

**NARRATIVES ON ORGANISED
CRIME IN EUROPE
CRIMINALS, CORRUPTERS & POLICY**

Petrus C. van Duyne
Miroslav Scheinost
Georgios A. Antonopoulos
Jackie Harvey
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 seventeen times:

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Introduction: crime narratives and their narrators

Petrus C. van Duyn

Narratives: more than just tales

What is obvious is often overlooked because it seems so simple and banal. One of the obvious things is that most of the time we live like villagers with a limited action radius and narrow knowledge horizon. That is not the glorified ‘global village’ but the ‘village of daily existence’ with a nine-to-five job and a household with one or more kids and an equally busy partner. To complement our limited knowledge horizon we rely on a variety of stories from a multitude of sources, which feeds the major part of our understanding of the world of which we experience so little directly. This multitude of stories can be experienced as confusing; we need to put them in order to get a coherent mental representation of all these things we hear about, but are beyond our ‘village of daily existence’: a leading narrative. The narrative can be political: at the time of writing there is a competition of the narrative of ‘leaving’ versus ‘staying’ in the European Union and by the time of publication we will know which one was the most appealing to the British. Indeed, narratives have the power of evoking a ‘mental match’ in the mind of a receptive audience, reinforced if presented by a source or persons of prestige. Narrating is the craft of the religious, political and financial gurus ranging from prophets, charismatic politicians to conmen such as Madoff or Stanford.¹

¹ Bernard Madoff was a respected and successful Wallstreet investment broker operating as a kind of pyramid-play or Ponzi scheme: using the investment of recent investors to pay the earlier ones. Robert Stanford was also a New York investor and asset manager operating on the same principle. The financial crisis in 2008 led to their exposure. Both are serving prison terms in excess of 100 years.

History abounds with such leading narratives, some of them surviving for many Centuries. By way of striking example, one of them is the narrative of the Viking threat in the ninth and tenth Century. The traditional, leading narrative was that of merciless brutes who plundered churches, besides killing monks and priests. That happened indeed. However, that narrative was composed by the only people who could write down their experience: the victimised priests themselves. The English priest Bede was one of the most important narrators of this history of the terrible Norsemen. His narrative was copied and re-copied by many fellow priests across Europe. This narrative remained in the traditional history books till archaeological research in the last Century revealed another narrative. The Norsemen from Scandinavia were what we call today ‘adventure capitalists’ and depending on the opportunities they paid or robbed – not much different from contemporary Christian warrior-traders. By robbing ‘immobile’ church silver and using it for trade, they contributed to currency circulation which furthered the European economy: silver coins could be found as far as Russia (Jones, 1973). Viking ‘crime-money’ in circulation did no harm! Moreover, in many parts of the North Sea region, Normandy and Sicily they also proved to be good rulers (Van der Tuuk, 2015). That is historically recognised by now, but has nevertheless not been adopted as an element of traditional or popular narrative of the fierce Norsemen as the ‘scourge of Christianity’.

Religion provides an inexhaustible source of competing narratives all claiming to be the True Narrative as a path to heaven. Some give strict commandments how to deal with fellow human beings with serious historical and political consequences. For example, the arrival of Columbus in America led to a real problem: the conquerors met unbaptized people who had never heard of Christ and the ‘Glad Tidings’. What should be done? In order for them to be converted a pressing question had to be answered: do these creatures have an eternal soul? That was an important question: according to the Christian Narrative a positive answer would imply the sacred duty of rescuing them from eternal hell and doom. Thereupon, the very Catholic Spanish kings sent a delegation of the Inquisition to the new land to investigate the matter. The delegation concluded that the natives did have a soul and that the King had the Christian duty to convert them (Parry, 1973). This differed from the colonising Portuguese who operated as traders: saving souls had no place in their commercial narrative (Boxter, 1973). For the indigenous people the dif-

ference was marginal: they succumbed by millions to deceases, violence and exploitation, with or without a converted soul.

If modern readers would think this too much as just ‘historical dust’, I remind them of the Promised Land narrative and a Century of modern Middle-East history since the Balfour declaration of 1917 (Rogan, 2016; 2010; Mansfield, 2003): a ‘holy’ narrative inspired and victimised millions of people keeping the world in its grasp till the present. Narratives of whatever age or conviction do matter, either as an originator of actions and their justification, or as a mindset to take things for granted.

Narratives must not be equated with legends or folkloristic stories. They can function as powerful collective mental schemata or frameworks for judging events with inherently connected political and legal values. A modern, highly disputed narrative is the mass murder of the Armenians during the First World War by the Turkish army and/or government (Rogan, 2016). This is a criminal narrative which can be named by one word, a word that changes its meaning fundamentally even if the factual components remain the same: ‘genocide’.² Mentioning the Armenian genocide narrative is forbidden in Turkey while the Armenians in Diaspora lobby for its universal recognition. Narratives can be powerful political schemes.

These selected examples strongly suggest that the concept of narrative is to be taken seriously. Nevertheless, the question remains whether it is suitable for a scientific application in the human sciences, such as criminology or political science? Is it not another fuzzy concept with hazy delineations? That may be true and it has overlaps with the concept of ‘discourse’. But I am of the opinion that the concept of narrative puts more emphasis on a theme that provides the pivot around which concrete stories can unfold. It is a concept also used in psychology of language and cognition in which it more or less corresponds with what is called a ‘mental scheme’ for interpreting linguistic or sensory input (Hertel and Ellis, 1979). If you do not have the mental scheme of, for example, ‘vacuum cleaning’ the sentence “a strong humming sound came from the corridor” would be difficult to interpret (Thorndike and Hayes-Roth, 1979). Likewise it is difficult to interpret a sentence “the bagman was done because he used to skim” without a mental scheme of the outline of an organised

² Although some would argue that it is factual components rather than meanings that define genocide (see, for example, Stanton, 1996).

crime narrative. But in the last example one does not only use a scheme of meanings, but also a temporal sequence cast in a ‘story grammar’, together the narrative (Harley, 2001).

It should be remarked that the narrative as an approach has many ‘frills of imprecision’ concerning the themes and concepts it contains. When people think in and act from a narrative, the meaning of particular terms, including the narrative label, are no more specified as the user deems practical. Psychologically narratives can be fuzzy and even contradictory while business goes on. For example, organised crime and money laundering can be presented as schemata which order collections of narratives, such as the Mafia, Cosa Nostra, Russian organised crime etc. Von Lampe (2016, ch. 1 and 2) provides a proper review of the conceptualisation of OC which a cognitive psychologist would cast into a narrative approach.

The word ‘narrative’ has a dual meaning: it denotes an approach as well as the subject of observation which is the meaningful scheme in which (one or more) stories are perceived or brought together. In this way it is an approach with ‘frills’ on its borders: it is not an operationalised concept in the way it is usual in experimental settings – though that is not excluded.

In this Cross-border Crime Volume a number of important narratives are elaborated: corruption in ‘usual suspect’ countries in Eastern Europe, ‘organised crime’ slipping into the new cyber crime narrative; economic crime within which each conman is a deceptive narrative producer himself and finally ‘moral panic’, a kind of heated-up narrative of which one may ask: what is genuine and what is narrative manipulation?

Corruption

The narrative of corruption, which goes beyond (mainly lower level) direct bribery, is like a quiver with ‘accusing arrows’ that can point at a multitude of culprits in a single case: each pointing their arrows to others, equally or even more guilty and having his own narrative within the overarching narrative. This is how it goes in higher-level cases of corruption: pots calling kettles black. The resulting chain of narratives can unfold rapidly and broadly, growing into a scandal: a kind of on-going story or a chain-process of revelations. In countries in which corruption is endemic

or even institutionalised and which have a weak state structure, such a scandal may stir bottom-up social unrest, which impact on the relevant institution(s) or even the structure of the state. This happened in 2014 in Ukraine during the Majdan revolt (Jansen, 2014, ch. 11). What did that produce? Taking stock of the present situation we can say that in that country the timber frame of the public institutions proved to be too deeply eroded by corruption to bring about short term change. Rotten institutions can be resilient if the interests for the corrupt stakeholders are high enough.

Three chapters in this volume narrate about corruption in Eastern Europe, where corruption is in every respect endemic and where corruption as a narrative label loses its distinctiveness and shades into that of mal-governance. The three countries studied are Serbia, Romania and Ukraine.

For the state of corruption in Serbia *Marija Zumić* addresses the development of the first decade after the deposition of Milošević (2000). Did the corruption situation change for the good after his departure? Actually, the author's story points at two answers. In the 'reality on paper' much has been achieved: there is an Anti-Corruption Council, an Anti-Corruption Agency, and a multitude of laws and ratified conventions. To this it should be added that almost nothing happened without external pressure from the EU. The normal reactions of the Serbian elite are: foot dragging or, if action is unavoidable, creating Potemkin Villages (Van Duyne and Stocco, 2012). This 'institutional corruption resilience' was investigated from the angle of 'discourse' (or in my terms: narrative) and Institutionalism, together: Discursive Institutionalism. The question the researcher poses is: do corruption scandals in Serbia cause legal and institutional changes. The author's *pièce de résistance* is the scandal around the privatisation of the *Port of Belgrade* of which the state owned shares were sold to two controversial entrepreneurs for a too low price in 2005. It was a shady deal which did not directly cause a scandal. Actually, it 'simmered' for a while until in 2008 it became a real scandal, which was not the only one in which these entrepreneurs were involved. It was a protracted complicated scandal giving rise to three subordinate narratives or discourses: The Mainstream Discourse (of the present ruling elite) told the story that the previous government was to blame; the Sub-discourse, pointed at the confluence of politics and capital in which handsome deals were cooked, and the Counter Discourse came from the businessmen themselves, reject-

ing all allegations and blaming the government and Anti Corruption Commission which they even summoned to court.

The outcome of this contest of narratives or discourses was disappointing: for the theory of Discursive Institutionalism as well as for the Serbian people. The ruling elite in the formal institutions proved resilient against ideas and argumentations derived from this and other scandals. However, they were receptive to EU pressure. Even then one can observe foot dragging rather than acting from an inner conviction. One can say that the anti-corruption narrative did not penetrate into their own discourse.

In the second chapter *Radu Nicolae* recounts the story of corruption in the medical sector of Romania. It reads like a narrative of a house of mirrors, in which nothing is what it pretends to be. Naturally one thinks of the ubiquitous tradition of informal payments of patients to the general physician. But this is only the baseline of corruption involving mainly poor patients and low paid doctors and it is certainly not specific of Romania. Above this baseline the author elaborates a labyrinth of opportunities for corruption and fraud. This ranges from the doctor who conspires with the pharmacist next-door to make phony prescriptions, to “big pharma” to get its ineffective brand on the most advantageous compensation list.³ The experience with corruption starts with medical students who get their diplomas by bribing the professor after which they slide into a system where they are under a corruption pressure to hustle patients (some real, others on paper from a bought name list, some dead), medicines, and his own career towards an equally corrupt top. Actually, this is a technical enumeration of deceit and abuse and is not the real social and psychological – human – narrative. That is the broadly shared complicity through the whole social system of patronage and clientelism, from the successive Ministers of Health downwards. For example, from 2006–2014 each Minister ordered an audit of the Bucharest Oncology Institute, which revealed gross irregularities. So the manager was fired and replaced by his protégé, resuming the old practice. The next Minister also ordered an audit with the same result and installed a new protégé till the next Minister etc. It should be no surprise that new laws to curb corruption in the health sector were either technically ramshackle or failed in their im-

³ Again Romania is not unique in this if we compare it with the medical practices of “Big Pharma” in Western Europe and the US as recounted by the Danish expert Peter Gotzsche (2014).

plementation. In the literature it is called “*lack of political will*”, which sounds too passive and impersonal. I think the real narrative of corruption is better described as a social hierarchy or elite network taking care of mutually advantageous crooked decision making.

In the description of the corrupt health sector the author did not cast the criminal wheeling and dealing in the conceptual frame of organised crime though according to Götzsche (2014) it would have made a perfect organised crime story. In the next chapter on the gambling industry in Ukraine the researchers *Anna Markovska* and *Yuliya Zabyelina* make up for this omission by combining the narrative of corruption and organised crime. Not because of the nature of gambling which is not criminal *per se*, but because of the policy making by the Ukrainian government. What is the case? Gambling was a normal licit commercial sector until in 2009 a gambling hall burned down resulting in many victims. Although this tragedy had nothing to do with gambling itself but with violations of safety regulations, the government pronounced a ban on the whole industry. By this act all existing licenses (costing € 150.000), became null and void and without compensation even if bought shortly before this prohibition. The government simply pocketed the money: welcome in Absurdistan!

What followed was the predictable enfolding of an illegal market as the demand for gambling services remained: the population did not appreciate what was wrong with gambling and did not feel any pangs of conscience being served in an illegal setting. The illegal gambling service developed soon enough, though in a more fragmented shape: various kinds of ‘underground’ gambling dens came into being. That is according to expectation and as such of little interest, if it were not the case that in some absurd way above this underground gambling economy illegal ‘upperworld’ enterprises sprang up. These were publicly observable as chic facilities and thus known to the authorities. To which the authors add: protected on a higher level than just the local police only. One of such illegal ‘upperworld’ gambling facilities was registered in the company register under the ironic name: *International Organisation against Human Rights Violations*. It operated professionally, right in the centre of Odessa, protected by the police (for ± € 50.000 per month), while keeping the neighbourhood clean through its own security staff.⁴

⁴ All numbers are in normal European writing: the comma for the decimals and the dot for the thousands.

From a criminological point of view it is an absurdistic narrative. A clearly weak and corrupt government enacted a law that created a criminogenic environment in which not only a low-level underground market developed but also openly tolerated professional organisations.⁵

The many facets of the organised crime narrative

The chapter on corruption in Ukraine shows that one can smoothly transit to the organisation of crime as soon as one deals with the criminal economy. Does that mean that only another label is put on the same narrative or does the OC-label matter because another dimension is added? Though that may depend on the narrator, the chapter by *Ilona Karpanos* telling the story of almost a Century of organised crime and criminal economy in Russia shows that with a change of perspective the narrative itself changes. In contrast to most authors on organised crime in Russia, Karpanos' study of the interweaving of crime and state starts right at the Russian Revolution a Century ago. Despite the socialist dogma that crime did not exist in the Soviet utopia, corruption and criminal organisations have always been an element in the socialist and nowadays capitalist economy. Illegal ways to obtain scarce consumer goods, corrupt interactions between the socialist officialdom and the underground economy, the *thieves in the law*, all this was part and parcel of the history of the Soviet economy. When under Gorbachev with glasnost and perestroika the reigns slackened organised crime presence in the economic regulations became more visible. For the underworld and upperworld the windows of criminal opportunity opened, at first slowly and just ajar and then, in the 1990s, they were flung wide open. New enterprises mushroomed and so did the need for protection, either provided by criminals from sport schools or the moonlighting police. Criminals became licit entrepreneurs seconded by erstwhile higher officials who themselves became criminals. Some state that Russia is ruled in mafia style (Dawisch, 2014). Interestingly, from the beginning of Putin's presidency Russia did not return to

⁵ It is fair to mention that the drug policy in many European countries has resulted in similar absurdism: cannabis trade is prohibited, but the public outlets in the Netherlands through 'coffee-shops' is regulated, the difference being that no corruption is involved.

the chaos of the 1990s. On the contrary: with its principle of ‘vertical power’, the state is strongly organised and little of importance happens without a ‘green light’ from Moscow: deviation from the Kremlin is not tolerated and can be severely punished (Kasparov, 2015), if not in, then out of court. Corruption is still endemic and officially a ‘matter of concern’⁶, but otherwise deeply integrated in the power structure of the state.

How different can the narrative of organised crime be if we follow *Peter Sproat* in his analysis of organised crime in the UK. As a matter of fact we have here two sub-narratives: the official one and Sproat’s data story. The annual *official* narratives are composed by law enforcement, first Serious Organised Crime Agency and then its successor National Crime Agency and adopted by media as well as mainstream researchers. The dominant theme, as can be observed in the regular threats assessment is always seriousness: naturally the adoption of the word ‘threat’ always implies a serious narrative. How valid is this narrative? The author addresses this question by collecting public data across the years 2009–2015: the outcomes of law enforcement actions. Subsequently he let these data speak for themselves, presenting the components one by one. That results in an empirical narrative which is characterised by a steady mismatch between these public data and pretences and claims in the official narratives. For example, compare the 155 identified cases with 761 convicted defendants collected from open sources with the official story that “*around 38.000 individuals, [are] operating as part of around 6.000 criminal gangs*” (note the imprecise “around”). Both propositions are supposed to stem from the same underlying official databases, though their nature can be different in terms of reliability and validity. This points at a number of methodological *caveats* which may explain the gap between the aggregated conviction data and the threat narrative of the NCA, but the latter agency does not even touch on this subject. Is there a systematic exaggeration of the official organised crime threat? The author underlines this suspicion by pointing at the size of the identified criminal organisations. One third consists of *sole* perpetrators or partnerships (what is the organisation of one person?)

⁶ This was admitted by Russian officials to the assessors of the Financial Action Task Force during their assessment of the compliance to the anti-money laundering recommendations: “*the existence of corruption within law enforcement as acknowledged by Russian authorities, has a negative impact on the effectiveness of the system.*” FATF Second Mutual Evaluation Report. Anti-money Laundering and Combating Financing of Terrorism. Paris, 2008. P. 9

and almost half of five persons. Then there is the differentiation between domestic as well as 'transnational' crime which should be interpreted in neutral way: after all, most smuggling implies a foreign participation as part of the criminal trading pattern, not much different from cross-border licit traffic. Does a foreign threat emerge from the data? Don't worry: 73% of the identified organised criminal groups are British grown, and 175 of mixed national origin, leaving only 10% solely consisting of foreign nationals, while altogether the level of violence was low, UK or not. Surveying this data stock taking, it is an interesting method of enabling the reader to make his own narrative: not of the threat narrative but of a police-to-fact mismatch. Naturally this raises the question why the police narrative still remains dominant in the official discourse. Is there a kind of official resilience against data based narratives

A 'True Crime', real life story of a professional criminal family is provided by *Jackie Harvey* and *Rob Hornsby*. Of course, single crime-family biographies are not very frequent in criminology. Nevertheless, they are important for a more detailed account of the criminal whims of fate, human relationships and personal roles. The approach is more akin to (contemporary) history than to mainstream criminology: trying to understand conduct 'from within'. That is one side of the approach which does not necessarily result in a coherent criminological narrative. To achieve that coherence the authors subsumed the raw material, subsumed findings from personal sources around the crime-family (not of the core family itself) under the concept of (criminal) entrepreneurship. The central person in the narrative is *Jack*, who followed in the criminal footsteps of his father, but perfecting the crime-business by his talent for *criminal risk management*. This implied not only avoiding operational risks (from police as well as fellow criminals) but also by creating a *licit* businessman profile. This risk management led him to transit from the risky bank robbery jobs to real enterprising: recreational commodities (drugs) and investment in the legitimate night-life scene with related (muscled) protection. For all involved it was a 'strong-handed' management with no freedom to say 'no'. But still, like the erstwhile robber barons in the 19th Century US (Abadinsky, 1994: ch. 2), the narrative of the crime-family enterprise can close (for the time being) by mentioning their safe landing on the white sands of legitimacy.

This portrait of a crime family shows the important function of a narrative in ordering data which remain otherwise fragmented. But a narrative

can also be like a procrustean bed, forcing an ordering which do not fit to the facts. This is demonstrated by *Anita Lavorgna* in her chapter on cyber-crime and her questioning of the imposition of the cyber-OC narrative. Under the motto: “*language is a whole reality*” the author analyses how that narrative emerged and unfolded: from Interpol to Europol and so further. What is striking is that so many warning words have been spent with so little evidence: another data and official story gap. For example, the *Key Findings of the Europol OCTA Report 2014* mention how traditional OC groups are using the Internet for more sophisticated crime. That sounds serious, but is it true? The author finds no underlying systematic evidence and wonders what ‘key findings’ actually mean when so little is found. She was not the first to signal a void under ‘threat claims’: Schudelaro (2005) noticed a similar emptiness under the cyber-laundering threat. The answer is implied in the little sentence: “*language is a whole reality*”: socially as well as institutionally. Institutions make reality by incantations, cast it into a narrative and present this to a congregation of believers (Van Duyne, 2011). And so it goes with Europol: its *European Cybercrime Centre* (2013) needs an OC-threat in its justifying narrative. So it begins with the OC-cybercrime word. Paraphrasing the first verse of the Gospel according St John: “In the beginning was the word; and the word became an organisation”. Against this socio-linguistic background it does not matter whether the concept has become an empty signifier as long as it furthers institution building. Meanwhile it is far from certain whether mastery of IC technology makes OC really more extensive: the authors mention the ironic outcome that applying IC skills may save a lot of staff in the crime-enterprise, implying smaller organisations or none at all. So: “less OC with more IT”.

