sector did manage to carry through important reforms to adapt to the
new security challenges in the EU. In 2015, considerable progress is made in the fight against money laundering, fraud, identity theft, and crimes that jeopardize the EU’s financial interests, hence weakening the abuse of the economic sector by organised criminals.

Sieve

In 2013, ten years after the Dublin Declaration (2003), a European jubilee conference is held in Dublin. On the agenda is the evaluation of the European and international cooperation across the private and public sectors and the measures, standards, best practices, and mechanisms that were implemented to reduce and prevent the negative impact from organised crime activities to governments and the legitimate economy.

One of the central issues at the conference is the evaluation of the fight against intellectual property crime. The enforcement of intellectual property rights has been high on the political agenda of Western industrialized countries for almost 20 years now, but estimates indicate that the number of intellectual property violations in the EU continues to rise. Policy makers express their dissatisfaction about the approach of intellectual property crime and hold the private partners and the rights holders responsible for the discouraging results. The rights holders recognise that governments and intergovernmental organisations have made efforts to tackle intellectual property crime. New legislation was issued and investments were made to widen the scope of intellectual property enforcement. A more global approach of the phenomenon is in place. The rights holders strongly repudiate however, that they are to blame for the growing numbers of intellectual property crime. According to them, the past decade governments have made insufficient investments to put the various policies into practice and left businesses to their own devices for the enforcement and safeguarding of their intellectual property rights from (digital) piracy and counterfeiting.

The shift, from the public to the private sector, for the protection of intellectual property rights has important consequences. The private sector is fragmented and poorly organised. Some businesses, mostly large corporations, have developed strategies to prevent the violation of their intellectual property rights as part of a larger business strategy. Other firms, especially small and medium sized enterprises and businesses in developing countries, are unaware of threat of intellectual property crime or cannot afford to develop costly prevention and harm reduction strategies. Yet other firms have been penetrated by criminal organisations and form a link in an international integrated network that produces and distributes counterfeit and pirate goods on a global scale. Ill-coordinated partnerships, fragmentation of the public and private sector, high costs and business and customer unawareness about the nature of possible crime related threats are the most important conclusions of the conference, not only in the field of intellec-
tual property crime control but regarding the protection of governments and the legitimate economy in general.

Although these problems were also a concern ten years ago, a wide variety of new technological applications and the digitalisation of daily life made them more urgent and complex. In 2015, economic sectors are vulnerable to organised crime involvement because during the past decade, not enough attention was paid to effective intellectual property rights protection and enforcement and to the adequate protection of the legitimate economy in general. The inadequate safeguarding of intellectual property rights, both by the public and the private sector, resulted in massive profits for organised criminals.

The European Crime Situation Report 2015 shows how important intellectual property crime is for the funding of the production, sale or consumption of illegal goods and services in the EU. Figures published by the European Commission (2015) indicate that even though customs and law enforcement efforts did not change significantly, between 2005 and 2015 the number of intercepted counterfeit or pirated goods rose by more than 500%. OECD reports estimate that currently, counterfeits account for 10% of world trade. In the EU, numerous jobs are lost each year. Legitimate businesses are hit hard and suffer a substantial loss of sales revenue, market share and investments, which in turn leads to lost tax revenues. Consumer confidence in some sectors has dropped to an all time low. Intellectual property crime is also responsible for a number of deaths in the EU, as the counterfeiting of products, like medicines, poses serious health and safety risks.

The past decade, the EU policy maker failed to take the necessary measures to promote a strong and effective enforcement of intellectual property rights, and shifted a great deal of the responsibility for the protection of the legitimate economy to the private sector. The private sector managed to take up this responsibility, but only to a certain extent, as a lot of economic sectors cannot cope with the economic costs of crime prevention, for the rise of the information economy and the digitalisation of daily life has increased the complexity and the costs of preventing, detecting and deterring increasingly digital criminal activities, like information theft and cyber corporate espionage, that seriously affect the vulnerability of economic sectors in the EU.

**Fragmented Vulnerability**

On New Years’ Eve 2010, terrorists release lethal doses of chemical agents during mass events in Brussels, Paris and Cologne, where thousands of people are gathered to celebrate the New Year. At the same time a cyber attack is launched against the digital infrastructure of the three cities, disabling the computer networks controlling the power grid, killing people and distorting essential information and communication technologies. Rescue efforts are impaired, which further increases the amount of casualties. As
the death toll continues to rise, the EU starts to organise its response. In the years following the attacks, new legal texts are drafted at a dazzling rate, law enforcement agencies are given new and far-reaching competences, cooperation is stimulated and power is concentrated to speed up the policy process and increase efficiency. Military interventions, optimisations of intelligence processes in the EU, increased surveillance and interdiction competences, and massive investments in software security, biometrics and other security technologies are pushed forward as solutions to decrease the vulnerability of the European Member States to future terrorist threats.

None of these measures are new. Similar policies were developed in the aftermath of the 9-11 attacks and under The Hague Programme (2005 – 2009) terrorism related measures were an absolute priority because of the persistent threat of terrorism in the EU. What is new, in the aftermath of the 2010 attacks, is the speed in which these policies are implemented and executed. Soon, however, a time would come that would prove the assumptions guiding these policies inadequate.

When Eastern European private intelligence companies provide the first clues to the origins of the terrorist attacks, their preliminary reports leave policymakers puzzled: Highly educated European citizens retrieved chemical agents from military depots and managed to engineer and launch successful cyber attacks in cooperation with insiders, familiar with the computer networks and security systems. This was not at all what the EU had prepared for. These findings confront European policy makers with some important consequences of their long-time focus on terrorism, rendering less evident some of the key strategies that have been developed so far: the link between immigration and crime, for instance, which resulted in the introduction of a European identity card, a massive spread of profiling and identification technologies and a harsher, more restrictive immigration policy in the EU. This entailed massive investments in security technology and artificial intelligence at the disadvantage of human intelligence.

The continuing fragmentation of the field of crime control, resulting in a highly obscure network of crime control practices. Accountability and transparency arrangements that can meet the complexity brought forth by this field continue to lag behind. The 2010 investigations shed new light on the nature and origin of terrorism, and laid bare the inadequacy of some of the assumptions and policies governing contemporary terrorism control efforts. Furthermore, some policy domains, like the control of organised crime, were overshadowed by this one-sided focus on terror and remained underdeveloped. As the fight against terrorism gained importance, The Hague programme provisions on organised crime were hardly invested in.

The most striking examples are the EU anticorruption policy and the policies to combat intellectual property crime. Both issues facilitated the 2010 terrorist attacks and proved to be of vital importance. In both cases the EU, as well as semi-public and private actors continued to promote concrete strategies to tackle these issues. Overall,
however, the necessary means were never provided to put these much needed policies into practice.

Despite the policy rhetoric, the enforcement of intellectual property rights is not a priority in 2015. New legal arrangements were drafted, and the penalties on intellectual property crime were made more severe, but none of these measures was put into practice or executed properly. International cooperation schemes and partnerships are in place but are often ad hoc or informal in nature. The private sector has taken much-needed measures to protect itself but is limited in scope in the EU and is not always capable of funding costly measures to prevent, or fight off organised crime penetration. The fragmentation and ineffective fashion in which intellectual property rights are safeguarded is characteristic for the way the economic sectors are protected in general in the EU. Consequently, the abuse of the economic sectors in the EU is varied and diverse. Money laundering, information theft and fraud have many faces, do not always require the same skill or level of complexity, and the success of these activities depends entirely on the measures taken in the various sectors. In some Member States the economic impact, in terms of job opportunities and the loss of revenue by businesses, is felt more than in others. The same goes for the health and security risks that come with counterfeited goods. Overall, the penetration of the legitimate economy still is a matter of high profit versus low risks and a much-needed source of revenue for organised criminals to fund additional criminal activities.

Conclusion

The development of strategic plans to control organised crime is inevitably faced with uncertainty. Despite this uncertainty policymakers seem to act on clear and often one-sided assumptions about the threat posed by complex phenomena like activities of criminal groups. What is defined as organised crime in Europe is believed to be on the rise, highly dynamic and flexible, operating on a global scale, opportunistic and targeting the social and commercial structure of the European Union. For that reason more (and often intrusive) measures are deemed necessary to tackle the phenomenon. We believe that scenario thinking is a process that allows policymakers to make better assessments of threats and challenges posed by such phenomena. By better, we do not suggest that scenario studies can predict organised crime threats and challenges in a more accurate manner than other assessment tools.

What we have suggested in this chapter is that scenario studies strive for a different knowledge base for crime assessments as well as for a more optimal use of the existing knowledge base, given our current understanding of the phenomenon in light of the inevitable unpredictability and insecurity about what the future of organised crime
Scenario studies thus rely less prominently on law enforcement data but structure and combine contextual data, i.e. political, economic, environmental, social and technological information, law enforcement data, scientific analysis and policy choices to develop alternative contextualised futures of organised crime. These contextualised futures or stories intend to put strategic decisions in perspective. Scenarios thus shift the focus from assessing what organised crime groups will do, to assessing the ways in which societal contexts might be exploited: what is of vital importance to European economies, political systems, to our societies? What are the most significant, most important vulnerabilities of the European information and communication technology structure? What are the most significant (undesired) consequences of our political choices and crime control strategies? As such, the focus for policymakers shifts towards structural developments, weaknesses and opportunities which pose significant security risks if left unattended. Precisely because of this shift, policymakers are shown opportunities to develop proactive or anticipatory policies. Such policies no longer focus on the assessment of criminal activity, but analyse and assess structural developments, weaknesses and opportunities.

In its final report, the National Commission on Terrorist Attacks Upon the United States (2004: 344) acknowledges the problems of uncertainty and proposes to ‘institutionalise imagination’ as a way of dealing with the uncertainty of the threat brought forth by criminal phenomena. As the report rightfully points out, the application of imagination in the policy process requires more than “finding an expert who can imagine that aircrafts could be used as weapons”. We believe that the questions on which scenarios are based allow policymakers to pinpoint (imagine) weaknesses in their strategic thinking process and stimulate them to be proactive. The selection of items to be included is weighed in the light of informed literature review of the contextual data, law enforcement data and the scientific knowledge base of organised crime. The scenarios we presented in this chapter thus highlight the importance of intellectual property rights to European economies and of crime control formats and indicate what the consequences might be if these matters are left unattended.
References


Bradfield, R., Wright, G., Burt, G., Cairns, G. and Van Der Heijden, K. The origins and evolution of scenario techniques in long range business planning. Futures, 37(8), 2005, 795-812


Council of the European Union, 14959/1/01, Crimorg 133, Brussels, 10 December 2001

Council of the European Union, 16054/04 JAI 559, Brussels, 13 December 2004


217
EUROPEAN CRIME-MARKETS AT CROSSROADS


Ogilvie, J., *Creating better futures: Scenario planning as a tool for a better tomorrow*. Oxford University Press, 2002


http://www.gbn.com/ArticleDisplayServlet.srv?aid=34550 


Vander Beken, T., Denken over toekomst en scenario’s in de criminologie. *Panopticon*, 26(5), 2005, 1-10 (b) 


Introduction

The purpose of this chapter is to consider the experience of the Czech Republic in seeking to establish and strengthen anti-EU fraud structures and measures, the problems it encountered and how it sought to overcome them as well as the wider lessons that can be drawn for more recent entrants and for those countries that wish to join the European Union (EU).

The methodology employed was a review of secondary materials such as European Commission reports, academic articles, government documents and semi-structured interviews with officials of the Supreme Prosecutor’s Office of the Czech Republic and Czech academic colleagues.

Background

The Czech Republic joined the European Union as a fully fledged member in 2004, along with nine other states, the majority of them having made the rapid transformation from communist states to democratic market economies within a very short period of time. As with any club or society, whether it is the European Union, the Freemasons or the local tennis club, every new member has to abide by the rules of the club. But in order to be able to abide by the rules and also to make a positive contribution, the new member needs help and support from both existing members as well as from the senior officials of the club or society. What kind of support did the Czech Republic receive? This chapter will attempt to make an assessment.

It is not possible nor is it appropriate to study the phenomenon of EU fraud in isolation. For a proper understanding one has to consider the broader context within which it operates such as the political, economic, social and historical circumstances (Scheinost, 2006). The Czech Republic having joined the EU in 2004, presumably with some enthusiasm, has now adopted a somewhat Euro-sceptic attitude towards

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Brussels. For example, it was opposed to the EU Constitution and has serious concerns about the threats posed to national sovereignty with respect both to policymaking and with the primacy of EU law and decision making. This scepticism emanates from President Klaus and cascades downwards through the Civic Democratic Party of which he is a former leader, to sections of the population at large. Such an attitude is potentially damaging to a nascent EU anti-fraud service, when that service is in need of support from its national government in the form of lobbying in Brussels for more training and assistance from the anti-fraud office and the rest of the European Commission.

In considering any form of economic crime, such as EU fraud, it is essential to be aware of and to understand the norms and mores that operate within a given society. As Scheinost (2006) explains, under the communist regime of Czechoslovakia, as it was then, all property apart from personal belongings, was owned by the state. It was regarded as so-called 'property in socialist ownership' and it was afforded a greater protection under law than personal belongings and as a consequence, punishment for crimes committed against state property was far more severe. Despite this sanction, in the opinion of the general public, to take something from the state was considered to be a relatively minor offence and such behaviour tended to be tolerated by the general public (Scheinost, 2006). Jordan (2002) quotes a Communist era Czech axiom: “If you do not steal from the state, you rob your family”.

When a society is in transition, values, norms and practices from a previous period interact with emerging norms and values of a free market economy. As Scheinost (2006: 77) comments: ‘... Toleration of theft of state property together with disrespect for the private property that has been nourished for so many decades, encountered the appetite to get rich quickly, to achieve speedy success (expressed in money and social status) and exploit favourable opportunities). The speed of the transition process and ability of the entrepreneur to make headway in the new conditions was regarded more highly than strict observance of the law’. Jordan (2002) observes that during this period, administrative corruption persisted just as it did under the communist period. Poorly paid bureaucrats demanded bribes to supplement their incomes and bribe payers came to regard the practice as a normal business cost. When this coincides with market reforms and privatisations, there are opportunities to make massive profits and gains. Barnes (2003) notes that the Czech government in the early 1990’s was able to pursue sweeping economic reforms including mass-voucher privatisations.

This swashbuckling period of economic reform and transition did influence the extent and forms of economic crime. As Scheinost (2006) explains, it was very easy to acquire bank loans on the basis of entrepreneurial projects which were somewhat “thin” to say the least. The quality of these projects would not be closely scrutinised and the state would not allow key banks to become bankrupt. It was also of advantage to know that the courts could not cross-check the decisions of the privatisation com-
mittee which played a key role in the privatisation process. Whilst all transgressions were not necessarily unlawful, some were, at least, unethical and involved looking for opportunities often on the edge of legality, in the knowledge that economic crime and commercial sharp practice were not at the top of the list of priorities for investigation.

Now that this ‘swashbuckling’ period of transition is over, economic crime has become established as a feature of criminal activity. Given the entry of the country into the European Union, then a “honeypot” of EU funds must be an attractive opportunity for fraudsters. Criminals want to make money; given that they undertake their own form of risk analysis – if the risks of detection appear to be low and the rewards are attractive, then it appears inevitable that they will direct their attention towards EU funds. In the late 1990’s as the process of preparing for enlargement gained pace, officials of the then anti-fraud unit of the European Commission – UCLAF, were very worried about organised economic criminals in Central and Eastern Europe getting their hands on EU funds: ‘Officials here are worried sick about EU money disappearing into a black hole”

How ‘organised’ these criminals are, is a matter of some debate both within and without the academic community. Van Duyne (2003) and Spencer (2007) have both noted that organisations can be very loose and local and consist of entrepreneurs looking for opportunities in a very enterprising way. There may well not be a “Dr Evil” directing hierarchical criminal networks which are hell-bent on swindling the European Budget and taxpayer. This does not mean that EU funds are not under threat, even though locally based fraudsters can still swindle the EU out of thousands of euros and even more. In order to counter this threat, a system of financial aid and technical support to candidate countries was introduced.

**Impact of the expansion of the EU on the fight against fraud**

Prior to the expansion of the EU in 2004, fraud has been a major issue. Academic commentators such as Tutt (1989), Sherlock & Harding (1991), Passas & Nelkin (1993), Sieber (1998), Quirke (2006) amongst others, have all highlighted the issue and problem of fraud. When there were just fifteen member states, the fight against fraud was dogged by the fragmented response from a multiplicity of member state agencies operating within fifteen separate legal systems, all of which defined, investigated and reported it differently. The true extent of fraud has never been quantified. Indeed, given that fraudsters like to keep their activities secret, this is not surprising. Estimates have ranged from 2% to 10% and above (Ruimschotel 1994). Now that EU membership has increased, first to twenty five, and now to twenty seven, this problem of frag-

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2 Interview with UCLAF Official 1998.
European Crime-Markets at Cross-Roads

Implementation can only be exacerbated. For example, Community institutions have now to cope with twelve new legal systems – this is unlikely to improve the existing situation.

Fraudsters exploit differences in legal systems and procedures, they operate in ‘real time’; they do not have to comply with legal protocols and agreements. There were attractive sums for the fraudsters to consider focusing their attention upon, as Murawska (2004) outlines, the candidate countries received on average about three billion euros per year and from 2004 to 2006, the new member states received about 16 billion euros. In order to minimise the risk of fraud, the European Fraud Prevention Office (OLAF) which administratively is part of the European Commission, made checks and investigations in the candidate states and sought to ensure good co-operation between itself and the administrations of the new member states (Murawska, 2004). The role of OLAF is to protect the finances of the European Community and to support and liaise with national investigative bodies particularly where investigations have a cross-border dimension (Illett, 2004).

Prospective member states made efforts to adopt the acquis communautaire in the protection of the Communities financial interests and the candidate countries were required to: ‘create an efficient anti-fraud protection system with respect to funds provided in the framework of the Accession Partnership such as the programmes PHARE, ISPA or SAPARD’ (Murawska, 2004:3).

Efforts of the Czech Republic to prepare for accession

The Czech Republic was obliged to comply its legal system with the acquis communautaire, under the first pillar of the European Union, as part of its preparation for accession. As Murawska (2004), comments, the Community measures about protection of the Community’s finances are fairly modest. These consist of three EC Regulations:

- Council Regulation (EC Euratom) No. 2988/95 of 18 December 1995 on the protection of the European Communities financial interests
- Council Regulation (EC, Euratom) No.2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities financial interests against fraud and other irregularities

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3 OJL 312, 23/12/1995: 1-4
4 OJL 292 15/11/1996:2-5
5 OJL 136 31/05/1999:1-7

224
Also, the Czech government was expected to incorporate into its legal system, the Convention on the Protection of the European Communities Financial Interests (the PFI Convention) together with its associated protocols. The PFI Convention is intergovernmental and lies within the third pillar of the European Union.\(^6\) The convention as Fenyk (2007) details, requires that member states shall incorporate frauds against the European Communities’ financial interests into their criminal code and should take the necessary steps to ensure that fraudulent behaviour and conduct is punishable by criminal penalties that are effective and reasonable and also that heads of businesses and other senior executives that have the power to take decisions or exercise control “to be declared criminally liable in accordance with the principles defined by national law in cases of fraud affecting the European Community’s financial interests . . .” (Fenyk 2007: 2).

The First Protocol to the PFI Convention requires that definitions on what is termed corruption, both active and passive (Articles 2-3) be assimilated into the criminal law and the Second Protocol to the PFI Convention requires national law to provide that legal persons can be held liable in cases of fraud or active corruption and money laundering committed that damage or are likely to damage the European Communities’ financial interests (Fenyk 2007).

Even though Czech criminal law broadly follows similar principles to other member states of the European Union\(^7\), in order to ensure full compatibility with the PFI Convention as well as Article 280 of the EU Treaty whereby member states are required to take the same measures to counter fraud against the Community’s financial interests as they would to counter fraud against their own financial interests, there needed to be amendments and revisions of the existing Czech legal framework and these should have been achieved by the time of the accession of the Czech Republic to the EU.

Fenyk (2007) details how these amendments were not in fact made by the time of accession, apparently neither the PFI Convention nor the protocols had been published in the Official Journal of the EU in the Czech language and the Ministry of Justice was engaged only in 2004 to draft the official translation of the text of the Convention. With time taken both for comments by officials of the Czech Supreme Public Prosecutors Office as well as external experts, neither the Convention nor the Protocols were delivered to the Czech Parliament with the proposal for accession to the EU. The Czech Republic did not therefore commence the process of ratification, and there are still problems in this respect. The criminal code has still not been amended and the issue of legal liability of legal persons is a major omission from the code. Therefore we are still awaiting full ratification of the Convention and its Protocols which means that not

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\(^6\) OJ C316, 27.11.1995:49
\(^7\) Interview with Czech officials 2006
all member states have incorporated crimes against the European budget into their legal
framework and so in that sense we do not have a level playing field. Prospective mem-
ber states should look to the example of the Czech Republic in this area and ensure
that a fully translated and reviewed PFI Convention together with its associated proto-
cols is delivered to their national parliament with the proposal for accession in order
that the ratification process for the Convention can be completed at the earliest possible
opportunity. The importance of the PFI Convention together with its Protocols cannot
be overstated because these are important elements of a common basis for criminal law
protection of the Union’s financial interests, as they deal with aspects of substantive
criminal law and judicial cooperation. Its ratification and implementation is a step to-
towards reducing the fragmentary nature of the legal approaches to fighting fraud against
the EU.

In order to ensure effective co-operation between OLAF and the national adminis-
trations in the candidate countries as well as seeking to have in place organisational
arrangements which would be capable of preventing and detecting frauds and irregu-
larities as Murawska (2004) outlines, OLAF supported the creation of independent anti-
 fraud structures at a national level in then candidate countries. The rationale behind
such structures was to ensure effective co-ordination between legislative and adminis-
trative measures dealing with EU fraud policy (Murawska 2004). OLAF provided train-
ing and support although it has been acknowledged by academic commentators such as
Murawska (2004) and by national officials that such support was not sufficient and in
some cases was regarded as being fairly minimal. This is an important consideration.
Given the complexity of EU programmes and fraud investigation, there was an obvious
need for substantial and substantive support both from OLAF and from the Commis-

In the case of the Czech Republic, it was recognised at a fairly early stage in the
accession negotiations, that there was a need to create a system which not only permit-
ted communication with OLAF regarding the notification of irregularities but also
which made possible the timely detection of fraud and irregularities and their proper
investigation within both the administrative and criminal spheres. The Ministry of
Justice took the decision in May 2000, that the Supreme Public Prosecutor’s Office
should be appointed as the contact point for future co-operation with OLAF. In fact
this effort started out with just the Deputy Chief Prosecutor and three officials. Ac-
cording to the arrangements drawn up with OLAF, the Supreme Public Prosecutor’s
Office (SPPO) was appointed as the single contact point for OLAF for co-operation
concerning the fight against frauds and other illegal activities detrimental to the Com-

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8 Interview with Czech Officials 2006
9 Interview with Czech Officials 2006

226
munities’ financial interests. The arrangement covered the following forms of co-operation between both authorities (SPPO 2005):

1. Mutual exchange of information on Czech legislation and case law concerning economic, financial and associated crimes and on EC legislation concerning protection of the Communities’ financial interests, particularly if this information is important and urgent to both parties.

2. Informing the Director-General of OLAF of any administrative and criminal investigation as well as any prosecution, which touches on the Communities’ financial interests.

3. OLAF could notify the SPPO of facts, which can indicate suspicions that an irregularity or a crime affecting the financial interests of the European Communities has been committed, and whose investigation or prosecution is within the jurisdiction of the Czech authorities. The SPPO is obliged to forward such notifications to the competent Czech authorities and to inform OLAF about this without delay.

4. Both authorities could within the administrative and legal framework of powers vested in them, exchange information for the purposes of investigation and mutual legal assistance in cases where the Communities’ financial interests are concerned or in any other case where Community law requires the exchange of information.

At this formative period of time however, the European Commission did not launch an initiative in the Czech Republic like the ‘OLAF Poland’ project. This was an early example of cooperation between a transnational European institution and competent national bodies which involved an OLAF office being established in Poland and OLAF officials being based there. Polish authorities assisted by OLAF officials investigated frauds and irregularities within the PHARE programme, which aimed to support candidate countries in the creation of anti-fraud co-ordinating services and structures, establishing lines of communication, exchange of expertise and the establishment of anti-fraud databases. The fact that OLAF staff were based in the country itself gave national officials experience of working closely with them which should establish good working relationships and understanding as well as improving and enhancing the skills set of national officials.

No OLAF officials were or have been based in the Czech Republic and indeed the perception of support from OLAF to the Czech authorities at this time and indeed subsequently, is seen as being ‘minimal’ by Czech officials. These are self-inflicted wounds and are very surprising given OLAF’s own claims about the success of the Polish ‘experiment’. If it was so successful, why was it not rolled out across more candi-

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10 Interview with Czech Officials
11 Interview with Czech Officials
date states? If it was a question of resources, why was there no lobbying to secure the support for such a successful programme?

In 2003, the position of the SPPO in the Czech Republic and the equivalent co-ordinating organisations in other candidate countries was enhanced by being designated as ‘AFCOS structures’. AFCOS stands for Central Anti-fraud Co-ordination Structures. Within the Czech Republic agreements were drawn up between the SPPO and other ministries with responsibilities for implementing or monitoring EU expenditure as well as collecting revenues such as customs duties, value added tax and so on. Competent officials from each Ministry were appointed to be responsible for co-operation with the SPPO and the structure for co-operation with OLAF in the Czech Republic was established. However, at this very moment – the genesis of the AFCOS system– we see a fundamental weakness which existed before the major enlargement of the EU in 2004, and that is fragmentation. Fragmentation has severely hampered the fight against fraud as a multiplicity of agencies with anti-fraud responsibilities and duties are difficult to co-ordinate, are rivals in terms of allocation of resources and often have different priorities as well as the potential for duplication of resources and of reporting.

Within a relatively small country like the Czech Republic, there were agreements between the SPPO and three departments of the Ministry of Finance: the General Directorate of Customs, the Central Harmonisation Unit for Financial Control and the Financial Analytical Unit – this is just within one ministry. There were other co-operation agreements with the Ministry of Agriculture which would have responsibility for implementing and allocating and monitoring Common Agricultural Policy funds, the Ministry for Regional Development which would have some responsibility for Structural Funds as well as with the Ministry of the Environment, the Ministry of Transport and two units of the police force – namely, the Unit for Combating Corruption and Financial Crime and the Department for Combating Counterfeiting. There was also an agreement with the State Audit Office which was independent of the executive authority. We can see that there are many different bodies and people involved in the anti-fraud mechanisms and processes. One can see that these arrangements can be divided up into two sub-groups. In the one, which we could call criminal investigation groups, there are well established arrangements for contact and co-ordination between the SPPO, Customs and the police. These arrangements have stood the test of time. The second sub-group is composed of organisations that tend to undertake non-criminal investigations which are called administrative investigations, and these had no practical experience of liaising with the SPPO and particularly on matters concerning EU fraud and the protection of the Communities financial interests. Hence, there is potential for confusion, inefficiencies, duplication and misunderstandings.

12 Interview with Czech Officials 2006

228
Assessment of the anti-fraud co-ordination arrangements prior to accession

Prior to accession, a mission to the Czech Republic was carried out by a consultancy firm – Investment Development Consultancy (IDC) working for the Directorate General-Enlargement in late 2002. Its goal was to examine the anti-fraud co-ordination and investigation arrangements. The subsequent report identified a number of problem areas:

- There were gaps in the level of understanding of anti-fraud topics and areas. All the relevant rules, legislation manuals etc needed to be gathered together in order to achieve a common understanding by officials.
- There was an absence of practical insight and training into the different types of EU fraud cases, detection and investigation practices. There was a lack of knowledge of computer audit techniques and risk analysis techniques.
- Information technology support in terms of databases and case management systems, data encryption and security was also found to be poor.

In terms of the anti-fraud structures themselves, the consultants found there to be a skills gap in terms of being able to cope with the complexities of fraud investigation as well as there being a lack of strategic objectives so that all interested parties would be aware of the long term objectives of AFCOS and their role in helping them to be achieved. This led to delay in responding to requests from OLAF for assistance and a lack of co-ordination with respect to the conduct of investigations into suspected fraud and irregularities. There was a need for a comprehensive training programme for all interested parties. These findings beg the question as to why these difficulties and gaps in knowledge and operational skills, particularly on the administrative side of the investigation and reporting process could not have been foreseen and measures put in place to address these issues. The European Commission and OLAF should have been far more pro-active during the early period of the accession process and negotiations in order to ensure that the Czech AFCOS regime and constituent parts had the necessary skills and expertise in order to fully meet its responsibilities and commitments.

In mid 2003, the European Commission asked Sigma, the consulting arm of the OECD, to assess the anti-fraud structures in candidate countries. The objective of Sigma’s assessment in the Czech Republic was to: “Evaluate the operational and administrative capacities of AFCOS and its partner institutions in the protection of the Community’s financial interests and, where needed, to put forward proposals and recommendations for strengthening these capacities” (Sigma 2004: 2). The main findings of the report were that despite the strong legal position of AFCOS which was an advantage of having the SPPO at its head, the following had yet to happen (Sigma 2004: 2):
EuropeCrime-Markets at Cross-Roads

- AFCOS had not carried out a risk assessment of pre-accession funds and a National anti-fraud strategy had still not been developed
- The relevant ministries had not been given the OLAF reporting guidelines and the reporting format on suspected cases of irregularity
- No training had been given on the use of these guidelines
- The OLAF anti-fraud system (AFIS) which enabled constituent parts of AFCOS to securely communicate with each other and with OLAF had yet to be installed in the Directorate-General of Customs and linked by terminal to the relevant ministries
- No irregularities had been filed by AFCOS with OLAF

The Supreme Prosecutors Office as the lead agency in the AFCOS structure, needed to take a more proactive role in seeking more support from Brussels in terms of training and expert advice also in seeking the assistance of the private sector in terms of training in, for example, techniques of risk analysis. There could also have been contacts with AFCOS in other candidate countries to share experiences and also perhaps to share expertise and knowledge, which may well have helped to bridge some of the gaps identified. The fact that the national anti-fraud strategy had not been developed was a weakness because the AFCOS role needed to be highlighted and publicised and the emphasis on prevention needed to be highlighted because as the Sigma Report notes, it is a far more cost effective way of controlling fraud than investigation and prosecution and also improvements in control mechanisms and institutional co-operation reduce the potential for frauds to be successfully committed. Although to obtain convictions is very useful because it shows results are being achieved and it can also serve as a deterrent "pour encourager les autres".

Upon Accession in 2004, it can be seen that although significant progress had been made, that there were gaps and problems in the response of the Czech Republic to the problem of EU fraud. The national anti-fraud strategy had not been completed by the designated deadline of December 31st 2003, but by May 2004, the Czech Government adopted Resolution 456 to the National Strategy against Fraudulent Activities Damaging or Threatening the Financial Interests of the European Communities. The Strategy includes: “the system of internal control of the management of financial funds of the individual programmes from the European Union total budget, the AFCOS system and the internal communications network, announcement of ascertained discrepancies and legislation relating to the protection of the EU’s financial interests” (Ministry of the Interior 2005: 34). Also, in 2004 in order to strengthen the position of AFCOS in both legislative and operational terms an AFCOS section was created within the Department of Serious Economic and Financial Crime which would be supervised by the First Deputy Prosecutor general and would be composed of prosecutors experienced in the
area of fighting against fraud and supported by administrative staff with managerial, organisational and language skills (SPPO 2005).

To have structures in place which appear to have the necessary expertise and capacity to carry out and fulfil particular missions is reassuring, but it is how these structures operate in practice that is the acid test of their effectiveness. The results to date are mixed to some extent. The Director-General of OLAF in 2006 in his foreword to the 2005 OLAF Annual Report commended the Czech authorities for always meeting their reporting deadlines and stated that OLAF has good co-operation from the Czech tax authorities in the fight against VAT fraud, but did say that there was room for improvement in the Czech administration as a whole as far as communication about irregularities was concerned.

One area of irregularities communication that needs to be examined concerns the number of departments that communicate irregularities directly to OLAF. Each Ministry communicates irregularities to OLAF on a quarterly basis, despite officially there being only one contact point with OLAF, namely the Supreme Prosecutors Office.\(^\text{13}\) This is one of the important principles which underpins the AFCOS system, yet this principle has been undermined with the full co-operation of OLAF. A common theme in the academic literature emphasised by commentators such as Passas & Nelkin (1993), Doig (1995), Sieber (1998), Pujas (2003), Quirke (2006) and (2007), is that fragmentation with a multiplicity of agencies involved in the fight against and reporting of fraud, complicates, and in fact dilutes the response to the problem of fraud, yet here within one relatively small member state we see this problem in microcosm. The Supreme Prosecutors Office should be provided with information before the regularities are reported to OLAF, but it is not clear that this always happens.\(^\text{14}\) If the AFCOS system is to operate as it was surely intended to operate, then all irregularities should be reported to OLAF through the SPPO and not around it.

Since accession, there have been problems with a lack of political support from the current Czech government which does not favour overt co-operation with Brussels at the present time\(^\text{15}\) with issues of national sovereignty complicating matters. When an organisation is in its infancy, and should be seeking support from Brussels in terms of training and even secondment of experts and so on, the fact that the government has a negative attitude in this respect, severely complicates matters and handicaps the development of the infant organisation.

The duplication of requests for information from Brussels is frustrating for the Czech authorities. OLAF asks for information at one point in the year and then some time later, the Commission asks for the same information. This is inefficient and time

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\(^{13}\) Interview with Czech Officials 2006

\(^{14}\) Interview with Czech Officials 2006

\(^{15}\) Interview with Czech academic colleagues 2006
The SPPO has also been disappointed by a lack of support from OLAF, a particular example of this is in a case involving possible fraud and irregularity with respect to PHARE funds which funded specific projects in the run up to Accession. Eight officials entrusted with the process of transferring money from the PHARE fund to the Czech Republic were suspected of having tried to siphon off millions of Czech crowns into their own hands. Two of these people were senior officials at the Ministry of Regional Development and were placed under investigation for fraud and embezzlement. OLAF officials, many of whom were on temporary contracts and were perhaps unsure of their long term future with the organisation, were reluctant to get involved when the SPPO sought support. The Czech government did not want an investigation to take place, no doubt concerned about political embarrassment which could have tarnished its reputation with the authorities in Brussels. The issue of the high proportion of OLAF staff on temporary contracts has been raised repeatedly, both by the European Court of Auditors (2003) and academic commentators such as Quirke (2007). The issue of political interference into criminal investigations was a factor involved in the resignation of the head of the AFCOS system – the Deputy Chief Prosecutor.

Another high profile case which has come to the fore is that where senior government officials have been implicated in a situation where there was a plan to renovate the state owned Budisov chateau. The cost of the renovation was deliberately inflated to almost 70 million crowns which was around 30 million crowns higher than the real cost. This ‘difference’ was then to be shared between three officials (www.radio.cz/en/article) – this is a classic structural funds fraud – over inflation of the cost of works and no doubt a siphoning off of interest earned on the funds as well. Such cases whilst embarrassing for the authorities are also useful in demonstrating that no one is above the law and providing an opportunity to show that cases of EU fraud will be vigorously investigated and prosecuted if the evidence warrants it.

Currently, there is some speculation that the Ministry of Finance is lobbying quite hard for the AFCOS designation and position to be taken away from the Supreme Prosecutor’s Office and given to it. If it came to pass, this would be a very serious misjudgement, as the Ministry does not have the expertise or the experience to coordinate the activities of various investigatory bodies such as police and customs for example, where legal opinions and advice are a crucial part of the process.

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16 Interview with Czech Officials 2006
17 www.radio.cz/en/article72526
18 Interview with former Czech Official 2006
19 Interview with former Czech Official 2006.
20 Interview with former Czech Official 2006
21 Interview with Czech academic colleague
Wider lessons to be drawn from the Czech Experience

There are a number of lessons that can be drawn:

- There is a need for wholehearted support from the national government in terms of dealing with the Brussels authorities in seeking to gain material support and operational expertise and training.
- The AFCOS organisation must be pro-active in analysing its strengths and weaknesses and using this analysis to put a case forward to OLAF and the European Commission for help, support and training in order to strengthen the organisation.
- The issue of fragmentation has to be tackled. Having a multiplicity of organisations involved in both investigation and reporting is difficult to co-ordinate and can lead to mixed messages being sent to the authorities in Brussels with some authorities investigating on an administrative basis and others on a criminal investigative basis – the individual ministries and the SPPO and police units in the Czech Republic for example.
- The authorities in Brussels need to actively support the lead institution in the AFCOS structure, there should not be separate reporting of irregularities by individual ministries as this undermines the authority and position of the lead institution.
- The duplication of information requested by Brussels also needs to be considered. Member States should not be asked to provide the same information both to OLAF and also the Commission – this duplication is costly, inefficient and time consuming.
- OLAF officials should be based in the candidate countries as in the OLAF Poland project, this leads to a wider understanding of the issues facing national authorities on the part of OLAF, as well as experience for national officials of working and liaising with a transnational body like OLAF.
- There should be a regular system of seconding national officials to OLAF in order for them to gain experience of the Europe wide perspective which OLAF has.
- The lead institution in the AFCOS structure should not have its position undermined by departmental lobbying and infighting as appears to be happening with the Finance Ministry at present as this is a distraction from co-ordinating and supporting the fight against fraud.

Conclusions

The Czech Republic has been able to establish an AFCOS structure which appears to be respected by the anti-fraud office in Brussels, OLAF, but which nevertheless has faced problems such as a lack of knowledge and operational expertise on the part of
some of its officials which need to be addressed by actively seeking the assistance of the Brussels authorities and perhaps also the expertise of the private sector where appropriate in order to bridge the skills and knowledge gap. This effort needs to be actively supported by the Czech government which will enable the AFCOS structure to develop and enhance its expertise and efficiency as well as by the European Commission which should be more proactive in seeking to assist new member states and shouldn’t always expect them to come to Brussels with a “begging bowl”. The recent history of the country with the rapid transformation from communism to capitalism has provided opportunities for both sharp commercial practice and outright financial and economic crime and it would be naïve to assume that EU funds will not attract attention from such criminals; in fact there have been high profile instances of this. The experience of the Czech Republic provides lessons for other candidate states in terms of seeking to reduce the level of fragmentation in the investigative and reporting dimensions as well as seeking the active support of the national government in dealing and co-operating with the Brussels authorities
EU FRAUD AND NEW MEMBER STATES: THE CZECH REPUBLIC

References


European Commission (2003), Need assessment in Candidate Countries, carried out on behalf of the Commission (OLAF and DG-Enlargement), Office of Official Publications of the European Communities: Luxembourg


Fenyk, J., 'The level of implementation of the Convention on the protection of the EC’s financial Interests and of the Follow-up Protocols in the Czech Republic', European Law and National Criminal Legislation, 2007, vol 1, 116-121


Sigma, Draft report of the assessment of the anti-fraud system in the Czech Republic, OECD Paris, 2004


Supreme Prosecutors Office of the Czech Republic, Position of the Supreme Prosecutor’s Office of the Czech Republic in the AFCOS System’, SPPO, Brno, 2005

Tutt, N., Europe on the fiddle: The common market scandal, London Croom: Helm, 1989


Cross-border VAT Fraud in an Enlarged Europe

Konstantin Pashev

Introduction

The ‘implosion’ of the socialist regimes in Eastern and South-eastern Europe was, in addition to the political turnover, followed by quick social and economic changes. An important socio-economic corollary was the increased cross-border mobility in terms of goods, capital and people. The opening of the borders with the European Union (EU) member states together with the introduction of various measures to reduce the processing time at custom clearance with the other neighbouring countries not only boosted licit trade: a considerable part of the emerging entrepreneurs apparently took advantage of the new situation to promote illegal activity.

Studies based on mirror statistics\(^2\) in Bulgaria revealed that recorded EU imports to Bulgaria in 1998 were 18% lower in value terms than the corresponding EU exports statistics. The discrepancy was largest (about one third) for imports from Austria, Greece and the Netherlands, the list of goods being topped by automobiles and consumer electronics.\(^3\)

This Bulgarian situation is not unique. Unrecorded flows of goods or imports and exports which are under-invoiced, is a common phenomenon in the EU and elsewhere. Also other forms of trafficking, such as contraband cigarettes, are a common corollary of licit trade in the EU (Van Duyne, 2003; Von Lampe, 2002; 2003). Within this landscape of defrauding freebooters one particular form attracts attention: VAT fraud. Not because it is unique, but because of its persistence and scale.

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1. Professor of Public Finance at New Bulgarian University in Sofia and Senior Economist at the Center for the Study of Democracy, Sofia
2. Mirror statistics compare export statistics in the origin country with import statistics in the destination country in an attempt to estimate the scale of misreported trade flows. The method provides rough guidance about the scale of tax evasion in cross-border trade, even though it may be not so instrumental in localising it, as the discrepancy may be due to over-valuing of exports in the origin country for the purpose of siphoning out of VAT credit; or alternatively it may reflect hiding of imports on the other side of the border for the purpose of tax evasion.
Until recently, VAT fraud had been hardly mentioned in the literature on organised crime. One reason for this, is that mainstream research on ‘organised crime’ is more ‘usual-suspect’ (lower class) oriented: ‘serious’ criminals have been marked off as different from ‘white collar’ crime (Fijnaut, et al., 1998). Sutherland’s (1949) qualification of ‘white collar crime’ as ‘organised crime’ has been more often quoted than heeded. Neither did the literature on tax compliance single out VAT fraud as a type of organised crime. This does not seem to be due to a lack of surveys: an early overview of the exposure of the tax system to fraud was, for example, provided by Tait (1988) who examines 16 types of VAT fraud.

Taking evidence from cross-border trade among the Benelux countries in the 1980s and 1990s, Van Duyne (1991, 1993, and 1996) and Aronowitz et al. (1996) were amongst the few to study VAT fraud schemes as demonstrations of higher level forms of criminal organisational conduct.

In the last five to six years, however, the literature on VAT fraud has grown immensely. The major reason for this increased attention to cross-border VAT fraud is that the old risks have become hard to manage due to two important developments within the EU. The first one is the launch of the single market in 1993 and the removal of customs controls in intra-community trade. The second one is the unprecedented enlargement of the EU (south) eastwards with the accession of 12 new countries over the period 2004-2007.

The challenges of the enlarged single market

In the five decades of its use in Europe, VAT has turned into a major policy vehicle of revenue collection and free trade. Its advantages to other ways of taxing consumption (notably its, predecessor turnover tax, and the major competitor, the US retail sales tax) are well studied in the literature. The key to its success is the credit-invoice mechanism. The registered businesses are required to collect the VAT due on their sales (the output tax) from their clients, but at the same time are allowed to subtract this from their tax liability, that is, the tax paid by them to their suppliers. If they have paid more tax then received, they are entitled to a refund of the difference.

To illustrate the mechanism: take a manufacturer (M) and a salesman (S) both of whom are VAT registered companies. M sells to S goods worth € 100, with a VAT of € 20 (i.e. 20 % VAT, which will be entered on a separate line in the invoice). If S adds value of € 20 and resells the goods to the end user for € 120, he will need to charge the end user VAT of € 24 on the whole value added (gross sales price of € 100 + 20 + € 20).

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4 See for instance Keen and Smith (2007) and the list of literature therein.
5 See Ebrill et al (2001)
20% = €144). However, the salesman S will not pay the whole amount to the taxman, as he has already paid €20 VAT to his supplier, who is obliged to transfer that sum to the revenue office. Thus, the salesman S will deduct from the tax collected from the end user (€24), the tax paid to the manufacturer M (€20) – if it is duly written in the invoice – and will pay to the tax office €4, which is exactly 20% on the value added by the distributor (S).

In this way the credit-invoice VAT integrates into its system the economic advantages of minimizing the cascade effect of the turnover taxes (i.e. multiple taxation of the same value added according to the number of transactions in the supply chain) with the enforcement advantages of the multi-stage taxation (i.e. reduced risk relative to the single-phase taxation of losing the whole tax if the retailer defaults). The major economic advantages of the credit mechanism of the VAT are in its impact on investment and exports. It allows start-up and expanding businesses to claim a credit on the tax paid on their capital investment. If the refund mechanism does not operate properly, it will turn the VAT into a tax on investment rather than on consumption thereby discouraging investment and growth as too much capital will remain tied up in the accounts of the tax administration.

The VAT is better for free trade as well. Under the destination principle applied to taxing cross-border sales, exports leave the country of origin tax-free (zero rate), while imports are taxed at the same rate as domestic goods. In this way the VAT cannot influence the price competition between domestic and foreign goods and ensures their equal chances on the single market. Furthermore, this ensures that the VAT is a tax on consumption rather than on production: in the end, the consumer will pay the VAT at the rate of his home country. Technically, it is achieved through the zero-rating of exports: the exporter applies zero tax to the value of exports, but claims back the previously paid tax, as registered on the invoice for the goods and services used by him for the production of the exports.6

Those two major advantages of the VAT however, are at the same time the major sources of its vulnerability. Both in the case of capital investment and in the case of exports, the credit-invoice mechanism is likely to result in negative tax liability i.e. claim for net refund from the Treasury.7 This creates lucrative opportunities for fraud and abuse of the rebate mechanism of the VAT by individual fraudsters and organised crime entrepreneurs alike.

This is especially true in regard to the exposure of the VAT to cross-border fraud, which is widely considered the Achilles’ heel of this tax system. If we ignore the tech-

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6 Zero-rating of exports is different from exempting exports in the sense that the latter would exclude the credit on inputs.
7 Refund claims may also be a result of domestic supply of goods and services in a country with multiple VAT rates, where outputs enjoy preferential VAT rates relative to the standard rate paid on inputs.
nicalities, the mechanism of cross-border VAT abuse implies receiving a refund on zero-rated exports which is not matched by a payment of the preceding tax liability earlier in the chain in the country of origin. Alternatively, the fraud may include leaving imports out of the books in the country of destination in order to cash in on their tax-free status. The problem is that zero-rating of exports breaks the chain exactly at border crossing and the ensuing vulnerability is the matching of invoices between two countries. As is the case with any cross-border flow of information, tracking and tracing remains a challenge, if only because of delays and technical mismatches. Also trans-border cooperation in the investigation of fiscal frauds is still, even in the EU, much less effective and efficient than national audit and enforcement actions. This places international fraud networks in a substantial advantage relative to national audit and enforcement institutions.

Opportunities for fraud and abuse have actually grown further with the establishment of the European single market and the removal of custom controls at internal borders in 1993. Up to that point the destination principle operated through collecting the VAT on imports at customs clearance. Therefore evading the tax would mean overcoming physical border controls, which usually would imply bribing or involving customs officers into the crime network.

Under the post 1993 deferred payment rule applied after the abolition of border controls, the VAT on imports (referred to as intra-community acquisitions in the case of the intra-EU trade) is deferred for later handling: filed and due together with the other VAT liabilities on sales after the tax-free acquisitions of goods has taken place. In brief, border controls do not exist anymore for preventing fraud on intra-community acquisitions of goods and services. The main anti-fraud device becomes the VAT Information Exchange System (VIES), through which authorities may check if duty-free exports declared in the origin country for the purpose of refund on previously paid VAT, match imports declared and taxed in the destination country. In the case of mismatch either exports did not really take place, or imports were left out of the books. Subsequently the tax administrations need to find out who is evading the tax (supplier or client) and on which administration the revenue loss falls.

This, however, was a risk of which Europe was aware. As already mentioned, the Benelux countries had been operating a system of open border trade, without customs control, for more than a decade at the time of the launching of the single market. In the Benelux trade VAT was not paid at the border, but deferred to a later settlement, when the monthly or quarterly VAT forms had to be submitted. The control of the arrival of shipments was carried out by means of matching the 5th copy of the so-called T2 form. This T2 form accompanied the cargo to the destination and a 5th copy had to be sent back to the customs office of its origin where it was matched with the first copy. If the copy was not returned, a mismatch was observed which could mean that the goods had
disappeared, without payment of VAT, onto the black market. Meanwhile the exporter had reclaimed the VAT. As a matter of fact, the schemes on the fraudulent refund of taxes as well as excises for exported goods had spread to neighbouring countries as well: Germany and France. In some export schemes to third countries corrupt customs officers in Spain and Italy were involved (Van Duyne, 1996).

The elaborate VIES system of intra-community cross-border invoice matching took into account the Benelux experience. However, this was more geared to the compliant majority of licit traders than to determined VAT scam organisers. Policy makers were slow in becoming aware of a major criminal problem. This may be due to the circumstance in which VAT fraud was looked upon as ‘only’ a national fiscal problem, while at EU level it was considered a national responsibility.

On top of this came the unprecedented enlargement of the EU (south) eastwards only a decade after the single market was established. In 2004 eight former eastern block countries (together with Malta and Cyprus) joined the EU, followed by Bulgaria and Romania in 2007, thus enlarging the single market from 15 to 27 countries in 2007 with broadly varying levels of administrative capacity in handling conventional evasion and organised fraud. On average new member states are more exposed to the threat of VAT fraud due to having a relatively shorter track record of successful enforcement and investigation practices in this field, together with higher levels of corruption and shadow economy. With the accession to the EU this higher exposure to fraud becomes more than a domestic problem, turning it into a threat for the fiscal interests of the whole Union. Consequently, this makes tax efforts much more international than before, as VAT collection in one Member State depends on the administrative efficiency of tax auditors in the trading partners’ country as well.

Furthermore, even if all new Member States had commensurate enforcement capacity relative to the old Member States, the very fact of extending cross-border cooperation from 15 to 27 national authorities would constitute a drastic increase in the risk and an unprecedented challenge to international cooperation.

Summing up, therefore, on one hand, the VAT is a crucial condition for the functioning of the single market, i.e. the free movement of goods, capital and people. On the other hand, it is exactly the establishment of the single market and the removal of the border controls that brought the tax closer to a sub-national tax (for which it is not best designed) and made the risk of fraud hard to manage. Each national authority – especially those in the ‘catching-up’ new younger market economies – faces the difficult task of finding the right balance between fiscal and economic priorities, i.e. protecting the tax from criminal abuse by tightening refund procedures on one hand, versus minimising the cost of enforcement falling on and impeding production and exports, on the other. As in other similar challenges, the increased compliance and enforcement
costs tend to fall more on compliant businesses. Those costs may outweigh the benefits of deterred or prevented fraud.

**Forms and modus operandi of VAT fraud**

Cross-border VAT fraud is mainly about the abuse of the tax refund related to zero-rating and should be distinguished from other forms of *conventional tax evasion*. The latter include techniques of concealing taxable receipts from the production and distribution of *real* products and services. Sales are simply not recorded in the books, or are recorded at lower than actual prices and/or quantities. Alternatively, evasion may be effected through overvaluing of spending on purchases, which leads to an inflation of the refundable VAT.

**The missing trader**

A simple form of VAT evasion related to cross-border trade is the so called *missing trader fraud*. Within this scheme the importer benefits from the cross-border tax-free acquisition of goods, resells them in his country, charges VAT, and then goes ‘missing’ or insolvent before paying the collected VAT to the Treasury.

A simplified illustration of the missing trader is presented in Figure 1. The supplier in the country of origin may be a fully compliant trader. With zero-rating the merchandise crosses the border tax-free at net worth of say € 5 million. The intra-community acquisition worth a total of € 5 million is sold in the country of destination for € 6,9 million, of which € 0,9 million is output/selling VAT charged (VAT rate is 15%). If the selling company goes missing or broke without paying the collected VAT, it will end up with a net gain from the fraud worth € 0,9 million (i.e 15 % extra profit).
It is worth noting that this simple version is harder to construct in the case of imports from outside the EU. In that case the VAT is collected at custom clearance, i.e. before reselling the goods and collecting the output tax from the next trader. This would reduce drastically the gain in the tax due on the value added by the importer – namely to 0.15 million euros or six times lower than in the case illustrated above (assuming for instance a value added of 15% at the importer’s side). Therefore the missing trader scheme applied to intra-EU trade is more attractive relative to imports from outside the EU.

It is not necessarily the case that such a simple missing trader scheme is carried out in a cross-border trade flow only. It can be a lucrative opportunity in domestic trade as well. That is the case when a registered trader buys goods from tax-exempt suppliers (for example buying milk from small farmers for a dairy factory), or at preferential tax rate. In these cases it is possible that the trader accumulates large liabilities to the treasury during the tax period, which makes the scam worthwhile: the merchandise is sold to customers and the VAT due is pocketed. By the time the tax office notices increasing arrears in payments, the firm, or its managers, have disappeared.

In this version the Missing trader fraud is a one-shot individual enterprise scheme and a fairly risky operation, the repetition of which would require registering a new company in someone else’s name. Often such individual enterprise schemes are not premeditated, but the result of real liquidity problems for a licit firm finding a way out of its problems.
There is also a better option for the fraudster than simply to disappear if his clients are not VAT-registered. Instead of disappearing from the market the fraudster in the above illustration may realise the same gain by selling the imported good to end-users or small exempt traders without registering the sales. If the detection rate is low, or corruption levels high, this might be a preferred option, which offers a longer-term operation of the evasion scheme than the missing trader alternative.

The above form of VAT evasion is a rather extreme one as it requires either the closing of the company, or the exposure to the risk of relatively easier detection of unregistered sales to end-users. The more sophisticated and sustainable the fraud operations tend to be, the more they rely on fictitious transactions and traders organised in a well-functioning crime network.

Fake exports

The simplest form of cross-border fraud is to fake exports (or intra-community deliveries) while the goods are sold domestically without invoices to non-VAT customers. In this case the exporter/supplier performs the transaction on invoice only, applying the zero VAT rate on exports and claiming tax credit on the goods bought, while actually selling the products on the domestic market.

A less risky and more sustainable version of this type of fraud (relative to the one examined in the next paragraph) would use real goods which are fictitiously exported. Figure 2 presents a simplified numerical illustration of the fake exports scheme. The false exporter declares the goods as intra-community delivery, in order to claim the rebate of € 0.8 million and then sells them domestically without registering them, taking out an extra up to € 1 million of tax collected from end-users but not paid to the tax office. The total return on the fraud in this case is up to € 1.8 million (i.e. 36%).

Figure 2.
Fake exports of real goods

<table>
<thead>
<tr>
<th>Actual domestic sales without invoices</th>
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<tbody>
<tr>
<td>Sales value</td>
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<tr>
<td>VAT charged</td>
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<tr>
<td>VAT evaded</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Paper exports</th>
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</thead>
<tbody>
<tr>
<td>Country of origin (VAT 20%)</td>
</tr>
<tr>
<td>Inputs net value</td>
</tr>
<tr>
<td>Input VAT paid</td>
</tr>
<tr>
<td>Value added</td>
</tr>
<tr>
<td>Tax liability</td>
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<tr>
<td>Tax refund</td>
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</table>
This scheme may also be purely individual and on a random base if applied to intra-community trade. In the case of exports (out of the Union) the increased risk of detection at customs border usually makes the services of a corrupt customs officer crucial for its success. S/he is the one who does the paperwork clearance of the non-existing exports. This is the most rudimentary type of crime network fronted by two players – exporter and customs officer – but with substantial potential for criminal gain. As a matter of fact, behind these front players a chain of firms and operators can be – profitably – involved. This was the case in the cattle fraud in the early 1990s, stretching from Poland to Spain over the Germany, the Netherlands, Belgium and France (Van Duyne, 1993).

In the case of an intra-community delivery, the internal market replaced border controls with the VIES system. As already mentioned, it allows tax authorities in one country to check through their counterparts in the other Member State whether the intra-community deliveries declared in the country of origin have been registered in the country of destination. For most of the old Member States where the customs office functioned well this electronic information exchange system, nevertheless increased the risk of abuse of VAT credit. This is caused by the delay factor: despite the fast development of IT, the processing of inquiries through the VIES still requires a longer time span than it may take for the fraudsters to cover their operations. Still, for countries with higher levels of corruption in the customs and revenue offices, as is the case in some of the new Member States, VIES may protect revenues better than customs control and audit, because the VIES reduces the risk of revenue officers being bribed.

**Fake exports with a missing trader**

A more sophisticated version of the fake export fraud would include a combination of export of inflated value (i.e. value produced only on paper) with a missing trader somewhere up the chain. In this case the organiser of the fraud will benefit not only from stealing the tax charged on real consumption by end-users (as in the previous example), but also from VAT refunds on non-existing exports. The success of the latter component of the scam depends on a cooperating phantom trader further up the chain whose fraudulent sales invoices legitimize the right of the exporter to a refund. But the tax on the overvalued purchases underlying the refund claim will never be handed over by the missing trader to the tax office.

The illustration in figure 3 shows the same amount of real output as that in figure 2 above (of € 5 million). This time more perpetrators are involved: suppliers, the bogus firm and the exporter. In its way towards the zero-rate trader the value of the goods is inflated to say € 14 million. This may be realised through fictitious supplies of inputs from non-registered suppliers to the bogus firm, and/or by inflating value added by the
bogus firm through overvaluing of wage expenses or the profit margin. This allows fake exports to result in a net refund of €2 million, which is an additional gain to the €1 million generated from sale of the goods to the domestic market. The overall gain from the fraud is three times higher than that of tax evasion through fake exports of real goods consumed domestically (amounting to 60% return on the spending).

**Fig. 3.**
Fake exports of overvalued goods with a missing trader (VAT 20%)

Suppliers B, C, D..., whose role is to inflate the value added by the phantom and thus increase the refund to the zero-rate exporter

Most often the types of VAT fraud, illustrated in the preceding paragraphs are implemented through repeated rounds of cross border transactions known as **carousel fraud**. The fraudsters’ benefit from the carousel is threefold. First, if the flow of goods reaches its final destination directly, even on paper, it would be easier for the authorities to track it down and assign the responsibility for the fraud either on the exporter or on the importer. However, turning the cargo round a second fictitious time allows the traders on both sides of the border to avoid early detection. The carousel makes prevention and tracking down more difficult and delays the investigation because the chain of invoices repeatedly crosses jurisdictions. Second it multiplies the cash return on the
missing-trader fraud. While the authorities are trying to track down the flow of goods, the value of unpaid liabilities accumulated in the phantom traders on both sides of the border grow immensely. Thirdly, the carousel makes it unnecessary to inflate the rebate through domestic exempt supplies (as shown in figure 3 above), which may expose the network at higher risk of early detection. A simplified numeric illustration is provided in figure 4 with the assumption of a VAT rate of 20% on each side of the border.

This example concerns trade flows with a non-EU country.

VAT trader A purchases goods for €100 from a non-VAT supplier, adds value worth €10 and sells to B at the price of €110 levying a VAT of €22, which it transfers to the tax office.
Trader B exports the good for €120 against zero VAT rate and claims back previously paid VAT.

The importer C in the country of destination pays VAT on the value of the imports.

As this is not an intra-community cross-border supply the €24 are paid at customs clearance. C adds €10 value to the good and sells to D whom he charges €26. He settles his VAT account with the tax office: he subtracts the €24 paid earlier and has to pay only €2.

After having crossed the border through importer C the transaction chain goes through a number of fictitious and buffer transactions, whose effect is twofold. (a) First, they inflate the value added by the prospective missing trader (D), which allows an increased rebate of the tax credit by the organiser; (b), they make the connection between the compliant players (C) and the cheaters (F) more difficult to prove. Traders between the missing trader D and the zero-rate exporters may be compliant taxpayers as their compliance is needed for the flawless drawing of the tax credit by F.

As a result, the missing trader D enters into the account a payment of €130 for purchases plus VAT payment of €26 and adds value through labour inputs, or supplies from non-VAT traders worth €500.

As the goods continue around the carousel to E, it generates a tax liability for D in the amount of €100 (20% on the value added of €500).

Supplier E duly pays to the Treasury the liability on the value added by him and passes the goods to the zero-rate exporter, who completes the round by drawing the tax credit of €128 paid on inputs.

The net cash flow to the network from the first round (unbroken line) is €100, but after the first round the same goods are worth €650, i.e. six times more. Thus the effect of the second turnaround (dotted line) is several times higher.

The scheme’s capacity is considerable, especially if fictitious traders are involved on both sides of the border. Summing up, the carousel fraud makes detection difficult across borders and jurisdictions, while at the same time multiplying the return on the scam.

This basic scenario illustrates a cross-border trade with a non-EU country. In the case of intra-community cross-border supply the VAT is not due at customs clearance. According to the deferred payment principle the importer includes the VAT on intra-community acquisition in the monthly VAT declaration. Taking advantage of this, the missing trader may be in the position of trader C. The network may avoid the chain of fictitious transactions needed to inflate the value of the refund. The value of the acquisition may be inflated at border crossing. In this case detection requires electronic ex-
change of information on the level of company transactions (invoices) between the two jurisdictions. In brief, the single EU market should increase the risk of detection because of mismatches of invoices for deliveries and purchases, which alarms the tax authorities. However, that takes time and meanwhile the liability of the missing trader accumulates. By the time the firm is searched, it is declared bankrupt and the responsible managers have been replaced by a drunken straw man. Though the electronic exchange of information in the old EU Member States may give the fraudster a couple of month’s leeway. As remarked before, in the new Member States this is counterbalanced by the circumstance that such a system may be more corruption-proof than physical border controls, thus making a more reliable deterrent to fraud.

VAT evasion vis-à-vis organised cross-border fraud

The line of distinction drawn above between VAT evasion on real trade flows on the one hand, and fraud, related to transactions and traders that exist only on paper, may seem elusive and a matter of scale rather than content. Value-wise, on the side of enforcement there is not much difference. For the revenue administration the cost of one Euro of evaded tax is equal to that of one Euro of fraudulent refund.

This distinction is important for law enforcement and preventive measures. Table 1 below outlines the typical differences between the two types of non-compliance. Conventional evasion relies mainly on concealment of receipts from real sales and does not necessarily involve accomplices. In contrast to it, cross-border fraud is more often than not done through international crime networks including bogus traders and accomplices in two or more member states. Furthermore, if it is to perform in repeated rounds it may depend also on the collusion of tax auditors, custom officers (in the case of extra-community trade) and other law-enforcement authorities. Even without corrupt officers, organising cross-border VAT fraud schemes requires a professional organisation.
Table 1.
VAT evasion vs. network fraud

<table>
<thead>
<tr>
<th></th>
<th>Evasion</th>
<th>Network Fraud</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Objective:</strong></td>
<td>Hiding of tax liabilities</td>
<td>Illegal tax refund</td>
</tr>
<tr>
<td><strong>Instruments</strong></td>
<td>Real transactions with undervalued sales receipts or overvalued inputs</td>
<td>Inflated or fictitious transactions and traders are indispensable</td>
</tr>
<tr>
<td><strong>Organisation</strong></td>
<td>Individual, Random (taking chances)</td>
<td>Structured network incorporating real and fictitious suppliers and accomplices in the revenue and law-enforcing agencies</td>
</tr>
<tr>
<td><strong>Size</strong></td>
<td>Limited to the size of value added at each phase of the supply chain</td>
<td>Unlimited</td>
</tr>
</tbody>
</table>

*Source: Pashev, 2007*

The distinction drawn here is more than just conceptual, and has important practical implications. First, in terms of prevention policies, it is important that the legislation should differentiate between individual tax evasion and organised network for fraudulent refund of tax. Second, as far as detection is concerned, in the case of abuse of credit, there is often no real flow of goods to match the value in the invoice. The challenge for inspectors is to verify if goods have crossed the border. In contrast, in the case of concealment of income there is a real flow of goods. The challenge for inspectors is to find out if their real value is entered in the invoice.

Last but not least, law-enforcement bodies should be very careful not to punish a compliant trader. Because the fact remains that it may be not easy to prove whether the fraud is an act of individual evasion or alternatively it is a network fraud and the missing trader is just a fuse, benefiting the claimant of the refund. The organiser of a network fraud would rely on this difficulty in court claiming that he has nothing to do with the missing trader. This uncertainty is the biggest challenge to the use of the joint liability principle.

“Sizing” the problem

The threat and incidence of VAT fraud seems to have grown immensely in Europe in the last decade. In terms of fiscal damages it is estimated to top the list of organised crime in Europe, the receipts from it being used allegedly to finance terrorist networks. Estimates of the losses in the EU range between 60 and 100 billion euro. (International VAT Association, 2007) The European Commission (2004) estimates the losses of VAT fraud to be about 10% of net VAT receipts in some member states. The overall
VAT compliance gap in the UK in 2006-2007 is estimated at £12.8 billion (14.2%) of which between £1 and 2 billion is the loss from the missing trader fraud. Estimates of the previous year point at much higher cost of the missing trader fraud: between £2 and 3 billion. (HMRC 2007). German estimates of the VAT compliance gap seem to be of similar magnitude at about €17 billion (11% of VAT revenues) in 2005.8

Yet neither the literature, nor the practice, offers a reliable methodology for estimating the size of the loss. Similar to other spheres of organised crime, the lack of a reliable database and no accurate measure of the size of the problem makes a reliable evaluation of the impact of policy difficult to achieve.

Most of the research work in the field of VAT collection efficiency evaluates VAT compliance gaps, which mixes together conventional evasion and network fraud. From the classic models of tax evasion pioneered by Allingham and Sandmo (1972) until the more novel research of the shadow economy (Schneider and Enste 2000) the work on tax compliance is mainly about concealment of taxable income. As already argued above, conventional VAT evasion implies either undervaluing of sales receipts or hiding imports or overvaluing of purchase spending (increasing expenses). Illegal refunds in turn rely on overvaluing of exports and related input spending. This may distort national accounts statistics, because of (a) undervaluing of imports and/or (b) overvaluing of exports, thus overvaluing national output. Conversely, estimates of the hidden economy (including conventional tax evasion) tend to reveal non-registered income. Similarly, conventional VAT evasion may call for upward adjustment of the national accounts statistics, while VAT refunds based on fake exports or inflated value of inputs may require downward adjustment.

Many countries use what is known as a top-down approach to estimating the overall VAT compliance gap. It is based on the macroeconomic estimate of taxable expenditures, which are then adjusted to take into account preferential rates, exemptions (including small businesses), cascading, and the like. Then this estimate of the potential revenue is compared to the actual revenue to arrive at the VAT gap.9

This method is often combined with the so called bottom-up approach. This usually means taking the data of the law-enforcing agency as a base for the estimation. The revenue administration in Bulgaria, for instance, bases its estimates on the size of actually detected fraud cases and some assumed rate of detection (which in the Bulgarian revenue administration is in the broad range of 25 to 50%). The UK methodology

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9 See Zee (1995: 96-99) as well as HMRC (2007: 16-21) for detailed description
seems to be more sophisticated, making better use of data derived from the risk management system, but for good reasons it is not revealed to the public at large.\textsuperscript{10}

**The case of Bulgaria\textsuperscript{11}**

The problem with organised VAT fraud is relatively new for Bulgaria. The tax was introduced in 1994 but fraudulent refund schemes only started to spread after 1997, when the introduction of the currency board reduced inflation. Prior to that, the long time-limits for credit refunds and the high rate of inflation rendered such schemes unprofitable. The second half of the 1990s also saw the first high-profile cases of VAT fraud. Major countermeasures were not introduced until 1999 – 2000. Those included: closing some of the loopholes in the legal framework; streamlining the large taxpayers unit; restructuring the tax audit area to account for the abuse of credit; establishing special anti-fraud units; monitoring of VAT losses; and the like.

According to the tax authorities’ estimates based on the bottom-up approach, the detected fraud under the Value Added Tax Act (VATA) over the 2000–2004 period, amounts to an annual average of € 140-150 million (10-12 \% of VAT revenue collected).\textsuperscript{12} The actual loss, according to the administration’s own estimates, is two to four times bigger, i.e. between € 300 and 600 million. Top down estimates are commensurate with this. A 2002 report estimates the evaded VAT in 1999 and 2000 at € 300 million (31,5\% of VAT revenue collected) and € 225 million (19,4\%) respectively.\textsuperscript{13} According to World Bank estimates, the VAT compliance gap in 2002 is about EUR 450 million (33 \% of VAT revenues).\textsuperscript{14} Even though in absolute terms, the size of the problem may look small by international standards, as a percentage of net receipts, Bulgaria’s leakages may be three to four times higher than those of the UK and Germany.

Like most modern tax systems, the Bulgarian legislation has placed a number of obstacles to the abuse of tax credit. Firstly, rather than being immediately refunded, the VAT credit is deducted from the tax liability during the following three reporting periods. Only after that period, any remainder of tax credit will be refunded within 45 days. This arrangement is designed to allow bona fide traders to deduct credit from real liabili-

\textsuperscript{10} See HM Revenue and Customs (2007: 6)
\textsuperscript{11} This section draws heavily on Pashev (2007)
\textsuperscript{12} Доклад на Временната шекетна комисия за разследване на измамите с ДДС към 39-ото Народно събрание, 2005 [ Report of the 39th National Assembly’s Temporary Committee of Inquiry into VAT Fraud, 2005]
\textsuperscript{14} World Bank (2003), Project appraisal document on a proposed loan in the amount of EUR 31.9 million to the Republic of Bulgaria for a Revenue Administration Reform Project. Report No: 25010-BUL, May 9
ties. Only exporters are entitled to a priority refund within 30 days in order to avoid liquidity constraints. Therefore, organised VAT fraud schemes are mostly export-related frauds with third countries which cannot be accomplished without the complicity of customs officers. Secondly, actual cash is only refunded after a tax audit, and during the audit, the statutory time-limit is suspended. Finally, the principle of joint liability is the last barrier to abuse of VAT credit. It was introduced by the Code of Tax Procedure (CTP), in force since 2000. Under its provisions (Article 109), the administration could deny a tax refund if any trader in the supply chain has not paid the tax as due. In practice, this implied that, without having proof of any relatedness between the refund claimant and the non-compliant trader, the administration would anyway penalise the former. However, a number of cases filed by taxpayers have gone against the tax authority. In 2002, these provisions in the CTP Article 109 were repealed. The principle of joint liability remained embodied in VATA (Article 65(4)), but was considerably mitigated by the introduction in the same year of the new anti-fraud device: the VAT account.

Since 2003 all VAT-registered businesses are required to open a VAT account. It can be used only for incoming and outgoing VAT payments, thus separating VAT moneys from the undertaking’s other cash flows so as to ensure their safe passage to the Treasury. Any tax amount above BGN 1.000 must be paid into a VAT account. This threshold corresponds to the limit for cash payments of BGN 5.000. Thus the VAT account was meant as a device to fight the missing trader fraud by virtually extending the control of the Treasury to the VAT balances of the firm irrespective of the actual tax payment (i.e. before and after the pay day).

In return, compliant users of VAT accounts receive two kinds of relief with regard to the triple security arrangement outlined above. Traders, which pay to the VAT account not less than 80 % of the VAT charged to them (i.e. have at least 80 % of the payments going through bank transfers), are entitled to a refund within 45 days from the date of filing a VAT return. Even if a tax audit is ordered (in the tax authority’s discretion), this time-limit will not be suspended. Thus, under the VAT account arrangement, the requirement to deduct a tax credit from subsequent VAT liabilities, before any remainder can be refunded, is dropped, together with the requirement for a tax audit, and the waiting time for a refund is limited to 45 days, including the duration of any discretionary tax audit. The second advantage has to do with the joint liability principle. The provisions of VATA Article 65(4), which prevent refunds if any trader in the supply chain is non-compliant, do not apply if the subject payment has been made to a VAT account by the end of the reporting period for which a tax credit has been claimed (VATA, article 65(8)). Summing up, the VAT account was designed to counter the missing trader fraud, providing at the same time relief to compliant taxpayers caught in the trap of joint liability.
Only a year after its introduction its performance on both accounts fell short of the expectations. Firstly, it failed to raise an effective barrier against organised fraud. Missing-trader networks found a relatively easy way to draw down the VAT account of the missing trader, taking at the same time advantage of the shelter against the joint liability principle provided by the VAT account. The upgraded version of the missing trader fraud, dubbed ‘X-type’ VAT fraud, includes a supply ‘sub-chain’, whose purpose is to empty the liability of the missing trader from his VAT account. A basic scenario with a VAT rate of 20% is illustrated in figure 5.

Figure 5.
X-type VAT Fraud

The system works as follows. The main merchandise worth €10,000 originates from a non-VAT-registered trader (A) and goes to a VAT-registered purchaser/supplier (B) at a VAT-exempt price. The latter will go missing or bust, but before that for the purpose of this illustration s/he adds value of €1,000 and sells the good to the organizer O, who duly pays the whole VAT of €2,200 into B’s VAT account. This entitles O to almost automatic refund of the tax credit. The assumption is that the underlying VAT payment is secured against the missing trader fraud in B’s VAT account. It however will flow out before B goes broke. Its VAT account is drawn down by auxiliary purchases worth €11,000 from another supplier (C) and the transfer of the €2,200 VAT on them to C’s VAT account. Trader B receives fast moving consumer goods which it sells to cash-buyers (CB) for say €12,000. These are either final consumers or non-VAT-registered
traders or VAT-registered traders with tax liabilities under € 500. As they are not obliged to use the VAT account of the missing trader, it remains empty. Recovering the VAT paid to C from the cash clients requires real sales.

Table 2.
Return on the x-type VAT fraud: tax evasion vs. tax stealing

<table>
<thead>
<tr>
<th>Evasion Scenarios (real flow of goods)</th>
<th>Fake exports Scenarios</th>
</tr>
</thead>
<tbody>
<tr>
<td>(e): Revenue loss of € 2.400</td>
<td>(g): Revenue loss of € 4.800</td>
</tr>
<tr>
<td>(f): Revenue loss of € 2.400</td>
<td>(h): Revenue loss of € 2.400</td>
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</table>

(e) Scheme Organiser O adds value of say € 1000 and sells legally the prime good on the domestic market, charging VAT of 2.400, of which he owes € 200 of tax. The net result is that, being owed VAT of € 2.400 on the prime good and € 2.400 on the auxiliary good the Treasury only gets € 2.200 on the secondary good from C’s VAT account plus € 200 on the prime good from O. This allows the organizer to stay on the market and continue the operation through another decoy.

(f) Alternatively, the organizer may cash out the same amount through exporting the good and benefiting from zero-rating. Then he receives a cash refund on the input tax paid of € 2.200. The net result is that, being owed € 2.400 on the sub-chain good and zero on the export good, the Treasury gets € 2.200 from Z, but pays it to the zero-rate trader.

(g) Scheme Organiser O exports the primary goods on paper, charges the zero VAT rate on the export transaction, and receives a cash refund of 2.200, while in reality, he adds value of, say, 1000 and sells the goods domestically for unregistered cash. The net result is that, being owed total VAT of € 4.800 (€ 2.400 on the prime good and € 2.400 on the secondary good), the Treasury gets naught. The 220 it does receive from C’s VAT account in respect of the auxiliary supply is exactly offset by the cash refund in respect of O’s exports.

(h) There may be no primary good at all. In this case the fraud makes no sense unless it end up with fictitious export so that the fraudsters can cash out on the stolen credit. The profit of the x-type missing trader in this case is € 2.400 (€2.200 tax credit from the paper export of the main good and € 200 tax liability of B from the secondary good)
The flow of the prime goods may be real or fictitious. In the first case the effect of the missing trader fraud would be a tax evasion worth € 2,400, which is € 2,200 of VAT due on the main goods plus € 200 on the value added by B on the supplementary good (Scenarios (e) and (f) in table 2 above). It is worth noting that if B acts independently, i.e. if C and O are compliant taxpayers, the effect of the fraud would be limited to the € 200 evaded by B. The refund of the tax on the main good to the boss O raises the effect of the evasion to € 2,400.

The effect of the fraud may double if the network includes fictitious export. In this case O exports the goods on paper and claims credit of € 2,200, while actually selling it domestically for unregistered cash (scenario (g) in table 2). If the prime merchandise exists only in the books, then the X-type scheme does not make sense unless it ends with fictitious exports and siphoning out of the credit (scenario (h) in table 2).

In brief, the VAT account rather than providing effective safeguard, actually speeded up the network scam by relieving the missing-trader fraudsters of the audit requirement. Furthermore, because of its inefficiency as an anti-fraud device, it failed to guarantee the unconditional refund of tax credit to compliant businesses. Administrative practice and jurisprudence abounded in cases of VAT refund denial, and appeals from it, despite the taxpayer’s compliant use of a VAT account. On the other hand the cost of compliance has increased because of the effective freezing of companies’ cash flows in the VAT accounts.

The VAT account experiment in Bulgaria proved unsuccessful and after three years of use it was dropped from VATA with effect from January 2007. Even though rather negative, Bulgaria’s unique experience with the VAT account may be used to inform policy in other countries. Moreover after joining the EU on January 1 2007, its anti-fraud effort is now a part of an EU-wide search for effective countermeasures against the abuse of VAT credit.

Conclusion

One of the major deficiencies of the VAT system in Europe is its exposure to network abuse of the credit mechanism known as missing trader or carousel fraud. Confronted with the drastic increase of the fraud in the last years, the European Commission identified the urgent need of a coherent strategy to combat it. Yet, neither the literature, nor the practice has adequately addressed the threat. Indeed it was only in 2007 that Europol included the organisation of VAT fraud in its Organised Crime Threat Assessment 2007. Until then, organised business crime had been separately defined from the organised crime mainstream discourse (Van Duyne, 1991; 2006). Nevertheless, the findings of earlier research of Aronowitz et al. (1996), describing 30 VAT scams, demonstrated
the often sophisticated and sometimes violent level of the VAT-organisations. Even if one would apply the defective EU organised crime definition, the organisation of VAT fraud can usually safely subsumed under this title.

However, the tax evasion literature’s focus is mainly on the drivers and deterrents of individual evasion, while the literature on organised crime does not pay enough attention to the economics of organised VAT fraud. Correspondingly, tax law and administration are better equipped to fight conventional evasion rather than network fraud. Many countries have tried to apply versions of the principle of joint liability, but its chance of success in court appeals has proved limited. Furthermore the effect of the various preventive measures is difficult to evaluate as there is not yet a sound methodology to measure the damage.

Drawing evidence from the Bulgarian and international experience this chapter outlines various mechanisms of cross-border VAT fraud, trying to draw a line of distinction between individual evasion and organised VAT fraud. The distinction is important in view of the effective enforcement of the joint liability principle, according to which the zero-rate exporter may be refused the right to refund if tax authorities have strong reasons to believe that he might be connected (or should have known) that there is a non-compliant VAT payer positioned before him in the chain. It can be used for further studies of possible countermeasures proposed or applied as barriers to abuse of VAT credit and their costs and benefits.

The Bulgarian experience with the VAT account is of special interest as Bulgaria is the only country that has experimented so far with such kind of anti-fraud device. While the VAT account provided little benefit to the compliant businesses in return to withdrawing their VAT receipts from daily operations before the pay day, it could not play the role of reliable deterrent to the missing/insolvent trader fraud. Fraudsters found an easy way to leave the VAT account of the missing trader empty with a secondary sale of fast-moving goods within the crime network. Even though, negative the lessons from Bulgaria can be used for improvement of the design as well as for avoiding similar costs in other anti-fraud instruments.