We have seen that irrespective of its content (or the lack of it) the organised crime phrase has a function of its own by serving the interests of its users. But what about the contents of the OC narrative? In her chapter on ideas of organised crime *Anna Sergi* goes deeper into this aspect by analysing how prosecutors in three different jurisdictions – Italy, the UK and the USA – give further content to the OC label. The author interviewed 24 prosecutors and analysed their “story-telling of criminal procedures”. Unsurprisingly, the author presents three “tales” more or less determined by the national criminal code environment: these are jurists narrating in terms of their profession. In the interviews they talked about professional criminals who can only be successful if displaying sufficient criminal risk management, and one of the most obvious tools in this re-

gard is language and secrecy. With that the interviewees do not mean a secret coding of messages, but also the many languages and dialects spoken in metropolis like London and New York. This is a very practical thing because of time: how long does it take before the investigators understand a rarely spoken language or dialect or find the competent interpreter? That points at another facet of the narrative: the *otherness* which is not the same for the three prosecution services. In the narrative of the UK and the US interviewees, OC is to a large extent an ‘alien’ thing of migrants and incomers. Naturally Italy cannot attribute its OC problem to ‘foreign import’.

What is the ‘moral’ of the prosecutors’ narratives in terms of security? While the author observes some common traits, she also notices that under the same OC label the content of each narrative is determined by *national* law, history and case input. The latter can pose a threat because of the seriousness of the specific crimes or the menace because of the kind of organisation involved. But the *security dimension* of transnational organised crime remained in the responses of the interviewees in the background. So to say: ‘kept in reserve’ as a kind of politically correct concept to be used when opportune.

The last observation is remarkable: from the first day that organised crime was put on the political agenda, the emphasis was on the threat to national security. This has always been a serious element in the political narrative of international policy makers, certainly when also the ‘transnational’ dimension was dragged into the equation (Van Duyne and Nelemans, 2012). Has the security dimension been reduced to an incantation, as is so often the case with policy phrases or does it escape our attention because security subjects are often also an institutional secrecy concern that cannot be fully disclosed in a narrative? As these subjects, OC and security, are in the remit of secret/intelligence services we have a knowledge problem: secret services are not very talkative: if they have any narrative, their most frequent word is ‘classified’. How to shed light on OC and security? In the relevant chapter *Klaus von Lampe* describes how he collected all what the German Federal Intelligence Service (*Bundesnachrichtendienst: BND*) allows to filter through their veil of secrecy. This proved to be sufficient to describe its role.

The German Intelligence Service has a strict legal mission: to advise the federal German government on matters of foreign policy and (military) security policy and it is not allowed to carry out any law enforce-

ment task. This has not changed, though after the fall of the Berlin Wall the BND's mandate was extended to criminal areas with the restriction of "foreign policy relevance". Criminal topics could only be covered within the task of intelligence gathering and analysis. These topics concern drug trafficking, currency counterfeiting, international money laundering and human smuggling; all of a "significant nature". Organised crime can be a significant feature of these criminalities when it has an international dimension. So OC slipped into the BND remit too. The BND decides whether and what information is passed to the police or prosecution service.

How did the BND fulfil its new role? It appears that the BND was not very eager in fulfilling this new task assignment. The strategic monitoring of cross-border communication is used primarily for investigating terrorism and the proliferation of weapons, and only to a limited extent for investigating drug trafficking and alien smuggling and organised crime: a concern but not prioritised. As the BND has the support of the main political parties to focus on organised crime, this lower priority reflects clearly the lower threat perception of the BND itself. This raises the question whether organised crime is genuinely (perceived as) a security threat. I refer to the previous chapter by Anna Sergi, who also found the security dimension of the law enforcement narrative rather at the background. It is interesting to compare these threat assessments of transnational organised crime with the ones conveyed by Europol and then wonder why the language of the latter is always so threatening. If "language is a whole reality" various agencies may well live in different worlds.

Cheating narratives, policy making and moral panic

Narratives have a purpose: they are intended to bring you into a world to be believed as real. Nevertheless, you don't need to believe it fully to be carried away by it. That is the good story and it is the craft of the narrator to foster the conveyed narrative in the believers' mind and maintain it in the intended shape. Some narrators are politicians, some are criminals. Criminals need this craft perhaps more than other people because it may be part of their on-going criminal risk management: always pretending

another story than the real one. There is a defence side (hiding what has happened) and an *attack* side: narratives as tools to seduce gullible victims. You can call it a smooth-talk robbery: instilling so much confidence with empty promises that victims hand over their money voluntarily: the confidence trickster or conman as psychological manipulator.

In the chapter on investment and long firm fraud, the authors *Petrus C. van Duyne* and *Alan Kabki* elaborate the conduct and skills of these criminal narrative artists, who lure victims into spending the last cent of their nest egg with the promise: “*trust me, I will make you rich*”. In his PhD research Kabki collected the criminal files of 15 investment and 15 bankruptcy fraudsters to obtain insight into their *modus operandi*, personality traits and motives. This resulted in a quite heterogeneous population of fraudsters: *the* fraudster does not exist; nor *the* fraud narrative as the tool to seduce victims. The idea that fraudsters victimise only by appealing to the greed of credulous investors by promising golden mountains is a cliché with a limited validity. Yes, to some greed appealing unrealistic returns (as high as 240%) were promised, but alongside very modest ones, even with the warning “*if you doubt, you must not participate*” (with the prompt result of participation). From the narrative approach the fraudsters had to heed the consistency of their story, which also forced them to victimise friends and relatives: hearing the golden opportunities to make money the latter asked to participate in the investment programme. The fraudster could not say ‘no’ lest they would expose themselves. To convince victims of the value of the investment narrative a personal approach (“trust me”) was the most common, inclusive ‘wine and cheese evenings’, though ‘distant recruiting’ by means of websites and (unwitting) call-centres were also used. The more charismatic fraudsters conveyed such convincing narratives that even after exposure and trial the victims continued to believe their story which would have come true “*if only the fiscal police had not interfered*”. In one case the prosecutor thought that the fraudster compulsively believed his own narratives and, therefore, suggested a psychological investigation to determine his mental responsibility (see also Scheinost, 2004; p. 151).

The narrative tool of the bankruptcy fraudsters was of a different nature and relied only partly on abuse of confidence. In essence they ‘helped’ desperately indebted businesses to get rid of their liabilities by buying their firm (often for a symbolic price). Subsequently they installed a straw man, sold the remaining assets, accumulated the firm’s debts by buying (without paying) and selling the goods and in due course, filed for

bankruptcy of the stripped firm. The firm became a phantom and the traders phantom capitalists (Levi, 2008). This is not a 'just trust me' story, but a 'we will help you story' with creditors as victims. These fraudsters were not 'loners' but had to execute their fraudulent schemes by using their criminal networks, which reflected more than once a highly organised character. Nevertheless, the indictments in these cases were not cast into the organised crime narrative which matters: change of narrative label would entail a more severe criminal charge.

Clearly, the criminal law labelling to shape the narrative of the indictment is not just theory: it matters in terms of police priorities, prosecution and sentences meted out. This is elaborated by *Miroslav Scheinost* describing how in the Czech Republic in economic crime cases the prosecutors only gradually took the 'organised crime' banner seriously and thereby changed their prosecution narrative. He does this by a detailed description of three fraud schemes which also reflect the transition in the perception of economic crime. The first case took place in the 1990s, the wild years of transition and privatisation, during which there were still many shortages, particularly in cheap houses. This was taken advantage of by six businessmen who misled over 1000 common citizens desperate to get an affordable dwelling and inflicting € 36 million in damage. The victims were presented glowing housing opportunities, a seemingly American coverage as guarantee, of course, permission to participate after paying an 'entrance fee'. Despite the well organised nature of this scam, it was not prosecuted as a criminal conspiracy even though it had all components of such an offence.

The prosecution of a second case took a decisive step to indict the culprits of a large bankruptcy fraud under the conspiracy clause, later renamed as 'organised crime'. Technically this bankruptcy fraud used methods similar to that described in the chapter by Van Duyne and Kabki: indebted firms were bought, stripped of all assets and 'guided' towards bankruptcy. However, this case was more serious as the central role in this narrative was played by a corrupt judge: he was the competent authority to declare the targeted firms bankrupt followed by the appointment of an equally corrupt receiver and a quick sale of the assets under market value. This case made the people aware of the one-sidedness of the organised crime narrative: organised crime did not 'penetrate' the public administration, but grew right within the ranks of respectable guardians of the rule of law.

The third case also described the development of a criminal organisation amidst licit entrepreneurs. The complicated scheme was operated by a group of socially and economically well-integrated Vietnamese. They formed a kind of informal and illegal ‘custom service’ importing and distributing goods from China, forging documents of origin or otherwise corrupting the Czech customs. In general they lowered the value of the cargo in case of import restrictions mentioned another country of origin. The manager of this cross-border criminal organisation saw to the well-organised flow of goods into the Czech Republic and further into the EU, encompassing also transport lines.

While the use of the narrative approach allows for presenting a subject with proper coherence, it is also liable to bias. Within the academic discourse it is assumed that there will be a kind of self-correcting mechanism which counteracts bias such that it is less impacting on public opinion and policy making. This is a reassuring assumption, but a wrong one as the research by *Kathryn Gudmunson* on de-criminalisation of drug possession shows. She looked at the way and frequency of reporting on drug de-criminalisation in two comparable countries with similar policies: Portugal and the Czech Republic. Though there was not a ‘contest’ for academic and media attention between the two countries, the analysis of references showed that Portugal was presented as *the* success story, while the drug policy of the Czech Republic was just as successful: for two decades earlier than Portugal it had followed a harm reduction policy from the 1990s onwards. This had a consequence that changes were more gradual. For example, a drop in the occurrence of HIV, was much less dramatic in the Czech Republic than in Portugal, where there was a sensational drop, more suitable for a ‘glowing narrative’. Hence, Portugal was elevated as the shining light for Europe, though also other countries such as the Netherlands, Spain and Italy, had already decriminalised possession of drugs for own use long before. I call this ‘narrative absorption’. This is not without consequences, for good and for bad as a narrative spiral is set into motion: media headlines, policy makers responding by agenda making, political priority shifts and funds allocation, more research, media picking up the outcomes which impact again on policy makers *etc.* On the debit side it leads to one-sidedness, neglect of other research or perspectives. The skewed attention can also be the base for over-emphasis and possibly moral panic to be discussed in the last chapter.

First we have to look at a 'Brussels narrative': EU-fraud. That is a complicated narrative, which must be multiplied by the total of the member states for all the variations on the same theme. *Brendan Quirke* has unravelled for us the story of the anti-EU fraud strategy in the small member state Malta. In terms of law enforcement priority EU-fraud has always been treated as a poor relation with more lip service than action. To tighten the reins, the EU not only installed a central coordination body, the OLAF, but required that all candidate states will put into place an anti-Fraud coordination structure: AFCOS. In that structure all relevant national agencies would have a place, while the national organisation hosting that structure would be the contact point for OLAF in Brussels. Naturally, such a structure is as good and effective as its constituent components and the actual conduct in terms of compliance. It appeared that the 'watchdog' OLAF was the first to break the rules of the game: it ignored the AFCOS organisation by addressing the Malta Customs directly. OLAF proved to be a 'repeat sinner' as earlier it acted likewise in other member states. It was also not of great help when the head of the lead organisation (Internal Audit and Investigations Department) proved to have a very self-serving interpretation of the principle of integrity and conflict of interest. Though she was considered technically very competent, her integrity reputation was too damaged and she had to resign. So, despite the fact that in Malta there are not many big fraud stories, the EU-fraud narrative started in a minor key.

The following chapter deals with the money laundering narrative which actually consists of a bundle of mutually related stories because of the diversity of narrators who all want to say their bit. Leaving aside the official narrative of the FATF, *Mihaela Sandulescu* in her research turned to the workers in various (Swiss) banks to make their narratives heard. They are the gatekeepers, eye to eye with customers opening accounts and making transactions. What are their narratives? From the interviews with 25 Relation Managers (RM) a many-sided story was told with tensions between sub-stories. In the old days the system was easy: the RM was the gatekeeper and made money by welcoming customers, heeding strict confidentiality and not asking too many questions which could disturb the trustful relation between both. Though the Swiss banking industry had an anti-laundering policy from as early as 1977, the real change came with the Federal anti-laundering law of 1998 which impacted on the psychology of the RM. In the first place he had to ask his customers a lot of ques-

tions while developing a sense of ‘reasonable suspicion’ instead of the usual trust. But he also got an additional gatekeeper, behind him or sometimes next to him: the compliance officer (CO). While the RM made money for the bank, the CO interfered with his profit making operations: has the due diligence task been executed correctly and is there not a risk of involvement in laundering or even terrorist financing? That interference was experienced as a workload increasing nuisance. However, being obliged to share the same working place, the RM learned that the vetting your customer also had advantages: avoiding risks and attuning better to customer’s opportunities. So, as time went by, the CO became more appreciated. Still, the nature of both jobs did not bring real love: the RM has to spend more time on ML compliance while the annual targets became more compelling. In other words: with increased compliance related workload he earned less money. In this way the money laundering narrative of the work floor continues to encompass two stories by two main narrators who have learned to share the same working place but between whom tension remain simmering: money making and money controlling never fully fuse.

Narratives are rarely neutral descriptions of the world around us: they are informative as well as emotional, especially in the field of crime. The emotional component is usual negative: condemnation of wrong conduct or warning against threats of public order and safety. But crime as threat has also a sale value: it arouses a thrill, a sensational curiosity and fear. Fear can swing to ‘moral panic’. For this change one needs a good narrative: a “*dramatisation of evil*” and a crystallisation point of fear around a disturbing *other* with an alleged capacity to threaten. In his chapter *Paul Larsson* raises the question whether the Norwegian bikers, Motor Cycle gangs, the Hells Angels, the Bandidos or their Norwegian support groups created a moral panic. An interesting question because all the ingredient for such a panic were present. In the first place, one can present the bikers as the *others*, given their rough appearance and lifestyle, or rather the way they succeed in presenting themselves to public and media. Their violent reputation seems as a guarantee for drama, if not threat, while their reputed involvement in drugs and other contraband traffic justify a moral rejection.

The police and policy makers, together with the media as their outlet, used all the ingredients to present the bikers as a kind of public enemy though it cannot be concluded that it was their intension to evoke moral panic. As a matter of fact they issued alarmist reports, but did not sustain

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it. First the bikers were connected to the drug traffic threat; then to organised crime, but each time public calm soon set in again. It was as if every time hot air was escaping out of the balloon of excitement. One can also conclude that with each 'media breaker' rolling in, the police achieved its objectives in terms of budget and powers and, therefore, allowed the wave to subside again. And after so many years of worrying stories about the bikers' threat the author wonders: what is at present the situation? None of the facts of the biker community has changed in the two decades of intense policing them while in the end the number of biker-like clubs has even increased. Did the threat increase accordingly? The police provide no indications. In its recent threat assessments and trends the police no longer mention the bikers on the list of main threats: just as one among others. And the bikers themselves? They may still enjoy the comradeship, the dress and the macho as well as presenting the image of the sturdy independent man on his bike, the motorised modern Viking.



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What does corruption mean in a transition country? The political scandal of *Port of Belgrade*

Marija Zumić¹

Introduction

Over the past fifteen years, the issue of corruption has been one of the most salient topics in media reporting in Serbia. Large number of corruption scandals triggered heated public debates concerning the concept of corruption. In parallel with this intensive media coverage of corruption, the number of anti-corruption agencies and laws has significantly increased compared to the previous period of the 1990s. This chapter focuses on these two tendencies and aims at analysing the potential impact of high-profile corruption scandals on institutional change. Moreover, the research focuses on the ways in which corruption is conceptualised in public discourse and aims at identifying ideas put forward by the actors in public debates concerning anti-corruption policies.

The chapter will discuss a high-profile corruption scandal which emerged in the local media during the mandate of the third post-Milošević government (2008- 2012). This scandal – related to the privatisation of the company *Port of Belgrade* – surfaced in the public discourse after a decade-long string of corruption scandals in Serbia which, for the most part, had not been investigated or prosecuted by the state authorities (Van Duyne and Stocco, 2012; Zumić 2014b; Tomić 2015).² Moreover, during this government there was an increasing tendency in public debates in Serbia to view corruption scandals as connected events related to the same actors who are primarily members of the political and financial elites.

¹ The author is a Research Fellow at the New Europe College, Bucharest.

² For the list of cases, please see:
<http://www.antikorupcija-savet.gov.rs/izvestaji/cid1028/index> [Accessed: 20 November 2015].

Therefore, it is necessary to take into account the cumulative effect of these developments when the nature, dynamics and impact of this particular scandal on the understanding of corruption as expressed in public discourse is analysed. The short temporal distance between the surfacing of the scandal and the fieldwork conducted for this research influenced this analysis in several ways, which will be discussed in more detail in the concluding part of the chapter.

It is important to mention that certain changes in the anti-corruption institutional setting influenced the debates about corruption compared to the previous periods of the post-Milošević era. Firstly, the State Anti-Corruption Agency was established in January 2010 and was often criticised in the media for not dealing with political scandals, but focusing rather on the measures for the prevention of corruption. Secondly, the visibility of another anti-corruption institution – the State Anti-Corruption Council, established in 2002 – has decreased in public debates since its President Verica Barać, a particularly outspoken figure, died in March 2012. Lastly, the more active involvement of the media in anti-corruption debates is noticeable, which takes two forms: that of investigative journalism vetting all sorts of abuse and that of criticism because of the alleged influence of political and financial elites on the media's editorial policies.

The research is based on qualitative analysis; the data was collected through semi-structured in-depth interviews, searches in the media concerning scandals, analysis of documents, such as Serbian anti-corruption legislation, international anti-corruption conventions, political party programmes and so forth. This material was analysed through the prism of Discursive Institutionalism (DI) which is one of the newest approaches within New Institutional theory. DI offers theoretical tools for an analysis of the conceptualisation of corruption as well as the impact of discourse on anti-corruption policies. The chapter argues that the two-fold understanding of discourse, within DI, as an idea and the process of communicating an idea, is suitable for analysing public debates about corruption scandals.

The chapter will first explain the political context in which the scandal of the privatisation of the company *Port of Belgrade* surfaced in public discourse in Serbia. Then, the scandal will be presented from three perspectives: (a) as a corrupt practice in a particular sector, (b) as a mediated event in anti-corruption debates; and (c) as a potential cause of change in the

national institutional setting. The subsequent discussion will analyse the scandal from the perspective of Discursive Institutionalism, which will be followed by conclusions.

The Political Context: general overview

The third government after the overthrow of Milošević was formed in July 2008 by two pro-European social-democratic coalitions, consisting of seventeen political parties.³ The mandate of the third government was significantly marked by the global economic crisis, which was one of the reasons behind a government reshuffle in March 2011. One of the main changes, the reduction of the government from twenty-four ministries to seventeen, was explained in the media as a way of reducing public expenditure and improving the efficiency of the government. In his inaugural speech, the Prime Minister Mirko Cvetković emphasised two priorities of the government: the European integration process and the fight against organised crime and corruption. Concerning the first priority of the government, the European integration process, Serbia made significant progress at that time. In 2008, a European Partnership for Serbia was adopted and, in 2010, the ratification of the Stabilisation and Association Agreement (SAA) started. In March 2012, Serbia was granted the status of candidate country. As for the second priority of the government, the fight against corruption, the legislative framework was significantly improved by the establishment of the Anti-Corruption Agency (2010) and the adoption of the *Law on Financing Political Activities* (2011).

However, the annual Progress Reports issued by the European Commission (EC) from 2008 to 2012 note that corruption, organised crime and money laundering continued to represent a challenge to the rule of law. In its Reports, the EC underlined that the improvement of the institutional anti-corruption framework did not yield practical results, as the number of final convictions in high-profile corruption cases remained low (EC, 2010: 11). According to the Reports, the sectors most vulnerable to

³ The Government was formed by a coalition, For European Serbia, led by the Democratic Party (DS) and by the coalition consisting of the Socialist Party of Serbia (SPS), the Party of United Pensioners of Serbia (PUPS) and United Serbia (US). The government was supported by national minority parties.

corruption included public procurement and privatisation procedures, as well as major budgetary expenditure. Another important remark, repeatedly mentioned in the EC Reports, concerned the lack of political will and commitment of the political elite to fight corruption. For instance, the EC Progress Report (EC, 2011) notes that the State Anti-Corruption Council's Reports concerning high-profile corruption cases had limited follow-up by the relevant state authorities (Van Duyne and Stocco, 2012).

The Public Debates

Public debates about corruption, at the time when the studied scandal emerged, were mainly focused on the links between the political parties in power and some members of the financial elite. According to the Anti-Corruption Council, for example, corruption was intrinsically linked to the process of exercising power, as national laws were designed and adopted in a way to benefit powerful economic actors, and to secure financial support for political parties and their activities. The President of Transparency Serbia, Vladimir Goati, stated that a successful fight against corruption was only possible under the pressure of the European Union's authorities. Even then, as Goati argued, "*there will be enormous resistance, especially if the victims are from the ruling political elite*" (Tanjug, 22-02-2010).