Obviously, a one-size-fits-all approach in Europe would hardly be optimal, but the nature of the tax and the degree of its harmonisation makes any changes viable only if they are based on broad consensus.
References


Center for the Study of Democracy, Corruption trafficking and institutional reform, Sofia 2002


Duyne, P.C. van, Organizing cigarette smuggling and policy making, ending up in smoke. Crime, Law and Social change, 2003, no. 3, 263-283


European Court of Auditors, Special report No 8/2007 concerning administrative cooperation in the field of value added tax, together with the Commission’s replies, OJEU, C20/01, 25 January 2008


HM Revenue and Customs, Measuring Indirect Tax Losses, October 2007

International VAT Association, Combating VAT fraud in the EU, the way forward, report presented to the European Commission, March 2007


258


Shifting responsibilities in the fight against money laundering and terrorism financing from a bank’s perspective

Maarten van Dijk

A tale of two institutions – part I

A true sceptic may hold the view that the only difference between bankers and crooks is in the keeping of the books. What bankers and (most) criminals have otherwise in common is their drive to make money. Criminals tend to avoid bookkeeping, for anything that is written down may at some point in time be used against them as evidence in criminal proceedings. Bankers, may use the (many mazes in) the legal system but must use their bookkeeping and legal expertise for financial gains. The same concerns other (financial) service providers as well: attorneys at law, tax consultants, and accountants. Most profit oriented criminals lack such bookkeeping and legal skills and wish to hire the services of these professionals, who may become the witting or unwitting accomplices in money laundering schemes. Again, for the true sceptic the difference is of little relevance. Indeed, there was a time when nobody knitted their brows when banks and bankers were found serving clients of disputable reputation. And this is where our tale of two institutions begins.

Once upon a time –let us call this the pre-AML era– banks and other financial institutions conducted business in a way that was very different than at present. Although credibility and trustworthiness were then the primary assets of a bank as much as they are now, these key features had entirely different meanings and were operationalised in a rather different way.

The term ‘credibility’ is not used here in a strict financial-economic sense (that is, not linked to solvability and the active/passive balance) but in the broad sense of being discrete about clients and the services provided to them. The main asset of a bank –one may think of the typical 1980s ‘Swiss bank’ as a paradigm– was bank secrecy: the ability to provide financial and other services to clients while assuring the client that –

1 The author is Senior Advisor Intelligence & Analysis / FIU at the Security and Fraud department of ABN AMRO Bank NV. [The views expressed in this presentation are the author’s private views and not necessarily represent the views of ABN AMRO Bank NV.]

2 AML = Anti-money Laundering
irrespective of the business he conducted with the bank– no information would be disclosed to third parties.

The concept of ‘know your customer’ (KYC) –not an existing expression in those days– existed in the form of an almost self-evident trust. The bank trusted the client that he would disclose any relevant information to the bank and therefore he was never asked too many details about the nature of his business or the origin of the money vested in the bank. A long-standing banker-client relationship and a good reputation were in those days the most effective barriers to awkward questions. The nature of the clients business was only discussed when a credit had to be provided of more than average size and only because the bank wanted to be able to calculate the credit risk inherent to any lending activity. In other words, any curiosity on the side of the banks was motivated by the banks’ need to protect their own interests against fraudulent activities or loss as a result of their clients’ insolvency. For the remainder, the affairs of the client were literally his affairs. Any illegal activity by the client, apart from harming directly the interests of the financial service provider was merely a matter between the (national) law enforcement agencies and the client.

In those days the expression ‘Politically Exposed Person’ (PEP) had yet to be invented and some banks in particular were rather willing to accept large amounts of deposits by any statesman wishing to secure his money from any potential attempt –by his political opponents or others– to seize his assets. Banking, in these days, was very much a private affair, also for political persons.

In brief, the banks were profit oriented private institutions in an era in which there was a more strict division of labour between the state and the citizens: crime fighting was the responsibility of the state. As we all know, this has changed significantly both in and beyond the context of money laundering. The question to be addressed in this paper is: why have the financial institutions come that far in accepting so many tasks which once were the preserve of the authorities. Was it coercion, opportunism or was/is it embedded in the contemporary Zeitgeist?

A tale of two institutions – part II

Virtually all that has been described in the previous paragraph changed at the end of the 1980s, July 1989 to be exact\(^3\), when an organisation was established under the name Financial Action Task Force on Money Laundering, or briefly the FATF. Let us call this the beginning of the ‘AML era’. It was not an authoritative body formally backed

\(^3\) http://www.fatf-gafi.org

262
by any national or international governmental powers, but just an informal entity which, primarily for practical and organisational motives was located within the Paris based bureaus of the OECD.

The task of the FATF was to stimulate and assist states to develop AML policies and regulations. In a very short time span this independent body managed to become the most influential global organisation in the fight against money laundering and, later, terrorist financing. The FATF orchestrated and still orchestrates an unprecedented global alignment of jurisdictions in the fight against money laundering. If the success of an ‘army’ is determined by the extent to which the army manages to close it ranks, then the FATF deserves the accolade of a true ‘general’ in leading the ‘war’ against money laundering and terrorism financing. (But of course, the success of an army depends not merely on the ability to close ranks, but first and foremost on the capability to assess the true nature of the threat and subsequently to formulate the best strategy to counteract this threat, to be discussed later on).

The authority of the FATF is illustrated by quoting Even-Zohar, who observes that “[t]he industry should get used to the FATF –as it wields enormous power and responsibilities.” (Even-Zohar, 2004: 55). But responsible to whom, is the follow-up question as posed by Van Duyne (Van Duyne, Groenhuijsen and Schudelaro, 2005). Indeed, the FATF managed to get the attention of a wide audience: not only those governments and supranational organisations that helped establishing the FATF, but also those of other countries, who one after another were bent to their knees and lined up with the regulatory proposals of the FATF, which soon became the international standard. The timing of its establishment was no coincidence and reflected the spirit of that time, in which also the US legislator approved the US Money-Laundering Act (1986), the Council of Europe issued its Convention on money laundering (1988) the UN Convention on Drugs was issued, including a money laundering clause (1988). Hot money suddenly was a politically hot item and the key documents as produced by the FATF have, without a doubt, become pivotal to the discourse on the fight against money laundering and terrorism financing. The banks did not need much pushing: the financial world drifted already in a direction similar to the course set out by legislators and supra-national bodies.

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4 That is, from a strictly legal perspective. In fact the FATF from its very start was strongly supported by a number of Western governments, most particularly the United States government which pulled some political strings to get the FATF established to their model (e.g. Gilmore 2004).
Shifting responsibilities

Fighting crime was a task that previously had been the exclusive competence of the agencies of the state. It was and still is connected to the sovereignty of the (nation) state, the state monopoly to use (legitimate) violence, the right to interfere and, in reciprocity thereof, the duty to protect the citizens. To an increasing extent responsibilities and competences formerly confined to public bodies have shifted or partially shifted to private (corporate) citizens. In some cases this shift is based on truly voluntary participation of private entities, e.g., in the context of privatization of security services where the state or central authorities have to come to an agreement with private parties (e.g., Abrahamsen and Williams 2007). A good example of this can be found in the privatization of municipal parking policy enforcement. Nowadays, only small part of the enforcement area does not involve private corporations.

In the case of the fight against money laundering and, more recently, the fight against terrorist financing, it is also assumed—and virtually never challenged—that participation and cooperation by the financial and other service providers is based in 'voluntariness'. Granted, this voluntary cooperation is backed up by penal sanctions: non-compliance in reporting suspicious transactions is a criminal offence (Harvey, 2005) and if banks cannot demonstrate the implementation of risk assessment processes, they can be reprimanded by the regulators. Thus, the gatekeeper function of the (financial) service providers and the effort and costs involved, are primarily justified in terms of self-protection. The institutions are told that they must primarily be their own gatekeepers, protecting themselves from any unwanted involvement in illicit activities. By closing ranks, the service providers, in a concerted effort, contribute to the integrity of the financial system as a whole.

Whether all this is cost-effecting is difficult to tell. However, challenging the effectiveness of the current approach and the validity of the basic assumptions underlying this approach is also by more critical in-house AML-experts considered to be a rearguard action. It is simply in the best interest of commercial financial service providers to go along with mainstream AML developments and just accept whatever standards are imposed by the authorities. Whether or not the often repeated justifications for such standards may hold some truth or are mere rhetoric adhered to for the sake of self-preservation, it is an undeniable truth that the service providers quite overtly took responsibility for an important part of the financial crime-fighting chain. “The operational core of the strategy [to fight market-based crime] is a profound shift in the relations of ‘banker’, client and police”, Naylor writes and he adds that this has led to “the conscription of the private financial sector in a way previously unknown even in wartime” (Naylor, 2007).
The argument that the service providers are voluntarily involved in this crime fighting effort, has gained strength under the recent developments in which the fight against terrorism, set off by an indirect attack on the financing of terrorism, is brought under the same AML compliance umbrella. Which private entity wants to be associated with terrorism or the financing thereof? Those who are not outright against it—and are able to demonstrate so in word and in deed—expose themselves to the suspicion that they might be in favour of it and consequently risk accusation of being (alleged) supporters of the most serious evil of our time.

But of course this is all put too simple. Discussions on the efficacy of the fight against terrorism by waging a massive ‘war’ against the financing of terrorism inevitably must focus on the question whether the proper means are deployed in the most effective way (See also Even-Zohar, 2004: 75; Van Dijck, 2006; and in a similar vein: Hoogenboom 2006). Questions about the effect and effectiveness of legislation put in practice are always legitimate. Moreover, the balance of interest should take into account the wider scope of interests of society, as pointed out by Harvey, elsewhere in this volume.

Therefore, critically assessing or criticising how the financing of terrorism is counteracted today, does not imply support for terrorism and its cause. Nevertheless the anti-terrorism rhetoric has in a very effective way contributed to the notion that unrestricted compliance with AML and CFT\(^5\) regulations is in the best interest of the service providers. However, the underlying motivations may be different. It may be the case that a financial institution sees and seeks compliance as the best strategy to assure business continuity by avoiding the regulator’s wrath or the public’s indignation. Others might argue that it is truly in the best interest of the service providers to rule out any possibility of getting (unwittingly) involved in any act of terrorism support. Both from a theoretical and a practical perspective this does not make any difference. Whether someone’s motives are purely altruistic or ultimately instrumental to self-interest, is a meaningful question when it concerns human individuals, but not corporate entities.

One cannot distinguish between the formally adopted viewpoint of the corporate entity, as for example expressed in its business principles, and the ‘underlying’ motive or ‘true’ mind. In case of a corporate entity there are no ‘underlying motives’, only those motives of the individuals involved in the decision making, which should not be confused with the corporations ‘true’ will. What is more important, is that the fear for reputation damage and reprisal should not get in the way of a critical evaluation AML in terms of its underlying objectives and the results achieved so far.

It cannot be denied that law enforcement needs the support of the financial service providers to make effective use of financial instruments such as freezing a suspect’s

\(^{5}\) CTF = Contra Terrorism Financing
However, the ‘support’ of the service providers seems to exceed what once was considered the boundary of cooperation between law enforcement and corporate private entities, as is also argued by Naylor (2007). AML and CTF have brought a major change in which the initiative (and the burden of proof that measures were legitimate) has shifted from law enforcement to the service providers. Whereas in the ‘old’ days banks simply had to comply on the basis of a warrant backed by binding procedural law provisions, nowadays they are forced to play a more active role in proactively identifying clients and transactions (potentially) related to money laundering or terrorism financing. Most of the recent developments in the context AML and CTF, as described here, do cross the –already blurred– line between (what once were) the public and the private domain. In his analysis of AML in the diamond sector, Even-Zohar observes that:

“[b]anks and diamantairs are not only expected to play the role of policemen, they have to play the role only in those instances where real policemen have failed to prevent or to discover the illegal activity. It doesn’t matter whether this makes sense; it is the law.” (Even-Zohar, 2004: 69).

Indeed, irrespective of their opinion about specific AML provisions, banks and other financial institutions, want to comply simply because the law prescribes them to do so. But some criticise the law, holding the view that in its legislation governments may have crossed the dividing line between private and public. Criticising the very act of making money laundering a separate offence under US law, Naylor states:

“[T]his new crime has rationalized a regulatory apparatus that has turned the domestic, and increasingly international, financial system into global espionage apparatus. It puts financial institutions in a position of conflict of interest between their responsibilities to clients and shareholders and their duties to police and national security agencies.” (Naylor, 2007: 32).

Finding the needle: by whom and by what means?

The blind application of the AML regulatory framework, somehow, invokes the image of Don Quichote fighting windmills. Not that terrorism and money laundering are not real threats. Similar to Don Quichote’s case, the basic ideals underlying this fight are pure and worth pursuing. But, just as the man of La Pancha lacks a sense of reality, the fight against terrorism financing and money laundering may be based on a wrong depiction of the reality of these phenomena. Naylor argues that the current AML ap-

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6 The opposite is also true: financial institutions need the support of law enforcement to effectively counteract criminal behavior, such as fraud.
proach is based on several misconceptions, such as a miscalculation of the magnitude of criminal funds (see also Van Duyne et. al. 2005, Harvey 2007 and Harvey elsewhere in this volume) and the threats these sums pose to society. In addition, according to Naylor, who finds himself in the company of Van Duyne (2005 and 2007) other forces were behind the international promotion, for example by the U.S. Government, of strict AML regulations than merely the desire to save the world from money laundering.

From a perspective of impact-analysis it seems that current AML and CTF activities resemble the image of firing a cannon to destroy grasshoppers. Even when the grasshoppers come in the quantities of an all-destroying swarm, then still the cannon is not a very effective weapon. Whereas there seems to be a rather common understanding that committing terrorist acts and maintaining a supportive network does not require a massive amount of money and transactions, the use of the full AML apparatus in this context is perhaps something of an overkill. The AML regulatory frame, as noted by Van Duyne (2007), has become ‘top-heavy’.

However, the way financial service providers are relied upon as a key factor in the fight against terrorism by tracking down and/or preventing money flows purported to aid terrorists may be justified as the best possible approach simply because there is no real alternative. Granted, the allegedly small volume of money flows being cross-wired in support of terrorism resemble the needle in the haystack with no clue provided about how to look for it. But one thing is sure; we cannot find these needles without the help of the service providers processing the wire transfers and transactions. The smaller the amount of money involved in each transaction, the harder it will be to distinguish it as an ‘evil’ transaction. In addition, clever terrorism financiers –and by the same token, money launderers– know how to make the ‘needle’ resemble real straw. As a result, transaction monitoring becomes a ‘mission impossible’ of finding the look-a-like hay straw in the hay stack.

The financial world, at times, tends to react in a somewhat nervous way to any FATF report in which potential hiding places for terrorist or criminal money are defined. The FATF, at times, seems to adhere to the maxim that ‘good hiding places make bad clients’, but although there is some evident truth in this slogan, financial service providers cannot afford to accept this as a simple rule. Trust and Company Service Providers (TCSP), Alternative Remittance Systems (ART), Third-Party Payments, these are all examples of financial instruments that are easily abused by terrorism financiers and/or money launderers. The issue is that these instruments in the vast majority of cases are used in a perfectly legitimate way. Efforts to profile ‘evil’ use of financial instruments, therefore, fail to identify those characteristics that distinguish the ‘evil’ from the ‘good’, the illegitimate from the legitimate. To stay on the safe side of compliance, financial service providers tend to deny services to legitimate clients rather than
running the risk of unwittingly facilitating money laundering or terrorism financing. This may be very legitimate and understandable too, but it also affects many who have nothing to do with money laundering or terrorism financing at all.

One of the problems faced by banks and Financial Intelligence Units alike is the vast amount of unusual activity reports. This may have the effect that there may be money laundering activities going on that do not come to our attention at all. Either they are not really noticed or they have a fair statistical chance of not becoming identified within the unmanageable flow of reports. Therefore, to reduce the number of “false hits” the proposal has been launched to shift from a rule-based to a risk-based reporting system. But the risk-based detection of (potential) money laundering schemes remains dependent on the keen eye and wits of alert account managers and relationship bankers. To make any chance in detecting possible money laundering related activities, they must not merely execute the transactions as ordered by the client, but also be capable of relating these transactions to the client’s business. This requires a true understanding of the client’s business, the business sector the client is active in, his ‘normal’ financial conduct in that sector and also the recognition of deviations from this ‘normal’ behaviour as preliminary indicators of suspicious activity. That is quite a thing! Know your Customer is then extended to Know the Business and Business Sector of Your Customer.

Most likely the broad public does not fully realise what the new crime fighting tasks ask from the service providers in terms of effort, administrative burden and ethical dilemmas. Mostly, they only see the outer effects, such as a more stringent application of identification policies. But of course much more is done, inflating the cost of financial service provision. Eventually at least part of the extra costs are diverted to the client who ultimately pays the bill (e.g. SIA 2006). It is well known that a society gets exactly the quality and level of law enforcement for which it is willing to pay. This is no different for the financial world. But does society know how much it pays and what it gets exactly in return? Do the benefits of the current AML and CTF approach outbalance the costs? This might seem a typical question for a banker to ask, but in fact it is of concern to us all. Nevertheless, the question seems rarely addressed and if, only in academic context (e.g. Harvey 2008 and 2007, Sprout 2007a and 2007b). In the following section we will again narrow our focus to an internationally operating bank as the paradigm of (financial) service providers. It will discuss what place AML has in the total of all banking activity.

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7 Unusual transaction reports that, after being received and further investigated by the FIU, appear to have no connection to money laundering or terrorism financing at all.
**Finding the Needle: Shifting Responsibilities and Money Laundering**

**New risks, additional burdens of cost**

Risk and risk assessment is part of the core business of any financial service provider. In its most general meaning, it is the risk that enables the profit. No credit is provided without the risk of losing the money permanently. That is as of old. Now the AML and CTF regimes have introduced an entire range of new risks into the world of financial services and, more broadly, to business in general.

For a bank risks come in many shapes and forms: credit risks, market risks, operational risks, security risks, litigation risks, to name only a few of the major risk categories. The gradual expanding of the AML and CTF regulatory framework has resulted in new costs (such as operational costs, e.g. the salaries paid of staff with dedicated AML function) but also brings along new risks and new categories of risk.

On the one hand the financial service provider can be held responsible for inadequately implementing or complying with AML and CFT regulations. Regulators have the authority to impose huge fines and to withdraw banking licenses of financial service providers if proved to be insufficiently compliant. What twenty years ago was accepted as normal financial service providing, nowadays is viewed upon as facilitating money laundering for which the service provider and sometimes the individual bank employee can be prosecuted.\(^8\)

On the other hand, the financial service provider may face civil or criminal charges in case a suspicious activity report has been filed without due reason. The law only protects the service providers who justifiably report a SAR.\(^9\)

The most serious AML related risk is the risk of being accused by the regulator of being non-compliant. What may follow is a conviction resulting in a fine to be paid or the withdrawing of the licenses required for providing financial services. What this can amount to has become clear in the case of ABN AMRO, which in 2005 was convicted and fined 80 million US dollar together with a Cease & Desist order imposed by the American regulators. Some of the bank’s licenses for banking activities within the US were temporarily revoked, until the bank proved to have put in place programmes and procedures that structurally prevent (bank-wide) reoccurrence of the reproached activities. The negative consequences of such a reprimand may be felt for a number of years.

At the corporate level the bank must set up internal rules to determine the level of suspicion of transactions which may pertain to money laundering, even if the chance thereof is only a remote one. The huge gap between the amount of unusual transactions and the amount of transactions that after more thorough scrutiny are deemed

\(^8\) Under UK law, for example, the bank employee can even be prosecuted if he acted in commission of his employer and fully adhered to the internal policies and procedures implemented by that bank.

\(^9\) SAR = Suspicious Activity Report.
suspicious—a gap that is faced by all FIU’s in the world—shows that it is often very
difficult to tell in advance whether a transaction is or may be related to money launder-
ing. The consequence is that a financial institution continuously runs the risk of being
accused (retrospectively) of facilitating money laundering when at a later stage transac-
tions appeared to be part of a money laundering operation. The burden of proof is with
the bank: it must make plausible the fact that at the time of monitoring the transactions
it did not and could not know or suspect that these transactions were related to money
laundering. How difficult this can be in cases of corporate entities may be illustrated by
the FATF’s report on the misuse of corporate vehicles\textsuperscript{10}. In this report it is acknowl-
edged that in many money laundering operations involving the (mis)use of legal enti-
ties, launderers use trusts as the preferred type of corporate vehicle, but also that most
trusts are not abused for criminal purposes. The report mentions that possibly only one
per thousand of all trusts is actually abused for money laundering and systematic tax
evasion. Nevertheless the commotion about trusts has made several large banks to adapt
their policies and end their relationship with many trusts, just to avoid possible future
reputation risk. Bad press may attract a supervisor’s special attention and may be the
starting point of an in-depth investigation of possible malpractices within the bank. If
the bank is fined by the supervisor, this may again result in bad press and lead to the loss
of clients or give rise to all kinds of civil claims from clients who smell the scent of ‘easy
money’.

\textbf{AML: a booming business}

We bid you welcome to the world of KYC\textsuperscript{11} and EDD\textsuperscript{12}. The fight against money
laundering and the financing of terrorism has created a universe of its own with a strong
gravitational pull. Compliance with AML regulations by multinational financial corpo-
rations in general encompasses much more than the broad public may realise. It does
not stop at a simple checking of the identity documents of retail clients. Banks go at
great length to be compliant and, facing the risk of reputation damage, purportedly
adhere to compliance rules not in a mere formal sense but wholeheartedly.

Since the emergence of AML, and later CTF an entirely new jargon is spoken by
numerous people working for the bank in newly created—often highly specialised-
positions and functions. Let us take a look—by way of a brief introduction in the ABC
of AML—at some of the new vocabulary that has emerged as a result. As highlighted

\textsuperscript{10} FATF, The misuse of corporate vehicles, including trust and company service providers, 13
  october 2006.

\textsuperscript{11} KYC = Know Your Customer

\textsuperscript{12} EDD = Enhanced Due Diligence
before, it all started with the establishment of the FATF. Its Forty Recommendations and Nine Special Recommendations have become key notions. Together with the NCCT\textsuperscript{13}-list the Recommendations form the main feat of the FATF. To evaluate the countries rate of compliance the concept of Mutual Assessment was introduced: Countries forming assessment teams sending to other countries to compare the AML regulatory body of that country and its efficacy in terms defined by the FATF. At a more generic analytical level the FATF produced the Money Laundering Typologies: typical examples of money laundering schemes to raise awareness among the stakeholders and their staff. In support of the FATF’s work the UN issued Model Bills: templates to be used by those countries which experience some difficulty in drafting proper AML legislation.

In Europe MONEYVAL\textsuperscript{14} was set up, an initiative for a database with limited access for law enforcement to easily exchange relevant AML legislation. The Forty Recommendations required countries to set up an FIU\textsuperscript{15}, a public body to process SAR’s\textsuperscript{16} Reporting suspicious or unusual transactions became the role of the gatekeepers: the financial and other service providers obliged under statutory law to perform transaction monitoring. However, monitoring money flows of existing clients was not enough. The gatekeepers also became responsible for properly identifying their clients (KYC) in the context of Client Acceptance, also known as NCTO\textsuperscript{17} and therefore must also perform due diligence. In the larger (financial) corporations due diligence comes in many forms: CDD\textsuperscript{18}, or BDD\textsuperscript{19}, EDD\textsuperscript{20} and SDD\textsuperscript{20}. In a normal business model the whole of all due diligence activities is spread over many different departments, units and functions and has a multi-layered structure. The end of an NCTO due diligence with a positive\textsuperscript{21} outcome marks the start of the Client Life Cycle. If too much ‘detrimental information’ is disclosed about a client during the due diligence process the bank will not engage into a business relationship with the client and it might even be bound by law to file a SAR. But the due diligence encompasses more than a strict ‘yes’ or ‘no’ and leaves room for shades of grey, e.g. to take on a client as an ‘increased risk’ client. Such a label invokes closer monitoring of the clients transactions in order to prevent the bank from unpleasant surprises. Clients can either be natural persons or corporate clients. KYC and due diligence requirements oblige the gatekeeper to establish the iden-

\textsuperscript{13} NCCT = Non Cooperating Countries and Territories
\textsuperscript{14} MONEYVAL = the Council of Europe Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures
\textsuperscript{15} FIU = Financial Intelligence Unit
\textsuperscript{16} SAR = Suspicious Activity Report
\textsuperscript{17} NCTO = New Client Take-On
\textsuperscript{18} CDD = Client Due Diligence or Customer Due Diligence
\textsuperscript{19} BDD = Business Due Diligence
\textsuperscript{20} SDD = Security Due Diligence
\textsuperscript{21} ‘positive’ in terms of a positive decision to take-on the client; internally such a positive decision is communicated as a ‘neutral’ advise, opposed to a negative advice.
tity of the UBO\textsuperscript{22} or in plural, UBOs. At the level of BDD or regular CDD it suffices to establish the identity of the legal owner. At the level of Security due diligence, bank staff must keep in mind that the UBO might not converge with the legal owners and that corporate entities are structured in such a way that they keep the ‘true’ UBO’s out of sight. For example, the UBO might be a father who has put his registered shares on the name of his three daughters in order to remain out of sight of the due diligence survey. Globally harmonized AML regulations require the gatekeepers to file the data for a minimum amount of time and keep the data available for disclosure to the law enforcement authorities upon request (whereas data protection and privacy law often requires the data to be disposed and properly destructed after a certain period).

In the world of AML many sanction lists exists, such as the OFAC\textsuperscript{23} Sanction List. Although in a certain way these lists make life easier for the AML officers performing due diligence (no need to further investigate the background of a client when he appears on such a list), keeping track of all relevant lists and making sure the contents and latest updates are properly disseminated within the bank may prove quite a task. The KPMG report demonstrates the wide scope of AML activities within the large financial institutions by mentioning departments involved in these activities (Compliance, Internal Audit, External Audit, Operations, [Internal] Financial Crime Prevention Office, External Consultants and other) and by mentioning a number of positions with AML related tasks and AML related activities. To guide the banks the FATF on a regular basis drafts reports on themes that touch upon money laundering and money laundering vulnerabilities, such as about Alternative Remittance Systems (ARS), Trust and Company Service Providers (TCSP’s), trade based money laundering and Third Party Payments (TPP’s). In the words of Naylor, compliance and anti-money laundering have become a booming business (Naylor, 2007).

**Quantifying the administrative burdens of cost**

Drafting balances and weighing the pro’s and cons in monetary terms is part of the core business of any financial serviced provider. Whether a bank engages in an activity or participates in a project primarily depends on the prospects of making a (good) net profit. All banks have built-in processes to calculate whether a business activity is expected to result—and afterwards has resulted—in a net profit. Therefore it should not be too difficult for a bank to keep track of the costs involved in compliance with anti-money laundering. Nevertheless it is hard to find any published figures of costs incurred by AML compliance. In this respect the report *Global Anti-Money Laundering Survey*,

\begin{footnotesize}
\textsuperscript{22} UBO = Ultimate Beneficial Owner
\textsuperscript{23} OFAC = Office for Financial Administration Control
\end{footnotesize}
published by KPMG International may serve as a striking illustration: AML costs are discussed in terms of readjustments by institutions of the estimation of these costs in relation to previous estimations by the same institutions(!). What does this mean? In previous surveys banks told KPMG to what extent they expected that AML costs would increase or decrease in relative terms; that is in percentages compared to current costs. However, the actual costs were not disclosed. The overall conclusion drawn in the KPMG report is therefore necessarily of a very general and tentative nature: new estimations of AML costs are higher compared to what banks initially had estimated. Did the financial institutions participating in the KPMG survey not know their compliance related costs or were there some other reasons for not being too detailed about these costs?

The KPMG report provides for a partial answer: “The difficulty of estimating AML costs is that costs may be spread across many different functions (operations, compliance, risk) or regions, involve direct and indirect costs and overlap with processes that are embedded in normal business practice (e.g. credit risk or customer relationship management).” Indeed, anti-money laundering and anti-terrorist financing have become intrinsic part of a financial institution’s core business and even with a very strict and accurate time-management registration it is often very difficult to tell what part of an employee’s work must be allocated to the budget reserved for AML costs. In most international banks AML related (both directly and indirectly) activities are spread over many different departments, most of which are departments which deal not solemnly with AML. If one department is specifically assigned with anti-money laundering affairs, then it seems reasonable to include the entire costs for this department in the AML cost calculation. But what about the other departments? Is an enhanced due diligence analysis specifically related to the prevention of money laundering or is it part of a wider aim of the bank to protect itself against criminal threats? Many activities serve multiple goals at the same time, making it even more difficult to single out AML costs.

However, there might be another reason why financial institutions are reluctant to disclose detailed information on AML costs. Giving insight in these costs may invoke all kinds of questions, which the financial institutions are reluctant to raise, let alone to answer. This is even more the case as, in general, overhead compliance departments simply do not wish to draw attention to themselves. What’s more, the information provided in response to such a question, may disclose answers that reflect negatively on the bank and the financial sector in general. One of the most pressing questions would be how effective AML compliance is in relation to the underlying objectives. As discussed above, from a political perspective AML regulations and the costs these regulations entail are justified as the ultimate means to fight organised (that is, profit driven) crime. However, the financial institutions usually refer to a more modest and immeasurable justification, one which relates AML efforts to the objective of protecting the
integrity of the financial system. Either way, it can be questioned whether these objectives are truly achieved or even whether the current AML approach brings us anywhere near these objectives.

As some authors [Levi & Reuter, Duyne, Harvey, Hoogenboom 2006] have stated, it seems rather unlikely that organised criminals are curbed in their activity and that the criminal ‘market’ as a whole has decreased as a result of the emergence of global AML. Perhaps the laundering of money has become more expensive and new ways had to be found by criminals and their facilitators to circumvent some of the legal safeguards now in place? Who will tell? Since neither a proper measurement of the volume of ‘organised crime’ (or the turnover of the criminal organisations) nor a proper measurement of money laundering itself has preceded the establishment of the FATF24 and other milestones in AML history, it is virtually impossible to measure their success or lack thereof. Even today, the mere measurement of organised crime, from a macro-economic monetary perspective is a wish yet to be fulfilled, if alone for the lack of a common definition of organised crime (Van Dijck, 2007; Van Duyne and Van Dijck, 2007). Any valid conclusion on the success rate of AML activity, requires at the least some kind of comparison of the old situation with the new situation, but all there is to compare are vague and highly debated estimates. This is equally true for the measurement of organised crime (Van Duyne and Van Dijck, 2006) as it is for the measurement of money laundering (Naylor 2007; Unger et al, 2006; Reuter and Truman, 2004: 9; Van Duyne, 2003).

Anecdotic evidence may reveal some successes, such as provided in media reports of convictions for large-scale money laundering. However, these accounts, though quite intriguing and illustrative, are primarily of descriptive value and do not tell anything about what has been achieved in macro-economic terms. In other words, one cannot deduce any measurement from them.

It might very well be the case, as argued by some, that the very presuppositions underlying the global AML effort are invalid and badly chosen from the onset. The entire mindset of current AML thinking might be wrong. The global effort to attack money laundering has, as argued by Harvey (2005) resulted in a tick-box system in which each of the responsible agents seems more busy with avoiding punitive sanctions and reputation damage, than really be concerned with the fighting of money laundering and the criminals committing money laundering. And who can blame the financial institutions and other gatekeepers for this? Catching or haunting criminals is not their job: cooperating (often on the basis of law), however, is part of their daily business and in many cases done with true zeal.

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24 The FATF made an attempt to measure the amount of money laundered on a global scale in its 1990 Report on the 40 Recommendations, but acknowledged in the same report that it failed to succeed (see e.g. Groenhuijsen, Van Duyne and Schudelaro, 2005)
With some frequency voices are heard arguing that there seems no correlation between those countries that are reprimanded by the FATF for not meeting the requirements of the FATFs 40+9 recommendations and the actual amount of money laundered in these countries (Harvey, 2005a and 2005b). That is to say that not being (fully) compliant does not automatically imply a higher occurrence of money laundering. The other way around, one can argue that full compliance with international AML standards does not safeguard a country from money laundering. Quite the opposite: the countries with the most elaborate AML regulation and the most severe AML regimes may have a high money laundering prevalence nevertheless. Most of these countries are rich industrialised countries with fully developed open market economies, thus providing a viable environment for money launderers to prosper. But the FATF does have a point in getting nervous about those countries where ownership structures and money flows are opaque. From a law enforcement perspective those countries (and territories) form weak links in a chain that owes its strength to the transparency of money flows and ownership structures. Countries that put an end to efforts to follow the money trail (cross-border), are a risk from an anti-money laundering perspective. But by the same token one could argue that the FATF puts too much emphasize on vulnerabilities and should more invest in empirical research demonstrating actual money laundering prevalence (see, in a similar vain, also Harvey, elsewhere in this volume).

Fighting money laundering resembles Don Quichote fighting windmills: the underlying motives may be pure and laudable, though the failure is in not identifying the true foe and not spending one’s energy wisely. The ‘upper world’ has become quite busy with fighting the money laundering windmills and the chasing of ‘ghosts’ never has become more visible than in the amounts of incoming SARS and, as a remedy to that, the shift from a rule-based to a risk-based reporting requirement, in which the financial service provider is granted more discretion to determine whether a transaction is actually suspected to be relating to money laundering or terrorist financing (Van Dijck, 2006). Although one of the motives underlying the shift from rule based to risk based reporting was the expected decrease in administrative burden for the gatekeepers, AML and CTF do not seem to be on the decline, but instead, is still regarded as a booming market. Granted, when properly conducted a risk-based approach is less of a ghost-chase than a rule-based approach. But to properly implement a rule-based approach requires, among many other things, rather different skills from a bank’s account managers and relationship bankers.
Increasing integrity

But is it all that bad? Are we really chasing ‘ghosts’ similar to Don Quichote chasing his windmills? It is hard to imagine that all these specialists who are professionally involved in AML—even a relatively small sized country as the Netherlands has hundreds, if not thousands of AML officers—have no clue whether what they are doing makes any sense. They can’t be all chasing ghosts, can they?

Whereas on the one hand no reliable estimates exists on the annual global turnover of criminal activities and the amounts of money (to be) laundered, it is on the other hand evident that (organised) crime-for-profit does exist and is likely to yield huge profits. As a result, large amounts of money may be waiting to be laundered or are already laundered daily without being noticed. Given the very broad definition of laundering, this implies huge money laundering ‘activity’, as the mere circulation of criminally obtained money in the ‘upper world’ economy without being noticed, is by itself a form of money laundering.

It cannot be denied that the global AML effort and the cooperation of the gatekeepers (either compulsory or voluntarily) have brought a wind of change to the financial sector. Whilst in the pre-AML era it was much easier for criminals to route their money through the financial system and thus being able to reap their ill-gotten fruits by participating in upper world economy, this has now become much more difficult.

One of the key differences is that, at least internally, the due diligence is performed in a much more transparent way and that banks engaging into a business relationship with clients and the people involved in the assessment and client take-on are much more accountable. Banks have to an increasing extent implemented a division of labour and a separation of decision competence. In addition, key responsibilities have become much more transparent. As a result the judgement on clients is detached from personal gain by those whose bonuses and commission depend on their clients and on the volume of transactions performed by these. This, by itself, adds credibility to the outcome of the assessment.

However, although transparency and accountability are intrinsic part of the banks’ internal procedures, any information with regard to individual due diligence procedures are regarded highly confidential. And so it should be, because confidentiality is still key element of any bank-client relationship. Nevertheless, external transparency has also increased as a result of the different role played by the regulators and supervisors. The supervisors in particular have obtained far-reaching competencies in most western countries enabling them to demand proper explanation of virtually any of the activities of the financial institution. Supervision does not confine itself to checking whether the proper policies and procedures are in place, but also—potentially—includes detailed inquiry into individual transactions and due diligence activities. Strong supervisory
powers indeed are the corner stone of any compliance system and, on the contrary, most often the weak link in malfunctioning regulatory frameworks.

**The bigger picture: a revival of responsible citizenship**

It would be a misinterpretation of history if the shifting of responsibilities from public authorities to private (profit-drive) institutions are considered to be merely the result a successful attempt by the public bodies, including the FATF, to actively involve financial and other service providers in the fight against money laundering and terrorism financing. Viewing the ‘bigger picture’ one may observe a broader social development in which the role of corporate citizens — and citizens in general — is viewed upon differently. Society-wide a gradual trend can be observed towards a notion of republican citizenship. In this notion of citizenship the responsibility of the well being and welfare of society is shared by its citizens. Law and order are as much a task of citizens as these are the task of the public bodies. In this notion of responsible citizenship there is still a labour division between the state bodies and the state’s citizens. Whereas the latter have to abide the law, it is the former who is entitled to enforcement. But a trend can be spotted in which to an increasing intend (corporate) citizens are involved in law enforcement as well under reference to their roles as responsible citizens (e.g. Van Oenen 2002, Van Dijck, 2003).

The risk for financial loss due to bad credit of the debtors and even the losses as a result of fraudulent activity may be regarded as operational risks and compensated by the profits. These losses may vary per year but, normally, will not put at risk a financially sound bank. The loss as a result of reputation damage, however, is much more difficult to quantify and can cause serious damage to a bank. The banks reputation is directly and indirectly linked to its credibility, both in the narrow sense of financial and monetary credibility and in the much broader sense of social credibility and trustworthiness.

In the world of business the notion of responsible corporate citizenship are reflected in the business principles and core values of the corporations and are linked to the notion of sustainability and, in the world of finance, sustainable banking (e.g. Nimwegen, 2002). AML and CFT are examples of the state authorities seeking more active involvement of the corporate entities in law enforcement.

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25 Not withstanding exceptional cases such as the British Barings bank, which was brought down by one single investment banking employee, Nick Leeson, who set up hidden accounts to conceal overzealous increasing losses from overzealous investments. The case of French Société Générale which is reported to suffer losses of approximately 5 billion Euro caused by one defrauding employee only, provides a more recent illustration.
As stated before, a good reputation is a key asset of any bank, its main virtue one could say. But a good reputation exceeds the fulfilment of the mere obligation to abide the law. It demands a more active approach of corporations in their contribution to the well-being of society. Hence, the willingness of banks to comply with Reputation and the related risk of losing it are not merely linked to AML and CFT regulations but not only motivated from the desire to fight money laundering and terrorism financing, but it is part and parcel of a broader view on the role of the large corporations in society. The large financial institutions, together with other multinationals, have become increasingly aware of their responsibilities as corporate citizens. In the words of former ABN AMRO CEO Groenink:

“In recent years compliance has risen up the agenda of everyone in the financial industry. Following a series of scandals and global shocks, MiFID brings new and more stringent regulations. More than ever, these have made compliance an integral part of doing business. At the same time, we believe it is our duty to act responsibly to be a good corporate citizen, since our clients’ trust is what keeps us in business.”

Corporations have a public task, not in the formal legal sense, but in the sharing of public responsibilities, simply as a result of the impact of corporation on society – in its widest sense: economically, socially, environmentally. Corporate citizenship has become intrinsic part of the identity and self-perception of most multi-nationals. Large corporations have been identified as role models and are requested to ‘lead by example’. In response to this trend, most corporations have embraced this role and turned it into a positive weapon and incorporated many aspects of it into their public relation policies and activities. As a result, banks overtly adhere to anti-corruption measures not only for the sake of compliance with legal provisions against corruption. In a similar vain, multinationals –banks as well– have created ‘green policies’ in which they take responsibility in the way their business affects the environment (see also Van de Ven, 1998).

In addition, large multinationals, which are often at the stronger end of bilateral agreements nowadays demand from their contractual partners full adherence to, and compliance with their corporate values and codes of conduct and thus seek to assert their influence to the well-being of society. Explicit references to these codes are included in the contractual agreements. And acting in breach of the corporate principles is taken as grounds for terminating the agreement. It must be admitted that corporate citizens have sometimes reacted somewhat slowly to the ‘sustainability’ demands from society and often needed extra encouragement, e.g. in the form of bad press, before taking proper action. And even nowadays independent journalists and NGO’s function as ever prying watch dogs in search for inconsistencies between corporate practice and corporate policies. Only recently a few major Dutch banks were criticised for their negligence in checking whose money was
invested in which funds. The media reports disclosed that Greenpeace funds were invested in shares of Shell, which, from an environmental perspective, is one of the ‘arch-enemies’ of Greenpeace. No written rules were violated, but reputation harm was suffered nevertheless.

Therefore the shift of responsibilities from state bodies to private corporations also in terms of AML and CFT can be considered as part and parcel of a shift in the general perception of the responsibilities of citizens and, more specifically, corporate citizens. In the pre-AML era banks could afford to be less discriminate about whom to accept as a client, because the social environment and the *Zeitgeist* allowed so. Nowadays things are different. It is as much the public view (shared by governments, NGO’s, corporate entities and the public in broad) that require diligence in banking as a kind of formal (legal or statutory) projection of the *Zeitgeist*. The question whether financial institutions do enough to curb money laundering and terrorism financing, or whether they take the right measures to do so, is preceded by the fact that it is a good in itself that they are willing to comply as much as possible, whatever the underlying motivation to do so.

**New embedding landscape: public private partnerships**

The shift of responsibilities has brought a shift in the division of labour between the state bodies and the state’s citizens. But it also opens the door to new forms of cooperation, of public-private partnerships. Corporate citizenship does not stop at being compliant with legal and social standards. Some financial institutions, such as ABN AMRO Bank, are seeking to intensify cooperation with their public and private partners. Under the header of public-private partnership these corporations are willing to go one more step further in information exchange and in other forms of cooperation. This cooperation goes beyond what is required on the basis of legal provisions or standards and is entirely based on voluntariness.

This public-private cooperation may take the form of liaising on a regular basis with law enforcement agencies, secret services, the Customs and the Inland Revenue Services. It works both ways. On the one hand the public agencies need accurate and up-to-date information or intelligence from banks. Regular contacts may provide a solution which both serves the agency in its need for information, whereas from the banks perspective data are provided in a way that does not conflict with the banks own interests – and naturally the interests of the clients involved, e.g. in relation to privacy protection. On the other hand the bank may obtain information with regards to which subjects (or suspects) have the special intention of the law enforcement agencies, so that it is able to monitor possible suspicious transactions at an early stage. This is much in
line with Recommendation C 114/2 (15 May 2002) of the Council of the European Union, in which it makes the plea for the initiation of a financial investigation parallel to the application of more traditional police investigation means, as soon as the police investigation is started and particularly when the investigation concerns drug related or other organised crime (see also Golobinek, 2006). Evidently, information exchange at this early stage needs to be fully compliant with existing standards regarding privacy protection and other rules imposing limits to the exchange of information. But this is not the place to discuss this into detail. What is relevant here is that financial institutions already liaise intensively with law enforcement to the benefit of both parties.

Next to public-private partnerships also semi-public or private-private partnerships are imaginable. In the near future banks and other institutions may be more than before willing to engage into partnerships with academic institutions and NGO’s. Again the benefits would be mutual. Whereas academics researching financial crime often complain about the lack of data (partially because the public bodies are reluctant to grant access to relevant data), financial service providers are able to provide access to relevant data.

**Epilogue**

Opposing the viewpoint expressed at the very beginning of this chapter, one might argue that “the primary difference between the banks and the state is in the keeping of the gate”. To an increasing extent financial and other service providers are depended upon to play their part in the prevention and suppression of (financial) crime, money laundering and the financing of terrorism. To a certain degree, the involvement of the financial institutions in the fight against money laundering, terrorism, corruption and financial crime, need no further justification. Being part of society and –more than that– being of strategic importance to the state and society, banks and other financial service providers have to take up their role as corporate citizens and take up the responsibilities this brings along. State authorities to an increasing extent depend on the disclosure of information and intelligence held by the financial service providers. Self-respecting financial service providers do take up this responsibility and have proven their willingness to contribute on a substantial scale to the fight against crime and the protection of the financial sector.

Evidently, there is flip side of this coin. Ultimately banks are profit-oriented institutions and will only adhere to the above described notion of corporate citizenship and participate in AML and CFT to the extent this still enables them to make a (good) profit. Apart from moral motives to protect the client and client data –they are after all the paying customers– there are economic and financial motives to draw a line and to
uphold client protection. This, for example, may explain why banks are reluctant to apply AML and CFT regulations in simple matters of tax evasion – and most likely they can find support in this in public opinion.

The question left to be answered is: to what extent can the service providers be (legally) obliged to contribute before an invisible line is crossed and they become too much occupied with tasks originally allocated to the state. Naylor argues that this has already gone too far and that civil rights are already sacrificed for an approach based on false presumptions (Naylor, 2007). Crossing that line also means that the financial burden might become too high – or at least too high when related to the expected benefits. Ultimately the costs for a safe society will have to be paid by society itself. This makes the question whether the current approach is the most effective even more relevant.

It seems that the financial world, including governmental and semi-governmental bodies such as the FATF, has given up on measuring the effects of AML and has ceased to draw up the balance of costs against the benefits. AML, in more than one way, has become a matter of principle, a dogma which is not open to debate anymore. Apart from that, AML has become a booming business in itself, a universe of problem owners with its own gravitational force having no real desire for change.

The successful 'export and distribution' of AML standards has created a sound basis for further global harmonisation and eventually the weak links in the system are expected to be routed out. That is, 'safe havens' benevolent to tax evasion and money laundering will eventually have to adopt similar stringent AML regulations as other countries. In addition it seems that banks, especially those in the Western world have become more transparent than they were before and also more critical when it comes to client acceptance and the continuation of business with existing clients. Due diligence is there to stay and that is a good thing.

At the same time we must take notion of those who warn for the tick-box mentality as an almost intrinsic part of the current AML and CTF approach. It may very well be that the financial service providers and others are doing good things for the wrong reasons or – worse – wrong things for the right reasons. However, it must be kept in mind that there are no reports by organised crime experts of diminishing organised crime as a result of the emergence of AML regulatory frameworks. The (financial) world may have become different for criminals too, but these changes may have merely invoked a new round of adaptation: different means are deployed in different ways and criminals may find it still relatively easy to use the dirty money the way they want. It is plausible that in the ‘underworld’ counter-AML, have become a booming business mirroring AML. Facilitators who know to circumvent AML control may be found more easily than ever before.\(^{26}\)

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\(^{26}\) E.g. Volkskrant, 22 July 2008.
Major financial corporations to an increasing extent seek cooperation with private partners and state authorities that extend beyond the obligations imposed by law. Naturally the incentive for this is partially self-interest: the corporation benefits in multiple ways from these partnerships, but that does not imply that the cooperation is not also based on a notion of responsible citizenship as adhered to by these entities. Hopefully the disclosure, exchange and further analysis of data kept by the financial institutions will provide new grounds for a better understanding, not only of money laundering, the financing of terrorism and financial crime, but also of the efficacy of AML and CTF policies and processes. In turn this could revive the initiatives to come to a measurement of the efficacy of AML and CTF. Achieving that would be a new milestone in the fight against money laundering and terrorist financing.

The fully-fledged adherence of the financial institutions, despite of the huge costs involved, is not only to be understood as a success of bodies, such as the FATF to impose a new frame of reference with regard to AML and CFT. Neither is it to be understood as a simple acceptance of binding regulations and (statutory) law. It is most of all the spirit of the time, the Zeitgeist, that demands a self-reflective, transparent and responsive attitude of the financial service providers as prime corporate citizens taking their responsibility in contributing to ‘the good society’, together with the state authorities and together with the public in broad. This requires most of all that banks are sensitive and responsive to public opinion and protect their standing reputation. Currently, AML and CFT are key part of that public-oriented strategy and require proper attention. As the saying goes: a good reputation comes by foot and goes by horse. It takes only one look at the cover of this book to be reminded.
References


Gilmore, W.C., Dirty Money - The Evolution of International Measures to Counter Money Laundering and the Financing of Terrorism, 3rd, Council of Europe (CoE), Strasbour, 2004


Groenhuiisen, M.S and D. van der Landen, Financiële Instellingen en de strafrechtelijke be-strijding van het witwassen van geld [transl. Financial Institutions and the criminal containment of money laundering], 1995, Tilburg

283


Hoogenboom, A.B., *Voorbij goed en kwaad van witwassen* [transl.: Beyond good and evil of money laundering], *Justitiële Verkenningen*, 2006 vol. 32 (2), pp. 76-85.


Oenen, G. van, *Het surplus van illegaliteit* [transl. The surplus of illegality], 2002, Uitgeverij De Balie, Amsterdam


SIA (Securities Industry Association), *The Costs of Compliance In the U.S. Securities Industry*, February 2006.


Crime-money records, recovery and their meaning

Dr Jackie Harvey and Mr Siu Fung Lau

Introduction

Taking the moralistic high ground (Bosworth-Davies, 2007), the authorities justify their anti-money laundering legislative zeal on the basis that they believe money laundering to be on a scale so vast that it threatens the very foundations of the financial system. From the beginning, however, some academics (Van Duyne, 1994; Naylor, 2003) have questioned the certainty with which such figures have been put forward, quoted and repeated, becoming, through such repetition seemingly established truths. Indeed, it would appear that the bigger and more threatening the estimate, the more likely it is to be adopted (van Duyne (2003), Reuter and Truman (2005), Levi and Reuter (2006) and Harvey (2005, 2008)). Harvey (2008) further draws attention to the tendency to ‘talk up’ the figures as smaller estimates would not only invalidate the logic of the approach but would possibly deter the levels of investment necessary for its operational impact. Chong and López-de-Silanes (2007) identify these voices as belonging to ‘irrelevance theorists’, apparently overlooking their fact based critical observations.

The case for irrelevance

Official justification for anti-money laundering is based on the frequently presented hypothesis that removing access to the financial benefit of crime will reduce its attractiveness and that the imposition of regulation increases both the costs of laundering and the probability of detection and conviction. Such arguments continue to be presented despite increasing evidence that they do not hold in practice (Alldridge (2003), van Duyne (2005), Reuter and Truman (2006) and Harvey (2008)).

Further, it is generally stated in the literature that money laundering is a dynamic process, constantly evolving as the criminal fraternity develop new and ever more complex methodologies of money laundering to avoid detection (Boorman and Ingves, 2001). This “the criminals-are-always-ahead-of-us” argument, is used as justification by

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law enforcement agencies to argue for increased resources and by governments as a reason to continually widen the definition of laundering to embrace as it does, terrorism, tax avoidance, receipt of stolen property and even capital flight (van Duyne, 2003). Indeed, Van Duyne et al. (2005: 130,135) point to the somewhat illogical argument that the criminal fraternity are believed so inventive that they possess schemes that legislators cannot even imagine but that by definition are in existence. Consequently this ‘I believe because I cannot see it’ philosophy is used as justification for conferring even wider law enforcement powers. Even Levi and Reuter note the increasing pressure to expand the anti-money laundering regime: “It is difficult to predict where this broadening of coverage will end” (2006: 291).

Thus, rather than rationally balancing benefit against cost or legal interests (refer to Harvey, 2005; Van Duyne et al., 2005) the approach of the regulators is to assume ‘more of everything’ is implicitly better. This has resulted in a ‘blanket approach’ (van Duyne et al. 2003) by which the criminal world and its attendant illegality appear to grow at the expense of a shrinking clean world (Geiger and Wuensch, 2007: 94, 95). Van Duyne et al. draw attention to the belief in ever increasing amounts of crime money as an ‘article of faith’ (2005: 113) whereby the righteous believers do not question its existence but look for and repeat the scattered pieces of evidence that reinforces its existence.

As the focus has always been in terms of the overall quantity of laundering little thought has been given to the development of a clear operational definition of money laundering and this has resulted in an absence of theoretical rigour underpinning empirical work. Levi and Reuter (2006: 356) draw attention to the circular logic of much of theory, noting, in particular, the impossibility of measuring the impact of the anti-money laundering regime on predicate offences. This is simply because it is not possible to answer the question of how much would have occurred in its absence. The common problem faced by studies to date, (see, for example, Chong and López-de-Silanes (2007); Masciandaro et al. (2007) and Unger (2007)), is a lack of objectivity and a resultant inability to construct a dependent variable that is measurable and that can be isolated from the independent variables (van Duyne 2007c: 14). Levi and Reuter (2006: 333) further bring into question the use of macro approaches of determining criminal money estimates that encompass the scale of the grey economy: “The findings can support only the broadest statements about the extent of laundering activities”.

With over a decade of the rigorous application of anti-money laundering could we not expect, as pointed out by van Duyne (1998), Alldridge (2003) and Harvey (2008), evidence of abatement with an associated reduction in our estimates of money laundering? Instead, perhaps as justification for the need to continually increase the legislative reach of the state (Alvesalo and Tombs 2005), it appears more convenient to suggest that criminal activities continue to expand both in absolute numbers and in terms of
crimes committed. Hence the expanding legislation merely enables us to maintain the status quo within the crime market. However, and more worrying, such relentless rise in legislation can actually create a false sense of security at the expense of civil liberty.

What has failed with respect to legislation within this arena is a balancing of the interests of the law enforcement agencies, baying for an ever-widening arsenal of tools, against the costs imposed on society and against legal rights (Van Duyne et al., 2005). Bosworth-Davies (2007: 55) points to “the paucity of thinking” displayed by the decision making authorities in introducing laws that impact on civil liberty without either thought or justification. Whilst it is perfectly in order for the authorities to anticipate and pre-empt criminal action that might have a detrimental impact on society, there is still the overarching requirement for prudence and appropriate and careful balancing of costs against benefits. Indeed, as pointed out by Levi and Reuter (2006: 294):

“We cannot dismiss the possibility that the regime’s many critics are correct. Whatever their benefits in theory [emphasis in original], the controls in practice may do little to accomplish crime-fighting goals or to combat terrorism, while imposing a substantial burden on people doing business”.

Further, critics draw attention to the inability to measure impact of counter measures on either money laundering or predicate crime. Conscious of their inability to prove effectiveness and anxious to provide evidence of value for money the UK authorities have increasingly turned to second best measures of performance: looking at the volume of Suspicious Activity Reports (SARs); numbers of prosecutions and convictions and, finally, at asset recovery (Harvey 2008). However, “designing a transparent performance measure for the agencies involved is well-nigh impossible” (van Duyne et al., 2005: 141) and that given such absence, agencies pursue their own goals and objectives. They measure their performance as appropriate and frequently in terms of workload (a point highlighted in van Duyne and Donati, 2007b), recording information that achieves the objectives of the agency but not necessarily capturing what actually matters. Levi and Reuter, (2006: 343) point to:

“a fairly serious indictment of the lack of strategic end-to-end processing in a loose-coupled law enforcement and regulatory system that is both expensive and intrusive of privacy”.

What is curious, as pointed out by van Duyne, is that with so much money and effort being expended in the area of regulation and then in policing of those regulations, there is still no “proper knowledge of its nature and extent” (2003: 67). Equally, Chong and López-de-Silanes (2007: 4) note the paucity of work focused on the theory of “optimal money laundering regulation” and suggest that anti-money laundering may lack effectiveness because it targets the wrong area. So rather than asking ourselves how well it

\[2\] See Harvey (2008) for a discussion of regulatory impact studies that have been conducted for the money laundering legislation introduced in the UK.
works (Levi and Reuter, 2006: 365 and Reuter and Truman, 2005: 56) let us more appropriately ask “does it make any difference”. Given that the obligations placed upon both the regulated institutions and on the public at large by these measures are substantial then surely they “are worthy of a serious research effort that they have not yet received” (Levi and Reuter, 2006: 369). Indeed, Reuter and Truman argue for a careful evaluation of what has been achieved (2005: 60). Pleasingly, such cries do seem finally to have been heard by the policy makers as HM Treasury (2007: 27–28) notes:

“Policy makers need to decide whether the system needs strengthening in any area, or whether they need to make better use of the controls that already exist. They must also understand how the criminal economy works in order to identify possible areas of vulnerability. For example longer term asset recovery targets need to be set in the context of our best assessments of how much money is actually out there and potentially available for seizure.”

The constantly widening scope of what constitutes money laundering confuses what is actually being counted and by definition precisely what it is we are trying to measure and, by use of legislation, control. Van Duyne (2007c: 2) makes a similar observation “blurring the concept of money-laundering, which may be convenient for political purposes, but does not lead to a real understanding”. If we want to approximate this ‘real understanding’, we have to go back to the empirical basics, the original observation units. These have to be addressed from the angle of reliability and validity. For it is only by establishing the integrity of each of our building blocks that we can properly establish the basis for a theory of criminal money management. To the extent these are defective; we will face a commensurate problem of reconstruction.

As a starting point, this work, therefore, returns to basics, to question (rather than conclude) the integrity of the data that currently informs policy decisions made by the authorities. Fleming (2005: 33) talks of the “disconnect in the [SARs] regime between policymakers and law enforcement agencies”. This back to basics approach is not radically innovative, indeed it draws on the work of van Duyne et al. (2007a) for the theoretical logic and hence justification. Its unique contribution lies more perhaps in the fact that this approach is a relatively new area of analysis within the UK.

**Methodological issues**

Van Duyne draws attention to methodological issues that are pertinent to the framework of this particular paper, highlighting a lack of consistency over how terminology is defined and applied. With further difficulties surrounding attempts to measure the scale of the problem due to the abstract definitions surrounding the scope of money laundering, he makes a plea for ‘the need for valid, reliable and comparable data’ (2007b: 6) together with an approach by the authorities that “uses the systematic collection and analysis
of law enforcement data for empirically grounded theory building” (2007: 12) and on page 6 notes that:

“a major challenge lies in the validity of data interpretation and the conclusions to be drawn from available data. Often enough it seems that interpretations are regarded as self evident against the background of commonly shared superficial notions of face-value plausibility and di-ché imagery, but not on the basis of empirically grounded theories”.

This same point is argued by Naylor (2003) who noted “analysis of the inherent nature of the criminal act is further plagued by terminological vagueness” (2003: 82) and whilst his paper addresses economic crimes the complaints of the author can be extrapolated to money laundering; “the frequency with which it is used contrasts starkly with the infrequency with which it is defined” (ibid: 82). A similar view, albeit within the context of fraud, has been expressed by Levi et al. (2007: 45) who argue that for data capture to be relevant, the users of that data should define its purpose and thus shape.  

The seriousness of the anti-money laundering legislation requires careful and meticulous information management to maintain the reliability of the basic data. This empirical study uses data from both the Asset Recovery Agency (ARA) and from the Home Office in an attempt to shed light on two distinct areas. Primarily it will consider the integrity of the data compiled and shared by these two agencies. In support of this, it will provide a preliminary analysis of the criminal use of money and hence its potential impact on the integrity of the financial system. It is argued that currently, little thought is given over the spending patterns of criminals and its attendant impact through the payment mechanism. It is this that is surely the operational threat to the integrity of the financial system and which should, therefore form the basis for policy making.

Policy on asset recovery is basically driven by financial or fiscal targets, not by reference to the numbers of criminals, to crimes committed, or indeed to the desire to reduce crime. The result is that asset recovery is viewed as a performance measure for law enforcement agencies, though in the rhetoric one often hears the fading sounds of other objectives. The Home Office (2006: 36) comments that “seizing criminals’ assets . . . is a key tool of law enforcement. It reduces crime, . . . and ensures (and shows) that crime does not pay”. Indeed, three targets in one, but the hard target set is that law enforcement agencies have to recover £250m by 2009-10 with, more significantly, a longer term goal of up to £1 billion.

Of concern is the absence of proof that such sums actually exist to be recovered. Moreover, these estimates appear to be based on somewhat naïve and extremely unso-phisticated extrapolation. HM Treasury points to a study of a ‘sizeable sample’ of the 200,000 annually reported SARs which indicated a median value of £10,000 and a

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3 They highlight six dimensions of data quality: relevance, accuracy, timeliness/punctuality, accessibility/clarity, comparability, and coherence (ONS, 2005).
mean of £35,000 for each one. They further note that around 40% of the SARs relate to transactions that are genuinely suspicious and then by simple multiplication suggest that they reveal £2-3 billion of laundered money. The same report (2007: 8, 29) estimates (on unclear grounds) “money laundering through the regulated sector of about £10 billion per year” and, from a methodological standpoint more concerning is the figure for “criminal capital formation” – that is assets invested in a possible seizable form of about £5 billion, £3 billion of which is exported overseas” (page 8). These figures might well be driving targets for asset recovery but they appear unfounded and as noted by Kennedy (2007), the focus is on income generation simply because the latter is simpler to measure.

**Crime money records**

As already noted, approximating ‘real understanding’ entails going to the empirical foundations. Therefore this study looked at databases held by both the UK Home Office (in respect of cash seizure, forfeiture and asset recovery arising from the criminal recovery processes) and by the UK Assets Recovery Agency for civil recovery only. Because of the different legal regimes, criminal and civil, there exist two information processing systems and (at least) two databases, though they concern the same subject and target: getting the crime-money.

**Data from the Home Office**

Within the criminal justice system the crime-money (if detected and seized) flows in through a multitude of enforcement channels, and so does the related information. They flow together in one point and that is the ‘JARD’: Joint Asset Recovery Database. The information related to Confiscation orders, Cash forfeitures (orders granted) and remitted amounts for both, are entered onto this revenue tracking system.

The Home Office provided access to the JARD database covering data relating to asset recovery across the 43 police authorities and the other agencies with asset recovery powers for a three year period from 2003/4 to 2005/6. Data supplied was sent to us hard copy and this had to be computer entered prior to analysis. Once the data had

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4 Simply derived from £35,000 multiplied by 200,000 multiplied by 40%.
5 44, including the British Transport Police.
6 These comprise: Assets Recovery Agency (ARA); Department for Trade and Industry (DTI); Department for Works and Pensions (DWP); Her Majesty’s Revenue and Customs (HMRC); Inland Revenue; HMRC Enforcement and Compliance; Local Authorities Regional Asset Recovery Agencies (RART); Ministry of Defence (MOD); National Crime Squad (NCS); Serious Fraud Office (SFO) and the Serious and Organised Crime Agency (SOCA).
7 Financial years from 1st April to 31st March.
been reviewed, a follow up interview was held by telephone (on June 19th 2007) with a member of the Home Office seeking clarification and in order to provide an understanding of its use within the Home Office.

An initial attempt was made to evaluate the Home Office data which comprised an unwieldy twelve sets of records. Data is held on an annual basis for asset recovery and is captured according to whether it involves a cash seizure or a confiscation forfeiture order (attached to and following from a criminal predicate offence). Then comes a further tracking according to whether it involves a court order granted with a separate database for orders once they have been enforced and payments remitted onto JARD. For onward remittance through the Home Office into the Consolidated Fund each case is assigned a unique case tracking reference number NUN with all data entry being undertaken by the referring agencies (the police authorities and the agencies mentioned in footnote 6).

A first step involved an attempt to understand the extent to which case data could be linked together using the NUN or unique case tracking reference number. An area of potential confusion lies in the fact that there appears to be a NUN sequence applied to cash forfeiture separately to that used for confiscation orders. This means that two unrelated cases, involving different suspects (one referring to cash and one to confiscation seizure) can in both cases have the same NUN.

It was explained that confiscation orders follow from a predicate offence, and that the financial investigators within the law enforcement agency will request a criminal confiscation order (providing a list of assets supported by estimated values) from the courts, with the latter determining how much can be realised and its value. The agency will obtain ownership of the assets covered by the court order and submit them for sale. If the amount realised from such sale is less than the value of the order, they will return

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8 Cash forfeitures-orders granted: this refers to cash seizure (law enforcement agencies may seize cash where there are grounds to suspect it is obtained through unlawful activity). The police have 48 hours to obtain, through the courts, a cash forfeiture order (if the magistrate’s court is satisfied that the cash seized is recoverable property) which stays in place for one month. If, during this time, there is no appeal the cash is forfeited and paid into the consolidated fund (tracked as remitted amounts cash forfeitures entered on JARD). It would be expected that the data held on these two data bases should match up. Where gaps appear this should relate to a successful appeal and cash being returned to the owner.

9 In these cases a confiscation order requires an offender to pay back the value of the benefit from a given crime ‘the proceeds’ (Kennedy, 2007: 33).

10 The police will obtain the assets covered in the order (order refers to monetary value estimated not to physical assets lists – this is distinct from the Assets Recovery Agency) and submit them for sale. Once sales are realised that amount will be entered on JARD. If the police realise less from the sale than the amount of the court order they will go back to the courts for an amended order to match the amount realised and that might explain differing amounts across the confiscation data – and the longer time period involved.

11 E-mail exchange with the Home Office 23/4/2007
to the courts for an amended order\textsuperscript{12}. It was suggested that this might be responsible for inconsistencies across the confiscation data and certainly for the longer time periods involved between the granting of the order and the eventual payment of the proceeds into the Consolidated Fund. There is apparently no attempt made to return to and clean up the original data in the light of this.

Unfortunately only a small proportion of cases could be matched in this way and all related to confiscation orders granted to Her Majesty’s Revenue and Customs (Enforcement and Compliance branch). These subsequently appeared as confiscation orders entered onto JARD (i.e. assets remitted) in either the same or in subsequent years.\textsuperscript{13} In the majority of cases, however, these remittances were made by a different law enforcement agency, further adding to confusion. We were assured that cash forfeitures orders granted should match to cash forfeitures entered onto JARD in all cases except where there is a successful appeal against the court order and the funds are returned to the owner.

All asset recovery is made under the incentivisation scheme; submissions onto JARD are made in total and used as a basis for refunding the remitting agency 50\% of the proceeds. As shall be seen, the Assets Recovery Agency prosecute and enforce their own cases remitting to the Home Office and from there into the Consolidated fund 100\% of the recovery less receivers costs.\textsuperscript{14} The Home Office returns to them, half of this sum which is then shared equally with the referring agency.

Both Lander (2006) and Fleming (2005) argue that there is greater need for data transparency and linkage between the various law enforcement databases so that such data capture is not lost\textsuperscript{15} with Lander identifying the need for ‘central end use data’ (paragraph 28). Indeed, the Home Office (2006: 44) observes that information systems had been developed to meet the local needs of the user and were never designed for information sharing, let alone analysis. Apparently some aspects of our information era passed the Home Office unnoticed.

As already noted, all data entry is carried out by the financial investigators within each referring agency. However, the data remitted from the law enforcement agencies to the Home Office is extremely limited, leaving out many variables and identifying only the enforcing act, the amount involved and the remitting agency. However, this

\textsuperscript{12} It is unclear whether the amended order is to keep the person liable for the initial amount or if it is to remove liability for the remaining balance.

\textsuperscript{13} For 2003/4, 27 cases matched JARD cases in the same year and a further 6 to 2004/5. For orders granted in 2004/5, 15 matched to cases entered onto JARD in the same year with a further 25 matched to cases entered onto JARD in 2005/6, whilst for 2005/6, 73 cases could be matched between the two data bases.

\textsuperscript{14} Earlier in 2007, however, the Home Office agreed that ARA could net these costs from remitted funds.

\textsuperscript{15} Both note the need to match SARs against JARD (Fleming Recommendation 10, page vii) and the Police National Computer (Lander paragraph 73);
does not appear to disturb them as the Home Office interviewee commented “there is no need to understand the data”. Thus they do not need details of underlying cases and as the criminal information was being tracked by the law enforcement agency it was simply “not required anywhere else in the Home Office”.\textsuperscript{16} It is indeed curious that when the Home Office was approached with a request that asked specifically for information on criminals and their assets they were only able to provide information collated by case number and referring agency. There would appear to be as much confusion about the appropriate use of this data as there is confusion within the data. The only use for such information is to determine which agency remits the most money, a fact that might be of great use to the accountants but hardly of great value for crime reduction. And even this data is difficult to reconcile and match across the different data bases.

Analysis of the Home Office data points to the most prolific referring authority and to the time periods involved between orders being served and funds remitted. Table 1 provides a breakdown by identified criminal activity of confiscation orders granted in 2003–4. The classification of predicate crime is determined by the reporting agency and although it had some relevance for interpretational purposes it resulted in a lack of consistency in definition. For example it is unclear as to the difference between ‘money laundering’ and ‘money laundering – other’. In addition, a large proportion (32%) of crimes are merely cited as ‘other’. Unfortunately this is the only year out of the three year range for which this detail is available. Further it does not extend to cash forfeiture orders granted, which during the same year were tracked by type of legislation used and does not inform us about the predicate crimes. Obviously tracking by legislation improves consistency but at the expense of data richness. The large share attributed to drug trafficking (40%) does not necessarily mean that the same proportion of the sums confiscated could be attributed to this source. It would be reasonable to assume that far larger sums would be associated with fraud even though there were fewer cases.

\textsuperscript{16} Telephone interview June 19th 2007.
Table 1
Confiscation Orders classified by Criminal Activity\textsuperscript{17} 2003-2004

<table>
<thead>
<tr>
<th>Category</th>
<th>N. cases</th>
<th>% of total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drug Trafficking</td>
<td>334</td>
<td>40</td>
</tr>
<tr>
<td>Other Fraud / Embezzlement</td>
<td>71</td>
<td>8</td>
</tr>
<tr>
<td>Excise Duty Fraud</td>
<td>56</td>
<td>7</td>
</tr>
<tr>
<td>Burglary / Theft</td>
<td>29</td>
<td>3</td>
</tr>
<tr>
<td>Money Laundering - Other</td>
<td>20</td>
<td>2</td>
</tr>
<tr>
<td>VAT Fraud</td>
<td>18</td>
<td>2</td>
</tr>
<tr>
<td>Tax and Benefit Fraud</td>
<td>9</td>
<td>1</td>
</tr>
<tr>
<td>Handling</td>
<td>8</td>
<td>1</td>
</tr>
<tr>
<td>Robbery</td>
<td>5</td>
<td>1</td>
</tr>
<tr>
<td>Pimps and Brothels / Prostitutions</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>Money Laundering</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>People Trafficking</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Money Laundering - Drugs</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Counterfeiting / Intellectual Property</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Other Crime</td>
<td>273</td>
<td>32</td>
</tr>
<tr>
<td>Unknown</td>
<td>14</td>
<td>2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>844</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

Data contained within Table 2 shows the breakdown of confiscation orders granted and entered onto JARD according to legislation used. There is a distinction between the numbers of orders granted and recovered with a total of 7,375 orders granted over the three year period with almost double that number, 14,283 being entered onto JARD. It is not clear why there is this discrepancy but it might be due to the fact that the time period for recovery might be so long that it spans several years. Looking at the raw data for cases over £100,000, this would appear to be supported as the average number of days for recovery per case in 2003/4 was 562; for 2004/5 the average period had increased to 866, although it had dropped back again in 2005/6 to 554 days.

\textsuperscript{17} Classification is that assigned by reporting body.
Table 2
Number of confiscation forfeiture orders granted and number of orders entered onto JARD, by legislation for 2003 – 2006

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Proceeds of Crime Act 2002</td>
<td>-</td>
<td>1.681</td>
<td>3.154</td>
<td>66</td>
<td>1.271</td>
<td>3.590</td>
</tr>
<tr>
<td>Drug Trafficking Act 1994</td>
<td>-</td>
<td>437</td>
<td>269</td>
<td>1.204</td>
<td>2.125</td>
<td>2.353</td>
</tr>
<tr>
<td>Drug Trafficking Offences Act 1986</td>
<td>-</td>
<td>7</td>
<td>3</td>
<td>276</td>
<td>464</td>
<td>479</td>
</tr>
<tr>
<td>Criminal Justice Act 1988 (As Amended)</td>
<td>-</td>
<td>459</td>
<td>505</td>
<td>237</td>
<td>803</td>
<td>1.406</td>
</tr>
<tr>
<td>Anti Terrorism Crime and Security Act 2001</td>
<td>-</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Proceeds of Crime Scotland Act 1995</td>
<td>-</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Criminal Justice (Confiscation) (NI) Order</td>
<td>-</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Proceeds of Crime (NI) Order 1996</td>
<td>-</td>
<td>9</td>
<td>4</td>
<td>0</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>Total for all legislation</td>
<td>844*</td>
<td>2.596</td>
<td>3.935</td>
<td>1.783</td>
<td>4.667</td>
<td>7.833</td>
</tr>
</tbody>
</table>

* Data taken from Table 1.

It is interesting to look at the raw data in its entirety and for this reason an analysis is shown in Table 3. For confiscations orders entered onto JARD (i.e. assets recovered) it can be seen that there is a range of activity across the different agencies with some only making a few payments each year whilst others make a significant number. In all cases there are a significant number of payments being processed for £1.00 and several of £0.00. Upon pointing this out to the interviewee, it was suggested that the nil amounts and probably the £1 amounts should be filtered out of the data base as these would relate to instances where the forfeiture order would have been replaced by a compensation order so that the proceeds of crime would have gone in compensation to the victim in place of the Home Office or the referring body.

A major problem concerns the patchy enforcement of confiscation orders granted by the courts. One point made by Kennedy (2007: 36) is that it makes little sense to enforce orders where the assets recovered are less than the cost of recovery. Further
he draws attention to the variation in cash seizures across the different police forces and this is also evident from this study.

The vast majority of payments are for relatively small amounts and it is believed these reflect multiple payments against the same case number, particularly in respect of cases involving drugs\textsuperscript{18}. There are relatively few large scale payments being made. Table 3 shows details of the number of payments made with minimum and maximum sizes. It is interesting to note that the largest payment size is in the region of £1 million whilst, significantly the average payment size ranges from seven to fourteen thousand pounds. Median amounts are significantly smaller being in the region of £300 to £500.

Data contained in Appendix 2 gives a breakdown of confiscation amounts entered onto JARD by the remitting agencies. Surprisingly there is very little remitted by the Serious Fraud Office (SFO). When asked about this, the Home Office Interviewee expressed surprise at this, apparently it had never been noticed before. However, he suggested that this might be where the SFO conducts joint enquiries so that asset recovery would be shown against the other referring force. So this remains to be investigated. Further analysis of the confiscation orders indicates that the largest single remitter of funds is the HMRC Enforcement and Compliance whilst the smallest annual payments, ignoring zero, (of between one and four thousand pounds) are the British Transport Police and the Ministry of Defence. The value of cash forfeiture is, as would be expected, far lower. However, again the largest annual payments are received from HMRC Enforcement and Compliance.

\textsuperscript{18} A recovery order against a small time drug dealer might, for example require them to pay the amount by multiple small monthly payments over a period of years.
Table 3
Breakdown of payments by agency for confiscation orders entered on JARD 2003/4 to 2005/6

<table>
<thead>
<tr>
<th></th>
<th>2003/4</th>
<th>2004/5</th>
<th>2005/6</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of payments</td>
<td>2,016</td>
<td>4,754</td>
<td>7,837</td>
</tr>
<tr>
<td>Agencies making payments</td>
<td>57</td>
<td>59</td>
<td>60</td>
</tr>
<tr>
<td>Mean payments per agency</td>
<td>35</td>
<td>81</td>
<td>131</td>
</tr>
<tr>
<td>Minimum payments per agency</td>
<td>1</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Maximum payments per agency</td>
<td>230</td>
<td>680</td>
<td>971</td>
</tr>
<tr>
<td>Minimum value for single payment</td>
<td>£0</td>
<td>£0</td>
<td>£0</td>
</tr>
<tr>
<td>Maximum value for single payment</td>
<td>£1,014,680</td>
<td>£1,070,357</td>
<td>£905,909</td>
</tr>
<tr>
<td>Average payment size</td>
<td>£11,122</td>
<td>£14,050</td>
<td>£7,832</td>
</tr>
<tr>
<td>Median payment value</td>
<td>£491</td>
<td>£500</td>
<td>£300</td>
</tr>
<tr>
<td>Total amount remitted</td>
<td>£22,421,971</td>
<td>£66,794,789</td>
<td>£61,380,949</td>
</tr>
<tr>
<td>Total orders granted</td>
<td>£92,244,475</td>
<td>£130,334,445</td>
<td>£142,969,553</td>
</tr>
</tbody>
</table>

Curiously whilst the data contained within these tables relates to asset recovery data (i.e. payments made into the consolidated fund) it cannot readily be matched against aggregated asset recovery receipt data also provided by the Home Office.\(^\text{19}\) Table 4 provides the data for total assets recovered from these two Home Office sources.

Table 4
Inconsistency in asset recovery data from the Home Office

<table>
<thead>
<tr>
<th></th>
<th>2003/4</th>
<th>2004/5</th>
<th>2005/6</th>
<th>Total 3 year period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total asset recovery data ml. £</td>
<td>£54,50</td>
<td>£84,44</td>
<td>£92,25</td>
<td>£231,19</td>
</tr>
<tr>
<td>Total confiscation orders entered onto JARD</td>
<td>£22,42</td>
<td>£66,79</td>
<td>£61,38</td>
<td>£150,59</td>
</tr>
<tr>
<td>Total cash forfeiture orders entered onto JARD</td>
<td>£15,97</td>
<td>£17,74</td>
<td>£24,13</td>
<td>£57,84</td>
</tr>
<tr>
<td>Total data entered onto JARD</td>
<td>£38,39</td>
<td>£84,53</td>
<td>£85,51</td>
<td>£208,43</td>
</tr>
<tr>
<td>Discrepancy</td>
<td>£16,11</td>
<td>-</td>
<td>£6,74</td>
<td>£22,76</td>
</tr>
</tbody>
</table>

\(^\text{19}\) Home Office correspondence with author reference T29901/6
It is strange that data from the same part of the Home Office appears to be so inconsistent, however, it is thought that the explanation might lie in the fact that total asset recovery data includes civil recovery and that this accounts for the total difference over the 3 year period of £22.76 million. Confusingly, however, data from the Assets Recovery Agency indicated gross receipts to be 0 (2003/4), £4.3 million (2004/05) and £4.1 million (2005/6) giving a total for the period of £8.4 million.

Data from the Assets Recovery Agency

ARA were visited and interviewed in April 2007 at which point data was collected and their processes were explained. This was followed up with a clarification interview which was conducted by telephone on June 20th 2007. ARA provided access to a database that had been specifically compiled for an NCIS restricted current intelligence assessment report on criminal lifestyle profiles in 2004. This database represented the totality of cases under investigation by them at that time and is far richer as it reproduces the file evidence built up against each ‘client’. The ‘live database’ does not indicate closed cases or amounts remitted to the Consolidated Fund. Unfortunately this rich data base was drawn together for a specific project and has not subsequently been maintained.

Kennedy (2007: 33) and HM Treasury (2007: 24) both provide details of the civil recovery powers associated with the Proceeds of Crime Act (2002) that are available to ARA. The agency may undertake civil seizure of cash (£1,000 and above) if there are grounds to suspect that it was obtained through unlawful conduct with subsequent forfeiture granted by magistrates courts if they are satisfied that the cash seized is recoverable property. It also has restraint powers enabling the freezing of property to preserve assets that might be subject to subsequent forfeiture (Lander, 2006) and civil recovery of proceedings of criminally derived property through High Court granted confiscation forfeiture orders.

The data base made available to us for analysis was in fact an extract from the data held on their CMS or case management system. Whilst very rich, there were no case dates provided so although we were told that it consisted of all live cases, it was not possible to conclude what stage of the investigation each was at. Information for referrals comes with a ‘case plan’, a template police document that will provide case details and it is this information that went onto the data base. This is then supplemented by their own investigations which mostly corroborates the incoming data. All classifications used come from the referring body. The Agency commented at the start that the referring law enforcement agencies referred old criminal cases which had either been ‘thrown out’ by the criminal courts or for which there was insufficient evidence to

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20 Assets Recovery Agency Press Release 21st February 2007 (ARA 08/07)
21 ARA also has powers to tax income or other gains suspected of being derived from crime.
bring a criminal prosecution. They are handed over to the ARA to pursue a new civil case but are often so old that effectively the ARA had to re-start the investigation. When a case is referred they assign a unique code or reference case number via CMS and it will have this through its life, although this key was missing from the data made available to us. Note that this is not the number as used in criminal cases (NUN) as it is given a new one because the case is no longer within the criminal system.