On the other hand, civil servants in the Ministry of Justice, who were interviewed for this research, suggested that it was not the lack of political will that slowed down the fight against corruption. Instead, as they argued, state institutions lacked the technical capacity and trained staff to successfully identify and dismantle complex international organised crime groups and drug trafficking rings which, according to this view, represented the source of corruption. According to the interviewees in the Ministry of Justice, organised crime and corruption in Serbia are, connected and mutually reinforcing, but the state has no capacity to coordinated the measures on both areas. Therefore, fighting political and administrative corruption, without addressing the problem of organised crime, would not yield results.

Lastly, members of the financial elite, for the first time since the year 2000, became actively involved in public debates about corruption (B92⁴ 21-11-2010; B92 22-11-2010; B92 30-03-2011). They critically com-

⁴ Media news: see annex.

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mented on the aforementioned views on corruption as those explanations implied that successful businessmen in Serbia could be identified as a threat to economic development. Instead, according to their view, businessmen had to deal with myths and prejudice in the media, created in order to justify the government's lack of competence and efficiency.

Public Opinion about Corruption

An opinion poll conducted by the United Nations Development Programme (UNDP) between 2009 and 2012 offers an insight into citizens' understanding of corruption.⁵ During the final year of Cvetković's government, approximately 90% of interviewed citizens believed that corruption was common practice in Serbia. Moreover, a majority of respondents considered that it was in the interest of large companies to have a corrupt government in order to protect their business interests. The survey further revealed that the institutions perceived by respondents as the most corrupt include political parties, health care, government and the judiciary. According to the respondents, bribes are most often offered to physicians, policemen and civil servants. However, the level of those who had directly experienced corruption, as measured in June 2012, was 14%. Lastly, the survey shows that over 70% of respondents gave a negative answer to the question: Is Serbia going in right direction? This social and political environment is reflected on public debates in the scandal analysed in the next section.

Discursive Institutionalism

Key concepts of the theory

Discursive Institutionalism (DI) is the newest theory within the New Institutionalism framework, developed by Vivien Schmidt, and based on an innovative understanding of institutions and ideas in a political context.⁶

⁵ UNDP and Media Gallup (2012) *Ispitivanje javnog mnjenja o korupciji u Srbiji, Percepcija korupcije na nivou domaćinstva*. Measuring was conducted once in 2009 and twice in each of the following years: 2010, 2011, 2012.

⁶ The New Institutionalism includes the following approaches to the analysis of institutions: Historical Institutionalism, Rational Choice Institutionalism, So-

Discourse, which is the main concept of this theoretical approach, is defined in a two-fold way (Schmidt 2002, 2006). On the one hand, there is *discourse as content*, which is “*the substantive content of ideas*”. On the other, there is *discourse as process*, which involves “*the interactive processes that serve to generate those ideas and communicate them to the public*” (Schmidt and Radaelli 2004: 197). In relation to the latter, the discourse as content, DI understands *ideas* both as interests related to rational decision-making, which is in line with the Rational Choice Institutional theory, and as values and appropriateness, as it appears in the Sociological Institutionalism. This suggests that DI is an inclusive framework open to a wide range of approaches to discourse, from those based on the positivist side of the New Institutionalism spectrum to those with culturalist theoretical assumptions (Schmidt 2008a, 2010b, Peters 2012, Zurnić 2014a). Moreover, DI differentiates two types of ideas which a discourse can contain. On the one hand, there are *cognitive ideas* which offer rational explanations of the problem in order to provide efficient solution, such specific instructions and suggestions for political action. On the other hand, *normative ideas* are focused on values and aimed at assessing appropriateness of policies and programmes.

Institutions are conceptualised within DI both as fixed and contingent at the same time, since they emerge and change through the process of communication of ideas. DI posits that institutions constrain the action of its members and, at the same time, its members create and change the institutions within which they work and communicate their ideas. In sum, institutions represent the environment in which political actors think, speak and act, but institutions are also contingent on the ideas, words and actions of their actors. Therefore, DI understands institutions not as some fixed formal structures, but as flexible structures open to debate (Peters 2012).

Institutional change, according to Discursive Institutionalism, may take place whenever the actors in debates articulate and communicate their ideas effectively. The success of institutional changes depends on the transformative potential of the individual’s discourse (in terms of its content and the way of communicating that content). Introducing a new idea in a

ciological, Normative, Empirical, International, Network Institutionalism, Actor-oriented Institutionalism, Constructivist, Feminist Institutionalism and Discursive Institutionalism (Peters 2012).

debate is not the only way of initiating: institutional change can be initiated discursively in different ways. For example, it can be achieved by introducing a new idea in a debate or by using the ideas that already exist in the debate and then combining them and transforming them into a decision (Peters, 2012). What is important, according to Peters, is that members of institutions who have diverse and opposing views achieve consensus on the issue in the debate. Finding a common ground between them increases the transformative power of their discourses and makes the change to the existing policy more likely (Schmidt 2010a, 2011a, Peters 2012, Lowndes 2013, Zurnić 2014a).

However, DI acknowledges the fact that ideas and the communication of ideas alone are not enough to trigger institutional change. As Peters (2012) suggests, public debates can be intensive and frequent, but they can remain just debates, without affecting the institution within which they took place. Therefore, the focus of Discursive Institutionalism is to explain why, when and how some discourses fail and others succeed.

Discursive Institutionalism: limitations of the theory

The limitations of DI include those characteristic of ideational theories in general. For example, the concept of institution in the Discursive Institutionalism framework cannot be clearly delineated from its environment since it is defined very loosely. Peters (2012) comments that, according to DI, anything can constitute an institution as any person can join it and there are no exogenous principles of hierarchy and organisations. Therefore, it is difficult to analyse ideas and institutions separately, since the ideas are inherent to individuals, and institutions are contingent for the communication of ideas by individuals.

However, Discursive Institutionalism has been increasingly used to analyse the interconnectedness between public debates and policy change. For example, Sheri Berman explored the ideas which led to different policy solutions in the interwar Europe (Berman, 1998, 2011). Moreover, Vivien Schmidt (2002) analysed several pairs of countries and the impact of discourse on welfare adjustment in those states. The body of literature includes the studies focused on the impact of discourse on political action through analysis of the speeches and debates of the political elites (Wincott, 2011; Rich, 2011; Dobbin, 1994; Art, 2006). These examples sug-

gest that DI framework is being increasingly used and, therefore, adapted for empirical research of the impact of ideas on political action. This chapter aims to contribute to this literature applying the DI framework on the topic of corruption scandals in a democratising state.

Discursive Institutionalism and corruption studies

This chapter focuses on a political scandal in Serbia and its impact on institutional change in the area of anti-corruption. The existing literature suggests that, thus far, corruption scandals have been analysed either as unintended consequences of political processes, or as a result of rational decisions of political actors (Markovits and Silverstein 1988, Neckel 2005, Rose-Ackerman 1999, Blach-Ørsten 2010). The latest literature understands political scandals as a form of communication and a part of political language (Entman 2012, Zurnić 2014b). In line with this latest discursive tendency in ‘scandalogy’, Discursive Institutionalism offers a suitable set of concepts for exploring political scandals from the perspective of ideas and communication.

The DI conceptualisation of an institution – as a flexible discursive structure, open to change, fixed and contingent at the same time – is suitable for the analysis of anti-corruption discourse in Serbia for two reasons. Firstly, the number of anti-corruption laws and institutions in Serbia significantly increased in the post-2000 era. This tendency cannot be explained as a result of the historical legacy or exclusively as the rational decisions of political actors. Discursive Institutionalism, thus, offers better insight into what is included in the concept of corruption in public debates and whether or to what extent these conceptualisations have impact on anti-corruption public policies and on formal institutional structures in this area.

Secondly, as mentioned earlier, the majority of high-profile political scandals in Serbia have not been investigated or prosecuted by the state institutions. This enables that stories about corruption remain open-ended and present in the media reporting over an extended period of time (Zurnić 2014b). Therefore, the DI concept of a discursive institution, i.e. an institution as *forum* in which the members of the political and business elites, academics and NGOs voice their opinion represents the most suitable theoretical tool for analysis of anti-corruption discourse in Serbia.

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Some of the aforementioned limitations of DI are bridged by complementing the framework with discourse theory as well as with the theoretical approaches to concept formation (Connolly, 1983, Philp, 1997, 2007, 2008). For example, Connolly's analysis of the conceptualisation of the terms interest, responsibility and power in political discourse has been of great importance for the theoretical analysis in this chapter.

Research goals and methodology

The research in this chapter develops in two directions. On the one hand, the analysis focuses on the ways corruption is conceptualised in public debates concerning the scandal of the privatisation of *Port of Belgrade*. On the other hand, the analysis searches for a possible causal relationship between this corruption scandal, as the independent variable, and institutional changes, as the dependant variable. Concerning the second goal, it is important to define the following two concepts: *influence of the scandal* and *institutional change*. Firstly, it is expected that the scandal under investigation has a *direct influence* on the national legal framework, which means that it would result from citizens' or MPs' initiative for legal change. Indirect and complex models of impact are not analysed (Beach and Petersen, 2013). Secondly, *institutional change* is expected to be: (a) a long-term measure (b) introduced at the state level and (c) a measure that sanctions the practice perceived in the debates as corruption. If no institutional change can be explained as a direct impact of the selected corruption scandals in the period between October 2000 and May 2012, an alternative explanation will be offered.

The causal link between the corruption scandals and anti-corruption institutions is explored through the process-tracing technique, i.e. tracing the impact of the ideas expressed in public debates on the national anti-corruption legal framework (Beach and Petersen, 2013). The process tracing in this research can be summarised as follows. Firstly, it is explored what practices are identified in public debates as corruption and what ideas are put forward as appropriate anti-corruption policy. Then, the main discourses were identified and associated with specific political actors. In Berman's words, "*ideas do not have any impact by themselves, as disembodied entities floating around in a polity*" (Berman, 1998: 21). According to DI, the position of power in formal institutions is not necessary for the actors in

order to bring change successfully. Instead, it is the strength of their arguments and the convincing communication of their ideas that empower the actors (Schmidt, 2011b; Peters, 2012).

In line with this, the identified discourses were assessed with respect to coherency and consistency of their ideas, and the strength of their cognitive and normative ideas. The discourses were also assessed regarding the appropriateness of their ideas in terms of national values, tradition and culture (Schmidt, 2008a; Metha, 2011) and in respect to whether the actors had reached consensus on relevant issues (Peters, 2012). Following the analysis of the ideas and their communication, the research focuses on the pieces of legislation in the area of anti-corruption which were adopted after the scandal had emerged. The research explores whether those legal innovations deal with the practices which were identified in the debates as corruption. If the legal changes reflected the ideas and suggestions put forward in the debates, there were reasons to believe that the discourse(s) contributed to this legal change. When the newly-established institutions could not be explained as a result of public discourse, an alternative explanation was identified.

The Scandal of the Privatisation of *Port of Belgrade*

Port of Belgrade is a company dealing with river transportation of passengers and cargo, situated at the confluence of the Danube and the Save rivers, near the city centre of Belgrade. The *Port* was first privatised in 1997, when a part of its shares was distributed to its workers and the rest remained in state ownership. In 2005, all state-owned shares and most of the private shares were bought by a Luxembourg-based company *Worldfin*.⁷ Three years later, the media reported that the majority owners of *Worldfin* are the Serbian businessmen Milan Beko and Miroslav Mišković. At the time when this information became public, the two businessmen were allegedly involved in several controversial privatisation processes.

The privatisation of *Port of Belgrade* had several controversial aspects. Suspicions were raised in the media that the tender procedure involved

⁷ For more information about *Worldfin*'s bid in this privatisation process, please see *Report on Concentration of Ownership in the Company Port of Belgrade*, issued by Anti-Corruption Council in February 2008.

certain irregularities. The media also reported that the political and financial elites had allegedly coordinated this privatisation process to protect their interests. This informal coordination, according to the media reports, took place during the second and the third post-Milošević governments. At first, these irregularities were not considered corruption in formal-legal terms, as the allegations of corruption reported in the media were mainly based on suspicions and doubts, rather than on concrete evidence. In 2012, however, the privatisation of *Port of Belgrade* was brought to the courts as one of the twenty-four cases of corruption in privatisation, which the European Parliament suggested to the Serbian government for investigation.⁸

In what follows, the controversial aspects of this privatisation will be outlined as they represent the background on which the anti-corruption debates developed. These controversies concern the *tender procedure* and the *urban-planning policy*. It is important to note that information about the case was acquired from several sources, such as media coverage of the case, television debates and interviews conducted for this research. Sources of hard evidence, such as judicial archives, were not available as the investigation concerning this case is still on-going. Moreover, the privatisation of *Port of Belgrade* is still considered to be a highly-sensitive issue in Serbia as high-ranking politicians and influential businessmen are involved in the trial.

Controversies Concerning the Tender Procedure

The main concern regarding the tender procedure was that the Port's shares were allegedly sold to *Worldfin* at a significantly lower price than the one that would have potentially been achieved if a different model of privatisation was applied, e.g. a public auction.⁹ In 2010, the worker-

⁸ European Parliament Resolution of 29 March 2012 on the European Integration Process of Serbia (2011/2886(RSP): 19.

⁹ In 2005, the State Economic Institute was tasked with assessing the book value of the company. The results suggested that the capital of *Port* was worth over three times more than the price offered by *Worldfin* at the tender. The worker-shareholders of the *Port of Belgrade* were informed about the assessed value of their company, as well as other relevant institutions, including the Ministry of Economy, the Agency for Privatisation and the Securities Commission. Both groups of owners, the worker-shareholders and the state, decided to sell their shares to *Worldfin*.

shareholders of *Port of Belgrade* filed a complaint arguing that the State Agency for Privatisation and the bidder *Worldfin*, in coordination, concealed relevant information in order to influence the worker-shareholders' decision. In December 2012, the court made a decision against the worker-shareholders. According to the court, the shareholders decided to sell their shares by their own free will. Regarding the price of the shares, the court found the complaint groundless and stated that, “*it is the market forces which determine the price of shares, not the plaintiff, the respondent or the Institute of Economy*” (*Tanjug*, 25-12-2012).

The other controversy concerning the tender procedure was related to the origin of the capital invested in this privatisation process. *Worldfin*, the new owner of *Port of Belgrade*, was a newly-established off-shore company based in Luxemburg. According to the Anti-Corruption Council's *Report on Concentration of Ownership in the Company Port of Belgrade* (2008: 6), *Worldfin* had been registered shortly before the tender was published, as a company with no financial reports yet but only with its initial capital of € 31.000. Suspicions were raised in the media that *Worldfin* might have been a part of a larger money laundering scheme. This allegation has not been supported by any concrete evidence, but it did open important debates amongst the general public. For instance, discussions questioned to what extent the taxation system in Serbia was designed and implemented in order to protect the public good and whether Serbia had adequate legislation for curbing illegal financial operations and money laundering. Moreover, as the number of privatised companies was significantly higher than the number of companies which bought them, the problem of the concentration of capital and the monopolistic position of investors has been raised in public.

Controversies concerning urban planning

Another debateable aspect of this privatisation process is related to the fact that the Master Plan of Belgrade was changed shortly after the privatisation of the *Port of Belgrade* was finished. The amended Plan envisaged the removal of the port to another location and the conversion of its land from an industrial area to a commercial and residential area. The media speculated that the change was introduced by the previous, second, government (2004-2008) in order to meet the interests of the new owners of the *Port*

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of Belgrade, Milan Beko and Miroslav Mišković. The State Anti-Corruption Council, in its *Report on Concentration of Ownership in the Company Port of Belgrade* (2008), raised concerns that the new owner of the *Port* might make large profits from developing, constructing and managing the future residential area, instead of continuing its business in the transport industry.

The complex situation gave rise to opposing interpretations of the laws concerning urban-planning. The authorities of the third government, which took office after the Master Plan was changed, argued that *Port of Belgrade* could either move to another location and continue its business activity in transport, or pay a land conversion fee and develop the land into a commercial and residential area on the riverside. On the other hand, the company *Port of Belgrade* defended its alleged right to remain at the same location and change its business activity in line with the updated urban-planning policy. The Mayor of Belgrade, Dragan Djilas, considered various extra-judicial means to defend public interest in this controversial privatisation, including negotiations with *Port of Belgrade* about repurchasing the company from its current owner (B92 27-06-2011, B92 15-06-2011).

It is important to understand the privatisation of *Port of Belgrade* in the wider context of the construction industry. The *Law on Privatisation* (2001) did not regulate the right to use the land on which privatised companies were located. Therefore, in a large number of cases investors did not privatise public and state-owned companies in order to invest in them and improve their productivity. Instead, some investors would stop production in the privatised company and benefit from renting or using the land on which the company was located. Some anti-corruption experts argued (*Anti Corruption Council Report on Concentration of Ownership in the Company Port of Belgrade* 2008) that due to the shortcoming of the legal framework, the privatisation process served as a method for big companies to acquire public or state-owned land without paying the commercial price for it.¹⁰

¹⁰ Privatisation in the construction industry and the area of spatial planning were highly vulnerable to corruption. Members of organised crime used this unregulated area for their money laundering schemes. Moreover, civil servants were involved in several cases of embezzlement and abuses of office during the privatisation of the construction industry. For instance, the former mayor of the town of Zrenjanin, Goran Knežević, was arrested and charged, in 2008,

Lastly, the problems concerning the regulation of the construction industry included the pending Restitution Policy. Before Serbia becomes a member of the EU, the State must compensate the original owners of the land which was confiscated during the communist regime. The Law on Property Restitution and Compensation was adopted in 2011 and the authorities have been criticised for failing to coordinate restitution and the privatisation processes. For instance, the Anti-Corruption Council argues that the privatisation process is not implemented in such a way that the income generated from selling a company covers the costs of its restitution; instead the compensation incurred additional costs to the public budget.

Debates about the privatisation of *Port of Belgrade*

According to the media archive of *Politika*, the first media news report about the privatization of *Port of Belgrade* was published in 2005 when the privatisation process was conducted. The media coverage suggests that during the second post-Milošević government, from 2004 to 2008, the media did not refer to the case as a corruption scandal. Instead, the privatisation of *Port of Belgrade* was named as “a unique case that deserves special attention” or one of the “phenomena that indicates the sources of corruption in economy and politics” (AC Council Report on Concentration of Ownership in the Company *Port of Belgrade* 2008: 1). Moreover, the media reported that this event was “an opportunity for the state to prove its power by confronting private interests” (*Port*¹¹ 27-2-2008). In May 2008, during the electoral campaign of the general election, all candidates for the Mayor of Belgrade expressed their views on the privatization of *Port of Belgrade* (*Port* 08-04-08). The candidate of the Democratic Party, Dragan Djilas, who won the

together with ten other people, for organising a criminal group and for the embezzlement of € 3,5 million of local administration funds. This case, named in the media as the “Construction Mafia”, ended in November 2012, after the current government was formed. The Special Court for Organised Crime and Corruption acquitted Knežević of the charges. He was Minister of Agriculture in the next government.

¹¹ Media news: see annex.

local elections in Belgrade, stated that everything would be done in order to keep the riverside land the property of the City (*Insajder* 2011).¹²

When Djilas took over as the Mayor of Belgrade, the media reported on the change in his approach to the problem. This discursive shift is best illustrated by Djilas' statement that the interests of the city could be defended in various ways, including negotiations with the new owners or through partnership with them (*Port* 6-3-2009, 24-4-2009). The media interpreted that this sudden change in tone resulted from the informal influence of big capital on the new administration. Moreover, the media accused the city authorities of corruption as they, allegedly, abused voters' trust by abandoning promises which they made during the electoral campaign (*Port* 11-4-09, *Port* 6-3-09, *Port* 14-4-09). The change in the Mayor's discourse significantly influenced the representation of the privatisation of *Port of Belgrade* in the media, as the case was increasingly named as a high-profile corruption scandal. This discursive change is crucial for understanding my decision to include the scandal concerning the privatisation of *Port of Belgrade* in this chapter, based on developments during the third government (2008-2012), even though the privatisation actually took place during the previous, Koštunica government (2004-2008).

Three discourses about the privatisation of *Port of Belgrade*

Public debates concerning the privatisation of *Port of Belgrade* have changed over the past eight years. The dynamics of the debates and the number of actors involved continue to vary as the current, fourth, government has intensified the investigation of the case. On the basis of the media content analysis, explained in the section of this chapter dealing with research methodology, it is possible to identify three groups of actors with specific views on the *Port of Belgrade* scandal. The discourses are named in this research as the *Mainstream Discourse*, the *Sub-Discourse* and the *Counter-Discourse*. This section will offer a brief overview of the three positions in order to present the conceptualisations of corruption concerning the privatisation of *Port of Belgrade*.