It was noted in the follow up telephone interview with the ARA that the only data passed onto the Home Office were details of the amount remitted, and this fact was separately corroborated by the Home Office. However if they, in the course of their investigations uncover material that is of a criminal nature they have arrangements in place to pass back data to the referring agency particularly if it involves new criminal intelligence. As in the case of the Home Office data, the tagging in terms of predicate crime is supplied by the referring agency. It was noted that estimated values are used all the way through the enquiry case until it is closed when assets are realised. There is no attempt to match actual amounts against estimates, as there is simply no need from the perspective of the agency. The important point is to move onto next case. All estimated values are those made by ARA – it is their estimate of the amount that could be realised (for example after payment of a mortgage). Some cases did not include an estimate of recoverable amount because the enquiry was still in its infancy. It was also explained that the cash seizure amounts contained within their record base shows amounts held by police and retained by them as part of criminal case prior to going to ARA.

This data base comprised 162 records or cases which were live and thus not concluded. The database itself is too large to include within this chapter, however, a summary is included in Table 5 below.

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22 It was noted that they were able to recover and make use of law enforcement agency files but that they often contain old information.
Table 5
Analysis of the ARA database by number of defendants associated with each identified case

<table>
<thead>
<tr>
<th>Number of defendants identified in each case</th>
<th>Number of cases</th>
<th>Total value of assets</th>
<th>Goods and investments identified</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>11</td>
<td>£3,918,307</td>
<td>Property, cars, boat, ISAs, PEPs, endowments and Life Assurance</td>
</tr>
<tr>
<td>1</td>
<td>118</td>
<td>£67,791,297</td>
<td>Property, vehicles, watches, jewellery, land, paintings, patio equipment, entertainment goods, boat, motor homes, bank accounts, ISAs, PEPs, endowments, life assurance, pensions, premium bonds, shares and bonds.</td>
</tr>
<tr>
<td>2</td>
<td>19</td>
<td>£26,003,462</td>
<td>Property, vehicles, watches, jewellery, gym, painting, caravan, land, ISAs, PEPs, endowments, unit plans, bonds, life assurance, shares, bank accounts</td>
</tr>
<tr>
<td>3</td>
<td>8</td>
<td>£8,769,039</td>
<td>Property, vehicles, shares, life assurance, bank accounts</td>
</tr>
<tr>
<td>4</td>
<td>2</td>
<td>£3,614,439</td>
<td>Bank accounts</td>
</tr>
<tr>
<td>5</td>
<td>1</td>
<td>£89,295</td>
<td>Vehicles, motorbike, tractor, banks account</td>
</tr>
<tr>
<td>7</td>
<td>2</td>
<td>£1,391,000</td>
<td>Property, vehicles</td>
</tr>
<tr>
<td>11</td>
<td>1</td>
<td>£609,671</td>
<td>Property, vehicles, motorbikes</td>
</tr>
<tr>
<td>Totals</td>
<td>162</td>
<td>£112,386,517</td>
<td></td>
</tr>
</tbody>
</table>

A number of interesting observations can be made. Firstly there are a total of 11 cases held in the database for which there is no identified 'client'. The majority of the cases (118 out of the total of 162) involve one individual although there is one case in which there were 11 identified individuals. Of the total number of cases, 32 were for values of greater than £1 million (20%), 62 cases were for amounts of greater than £0,5 million (40%), whilst, there were 67 cases (40%) less than £0,5 million. Further discussion of Table 5 appears in the next section.

Table 6 below provides details of the cases classified by identified predicate crime. All labels contained within this table are those used in the database.
### Table 6

Analysis of the ARA database by predicate crime

<table>
<thead>
<tr>
<th>Number of cases</th>
<th>Predicate crime</th>
<th>Total asset value</th>
<th>Range of asset value (where available)</th>
<th>Average asset value</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Benefit fraud</td>
<td>£534,685</td>
<td>£534,685</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Burglary</td>
<td>£1,654,500</td>
<td>£1,654,500</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Counterfeiting</td>
<td>£1,822,136</td>
<td>£50,000 – 632,704</td>
<td>£260,305</td>
</tr>
<tr>
<td>19</td>
<td>Drug Dealing</td>
<td>£6,570,767</td>
<td>£55,343 – 1,300,000</td>
<td>£345,830</td>
</tr>
<tr>
<td>36</td>
<td>Drug Trafficking</td>
<td>£32,831,110</td>
<td>£55,000 – 13,995,000</td>
<td>£912,531</td>
</tr>
<tr>
<td>17</td>
<td>Drug Trafficking/money laundering</td>
<td>£20,152,056</td>
<td>£100,000 – 3,261,200</td>
<td>£1,185,415</td>
</tr>
<tr>
<td>1</td>
<td>Drug Trafficking/smuggling</td>
<td>£27,824</td>
<td>£27,824</td>
<td>£27,824</td>
</tr>
<tr>
<td>1</td>
<td>Drug Trafficking/tax evasion</td>
<td>£426,719</td>
<td>£426,719</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Evasion of Excise Duty</td>
<td>£6,313,583</td>
<td>£114,769 – 4,390,000</td>
<td>£901,940</td>
</tr>
<tr>
<td>7</td>
<td>Evasion of VAT</td>
<td>£16,801,336</td>
<td>£90,000 – 8,200,000</td>
<td>£2,400,191</td>
</tr>
<tr>
<td>5</td>
<td>Fraud</td>
<td>£524,280</td>
<td>£24,573 – 250,000</td>
<td>£104,856</td>
</tr>
<tr>
<td>2</td>
<td>Fuel smuggling</td>
<td>£1,209,000</td>
<td>£209,000 – 1,000,000</td>
<td>£604,500</td>
</tr>
<tr>
<td>1</td>
<td>Fuel smuggling tobacco smuggling</td>
<td>£0</td>
<td>£0</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Handling stolen goods</td>
<td>£1,606,956</td>
<td>£300,000 – 996,956</td>
<td>£535,652</td>
</tr>
<tr>
<td>1</td>
<td>Human trafficking</td>
<td>£967,500</td>
<td>£967,500</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Illegal immigration</td>
<td>£700,000</td>
<td>£205,000 – 495,000</td>
<td>£350,000</td>
</tr>
<tr>
<td>15</td>
<td>Money laundering</td>
<td>£4,715,924</td>
<td>£20,197 – 750,000</td>
<td>£314,395</td>
</tr>
<tr>
<td>1</td>
<td>Murder</td>
<td>£132,500</td>
<td>£132,500</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Prostitution</td>
<td>£875,000</td>
<td>£120,000 – 595,000</td>
<td>£291,667</td>
</tr>
<tr>
<td>4</td>
<td>Robbery</td>
<td>£1,700,432</td>
<td>£16,000 – 1,144,432</td>
<td>£425,108</td>
</tr>
<tr>
<td>5</td>
<td>Smuggling</td>
<td>£2,286,297</td>
<td>£27,200 – 1,113,804</td>
<td>£457,259</td>
</tr>
<tr>
<td>1</td>
<td>Tax evasion</td>
<td>£1,785,405</td>
<td>£1,785,405</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Terrorism (Loyalist)</td>
<td>£1,692,658</td>
<td>£1,692,658</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Terrorism (Loyalist) Drug Trafficking</td>
<td>£621,402</td>
<td>£241,402 – 330,000</td>
<td>£207,154</td>
</tr>
<tr>
<td>2</td>
<td>Terrorism (Loyalist) counterfeit</td>
<td>£783,000</td>
<td>£183,000 – 600,000</td>
<td>£391,500</td>
</tr>
<tr>
<td>2</td>
<td>Terrorism (Republican) smuggling</td>
<td>£682,663</td>
<td>£157,663 – 525,000</td>
<td>£341,332</td>
</tr>
<tr>
<td>1</td>
<td>Terrorism (Republican) drug Trafficking</td>
<td>£102,086</td>
<td>£102,086</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Theft</td>
<td>£1,647,040</td>
<td>£45,482 – 822,179</td>
<td>£549,013</td>
</tr>
<tr>
<td>2</td>
<td>Tobacco Smuggling</td>
<td>£182,000</td>
<td>£0 – 182,000</td>
<td>£91,000</td>
</tr>
<tr>
<td>7</td>
<td>No crime specified</td>
<td>£3,017,659</td>
<td>£27,010 – 1,187,514</td>
<td>£431,094</td>
</tr>
<tr>
<td>162</td>
<td></td>
<td>£112,386,518</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Table 6 indicates that the majority of the cases (74) are drug related (excluding those linked to terrorism) with a total asset value of £60,028,476, accounting for over half of the total assets reported. The next largest category relates to fraud and tax evasion where there were 20 cases totalling £25,424,604. Significantly only 15 cases were identified as money laundering involving a total of £4,715,924.

Whilst recognising that this spreadsheet was constructed by the Agency for a specific purpose, analysis of the data from ARA is interesting as an example of disorderly information management. For example there is one case (identified as Terrorism Loyalist drug trafficking) where the total value of assets shown are valued at £241,402 comprising one UK property valued at £50,000; plus cash seizure of £40,965, a life policy of £100,000 plus an item termed 'proceeds from sale of house' £50,437. The implication from this being that there was only one house but that this has been mentioned as being sold and as being unsold and hence double counted. Elsewhere there are two separate cases from the same agency – one marked ‘drug trafficking’ and one ‘drug trafficking/tax evasion’ which curiously both contain reference to a mini cash ISA\(^\text{23}\) containing £253,13. This could be viewed as possibly coincidence but it is unusual. A further example refers a case of VAT evasion which identified £5 being held in an offshore bank account. A final example concerns two cases reported from the same police force: one called ‘drug trafficking’ and the other ‘drug dealing’ in which the data match exactly (total value of assets £209,392; 4 properties valued at £190,000, £4,890 cash seized £14,343 in a Scottish Widows tax exempt personal equity plan, apart from demographic details of defendants and the fact that one of the cases contains an additional £159,24 in a bank account).

It is curious that ARA includes, within their database, a column in which they identify the total value of assets; however this does not always seem to correlate with the sum of the individual component values identified within the data base. For example, in a case of counterfeiting by one defendant the total asset value is identified as £102,103, however, the component assets are shown as comprising a UK property valued at £81,000 and a Mitsubishi L200 Warrior valued at £13,000, indicating a discrepancy of £8,103.

**Criminal financial conduct**

Do these basic data provide us a first approximation of ‘real understanding’, as mentioned at the end of the second section? As a matter of fact it gives us a first glimpse of what these offenders have done with their money. Details from Table 5 shed some

\(^{23}\) Tax exempt individual cash savings account

302
light on this. In total cases involved 218 identified individuals and their assets seized. That provides the following picture.

The most seized asset was UK property (471 in total, valued at £75,024,409). Other high value goods were largely vehicles (£1,573,538) with some holdings of paintings (£421,925), land (£3,251,000) and jewellery (£305,555) but the total of all of these amounted to only £7,052,195. As already noted above, cash seizures contained within the records related to funds already in the possession of police and retained by them prior to the case being handed over to ARA. These funds amounted to £1,453,030. However, in addition to this, there is an additional amount of £9,683,068 held as cash by the defendants and taken over by ARA (almost all of this relating to one single case). Curiously the amount held in financial assets (including bank accounts) amounted to only £11,024,656. It can be seen that the composition of these assets primarily comprised tax exempt savings and investments (ISAs and PEPs), insurance policies, endowments and pension plans with one or two small holdings of shares. It is doubtful that these small amounts would have the capability of affecting the integrity of the financial system.

What the ARA data illustrates is that these are not sophisticated criminals moving vast sums of money into the financial system and compromising its integrity. In contrast our criminals demonstrate little investment acumen being concerned more with the acquisition of physical status enhancing assets. These observations do not stand alone. The Dutch research on ‘crime-money management’ show similar findings: the interest of high-earning criminals for ‘financial products’ is minimal (Van Duyne, 2003: 86). Further these assets do not appear to be particularly well hidden. Evidence from our data suggests that accounts and houses are frequently registered in the name of the suspect or a close family member (in one case his two year old child).

In relation to the data from ARA how do we set about its interpretation? The most lucrative (in terms of criminal income) cases\(^{24}\) involve VAT and tax evasion, burglary and drugs. This approach delivers insights into the different crime typologies and their relative weights rather than the overall scale of the problem. We can argue that the impact of ARA is one of “inconvenience” and they themselves draw attention to their role in disruption of criminal activity\(^{25}\). Their activities, however, do not even create a wrinkle in the market. There is an evident lack of sophistication by those chased through the courts. What evidence suggests that the big operators carry on regardless? Clearly the data measures performance in terms of fiscal criteria but what it fails to do is to shed light on effectiveness in terms of preventing predicate crime or are we faced with what Alldridge (2003) terms an “exercise in futility”?

\(^{24}\) Data from Table 6 using the highest average asset values per case

\(^{25}\) Interview with ARA and refer to their Press Release 21st February 2007 (ARA 08/07)
Data integrity reviewed

Analysis of the data retained by the two agencies –ARA and Home Office– point to problems for policy makers that should haunt them. Logically one would expect to be able to track a recovery case through the four data bases of the Home Office, linking cash seizures orders to subsequent forfeitures of other criminally acquired assets. However, the parallel unique NUN does not reliably enable this to be done. From the data included in these tables the same observation should be made regarding proper interpretation. It is not possible to follow confiscation orders from Home Office records through to ARA records, nor is there a link from the criminal individuals as counting units through to civil recovery cases. In addition, from the classification used in the records it would appear that referring agencies do not use consistent terms and there is no unified code book. This further brings into question the validity of the estimates of ‘money laundering’ and what exactly is being counted as ‘money laundering’, let alone that worrying statements are allowed to be made about the threatening ‘launderers’.

What we have is evidence of discrepancy within government databases and record keeping which brings into question the integrity of data which seem more affected than the integrity of the financial system. There is no checking within either the law enforcement agency or within the Assets Recovery Agency over either the validity of estimates or of the extent to which estimates and actual remittances are matched. It would appear that there are real data gaps. For example it is not possible to track most ‘profitable’ crimes, even if such measure was important; nor to track data from police to Home Office for policy making; nor to differentiate according to predicate crime in order to allocate money obtained to its criminal source. Critically it is not possible to be truly certain that the funds were really being laundered rather than simply held by criminals until spent. Granted, thus far the Home Office, the law enforcement agencies as well as the ARA could afford not to bother about such difficult questions like ‘reliability’ or ‘validity’: no one cared to challenge them to do so. Obviously there are problems, but they do not appear to cause sleepless nights.

Conclusion

The reader can take this first survey and analysis of the available data as a first attempt in the UK to collect the basic information blocks to approximate what really happens in the field of criminal finances. However, due to the different foci of each agency information is lost as it passes between agencies. This results in a landscape map which is more akin to the sort of map on which Columbus had to rely when he set sail to discover India. The ‘strategic map makers’ in the anti laundering regime –the agencies–
characteristically use to create each their own unique identification system that severs the link from any useful prior case history. At each stage it is probable that the handling authority only keeps information of relevance to that agency either for tracking or performance monitoring as obviously the objective of the police is different from that of policy making. The problem then is that potentially significant information is either ignored or lost. This reinforces the observations of Lander (2006) and Fleming (2005) that there is a clear need to standardise data across all referring agencies so that it can aggregated and compared.

Of concern is the poor quality of the data, lacking in reliability and validity, within the Home Office, pointing to the need for an overarching data management system. There is also massive information loss with tracking only in relation to the Consolidated Fund. If there is a pretension of information based policy making, then hopefully it is not based on these asset recovery data. It would be very difficult to use the content of these data bases for any pretense of risk based policy. What other data for such an information or risk based policy there is, remains a mystery, which does not appear to trouble the policy makers. That said, even this poor data, together with findings elsewhere, gives a first but hazy view on the reality of ‘criminal money-management’, demythologising some threat images of the laundering phenomenon, pointing the way to a really cost-effective enforcement application.

Rather, in a resource-constrained environment evidence from this chapter suggests that anti-money laundering legislation is being driven by fiscal targets designed to resource the law enforcement agencies (Home Office 2006), rather than by any sensible evaluation “of how much money is actually out there” (H M Treasury, 2007: 27-28). This appears tantamount to state deployed greed. To all intents the penal law has become an instrument of an alternative income agency, next to the Customs and Revenue service. However, surprisingly, there is hardly any discussion about the income generating role of penal law (see Van Duyne et.al. 2005). It is interesting to note in this respect the comment by Fleming (2005: 15) who suggests that “a more effective and informing approach to the data held would be to enable interrogation of the data with specific policy informing questions.” Indeed, if such questions are raised in the first place.
References


Fleming M., UK Law Enforcement Agency Use and Management of Suspicious Activity Reports: Towards determining the Value of the regime” University College London. 30th June 2005


306


Lander, S., Review of the suspicious activity reports regime (the SARs Review) March. SOCA, 2006


SOCA, UK Threat Assessment of Serious Organised Crime 2006/7

Money laundering: possibilities and problems in the law enforcement in Serbia

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Introduction

During the past two decades, the anti-money laundering efforts of the international community have been intensified. A series of international legal instruments has been adopted wherein norms and standards in regard of treating the problem of money laundering have been laid down by the United Nations, the Council of Europe and the European Union. In addition, the United Nations Organisation has initiated a global programme against money laundering within the UN Office on Drugs and Crime whose goal is extending support to the Member States in adopting appropriate laws on the prevention of money laundering and developing mechanisms for combating this form of crime.

The Republic of Serbia, following the international commitment in the fight against money laundering, has been actively engaged in the money laundering and organized crime counter-action. At international level, Serbia is a party to the most relevant International Conventions. Efforts on the domestic front are demonstrated by the introduction of a new Law on the Prevention of Money Laundering in 2005, the introduction of a new Criminal Code and the new Criminal Procedural Code, both containing articles relevant for the issue of money laundering. These reforms have sub-

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4 More information may be found on the web site of the UN Office for Drugs and Crime: http://www.unodc.org/unodc/en/money_laundering.html
stantially innovated Serbian legislation in this field complying with numerous International Conventions ratified by Serbia.\(^8\)

The aim of this chapter is to point out some of the most important findings of the analysis of relevant Serbian legislation regarding money laundering, its evolution, compliance with international obligations and standards, and possibilities put forth for prevention, prosecution and suppression of this form of crime, as well as to emphasize some problems, flaws and dilemmas encountered in practice so far.

The analysis of Serbian anti-money laundering legislation was done within the research into the legal framework regarding anti-money laundering in Serbia. It was carried out in 2006 by the authors of this chapter in cooperation with OSCE Mission in Serbia, UNICRI and Tilburg University (the Netherlands). In addition to that, we did interviews with several professionals and analyse press release, papers and other written materials in order to identify problems, defects and dilemmas in the law enforcement.

The starting point for the analysis presented in this chapter is those international conventions, which relate to money laundering, and were ratified by Serbia. These are: the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988);\(^9\) Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime (1990);\(^10\) UN Convention for the Suppression of the Financing of Terrorism (1999);\(^11\) Council of Europe Convention against Corruption (1999);\(^12\) UN Convention against Transnational Organised Crime (2000);\(^13\) and UN Convention against Corruption (2003).\(^14\)

The quoted international conventions contain a series of requirements regarding the implementation by the ratifying countries of appropriate law enforcement policies related to the suppression and prevention of money laundering. The main issues defined in these international instruments are as follows:

- the definition of the concept of “money laundering” and its criminalisation, encompassing complicity, particularly aiding, organising or incitement;
- measures for the prevention and detection of money laundering;
- investigative techniques.

\(^8\) Pursuant to the Constitution, ratified international agreements and generally accepted rules of international law are parts of the domestic legislation and can be directly implemented.

\(^9\) Official Gazette of the SFRY – International agreements, No. 14/90.


This provides a basis for the analysis of both Serbian anti-money laundering legislation and its practical implications. In this chapter the authors will focus only on the provision of the laws relevant for criminalisation, detection, proof and prevention of money laundering: Law on the Prevention of Money Laundering, Criminal Code and the Criminal Procedure Code.

Money laundering – definition and sanctions

The criminal offence of money laundering was for the first time introduced in the Serbian legal system by the Law on the Prevention of Money Laundering from 2001. This Law aimed at regulating comprehensively, the issue of money laundering, including the legal definition and related crimes and sanctions. It was a choice dictated by the apparent absence in the Criminal Code of any specific provisions on money laundering. Of course, the drawback of inserting the new law was a potential disharmony and conflict with a special clause that contained similar criminal provisions as a part of the penal system. As a matter of fact, the old Criminal Code of the Republic of Serbia did contain a provision on concealment that was relevant to money laundering, because, as it was stated by both legal experts and interviewed professionals, money laundering is a special form of concealment.

The 2001 Law on the Prevention of Money Laundering defined money laundering as “depositing money obtained by illegal activities (grey economy, trafficking in arms, drugs, psychotropic substances and the like) on the accounts with the banks and other financial organisations and institutions or entering that money in other ways into the legal financial flows, which domestic and foreign physical and legal persons do in order to conduct legal trade and financial businesses”.

Unfortunately, this definition was unclear worded and fraught with interpretative ambiguities, which was one of the reasons for the inadequate (or even absent) implementation. The other reason seemed to be a profound unwillingness (see Van Duyne and Donati in this volume, otherwise the OSCE/UNICRI report).

First of all, it was quite problematic to determine what was to be considered a predicate offence; a necessary element for the crime of money laundering to exist. The definition given by the mentioned Law was based on quite obscure wording: “illegal activities”, followed by a list leading to several interpretation issues, such as:

- The question of the reach of the Law: whether the term “illegal activities” should be interpreted to include only activities falling within Serbian domestic jurisdiction or whether one could argue in favour for a more “universal” interpretation. With

15 These concern ‘grey economy’: trafficking in arms, drugs, psychotropic substances and the like.
regards to this issue, it should be highlighted that the 1990 Strasburg Convention
upholds the principle of the irrelevance of territorial jurisdiction,\textsuperscript{16} though one
should also note that the 2001 Law entered into force before the Convention was
ratified by Serbia, which means that under the term “illegal activities” one could
consider only activities that are illegal according to national legislation.

- It was also unclear whether the phrase “illegal activities” should be interpreted to
  include all activities that are contra legem as a whole (thus including commercial, civil
  and administrative law violations) or only those activities that are sanctioned by pe-
  nal law. The latter solution would seem to make more sense but, unfortunately
does not appear to be supported by the actual wording of the phrase. Hence, one
could reasonably conclude that any illegal activities (whether criminal or not) could
be considered predicate offences.

- Finally, the words “illegal activities” were immediately followed by a list of activi-
  ties. Normally one should conclude that the issue is resolved in the sense that “ille-
  gal activities” as predicate offences underlying money laundering, are only the ones
included in the list. Unfortunately the list was also open ended in a manner that it
was difficult to determine whether it was meant to be exhaustive or was merely
meant to provide some examples. To complicate the issue further, the items on the
list were not well defined either. Particularly the first item, “grey economy”, which
is not even an activity, but indicates loosely a non-recorded component of the
economy. One should add that in the Serbian Law there seems to be no definition
of “grey economy”, even if several activities commonly understood to be part of
the “irregular economy”, such as non compliance with employment and social se-
curity regulations, are sanctioned by Serbian law. But even if one did accept this
very liberal interpretation, one would still have to face the question which of the
“irregularities” of the “irregular” economy (a deliberate tautology) would rank as
predicate offences!

A second major uncertainty of the definition was the term (or, better, the verb) “de-
posit”. Namely, if we accept one of the most common definitions of money launder-
ing, according to which it presents a dynamic three-stage process that requires: place-
ment, layering, and integration, we may conclude that as to the definition envisaged in
2001 Law on the Prevention of Money Laundering only placement was incriminated,
while the other two phases of money laundering were ignored. The legislator’s choice
of wording with regards to the “deposit” issue did have practical consequences for the
fight against money laundering. Josip Bogic, the former Chief of the Department for
Fighting Organised Financial Crime within the Department for combating organised
crime of the Ministry of Interior, offers a practical example of this issue by citing a case

\textsuperscript{16} Art.2 par a) “it shall no matter whether the predicate offence was subject to the criminal
jurisdiction of the Part”
in which 36 million euro – the proceeds of evasion of Serbian tax – were smuggled in cash out the Republic of Serbia and deposited in a bank account in Bosnia and Herzegovina (Republika Srpska). The perpetrators could not be charged for the criminal offence of money laundering precisely because the criminal offence of money laundering under this Law included only depositing money in accounts of banks and other financial organisations in the Federal Republic of Yugoslavia, but not other transactions designed to conceal the origin of the funds. In that way, the legislator artificially dissected the notion of “financial transaction” in a manner that does not correspond to actual practice.

Available sources do not offer a persuasive answer as to why the judiciary did not interpret the old Law extensively enough so as to resolve the “deposit” paradox contained in the provisions of the 2001 Law on the Prevention of Money Laundering. The issue becomes even more relevant after the Strasbourg Convention was ratified. Considering that the said definition may well be considered “contra Conventionem” it is unclear why the judiciary did not begin to apply or otherwise use the Convention directly. It must be remembered in this context that provisions of the ratified international convention acquire the status of constitutional law, ranking higher than normal law such as the 2001 Law on the Prevention of Money Laundering. We can only speculate that the judiciary did not understand well the given definition and/or was not given proper instructions how to apply it. Alternatively, perhaps, they were not familiar with how to deal with norms derived from ratified international treaties.

Nevertheless, even in these cases criminal procedures could be undertaken. Namely, through application of the criminal offences that obviously includes money laundering or at least some of its forms as concealment. In regard to that, as emphasised by professor Stojanovic, one of the leading experts in criminal law in Serbia, “money laundering can be considered the special kind of the criminal offence of concealment and as such it was partly possible earlier to prosecute for money laundering using this provision as well” (Stojanovic, 2006: 552).

Bearing that in mind, we may conclude that the old Law on the Prevention of Money Laundering provided quite a poor definition for this offence. Predicate offences were defined in a very imprecise and vague way, while the definition of transactions falling within the scope of the law was excessively narrow. The Strasbourg Convention ratified later demonstrated incompleteness and discrepancies of the old anti-money laundering law both with the international and local legislation. On the other hand, the implementation of the Law illustrated its shortcomings as well (Bogic, 2005:322). Due

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to this, the result was a tool that was very difficult to use in practice and that allowed for excessive latitude in interpretation.

**Current situation**

The latest legal reforms in Serbia have significantly amended and improved the previous anti-money laundering regulations, specifically regarding: the definition as a criminal offence; sanctions (penal and non penal); prevention, detection and rules of evidence. Besides, one of the important innovations is a systematic reordering of the “competences” of the actors involved in the prevention and fight against money laundering and the harmonisation of various relevant acts and provisions so as to avoid conflicts and overlap.

Today, money laundering is defined in Article 231 of the Criminal Code and in Article 2 of the Law on the Prevention of Money Laundering enacted in 2005. The definition contained in the Criminal Code reads as follows:

“conversion or transfer of property, with the knowledge that such property originates from a criminal offence, with the intention to conceal or falsely present illegal origin of property, or conceal or falsely present facts about that property with the knowledge that that property originates from a criminal offence, or acquire, hold or use the property with the knowledge, at time of receiving it, that that property originates from a criminal offence”.

The reform of the relevant legislation has entailed the translation of penal sanctions from the Law on the Prevention of Money Laundering to the Criminal Code. Sanctions for money laundering provided for in the Criminal Code could be divided into two sets:

- A first set of sanctions directly punishing the perpetrator of the crime of money laundering. For the basic form of this criminal offence, the sanction is imprisonment for no less than six months and up to five years. If the amount of money or property exceeds 1,5 million RSD, the offender shall be sentenced to imprisonment of between one to ten years.

- A second set of sanctions is imposed on the persons who, knowingly or out of negligence, enabled the launderer to perpetrate his crime. This is typically the case of the “responsible person” or entities that are entrusted by money laundering law with monitoring and reporting duties. Thus, according to the Criminal Code the responsible person or the legal entity if he knew, could have known or should know that the money or property present proceeds acquired from a criminal offence, is punishable in the same terms as the perpetrator of the money laundering offence. In the case of a physical person who is not tasked by the money laundering law with specific duties, sanctions are more lenient, that is, imprisonment of up to three years.
The reform of legislation undertaken in 2005 does resolve several of the issues previously discussed and more appropriately matches the standards of the Strasbourg Convention and other international treaties.

First of all, the new provisions introduce a clear distinction of the roles that the new Law on the Prevention of Money Laundering and the new Criminal Code are to fulfill. Namely, the 2005 Law on the Prevention of Money Laundering focuses on prevention aspects, whereas provisions on the crime of money laundering and related sanctions are included in the Criminal Code in the section dedicated to “crimes against economy”.

The way the current Criminal Code defines money laundering presents a considerable improvement in comparison to the definition contained in the old Law on the Prevention of Money Laundering. This definition is also in agreement to relevant international documents, “by containing the components of conversion, transfer, concealment, disguise, acquisition, possession or use of assets derived from crime”. 18

Unlike the previous term “illegal activities”, the reference to “criminal offence” does provide for a clear indication that predicate offences are to be considered as being only those activities that are defined as crimes by law, while there is no explicit limitation to Serbian penal provisions. Thus there seems to be no obstacle to the application of the Strasbourg Convention principle on the neutrality of territorial jurisdiction. On the other hand, all actions that are sanctioned by penal law are considered predicate elements of money laundering, 19 i.e. the predicate crime may be any crime through which the material gain is obtained (Stojanovic, 2006: 553), including corruption and similar criminal offences. Secondly, the “deposit” issue is also resolved as the new definition adopts the same wording “conversion or transfer” 20 as the Strasbourg Convention.

In regard to that, as it was stated by the interviewed prosecutor of the Special Prosecutor’s Office for organised crime in Belgrade, the most frequent predicate offences committed are crimes against economy and crimes against legal traffic in general, and tax evasion, abuse of official position, and abuse of the authority in particular. 21 Fictitious and false legal businesses appear to be the most frequent modus operandi (the so-called phantom firms). 22 One of the most frequently used ways of entering dirty money into legal flows is through investing in real estate and other enterprises. 23

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19 This approach is consistent with the Strasbourg Convention Article 6. paragraph 4 Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by declaration addressed to the Secretary General of the Council of Europe declare that paragraph 1 of this article applies only to predicate offences or categories of such offences specified in such declaration.
20 Article 6.1.a of the Convention
been recent examples of dirty money (particularly from drug trafficking) being laundered through the construction industry, in which case the origin of money is not checked, through investing in chains of betting places, and through the financing of young football players. Nevertheless, we are still missing legal experience in regard to the criminal offence of money laundering in Serbia. According to the official judiciary statistics for 2006, there were only four criminal reports submitted by the police to the prosecutor’s office, two criminal charges were brought, two criminal reports were rejected and there were no convictions.

As a measure of coordination, money laundering is defined in almost the same manner both in Article 231 of the Criminal Code and in Article 2 of the 2005 Law on the Prevention of Money Laundering, although the two definitions are not identical. Whereas the Law on the Prevention of Money Laundering has retained the particular provision relating to money laundering in the course of ownership transformation (“concealment of illegally acquired social property and social capital, in the process of ownership transformation of enterprises”), such provision was not introduced into the text of Article 231 of the Criminal Code. It is not completely clear what the intention of the lawmaker was when he kept the provision on money laundering in the course of ownership transformation in the definition given in the Law on the Prevention of Money Laundering, but omitted from the Criminal Code incrimination. It does not seem that it will have any impact on the way the Criminal Code is interpreted. Although professor Stojanovic, the Chairman of the Commission that drafted the Criminal Code, was not able to explain why this form is kept in the current Law on the Prevention of Money Laundering, he was clear that the provisions from the Criminal Code are the only ones that are relevant for criminal liability. However, such an unclear situation in relation to money laundering in privatisation seems to open up the opportunity for impunity in this vulnerable sphere. Due to that, this remains an interesting field for further research, particularly if we keep in mind the fact that, as was stated by the director of FIU, dirty money is entering into legal flows through the buying of enterprises (companies) in the course of privatisation, although, as pointed out by one of the interviewed prosecutors, it is very hard to prove that in these cases, money originates from criminal activity.

Finally, the new Criminal Code has not introduced particular provisions on the perpetrators of the predicate offence and the offence of money laundering (so called “self laundering”) as, for example, the Criminal Code of Montenegro prescribes for such a case a more severe punishment (Rakocevic, 2005: 936). It remains to be seen how legal practice shall interpret the provisions of the Criminal Code in this regard:

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24 Interview given by a representative of the Ministry of Interior, Daily newspaper Blic, 5th October 2007, pages. 16.
will it in such cases decide on criminal prosecution for criminal offences in concurrence with money laundering or only for the predicate criminal offence. According to professor Stojanovic, who, as the criminal law expert should be recognized as an authoritative source, the person who committed the predicate crime cannot be indicted for the crime of money laundering, since in that case money laundering should be treated as a “later non-punishable offence”. Here the analogy with the criminal offence concealment\(^{26}\) is used (Stojanovic, 2006:553).

Hence, the practice shows a different approach. Namely, according to the compulsory instruction of the Republic prosecutor’s office, “the perpetrator of the criminal offence of money laundering can be any person”. This means that the one who gained the property by committing a crime can be also prosecuted for money laundering. Due to that, in practice there are criminal charges for money laundering committed in concurrence with other criminal offences, such as trafficking in human beings, bribe, and abuse of official position. Nevertheless, according to the compulsory instruction given to prosecutors in Serbia, the criminal policy reasons can, in exceptional cases of self-laundering, justify the use of the principle of illusory real concurrence. That can lead to a conclusion that some discretionary is given to prosecutors to decide upon treating each particular case of self-laundering in one on another way. It means that this question is left to legal practice to be “regulated” in proper manner by making some kind of precedent and trace the road for possible further changes of the existing legislation. However, we are not convinced yet whether this is legally correct solution or not. We consider that practice will show that, although from the point of view of legal science, this could be seen as legally incorrect, i.e. in opposite to the principle stated in the previous section related to the “later non-punishable offence”.

### Other provisions relevant to prevention of laundering

Given that money laundering is a new criminal offence, it may be expected that Public Prosecutors will at first, not feel confident about its application. However, it should be borne in mind that the Criminal Code of Serbia already contains, –before the introduction of the recent money laundering clauses– other provisions whose application may prevent the occurrence of money laundering, actually, under which money laundering may in fact be subsumed and sanctioned. Granted, money laundering is not explicitly mentioned. In the first case there is a measure of mandatory confiscation of any material gain obtained from a criminal offence, which indeed includes all predictable criminal offences, while in the second case, there is a section of a criminal offence entitled the concealment.

\(^{26}\) See later for more details about this criminal offence.
The provision of confiscating illicit material gain is of a general nature, which may be imposed regardless of what kind of criminal offence or material gain was acquired. This measure is regulated by Articles 91 and 92 of the Criminal Code of Serbia. Article 91 provides that “no one may retain material gain obtained by a criminal offence” and that the material gain shall be seized on conditions provided by the Criminal Code and the court decision determining the commission of a criminal offence. Article 92 provides that money, items of value and all other material gains obtained by a criminal offence shall be seized from the offender, and if such seizure should not be possible, the offender shall be obliged to pay a pecuniary amount commensurate with the obtained material gain. It is also prescribed that the material gain obtained by the criminal offence shall be seized from the person to whom it was transferred without compensation or with compensation that is obviously inadequate to its real value, as well as confiscation of the material gain for the benefit of another asset which was acquired by such criminal offence.

Besides provisions of a general nature relating to the measure of confiscating illicit material gains, the Criminal Code provides the obligation of confiscating material gains also within incrimination of some specific predicate criminal offences (for example, corruption, illicit mediation), as well as in the case of the criminal offences of financing of terrorism and money laundering.

However, it should be mentioned that in the legal terminology of Serbia the measure of confiscating illicit material gain is understood in different way from confiscation. Namely, the term confiscation is used associated with penalty of confiscation, which was found in the earlier Criminal Code and which consisted of confiscating property from the convicted person, and was not limited to property acquired by criminal offence, but this provision is not included in the present Criminal Code.

On the other hand, concealment is provided as a criminal offence in Article 221 of the Criminal Code, which reads: “whoever conceals, circulates, purchases, receives in pawn or otherwise obtains an object he knows was acquired by a criminal offence or whatever obtained it by sale or exchange shall be punished with fine or imprisonment up to three years, where the penalty may not exceed the statutory penalty for the offence by whose commission the object was acquired”. In case the offender habitually engages in the criminal offence or in case the offence is committed by an organised group or the value of concealed items exceeds the amount of one million and five
thousand RSD, a more severe punishment is provided, including imprisonment of between six months to five years.

However, what can be noticed is that the penalties proscribed for concealment are much more lenient then for money laundering.

The Criminal Code provides a whole series of predicate criminal offences, as well as greater number of offences whose manner of commission includes various fraudulent acts and forgeries, which may also refer to forging data of financial nature (for example, abuse of authority in economy, forging documents, specific cases of forging documents, forging official documents, abuse of official status, negligence in business activity, fraud in service, fraud, obtaining and using credits and other benefits without grounds). Finally, there are criminal offences, which provide for punishing for the behavior that disables timely detection of money laundering (for example, disabling the control of business books and other documentation).

**Prevention, detection and proof**

Detecting money laundering is to the greatest extent regulated by the Law on the Prevention of Money Laundering and the Criminal Procedure Code, while the provisions pertaining to proof are mainly contained in the Criminal Procedure Code.

**Law on the Prevention of Money Laundering**

The 2005 Law on the Prevention of Money Laundering has to a great extent eradicated the shortcomings of the previous Law and improved measures for detecting money laundering. The new Law has expanded the group of persons who are obliged to take measures for detecting and preventing money laundering (obligors), which is in compliance with the international documents and the examples of best practice.\(^\text{28}\) Besides, the Law more clearly and adequately determined what is understood under transactions as well as when the measures and actions for detecting and preventing money laundering are to be taken. The obligation of reporting suspicious transactions and providing data and information, which are necessary for detecting and preventing money laundering, are expanded and regulated in detail. Finally, this Law foresees establishment of the Financial Intelligence Unit within the Ministry of Finance.

The Obligors

The Law on the Prevention of Money Laundering foresees a broad list of obligors, including different financial and non-financial businesses and professions, \(^{29}\) expending it also to attorneys, partnership law firm, auditing company, certified auditor and legal entity or physical person responsible for keeping business books or providing tax advisory services. These categories have reporting obligations when acting on behalf of their clients in financial transactions or transactions related to real estate business, if they assess that there is a suspicion of money laundering related to a certain transaction or person/entity or when the client asks for advice related to money laundering.

Bearing that in mind, we may state that there is justification for the Anti-corruption Council’s recent claim \(^{30}\) that the listing is so vague and encompassing that it could be argued it includes just about everybody.

However, although the extension of the list of obligors is in compliance with international standards, it may be noticed that the new listing does exclude a category that was previously included, that is “government agencies, organisations, funds, bureau and institutions as well as other legal persons which are in whole or in part financed from public revenues”. Notable institutions that are now exempted from obligations are the ones involved in the process of privatisation and, first and foremost the Privatisation Agency. It should be highlighted that this is the second instance in which privatisations drop out of sight in the money laundering policy as we already noted that the definition of the criminal offence of money laundering in the new Criminal Code no longer contains the provision relating to ownership transformation. At a time when the legislator seems anxious not to exclude from the regulatory regime, even the more marginal operators, it is supremely odd that he would exempt the entity that presumably handles some of the largest transactions in the country.