The *Mainstream Discourse*, developed by politicians and officials at the local and state level, argued that the controversies concerning the privati-

¹² "We will defend every inch of the land at the riverside; we'll do everything we can to make the land city's ownership" (*Insajder* 2011).

sation of *Port of Belgrade* resulted from the wrongdoing of the previous government. According to this view, the previous coalition secured party-financing through informal connections with influential businessmen (*Insajder*, 2011). In return, large domestic businesses obtained privileges in the process of privatisation. This informal link between politics and the economy, according to the actors of the Mainstream Discourse, resulted in the monopolistic position of some domestic companies. This was not the first time that the issue of the political empowerment of the oligarchs as the origin of political corruption has been discussed in the public sphere. During the previous government (2004–2008), anti-corruption bodies and experts warned that the monopolisation of the economy might threaten political and economic reforms, but the politicians – both in the ruling government and in opposition – ignored this view. After the elections in 2008, however, this topic was turned into the core argument of the Mainstream Discourse. It is important to stress that the advocates of the Mainstream Discourse, i.e. mainly the incumbent political elite, identify as corruption only the informal practices of their predecessors, while the irregularities and controversies which took place during their mandate are not considered as corruption.

The *Sub-Discourse*, developed mainly by the Anti-Corruption Council, further forwarded the argument concerning the influence of the financial elite on politics. According to this view, the monopolistic position of some companies interferes with market forces, reduces the efficiency of the national economy and negatively affects the standards of living of Serbian citizens. From the Council's perspective, the privatisation of *Port of Belgrade* is defined in the following way:

“Ownership concentration which has been carried out in the Port of Belgrade is an example of monopoly creation under protection of political factor and with an active participation of ‘runaway’ capital” (AC Council's *Report on Concentration of Ownership in the Company Port of Belgrade* 2008: 2).

The Council's *Report* highlights similarities between the privatisation of the *Port of Belgrade* and several other controversial privatisation processes. For instance, the same mechanisms were used during the privatisation of *C Market* in order to secure a monopolistic position for large domestic retail businesses in the national market. Some parallels were also made with the informal money transfers to Cyprus (AC Council *Report on Con-*

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centration of Ownership in the Company Port of Belgrade 2008: 2; Zurnić 2013) as similar off-shore investment schemes could be observed in the privatisation of Port of Belgrade.

The Sub-Discourse and the Mainstream Discourse are not contradictory as both argued that corruption was generated by the informal connections between politics and business. However, the Sub-Discourse underlined that the third government (2008–2012), as much as the previous one, could not resist the influence of big capital. On the other hand, the media criticised the advocates of the Sub-Discourse for basing their statements on personal impressions, suspicions and doubts, rather than grounding their accusations on facts.

The *Counter-Discourse*, the third voice in the debate, was mainly represented by the businessman Milan Beko who privatised Port of Belgrade. At the open debate, *Waiting for Capitalism: the role of big capital in the democratization of Serbia*, held in June 2011 in Belgrade, Beko used this opportunity to express his views on corruption. He opposed the aforementioned interpretations of the origins and mechanisms of corruption and criticised three widespread beliefs about capitalism in Serbia (Žarković, 2011). The first myth, according to Beko, was that big businesses in Serbia benefit from keeping the country isolated from the global economy; a second myth, according to him, is that the big capitalists achieved a privileged position in the market through corruption; lastly, Beko opposed the argument that Serbian businessmen were inefficient managers and, therefore, the main culprits for the unsuccessful market reforms.

Contrary to the Mainstream Discourse, Beko argued that it was not the financial but the political elite in power who occupied and monopolised important national resources. He explains the origins of corruption in the following way: “*in a disordered society with scarce resources, politics becomes the most important financial resource and the political oligarchy monopolises this resource and manages it without scruples*” (Beta 15-06-2011). Moreover, Beko argued that the state authorities, allegedly, racketeered other economic actors who were interested in using the resources for their business activities. It is not clear what the term racketeering implies in this context, but Beko explicitly distinguishes it from corruption: “*Racketeering and corruption go in different directions, even though they involve more or less the same amount of money. [. . .] Racketeering works in top-down direction and that’s why it is a dangerous social phenomenon. Everyone is today forced to pay some charges to racketeers... all social groups are exposed to it*” (Beta 15-06-2011).

As an example of a resource usurped by the state, Beko singled out the privatization of the company *Port of Belgrade*. He argued that the legal dispute concerning the privatisation of *Port of Belgrade* remained unsolved for a long time because, as he argued, political will is on the opposite side of the law.¹³ He noted that the incumbent government benefited politically and financially from imposts and contributions charged for the use of public resources. According to this view, the newly-introduced laws on the regulation of the construction industry – stipulating taxes for the conversion of land from industrial to construction area, or charges for issuing construction permits – was a legalised form of state interventionism, which Milan Beko labels as racketeering.

Another important aspect of the Counter-Discourse is the tendency to delegitimize the efforts of other social actors in the fight against corruption and to identify their work as a specific form of corruption. Beko argued that the ruling coalition benefited politically from presenting the alleged economic interventionism as a successful anti-corruption policy. Moreover, by representing the economics of regulations as a way of curbing corruption, the state authorities, according to Beko, misrepresent the concepts of liberal economy and democracy, and create obstacles to national economic development. Furthermore, Beko criticised President Tadić's way of dealing with the growing financial power of domestic companies. According to Beko, the President's war on the oligarchs was an ill-articulated and unfeasible idea, as it is not in the President's mandate to implement such policies.¹⁴ Moreover, Beko accused the ruling coalition of abusing their position of power and authority in their communication with the business community. Such an attitude, according to Beko, generated a hostile social environment for business, and threatened personal safety of the businessmen and their families (B92 30-03-11).

¹³ "If the political will were on the side of the law, the privatisation of the *Port* would be solved in a couple of months. But, after five sentences in favour of the *Port*, which proves that the law is on our side, this privatisation is still controversial" (Beta 15-06-2011).

¹⁴ Beko expressed his doubts about the President's suggestion that the richest businessmen in the country should show their social responsibility. According to Beko's ironic comment, the Serbian President failed to specify what form of social responsibility he referred to: whether it was the American model in which businessmen, such as Bill Gates, give large sums of money to charity, or the Russian model of cooperation established between the President Vladimir Putin and Russian oligarchs, or the Venezuelan model based on the nationalisation of companies in the private sector (B92 22-11-2010).

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On the other hand, Beko accused the advocates of the Sub-Discourse, including the Anti-Corruption Council of corruption, as they allegedly benefited from making up scandals. From Beko's point of view, the Anti-Corruption Agency, which was established in 2010, threatened the mandate of the Council and the authority of its members (Port 29-2-08). Therefore, as Beko argued, the members of the Council created corruption discursively, in order to overcome the institutional crisis. Beko filed several complaints against the Council's President Verica Barać, arguing that her unfounded claims damaged the business image of his company and threatened his personal security. The Council's President Verica Barać sadly died in March 2012.

In sum, the *Mainstream Discourse* is promoted by members of incumbent political parties, who disagree that the scandal involved a breach of law during their rule. Their views on the scandal were mainly reported by the mainstream media. The other two discourses, the Sub-Discourse and the Counter-Discourse, have a common stance that the scandal involves corruption. However, these discourses disagree on what represents the act of corruption and what anti-corruption measure should be implemented in order to prevent reoccurrence of this practice. The second position, named the *Sub-Discourse*, was mainly formalised through the activities of the State Anti-Corruption Council and some media sources. The Sub-Discourse advocated the rule of law and compliance-based accountability of political leaders. The third position, the *Counter-Discourse*, represents the view of part of the financial elite and the discourse is formalised in public statements of and interviews with the new owners of *Port of Belgrade*. The Counter-Discourse tends to deny legitimacy of the official anti-corruption policies and advocates intensive liberalisation of the economy and elimination of any influence of state institutions in the economic sphere.

Institutional change concerning the privatisation of *Port of Belgrade*

There have been several institutional reactions to the scandal of the privatisation of *Port of Belgrade*. For example, the Anti-Corruption Council issued the *Report on Concentration of Ownership in the Company Port of Belgrade* in February 2008. According to the Council's members, the gov-

ernment never discussed their *Report* (Beta, 12-02-2011; Djaković, 2011). Another institutional reaction took place in 2009 when the City Assembly of Belgrade established a Fact-Finding Commission in connection with the operation of the competent authorities and organisations concerning the location of *Port of Belgrade*. According to the President of the Commission, Dejan Randjić, the mandate of the Commission was to clarify the controversies concerning the privatization of *Port of Belgrade* and, as he stated, “to bring this issue back, from the media to the institutional framework” (Port, 14-04-2009). The available media coverage offers no follow-up information concerning the Commission’s work or the results of their investigation.

Moreover, in June 2010, the Council filed a complaint against the businessman Milan Beko for organising a criminal group and incurring costs of € 20 million to the state budget during the privatisation of *Port of Belgrade*. According to the Council’s official complaint the members of that criminal group were accused of abuses of office during the privatization of *Port of Belgrade*. These include: the Minister of Economy in the second government, Predrag Bubalo, the President of Securities Commission Milko Štimac and fourteen people, mainly members of the *Port’s* Steering Committee and the Securities Commission. However, the court did not initiate an investigation concerning this case. Among non-institutional reactions are several complaints filed by the co-owner of the *Port* Milan Beko against the President of the Council, Verica Barać. She was accused of damaging the image of Beko’s company. The case remains unresolved as the trial was suspended following the death of Verica Barać.

As it was mentioned earlier, the privatisation of *Port of Belgrade* is among the twenty-four cases of corruption which the European Parliament (Resolution of March 2012) recommended to the Serbian Parliament for investigation. The current government, which assumed its mandate in July 2012, continued the investigation of this privatisation process. The co-owners of *Port of Belgrade*, Beko and Mišković are involved in several trials concerning their business activities. There are three on-going trials involving Milan Beko – concerning the privatisation of *Port of Belgrade*, *C Market* and *Novosti* – and an attempted murder of this businessman took place in November 2014. The other owner of *Port of Belgrade*, Miroslav Mišković, was arrested in December 2012 on suspicion of involvement in the illegal privatisation of ten road maintenance companies.

Institutional changes in the construction industry

The aforementioned case-related institutional reactions can be characterised as case-related and diverse, but they do not represent institutional changes with direct and long-term impact on the national legislative framework. However, certain legal changes at the state level took place following the *Port of Belgrade*. The third government (2008–2012) introduced significant changes to the legislation in the sector of spatial planning and construction. The new legislation was aimed at eliminating the existing incentives for criminal activity in these sectors and at eliminating informal cooperation between businesses and state institutions.

The new legislation included the *Law on Planning and Construction* (2009), which regulated the conversion of so-called *right to use* into the *right to own* construction land. The Law also established the Fund for Restitution, which was mandated to tackle the issues concerning compensation for land confiscated during communism. Critics argued that the Law enabled the permanent disposal of public property without legal basis. It has been argued that the Law would have long-term negative impact on the ownership structure of state-owned land, of the property of local governments, private property and in the area of restitution (*Tanjug*, 25-07-09). Moreover, the Law was criticised in the media for introducing a complex and time-consuming administrative procedure concerning the conversion of rights. Under the current coalition, in December 2012, the Law was amended as to postpone the implementation of the legal provision concerning the conversion of rights.

Another institutional change was made in June 2011 when the Parliament adopted the *Law on the Stimulation of the Construction Industry*. The Law stipulates that Ministries and local administrations identify and finance construction projects, and determine the lowest and the highest cost of construction works. The Law was expected to reduce unemployment and promote the construction industry, which has been severely affected by the economic crisis.

The Law was criticised in the media for its interventionist and protectionist character as only domestic companies are allowed to participate in certain construction projects. A group of non-governmental organisations, including Transparency Serbia, launched an initiative for establishing the

legality of this Law.¹⁵ The initiative argued that certain provisions of the Law are not in accordance with the Constitution, with the Law on Public Procurement, with the Central European Free Trade Agreement (CEFTA) and the Stabilisation and Association Agreement signed with the European Union. As the initiators stated, the Law was a “*direct incentive for corruption, created and supported by the state institutions at the highest level [. . .] Drafting and adopting such [a] law represents a legal-political scandal, an attack on the Constitution and on the most important systemic laws, which undermines the legal order and endangers international credibility of the country.*”¹⁶ In December 2012, the Parliament adopted amendments to the Law in order to extend its validity until 2014 (*Tanjug*, 17-12-12) despite harsh criticism in the media.

Serbia and the European Union accession process

It is important to stress that a source of influence on the Serbian legal and institutional framework is the process of Serbia’s accession to the European Union. Serbia has been actively involved in this process since the mid-2000s and has politically and legally committed to follow the suggestions and recommendations from EU authorities. As far as spatial planning and construction are concerned, the European Commission has pointed out on several occasions that these areas are one of the main sources of corruption in Serbia. The EC comments on this issue are outlined here as evidence of an alternative source of influence on the national legislation in the area of construction, spatial planning and restitution.

¹⁵ The Initiative for reviewing the constitutionality and legality of the Law was launched in July 2010 by the following non-governmental organisations and civic groups: the Centre for Democracy and Human Rights of the Toplice Region, the Centre for the Development of Non-Profit Centre in Belgrade, the Pigos Civic Library in the town of Pirot, the Centre for Human Rights and Democracy in the town of Uzice, the Majdanpek Resource Centre, the Belgrade Centre for Human Rights, and Transparency Serbia.
Source: www.nadzor.org.rs/pdf/inicijativa.pdf;
www.blic.rs/Vesti/Drustvo/197538/Inicijativa-za-ocenu-ustavnosti-Zakona-o-podsticanju-gradjevinske-The [Accessed 20 April 2015].

¹⁶ *Inicijativa za pokretanje postupka za ocenu ustavnosti i zakonitosti* (2010), Gradjanski nadzor javnih finansija available at:
http://www.nadzor.org.rs/inicijativa_za_ocenu_ustavnosti_07_07_2010__godine.htm [Accessed 20 April 2015].

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The EC Report for 2009 specifies the following: “*With regard to property rights, Serbia has adopted a new law regulating private ownership of urban construction land. However, the continued lack of a legal basis prevents proper launching of the restitution process. Privatisation of some of the properties in dispute has continued with the risk of de facto prejudging future decisions on the return of property. The restitution process faces greater uncertainty, as a result of the economic crisis and consequent limited budgetary resources.*” (EC 2009:17)

Similar comments on this topic were made in the Report for the year 2010 (EC 2010: 15, 32). The 2012 EC Report on Serbia addresses the same issue: “*The Law on Planning and Construction and its amendments have led to differences in interpretation and thus in implementation at municipal level, which increases uncertainties for investors.*”

The 2013 EC Report again comments on this sector in a critical tone: “[. . .] *market entry is still hampered by lengthy and costly procedures for granting various permits, notably construction permits. With amendments to the Law on Planning and Construction, adopted in late December, the requirement for converting use rights into ownership rights in order to receive a construction permit, for land obtained through privatisation, was abolished for one year. In May, the Constitutional Court suspended the execution of this provision until determining its constitutionality.*” (2013: 18) The EC Report for the following 2014 repeated the same comment (2014: 20).

The latest 2015 EC Report again identifies construction and spatial planning, among other sectors, as “*particularly vulnerable to corruption*” (2015: 13). But, it adds some positive comments on this topic too: “*Procedures for construction permits have been improved but further efforts are needed to ensure proper implementation.*” (2015: 27). This echoes the EC concerns from earlier that it is not the legislation but its implementation that slows down the process of institutional reform in Serbia. The conditionality policy is often used by EC to speed up the accession process and to ensure some concrete results.

However, there is a growing literature on the effectiveness of the conditionality policy in further EU enlargement into the Balkans. Some authors argue that this policy has obtained the form of fake, partial and imposed compliance in the case of Serbia (Noutcheva, 2009; Trauner and Kruse, 2009). Moreover, the latest literature on this topic suggests that the top-down policy transfer from EU level to a candidate state should be modified to allow domestic actors to take a more active part in democratic reforms (Elbasani, 2013; Stojanović, 2013). Bringing the domestic actors

back in and taking into account the political, social and historical context of the candidate country is necessary, according to Elbasani, in order to create appropriate incentives for reform.

Discussion

This research aims at contributing to the literature on corruption from the perspective of discourse, by looking at the role of scandals in the process of policy change. The research offers better insight into the origin of the anti-corruption policy in Serbia and the lack of bottom-up input of policy solutions. The research analyses the impact of anti-corruption debates on institutions and Discursive Institutionalism (DI) is identified as a suitable theoretical framework for the following reasons. The concept of an institution within DI, as both a process and structure, as flexible and contingent, offers better insight into anti-corruption debates in Serbia. Most of the high-profile corruption scandals are still awaiting a final court decision and the debates concerning these scandals have been open-ended over the past twelve years. This suggests that corruption scandals represent discursive institutions, as much as a process and as fixed structures, within which an understanding of corruption could be discussed and transformed into a policy solution.

The anti-corruption discourse during the third government (2008–2012) is characterised by a large number of corruption scandals which mainly had not been investigated or prosecuted by the state authorities. The actors in the public debates concerning privatisation tended to underline similarities between the different cases of corruption and they explain corruption as a well-coordinated network of businessmen and politicians which was inaccessible to the public. In the debates concerning the privatisation of *Port of Belgrade*, there are three groups of actors who promoted specific understandings of corruption – the Mainstream Discourse, which was advocated by civil servants and state officials of the third government; the Sub-Discourse, which was mainly formalised through the activities, statements and reports of members of the State Anti-Corruption Council; and the Counter-Discourse, advocated by members of the financial elite involved in the privatisation of *Port of Belgrade*.

Conceptualisations of corruption

The Mainstream Discourse identified corruption as the informal connections between the political and financial elites, which were established by their predecessors. Therefore, the fight against corruption, according to the Mainstream Discourse, should be based on policies aimed at limiting the informal influence of the financial elite on political decision-making. The critical moment for the Mainstream Discourse occurred when the mayor of Belgrade – who was initially determined to protect the state-owned land on which *Port of Belgrade* is based from corrupt privatisation deals – opted for some less conflictive solutions, such as to negotiate with the new owner of *Port of Belgrade*. This was the point when the story about this privatisation process was transformed into a corruption scandal in public debates. The less conflictive solutions enabled the city authorities to avoid conflicts with a member of financial elite who became a new owner of *Port of Belgrade*. However, at the same time, these solutions cost the city authorities significant political loss and public shaming due to the subsequent emergence of the corruption scandal.

According to the Sub-Discourse, which is advocated by the new owner of *Port of Belgrade*, the concept of corruption includes in the first place, the irregular tender procedure during the privatisation of *Port of Belgrade*, as well as the informal coordination of the city and state authorities concerning privatisation and urban-planning policies. Secondly, the Sub-Discourse argues that the source of corruption is the informal influence of the financial elite on politics. Thirdly, the Sub-Discourse emphasises that the tendency of politicians in Serbia not to fulfil their electoral promises that corruption scandals would be investigated, indicates that the anti-corruption discourse is used for political gain. The Sub-Discourse argues that the authorities selectively and strategically apply the concept of corruption, in order to avoid conflict with powerful members of the financial elite.

Lastly, the Counter-Discourse identifies corruption as the state's intervention in the economic sphere which is an obstacle to individual businessmen and to the overall efficiency and transformation to the market economy. The Counter-Discourse views the other two conceptualizations of corruption as inadequate to the economic and political reality in Serbia. According to this view, the advocates of the Mainstream Discourse abuse their power by implementing policies of state interventionism, such as

imposing taxes. However, the Mainstream-Discourse and the Counter-Discourse came to the point of agreement, which Discursive Institutionalism names as *discursive coalition*. That moment happened when the city authorities opted for a loose approach to the privatisation of *Port of Belgrade* in order to avoid conflicts with the new owner. Despite the DI assumption that discursive coalitions make the ideas stronger and improve their chances to turn into a policy, the institutional change did not happen in this case.

Different practices are identified as abuse of power due to the differences in understanding the notion of power which lies in the core of this concept. According to Connolly, the concept of power has two important aspects. Firstly, the exercise of power necessarily involves the limiting of the recipient's choices (Connolly, 1983: 96). Secondly, the actors who exercise power are held responsible for the outcomes of this act. The attribution of responsibility must not be arbitrary, but it has to be established on the basis of clear methodological principles (Connolly, 1983: 97). Therefore, when we identify responsibility for the exercise of power, we do not simply describe the role and position of an actor but, as Connolly points out, we are “more like **accusing** him of something, which is then to be denied or justified” (Connolly, 1983: 97, emphasis in the original).

The Mainstream Discourse accuses the previous government for limiting the further development of the free market in Serbia by establishing informal links with the financial elite. The Counter-Discourse accuses the actors of the Mainstream Discourse of limiting the possibilities for investment and economic development by the tax regime. The Sub-Discourse argues that the controversial privatisation of the *Port* limited citizens' right to be informed about relevant developments in the economy as well as their right to hold politicians responsible for the controversial privatisation of the *Port*.

Institutional change in anti-corruption

The research findings suggest that two types of institutional changes took place following the scandal on *Port of Belgrade* emerged. On the one hand, several institutional changes can be linked to the scandal about *Port of Belgrade*, as they reflect the ideas about corruption and anti-corruption which were put forward in the public debates. For example, following the stud-

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ied scandal, legislation was adopted in order to regulate ownership rights over privatised state-owned land. This issue is at the core of the public debates concerning the privatisation of the *Port of Belgrade*. However, the mandate of the third post-Milosevic government was characterised by huge number of corruption scandals in construction, and it is difficult to argue with certainty that the *Port of Belgrade* scandal, and not other scandals in the same area, influenced the institutional change.

On the other hand, there are changes in the anti-corruption institutional setting which cannot be linked to the ideas expressed in public debates about the scandal. Most of the AC institutional changes, actually, emerged in parallel and independently from the studied scandals. Therefore, their origin should be searched elsewhere. For example, the adoption of the *Law on the Prevention of Conflicts of Interest* (2004), the *Law on Financing Political Parties*, the *Law on the Anti-Corruption Agency* (2008) belong to this group. Externally-driven AC institutional changes, such as the aforementioned ones, became predominant after Serbia joined the Group of States against Corruption (GRECO) in 2003 and ratified the UNCAC (2005). In 2005, Serbia started negotiations with the European Union on a Stabilisation and Association Agreement. This significantly increased the number of externally-driven AC institutions, as the process of EU accession involves harmonisation of national legislation with the Community *Acquis*.

Externally-driven institutional change

Following the emergence of the *Port of Belgrade* scandal, one of the major institutional changes in anti-corruption was the establishment of the national Anti-Corruption Agency (ACA). The Law on the Anti-Corruption Agency (2008) was prepared in accordance with international standards, especially with UNCAC Article 6 and specific GRECO recommendations, which stipulated the creation of such a body. Moreover, the EU *Plan for Visa Liberalization*, that Serbia complied with, required establishment of an anti-corruption agency. “The EU Plan for visa liberalization with the Republic of Serbia (Road Map), Block 3: Public order and security, Preventing and fighting organized crime, terrorism and corruption: *Implement the legal regulations on the prevention and fight against corruption, including the creation of an independent anti-corruption agency*” [emphasis

added].¹⁷ The chapter shows that the external factors, such as the accession process to the EU and compliance with international anti-corruption conventions, had a stronger impact on institutional change than the studied scandal. Therefore, the hypothesis set at the beginning of the research was not confirmed.

Discursive Institutionalism – limitations of the theory

The research has demonstrated the theoretical applicability of Discursive Institutionalism in the analysis of corruption scandals in Serbia. The theory explains that the anti-corruption discourses in Serbia have not achieved a common denominator (Peters, 2012), which significantly decreased the power of their arguments to influence public policy. Moreover, the research shows that even in those cases when discourse coalitions were achieved (between the Mainstream Discourse and the Counter-Discourse), the discourses did not produce any long-term changes in the area of AC. This indicates that formal institutions in Serbia might not be as flexible and open to new ideas and discourses, as what Discursive Institutionalism defines as a ‘good institution’ (Peters, 2012). Moreover, the formal institutions in Serbia, as the research shows, were less open to bottom-up input and policy solutions suggested by domestic actors. Instead, the long-term changes at the state level were mainly externally-driven.

Another assumption of Discursive Institutionalism is that ideas empower the actors in debates in order to bring change to institutions (Schmidt, 2010c; Peters, 2012). This research suggests, however, that this assumption can be questioned from two perspectives. First, the ideas promoted by the actors who were *not* veto-players in designing and implementing anti-corruption policy within formal institutions, did not produce change. For example, the Sub-Discourse in this scandal promoted the idea that the informal intervention of politicians and state institutions in the process of privatisation – either through prioritising certain buyers, or by fixing the price of the privatised companies, or in any other way – should be legally sanctioned as a form of corruption. However, no anti-corruption measure including this idea was identified. This indicates that the positions within formal institutions where discourses are coordinated

¹⁷ Available at the web site of Ministry of Foreign Affairs of Serbia:
<http://www.mfa.gov.rs/en/foreign-policy/eu/republic-of-serbia-eu>

and communicated play a more significant role, in the case of Serbia, than that which Discursive Institutionalism can explain.

Second, the actors of the Mainstream Discourse were institutional veto players in the implementation and coordination of the privatisation of *Port of Belgrade* which they used efficiently to block the privatisation process. Moreover, the promoters of this discourse had access to the conventional media, which was one of the most effective ways of communicating arguments and views on the topic. However, when it comes to bringing about an institutional solution to this and similar problems in the construction industry in Serbia, the Mainstream Discourse proved to be ineffective even though a veto player in political decision-making.

These findings suggest that, contrary to the DI assumptions, the advocates of the Mainstream Discourse were key actors in the investigation of this corruption scandal and veto players in political decision making. No significant institutional change can be identified as the outcome of their participation in debates. Therefore, further research on the role of external actors and their response to high-profile corruption scandals might offer insightful information. For example, the Resolution of the European Parliament (2012),¹⁸ urging the Serbian government to investigate the twenty-four controversial cases of privatisation, triggered a more prompt reaction by the government than the decade-long public debates concerning these cases.

Conclusions

Since the political changes in Serbia, when Milošević's opposition won the elections in October 2000, the fight against corruption has been presented in the public discourse as a political priority. However, the debates concerning corruption scandals suggest the lack of consensus on what

¹⁸ “European Parliament Resolution of 29 March 2012 on the European Integration Process of Serbia (2011/2886(RSP): 19. This Report calls on the Serbian authorities to immediately review the controversial privatisation and sale of 24 companies, as the European Commission has expressed serious doubts concerning their legality, including those of ‘Sartid’, ‘Jugoremedija’, ‘Mobtel’, ‘C market’ and ATP Vojvodina.” EP Resolution is available at: www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2012-0114&language=EN&ring=B7-2012-0188 [Accessed 20 April 2013].

constitutes an act of corruption and what the appropriate anti-corruption policy would be. The focus of this chapter was twofold. Firstly, the chapter aimed to identify the practices in politics which have been identified as corruption in public discourse. Secondly, the chapter traced the origin of anti-corruption institutions by looking at the policy ideas put forward by various actors in public debates.

The chapter offered a brief overview of the context in which the scandal concerning the privatisation of *Port of Belgrade* emerged. The mandate of the third post-Milošević government (2008–2012), when the studied scandal developed, was marked by the economic crisis and instable government led by Democratic Party. The public debates concerning corruption reveal a high level of scepticism concerning the democratisation process in the country. The surveys from 2012 show increasing mistrust in the state institutions and political parties, while 14% of citizens actually had experience with corruption.

The large number of corruption scandals was understood in the media as resulting from connections between the same members of the political and financial elites. The sources of corruption were identified in different forms and at different levels of state institutions, from bribery between citizens and civil servants, to embezzlement or misallocation of funds at the managerial level, including the non-transparent policy-making at the highest levels of institutions, including ministries and the cabinet of the President. The concept of corruption is contestable to the extent that the actors in the anti-corruption debates accuse all other actors of different activities labelled as corruption. These activities include, for example, encouraging corrupt practices and reinforcing corrupt mechanisms discursively, or adopting inadequate legislation.

Regarding the impact of the scandal on the national legal and institutional setting, two major changes have been identified – *Law on Planning and Construction* (2009) and *Law on Property Restitution and Compensation* (2011). The process-tracing conducted on the selected material showed no direct long-term impact at state level on the outcome of the three interpretations of the privatization of the *Port of Belgrade*. It is important to mention, however, that a large number of corruption scandals which had surfaced in this sector might have contributed to this change as well.

Serbia has been committed to the process of EU accession since the early-2000s. As a candidate for EU membership, Serbia is obliged to follow the recommendations of the European Commission and to introduce

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changes to its legal changes in order to make progress in political and economic aspects. The chapter outlines the EC comments and recommendations which were made following the studied scandal and are related to the construction sector in Serbia (Progress Reports for Serbia 2009-2015). This overview suggests that the external pressure on the incumbent political elite in Serbia to regulate the construction sector was very much present in the years following the scandal. It is likely that the two laws in the area of construction have been introduced as a part of the EU accession process, and not exclusively as a reaction to the public debates on accumulated corruption scandals in this area.

As the case-centred process-tracing approach, applied in this research, examines a case embedded in a specific historical context, the findings of the analysis cannot be generalised according to the experience in other cases. For this reason, the conclusions made in this research are case-specific and cannot explain cases in different contexts. It is important to mention that relevant sources of data were not available which, to a certain extent, limited the scope and depth of the analysis. The people who could be expected to be familiar with the developments of the two corruption scandals, such as lawyers, judges, high-ranking civil servants in ministries, were not willing to be interviewed.

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Anonymous source, Journalist, 20 October 2012

Healthcare corruption – patterns and vulnerabilities – in Romania

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Introduction

Recent EU reports have highlighted that corruption in the healthcare system is pervasive in the eastern parts of the European Union, from Estonia to Greece.² The corruption patterns in the health sector did not change significantly in any of these countries after the accession to the E.U. Corruption types vary from informal payments (bribery) or public procurement fraud to conflicts of interests or trading in influence. The European Commission (2013: 9) has identified six types of corruption in healthcare: bribery in medical service delivery, procurement corruption, improper marketing relations, misuse of (high) level positions, undue reimbursement claims, and fraud and embezzlement of medicines and medical devices. The healthcare systems also vary across EU with respect to financing and organisation.³ Numerous policy proposals, anticorruption interventions and reform strategies have been developed in the last few years.⁴ However, general blueprints tend to fail as they are not designed around a specific problem and context. Moreover, in Eastern Europe, the political context is highly volatile and some reform measures, unless implemented timely or in coordination with other measures, tend to become

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² European Commission, Report from the Commission to the Council and the European Parliament EU Anti-Corruption report - COM(2014) 38 final

³ European Commission – Directorate-General Home Affairs, Study on Corruption in the Healthcare Sector, p.26

⁴ Some of them (centralized procurement, code of conduct, anti-corruption hotline etc.) may be consulted in the UNDP publication: *Fighting corruption in the health sector. Methods, tools and good practices*, 2011

obsolete or ineffective in the light of new developments. Such an example in Romania is the co-payment reform, as I will develop later.

There are few academic studies on corruption in the Romanian healthcare sector. Moldovan and Van de Walle (2013) discuss citizens' attitudes on informal payments while other projects take a European perspective to analyse corruption in the healthcare sector⁵.

This chapter aims to map the corruption patterns and vulnerabilities in the Romanian healthcare system based on a desk review and media monitoring of the healthcare corruption cases uncovered by anticorruption agencies. In the period 2010–2015, anticorruption agencies uncovered numerous cases of corruption in the healthcare system. Many of them are still under different stages of court proceedings, only some of them having a final court decision. All these cases benefitted from an intensive media coverage for which reason I use media monitoring to identify and sort these cases. For each case I followed court proceedings to identify final court rulings, if available. As the aim of this chapter is to identify *modi operandi*, not to review the performance of the criminal justice system, the media monitoring instrument employed here delivers a fair picture of the corruption challenges in the system as documented by the anticorruption agencies. Generally, in about 90% of the cases, the corruption charges are confirmed in court.⁶ The list of cases identified and the method used are detailed in Annex 1. The media monitoring is supplemented by the analysis of relevant literature and recent public policy reports on the healthcare system in Romania. Thus, the data collected through media monitoring are put in the institutional context in order to answer several research questions: What are the patterns of corrupt interaction in healthcare? Who are the actors involved? What vulnerabilities are exploited?

I begin with a general overview of the healthcare system to address the institutional context. Then, based on the sample of cases, I define three layers of analysis and focus on corruption patterns in each layer. I conclude with a discussion of key vulnerabilities and directions for anticorruption policy making in the healthcare sector.

⁵ Anticorruption policies revisited Global Trends and European Responses to the Challenge of Corruption:
<http://anticorrp.eu/project/overview/>

⁶ The rate of acquittal in cases uncovered by the National Anticorruption Directorate (DNA) is 10–15%. Source: 2014 DNA annual report.

This type of analysis has limits as in all likelihood not all the cases uncovered by law enforcement agencies have been identified and included. The analysis is based on charges brought by law enforcement agencies⁷ as reflected in the media⁸.

Overview of the Romanian healthcare system

According to the Romanian Constitution the right to health is guaranteed by the state.⁹ The law on the healthcare reform¹⁰ establishes the Ministry of Health (MoH) as the central authority of the public health system. The National Health Insurance House (NHIH) administers the health insurance system and the unique national fund of social health insurance¹¹. The insured citizens benefit from a Basic Benefit Package while emergency services are free to all citizens, irrespective of insurance status. The dynamic between MoH and NHIH is responsible for the advancement of reform, the balance of the healthcare market, as well as control of corruption and abuse. MoH has key powers in developing national health policies¹², inspections and control¹³ and administration of the national health programs.¹⁴ NHIH enters into contracts with healthcare providers and reimburses them for medical services.¹⁵

The total health expenditure in Romania has in the last 5 years been fluctuating between 5,3% and 5,9% as a share of GDP¹⁶. Similar fluctuation can be observed in the last 5 years in the indicator public-sector ex-

⁷ DNA, DIICOT (Directorate for Investigating Organized Crime and Terrorism) and General Prosecutors Office (included cases uncovered in cooperation with General Anticorruption Directorate within the Ministry of Internal Affairs).

⁸ 26 cases considered, out of which 5 have a final court decision.

⁹ Article 34 from Romanian Constitution

¹⁰ Law no. 95/2006 on healthcare reform

¹¹ Article 280, law no. 95/2006 on healthcare reform

¹² Article 10, paragraph 1 and 2, law no. 95/2006 on healthcare reform

¹³ Article 10, paragraph 3, law no. 95/2006 on healthcare reform

¹⁴ Article 9, law no. 95/2006 on healthcare reform

¹⁵ Article 281, law no. 95/2006 on healthcare reform. At local level, there are 42 CNAS offices responsible for contracting services from public and private providers.

¹⁶ World Health Organization (WHO) estimates for the period 2009–2013, Health for all database, WHO Regional Office for Europe

penditure on health as a percentage of total government expenditure: between 19,1% and 20,6%.¹⁷ The allocated health budget in 2015 was 22,9 billion lei (€5,1 billion).¹⁸ Half of this allocation is consumed by hospitals¹⁹ and the other half is split between medicines and administrative expenses.

Corruption in the health sector is particularly relevant in the discussion about access to healthcare services. Access to basic medical treatment is conditioned by the ability to pay informal taxes or gift-giving²⁰, the poorest being most disadvantaged.

Generally, poor people do not even seek healthcare services in systems prone to corruption because they perceive that they cannot afford them, irrespective of their insurance status.²¹ The World Bank estimated that 85% of the poor who need medical care in Romania are not getting it.²² In Romania, 11,1% of the citizens, mostly poor, considered they had an unsatisfied healthcare need because they could not afford to pay treatment or travel long distances, or because of long waiting lists or a lack of trust. The significant inequalities are between rural (mostly poor) and urban communities (mostly richer). In urban areas the health insurance rate is 20% higher than in rural ones: 94% insurance coverage in 2012 in urban areas against only 74% in rural areas. Besides corruption and the payment of informal taxes, other factors contribute to inequalities in healthcare access. The sole medical service providers in rural areas are family medical doctors. At the national level density of family medical doctors is 0,5/1000 inhabitants in rural areas, compared to the 0,73/1000 in urban residents.²³

¹⁷ WHO estimates 2009–2013, Health for all database, WHO Regional Office for Europe

¹⁸ This allocation is 18% of the total expenditures of the state budget. Source: annex 9 of the Law no. 186/2014 on State Budget for 2015. The National Bank of Romania medium lei/euro exchange rate for 2015: 4,4450 lei per 1 euro.

¹⁹ Government Decision no. 1028 /2014 regarding National Strategy on Health 2014–2020 and the Action Plan, p. 27

The story about the bribes and gift-giving culture in the Romanian healthcare system documented by The Guardian: “*Bribes for basic care in Romania*”: <http://www.theguardian.com/society/2008/mar/26/health-romania>

²¹ Vian et al. (2010, p. 6)

²² World Bank (2011, p. ix)

²³ Government Decision (HG) no. 1028 /2014 regarding National Strategy on Health 2014–2020 and the Action Plan, p.26 (data from 2011)

The poor or vulnerable patients, especially ethnic Roma, also have to face acts of segregation and discrimination.²⁴

A circumstance seriously affecting the healthcare system is the (lack of) employment and promotion opportunities, including low salaries, leading to an exodus of medical doctors.²⁵ They leave Romania in search of better payment and working conditions, unwilling to adapt to a system where informal payments and other forms of corruption form regular salary supplements. As these people will not come back to Romania, this practice drains the Romanian healthcare system of integrity biased individuals and of good professionals, restricting the possibility of building a critical mass within the system able to push for reforms. Thus, clientelistic networks maintain their ability to reproduce in the absence of competition.

In order to prevent corruption in healthcare, the Ministry of Health established an integrity department within the framework of the National Anticorruption Strategy 2012–2015. However, the department is poorly staffed (only 3 employees) compared with similar units in other Romanian ministries.²⁶ The main initiatives of the MoH's integrity department have been the monitoring of spending of public funds by the public health units and a feedback mechanism for patients, including establishing Ethical Councils in hospitals.

Patterns of corruption in the healthcare system

Based on media monitoring, I have grouped the cases into types and defined three layers of analysis:

- policy making;
- policy implementation by healthcare authorities (Ministry of Health, National Insurance House);
- strategies developed by healthcare professionals and the private sector.

²⁴ Euro Health Consumer Index 2014, p. 18

²⁵ Mass exodus: why corruption in Romanian's healthcare system is forcing its doctors to work abroad, *The Independent*, 02.01.2014, Elena Stancu

²⁶ Integrity department within Ministry of Regional Development has 15 employees. The issue is also mentioned in the Cooperation and Verification Mechanism technical report of 28.01.2015, p.37: "However, staffing constraints seem to limit the potential of these measures to effectively detect and prevent corruption", COM(2015) 35 final.

Each layer has its own corruption patterns. At each layer large resources are drained from the system and the layers are interdependent, meaning that any change in one layer triggers adaptive responses in the others. At the policy-making layer, corruption patterns resemble 'state capture' and involve misuse of (high) level positions and undue influence over the regulations. In the policy implementation part, corruption patterns involve procurement, licensing, control over the medical services contracting process. The last layer is the most visible in the media as it involves cases of fraud and informal payments: bribery. I will treat each layer separately, using law enforcement agencies' cases as reflected in the Romanian mass media or in different reports on Romania.

Corruption in health policy making

Government regulation of medicines creates multiple corruption opportunities as the decision chain is technical and complex. For instance, the list of medicines available for insured persons is drafted by the MoH and the NHIH and approved by Government decision.²⁷ Medicine producers are interested in having their products on the list as it ensures access to a market of €1,5 billion annually. Medicine prices are subsidised according to four reimbursements sub-lists: sub-list A includes mostly generics that are subsidised with 90% of the reference price; sub-list B includes medicines that are subsidised with 50% of the reference price; sub-list C comprises the medicines fully compensated; and sub-list D includes medicines that are subsidised with only 20% of the reference price.²⁸

Bribes are paid in order to introduce substances on the list, without scientific proof regarding their effects. For instance in 2008 Ginkgo Biloba was introduced on the sub-list B, being subsidized with 16,3 million Euro annually, although is not supported by clear evidence of any positive benefits.²⁹ An independent report from 2011 highlighted numerous subsidised medicines listed for indications outside the terms of their marketing approval as well as listed for indications or in settings in which they may not be cost effective.³⁰ Medicines are also introduced on the list without

²⁷ Article 242 from Law no. 95/2006

²⁸ Article 2 of the Government Decision (HG) no. 720/2008

²⁹ Nice International, 2012, p. 20.

³⁰ Nice International, p.14

cost-effective and budget impact assessment.³¹ Nevertheless, the recommendations for delisting were implemented (partially) only in 2015 when Ginkgo Biloba and other 16 medicines were delisted from sub-lists A, B and C.³²

The pressure on the policy making is very high, having as consequences regular policy shifts as demonstrated by the law on health care reform being changed 87 times from 2006 until 2015.

Decisions on privatisations are most vulnerable to corruption. Distortion appears also in decisions on allocating funds, large projects being more vulnerable to large kickbacks.