Keeping that in mind, the application of the Law on the Prevention of Money Laundering needs to be monitored and the list of obligors and their obligations should be reconsidered. The warning of the Anti-corruption Council that with obliging a vast majority of transactions to be reported to the FIU, it may be overburdened with useless

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\(^{29}\) Banks and other financial organisations, exchange offices, postal and telecommunication enterprises, insurance companies, investment funds and other institutions operating on the financial market, stock exchanges, broker-dealer associations, custody banks authorised for trading in securities and other entities engaged in transactions involved in securities, precious metals and precious stones, organizers of classic and special games of chance (casinos, slot-machine clubs, betting places), as well as other games of chance and pawn shops. Obligors also mean other legal entities, such as asset management on behalf of other persons, factoring and forfeiting, leasing, those issuing credit cards and operating with these cards, real estate business, trade in art works, antiques and other valuable objects, trade in automobiles, vessels and other valuable objects, organisation of travels, mediation in negotiations related to granting credits and the like.

information and consequently miss genuine money laundering activities, needs to be kept in mind too and checked in practice. Due to that, the question of relation or even a gap between the input and the output of data should be further explored. Finally, in view of the high risk of money laundering connected with it, the Privatisation Agency should have obligation to report suspicious transactions.\(^{31}\) Otherwise, this opens a space for immunity in this vulnerable sphere.

**The Financial Intelligence Unit (FIU)**

The 2005 Law on the Prevention of Money Laundering provides the obligation to establish the *Financial Intelligence Unit* (FIU) within the Ministry of Finance. Thus, the FIU was established as an administrative organ within the Ministry of Finance, which activities include data collection, analysis, keeping and exchange, monitoring, cooperation, training and other activities relevant for detection and prevention of money laundering. Upon the suggestion of the director of the FIU, the Minister of Finance establishes the inner organisation and systematisation of the working places within the FIU. The FIU is managed by the director, who is appointed by the Government of the Republic of Serbia on the advice of the Minister of Finance. The Minister is obliged to submit to the Government annual reports on the work of the FIU. The Law prescribes special training of the staff and the competence of the Minister relating to its organisation, rights and obligations of its staff. In particular, it is provided that the FIU staff may not perform activities which are incompatible with their work in the FIU and with the work of the FIU itself.

For the purpose of detecting money laundering, the Law prescribes the obligation of obligors to provide to the FIU the data referred to in Article 34 of the Law\(^{32}\) on any

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\(^{32}\) Pursuant to Article 34 paragraph 1 items 1) to 4), 7) to 10) and 12), the following data are to be submitted: firm, registered office, registration number, tax identification number (hereinafter referred to as: TIN) of the legal entity opening an account, establishing cooperation or performing a transaction, or for which an account is opened, business cooperation established or transaction performed; name and surname, date and place of birth, residence, identity document number and place of issuance, unified citizen’s registration number (hereinafter referred to as: the UCRN) of the employee or the proxy opening and account, establishing business cooperation or performing transaction on behalf of a legal entity; name and surname, date and place of birth, residence, identity document number and place of issuance, unified citizen’s registration number of physical person opening an account, establishing business cooperation or performing transaction on behalf of a legal entity; type and purpose of the transaction and name and surname, and the UCRN of the physical person, that is, firm, registered office, registration number and TIN of legal entity for which the transaction is intended; date and time of performing the transaction; amount of the transaction in RSD; currency in which the transaction is performed; manner of performing the transaction and if the transaction is performed
European crime–Markets at Cross-Roads

cash transaction, that is, on several inter-related cash transactions in the total sum amounting to or exceeding 15,000 euro in RSD equivalent value. The obligation of reporting life insurance operations to the FIU is also prescribed. Likewise, customs authorities are obliged to submit to the FIU the data on every transfer of cash, foreign currency, cheques, securities, precious metals and precious stones across the state border the value of which exceeds the allowed amounts prescribed by the provisions on bringing in or out of the state borders RSD, foreign currency, cheques and securities, and not later than three days from the date of such transfer. The old Law prescribed the obligation of providing data on every transfer across the state border exceeding 30,000 RSD (500 euro at the time of passing the Law), which was not in compliance with the allowed amount.

In addition, the Law on the Prevention of Money Laundering harmonised limits of the “suspicious transaction” amounts with the international standards and these today amount to 15,000 euro, instead of 600,000 RSD (10,000 euro in RSD equivalent value at the time of passing the Law, and for approximately a third less than that in 2005, due to inflation).

The obligor shall be obliged to appoint one or more persons who shall be responsible for detecting, preventing and reporting to the FIU the transactions and persons suspected to be related to money laundering. Furthermore, the Law also prescribes the obligation of obligors to provide professional trainings for employees performing the duties prescribed by the Law on the Prevention of Money Laundering, to provide training in compliance with the standards and methodology determined by the regulation passed based on Article 13 paragraph 2 of this Law, to perform internal control of activities performed in compliance with this Law, as well as to develop a list of indicators for identifying suspicious transactions.

In terms of detection of money laundering, it is also important to stress that the FIU has the power to request from the obligor to provide data on financial standing and bank deposits, data related to payment transaction instruments (cash and non-cash) in the country and abroad, as well as other data and information necessary for detecting and preventing money laundering when it assesses that certain transactions or persons/entities are suspected to be involved in money laundering. In addition, the FIU may issue an order for temporarily suspending the transaction, if it assesses that there is a suspicion of money laundering, of which it shall notify competent judicial and inspection authorities, as well as authorities of internal affairs. Also important for detection is that the FIU may issue an order to the obligor to monitor all transactions performed through accounts specified in such order.

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based on signed contract and subject of the contract as well as contracting party; reasons for suspecting a case of money laundering.
The FIU may also request from the state authorities, organisations or legal entities entrusted with public authority, as well as from an attorney, partnership law firm, auditing company, certified auditor, and legal entity or physical person to providing accounting services or tax advisory services, the data, information and documentation necessary for the detection and prevention of money laundering. The FIU may, at the initiative of the Court, Public Prosecutor, National Bank of Serbia, Ministry of Interior, Ministry of Finance, the Agency for Privatisation, Securities Commission and other competent state authorities, conduct an examination of all transactions and persons/entities suspected to be involved in money laundering.

The competent state authorities shall be obliged to regularly provide to the FIU the data and information on proceedings related to breaches, economic offences and criminal offences related to money laundering, as well as on offenders (personal data, phase of the proceedings, enforceable court decision) twice a year, while at the request of the FIU, more often as well. The Courts shall be obliged to provide to the FIU the reports on all concluded real estate contracts.

The Law prescribes a fine in the amount from 45,000 to 3,000,000 RSD for a legal entity in the case of failing to meet the obligation to notify the FIU. However, the Law on the Prevention of Money Laundering does not provide a particular obligation of reporting related to financing of terrorism. However, it prohibits notifying the client about filing a report or giving information to the police.

Considering all this, we may conclude that establishing FIU, with its all competences and obligations, is an important step in creating a state mechanism for combating money laundering. However, it should be somehow evaluated whether this form of institutional organisation in which it is dependent on the Ministry of Finance is proper or might be misused for achieving political aims. In other words, it should be explored whether it would be better to have the FIU as an independent agency.  

**Criminal Procedure Code**

Some of the important requirements contained in international instruments are related to the provisions relevant for detecting and proving money laundering, including particularly investigation techniques, such as:

- electronic surveillance and other forms of surveillance and secret operations (tailing, watching, tapping telecommunications, access to computer systems, and the like);
- controlled delivery;

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EUROPEAN CRIME-MARKETS AT CROSS-ROADS

- inspecting business books and other books of banks and other financial institutions, that is, making available relevant records of banks and other financial institutions to courts and other or other competent authorities or seizing them.

In Serbia, investigative techniques are regulated by Criminal Procedure Code. Both the old, but still valid Criminal Procedure Act (hereinafter referred to as: the CPA) and the new Criminal Procedure Code (hereinafter referred to as: the CPC) have several provisions of significance for detecting and proving money laundering. A part of them include provisions applicable to all crimes, while the other are provisions whose application is limited to organised crime, other forms of serious crimes or other, specifically enlisted, criminal offences.

In this section we shall compare the measures relevant for detecting and proving money laundering, provided in the old, but still applied Criminal Procedure Act, with the measures provided in the new Criminal Procedure Code, passed in May 2006, but which will be implemented from January 1st 2009.34

General investigative techniques and money laundering

Both Acts include several provisions applicable to all criminal offences, which are of special importance for detection and proving of money laundering. They include investigation techniques such as inspection of certain objects and premises, seizure/temporary seizure of certain objects, order to postal service to retain and deliver letters and the like as well as orders to a bank, financial or other organisation to submit data or statement of balance of the suspect’s business or personal accounts, which are further described.

The Criminal Procedure legislation provides that authorities of internal affairs may, if there is a ground for suspicion that a criminal offence was committed, inspect certain objects and premises of the state authorities, companies, shops and other legal entities and their documentation and confiscate these if necessary. It is also provided that objects, which must be seized pursuant to the Criminal Code or which can serve as evidence in criminal proceedings, shall be temporarily seized and deposited in court or their safekeeping shall be secured in another way. Whoever is in possession of such objects shall be obliged to surrender them at the request of court. A person who refuses to surrender the objects may be fined up to the amount of 100,000 RSD, and if he further refuses to surrender such objects, the same fine may be imposed again.35

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34 It is important to mention that considering a great number of new solutions, the new Criminal Procedure Code shall be implemented from January 1st 2009 (with the exception of provisions on witness protection, which are already applicable).

35 At the moment, there is no provision what might happen to a person who refuses to surrender the assets after the second fine punishment. However, according to new Criminal Procedure Code, which is still not in force, it is foreseen that a person can be punished with a fine.
authorities of internal affairs may even before initiating investigation, temporarily seize objects if there is a danger of delay, and also search dwellings or persons. The new Criminal Procedure Code provides yet another possibility of imprisonment of the person, who, in spite of being fined twice, refuses to surrender the requested objects.

Both criminal procedure laws provide that the investigating judge may order the postal, telephone and other enterprises, companies and persons registered for the transmission of information to retain and deliver to him, against receipt, letters, telegrams and other shipments addressed to the accused or sent by him, if there are circumstances which indicate that it is likely that these shipments shall serve as an evidence in the proceedings. Also, the public prosecutor may order a bank, financial or other organisation to submit data on statement of balance of the suspect’s business or personal accounts. Besides that, he may order that the execution of financial transactions for which there is a suspicion that they present a criminal offence or gain originated from the criminal offence, are temporarily discontinued and that financial resources and cash in local and foreign currency allocated for these transactions are temporarily confiscated, deposited on a particular account and kept until conclusion of the proceedings.

Finally, the new CPC provides as a general probative act that the public prosecutor may request that the competent state authority, bank or other financial organisation performs control of business activities of certain persons and that the same submit documentation and data which may serve the public prosecutor as a proof of the criminal offence or of property obtained from criminal offence, as well as information on suspicious cash transactions in the sense of the Convention on Money Laundering, Search, Seizure and Confiscation of Proceeds from Crime. In addition, the public prosecutor may order that the competent authority or organisation temporarily discontinues payment, i.e. issuing of suspicious money, securities or objects. While previous CPA proscribed it as a special investigative technique applicable only to organised crime, according to new CPC it can be applied to all criminal offences, i.e. to all cases of money laundering, regardless whether it meets conditions for organised crime or not.

Special investigative techniques and money laundering

Special investigation measures and techniques provided in both laws include: surveillance and recording, control of business activities, providing simulated business services, concluding simulated legal transactions, engaging undercover investigators, controlled delivery, as well as temporary confiscation of objects and material gain. In addition, new Criminal Procedure Code provides a new probative act: automatic computer

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of up to 150,000 RSD, if further refuses to surrender objects, a new fine of up to 300,000 RSD may be imposed. Further step would be imprisonment, which can last up to one month.
search of personal and other data. Besides, the new Criminal Procedure Code provides the use of special investigation measures to three groups of criminal offences:

1. to criminal offences pertaining to organised crime;
2. to a broader range of criminal offences considered, according to penalty proscribed, serious crimes;
3. to specifically enlisted criminal offences.

The relevance of this classification for money laundering is seen in the fact that it expends the use of special investigative techniques in the cases of money-laundering. Due to that, new CPC provides for the use of these techniques both when a certain case of money-laundering meets conditions to be treated as organised crime\textsuperscript{36} and in a case when it does not meet such conditions. Thus, according to the new CPC, only the use of surveillance and recording is limited to cases of money-laundering if it may be treated as organised crime, while all other investigation techniques may be used in money-laundering cases without this restriction.

The investigating judge may order surveillance and recording of telephone and other conversations or communications by other technical means as well as optical recording of persons for which there is are grounds for suspicion that they have committed themselves or with others a criminal offence with elements of organised crime, including money laundering. The postal, telephone and other enterprises, companies and persons registered for the transmission of information shall be obliged to enable police authorities and Security Intelligence Agency the execution of these measures.

Apart from offences of organised crime, the new CPC provides the possibility of applying providing simulated business services and making simulated legal transactions in cases where there are grounds for suspicion that the following offences were committed: forging money, money laundering, illicit production and traffic in narcotic drugs, illicit

\textsuperscript{36} The Law on Organisation and Competence of the State Authorities in the Suppression of Organised Crime defines organised crime as commission of criminal offences by organised criminal group, that is, other organised groups or its members for which the punishment of imprisonment of four years or more severe punishment is provided. The organised criminal group means a group of three and more persons existing for a certain period of time and acting in conspiracy to commit one or more criminal offences for which a penalty of imprisonment of four years or more severe punishment is prescribed, for the purpose of acquiring, directly or indirectly, a financial or other material gain. The new Criminal Procedure Act defines organised crime in a similar way, but, besides this, at least another three of the following conditions must be fulfilled: that each member of criminal organisation had an assignment or role determined in advance; that the activities of the criminal organisation was planned for a longer period of time or indefinitely; that the activities of the criminal organisation is based on application of certain rules of internal control and discipline of its members; that the activities of the criminal organisation are planned and performed on international scale; that in performing activities the violence and intimidation are applied or that there is a readiness for applying them; that economic or business structures are used in performing activities; that money laundering or illicit gain is used; that the organisation or its part has influence on political power, media, executive or judicial authorities or other social or economic actors.
traffic in weapons, ammunition or explosive substances, human trafficking, traffic in children for the purpose of adoption, giving and receiving bribes and abuse of official status.

Moreover, the new CPC expands the application of the measure of engaging the undercover investigator in such way that it, besides in case of organised crime, may also be applied to cases of every other organised commission of criminal offences against the constitutional order or security or against humanity and international law as well as in cases of other criminal offences for which the prescribed punishment of imprisonment is more than four years (therefore, regardless whether the legal conditions pertaining to organised crime are fulfilled or not). Exceptionally, this measure may also be applied in case these offences are being prepared.

Although, unlike the valid CPA, the new CPC does not limit the use of controlled delivery to organised crime, however, it considers its use exceptional. In addition, it also explicitly mentions that controlled delivery is to be applied when it is otherwise impossible or difficult to detect, among other, stolen objects and other objects obtained by crime.

The new CPC provides a new probative act of *automatic computer search of personal and other data*, which consists in automatic searching of already kept personal and related data and their automatic comparing with the data referring of the committed criminal offence and persons which may be brought into connection with this criminal offence so as to exclude in such a manner some persons as possible suspects and single out persons for which data are to be collected as a ground for suspicion. It may be applied in cases of *money laundering* as well as in cases of some other offences enlisted in the Code.

The originality of the new CPC is also that, if there is a ground for suspicion that certain object or material gain originates from criminal offence for which punishment of imprisonment of ten years or more is prescribed, the court may impose a measure of temporary confiscation of the object or material gain even aside from the general conditions provided by the Code. This provision differs from the provisions of the still existing CPA which limits this exception with offences from the field of organised crime only.

We may conclude that the provisions of the Law on the Prevention of Money Laundering and the Criminal Procedure legislation to a great extent completed and improved legal regulations in this field. By providing a series of detailed measures, a solid ground for detecting and proving money laundering has been created. Besides, it can be noticed that a new CPC put forth a better basis for using special investigation techniques in the cases of money laundering by explicitly providing for the use of almost all of them when there is either a reasonable doubt that it is a matter of money laundering or when it does not have elements of organised crime.
However, it is worth mentioning that, similarly as most of new legal provisions in Serbia, the legal provisions about investigation techniques are proscribed without clear systematisation and connection with the wider legal context, which may make their interpretation and application difficult and inconsistent. Thus, it is necessary that the use, in practice, of temporary measures and special investigation measures and technique in cases of money laundering is monitored. This is necessary in order to establish how significant in reality they are for prevention, detection and proving of money laundering.

Concluding remarks

The results of our research suggest that Serbian legislation regarding money laundering is formally in compliance with international standards and obligations. In recent years, following the passing of the new Law on the Prevention of Money Laundering as well as the new Criminal Code and Criminal Procedure Code, there has been significant improvement, compared to prior years.

These improvements include, in particular, better harmonisation with international standards and between different laws, as well as a clearer and more comprehensive definition of money laundering, i.e. predicate offence and transaction, expanding the list of obligors, inclusion of professional categories as obligors, detailed regulation of obligations, as well as providing in detail an entire series of detection, prevention and investigation measures.

However, formal compliance with broad international principles does not automatically translate into good and effective laws. Bearing in mind identified problems, flaws and dilemmas presented in this chapter, it may be concluded that the Serbian legal system is still very vulnerable so, perhaps, the process of implementing the current legal solutions and harmonising with the world, and in particular with the European standards is, in reality, slow and not efficient enough. Due to this, there is insufficient legal practice in this field. Well that is a very, very mild critique. To me the system of the investigative powers looks almost Stalinist, unsystematic and the application of law can, therefore, be highly arbitrary. Privatisation scams and laundering are left out (too many high level interests). Despite all impressive real estate surveillance, the courts have not filed any request to the FIU.

Besides, it is worth mentioning that in Serbia, as well as in entire former Yugoslavia, the establishment of case law was always a much bigger problem than the laws in books. Thus, we need to monitor implementation of analysed provisions in practice and suggest certain changes of both legislation and practice.
Finally, further efforts should be made in terms of the education of police, prosecutors and judiciary in order to ensure their understanding of the complexity of the problem of money laundering and to be able to act in more effective and appropriate way. The first step will be a system of monitoring the enforcement efforts, because at the moment it is virtually impossible to evaluate and control the system.

References

Ilcic, D., Documents of international organisations for the prevention of money laundering as a Source of Law. Pravni život. 2005, no. 9, pp. 903-923
Fijat, Lj., Detecting and preventing money laundering. Svet finansija, 2003, no. 192, pp. 28-33
Rakocevic, V, Money laundering – Detecting and proving. Pravni život, 2005, no. 9, pp. 925-945
In search of crime-money management in Serbia

Petrus C. van Duyne and Stefano Donati

The shadows of shady finances

No household is without its dark sides, corners, corridors and rooms. This applies to its structure as well as to the daily dealings between the members of the household. The extent of this dark side is determined by history and the attitude and opinion of the household members concerning the way in which to handle their affairs. It is also highly determined by the household structure, which partly depends on its leadership. This applies to family as well as to state households, which is the old term to denote the financial and economic management of a country. For obvious reasons, within official papers, this management is presented in bright colours, smoothing over the dark sides of finances, trade and industry. For a long time one could get away with such presentations. However, internationally pressure has built up to shed light on these dark areas. One of the reasons for this pressure is the global anti-money laundering policy, in which such dark sides of state households are considered the cracks through which money can be laundered. In the present international setting no country escapes this scrutiny.

Among the countries of South-eastern Europe, Serbia in the 1990s, has gone through a period of political and economic upheaval during which the economy was to a large extent criminalised. Popović (2005) speaks of ‘ten lost years’. This has certainly contributed to a state household with many shady economic and financial corners, as alluded to above. Understandably, this raises worries about opportunities for money-laundering and of course the related predicate illegal profit generating crimes, which is the focus of our research project.

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1 This paper and the information presented is based on a project on money laundering in Serbia, carried out in 2005/2006 on request of the OSCE Mission to Serbia and in conjunction with the UNICRI. The report was presented in October 2006. All information, statistical data and legal commentary presented in this article is referred up to the date of presentation of the report and does not reflect any subsequent event.

2 The authors are respectively professor of empirical penal law at Tilburg University, Netherlands, and Economic Transparency Advisor at the OSCE Mission to Serbia
Comprehensive research on the nature and extent of laundering is an (over)ambitious undertaking in any country and certainly in a country with a large shadow economy. In addition, there are other obstacles, like formulating a proper definition which does more than merely repeating the political and legal wording of the various conventions. Even if one overcomes the definitional obstacles, there is the problem of estimating the extent of the crime for-profit, which continues to haunt money-laundering researcher (Levi and Reuter, 2006). The macro-economic universal approach of Walker (1999), reapplied for so-called money laundering in the Netherlands by Unger et al. (2006) is characterized by a shady methodology. It lacks substantiation of its assumptions, coherence in data gathering as well as defects in the validity of its extrapolations (Van Duyne, 2006). A universal study or assessment of this hidden and ill-defined phenomenon is rather an uncertain undertaking based on many debated assumptions, though progress is being reported (Scheider, 2003). These difficulties also apply to national situations, unless proper methodological conditions are met. Thus far many scholars have not come across such enticing research conditions in industrialised countries with proper statistics like Canada (Mirus and Smith, 2005) and the US (Feige, 2005). In transition countries like Serbia, these uncertainties will predictably be much bigger.

For this reasons more modest research questions were formulated:

Is it possible to ferret out parameters with which to approximate the shady economic areas within which the volume of crime-money and its criminal management in the Serbian economy may be projected?

The reader may note that in the wording of this research question we do not use the phrase ‘money-laundering’ about which the authors felt increasingly uneasy. The phrase ‘money-laundering’ expresses a legal conclusion, a construction or an evaluation of certain criminal conduct. However, starting with a conclusion did not appear to us a methodologically elegant approach, though it is not uncommon in mainstream criminological research on money-laundering (and organised crime). Therefore, as the authors looked for crimes-for-profit which requires handling or managing crime-money,

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3 Or “grey economy” of which there are many definitions and approaches (Schneider, 2003). There are indications in Serbia of a large undeclared, “informal” economy. Activities that would fall within this categories include anything ranging from individual, unregistered businesses and undeclared employment, to criminal trafficking properly. Estimates cited for Serbia are in the range of 25% - 35% of GDP (Djankov et al., 2003). The Statistical Office is currently refining a methodological approach to the issue.

4 One can define money laundering in a very broad sense, as formulated in the Council of Europe Convention and most of the legislation derived from it and if one also includes the self laundering, any successful crime for profit is automatically entailing the laundering of offence. From this angle the extent of laundering equals the total of criminally obtained profits, irrespective of any subsequent handling of money. See Van Duyne et al. (2005) for a critical review.
we replaced the phrase ‘money-laundering’ with criminal money management. This is more than a word play, but concerns the heart of the crime-money issue: how do people handle crime-money?

Groping in the dark

Addressing the research question requires the analysis of a minimum of data from supervisory and law enforcement agencies, ranging from the National Bank of Serbia, to the Serbian Financial Intelligence Unit (Administration for the Prevention of Money Laundering) the police, the tax inspectorate and the courts. This implies the availability of reliable databases, which must be based on transparent information management. However, on this point the researchers encountered no such transparency and few tokens of a proper information management. Indeed, it proved to be extremely difficult to obtain data about the functioning of the authorities concerning law enforcement, whether in economic, civil or penal law matters. In the surveys of the social and economic situation, various authors of (unpublicised) reports regularly indicate that the reliability of presented data of Serbia (and Montenegro) is very variable. More important, there is no key to determine the level of (un)reliability of the various databases. In addition, focusing in this report on Serbia, much of the macro data do not (yet) differentiate between Serbia and Montenegro, though they are now separate countries while their economies have already been separate for almost half a decade.

Because of this lack of empirical data, approaching the shady or criminal side of the Serbian economy to shed light on the issue of crime-money and criminal money-management by means of macro studies will be somewhat speculative. However, going into more individual details will make the study anecdotal on the other hand.

For this reason the researchers broadened their focus and exploited any opportunity to get data which could shed light on the non- or badly recorded economic criminal state of affairs and the exploits of the authorities. They were well aware that the present social, economic (and criminal) landscape of Serbia has been shaped in years of political turmoil and governmental neglect. When Milošević was ousted from power in 2000, the economy in US-dollar terms was about half the size it had been ten years before. The combination of the embargo during the wars in former Yugoslavia and mal-governance brought the economy down. Though empirical data are lacking, the black

5 In publications about the informal economy in South and East Europe studies from or about Serbia (and Montenegro) are missing, though the other countries are properly represented (Belev, 2003).

6 For example, GDP in USD terms decreased from 13.889 billion in 1998 to 8.603 billion in 2000 (− 44,1%). Similarly, Purchasing Parity (PPP) per capita GDP decreased from 4.365 USD in 1998 to 3.795 in 2000 (Source: IMF World Economic Outlook)
or informal economy thrived, providing a means of survival to many and a lavish income to a smaller group of criminal and political entrepreneurs. The corruption index of TI was (and is) high, which naturally correlates highly with the above indicated lack of transparency in economic regulations, law enforcement and the records thereof.

Given these methodological constraints, we ended up with a quest for the unrecorded wealth and incomes of Serbia. Not all these moneys stem necessarily from criminal activities and not all crime-money will be laundered in the strict sense of the word: made ‘white’. We tried to penetrate the various information gaps to find out what is officially known about damage and income from crime. In addition a comparison was made between what is known about the household income and spending. If households spend systematically beyond their means there are reasons to speculate about how they make up for the deficit when they are not depleting their savings continued our reconnaissance by mapping the money flows into and out of Serbia to find out whether and to what extent these flows balanced. The background philosophy is that large volumes of unrecorded financial assets must leave some trace and/or yield some imbalance. In addition we took stock of what is known about economic and fiscal crime and other criminality-for-profit to which we had to add many methodological annotations, due to the inconsistency of the database formats of the various law enforcement agencies that deal with economic, fiscal crime and corruption.

Assessing material damage and proceeds

Estimating the profits from crime or the even broader phenomenon of the informal economy is in all economies shrouded in clouds of uncertainty. The ranges within which the estimated illegal incomes are related to the GDP vary enormously, depending on the parameters selected (for example currency demand, use of energy, mixed models. Schneider, 2003). Such estimates usually cover the whole unregistered economy, of which crime-for-profit is just a subset. Apart from that, crime-for-profit itself is not a clearly delineated subset either, encompassing a wide variety of criminal conduct: ‘traditional’ property crime as well as all forms of economic crime, including tax evasion, which as an illegal activity on its own. For this reason, we only differentiate between forms of crime-for-profit and unregistered economic activities in cases in which the underlying evidence provides justifications to do so.

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7 According to the Worldbank 10 % of the population lived under the poverty threshold of € 60 per month, while 2 % found it difficult to pay for the basic foodstuffs (EU report, 2004).  
8 Serbia and Montenegro TI Corruption Perception Index for 2005 is 2.8. TI considers a score of less than 5.0 as an indicator of a serious corruption issue.  
It is perhaps best to begin by trying to give a first general estimate of the dimensions of crime, or at least what is reported as such. The following step would then be to try and detail the overall figure according to the different types of crime and understand which are the most relevant in the Serbian context during the period under examination. The following tables 1 and 2 illustrate statistics on crime for the period 2000-2005 as reported by the Serbian Ministry of the Interior. Before the data is analysed in greater detail two important caveats need to be made:

1. The statistics relate to reports made by the police, which neither reflect the full picture of real crime occurring (crimes may be undetected or unrecorded) nor do all reports necessarily relate to crimes that actually occurred or which led to indictments and/or convictions.

2. The monetary values reported for material damage and crime proceeds need to be treated with care as the Ministry did not provide the authors with accurate definitions and methodologies utilised for calculating these figures.

Table 1.

Ministry of Interior crime reports and material damage: 2000-2005

a) Material Damage 2000-2005: all crimes (million DNS):

<table>
<thead>
<tr>
<th>Year</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>Total</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>General crime</td>
<td>883</td>
<td>1.353</td>
<td>1.259</td>
<td>1.679</td>
<td>1.253</td>
<td>2.316</td>
<td>8.742</td>
<td>10,2</td>
</tr>
<tr>
<td>Crime against</td>
<td>618</td>
<td>1.161</td>
<td>1.036</td>
<td>1.238</td>
<td>1.219</td>
<td>2.169</td>
<td>7.441</td>
<td>8,7</td>
</tr>
<tr>
<td>property</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Serbian Ministry of Interior
b) Number of criminal offences reported 2000–2005:

<table>
<thead>
<tr>
<th>Crime category</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>Total</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Property</td>
<td>70.728</td>
<td>83.247</td>
<td>55.545</td>
<td>45.374</td>
<td>50.703</td>
<td>54.274</td>
<td>359.421</td>
<td>59</td>
</tr>
<tr>
<td>Civil freedoms</td>
<td>442</td>
<td>438</td>
<td>428</td>
<td>445</td>
<td>474</td>
<td>472</td>
<td>2,699</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>105.716</strong></td>
<td><strong>121.310</strong></td>
<td><strong>94.717</strong></td>
<td><strong>89.597</strong></td>
<td><strong>98.947</strong></td>
<td><strong>101.754</strong></td>
<td><strong>612.041</strong></td>
<td>100</td>
</tr>
</tbody>
</table>

Source: Ministry of Interior

Material damage from reported crime in the period 2000–2005 amounted to a total of 86 billion DNS (a crude approximation in euro of around 1.200/1.2400 million €). Material damage from crime reported in 2005 was 25.7 billion dinars. By far, the most important category in terms of damage is economic crime: close to 70 billion dinars. More than 80% of the total of all damage from crime reported between 2000 and 2005 is attributable to economic crime, while it represents only 13% of reported offences.

The figures would lead to the inference (bearing in mind the preceding caveats) that economic crime is the main source of (domestic) illegal proceeds. There also seems to be in Serbia an increasing awareness of the seriousness of economic crime, as is well demonstrated by the following press article:

**Blic Press, 2005 (08/10/2005):** “Serbia loses 7.5 billion DNS per year because of economic crime”

“When one MD from Pancevo issued confirmation to a patient that he needed exceptionally expensive medical drug for treatment of a serious disease, that the patient in question actually did not suffer from, the MD in question had not thought at all that their deceit would be uncovered. Department for fight against the economic crime found out that the false patient managed to get 3.5 million DNS as a refund from social health. This is only one of about 9.459 criminal acts uncovered in the first nine months that cost Serbia about 200 million euros yearly.”

It must be said that a commonly accepted definition of economic crime as a part of the organised crime phenomenon is still lacking (as is the case with organised crime). Council of Europe Recommendation n.12/81 on Economic Crime may be considered a general guideline as it lists several offences including several kinds of fraud, collusive behaviour and cartel building, tax and currency regulation evasion, bogus firms, stock...
IN SEARCH OF CRIME–MONEY MANAGEMENT IN SERBIA

exchange offences and banking offences.\textsuperscript{10} Given the various findings of research in the organisation of crime and the analysis of the definitional issues surrounding ‘organised crime’, there are no grounds for differentiating between economic or organised crime as the focus is the organisation of crime-for-profit and their proceeds as such (Van Duyne, 2006).

Table 2.
Economic crime in 2005: cases and material damage in million euros

<table>
<thead>
<tr>
<th>Economic Crime 2005</th>
<th>No of Cases</th>
<th>%</th>
<th>Material Damage (ml €)*</th>
<th>%</th>
<th>Crime proceeds (ml €)*</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Negligence in business</td>
<td>200</td>
<td>2.7</td>
<td>9.6</td>
<td>3.8</td>
<td>0</td>
<td>0.0</td>
</tr>
<tr>
<td>Abuse in business authority</td>
<td>272</td>
<td>3.7</td>
<td>4.5</td>
<td>1.8</td>
<td>3.6</td>
<td>1.6</td>
</tr>
<tr>
<td>Illicit acquisition/use of loans</td>
<td>204</td>
<td>2.8</td>
<td>0.6</td>
<td>0.2</td>
<td>0.9</td>
<td>0.4</td>
</tr>
<tr>
<td>Illegal trade</td>
<td>1.076</td>
<td>14.6</td>
<td>0.0</td>
<td>0.0</td>
<td>1.0</td>
<td>0.4</td>
</tr>
<tr>
<td>Tax evasion\textsuperscript{11}</td>
<td>156</td>
<td>2.1</td>
<td>5.8</td>
<td>2.3</td>
<td>5.5</td>
<td>2.4</td>
</tr>
<tr>
<td>Fraud</td>
<td>511</td>
<td>7.0</td>
<td>1.5</td>
<td>0.6</td>
<td>1.7</td>
<td>0.7</td>
</tr>
<tr>
<td>Abuse of official position</td>
<td>2.851</td>
<td>38.8</td>
<td>216.4</td>
<td>86.3</td>
<td>215.8</td>
<td>94.4</td>
</tr>
<tr>
<td>Business fraud</td>
<td>1.881</td>
<td>25.6</td>
<td>12.3</td>
<td>4.9</td>
<td>0.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Accepting bribe</td>
<td>159</td>
<td>2.2</td>
<td>0.0</td>
<td>0.0</td>
<td>0.05</td>
<td>0.0</td>
</tr>
<tr>
<td>Offering bribe</td>
<td>38</td>
<td>0.5</td>
<td>0.0</td>
<td>0.0</td>
<td>0.01</td>
<td>0.0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>7,348</strong></td>
<td><strong>100</strong></td>
<td><strong>250.7</strong></td>
<td><strong>100</strong></td>
<td><strong>228.5</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

\* converted at an estimated rate of 83.19 dinar per 1 euro
Source: Ministry of Interior

In the Serbian penal system, economic crime typologies are included in the categories of ‘crime against the economy’ and ‘crimes against official duty’ of the criminal code as well as in a set of special laws.\textsuperscript{12} For 2005 the economic crime frequencies, the estimated damages and proceeds were brought together.

\textsuperscript{10} Also Europol in its Organised Crime Threat Assessment – OCTA 2007– pays more attention to organised economic crime.

\textsuperscript{11} For some forms of tax evasion the estimated damage may be higher than the actual illegal income.

\textsuperscript{12} Up to the end of 2005 the criminal code was based on the old Yugoslav Federal Criminal Code and the Serbian Republic Criminal Code. The framework was overhauled at the beginning of 2006 with the introduction of the new Criminal Code. Penal provisions are included in many other acts, including the Law on Business Companies, the Law on Foreign
As detailed in table 2, in 2005, proceeds of economic crime were in the region of €230 million, whereas damage to Serbian Society was above €250 million. It is interesting to note that the most common crime category –both in terms of number of cases and financial volume– appears to be Abuse of Official Position. While this offence accounts for 39% of all economic crimes, its share of the total estimated damage is 86% and of the total proceeds, 94%.

Assessing through gaps

What do the figures in the previous sections mean—assuming they approach reality—and to what should they be related? Do all these figures represent the 'launderable' income of wrong-doers? No, because 'damage' should not be equated to income to the wrong-doers. For example, with tax evasion fiscal damage as calculated by the Tax Office is usually larger than the illegal income of the fraudsters. In addition, laundering in the sense of legitimizing illegal income is rather a necessary consequential activity for the middle and upper echelon criminal earners. The common man’s economic crime may be substantial in accumulative terms but per earner-unit (person or household) it is too little for money laundering activities. By means of daily household expenses the illegal profits simply trickle back unseen into the licit economy. Hence, without a proper frequency distribution broken down by unlawful income and earners, a total figure of illicit money tells us little about money laundering in the meaning of explicit legitimizing activities.

Resources and expenses

Another question concerns the impact of this hypothetical economic crime figure in economic terms (apart from morals). This question relates to the issue of the Serbian 'grey economy', of which economic crime is obviously a component. As set out in the previous sections, many questions related to this issue do not have a satisfactory answer in Serbia: how large is the informal sector and its subcomponents, ranging from the almost white to the decidedly black; how do they relate to each other and what are the growth dynamics (is the grey economy growing or shrinking)? Bearing in mind these
limitations, we nevertheless tried to make inferences on the grey economy and to relate economic crime to the economy in general.

First of all, the figures on economic crime set out in the previous tables may be related to an economic parameter such as national income: either gross or net national income. For the year 2003 the Yearbook 2005 of the Serbian Statistics Bureau\textsuperscript{16} mentions a gross national income of approximately € 16.831,1 million and a net national income of approximately €14.323,10.\textsuperscript{17} For illustrative reasons we assume that the economic crime damage in 2003 was the same as in 2005: € 250 million (table 2). We could then relate the economic crime damage to these income figures and arrive at a percentage of 1,5% and 1,8% respectively. However, as mentioned above, this inference would not be correct as the damage does not equal the illegal income which can be approximated by the figures for crime proceeds, which lead to slightly lower ratios. However, as usual the statistics relate only to reported crime. Again, the researchers must stress the uncertainties over how the figures were actually derived. For a start, the data provided by the Ministry of the Interior for crime proceeds is likely to be incomplete: it is quite unlikely that instances of corruption (giving/taking bribes) produced almost no proceeds either in terms of the bribe paid itself or the unlawful advantage gained by the bribe giver.

The structure of the hidden economy phenomenon becomes even more complicated and extensive if we would include the incomes from other forms of crime: drugs, human trafficking, or gun running of which there are no ‘income’ data, however. We can also approach the issue from the angle of household resources and spending, with the objective to find differences, particularly negative ones. If more is spent than earned the difference must be bridged somehow, either by loans or by unrecorded income.\textsuperscript{18} The STAT.YEARB.SERB.2005, reports the data of income and spending obtained in 2004 by means of a Personal Consumption Survey among 4.328 households, selected representatively in rural and urban areas (table 8.1 of the Yearbook). The items of the questionnaire concerned the amount and nature of the average monthly income and monthly spending, including the objects of spending. The figures for monthly spending per household member of 7.565 dinars and resources per household member of 7.135 dinars reveal a monthly average deficit of 430 dinars per household member. These figures translate to monthly resources per household of 21.833 dinars, monthly spending per household of 23.149 dinars and a monthly deficit per household of 1.316 dinars (about € 18,10). Crudely translated in an annual figure, the average yearly deficit of households in the

\textsuperscript{16} STAT.YEARB.SERB.2005
\textsuperscript{17} In current 2003 dinars the figures are for gross national income 1.095.029,9 million dinars, and for the net national income of 931.859,8 million dinars. GDP in 2003 was 1.095.402,20 million dinars. (Chapter 6 of STAT.YEARB.SERB. 2005) with an average exchange rate in 2003 of 65,06 dinars to the euro.

339
sample is still a modest 15.790 dinars (approximately € 218). However, we need also to consider:

1. The deficit represents a full 6% of available resources and, on an annual basis it is greater than the average 2004 net monthly salary reported by the Statistics Bureau (14.108 dinars\(^\text{18}\)).

2. As shown in table 3, considering an estimated number of 2.584.891 households\(^\text{19}\), if we project the results of the interviewed sample to the whole of Serbia we may estimate an aggregate annual household deficit amounting to a respectable 40.814 million dinars (approximately € 562 million), that is, 0,05% of GDP in 2003. That would represent only a very small portion of the black economy which is estimated at 25–35 % of the GDP.

### Table 3.

#### Household sector cumulated monthly deficit 2004:

<table>
<thead>
<tr>
<th></th>
<th>Dinars</th>
<th>€</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Per Month figures:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Household members:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Available resources per member</td>
<td>7.135</td>
<td>98,32</td>
</tr>
<tr>
<td>Spent resources per member</td>
<td>7.565</td>
<td>104,24</td>
</tr>
<tr>
<td><strong>Surplus (deficit) per member</strong></td>
<td>(-430)</td>
<td>(-5,93)</td>
</tr>
<tr>
<td>Households:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Available resources per household</td>
<td>21.833</td>
<td>300,86</td>
</tr>
<tr>
<td>Spent resources per household</td>
<td>23.149</td>
<td>318,99</td>
</tr>
<tr>
<td><strong>Surplus (deficit) per household</strong></td>
<td>(-1.316)</td>
<td>-18,13</td>
</tr>
</tbody>
</table>

#### Annual aggregate projections for whole of Serbia:

<table>
<thead>
<tr>
<th></th>
<th>Dinars</th>
<th>€</th>
</tr>
</thead>
<tbody>
<tr>
<td>Household members:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Estimated aggregate available resources</td>
<td>677.234.204.305</td>
<td>9.332.151.086</td>
</tr>
<tr>
<td>Estimated aggregate spent resources</td>
<td>59.837.383.270</td>
<td>9.894.565.237</td>
</tr>
<tr>
<td><strong>Surplus (deficit)</strong></td>
<td>(-40.814.394.934)</td>
<td>(-562.414.151)</td>
</tr>
</tbody>
</table>

*average exchange rate 72,57 in 2004

\(^{18}\) table 5.17 of STAT.YEARB.SERB.2005

\(^{19}\) table 8.1 of STAT.YEARB.SERB.2005
In trying to understand how this deficit is financed one should recall that income is not the only resource available for spending. Also taken into consideration are: transfers (for example welfare benefits); the households’ wealth (i.e. savings accumulated in the past); other sources such as gifts and, if speaking in terms of cash flows, also borrowings, net reimbursements of principal and interest.

Unfortunately the categories used by the surveyor do not clearly distinguish between resources that are owned and resources that are borrowed and, with regards to the former, between flows currently received that can be correlated to GDP (income and transfers), and resort to the stock of wealth, that was either accumulated in the past or whose current appreciation (capital gain effect) would not be recorded in GDP. Also, some of the definitions are not well drafted, so that it is quite unclear whether all potential sources are included. Thus, we are not sure whether the survey captured all sources nor do we know if it also contained a question about how the interviewed households bridged this deficit.

The distribution of the deficit among households is an important factor in trying to find an explanation for the deficit. We cannot deduce much from an ‘egalitarian’ distribution, whereas a highly concentrated distribution could mean that a few persons have the ability to draw on ‘hidden’ sources to finance their expenses. These could also include concealed proceeds of crime, although this is only speculation. The survey data presented by the Statistics Office does not include any information about distribution other than geographically. With the exception of Vojvodina (that actually shows a surplus) there does not seem a large variance between regions.

It is difficult to relate these outcomes to other figures in the STAT. YEARB.SER.B.2005 or in other open sources due to the different meanings of ‘households’, which in some statistics seem to comprise (personal/family) enterprises as well. Though we are not certain that other tables use the same definition of household, the Statistics Office household saving figures show that even with this spending deficit the saving deposit rate increases, though mainly in foreign currency. The total dinar saving at the banks increased from 714 million in 2000 to 4.233 million in 2003, while the foreign currency saving deposits increased from 3.008 million to 69.738 million dinars. Meanwhile the short term credits of financial institutions to households increased from 916 million dinars in 2000 to 11.264 million dinars in 2003. In the same period the long-term credits increased from 1.697 million to 17.274 million dinars. Putting these outcomes together, the plausible hypothesis is that the Serbian households saved more

\[\text{\textsuperscript{20}}\text{For example the Statistical Office defines savings as “covering receipts from selling securities (stocks and dividends), borrowing repayment and cash decrease (mutual subsidy funds, deposits withdrawn from banks and other”). Selling of stocks is resorting to ones stock of wealth (negative saving) whereas dividends are a source of income (flow). More important, the definition would seem to exclude the selling of other assets (vehicles, jewellery, other valuables, and the like)\]
(in foreign currency) than they borrowed in dinars, while they spent more than they earned without (on average) eating into their savings. It is an interesting discrepancy for further research.\footnote{1}

Of course, this does not allow a straight conclusion of ‘money laundering’, unless all hidden incomes and their spending are equated with crime-money and laundering (see footnote 4). In our opinion, this would unduly stretch the meaning of this concept.

In any case, the ‘Wealth Effect’ of concealed (possibly illegally acquired) assets seems relevant for Serbia where the phenomenon of ‘capital resurfacing’ is notorious and the “previously held under the mattress” explanation is often given when depositing large sums for the first time. Indeed, Serbia passed the law taxing ‘extra-profit’ precisely to deal with the problem, and it has been argued that the implementation of the first money laundering law was allegedly delayed to allow such resurfacing without too much fuss. Explanations for so much ‘cash under the mattress’ commonly refer to the years of turmoil, lack of trust in the currency and in the banking system. Whilst there is some truth in these explanations, the idea of a prospering society in need of finding a safe haven for its surplus does not sit well with Serbia’s recent past. If anything, the overarching issue many Serbians faced was how to make ends meet in a plunging economy. It should be investigated how many succeeded in making ends meet splendidly, for example by studying the expenditure patterns after basic needs have been satisfied.

The international money flows

Another approach is to survey the flow of money, also from the perspective of potential financial gaps, either of payment surpluses or deficits, which cannot be accounted for by other parameters. Again, it goes without saying that such gaps should not be equated directly to ‘laundering’. If there are gaps, an economic explanation must first be searched for. Without more information and an in-depth study of all the economic variables, any conclusive statement would be a jumping to conclusions. Therefore, we restrict ourselves to raising questions and making observations by way of hypothesis. To this end we first looked for the foreign payments and receipts the information of which was provided by the National Bank of Serbia for the years 2003-2005.

The Serbian Balance of Payments

The National Bank of Serbia (NBS) prepares the balance of payment statistics from the information submitted for foreign currency transactions according to legal regulation. In the period under examination these were provided in the “Guidelines for the implementation of decision to the conditions for transfer and manner of arranging payments made, payments received and transfers under current and capital transactions in foreign currency and dinars”. The latest provisional figures for 2005 have been considered. The execution of international payments is accompanied by many forms for identifying the transaction and (advance) payment for import or export or other purposes. According to the statistics published by the NBS, the balance of payments for the years 2003–2005 presents a negative balance, largely due to a structural deficit in the balance of trade. The gap between the import and export of goods tends to widen with the growth of the Serbian economy (from $ 4.618 million in 2003 increasing to $ 5.563 million in 2005). This deficit is only partly compensated in 2005 by a small surplus of exported services ($ 17 million), remittances ($ 3.370 million), grants from other countries and organisations ($ 330 million). In addition there is an inflow of capital in the form of foreign direct investments (FDI): $ 1.481 million) and loans ($ 2.532 million) which of course will in the end lead to a reverse flow of interest and repayment. Each country with which Serbia entertains economic relations (trade, investments, and the like) the NBS provided half-year data on total currency inflows and outflows for the period 2003/2005 (no figures were provided for the years 2000, 2001 and 2002). We interpreted these figures as representing the sum of the current account and capital account inflows/outflows.

A sample of countries was then selected on the basis of the following parameters:
1. Size of flows in terms of monetary amounts and/or number of transactions;
2. Geographic location;
3. Unusual flows observed; and
4. Countries that are offer tax incentives and/or offshore facilities to non residents.

The cumulated 2003–2005 inflows (exports) and outflows (imports) for the selected countries in terms of euros are set out in the table 5. Figures are to be considered an

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23 The following terminology is used in this chapter

Overall inflows (exports): the sum of the inflows (exports) of the current account and of the inflows (exports) of the capital account.

Overall outflows (imports): the sum of the outflows (imports) from the current account and of the outflows (imports) of the capital account.

Overall flows: in general, the sum of current account flows and capital account flows.
estimate as individual currencies had to be converted into euros and, for our purpose we relied on the average rate (not weighted) for each 6 month period analysed.\textsuperscript{24}

Before conducting any further analysis, the data from the sample was matched with official balance of payments statistics. However, it was immediately apparent that cumulated flows of the countries sampled are substantially larger than the total population itself, as shown in table 4. Any conversion of the official numbers into euros (or the reverse) would further highlight this finding.

### Table 4
Comparison of sample and official balance of payments accumulated flows\textsuperscript{25}

<table>
<thead>
<tr>
<th>Accumulated 2003–2005</th>
<th>Overall Inflows (Receipts)</th>
<th>Overall Outflows (Payments)</th>
</tr>
</thead>
<tbody>
<tr>
<td>NBS Official balance of all payments cumulated 2003/2005 overall flows (current + capital +/- errors and omissions)</td>
<td>$40.1 billion</td>
<td>$36.3 billion</td>
</tr>
<tr>
<td>Sample of 19 countries, cumulated 2003/2005 overall flows (current + capital +/- errors and omissions)</td>
<td>€56.7 billion</td>
<td>€56.8 billion</td>
</tr>
</tbody>
</table>

When asked for clarifications, the NBS responded that the figures provided were not netted of the so-called neutral transactions. What are neutral transactions and why are they important for our research?

**Neutral transactions**

The balance of payments records transactions taking place between one country and the outside world. The key concept that defines whether an actor is to be considered ‘domestic’ or ‘foreign’ is residence, not nationality. This means that the balance of payments is a record of transactions between residents and non-residents. There are other kinds of transactions that have an international element. Namely:

1. transactions between residents executed through a non-resident financial institution (for example: a resident in Belgrade making a payment to a resident in Novisad through a bank in Vienna); and

\textsuperscript{24} An accurate conversion would have required calculating the average of the actual rate applicable to each and every transaction weighted by the size of the transaction itself.

\textsuperscript{25} “Errors and Omissions” are included in the official balance of payments figures considered for the comparison with the sample.
2. *transactions between non-residents* executed through a resident financial institution (for example: a resident in Italy making a payment to a resident in the Netherlands on a dinar account in Belgrade).

Such transactions should not be included in the balance of payments as they would be considered either domestic (1) or foreign (2). However, raw statistics collected for balance of payments accounting often do include them nonetheless, in which case they have to be subtracted to arrive to the final figures. (1) and (2) are also termed ‘neutral transactions’ as they would be entered both on the debit and on the credit side. For example, the payment effected by a resident in favour of another resident over a non-resident account would be recorded as an *outflow* (import) but also as an *inflow* (export). Hence, the net effect of neutral operations should in any case be nil. In practice this may not happen immediately, for example due to time lags in clearance, though statistically the net imbalance over a longer time span should be quite small. Actually, these neutral transactions should be of little interest to our research. Reality, however, proved different.

Contrary to this expectation the statistics provided by the NBS showed a substantial impact of neutral transactions on overall inflows and outflows, given the large the discrepancy between the figures in our sample and the balance of payments official statistics: 41.4 % of the payments current account + capital account *inflows* and 56.5 % of the payments current account + capital account *outflows*. It must be said that Serbia’s regime of controls on foreign exchange means that a good proportion of neutral transactions actually consist of ‘bureaucratic churn’: transactions executed on a daily basis between financial institutions and the Central Bank itself. However, even when this factor is taken into consideration, the volume of neutral transactions still appears unusually high.

Considering that some international money laundering triangulation schemes may show up as transactions between residents or between non-residents, the NBS was asked if they could provide a list and description of transactions defined as *neutral* according to their methodology as well as a new set of data of net neutral transactions that could be more accurately matched with Serbia’s balance of payments statistics. Due to time constraints this time we asked for balance of payments figures relating to the restricted (nevertheless interesting) sample of countries:

1. Bosnia Herzegovina (Federation and Republica Serbsky);
2. Cyprus;
3. Hungary;

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26 It was specifically clarified that data for the countries listed had to be provided broken down by item of balance of payment (balance of trade, services, remittances, capital flows and the like) and currency.
Money flows with these countries expressed in the various currencies were converted into euros according to the method used for the conversion of the first set of statistics received. For the six selected countries the new data was compared with the first set received (see table 5). As shown in table 5, the ratio of neutral transactions (including both transactions between residents and between non-residents) to non-neutral (balance of payments) transactions for the 6 countries in the sample is even greater than for the total Serbian balance of payments:

- **Overall inflows (exports):** neutral transactions (Column C) are 147% larger than normal resident/non resident transactions (Column A). The US and Switzerland record the highest ratios of neutral to non-neutral transactions (448% and 212% respectively).

- **Overall outflows (imports):** neutral transactions (Column C) are 69% larger than normal resident/non resident transactions (Column A). The US and Russia record the highest ratios of neutral to non-neutral transactions (again 448% and 98% respectively).

### Table 5

**Sample cumulative 2003-2005 balance of payments flows and neutral transactions**

<table>
<thead>
<tr>
<th>Euro Millions</th>
<th>Neutral transactions INFLOWS (A)</th>
<th>Balance of payment transactions INFLOWS (B)</th>
<th>Ratio: neutral / balance of payment INFLOWS (C)</th>
</tr>
</thead>
<tbody>
<tr>
<td>BiH (Federation + RS)</td>
<td>63.5</td>
<td>1.317.3</td>
<td>4.8%</td>
</tr>
<tr>
<td>Cyprus</td>
<td>185.7</td>
<td>643.1</td>
<td>28.9%</td>
</tr>
<tr>
<td>Hungary</td>
<td>34.9</td>
<td>332.7</td>
<td>10.5%</td>
</tr>
<tr>
<td>Russian Federation</td>
<td>1.137.3</td>
<td>699.9</td>
<td>162.5%</td>
</tr>
<tr>
<td>USA</td>
<td>3.542.5</td>
<td>770.6</td>
<td>448.0%</td>
</tr>
<tr>
<td>Switzerland</td>
<td>1.818.8</td>
<td>855.9</td>
<td>212.5%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>6.693</strong></td>
<td><strong>4.619</strong></td>
<td><strong>147%</strong></td>
</tr>
</tbody>
</table>

*Source: National Bank of Serbia*
IN SEARCH OF CRIME—MONEY MANAGEMENT IN SERBIA

Euro millions

<table>
<thead>
<tr>
<th></th>
<th>Neutral transactions OUTFLOWS (A)</th>
<th>Balance of payment transactions OUTFLOWS (B)</th>
<th>Ratio: neutral / balance of payment OUTFLOWS (C)</th>
</tr>
</thead>
<tbody>
<tr>
<td>BiH (Federation + RS)</td>
<td>63.0</td>
<td>517.2</td>
<td>12.2%</td>
</tr>
<tr>
<td>Cyprus</td>
<td>225.9</td>
<td>2.188.2</td>
<td>10.3%</td>
</tr>
<tr>
<td>Hungary</td>
<td>31.0</td>
<td>1.116.0</td>
<td>2.8%</td>
</tr>
<tr>
<td>Russian Federation</td>
<td>1,040.6</td>
<td>1,056.6</td>
<td>98.5%</td>
</tr>
<tr>
<td>USA</td>
<td>2,933.6</td>
<td>654.2</td>
<td>448.5%</td>
</tr>
<tr>
<td>Switzerland</td>
<td>661.4</td>
<td>1,666.3</td>
<td>39.7%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>4,955</strong></td>
<td><strong>7,198</strong></td>
<td><strong>69%</strong></td>
</tr>
</tbody>
</table>

Source: National Bank of Serbia

The breakdown of total ‘neutral transactions’ in its two components—transactions between residents and transactions between non residents deserves a further comment:

- **Transactions between residents:** these represent the greatest share of total neutral transaction. More interestingly they appear unusually large when compared to non-neutral transactions normally recorded in the bilateral balance of payments with the countries in the sample (164% of overall inflows and 64% of overall outflows). When analysing individual countries these ratios become even more remarkable. For example, for the US, transactions between residents are 418% greater than overall balance of payments inflows from non-residents and 437% greater than overall outflows.

Furthermore, inflows and outflows show persistent and substantial imbalances in each and every year and on a 3-year cumulate basis, whereas one would expect that neutral transactions would tend to balance statistically. Over the 2003-2005 period overall, inflows relating to transactions between residents exceed outflows by almost 40%. Imbalances for some countries are even greater: For example, for Switzerland inflows exceed outflows by a ratio of 3 to 1, and for Cyprus the ratio is 2.6 to 1. On the other hand, inflows and outflows referred to BiH, Russia and, to a lesser degree, the US, do show a tendency to balance out.

- **Transactions between non-residents:** the weight of transactions between non-residents relative to non-neutral transactions is much smaller (12% for overall inflows and 5% for overall outflows). However, flows are still substantial enough. For example, between 2003 and 2005 non-resident transactions with the US recorded € 234 million of inflows and € 77 million of outflows. In the same period the outflows to Cyprus were € 176 million vis-à-vis inflows from Cyprus of € 57 million.

With no additional information available from the NBS on the different types (and size) of transactions between residents it is not possible to make further progress in the analy-
sis. All that can be said is that the volume and pattern of transactions between residents and, to a lesser degree, of transactions between non-residents do appear unusual at first sight. On the other hand such transactions could be consistent with money laundering international triangulations schemes. Neutral transactions definitely represent an area deserving further investigation.

**Triangulations**

A second interesting finding is that one of the top recipients of flows from Serbia appears to be Cyprus. Perhaps even more notable is that over 95% of the outflows from Serbia to Cyprus represent payment for the acquisition of goods and services. With over €600 million of goods sold to Serbia in 2003, rising to €837 million in 2005 (an increase of 38%), Cyprus appears to be one of the top exporters of goods to Serbia. This is, on the other hand, an unlikely circumstance considering that Cyprus is a small, largely service-based economy. An additional remark is that over 80% of the said imports are paid for in US dollars (an approximate equivalent of €1.455 million).

This fast growing flow of goods apparently imported from Cyprus is made up by a comparatively small and declining number of transactions (a decline of 14%). Consequently, the average size of transactions is substantial and rising sharply from €59,435 in 2003 to €95,304 (the 2003/2005 average being €71,417). The average size of transactions in US dollars is particularly high: €180,912 in 2003 and a record of €271,913 in 2005. When comparing with the other countries in the sample, imports of goods from Cyprus appear to have the highest concentration of a small number of large transactions.
Table 6

<table>
<thead>
<tr>
<th>Bilateral trade balance with Cyprus 2003–2005: number and average size of transactions (NBS data)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
</tr>
<tr>
<td>Tot. value transact.</td>
</tr>
<tr>
<td>Export</td>
</tr>
<tr>
<td>Import</td>
</tr>
<tr>
<td>N. of transactions:</td>
</tr>
<tr>
<td>Export</td>
</tr>
<tr>
<td>Import</td>
</tr>
<tr>
<td>Average size:</td>
</tr>
<tr>
<td>Export</td>
</tr>
<tr>
<td>Import</td>
</tr>
</tbody>
</table>

Source: National Bank of Serbia

If there is such a large volume of transactions related to imports from Cyprus, these should be reflected in the Serbian customs data as well as in the Cyprus trade figures. However, corresponding figures could not be found. The Serbian Statistical Office reports imports of goods from Cyprus for $40 million in 2004, while the official 2004 Cypriot balance of trade statistics indicate an overall volume of goods exported of approximately €317 million, of which €187 million is to the entire EU and only €1.4 million to Serbia and Montenegro.

In order to explain these discrepancies we should begin by saying that the figures do not come from the same sources and actually reflect different concepts:

a. the National Bank records payment declarations according to the Law on Foreign Exchange: the €585,000,000 recorded as ‘imports of goods’ from Cyprus in 2004 must be intended as the flow of money that was actually paid to Cyprus on the basis of the declared purpose of the acquiring goods from Cyprus, that is, irrespective of whether the goods were actually purchased from Cyprus or from elsewhere and whether it was materially shipped to Serbia or not;

b. the Serbian and Cypriot balance of trade statistics are compiled by the respective customs. These institutions record goods physically entering or leaving the country on the basis of the accompanying documentation (invoice, bill of lading, and the like) and, in the case of imports (in our case Serbia) according to the rules of origin.

27 Source: STAT.YEAR.B.SER.B.2005
29 Rules of Origin are devised for trade purposes in order to ascertain the country of effective origin of imported goods: that is, where the products or its main components are actually extracted, manufactured or transformed.
Rules of Origin can explain the discrepancies between Serbian and Cypriot customs data. For example, the Cypriot authorities might see off a shipload of computers heading to Serbia and thus record an export of goods to Serbia. Once the computers reach Serbian soil, however, the local customs might note that although the machines were assembled in Cyprus, 90% of the components were in fact manufactured in another country therefore, according to rules of origin, classify the incoming computers as an import from the other country in question.

On the other hand, a more plausible explanation for the discrepancy between the Serbian National Bank figures and Serbian Customs statistics (arrival of goods), is that the acquisition and/or payment by Serbia of goods produced elsewhere is ‘triangulated’, that is, routed through Cyprus. This explanation appears to be confirmed by the NBS which hinted that the main determinant of the discrepancy could be fuel from Russia, as part of these imports are invoiced from Companies in Cyprus and/or paid for on Cypriot accounts.

We are not concerned whether oil is indeed the main ‘culprit’. Of more importance is the fact that triangulating appears to be a widespread practice, a circumstance confirmed by other institutions interviewed (police, customs, tax administration and Foreign Exchange Inspectorate). The rationale of triangulations is hardly ever grounded on pure business motivations. Most often their purpose is to take advantage of the incentives offered by the Cypriot authorities and its network of treaties against double taxation. In most legal systems such triangulations amount to tax avoidance to say the least, and they can be downright illegal if they also entail transfer pricing or a full or part simulation of the transaction. The latter appears to be fairly common in the case of Serbia as, according to the cited institutions, the price paid by the Serbian importer is usually substantially higher than market value, whereas the price paid by the Cypriot supplier to the third party is usually in accordance with market prices. In certain instances the merchandise never materially reaches Serbia nor are the services rendered. These profits are withheld by the Cypriot entity (whose beneficiary remains undisclosed) so that the operation may constitute a mechanism for skimming corporate or income tax or corporate asset stripping.

The Foreign Currency Inspectorate of Serbia reported that a considerable amount of foreign currency was transferred abroad in 2005, “most frequently, by importing and paying various services, the justifiability of which is difficult or almost impossible to establish”. The report cites 26 cases in 2005 of dubious marketing and other business services rendered by foreign companies for a total amount of €33.6 million. No further action was taken in these cases as, according to the inspectors’ report, “whether paid services have

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30 Foreign Currency Inspectorate “Information on payment of marketing services imported into Serbia” 2005/2006
in fact been delivered, imported, their value is represented realistically, or whether this is a transfer of capital abroad, is in fact very difficult to establish”.

Money comes home: remittances, loans and investments

Not only are the money flows leaving the country of interest; there are also incoming money flows in the form of remittances. The largest flows of remittances to Serbia originate from Switzerland, the US and Cyprus (table 7). However, Cyprus comes up once again as a clear winner when one looks at the average size of remittances. Switzerland is traditionally a safe haven for capital; the US is the world economic powerhouse and host to a large community of Serbian expatriates.

<table>
<thead>
<tr>
<th>Remittances</th>
<th>Cyprus</th>
<th>Russia</th>
<th>USA</th>
<th>Hungary</th>
<th>Switzerland</th>
<th>B &amp; H</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total value transactions</td>
<td>€102,528,289</td>
<td>€83,328,350</td>
<td>€200,770,032</td>
<td>€42,337,471</td>
<td>€241,023,774</td>
<td>€43,861,179</td>
</tr>
<tr>
<td>Receipts €</td>
<td>10.701</td>
<td>46,761</td>
<td>52,649</td>
<td>5,959</td>
<td>144,281</td>
<td>15,663</td>
</tr>
<tr>
<td>Payments €</td>
<td>764</td>
<td>1,489</td>
<td>15,873</td>
<td>1,791</td>
<td>2,804</td>
<td>3,835</td>
</tr>
<tr>
<td>N average</td>
<td>9.581</td>
<td>1,782</td>
<td>3,813</td>
<td>7,105</td>
<td>2,800</td>
<td>2,468</td>
</tr>
</tbody>
</table>

When we look at foreign direct investments and loans in the years 2003-2005, Russia ranks first (€ 244,4 million), followed by Cyprus (€ 107,9 million). The reverse of these investments and loans is the income they generate for the beneficiaries. This income paid abroad by Serbia went in the first place to the USA (€ 69,8 million, against an investment/loans of € 60,8 million), followed by Cyprus with € 36,5 million. Russia, the prime investor, was with a return flow of only € 8,4 million, somewhat poorly endowed.

Obviously, these statistics need a more in-depth analysis. In the first place we should know who is at the issuing and receiving end of the loans, investments and remittances. In the second place we should know how the interests and repayments are earned. That may shed light on the commercial rationality of these transactions. The available data did not allow such an analysis.

Elaborations on data provided by NBS

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31 Ibid
‘Groping in the dark’ produced a pattern of discrepancies. However, these raise primarily questions which may be projected against the framework of money-laundering, but that would be a jumping to conclusions. However, the inexplicable discrepancies justify at best the conclusion of a very opaque money and trade management. More plausible is the theory of triangulation, tax fraud and corporate asset skimming.

**Economic and fiscal crime**

**Methodological notes**

Economic crime, including fiscal offences and corruption, constitute traditionally and internationally a meagrely observed law enforcement sector. This concerns the *intensity* of law enforcement as well as the *information management* concerning detected and reported offences and their subsequent processing in the chain of investigation, prosecution and trial. Because of their very nature, various law enforcement institutions are involved in the detection and subsequent handling of the input and throughput: regulatory (administrative) agencies, penal law agencies at the subsequent criminal investigation and prosecution/trial phase. Usually each institution has its own data recording and processing system. Without a proper data management system in place, the likelihood that the different data systems will match is very slim. Actually they must be treated as different and incomparable databases.

Apart from this general characteristic, which Serbia shares with most jurisdictions, our data inspection per institution (police, Inland Revenue Service, prosecution) did not convince us that the figures could be used at face value. We have the impression that the databases are intended for rough workload measurement or case processing overviews. Apart from the well-known ‘dark number’ problem, the available figures of detected cases cannot be the building blocks for conclusive statements on economic/fiscal crime (let alone money laundering) without accompanying interpretation. Unless the database allows offender-offences connected analyses, we cannot connect the offender frequency to the offence frequency tables.

As far as the volume of economic crime and its impact is concerned, unless there are independent victim reports, the figures obviously reflect (as usual) the efforts and priorities of the institutions. Concerning the (financial) impact of economic crime, additional comments about their use should be given. For example, as mentioned before, the reported damage in fiscal cases cannot be equated with the criminal income of the perpetrators. This underlines our warning not to use financial law enforcement figures for concluding statements about a particular phenomenon like money laundering.
Facets and figures of economic crime and law enforcement

The police statistics recording damage inflicted by economic crime as well as the value of the illegally possessed property of economic crime from 2000 onwards is presented in table 8. It is not clear whether ‘the category ‘illegally possessed property constitutes a subset of the ‘material damage’.

Table 8
Value of damage and illegally possessed property 2000-2005 in euros

<table>
<thead>
<tr>
<th></th>
<th>Number of offences</th>
<th>Material damage in € (average yearly exchange rate)</th>
<th>Value illegally possessed property: in €</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>106.197</td>
<td>1.183.490.640</td>
<td>841.842.067</td>
</tr>
<tr>
<td>2001</td>
<td>121.847</td>
<td>168.070.106</td>
<td>153.894.626</td>
</tr>
<tr>
<td>2002</td>
<td>95.493</td>
<td>111.003.202</td>
<td>59.659.721</td>
</tr>
<tr>
<td>2003</td>
<td>90.409</td>
<td>110.620.051</td>
<td>83.598.241</td>
</tr>
<tr>
<td>2004</td>
<td>99.290</td>
<td>92.655.563</td>
<td>68.634.655</td>
</tr>
<tr>
<td>2005</td>
<td>102.056</td>
<td>265.904.141</td>
<td>248.715.677</td>
</tr>
</tbody>
</table>

Source: Ministry of Interior

Apart from the observation that the three frequency distributions show roughly a ‘U shaped’ curve, with two extremes in 2000 and 2005, the figures are difficult to interpret. Did the damage of economic crime and illegally possessed property almost triple from 2004 to 2005? Or is it a reflection of the exchange rate and should the financial data be presented in dinars? That would not account for the inflation rate, however, it is also uncertain whether these damage and illegal possession figures include fiscal damage or which part is to be considered the illegal advantage of the perpetrators. Given the figures of the tax police over 2005 this seems highly unlikely: the recorded fiscal damage in that year amounts to € 109.074.469. If the damage recorded by the police does not include the fiscal damage, the total damage would be € 374.978.610. Related to the total public revenue of € 8.448.192.771 this amounts to 4,4 %. Given the uncertainty of the reliability status of the data and the reasonable assumption that the informal, untaxed, economy in Serbia is sizeable, this may be a gross underestimation, certainly in the light of the informal economy estimated in Western European countries.

32 For 2005 the estimated average exchange rate of € 80 has been used.
Tax evasion

The figures provided by the fiscal police on Tax evasion detected for the years 2004 – 2005 are illustrated in table 9. Before analysing the figures in detail one should note that the Tax Police in its present status was set up in 2003. The sharp increase in evasion detected from 2003 to 2005 is a testimony to the growing capabilities of this unit.

Table 9
Tax evasion detected in 2004 and 2005

<table>
<thead>
<tr>
<th>Tax evasion detected</th>
<th>2004</th>
<th>2005</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Reported tax evaded*</td>
<td>Estimated unreported tax base**</td>
</tr>
<tr>
<td>Taxes:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Excise</td>
<td>816,975</td>
<td>N.D.</td>
</tr>
<tr>
<td>VAT</td>
<td>0</td>
<td>5,301,278</td>
</tr>
<tr>
<td>Sales tax goods</td>
<td>26,448,397</td>
<td>132,241,985</td>
</tr>
<tr>
<td>Sales tax services</td>
<td>937,604</td>
<td>4,688,021</td>
</tr>
<tr>
<td>Property transfers tax</td>
<td>0</td>
<td>56,027</td>
</tr>
<tr>
<td>Corporate income tax</td>
<td>304,292</td>
<td>3,042,924</td>
</tr>
<tr>
<td>Tax on financial transactions</td>
<td>0</td>
<td>5,412</td>
</tr>
<tr>
<td>Tax on personal income: salaries</td>
<td>4,556,113</td>
<td>32,543,667</td>
</tr>
<tr>
<td>Tax on personal income: other</td>
<td>0</td>
<td>1,438,364</td>
</tr>
<tr>
<td>Tax on games wins</td>
<td>0</td>
<td>1,706</td>
</tr>
<tr>
<td>Total</td>
<td>49,017,250</td>
<td>350,469,463</td>
</tr>
</tbody>
</table>

Authors’ own estimate based on average nominal tax rate according to the formula:
Unreported taxable base = detected tax evaded / nominal tax rate (%)
Of the estimated non-declared tax base of at least € 683,530,844 discovered in 2005, the pension, health and unemployment contributions represent the lion’s share: € 313,562,707 or 46%. We have no breakdown relating this figure proportionally to the perpetrators involved: the workers and/or the employers. Usually they are both knowingly involved: the employer doctoring his books (because of uncovered salary expenses) and the employee returning satisfied home with more to spend than his official salary. It would not be too imaginary to speculate how much of the spending deficit of € 183,795,474 of the household survey previously analysed is paid out of these illegal ‘income supplements’.

From the angle of money laundering these ‘income supplements’ are of less importance than the illegal savings of the employers: these illegal savings have to laundered or covered by means of documentary fraud.

When we relate the estimated tax evasion to the 2005 GNP of € 13,070,1 million the resulting ratio does not convey a really threatening fiscal doom: an evasion/income proportion of slightly less than 1 % is almost too good to be true. Consider that estimates for tax evasion in Switzerland –a country with a reputation for being law abiding– are around 2% of GDP, and evasion estimates in Italy, a notoriously less law abiding nation, are around 12% - 18% of GDP.

As these figures would turn Serbia into the most tax compliant country in the European continent, and as this is not the most plausible hypothesis, one should raise the question of the dark numbers. How much tax evasion is undetected and how can be observed in a largely cash based economy?

It is unclear whether and to what extent these figures concern cases and suspects handed over to the Public Prosecution Office for further procedural processing. Table 11 illustrates the reports by Tax Police:

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33 We could not estimate the tax base for all kinds of taxes. In some cases, such as “excise tax”, calculation of dues is not based on a % of value but tax is a fixed monetary amount levied per physical unit of measurement (e.g. X amount per litre of alcoholic beverage). In other cases it was not possible to break the figures further according to applicable tax rate (e.g. ‘other’). Consequently the estimated undeclared tax base is to be considered understated.

34 Figures are indicative. Evasions detected in a given year usually refer in part to taxes due in previous years. Similarly, it is expected that a portion of taxes evaded in the current year will be discovered in future years.


Activity of the Tax Police (Source Tax Police Reports)

<table>
<thead>
<tr>
<th>Activity</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of reports filed</td>
<td>45</td>
<td>876</td>
<td>1,365</td>
</tr>
<tr>
<td>Number of violations</td>
<td>63</td>
<td>1,118</td>
<td>1,804</td>
</tr>
<tr>
<td>Number of persons involved</td>
<td>49</td>
<td>987</td>
<td>1,534</td>
</tr>
</tbody>
</table>

of which: comp. owners or associates; entrepreneurs/self employed

<table>
<thead>
<tr>
<th>Activity</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>46</td>
<td>738</td>
<td>1,449</td>
</tr>
<tr>
<td></td>
<td>1</td>
<td>181</td>
<td>23</td>
</tr>
</tbody>
</table>

If (according to the law) all these cases would have been transferred to the Public Prosecution Office (PPO), this would imply workload input of 1,534 persons (1,363 reports) in 2005, suspected of tax fraud (and technically, subsidiary money-laundering). Indeed, the Tax Administration reports a feed back from Prosecution and Judiciary for the period 30.10.2003–31.03.2005. However, the numbers do not match. Of the total set of 306 cases in 2005 (66 from the previous year) 41 were refused or returned for further consideration. Of the remaining 265 cases 62 were rated ‘low priority’, leaving 203 for further processing. If we take a three years average, there is a workload of 122 tax cases (38 in 2003; 126 in 2004 and 203 in 2005; a steep increase).

The handling of tax evasion cases by the courts in the first instance does not reflect a large workload of tax fraud cases either. As the databases of the PPO and the courts do not match either (the numbers of the courts may stretch back to indictments input of several previous years), a direct comparison with the case processing of the PPO is not possible. Therefore we take the three year average of 73 cases of tax fraud handled yearly by the courts (2003: 55; 2004: 91; 2005: 74). That would mean that on average 49 cases per year should be on the ‘waiting list’ of the courts. Of the cases finally handled an average 74% ends in a guilty verdict.

Whatever interpretation or meaning one wants to attach to this statistical exercise, we must observe that:

- the rate of established tax evasion as a general tax fraud category is low;
- there is a clear output-input difference between the case processing institutions, with a ratio of tax police detection versus court handling of around 5%;
- the figures of other economic offences are difficult to interpret, because the underlying case processing mechanisms and reasons for handling or dismissing are unknown. Of the case/report input much is refused or sent back.

As the relation to economic/financial damage or criminal income per case is unknown, the seriousness of the cases cannot be rated or projected in a frequency distribution or a further breakdown. Consequently little can be said about crime money or money laundering.
Corruption and abuse

A category of offences particularly relevant for our survey consists of public office related abuses: embezzlement, taking and giving bribes. Without speculating about the real size of corruption in the country the figure from the PPO may be illustrative of the limited priority given to this issue.

Table 11
Corruption case input and actively processed by PPO

<table>
<thead>
<tr>
<th>Year</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
<td>N</td>
</tr>
<tr>
<td></td>
<td>Handled</td>
<td></td>
<td>Handled</td>
</tr>
<tr>
<td>Embezzlement</td>
<td>915</td>
<td>53</td>
<td>1146</td>
</tr>
<tr>
<td>Bribe taking</td>
<td>175</td>
<td>59</td>
<td>100</td>
</tr>
<tr>
<td>Bribe giving</td>
<td>117</td>
<td>37</td>
<td>162</td>
</tr>
<tr>
<td>Total</td>
<td>1.207</td>
<td>54</td>
<td>1.408</td>
</tr>
</tbody>
</table>

Source: Republic Prosecutors Office

Granted, because of lack of background, one can do little more than merely presenting these figures without additional interpretation: a proper content analysis of the criminal corruption files actually handled should shed light on such aspects as (lack of) evidence, on-going (or halted) investigations and the like. We do not know the outcome of the prosecution phase: the number of final decisions. We can only compare the case workload of the PPO with that of the courts in the first instance, compare the differences and observe a steady PPO-Court ratio of around 40%. Again, we have to be parsimonious with interpretations, but these figures cannot convey a high-intensity anti-corruption policy.

Phantom firms

There is little new about phantom firms: the hollow corporate shell destined to bust as soon as creditors want to collect their debts. For any fraudster setting higher aims than cheating rich old widows, it is the usual tool. If skilfully handled the chances of being caught as the background operator are slim. Look at the detention rate in the following table with an overall detention rate of 7%, though there were also ‘bad years’ with a detention rate of slightly more than 10%. Given the detected damage, though strongly reduced after 2002, there are reasons to believe that behind these phantom firms much wealth is changing into the wrong hands.
Table 12
Phantom operators, damage and success rate

<table>
<thead>
<tr>
<th>Year</th>
<th>N.charges</th>
<th>No. of persons</th>
<th>Arrested</th>
<th>Detained</th>
<th>Damage in €</th>
<th>% detained</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>225</td>
<td>409</td>
<td>64</td>
<td>14</td>
<td>23,112,242</td>
<td>3.4</td>
</tr>
<tr>
<td>2003</td>
<td>135</td>
<td>240</td>
<td>34</td>
<td>25</td>
<td>12,753,917</td>
<td>10.4</td>
</tr>
<tr>
<td>2004</td>
<td>104</td>
<td>201</td>
<td>38</td>
<td>24</td>
<td>13,572,143</td>
<td>11.9</td>
</tr>
<tr>
<td>2005</td>
<td>79</td>
<td>154</td>
<td>17</td>
<td>8</td>
<td>8,901,885</td>
<td>5.2</td>
</tr>
<tr>
<td>Total</td>
<td>543</td>
<td>1004</td>
<td>153</td>
<td>71</td>
<td>58,340,187</td>
<td>7.0</td>
</tr>
</tbody>
</table>

Source: Analytical Department of the Ministry of the Interior

We must assume that this table presents only a part of the phantom reality. A police report for 2002 mentions 619 identified phantom firms. These outfits skimmed taxes in an organised fashion and laundered money through the Novi Sad branch of a legally registered commercial bank from Belgrade. According to the 2002 police report, the activity of these phantom companies resulted in tax evasion in the amount of approximately 300 million dinars.

Thus, in 2003 a case was reported in which three owners of several companies from Valjevo had used phantom companies to present an alleged sale worth more than € 3.3 million, evading taxes in the total amount of € 638,000. There are also cases of phantom companies involved in illegal trade, such as the combine that sold imported oil derivatives worth € 128,000; a company from Bujanovac, that illegally imported goods worth € 168,000. Another from Čačak, which sold imported petroleum and xiol worth € 200,000; ‘DOO Interprom’ from Pančevo, whose owner acquired illegal profits by selling goods through phantom companies in the amount of € 184,000.

Furthermore, the Tax Police Report of 2004 mentioned for 2003 the uncovering of 357 phantom firms engaging in tax evasion for an amount of 1,711 million dinars (approx. € 21.7 million). 168 people were involved and 141 criminal offenses reported by the tax police.

These are just illustrations, to which one should add the VAT fraud schemes, as in addition, this form of fraud requires such a phantom firm in the chain of buying and selling: the ‘missing trader’. Naturally, money laundering is inherent to these scams, as the illegally obtained payments to the phantom firm have to be syphoned off as soon as

37 The Administration has no other data on these companies.
possible, leaving only the empty shell for the creditors. (See the chapter of K. Pashev in this volume).

The evasive illegal earnings

From our perspective of laundering, these economic phantoms render a precise attribution of criminal profits to categories of perpetrators difficult to achieve. We got a glimpse of the ‘loot’, but we do not know how it is being divided. This is important as a broad spreading of the criminal profits over many beneficiaries dilutes the loot such that a substantial part dissipates as daily household expenditure. However, lacking any database designed for cross-sectional analysis, we take the gross figures of illegal profits as provided by the Ministry of Interior and present the figure of the ‘illegal income’ as a hypothetical ‘launderable volume’. The methodological basis for determining these figures could not be determined either.