Corruption in the health policies implementation

Policy implementation is another layer for corruption as the officials enjoy discretionary powers in applying the procedures, exercising control or issuing licences. Although not officially investigated as a corruption case, the example of the law on the price of medicines demonstrates how regulations can be avoided.³³ According to the law³⁴, the price of a medicine X in Romania is set at the lowest price of the same medicine in one of the 12 EU countries to which Romania relates (Czech Republic, Bulgaria, Hungary, Poland, Slovakia, Austria, Belgium, Italy, Lithuania, Spain, Greece and Germany). Drug producers are required to annually notify the Ministry of Health and to amend price of drug X depending on the price changes occurring in other EU countries. In the last 5 years (2009–2014), most producers in Romania (national representatives of international companies) did not send these notifications. Ministry of Health did nothing to ensure compliance (lack of control). Annually, each producer has an audit regarding the compliance with industry regulations and national legislation. For one company the audit report signalled that the prices were not set according to the law. That company adjusted the price policies, but only when the incident became public, the Government reacted and most of the producers complied. In 2015, the Government issued the

³¹ Nice International, p. 24

³² Government Decision (HG) no. 741/2015 amending GD no. 720/2008

³³ Case documented in media: Vlad Mixich, *Culisele razboiului medicamentelor: faza trosnelilor. Eroarea lui Victor Ponta*, 26.02.2014, HotNews.ro

³⁴ Ministerial Order 75/2009 approving the norms on the calculation of prices for medicinal products for humans

first edition of the National Catalogue of prices for medical products authorised for marketing in Romania.³⁵

From the national and local insurance house, public servants receive bribes either to sign contracts with healthcare providers over quantities that cannot be reasonably delivered later on, to accepting fake reimbursements claims; or to modify the initial contracts increasing the delivered quantities.³⁶ Ministry of Health officials receive bribes for licensing medical units or pharmacies.³⁷

Procurement is another area vulnerable to corruption. In one case, uncovered in 2014, the representative of an international producer of medical equipment paid bribes to the officials drafting the bid's technical requirements and to the members of the procurement committee in order to 'win' the tender.³⁸ In another case, in 2015, a state secretary at the Ministry of Health received bribes from a private company in order to approve the financing of a hospital to buy medical equipment.³⁹

Corruption is maintained by a clientelist system of nomination and promotion of hospital managers and high public servants in Ministry of Health and Insurance Houses. For instance, in the period 2006–2014, four managers were nominated to the Bucharest Oncology Institute. Each new health minister has ordered an internal review of the institute, found similar gross irregularities and dismissed the former manager only to put in place his own *protégée* with the same result.⁴⁰

Future doctors are accustomed to the corruption system from university as there they are often required to pay bribes in order to pass exams. In 2015, formal accusations were brought against five medical university professors who allegedly received 50 to 100 euro from each student to pass

³⁵ The catalogue is available online:
http://preturi.ms.ro/fisiere_editii/c201501/canamed.pdf (last consulted on 25.11.2015)

³⁶ Case ID 1 in Annex 1

³⁷ Case ID 2 in Annex 1

³⁸ Case ID 3 in Annex 1

³⁹ Case ID 4 in Annex 1

⁴⁰ The internal investigations were reflected in the media:
<http://www.gandul.info/stiri/ancheta-la-institutul-oncologic-bucuresti-bolnavii-de-cancer-lasati-fara-medicamente-nicolaescu-cat-de-prost-sa-fii-sa-nu-faci-un-stoc-pentru-doua-trei-luni-11746134> and
<http://www.agerpres.ro/sanatate/2014/05/21/banicioiu-pacientii-institutului-oncologic-bucuresti-asteptau-trei-patru-luni-la-radioterapie-16-12-09>

an exam.⁴¹ In another case three professors requested bribes and sexual favours.⁴² Corruption vulnerabilities are manifest in almost all contests for coveted positions: from contests for resident physician positions⁴³ to management positions.⁴⁴

Corruption strategies developed by healthcare professionals and the private sector

The third layer is full of examples from jurisprudence showing how the middle and low-level players (medical doctors, healthcare companies, and citizens) develop corruption strategies to profit from the vulnerabilities of the system. The phenomenon is spread across the country, with different groups acting at the national and local level.

The first pattern highlights the vulnerabilities in the control exercised by the health insurance house as well as improper mechanisms of protection of personal data⁴⁵ in relation to compensated medicines and laboratory tests. A group of 45 persons (managers from three private medical laboratories, doctors and nurses) managed in a short period of time (January 2011– June 2012), to falsify 13.950 referral tickets for clinical health services and illegally receive approximately €500.000 as reimbursements from the health insurance fund. The *modus operandi* of the group was as follows: the employees of the medical laboratories (private companies) established directly or through intermediaries relationships with different medical doctors and asked them to join the scheme. Under the scheme, the medical doctors (MD) involved or their nurses (without the knowledge of the doctors) issued numerous false tickets for reference for laboratory investigations or for specialised consultations. The false tickets issued were fully compensated by the health insurance fund. The false tickets did not cover a real medical situation as they were issued in the names of patients who had not been consulted or who had been consulted but did not require laboratory tests or specialised consultation. The MDs or their nurses filled in the tickets using false claims about the medical condition of

⁴¹ Case ID 5 in Annex 1

⁴² Case ID 16 in Annex 1

⁴³ <http://www.bzi.ro/coruptii-din-umf-au-masluit-deja-posturile-de-rezidenti-din-spitale-323496>

⁴⁴ Case ID 6 and 8 in Annex 1

⁴⁵ Case ID 7 in Annex 1

the patients. These fake tickets were handed out by the doctors/nurses to the laboratories knowing that the laboratories would not perform any test or conduct any specialized consultation. The laboratories just asked the health insurance fund for the reimbursement of the value of these tickets. In order to keep the record of the false tickets, the laboratories implemented a software that used different user names, one for genuine and others for the fake ones. MDs or nurses received monthly 10% of the value of the tests/consultations recommended in the false tickets. In the above mentioned period, the false tickets scheme accounted for 65% to 71% of the total income of the laboratories. Another *modus operandi* in the lab tests is to undertake tests without using reagents but claiming full reimbursement.⁴⁶ Medical labs report tests that they do not perform in reality (copy/paste reports).

The same pattern is highly used in the case of subsidised medicines, the criminal nexus being formed by medical doctors, pharmacists and distributors.⁴⁷ One *modus operandi* includes false prescriptions of medicines by doctors. The prescriptions did not cover a real medical situation and were issued in the names of patients who had not been consulted. The false prescriptions were handed to different pharmacists that implemented them in the accounting system of their pharmacy and submitted reimbursement claims to the local insurance house. The medicines covered by these prescriptions were either physically out of stock or, if available, they were physically taken by pharmacists or even by doctors and sold privately to patients at market price. Doctors received each month 3% (sometimes up to 5%) of the value of the false prescriptions.

Another *modus operandi* is issuing real prescriptions for compensated medicines but directing the patients to a specific pharmacy, the doctors receiving 3-5% of the prescription value. Other modes of paying back the doctors included mobile phones, cars, family vacations to foreign countries (e.g. Las Vegas, Paris) or participation in international conferences covered by the medicines distribution companies or chains of pharmacies.

⁴⁶ Media investigation:<https://www.ziarulincomod.ro/acuzatii-grave-impotriva-sefei-de-laborator-de-la-spitalul-judetean-de-urgenta-ploiesti/>

⁴⁷ Case ID 11 from Annex 1. The same pattern was identified in case ID 9 and 10.

In Romania distribution companies (wholesaling) also have pharmacy chains (retailing), a practice that is debated in the European Union.⁴⁸ It has to be further analysed in the context of newly uncovered corruption cases what the impact is of vertical integration in the Romanian pharma industry, both backwards (upstream)⁴⁹ and forwards (downstream). In 2015, the National Anticorruption Directorate investigated corruption practices by 11 large pharma players in Romania, producers and distributors, among them Roche, Pfizer or GlaxoSmithKline.⁵⁰ According to the charges, in order to maximize retailing, these companies used to reward oncologists with luxury vacations and conferences in order to have them prescribe certain fully compensated expensive drugs. The prosecutors found large quantities of expensive oncology medicines at doctors' houses. The medicines were acquired after issuing fake prescriptions and were kept for private selling. A thousand prescriptions of subsidised cancer drugs accounting for 2 million euro seem to have been counterfeit.⁵¹

Another pattern was developed by the family doctors to increase their lists of patients. Family doctors are paid '*per capita*' by the local Insurance Houses according to the number of persons under supervision. Until 2011, the lists of patients under supervision were not verified by specific software and the family doctors simply bought databases of personal data and reported the persons from the databases as their patients. Also, family doctors reported in their reimbursement claims false social security numbers or social security numbers of dead people. In 2010, the National In-

⁴⁸ The most important chains are vertically integrated, the parent companies being Romanian medicine distributors. The first 5 pharmacy chains comprise roughly 1.000 pharmacies (OECD, 2014, p. 12). The effect of [downstream vertical integration] is that the market for pharmaceutical services is likely to show increasing levels of concentration. This increase in concentration may reduce the competition, for example leading to a decrease of quality competition (Ecorys, 2007, p. 27).

⁴⁹ Vertical integration is rare in the producer-distributor segment; only four producers are active on the medicine wholesale distribution market, namely: GlaxoSmithKline, Labormed, Gedeon Richter and Daiichi-Sankyo. Even in the case of these players, the vertical integration was not due to the interest of producers to expand their activities in the downstream market, but due to the acquisition of some Romanian players that were already active on the wholesale distribution market (data supplied by the 2009 sector inquiry). Also, vertical integration exists in the next segment of the distribution chain, respectively between distributors and pharmacies (OECD, 2014, p. 9).

⁵⁰ Case ID 10 from Annex 1

⁵¹ Case ID 10 from Annex 1

insurance House found thousands of physicians who had the same patients' lists as many of their peers after it reimbursed in 2008 to family doctors supervision services for 27 million patients in a country of 22 million inhabitants. This scheme alone accounted for 25 million euro defrauded.⁵² After 2011, the pattern slightly changed as family doctors automatically registered people as their patients after collecting personal data from Mayor's offices or local Insurance Houses.⁵³ The same pattern of false consultations and counterfeit prescriptions described above is also employed by family doctors, in association with specialised doctors and pharmacists, especially in rural areas and in regard to children.⁵⁴

A third fraud pattern is reporting 'phantom' inpatients. In order to meet the quantities of medicals services agreed with the local insurance house, hospitals claim reimbursement of fictitious medical services: preparing false intake patient forms to report increased numbers of inpatients.⁵⁵ In another case several doctors were using the public hospital infrastructure to operate on their patients from their private clinics. They did plastic surgery for starlets and charged them fees that reached up to €3.000. After the money was paid to the private clinic, the surgery took place in the public hospital. On the records of the public hospitals the persons were registered as inpatients and charged to the Health Insurance Fund.⁵⁶ Other cases involve gross conflicts of interests. Hundreds of doctors are found annually in conflicts of interest by the National Integrity Agency, having at the same time high level positions in public healthcare institutions and in private clinics.⁵⁷

⁵² Internal investigations and Court of Account audit reflected in media: <http://incont.stirileprotv.ro/credite-si-economii/medicii-de-familie-cumpara-liste-cu-pacienti-ca-sa-incaseze-fonduri-grase-de-la-cas.html> and <http://www.zf.ro/companii/intrebare-de-250-mil-euro-cati-asigurati-au-medicii-de-familie-pe-liste-7913057>

⁵³ 400 students were automatically registered by a family doctor as patients. The case was investigated by the local insurance house and the doctor got an administrative sanction – his contract with the local house was terminated: <http://www.mediafax.ro/social/ancheta-in-cazul-unui-medic-de-familie-la-care-ar-fi-fost-inscrisi-fara-sa-stie-sute-de-studenti-13706152> and <http://radioiasi.ro/stiri/regional/audio-cjas-iasi-a-reziliat-contractul-medicului-de-familie-acuzat-ca-a-inscris-studenti-pe-liste-in-mod-abuziv/>

⁵⁴ Case ID 12 and 20 from Annex 1

⁵⁵ Case ID 13 from Annex 1: the hospital director required to the doctors to increase the report with 7 false inpatients per day.

⁵⁶ Case ID 14 from Annex 1

⁵⁷ National Integrity Agency press releases: integritate.eu

Another grey area vulnerable to corruption is human organ and egg donation. In a case uncovered in Timisoara a group of doctors specialised in in-vitro fertilisation (IVF) and entrepreneurs (owners of private clinics) convinced young female patients to sell their eggs for €300. However, in Romania selling human eggs is prohibited: the only legitimate way being donation. The eggs were removed during weekends and sent abroad for 3.000 Euro each. The same group convinced young females to become surrogate mothers.⁵⁸ It seems that the black market of human organs has potential in Romania as low-income individuals are ready to sell their organs for transplantation.⁵⁹

Furthermore, corruption vulnerabilities are to be found in clinical testing. In Romania there are conducted approximately 300 experiments per year accounting for over 200 million Euro. These vulnerabilities emerge from low protection of enrolled vulnerable people who cannot give informed consent (e.g. persons with mental disabilities) or who are bribed for test approvals.⁶⁰

The most visible corruption pattern in the Romanian society is informal payments for treatment or bribes for illegitimate disability certificates.⁶¹ Patients are accustomed to giving presents or money when visiting a doctor. In 1993 a research reported that 54% of those interacting with the healthcare system admitted they gave unofficial payments or presents in order to solve their problems (Banciu and Radulescu, 1993). In the last 23 years numerous studies have shown that this is a problem, the percentage of people admitting unofficially paying for treatment oscillating from 30 to 60%.⁶² In 2013, 28% of Romanian respondents who visited public medical facilities in the preceding year had to make an extra payment, or offer a gift or donation besides the official fees (Eurobarometer, 2014).

⁵⁸ Case ID 15 from Annex 1

⁵⁹ Media report on adds from people who want to sell their organs:
<http://www.opiniatimisoarei.ro/piata-neagra-a-traficului-de-organe-timisoareni-isi-vand-rinichii-plamanii-si-testiculele-pentru-cateva-mii-de-euro/23/11/2012>

⁶⁰ Media investigation on clinical trial:
<http://www.digi24.ro/Stiri/Digi24/Actualitate/Sanatate/Cobai+umani+Romania+tara+testelor+clinice+pentru+medicamente+noi>

⁶¹ Disability committees across Romania composed of doctors issued thousands of disability certificates to people without disabilities for bribes. A disability certificate entitled the owner to social benefits.

⁶² Surveys consulted: —Romnibus survey 2010, project Promoting Integrity in the Health Sector Association for Implementing Democracy AID/IMAS;

The World Bank estimated in 2005 that the informal payments in Romanian healthcare amount to around 300 million euro annually (World Bank, 2011, p. 40). The problem seems to be more acute in surgery and hospitalization than in ambulatory services.⁶³ The World Bank estimated that a general practitioner (GP) receives on average 350 RON (80 euro) per year as informal payments whereas a hospital-based physician can acquire 60.784 RON (€ 13.800) per year (World Bank, 2011, p. 95). The problem is also monitored by European Commission Cooperation and Verification Mechanism (CVM). The anticorruption agencies began intensive investigations⁶⁴, many doctors being caught red-handed in the last few years.⁶⁵ Nevertheless, the problem does not seem to have radically changed as a 2014 survey reported that two thirds (68%) consider that the level of corruption in the public health system is ‘high’ and ‘very high’, and one fifth of people admitted giving informal payments.⁶⁶ A website that anonymously collects bribe giving incidents from citizens has over 600 reports of bribes paid in healthcare in the last 4 years.⁶⁷ The Ministry of Health and National Anticorruption Strategy does not propose policy alternatives for tackling this issue as previous reforms failed. I will analyse further one such policy that generated controversy among policy makers and civil society.

⁶³ “Informal payments are more common in the case of services provided to hospitalised patients, with some senior doctors receiving several times the national average, while other doctors do not receive any informal payments. In 2008, data from the household budget survey showed that, while 63 percent of the poorest and 88 percent of the richest quintiles of households made out-of-pocket payments for healthcare, informal payments were made by 57,4 percent of the entire population” (World Bank 2011, 40).

⁶⁴ In priority domains (complex cases) – such as defrauding the health, social or education insurance systems – there was an increase in the number of investigations in relation to offences of passive corruption (bribe-taking), up from 784 of the cases solved to 1278. The defendants sent to trial for corruption offences included 58 members of medical staff and pharmacists (CVM technical report, p. 30).

⁶⁵ Cases ID 17, 18, 19, 21, 22, 23, 24, 25 and 26.

⁶⁶ 2016 CVM technical report, p.36

⁶⁷ www.piatadespaga.ro

Co-payment reform

Co-payment was one of the policy measures proposed in the 2006 reform to counter pervasive informal payments in the system. One policy alternative, developed under a Global Opportunities Fund programme grant, proposed a co-payment scheme of 5 Euro for a consultation to a family physician, 10 Euro for a consultation to a specialist medical doctor and 10 euro per day for inpatient care. These amounts were designed to be paid directly to the physician/medical unit. Such a scheme would generate an annual income of 340 million Euro, largely the same amount as informal payments.⁶⁸ Such scheme was thought to eliminate informal payments without adding a burden on patients.⁶⁹ In the context of the financial crises, co-payment was one of the key policy measures of the financial agreement between the European Union and the Romanian Government in 2011⁷⁰: *approve the legislation of introducing a co-payment system for medical services conditioned by material means, developed in cooperation with the World Bank*. Co-payment was an important policy as the World Bank conditioned in 2011 the approval of a new loan on passing the co-payment bill.⁷¹ In the year 2011, the World Bank estimated that the new law on co-payment will extend the pool of payers to the health insurance system

⁶⁸ Legicon Consulting, *Evaluare ex-ante a introducerii co-plății serviciilor medicale în sectorul de sănătate din România*, 2007, p. 9

⁶⁹ “*The World Bank recommends introducing new formal co-payment mechanisms to reduce informal payments*” Eca knowledge brief: World Bank Health Sector Assists Crisis-Hit Eastern Europe Countries, Elizabeth Docteur, 2009-09-01 (Permanent URL: <http://go.worldbank.org/LSNRENE8U0>)

⁷⁰ Emergency Ordinance no.108/2011 on the ratification of the Framework Loan Agreement between the European Union, as borrower and Romania, as client, and National Bank of Romania, as agent of the client, a maximum amount of € 1.400.000.000 , signed in Bucharest on 28 June 2011 and in Luxembourg on 30 June 2011 and the Memorandum of Understanding between the European Union and Romania, signed in Bucharest on 28 June 2011 and in Brussels on 29 June 2011

⁷¹ *World Bank could lend Romania EUR 400 million in September*, May 9, 2011: <http://www.romania-insider.com/world-bank-could-lend-romania-eur-400-million-in-september/23244/> [The World Bank could grant Romania a loan of EUR 400 million in September, according to the chief economist of the World Bank Office in Romania, Catalin Pauna. “The payment depends on the Parliament’s approval of the co-payment in the health system, the Government’s progress in implementing the unified wage law and approval of reforms on public expenditure for the next three years”, Pauna said].

by about 3,5 million individuals (World Bank, 2011 p. 37). In the initial World Bank proposal the co-payments had two official policy objectives: raising income and reinforcing incentives to seek care in the most appropriate setting. In the initial form, co-payment had to be required for all visits to family doctors, out-patient specialists, and hospitals, as well as for diagnostic tests and non-emergency ambulance calls, the hospitals as well as the other medical units having the right to retain the income that they receive from co-payments:

“while these charges have not yet (as of February 2011) been formally approved, they seem likely to be set at 5 RON for a GP visit, 10 RON for ambulatory care, and 50 RON for hospital admission. The proposed co-payments for diagnostic and imaging tests range from 1 RON for a simple pathology to 150 RON for an angiogram. There is a large group of *socially vulnerable* and other individuals who will be *exempted* from these payments. In total, these exemptions will cover almost 40% of the population, including pregnant women, children, students, retired pensioners with an income of less than 740 RON a month, and the unemployed. Additionally, individuals entitled under various specific laws will also be exempt, as will be any individual being treated under the national treatment programs. There will be an annual ceiling of 600 RON for all individuals, meaning that this is the maximum they can pay in any one year. There has been no published impact assessment of the likely value of funds that this new law will generate” (World Bank, 2011 p.40).

While no impact assessment was ever done, this policy was intensively debated in Parliament and society at large⁷². The Government draft law on co-payment initiated in 2010 was adopted by Parliament in the end of 2011.⁷³ The co-payment policy was changed in July 2012⁷⁴ and again in December 2012⁷⁵ and started to be implemented beginning with April 2013. The monetary value of the co-payment was set by the framework

⁷² Several politicians and civil society organizations argued against this policy and even a draft law to abolish co-payment was initiated in Parliament (PL-x357/07.10.2013) but eventually rejected.

⁷³ Law no. 220/2011

⁷⁴ Law no. 138/2012

⁷⁵ Emergency ordinance (OUG) 91/2012

contract (between the Health Insurance House and the providers of health care).⁷⁶

In the final form the co-payment applied only to hospital admissions, having a value between 5 and 10 RON (1 – 2 euro), irrespective of the number of days of care. Large categories were exempted from co-payment: pregnant women, children, students, retired pensioners with an income of less than 740 RON a month, and the unemployed. The impact of the policy has been monitored only in the first year of implementation. The Ministry of Health reported that the hospitals collected in 2013 from co-payment 1,1 million euro. Most of the hospitals, especially small local ones, settled the co-payment at the minimal value while large hospitals settled the payments at maximum value. Practically, each patient admitted in the hospital, with the exception of those exempted, had to pay directly the hospital at discharge the 1 or 2 euro co-payment for the treatment received. The six highest treatment contributions were collected by hospitals in large municipalities: Bucharest (Fundeni Oncology Hospital – € 50.000; Bucharest Emergency University Hospital – € 30.000; Colentina Clinical Hospital 25.000 euro), Cluj-Napoca (Clinical Emergency Hospital – € 30.000), Craiova (Clinical Emergency Hospital – € 25.000) and Timișoara (Emergency Municipal Hospital € 23.000). There are also hospitals that collected in almost a year less than 25 Euro.⁷⁷

The reform failed as in the final implemented form it lost the informal payments control element. Setting the co-payment to such a low level and only for hospital treatment did not inhibit nor replace informal payments. It also did not change the perception of the patients about informal payments. The co-payment just added another burden to patients along with the classic bribe for treatment. The sole effect of this policy was to increase the revenues of a few hospitals in large cities with a very small percentage. In the initial form, the policy was promoted as a method to *replace* the informal payments: the patients would continue to pay an amount for treatment directly to the doctor but receive a receipt instead. It is not clear if that policy would have worked as marketed but it did not even get to be tried in practice. Surveys report that 14% of the citizens

⁷⁶ HG no. 117/2013

⁷⁷ Data provided by the Ministry of Health as a reply to an access to information request submitted by the author

support a co-payment system and see it as an appropriate measure to reduce informal payments.⁷⁸

Probably the policy would not have worked unless accompanied by a deeper integrity focused reform of the healthcare sector. Healthcare corruption is not only related to informal payments for treatment. The magnitude of embezzlement and corruption in the healthcare sector tend to be underestimated⁷⁹ and obscured by the discussions about the informal payments. Numerous public debates focus on the point whether the service is conditioned by bribes, while the policy makers tend to overlook the structural vulnerabilities and the pervasive lack of transparency of the decision-making process. Major stakeholders (private companies, public servants, doctors, nurses) are benefiting from the current state of affairs as they are still able to defraud the insurance fund or extort patients. On the other hand, the groups affected by corruption (patients, insured citizens, students) are unable to pursue collective action.

Practitioners feel entitled to a better salary and some of them see bribing as a fair indicator of performance. On the other hand there are professionals that do not accept bribes⁸⁰, demand better payment and protest against those policies that keep the profession prone to corruption.⁸¹ In 2015, the government⁸² and some MPs⁸³ proposed legalising bribes by imposing a tax on the bribes declared. The proposals were heavily criticised in the media and within the profession but the draft law is still pending in Parliament. Citizens also have mixed feelings 46% saying that bribes for medical treatment should not exist while another 46% are saying that bribing is an entrenched practice. At the same time, 22% of respondents

⁷⁸ p.21, MoH, 2015

⁷⁹ A recent audit of the Romanian Court of Account found more 3,5 million Euro fraud at the National Insurance House in 2014 (Curtea de Conturi, 2015).

⁸⁰ In 12% of cases, the practitioner did not accept the bribe (p.11, MoH, 2015)

⁸¹ The Doctors Alliance issued a press release highlighting fair system as opposed to legalising bribe:

<http://www.mediafax.ro/social/alianta-medicilor-critica-intentia-guvernului-de-a-legaliza-atentiile-de-la-pacienti-14679963>

⁸² Prime-Minister declarations: Romania considers legalized bribery to keep doctors by Vlad Odorescu - The Washington Times - Tuesday, October 6, 2015

⁸³ Draft law on the provision of medical services at the request of the patient in public hospitals was registered and adopted by the Senate (L223/2015) and it is under scrutiny in the Chamber of Deputies (Pl-x 457/15.06.2015).

believe that this practice is a form of rewarding the work of medical staff, while 10 % of the respondents who gave a bribe for healthcare in the past year do not feel that things have to be changed, giving gifts being a normal gesture for them.⁸⁴ On the other hand, Romanian patients do not give bribes when treated in a private hospital in Romania.⁸⁵

Anticorruption reforms tend to fail in Romania when the challenge shifts from prosecuting individuals to reform systems. Romania has an impressive track record of high level officials convicted for corruption while the systems generating that corruption are still preserved. Like the failed co-payment reform in healthcare, numerous reforms to tackle informal payments in education, pervasive plagiarism or fake diplomas have proved futile.⁸⁶

Conclusions

Mapping the system revealed corruption opportunities from the highest levels of policy and decision making to the level of general physician and nurse. Corruption is decentralised across the system: each group or individual working locally exploiting opportunities for embezzling insurance funds and securing bribes. Corruption is entrenched within the system: in the mindset of individuals who have been socialised into corruption behaviour from the very beginning of their medical training.

The main corruption patterns identified are bribing for introducing substances on the subsidised medicine list, bribing in the medical services contracting process, bribing for licensing, budgetary allocations, clinical testing and winning procurements. At a more personal level, students are bribing for completing their medical training, bribing for securing a job or (for those employed) a higher management position within the system. In

⁸⁴ p.13, MoH, 2015

⁸⁵ Gifts are prohibited in private clinics and hospitals through employment contract and violation of the rule may be sanctioned with termination of employment.

⁸⁶ For instance, in 2014, the Ministry of Education banned competitions in schools that admits participants based on paying a tax and other methods to raise money from parents (class fund and school fund). Nevertheless, recent reports suggest that these funds are still raised in many schools:
<http://observator.tv/social/indiferent-de-ce-spun-maimarii-din-educatie-fondul-clasei-se-strange-in-continuare-in-toate-scolile-162013.html>

addition, the system is a 'breeding ground' for anything that is forged: approved reimbursement claims for fake medical services, fake prescriptions, fake lists of patients or fake inpatients, fake or inadequate drug prescriptions for bonuses from producers, wholesalers or retailers, conflicts of interests, human organs trafficking. And finally there are the patients, making informal payments in order to get the service they are legally entitled to in the first place.

All the relevant stakeholders are joining in the corruption dance: politicians, public servants from high to low, senior medical personnel, middle and low professionals, professional bodies. The private sector usually is paying bribes to secure business, the responsibility and business ethics being a charade. The victims of corruption are extorted patients (especially the poorest) and insured citizens, broad categories unable to initiate and sustain collective action.

Vulnerabilities loom in almost every procedure. The analysis identified clientelism in the system, lack of accountability, lack of adequate administrative control, lack of transparency, red-tape, inadequate protection of personal data, wrong incentive structure, corporate corruption.

Other countries in the region experience similar problems. Hungary struggles with informal payments and procurement corruption. In 2007, Hungary introduced co-payment and in 2013 integrity packs/agreements during public procurements (European Commission, 2013, p. 249-250). Recent reports suggest that "*informal payments remain relevant and the two payments co-exist. However, the increase of formal payments may indeed lead to a decrease in informal payments, specifically among low-income households who are not able to pay for the double (formal and informal) price*" (Baji et al., 2015). Similar problems are reported in the Czech Republic that introduced in 2010 a co-payment reform consisting of a tiny payment of 1,20 euro for every time one consults a doctor and 4 euro per day spent in the hospital (European Commission, 2013, p 218).

This is more or less known, but still has to be brought to the fore to bring home the multi-faceted mixture of the anti-corruption mix fight in the health sector: a realistic policy has to approach all these layers and work structurally to change the incentives, increasing accountability, rewarding performance and boosting transparency (e.g., open data of all payments in the system). While the system is highly regulated, it lacks adequate information systems, strong policy analysis and impact assessments. A ramified system of corruption and sleaze can only thrive by non-

transparency maintained by lack of data and disciplined detailed analysis exposing the illegal incentives.

Medical practitioners in public units in Romania do not have salaries matching the length of their training, the salaries of their peers in the EU or their perceived social status.⁸⁷ Also, the salaries are not established in accordance with performance. In the same time, with notable exceptions, the conditions in which they work are poor.⁸⁸ These factors make bribing and embezzling acceptable and justified. Compliance with rules do not induce rewards, it is not acknowledged or observed. The bribe received becomes also a measure of performance as the most capable doctors get more patients and, consequently, more bribes. If they live up to their moral values, they might end up with fewer personal life opportunities (housing, entertainment, family) compared with their amoral peers. The control and social pressure for conformity with legal norms is scarce. It is only in the last few years that the issue has been stirring enough public outrage. The rules and regulations are designed in a bureaucratic manner so as to justify expenses, not to attain objectives or encourage performance. The public unit management is selected from the clientelistic network being more preoccupied with reward for the superiors than to ensure well-functioning of the unit.

A hint that the incentive system is not fairly balanced within the public healthcare is that informal payments are an exception in the private hospitals and clinics in Romania. The same patients that are accustomed to giving bribes in a public hospital or clinic do not feel obliged to do the same thing in a private one whether they are paying directly for the treatment or hold a private insurance. The attitude of the medical staff in a private unit is totally opposed to that in the public one, although, in many cases, these are the same professional. There are cases in which a profes-

⁸⁷ “The typical doctor earns \$369 per month, slightly less than the average Romanian’s salary of \$398, according to the country’s National Institute of Statistics”. The story “Romania considers legalized bribery to keep doctors”, by Vlad Odobescu - Special to The Washington Times - - Tuesday, October 6, 2015:

<http://www.washingtontimes.com/news/2015/oct/6/romania-considers-legalized-bribery-to-keep-doctor/?page=all>

⁸⁸ “‘The operating room was actually a small room with a dirty bed where everyone used to wear the same shoes as outside,’ she said. ‘Lots of dirt. The nurses would steal the cleaners and the food from patients. It was the same in all the hospitals I went to, because we needed to go to different hospitals during residency.’” Idem

sional, in order to supplement his/her salary, apart from the hours committed to the public hospital, is working part time to a private clinic.⁸⁹

The consequence of the failure to deliver appropriate healthcare is a lack of trust in the system that leads to a cynical social attitude, contributing to the sustainment of the system or searching alternative ways of treatment (not necessarily based on scientific evidences).

In the short run, the Ministry of Health has to empower its organisation and staff its own integrity structure in order to map all the vulnerabilities and conduct anticorruption mainstreaming, including at policy drafting. The group of professionals working against corruption within the system have to be encouraged and publicly acknowledged by anticorruption policy makers, civil society and international partners. Positive integrity instruments like collective action, integrity pacts and business ethics instruments have to complement the criminal procedures in order to build a critical mass within.

Annex 1

The first step in the research for this study was to Google search syntaxes. Then, each article was analysed and we selected only those reporting a case of corruption, fraud, embezzlement in the healthcare system uncovered by the law enforcement bodies in Romania. Many reports focus on the same case, thus only one report per case was selected to be included in the data base.

The mix of words used on Google search : “coruptie”, “medic”, “sanatate” “mita” (103.000 results) / “medic luare de mita” (193.000 results).

⁸⁹ These difference are also documented in the surveys were only 7% perceive corruption to be high in private healthcare compared with 36% of Romanians considering corruption be high in public healthcare. AID Romania – Perceptions about corruption in the healthcare, 2015

List of cases

Case ID	Date, title of the report, author, publication	Web link	Law enforcement agency uncovering the case	Other documents taken into consideration for the case
1	04.11.2015, <i>POTELEANU DRAGOȘ, directorul Casei de Asigurări de Sănătate Constanța, arestat pentru luare de mita</i> , Daniela Juncu, fn24.ro	http://fn24.ro/poteleanu-dragos-directorul-casei-de-asigurari-de-sanatate-constanta-arestat-pentru-luare-de-mita/	DNA	-
2	28.08.2015, <i>Directoare din Ministerul Sănătății, REȚINUTĂ pentru șase infracțiuni de luare de mită. Mihaela Udrea lucrează în Ministerul Sănătății din 2008, iar din 2009 era director interimar</i> , Mona Hera, Mediafax	http://www.mediafax.ro/social/directoare-din-ministerul-sanatatii-retinuta-pentru-sase-infracțiuni-de-luare-de-mita-mihaela-udrea-lucreaza-in-ministerul-sanatatii-din-2008-iar-din-2009-era-director-interimar-14691599	DNA	-
3	26.10.2014, <i>Scandal de corupție la Ministerul Sănătății: funcționari ai MS ar fi primit mită ca să favorizeze Dutchmed BV la licitații</i> , Cristina Șomănescu, economica.net	http://www.economica.net/scandal-de-corupție-la-ministerul-sanatatii--funcționari-ai-ms-ar-fi-primit-mita-ca-sa-favorizeze-dutchmed-bv-la-licitatii_90293.html	DNA	-
4	16.11.2015, <i>Secretar de stat, reținut de DNA într-un dosar de corupție. Perchezitii la Ministerul Sanatatii</i> , Agerpres / StirileProTV	http://stirileprotv.ro/stiri/actualitate/secretar-de-stat-adus-la-dna-intr-un-dosar-de-corupție-perchezitii-la-ministerul-sanatatii.html	DNA	-
5	09-07-2015, <i>Cinci profesori de la UMF Craiova, cercetati penal pentru ca luau spaga de la studenti</i> , Cătălin Țințăreanu, sanatarebuzoiana.ro	http://www.sanatateabuzoiana.ro/cinci-profesori-de-la-umf-craiova-cercetati-penal-pentru-ca-luau-spaga-de-la-studenti/#.VrSxHebr_bw	General Prosecutor's Office	-
6	09.11.2011, <i>Un secretar general din Ministerul</i>	http://www.antena3.ro/actualitate/un-	DNA	Final Court Decision no.

Case ID	Date, title of the report, author, publication	Web link	Law enforcement agency uncovering the case	Other documents taken into consideration for the case
	<i>Sănătății, trimis în judecată pentru luare de mită</i> , DD, Antena 3	secretar-general-din-ministerul-sanatatii-trimis-in-judecata-pentru-luare-de-mita-143085.html		117/13.03.2014, File no. 5275/109/2011, Pitesti Court of Appeal
7	24.04.2013, <i>19 medici și 13 asistente, trimiși în judecată pentru analize false</i> , b365.ro	http://www.b365.ro/19-medici-i-13-asistente-trimi-i-in-judecata-pentru-analize-false_189771.html	General Prosecutor's Office	Criminal Decision no. 1181/2014 (File no. 16484/3/2013), Bucharest Court of Appeal
8	12.02.2015, DNA: Ciupercă îi DNA: Ciupercă îi spunea șefului echipei de control de la Ministerul Sănătății ce să scrie în raportul despre SJU Ialomița, Mediafax	http://www.mediafax.ro/social/dna-ciuperca-ii-spunea-sefului-echipei-de-control-de-la-ministerul-sanatatii-ce-sa-scrie-in-raportul-despre-sju-ialomita-interceptari-din-dosar-13816824	DNA	-
9	21.09.2015, <i>UPDATE DIICOT: 59 de perchezitii la medici și farmaciști din București, Brăila, Constanța și Vrancea</i> , Agerpres	http://www.agerpres.ro/justitie/2015/09/21/diicot-59-de-perchezitii-la-medici-si-farmacisti-din-bucuresti-braila-constanta-si-vrancea-08-18-27	DIICOT	-
10	28.07.2015, <i>Rețeaua CORUPȚIEI din sănătate. 16 medici oncologi ar fi luat ȘPAGĂ să prescrie medicamente scumpe bolnavilor de cancer</i> , Andra Dolana, Ondine Ghergut, Romania Libera	http://www.romanialibera.ro/actualitate/eveniment/zeci-de-perchezitii-in-capitala-si-alte-sapte-judete-intr-un-dosar-de-coruptie-387368 http://www.bursa.ro/firmele-pfizer-roche-si-glaxosmithkline-printre-cele-cercetate-de-procurori-275198&s=strategia_na	DNA	-

Healthcare corruption – patterns and vulnerabilities – in Romania

Case ID	Date, title of the report, author, publication	Web link	Law enforcement agency uncovering the case	Other documents taken into consideration for the case
		tionala_anticoruptie&articol=275198.html		
11	11.10.2012, <i>DOSARUL REȚETELOR FALSE: Nouă persoane dintre cele 12 reținute au fost arestate, Catalin Lupasteanu, Mediafax</i>	http://www.mediafax.ro/social/dosarul-retetelor-false-noua-persoane-dintre-cele-12-retinute-au-fost-arestare-10191907	General Prosecutor's Office	File no. 48196/3/2012, Bucharest Tribunal
12	15.08.2015, <i>Bani din rețete fictive. 10 medici de familie, pediatri și diabetologi au fost arestați, fiind acuzați de un prejudiciu de peste 700.000 de euro, Claudia Bonchiș, Adevărul</i>	http://adevarul.ro/locale/oradea/bani-retete-fictive-10-medici-familie-pediatri-diabetologi-fost-arestati-fiind-acuzati-prejudiciu-700000-euro-1_55cf0d38f5eaafab2c89e2d3/index.html	DIICOT	-
13	03.07.2014, <i>Directorul unui spital trimis în judecata pentru decontari false si internari fictive, Alina Costache, enational.ro</i>	http://www.enational.ro/news/timisoara-directorul-unui-spital-trimis-in-judecata-pentru-decontari-false-si-internari-fictive-412640.html/	General Prosecutor's Office	-
14	28.04.2014, <i>DOSARUL SILICOANE pentru VEDETE. Ea este doctorița care avea acasă 170.000 de euro și în conturi 700.000 de euro. Tribunalul București a arestat-o prevenitiv, Virgil Burlă, evz.ro</i>	http://www.evz.ro/de-cizia-privind-propunerile-de-arestare-din-dosarul-operatiilor-estetice-asteptata-astazi.html	General Prosecutor's Office	-
15	30.05.2014, <i>DOSARUL traficului de ovule: Managerul Spitalului Athena din Timișoara, arestat la domiciliu. Șefa de laborator, cercetată sub control judiciar, Liliana Iedu, Mediafax</i>	http://www.mediafax.ro/social/dosarul-traficului-de-ovule-managerul-spitalului-athena-din-timisoara-arestat-la-domiciliu-sefa-de-laborator-cercetata-sub-control-judiciar-12665858	DIICOT	-
16	01.02.2015, <i>Trei profesori</i>	http://www.digi24.ro	DNA	-

Case ID	Date, title of the report, author, publication	Web link	Law enforcement agency uncovering the case	Other documents taken into consideration for the case
	<i>de la UMF Iași, medici foarte cunoscuți, au fost arestați, Digi24</i>	/Stiri/Digi24/Actualitate/Justitie/Medici+profesori+UMF+Iasi+arestati+mita+studenti+viol		
17	23.11.2015, <i>Medic timișorean trimis în judecată pentru luare de mită</i> , Gianina Ianăș, renasterea.ro	http://renasterea.ro/medic-timisorean-trimis-in-judecata-pentru-luare-de-mita/	General Prosecutor's Office	-
18	30.10.2015, <i>Un medic din spitalul Tulcea a fost reținut pentru luare de mită!</i> , Ziarul de Tulcea	http://ziaruldetulcea.ro/un-medic-din-spitalul-tulcea-a-fost-retinut-pentru-luare-de-mita/	General Prosecutor's Office	-
19	23.12.2015, <i>Medic de la Spitalul Foișor, cercetat pentru luare de mită și trafic de influență</i> , Agerpres	http://www.agerpres.ro/justitie/2015/12/23/medic-de-la-spitalul-foisor-cercetat-pentru-luare-de-mita-si-trafic-de-influenta-14-55-16	General Prosecutor's Office	-
20	15.11.2012, <i>Un medic din Bacău, arestat pentru luare de mită, vindea medicamente expirate</i> , Antena 3	http://www.antena3.ro/actualitate/un-medic-din-bacau-arestat-pentru-luare-de-mita-vindea-medicamente-expirate-192255.html	General Prosecutor's Office	Decision no. 170/15.10.2013, File no. 1033/110/2013, Bacau Court of Appeal
21	10.08.2015, <i>Medic ortoped de la Spitalul Județean Brașov, reținut pentru luare de mită</i> , Mihaela Gradinaru, Mediafax	http://www.mediafax.ro/social/medic-ortoped-de-la-spitalul-judetean-brasov-retinut-pentru-luare-de-mita-14670722	General Prosecutor's Office	-
22	27.01.2015, <i>Fostul coordonator al programului de oncologie din Harghita, trimis în judecată pentru luare de mită. Csiki Csongor cerea alimente și bani de la bolnavi</i> , Mediafax	http://www.mediafax.ro/social/fostul-coordonator-al-programului-de-oncologie-din-harghita-trimis-in-judecata-pentru-luare-de-mita-csiki-csongor-cerea-alimente-si-bani-de-la-bolnavi-13788291	DNA	-

Healthcare corruption – patterns and vulnerabilities – in Romania

Case ID	Date, title of the report, author, publication	Web link	Law enforcement agency uncovering the case	Other documents taken into consideration for the case
23	23.09.2013, <i>Medic militar, reținut pentru luare de mita: Doctorul Iancu Mocanu a cerut 2.000 de euro unui pacient</i> , Me-diafax	http://amfms.ro/din_presa/5838.html	General Prosecutor's Office	-
24	05.11.2014, <i>Medic rezident acuzat de luare de mită</i> , Telegraf	http://www.telegrafonline.ro/medic-rezident-acuzat-de-luare-de-mita	General Prosecutor's Office	-
25	17.08.2012, <i>Medic de la maternitatea Bucur, reținut pentru luare de mita</i> , Pagina Medicala	http://www.paginame-dicala.ro/stiri-medicale/Medic-de-la-maternitatea-Bucur_-reținut-pentru-luare-de-mita_17466/	General Prosecutor's Office	Decision no. 93/25.03.2013, File no. 39584/3/2012, Bucharest Court of Appeal
26	21.08.2015, <i>Corupție în sănătate. Un medic din Călărași, prins în timp ce lua mită</i> , Georgiana Șerban, radiovocescampi.ro	http://www.radiovocescampi.ro/2015/08/coruptie-in-sanatate-un-medic-din-calarasi-prins-in-timp-ce-lua-mita//2015/08/coruptie-in-sanatate-un-medic-din-calarasi-prins-in-timp-ce-lua-mita/	General Prosecutor's Office	

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Enforcing prohibitions in weak states: Gambling in Ukraine

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Introduction

In general the authorities intend to convey the impression that they are the tireless prosecutors of ‘organised crime’ (OC). No opportunity is said to be lost in the fight against organised crime. However, while displaying all this zeal, one should not forget what the cornerstones of organised crime comprise: a market with scarce but coveted commodities emerging as a result of a governmental policy and/or weak law enforcement. From this perspective the state is not a real enemy of organised crime but a fundamental contributor of its shaping conditions. One way to create such conditions is to prohibit or heavily tax consumer articles for which there is a sufficient demand and willingness to pay to offset the costs of law breaking. While this is fairly obvious, history abounds with examples of counter-productive legislation creating an underground market, while defective law enforcement assures a minimum flow of prohibited goods and illegal services. The most ubiquitous example is the psychoactive drug market to which can be added various forms of ‘vice’ control, be it sex, booze or nowadays cigarettes. The prohibition can be absolute or through fiscal means making commodities such as alcohol or tobacco expensive. This is the general theme, by now almost conventional knowledge, to which Ukraine is no exception: in this country, by prohibiting gambling the government only furthered instead of reducing a criminal market served by, among others, organised crime.