As can be deduced from Table 13 the ‘abuse of official position’ (Article 242/395 new Code) ranks highest in every year, followed by abuse of business authority. Fraud, quite a general category, ranks third. Looking at the time series, one can observe that in the year 2000 Serbia was not only in a political, but in (financial) law enforcement turmoil too: large amounts of money (€ 841 million) appear to have come into the wrong hands. A new rise of financial wrongdoing can again be observed in 2005, mainly attributable to the abuse of the official position (€ 224 million).

Table 13
Illegal profits for various crime categories 2000-2005 in €

<table>
<thead>
<tr>
<th>Offence</th>
<th>Abuse business authority</th>
<th>Acq. Loans &amp; benefits</th>
<th>Illegal trade</th>
<th>Fraud</th>
<th>Abuse position</th>
<th>Bribe taking</th>
<th>Bribe giving</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>10,386</td>
<td>15</td>
<td>2,325</td>
<td>2,447</td>
<td>825,510</td>
<td>31</td>
<td>0</td>
<td>840,714</td>
</tr>
<tr>
<td>2001</td>
<td>22,401</td>
<td>95</td>
<td>5,402</td>
<td>8,005</td>
<td>98,613</td>
<td>22</td>
<td>0</td>
<td>134,538</td>
</tr>
<tr>
<td>2002</td>
<td>10,807</td>
<td>1,582</td>
<td>1,396</td>
<td>1,679</td>
<td>40,246</td>
<td>44</td>
<td>13</td>
<td>55,769</td>
</tr>
<tr>
<td>2003</td>
<td>5,062</td>
<td>156</td>
<td>5,874</td>
<td>4,586</td>
<td>56,394</td>
<td>119</td>
<td>147</td>
<td>72,339</td>
</tr>
<tr>
<td>2004</td>
<td>8,683</td>
<td>347</td>
<td>1,009</td>
<td>2,043</td>
<td>44,218</td>
<td>11</td>
<td>1,010</td>
<td>57,323</td>
</tr>
<tr>
<td>2005</td>
<td>3,737</td>
<td>942</td>
<td>1,046</td>
<td>1,594</td>
<td>224,378</td>
<td>52</td>
<td>8,940</td>
<td>240,689</td>
</tr>
<tr>
<td>Total</td>
<td>61,077</td>
<td>3,137</td>
<td>17,053</td>
<td>20,354</td>
<td>1,289,359</td>
<td>281</td>
<td>10,112</td>
<td>1,401,375</td>
</tr>
</tbody>
</table>

*Source: Ministry of Interior*
The average yearly exchange rates were taken from the STAT.YEARB.SERB.2005. This entails some inaccuracy: if major financial abuses occurred in a month with a low of high exchange rate, taking the average may lead to under- or overstating.

As remarked, this is a very crude picture because it is not offender related. This means that we cannot cluster economic transgressions around violaters who in the course of doing business bribed, defrauded as well as abused their position. However, we think the figures of sufficient impressive magnitude to warrant a full statistical indepth analysis.

This is also not the whole picture. We have not yet included tax evasion, or smuggling. Of other criminal acts, like the operations of phantom firms we do not have illegal profit figures. The total illegal profits from tax evasion and smuggling in the time span 2000-2005 amount to € 30.492.742. However, comparison is not feasible due to the difference in reach of the articles applied and the related double counting. For example, corporate and personal income tax and social insurance contribution: the lower tax base of the manager and his employees is a consequence of tampering with the corporate books. All involved are individually liable to be imposed a gross tax correction to be recorded as tax fraud. If (for the sake of argument) we nevertheless add up all these illegal tax profits with those of table 13, we come to a five year illegal transfer of wealth of approximately € 1.432.000.000. Though this figure approximates suspiciously the Cyprus figure, it is pure coincidence: we do not know anything of the illegal income distribution. Other empirical research (Van Duyne and de Miranda, 1999; Van Duyne et al., forthcoming) supports the hypothesis that the criminal income distribution is as skewed as the licit one, as can also be derived from the large sums of the abuse of the official position. One should also keep in mind that the opportunities for making illegal profits are all but equally spread in the underground economy (Smith, 2005), while in most illegal enterprises wages are dismally low (Djankov et al, 2003).

Having come at the bottom of the (database) barrel of what is known about the criminal income, we will shift our attention to the money laundering instruments that are designed to do something about it.

Fighting money-laundering

As far as the fight against money-laundering is concerned, Serbia has complied with the requirements of the FATF: there is a legislation against laundering and a Serbian FIU has been established, the Administration for the Prevention of Money Laundering (APML). Money-laundering was already penalised in 2001. This was a federal law, while meanwhile the federation has ceased to exist. The law also contained a number of flaws, for which reason a new law was designed that came into force in January 2005.
2006. Meanwhile the APML has been operative since 2002. What evidence about money-laundering has been brought forward since the start of the anti-laundering regulation and the institution of the APML?

When we compare the figures of the Ministry of Interior concerning the illegal profits (irrespective of their validity) with the reported suspicious transactions, we notice some discrepancy. For example, the Ministry of Interior recorded in 2005 €240,689,641 as illegal profits (mainly from abuse of official position) while in the same year the Administration for the Prevention of Money Laundering (APML) recorded €54,625,845 as suspicious transactions. Assuming a ‘chain system’ of detecting and reporting crime-for-profit and related financial transactions, a lot of detected criminal income reports failed to reach the APML. As the APML is one of the receiving, analysing and forwarding links in that chain of processing illegal transactions, it is justified to have closer look at the available data.

### Table 14
Reported transactions and obligors 2002-2003

<table>
<thead>
<tr>
<th>Obligor</th>
<th>Number of reports</th>
<th>Sum in DNS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawyers</td>
<td>3</td>
<td>3,694,320</td>
</tr>
<tr>
<td>Car dealers</td>
<td>1,433</td>
<td>1,659,208,842</td>
</tr>
<tr>
<td>Banks</td>
<td>332,092</td>
<td>693,989,950,360</td>
</tr>
<tr>
<td>Brokers</td>
<td>98</td>
<td>342,378,838</td>
</tr>
<tr>
<td>Casinos</td>
<td>2</td>
<td>6,427,866</td>
</tr>
<tr>
<td>Exchange office</td>
<td>1,622</td>
<td>3,006,263,172</td>
</tr>
<tr>
<td>Real estate agents</td>
<td>601</td>
<td>1,010,855,638</td>
</tr>
<tr>
<td>Insurance</td>
<td>3</td>
<td>3,527,600</td>
</tr>
<tr>
<td>Post</td>
<td>1,330</td>
<td>2,717,357,462</td>
</tr>
<tr>
<td>UJP</td>
<td>5,393</td>
<td>11,366,460,669</td>
</tr>
<tr>
<td>Zop</td>
<td>9,531</td>
<td>17,911,664,517</td>
</tr>
<tr>
<td>Others</td>
<td>315</td>
<td>644,983,650</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>695,303</strong></td>
<td><strong>1,445,773,550,342</strong></td>
</tr>
</tbody>
</table>

*Zop, the old, socialist era, financial clearing house, reported only in 2002; UJP reported till 2004.*

*Source:* The Administration for the Prevention of Money Laundering

The number of institutions, firms and entrepreneurs who are obliged to report financial transactions which exceed €15,000 (or lower sums if the transaction is unusual) is
Therefore, the APML is not short of incoming unusual transaction reports. Indeed, the APML is the collection point of about 1,000 transactions reported daily and needless to say, it cannot possibly examine and re-examine all reports received to its full extent. Nevertheless, it processes all currency transaction reports and determines which of those should qualify as suspicious. Looking at the obliged institutions and other obligors we get the following frequency over the last four years.

In terms of money volume, the banks are the main reporting bodies, followed by the Zop and UJP. The exchange offices rank fourth, followed by the car dealers.

When we look at the processing of the reports about cash transactions, we get the following picture:

| Source: the Administration for the prevention of money laundering |

We do not want to present these outcomes as a trend: four years (of which the first can be considered a ‘warming-up’) are too short for a trend analysis. Let us just sum up that on average 0.2% of the reported cash transactions were eventually considered suspicious. This is a small proportion indeed. However, it should be noted that most European FIUs report also small proportions of unusual/suspicious transactions (Van Duyne, 2007).

Our question about the outflow (how many were reported to the police or prosecution) could not be answered. Though the APML stated during a presentation that it resolved 108 cases, it remained unclear what that means in terms of time (year), ‘outcome’ (suspicion of ‘laundering’ confirmed or rejected) or subsequent procedure (forwarding to the authorities or ‘archived’). The information about money-laundering cases of other law enforcement agencies is difficult to evaluate. The police reported ten cases related to illegal traffic, tax evasion, abuse of authority in the economy, kidnapping and fraud. The Novi Sad district prosecutor reporting 44 cases from 2002-2004,

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39 Missing is the important Privatization Agency, which is handling so much of financial interest, for the society and potential criminals alike.
IN SEARCH OF CRIME–MONEY MANAGEMENT IN SERBIA

but how they were reported or whether they were forwarded by the APML remains unclear. It is not possible to come to an evaluative conclusion about the functioning of the anti-money laundering instruments and organisation. There is an overwhelming inflow of reports, transformed into a trickle of suspicious transaction output and a mere shadow in the subsequent law enforcement bodies of police and prosecution.

Surveying the present state of affairs, a concluding comment like “the anti-laundering system works” is by no means supported by the scarce facts and figures of unknown or at least undeterminable reliability. Unless the variables of the input (business sector, nature of the reported persons, reasons for suspicion, the nature of the transactions and the like) can be mutually related in a breakdown analysis, these figures have very limited value, even if reliable.

Opacity prevails

It is difficult to deduce from the available data about crimes-for-profit a comprehensive picture which could be an approximation of the ‘real’ criminal profits and the laundering thereof. Granted, all countries face the problem of estimating the ‘hidden economy’ from uncertain parameters. As far as Serbia is concerned, this is aggravated by the circumstance of discrepancies in ‘state bookkeeping’. At the moment such bookkeeping lacks transparency. The Serbian phantom companies are matched by state phantom databases. Consequently we do not even come near any insight into the phenomenon of money-laundering. While the economic damage may be around €374,000,000 (or more), we do not know what part of it represents illegal income to be spent or saved (and laundered later). Is it the estimated €560,000,000 deficit of the household spending? Or the €250,000,000 illegally possessed assets according to the police reports? Granted, our fact finding covered some of the darker economic and law enforcement years, when the unfortunate rule of Milosivic came to an end and the rule of law acquired new opportunities, albeit gradually. There is hope because of new legislation to stem the tide of (economic) lawlessness. However, the actual situation is still characterised by opacity in most of the economic and law enforcement areas.

This is not a legislative but a human factor circumstance. This was underlined by the experience of the authors: while groping for facts and figure they hit on a more fundamental void: lack of curiosity. The questions they raised were very fundamental and basic and concerned ‘if A then B questions’. For example: ‘if households spend more than they earn and save, then there are unaccounted funds’. Or: ‘if more financial offences are detected, the suspicious transaction reporting should go up commensurate, followed by a higher input towards the PPO’. The authors met only a few individuals
in the public agencies or in the academic community who were intrigued by such questions.

Improving this human factor entails improving the general regime of information management, the one feeding the other. In addition, also a public and political interest must be developed, which again depends on the availability of underlying facts and figures. Granted, this state of affairs is not unique for Serbia. Many jurisdictions are hardly capable of producing more than just a few crude statistics, whether it concerns money-laundering or the related economic and organised crime (Van Duyne, 2007). Indeed, opacity prevails; but in Serbia it is accompanied in a landscape of uncertain law enforcement concerning financial and economic crime.
References


European Crime-Markets at Cross-Roads


Statistical Yearbook of Serbia, 2006


Walker, J., How big is global money laundering? Sydney, Australian Institute of Criminology, 2002
‘Criminal Money Management’ as a cutting EDGE between profit oriented crime and terrorism

Thomas Schulte and Martin Boberg

“We won’t give in, we’ll keep living in the past”.

Introduction and a short history of the scenario method

This chapter summarises the results of a project funded by the European Commission which examined possible future developments in the area of ‘Criminal Money Management’ (CMM). This interdisciplinary project was conducted by the Landeskriminalamt Nordrhein-Westfalen (LKA NRW) in collaboration with the Turkish National Police, Europol and Gent University with the ultimate aim of providing decision makers with a sound basis for developing strategic measures against illicit monetary transactions by generating future-scenarios.

The statement above, taken from a 1970s rock song, gives a good impression of the caveats law enforcement practitioners and scientists still face when they think about the future in the absence of any reliable predictions. Most people still believe in future planning based on statistics and time line analysis. This way of thinking can be compared to driving a car down the road by looking only in the rear-view mirror. This works only if it is a straight road without a bend ahead. Only then does one know from looking backward in what direction to steer. Likewise, predicting future events from looking at the past only works well if the future is a linear extension of the previous measurements. Our experience of life, however, tells us that future developments are not linear, and that therefore strategic planning solely based on data from the past can not be sufficient.

1 Th. Schulte und M. Boberg are members of the Organized Crime Intelligence Unit at the Landeskriminalamt Nordrhein-Westfalen (LKA NRW) in Germany.
2 Ian Anderson, Jethro Tull, Living in the past, 1970
3 For subsidiary details of the EDGE-project, who are beyond the scope of this contribution, please contact the project group: edge@polizei.nrw.de
The realisation that future is not an ‘unchangeable fate’ but can be shaped actively dates back to antiquity. This insight was transferred into a discipline called ‘Futurology’ after the Second World War. Herman Kahn turned one kind of future oriented strategic planning of the US Army into a scientific based methodology, the so-called scenario method, and defined scenarios as “hypothetical consequences of happenings which are constructed to focus on causal processes and decisive points”. This makes clear that the scenario method cannot and does not want to give clear future. Scenarios try to describe possible future trends and for this reason a range of possibilities. It is more of a pre-thinking than a forecasting of the future. It does not aim at a clear prognosis –future cannot be known– but provides the structured setting for intensive and disciplined brainstorming. It prompts participants by thinking aloud to sketch different possible futures and, by recognising those, provide a basis for concrete strategic future planning. In the end, it is a proactive strategic instrument, and by this means a method the EU has demanded for the enforcement of Organized Crime since 2001. The ‘future cone’ graphic may illustrate this:

In the field of law enforcement, at least since the end of the 20th Century, on EU-level the proposition was made to develop a threat assessment methodology that could shift the focus of the reports dealing with criminality from a description of current and partly historical situations, to a reporting of threats and risks related to future developments of the crime situation and its implication for law enforcement. A first, practical attempt in

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doing so was the implementation of a so-called Organized Crime Threat Assessment (OCTA) in 2005. OCTA. Although well-intended, it has been severely criticised by Van Duyne (2007). His main objections concern the lack of validity and reliability of the analysis. Indeed, this approach still appears to be in need of further methodological development.

In Germany the retrospective Organised Crime Report is supplemented by a report on an Organised Crime Threat Assessment (for Germany: ‘ELOK’), but neither the European OCTA nor the German ELOK are suitable methods for long-term strategic planning because their focus is on present events or those expected to occur in the near future. Consequently these reports can only be used for short-term strategic planning. In contrast, Scenarios have a scope of five to ten years and therefore provide a proper supplementary approach.

**Figure 2**

Modes of assessing organised crime

The Organized Crime Reporting system for the State of Nordrhein-Westfalen has been the first in Germany to incorporate the scenario method, in 2004, following a directive by the Federal Commission on Organised Crime. Methodologically assisted by the Daimler Society and Technology Research Team, three scenarios dealing with the future threat posed by organised crime were constructed regarding the development until the year 2009. Based on this, concrete strategic recommendations were given

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6 Europol was invited to disclose its methodology, but refused to submit the empty questionaire. After an action under the Dutch Freedom of Information Act the Dutch Minister of Justice complied with the request to disclose the OCTA methodology. See: P.C. van Duyne (2007) and forthcoming.
which in succession were implemented or are in the process of implementation. Against prior scepticism, the project demonstrated that the scenario method is an expedient instrument for strategic future planning in different fields of law enforcement.

Since then, various police authorities have tried and tested the scenario method on a number of different issues. One example of a very concrete, geographically confined problem is a study on bouncers in the Cologne red light district conducted by the police department in Cologne. This project produced highly convincing recommendations for action. The results of this project as well as numerous inquiries from different EU countries (for example Poland, Slovenia, Bosnia-Herzegovina), led the LKA NRW to consider the application of the scenario methodology on the European level. So in the autumn 2005 the LKA NRW created the project group ‘EDGE’.

Criminal Money Management

For the project EDGE, the topic of Money Laundering was chosen. Offences on the field of ‘Organised Crime’ (OC), or better, for not being caught in the long term problem of defining Organised Crime, ‘Profit Oriented Crime’ are mainly characterised by the high profit potential. Today, after 50 years of dealing with the topic of ‘OC’, it is less possible than ever to tell the actual size of the amounts of profits which are realised in this way. Inquiries into the further use of the capital acquired this way are even more difficult. Individuals with ‘dirty’ money at their disposal are keen on utilising the economic value represented by these funds as quickly as possible and without taking a risk of prosecution. Therefore in order to minimise the risk of prosecution which is inherent in the origin of the funds, it is necessary to ‘wash’ i.e. to launder the money. This handling of criminal money takes place against the background of a dramatically prospering development of the international finance channels – mainly resulting from the developing new communication technologies and a further diversification of the types of capital investment. It becomes clear that combating money laundering is not only an extremely complex and difficult task – in markets which are increasingly globalised it has to be a task of the international community rather than of local security agencies.

At the very latest it was after the attacks on the World Trade Center and the Pentagon on 9/11 when an intensive examination started on the shapes fundamentalist based terrorism can take and of its backgrounds. One of the central questions of the security agencies in this context concerns the financing of terrorist activities. On the one hand there is a controversial discussion about what financial means terrorism has at its dis-

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posal, and on the other hand, there are clear evidence gaps regarding the aggregate origins of these funds, except for individual cases.

The size of the financial means available to terrorists has led to the assumption that at least parts of these funds were acquired by criminal behaviour – possibly through OC. This assumption led to new assumptions on whether persons from the area of OC supply funds for financing terrorism or whether terrorists (also) finance themselves by means of OC. Except for a few singular cases, up to now there are only assumptions.

Still there is a factual link – and this survey is build upon it – between terrorism and OC: The methods of money transfer. Profits from OC need to be laundered, as explained above. Likewise, in the area of terrorism funds need to be moved in order to make them from their legal or illegal sources available for the immediate financing of an attack. This concept, i.e. the paramount importance of acts of international money laundering for the phenomenon of terrorism as well as for the international activities of OC sets the basis of the EDGE project work.

Findings on the ‘State of the Art’ of money transferring

The basis of every structured scenario process has to be an up-to-date, reliable compendium of the relevant factors related to the topic at hand. A closer look at the topic of money transfer reporting led to the conclusion that neither the existing money laundering reports nor the FATF Typology reports were sufficient for such an overview. The existing money laundering reports give valid statistical information regarding certain aspects, like asset forfeiture or suspicious transactions, but mostly leave out any specific findings drawn from existing cases. The FATF reports, on the other hand, show different ‘typologies’, but cannot underpin these with statistical data, and therefore do not give a representative, empirically based picture of the current situation.

To cover all aspects of criminal money management, a questionnaire survey containing nine questions among law enforcement agencies (police, customs, and financial police) was conducted using the EUROPOL Liaison Officer System. It was the first time that this system was used for strategic purposes. The questionnaire aimed at obtaining concrete information from actual criminal proceedings in the field of profit oriented crime and terrorism, supplemented by experts’ opinions regarding future developments, and policy recommendations.

The high response rate, as well as the high quality of the responses received from the EU member states, Turkey and Colombia, is indicative of the strong interest in this topic internationally. Overall, 88 completed questionnaires were received from police authorities in 18 countries, including a variety of special agencies. This provided the scenario process with a suitable basis for assessing the state of the art of money launder-
Quantitative Analysis

An initial quantitative analysis concerned the questions:
- What *modi operandi* of money transfers with a criminal background can be recognised at present? and,
- What *modi operandi* of this nature are to be expected in the future?

This resulted in an overview of the actual transfer methods considered to be relevant by the submitting authorities, as well as of the main focus of financial investigations in Europe. The projection concerning the present situation is presented in the following Figure:

**Figure 3**
** Present situation**

From the analysis of the questionnaires it became apparent that experts expect the relative weight and importance of today's transfer methods to change in the future as presented in Figure 4:
Future

Although the first impression is clearly that money transfers will move from the classical banking area into mobile or online systems, upon closer inspection a more differentiated picture emerges. It is important to stress that only illegal transfers that have come to the attention of the authorities are covered by these reports and that, accordingly, the survey does not reveal the complete spectrum of current illegal transfer methods. The described focal points in the field of bank transfers, cash couriers and money transmitters have in common that these methods can easily be detected by the current police strategies. For example, intensified border controls that were the consequence of the terrorist attacks in the past years increased the risk of detection and yielded more frequent incidents of cash transports.

Banking institutes and financial service providers are subject to the strict regulations against money laundering and, due to the dense network of internal suspicion procedures, are intensively covered by the police reports on suspected money laundering.

The number of detected Alternative Remittance Systems (ARS), mostly ‘Hawalah’-transfers, makes clear that this is no longer a ‘phantom’ or ‘potential threat’ as has been stated in the past, but a well working system used for illicit transactions. From analysing the experts’ responses, it can be seen that the main focus of future illegal money transferring is believed to be the transfers using digital methods. Developments in the private sector regarding systems like paypal or mobile transfer systems confirm these assessments, underscoring the necessity of law enforcement and political initiatives
in this area. Alternative remittance systems are believed to be of great importance as well and, in the case of e-dinar or other systems, in many cases combined with the digital modes of transfer. Cash transfers (digital) and money remittance services will remain important while the classical banking sector is not regarded as the focal point of interest for illegal money transfers in the future.

**Qualitative Analysis**

Apart from the quantitative analysis, special attention was also paid to a variety of seven qualitative aspects.

**Figure 5**

**Important sectors of criminal money management**

<table>
<thead>
<tr>
<th>Relevant CMM-sectors</th>
</tr>
</thead>
<tbody>
<tr>
<td>bank transfers</td>
</tr>
<tr>
<td>cash couriers</td>
</tr>
<tr>
<td>financial transfer via transportation of goods</td>
</tr>
<tr>
<td>alternative Remittance Systems (ARS)</td>
</tr>
<tr>
<td>new (digital) transfer systems</td>
</tr>
<tr>
<td>money transmitters ( Western Union, MoneyGram)</td>
</tr>
<tr>
<td>CMM-specialists (“gatekeepers”)</td>
</tr>
</tbody>
</table>

In this chapter two sectors shall be reviewed.

1. **New (digital) Transfer Systems**

New transfer systems such as paypal report significant increases in the number of customers and turnovers. Despite the fact that these systems are indirectly or directly ‘docked’ onto existing bank accounts, at present a monitoring of these online accounts does not take place. Only a small amount of illegal money transfers using digital accounts could be detected. However, it is quite likely that already today the actual levels of abuse are much higher and that the importance of these systems will grow substantially in the future.
Systems like paypal or the e-dinar system which show similarities with the Hawallah-Banking only show the state of the art of current transfer methods. Further developments towards mobile systems (mobile paypal) or anonymous credit cards that can also be used for transferring money (e-passport or xbox card) are indicative of the emerging trend towards accelerated, anonymous and mobile modes of money transfers. Given the absence of monitoring systems this sector has to be regarded as the most vulnerable transfer sector with regard to illicit transactions, urgently requiring appropriate measures.

2. Financial transfers with the Aid of so-called ‘Gatekeepers’
A number of responding agencies see themselves faced with the problem of specialists or so-called ‘gatekeepers’. This is an issue of growing importance considering the complexity of the modi operandi in the area of criminal money transfers. Besides the aforementioned technical side of transfer methods, the ‘human factor’ is of great relevance. In times of unmitigated globalisation, of deregulation of the financial centres, of international cash flows with worldwide transactions, there are new avenues opening up for criminal players to move their assets. However, sophisticated skills are required in order to actually exploit these opportunities. This is where so-called gatekeepers come into play; specialists who within the framework of criminal tasks and functions are only responsible for the transfer and laundering of incriminated funds. It is no longer the traditional bookkeeper who is part of a criminal hierarchy. Rather, criminal responsibilities are outsourced to independent businessmen, tax experts or lawyers who are hired as external experts. They have the necessary means, modified by certain features of the illegal market place, at their disposal, pretending, for example, to be involved in different areas of legal business, and operating with these new possibilities effectively as well as anonymously.

Expert Assessments
The information gleaned from the questionnaire survey on the state of the art of criminal money management was supplemented by statements from experts on particular issues, respectively. Experts who provided input at this stage of the scenario process included financial experts, experts in combating money laundering, high ranking police officers, bank managers, sociologists, judges and criminologists. For example attention was given to the difficulties regarding the analysis of the complex connections between international financial transactions and the financing of terrorism, the analysis of origination and destination countries regarding the transfer of incriminated money and also on the effects of the enforcement of terrorism financing since 9/11. As a result, a robust assessment of the state of the art of criminal money management could be made for the year 2007 as a basis for the future oriented scenario process.
The Scenario Process

On base of the findings of the ‘State of the Art’ description as well as with the inclusion of 20 international experts the scenario-process started by analysing the contextual factors dealing with CMM and, in a second step, by developing scenarios.

Analysis of the contextual factors

One of the main characteristics of ‘scenario writing’ is to consider factors which have some bearing on the central question (here: “How will criminal management develop over the next years?”) and which need to be considered in what is called a ‘cross-impact-analysis’. The issue at this level is not the development of criminal money management, but the development of contextual factors that in turn influence the development of criminal money management.

In view of the varied factors that may be of relevance, especially in the complex and dynamic contexts of organised crime and terrorism, such an ‘Outside-in’ approach may be time consuming, but it is indispensable for a holistic approach.

At the same time, the number of possible influential factors can neither be measured nor finally assessed. However, following the specific knowledge regarding the scenario methodology, any possible subject area can be covered by the definition of 20 to 25 factors of influence. In the EDGE project the prioritisation of the most important factors was subject to two criteria: How well do we know the probable development of each factor and how important is this factor for the topic of CMM (Uncertainty-Impact-Analysis).
Within the expert group, the following factors were regarded as most important to the future of criminal money management:

- Global migration
- Criminal underground markets
- Political perception regarding criminal money management
- Development of the world economy
- International movement of goods, services and values
- Development of extremism
- Flexibility of criminal actors
- Corruption development
- Development of criminal upper world markets
- Citizen’s loyalty
- Influence of media
- Social polarisation
- Development of international standards for combating CMM
- Digital development
- Misuse of new technologies
- National and international cooperation
- Management of natural disasters
- Development of education
- Conflicts of interests
- Non Governmental Organisations (NGO’s)

Following the findings on the influential factors their specific (probable) future development was elaborated, discussed and ultimately elaborated and projected in an expert workshop. As an example, the ‘flexibility of criminal actors’ was projected to be strongly rising in the next six years with a probability of 70% and a probability of moderately rising with a probability of 30%. The reason for this projection is especially the fact that OC structures have successfully managed a change from hierarchical structures towards transnational networks and the adoption of new technologies.

Following the elaboration of the influential factors by the project members between the first and second workshop, and the discussion of these factors in the second meeting, a cross impact analysis was conducted. Through this analysis, each factor’s trends (e.g. upward or downward) were put in relation with all other factors’ trends and the dimension of all possible interdependencies was elaborated in an intensive experts’ discussion. By these means it is possible to identify the dependencies between the influential factors and to include them in the development of possible future scenarios. Supported by special software, a matrix of probabilities was developed which serves as one basis for the scenario construction.
Matrix of single dependencies

Setting of Scenarios

With the usage of a special software tool, calculating all results from the cross-impact analysis, so called ‘raw scenarios’ are developed with consistent relations between the factors. From these scenarios, three to four are chosen which cover the spectrum of all scenarios being sufficiently different from each other to make a full development of the aforementioned ‘future cone’ possible. In addition to these scenarios, the future development of the concrete topic (here: criminal money management) is presented as well.

For a better understanding the final scenarios are presented through a scenario description, but also through pictures and short stories. In the project 43 different scenarios were calculated by the scenario software, but only three scenarios (‘The Rift’, ‘European Highway’ and ‘Pragmatism on the Rise’) were chosen since they fulfilled both the requirements for the coverage of most probable scenarios and a high bandwidth between the chosen scenarios in an ideal way. The selected scenarios were then each elaborated by the experts in one of three scenario groups. In order to illustrate the scenarios, a basic fictional story for every scenario was further developed into three different fictional scenario stories. These different story lines give a clear focus on the differences between the scenarios:

378
Scenario ‘Pragmatism on the Rise’

This scenario shows a de-globalized Europe and a return to national statehood. This leads to stagnating criminal markets, but in the same way stagnating law enforcement.

In spite of a long-lasting worldwide economic growth (4-6 %) there is a recognisable and increasing tendency towards ‘de-globalisation’: A trend towards national statehood and protectionism is documented by a stagnation in the development of international standards, while the interests of national states represent a permanent potential for conflicts. For Europe this means that an ‘EU fatigue’ becomes more and more apparent. Another result of this situation is the setting of import restrictions for the protection of domestic markets and interests. International flows of migration remain on today’s level, the flexibility of offenders as a result has not spread further. On the other hand there are good bilateral relationships among the security agencies as well as policies taking into account the phenomenon of criminal money management on the national level with legal guidelines (as well as the basic financial conditions). These ensure a high level of criminal prosecution in Europe. The underground crime market is shrinking, while the upperworld crime market remains static on the 2006 level. Corruption is also dealt with effectively.
The retreat from globalisation slows down the previously rapid development of
digital technologies. Due to this fact and due to the quality of (mostly national) law
enforcement, the misuse of digital technologies by criminals has not grown as fast as it
did before. This strengthens the role of traditional money transfer systems like Hawallah
banking.

A further consequence is the realisation that there seems to be no solution to the
problem of worldwide poverty and social polarisation: advances in the education sys-
tems of the rich countries are contrasted by a negative development especially in the
sub-Saharan countries. Poverty and lack of education in turn provide fertile grounds for
the growth of worldwide extremism. Since the self-centred welfare countries show less
and less responsibility for these global interdependencies there is a rising importance of
transnational NGOs.

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**Scenario ‘The Rift’**

The title, ‘Rift’, stands for different rifts which were recognised, especially on the one hand the
strongly ongoing polarisation of society and the broadening cleavage between rich and poor, but on
the other hand a growing rift between fast developing criminal offenders and only moderately devel-
op ing law enforcement.

The world will experience only moderate economic growth. The consequences of
globalisation, especially in the EU member states, are viewed in a negative light by the
EU population. This is reinforced by influential media reports, especially of the mostly commercial ‘free’ media. The crime rates in different areas have increased. The accelerated development in the technological, especially digital sector has led to a further spread of globalisation resulting in the creation of new transnational companies mainly residing in the EU and the US. The international movement of goods has increased, so have the number and volume of worldwide financial transactions.

The growing migration into the EU, and the ensuing strain on its social welfare systems lead to anxieties among large parts of the EU citizenry.

Political and social discontent, as a result of a growing polarization within the member states, has grown, although the educational level has improved as well. Trust in political institutions is weakening further, and as a result of diminished public confidence law-breaking is on the increase.

Highly professionalised criminal and extremist groups profit from growing poverty driven, *inter alia*, by natural disasters. Taking advantage of the further reduction of EU borders, new routes for the trafficking of illegal goods as well as human beings have been established. In addition to these underground activities, upper world crime markets have grown even stronger, with *modi operandi* and profits optimised through offender flexibility and the exploitation of new technological developments.

Although international cooperation in the field of law enforcement, especially with a better use of the institutions EUROPOL and EUROJUST, has significantly improved, the rising crime markets and their offenders must be regarded as being far ahead.

The negative effects of globalisation regarding the levels of criminal activity have logically led to a rise in illegal worldwide money transfers. Although international standards on criminal money management have been implemented into the different legal systems, especially alternative and anonymous transfers using digital technologies lead to substantial difficulties in successful financial investigations.
Scenario ‘European Highway’

This scenario describes a prospering Europe regarding economical and technological development and a growing identification of the citizens with the EU. This leads to significant improvements in the field of law enforcement, but also offers opportunities for criminal offenders.

The ‘European Highway’ scenario is characterised by continuous economic prosperity. For the majority of people in Europe the consequences of globalisation are perceived in a positive light, particularly because the security agencies are able to effectively address negative developments. Global migration movements, of citizens from the developing countries towards the industrialised countries, but likewise of skilled personnel in search of better career prospects, are on the increase. This creates an extremely flexible labour market. People are increasingly supplied by global players offering their products on a worldwide scale. This leads to further growth of the international exchange of goods.

Offenders also take more and more advantage of this. National borders hardly matter any more for criminals who operate more flexibly. Further developments of digital systems enable offenders to act almost independently of place and time by means of new, computer-based communication systems. This is bound to bring about an increasing misuse of these technologies. Fighting against this sort of crime is a challenging task for the well equipped law enforcement agencies.

Attention of the international community will remain on the suppression side of criminal money management. International standards will be harmonised, global strategies will be devised. However, the international accord is still hampered by national
interests and peculiarities. But all in all there is an increasing risk of detection for
offences in the area of the underground market, as well as in the field of corruption. Of-
fenders make increasingly use of the upperworld market (e.g. computer crime, product
piracy, falsification of goods) for achieving their profits. Criminal money management,
as a consequence, becomes more technical and less cash oriented.

A purposeful global policy of education, an improved management of natural disas-
ters (particularly in developing countries) as well as a readiness of religious communities
to communicate on all levels will prevent a further spread of extremist thinking and
promote citizens’ loyalty.

Apart from these broad future projections, for the purpose of also projecting the con-
crete outcomes regarding criminal money management, the sectors identified in the
first project phase dealing with the state of the art were put in perspective with the
specific scenarios to also project their possible development.

For the scenario ‘The Rift’ the following trends were envisioned:

Figure 8
The Rift and criminal money management

CMM 2012: “The Rift”

<table>
<thead>
<tr>
<th>Phenomenon</th>
<th>Trends</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bank transfers</td>
<td>Especially upper world market and corruption ‘play’ with banks and</td>
</tr>
<tr>
<td></td>
<td>will continue to use it.</td>
</tr>
<tr>
<td>Cash transfers</td>
<td>Moderate rise. More money is moved but more alternatives for</td>
</tr>
<tr>
<td></td>
<td>transferring.</td>
</tr>
<tr>
<td>Transferring of goods</td>
<td>Especially rise in Phantom Goods, real goods (diamonds, gold, cars)</td>
</tr>
<tr>
<td></td>
<td>rise due to migration (keeping of cultural habits).</td>
</tr>
<tr>
<td>Alternative Remittance Services (ARS)</td>
<td>Under law enforcement observation and more cooperation in this</td>
</tr>
<tr>
<td></td>
<td>field. But rising needs from underground markets.</td>
</tr>
<tr>
<td>New transfer methods</td>
<td>Digital world will have a strong demand for fast, cheap and</td>
</tr>
<tr>
<td></td>
<td>anonymous transferring. Intelligent offenders use digital means.</td>
</tr>
<tr>
<td>Money laundering specialists</td>
<td>Complexity and risk sharing needs specialists (OC = networks).</td>
</tr>
<tr>
<td>Money transmitters</td>
<td>Costly, alternative in the digital sector. Risks of detection have</td>
</tr>
<tr>
<td></td>
<td>increased. But ‘good tradition’ and fast.</td>
</tr>
</tbody>
</table>

Strategic recommendations

In the next step, the scenarios were analyzed using the SWOT (Strenghs, Weaknesses,
Opportunities, Threats) method (Vander Beken, 2004). Subsequently eight recom-
mendations were drawn up by the experts to meet the needs of decision makers regard-
ing strategic planning. Different areas were mentioned, examples are: an intensified control of risk areas such as the digital transfer market or the stock exchange market. Also mentioned were: the production of proactive strategic reports on CMM developments as well as the necessity to create a new scientific area conducting criminological research in the field of the organisation of profit oriented crime and related criminal money management.

Although discussions continue whether the scenarios should be left uncommented to give space for the decision makers to think for themselves, the experience within law enforcement shows that decision makers or political leaders regularly ask for more concrete solutions. Therefore this step was regarded as necessary.

Evaluation

In the final phase, the project, especially the methodology was evaluated by the Institute for International research on Criminal Policy (IRCP), Gent University, Belgium. Basis of this examination was a study of the project documents, a participating observation at a workshop and an interview with members of the project team.

The evaluation was summarized as follows:
“The EDGE project has taken a good choice to use the scenario technique to develop alternative designs of future crime developments in criminal money management to support strategic decision making processes. As they include discussions about relevant though ‘uncertain’ aspects of the future, scenarios can be considered as the next step to take within European (organised) assessments like OCTA, supplementing the rather static environmental scanning approach by a more dynamic intelligence process.

The application of the scenario technique within the EDGE project can be evaluated as interesting and successful. EDGE clearly shows the potential added value of a scenario process to planning processes regarding criminal money management by showing how working with influential though uncertain factors can contribute to a better insight into a phenomenon and possible approaches against it – using both empirical (detection and analysis of influential factors) and expert knowledge and combining these into a shared quantitative and qualitative view. Given its purpose and constraints within an EU project, the absolute strength of the EDGE project lies in the process of making scenarios, not in its concrete results or recommendations. Only when EDGE, or something like EDGE, would become a part of a larger intelligence cycle or plan, a more focused approach and monitoring will be possible. Let us hope this will be the case.”
Conclusion

Reviewing the two prime project objectives, namely the attempt to test the scenario method on a European scale as a strategic instrument for law enforcement authorities and the practical development of future robust recommendations in the field of ‘Criminal Money Management’, the outcome can be summarised:

_Criminal Money Management_

The project showed how complex the field of criminal money management is. Money transfers with an illegal background are conducted on a global scale. Out of new technologies, new and manifold opportunities for CMM develop. Existing transfer methods are optimised and new _modi operandi_ are created. Against this background, adequate attempts to fight these developments solely on a national scale will not prove to be successful. Only an international coordination of interdisciplinary cooperation of science, money transfer related businesses and the law enforcement sector can meet the challenges posed by criminal money management.

Although the banking sector has already implemented different research methods and although different concepts for the combating of CMM have been created, it becomes clear that especially the growing field of new, digital transfer systems has not received proper attention yet.

Operational and strategic actions require permanent evaluation regarding efficiency, and they need to be revised and adapted to new developments where necessary. In addition, continuous, interdisciplinary training for those confronted with criminal money management activities is important. New insights need to be disseminated on a European level in proactive strategic reports. An independent ‘Criminal Money Management Threat Assessment’ or a corresponding section in the OCTA would offer the best chances for a valuable reporting system.

The EDGE project has demonstrated how interdisciplinary and international cooperation can result in concrete recommendations and directives. With its result, a joint statement of relevant participants from the fields of science, bank economy and law enforcement and from different EU nations, Turkey and the US, EDGE is future-proof and practically oriented.

_Scenario method_

The application of the scenario method proved satisfactory. It could be established that this method is well suited for examining this specific crime area. But it would also be of good use in other relevant fields because the clear structure opens the chance for an intensive brainstorming and finally a deepened ‘pre-thinking’ of the future.
EUROPEAN CRIME-MARKETS AT CROSS-ROADS

The scenario method as a technique to examine the questions about future crime development proved its usability on a European context and additionally in one of the most difficult and complex crime areas. For this reason, it is recommended that this method should be regarded as a strategic supplement towards the Organised Crime Threat Assessment (OCTA) and be implemented into the European crime report landscape.

References


Duyne, P.C. van, Searching the organised crime knowledge grail: Disorganised EU threat methodology. Forthcoming