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The most recent token of furthering OC by legislation was performed by the Ukrainian Parliament that passed anti-gambling laws in 2009, effectively banning all forms of gambling in the country other than the national lottery. The law criminalised the organisation and operation of gambling activities at casinos, on slot machines, at bookmaker's offices and online gambling venues. The prohibition was supposed to be temporary (the expectation was that special gambling zones will be created) and imposed significant sanctions on illegal gambling business.

The legal gambling period that lasted from 1991 to 2009 in Ukraine was difficult for the companies providing services: corruption within the state administration meant that the companies were constantly bullied by corrupt tax, health and safety inspectors. During this time, the police effectively controlled the *unlicensed* gambling halls till all gambling was prohibited in 2009, a decision that has remained a mystery.

Officially, the 2009 ban on the gambling industry was introduced as a reaction to the tragedy in the gambling hall in the city of Dnepropetrovsk where nine people died in a fire and ten were seriously injured (Pogrebnyak, 2008). The hall operated legally, but the premises used did not comply with regulations. The official reaction to the tragedy was the controversial decree imposing a temporary ban on all gambling locations. Subsequently, in the summer of 2009, the Ministry of Finance recalled all the licenses. The added injury to the legal industry of the 2009 decree was the fact that the companies that purchased 5-year licenses in 2009 were not reimbursed by the government after the introduction of the hurriedly introduced ban. Interestingly, at that particular moment, as the legally operating companies stopped working, many of the illegally operating ones stayed in business and even expanded. Vice President of the Ukrainian Gambling Association Mr. Trinulski argued at that time that prohibition only led to further criminalisation of the industry and significant losses to the budget, referring to the prohibition as a form of 'bureaucratic terrorism' or intentional damage to the developing industry disregarding any rules of democratic decision making (Bilousiva, 2014).

It is difficult to understand the rationale for the complete ban on gambling. However, there are at least three ways of understanding the origins of the ban. First, the ban could be interpreted as one of the efforts made by the government to control the growing number of gambling addicts and the illegal deals within the industry. The Prime Minister of Ukraine at the time, Mrs. Tymoshenko, argued that Ukraine had an unusually high

number of gambling halls (over 100.000), that “take the last money from families, which don’t have much, and which corrupt young Ukrainians” (cit. in Ruzhkov, 2009: n.p.). Second, the internal fight within the government over the spheres of control could provide the banning government with access to unaccounted funds. Third, there was some fear among Ukrainian policymakers that there would be a relocation of the gambling industry from Russia to Ukraine following the complicated attempts of the Russian government to ban their own gambling industry.

Thus, while the official position to justify the ban was grounded on the need to fight with addictive conduct (ludomania), and poor health and safety measures in gambling halls, the unofficial view, according to the industry’s representatives, was much more cynical, citing the possibility of policymakers’ inherent interest in profiting from the gambling businesses themselves.

Should the Ukrainian legislators have known a better approach to gambling? We know from the history of prohibition in the United States that enforcing the prohibition of goods and services that are in large public demand is highly problematic even for the states with an extensive law enforcement apparatus² (Thornton 1991; Andreas 2013). But Ukraine is not such a state: its governance is characterised by weak public administration, enforcement and judicial agencies that are endemically corrupt (Kubicek 2009; Markovskaya *et al.* 2003).

Research question and method

It is important to understand why the Ukrainian government has supported the prohibition regime despite having minimal capacity to effectively enforce it. This is especially the case given that the illegal markets are deeply embedded in the society and have often produced the badly needed revenues in support of the feeble transitional economy. By study-

² Although there seems to be a consensus that the prohibition of alcohol regime did not succeed in terminating black market activities, there exists some consent among scholars that a nationwide constitutional ban on the sale, production, importation, and transportation of alcoholic beverages that remained in place in the United States from 1920 to 1933, has been one of the most promising of the many strategies tried thus far in lowering alcohol consumption (*e.g.*, Blocker 2006; Cook and Moore 2002).

ing the pre- and post-gambling ban on the Ukrainian black market, this chapter aims to shed light on important aspects of black markets in weak or developing states, where a lack of political will and defective law enforcement can lead to a ‘blind-eye’ response to black markets, and especially those of a ‘small vice’ like gambling. In this way, this chapter demonstrates that black markets are not identical and differ depending on (a) the nature of political will and interests; (b) state capacity to curtail black markets and ensure regulatory comprehensiveness; (c) vibrancy of the civil society.

Despite the broad scope that a study on the relationship between the black market and the economic and political systems requires, we have no ambition of exhausting a subject as complex and cross-disciplinary as this one. Therefore, this chapter only investigates the organisational features and working rules of black markets and outlines some of the features of an illegal gambling market in a weak state such as Ukraine.

Since the black market by definition exists unofficially, it is difficult to study it by relying on official statistics. Our analysis is, therefore, based on qualitative data collected from interviews³ with the representatives of the industry of the pre- and post-2009 gambling ban (2000–2013) in Ukraine. This is supported by an in-depth analysis of secondary academic and non-academic literature. It is based on these sources that we develop a typology of illegal gambling establishments and discuss the specific features of this black market in Ukraine.

The chapter is structured as follows: in the first half of the chapter we briefly review the existing literature on prohibition regimes, revisit the causes of black markets and discuss the organisation of illicit commerce and the constraints on gambling businesses in weak states. In the second half of the chapter we provide a detailed descriptive account of the criminal entrepreneurial landscape of the gambling industry in Ukraine’s southern city of Odessa in the aftermath of the 2009 gambling ban.

³ In the spring–summer of 2015 a series of in-depth interviews were conducted with the representatives of the post-2009 gambling industry.

Theoretical framework: black market and criminal enterprise

Origins of prohibition regimes

Throughout history governments have used various measures, such as prosecution and severe punishment (especially for drug-related offences), as well as economic penalties in an attempt to choke production and distribution of goods or services not allowed or regulated by the state (Sim *et al.*, 2011). Especially since the early 20th Century, governments of developed nations tended to use a range of criminal justice sanctions rather than civil penalties to solve problems related to black markets. The trend towards over-criminalisation of social control and the ability of governments to outlaw behaviour that is not always considered morally blameworthy or dangerous by a large, often predominant, fraction of the population, has become an essential topic in political science, public policy, and criminal law (Andreas, 2013; Plant *et al.*, 2011).

Issues related to the state prerogative to enact laws that criminalise particular social conduct have appeared in the academic and policy spotlight since one of the largest experiments in this area – the US prohibition law of the early twentieth Century and beyond. The 1920s anti-alcohol prohibition movement in the United States is an early example of authorities creating their own criminal markets by intervening in market relations and popular tastes (Van Duynes and Levi, 2005). Andreas (2014: 2) argues that smuggling has played a pivotal role in American history and the broader historical evolution of the United States that he describes as:

“as a distant colonial outpost in the British empire (heavily involved in smuggling untaxed goods); as a developing nation partly based on slavery (including illicit slave trading) and clandestine importation of British machines and skilled workers; as an advanced capitalist industrial and agricultural economy built on the influx of migrant labour (legal and illegal); and as a highly urbanised economy and society increasingly geared toward personal consumption and pleasure (including smuggled porn, bootlegged booze, prohibited drugs, and pirated music).”

Drawing parallels between the prohibition era in the 1920-1930s and the War on Drugs launched by President Nixon in 1971, this author suggests

that it is “more than a little ironic that a country made by smuggling has now become the world’s leading anti-smuggling crusader” (Andreas, 2014: 4). Effective enforcement has become one of the defining features of the US government, “unintentionally help[ing] pave the way for the rise of a new and more dangerous breed of smuggler,” he concludes (*ibid*: 295).

The difficulty of achieving victory in the curtailing of black markets is predicated not only on effective law enforcement but also on the agreement on the part of the people as to which goods and services may be traded and whether they will be willing to adhere to specific ethical and legal aspects of trade imposed by the state. Van Schendel and Abraham (2005) emphasise: “many transnational movements of people, commodities and ideas are illegal because they defy the norms and rules of formal political authority, but they are quite acceptable, ‘licit’, in the eyes of participants in these transactions and flows” (p. 6). In case of alcohol prohibition in the United States, for example, people viewed alcohol production as a harmless activity (NEW, 2015). The same applies to black markets providing employment to those who lack ability to work legally. For instance, Lemieux (2007) notes the paradigmatic case for the relative efficiency of the underground economy in the former USSR (and Eastern Europe), where “one third of the urban population’s income came from the underground economy (. . .). There are reasons to believe that the Soviet economy would have collapsed (earlier) without the relative efficiency of the underground economy” (Lemieux, 2007: 24).

The bottom line is that illegal activities in a formal sense may appear to be normatively acceptable for the population (Beare and Naylor, 1999). Some of *malum prohibitum* commodities have, therefore, become the main source of revenue for groups that work in the underground economy and cater to the larger public demand for particular prohibited and/or regulated goods and services. While prohibition may prevent or restrain trading in banned goods and services on the legal market, these goods generally endure to be desired by consumers. Because of a wide demand in the goods and services offered by black markets, underground economic transactions are usually not reported to the police or other regulatory agencies. In connection to this, the profitability of illicit enterprises and their continuity and expansion are contingent on consumer demand. Thus, when governments prohibit goods and services for which considerable demand exists, the prohibition regime ‘guarantees’ a readily available black market. Vice-type offences, such as prostitution, drugs, gambling, corruption within the state apparatus and police, in particular are difficult

targets for law enforcement investigation, as the consumer and the supplier become willing partners in the offence. Schelling (1984) called this phenomenon the ‘productivity’ of black markets, referring to public policy’s manipulations and emphasising that the

“difference between black market crimes and most others, like racketeering and robbery, is that they are ‘crimes’ only because we have legislated against the commodities they provide. We single out certain goods and services as harmful or sinful. For reasons of history and tradition, and for other reasons, we forbid dope but not tobacco, gambling in casinos but not on the stock market, extra-marital sex but not gluttony, erotic stories but not mystery stories” (p. 175).

Prohibition regimes in weak states

Hence, repression of illicit markets is not only problematic because of the moral ambiguousness of the coveted commodities and the powers available to the state, but also because criminal law enforcement is expensive while successes are rarely proportional to the efforts. Because of the alleged involvement of organised crime in illicit trade, responses to black markets carry high criminal justice costs, particularly when it comes to extensive (cross-border) investigation and prosecution. Despite high costs keeping pressure on crime markets is not without effects. Back in the 1980s, Peter Reuter, a renowned economist, presented a systematic analysis of factors that affected illegal markets, namely illegal gambling in New York in the mid-1970s, and argued that black markets in the United States were populated by ‘numerous’, ‘relatively small,’ and ‘often ephemeral’ enterprises – findings that did not conform to the conventional view of domination by the mafia achieved with violence and the corruption of public officials (Reuter, 1983; 1985). The visibility of large, centralised illegal enterprises made them more vulnerable to law enforcement detection and disruption, especially when there is no possibility for corruption (Reuter, 1985). This implies that profound police intervention in illicit economies in developed states with extensive law enforcement budgets and high capacity leads to relatively small and short-lived black markets (Liddick, 1998; 1999).

In contrast to this, in weak states, where there are hardly any effective counteracting institutions to enforce compliance with a prohibition regime, one can expect that the police and national judiciary system, the agencies that are supposed to control illegal markets through enforcement of the laws, are themselves brutally corrupt. As a result there are prohibition regimes not backed by law enforcement and societal conformity to the rule of law and related thriving illegal markets. Law enforcement is likely to enhance bureaucratic outgrowth, connected corruption and other forms of rent-seeking and opportunism in such countries (Gounev and Ruggiero, 2014).

Corruption is likely to be pervasive in weak states with high bureaucratic inefficiency, little transparency and few or no checks and balances in place. It thrives in a widespread culture of impunity, where citizens fail to respond to corrupted processes. It is for this particular reason that the “*size of the black market in any given country at any given time also reflects the size and effectiveness of the bureaucratic machinery that government mobilises to catch people who violate its economic regulations*” (Johnson, 2015: n.p.). Being unable to bribe law enforcement agencies, which is usually the case in stable democracies with relatively low levels of corruption, suppliers of the black market have to avoid the underworld by operating in secrecy. Thus, the success capacity of illicit entrepreneurs in developed states depends on their ability to protect themselves against law enforcement while preserving visibility and shielded access to the customer. While some Organised Crime Groups (OCG) survive by staying out of sight and keeping a low profile, an alternative strategy is the so-called ‘criminal mimicry.’ Borrowed from biology, this concept denotes “*an act of survival typical of crime-entrepreneurs*” (Van Duyne *et al.*, 2006: 180), whereby “*the crime-enterprise blends unnoticed into the commercial landscape.*” Criminal mimicry does not refer to symbiosis with the legitimate trade. Neither does it imply a corrupt interaction with legitimate institutions and their representatives (van Duyne *et al.*, 2006: 12, 180). Rather, this strategy allows criminal entrepreneurs, especially those who are either unable or unwilling to bribe the police to maintain presence in the legitimate market that is useful for both advertisement and promotion of illegal goods and services.

In weak states, particularly those with endemic corruption, OCGs manage to achieve extensive crossover between legitimate and illegitimate activities and establish mutually-beneficial relations with state authorities. Such large-scale decay of state institutions and their embrace with criminal

organisations has been discussed in the literature on ‘state capture’ (Hellman *et al.*, 2000), ‘social embeddedness of organised crime’ (Kleemans and Van de Bunt, 1999) and ‘crime institutionalisation’ (Dryomin, 2004; 2006). These perspectives on organised crime in weak states emphasise the corrosion of the very principles of governance in connection to the potency of organised crime to take control over state institutions that turn to serve the interests of a limited circle of elite rather than the citizenry. It is often the case that the elite and OCGs have shared interests. In cases in which that results in state capture by organised crime, the authorities directly benefit from OCGs’ activities, including those in the black market, and as a rule have very little or often a *negative* political will to restrict the activities illegal market entrepreneurs.

Without the backing of civil society that could bolster the political will against corruption, in states with high levels of corruption, it is difficult to hold officials accountable and pursue an effective fight against organised crime. In countries with corrupt and unaccountable police that lack legitimacy and public support, among other factors, citizens are not likely to report suspicious activities or assist investigation. In such cases, little trust in the police and strong a feeling of inclination not to report crimes that subvert the rule of law and impede functioning of the judicial process and legal institutions, especially for the curtailing of illicit markets (Tyler and Fagan, 2008; Sunshine and Tyler, 2003). Openly marketing illicit goods and services, is thus more problematic in countries with a strong civil society and pronounced civic activism. The presence of developed network of non-governmental organizations, particularly associations of investigative journalists, and an established channel of communication between the civil society and law enforcement discourage illegal entrepreneurs from directly approaching potential consumers.

Illegal gambling and organised crime

Given the high revenues, it is not surprising that black markets have often been associated with OCGs and have constituted a primary source of revenue for them. A certain level of organisation and acting in concert would be necessary to run most illegal enterprises. Indeed, if a certain good or service, such as narcotic substances or prostitution, is criminalised, *“private parties cannot enforce contracts through the normal channels. This creates a*

power vacuum that can then be filled by quasi-governmental organisations, such as ‘*mafias*’” (Wang and Antonopoulos, 2015: 3). Illegal gambling is not an exception. “*Ever since authorities decided to restrict gambling, criminals have offered the opportunity to play illegally. Since the end of the nineteenth century, illegal gambling also became one of the classic activities of organised crime*” (Spapens, 2014: 402). Moreover, a gambling venue is a complex business that requires a number of specialised workers, such as dealers, maintenance workers, supervisors (e.g., pit bosses), managers, security staff, financial officers, cashiers, and marketing staff. An illegal gambling venue will also employ lookouts to spot potential police raids, ‘ropers’ to bring in the people and skills or cappers to encourage customers to bet, not to mention debt collectors (Ferentzy and Turner, 2009: 112). In short, one needs staff to fulfil a diversity of tasks and employing staff implies by its nature organising.

In the United States, for instance, illegal gambling acquired rigid organisational forms in the 1920s, which were under the control of Al Capone’s groups that ran gambling dens (Spapens, 2014). The Kefauver Committee Report on Organised Crime (1951) stated that “*the Mafia (. . .) organisation specializ[ed] in the sale and distribution of narcotics, the conduct of various gambling enterprises, prostitution, and other rackets based on extortion and violence*” (p. 175). In China, illegal gambling emerged as a major source of profits for OCGs after 1978, following the ‘open door’ policy and economic reforms that blurred the lines between “*the legal and illegal sectors, particularly those sectors involving practices that are historically and socially embedded in Chinese society, such as gambling*” (Wang and Antonopoulos, 2015: 2).

During the Soviet era, gambling activities were viewed negatively. The only legal gambling activity supported by the state was lottery that generated considerable revenues for the state because millions of people participated in the lotteries even though the chances of winning were generally very low as in most games. Arrests of illegal gamblers who operated in hotels in resorts, markets and fairs, overnight trains and train stations, however, demonstrated the presence of illegal gambling in the Soviet Union, where ‘professional cheaters’ made exceptionally big profits (Tsytsarev and Gilinsky, 2009). A problem related to gambling that emerged in the Soviet Union but became expansive in the 1990s is *lokhotron*—a kind of illegal gambling, where a gullible person is taken advantage of by professional cheaters. OCGs have been in control of that industry. For example, in the early 1990s the Savlohov organised criminal group in Ukraine

specialised in the street gambling, playing ‘thimble’ (three cups and a pea) (Markovska and Serdyuk, 2011).

The Ukrainian gambling industry

Soviet legacy and gambling prohibition

The study of the black market in Ukraine offers an interesting insight into the survival of the historic black market mentality. Using the definition of Wedel (2003), it includes: ‘dirty togetherness’ and ‘flexible legality’. Ukraine has inherited what was part of that black market exchange mentality during the Soviet times and even long before, in tsarist era. In dirty togetherness, everyone is involved in the exchange on both legal and illegal markets (it can be the purchase of the legal and illegal goods on illegal market, or it may be the production of the legal or illegal goods and services).

The core of the Soviet principle was the state monopoly over the production of goods and services that prohibited or criminalised private enterprise. This prohibition turned private enterprise into the black economy. Therefore, even if the traders provided legal goods and services, they would still be operating in the illegal economy, because of the very nature of these exchanges and the status of those who run them. In line with what has been described by Schelling in 1967, the acceptance of the black economy by the general public and appreciation of the services provided created an alternative ideology that normalised the disrespect of law and the existence of black markets. The Soviet Union failed to effectively police this prohibition for a variety of reasons, corruption being one of the most prominent. Decades of pretend enforcement of certain laws have established the already existent practice of disregard for the rule of law. The most controversial case of partial prohibition of alcohol was attempted by President Gorbachev, who in 1985 restricted the production and sale of alcohol. Interestingly, while the restriction led to the improved demographic indicators, it also led to the dramatic increase in the illegal alcohol production. “*The treasury lost 20 billion rubles, which was significant for the Soviet budget. Vineyards across the country were cut down. From 1985 to 1990, only in Russia, their area decreased from 200 to 168 thousand hectares, and some unique collections of grape varieties were destroyed*” (Vorsobin, 2015:

n.p.). Gorbachev also recalled that while travelling around the country, it was mostly women who saw prohibition to be a positive thing (*Ibid.*). So, although positive aspects of the alcohol prohibition were identified, it was accepted that prohibition was not sustainable. Fast forward 24 years and the prohibition ban of the gambling industry in Ukraine in 2009 led to the series of protests from those employed by the industry, men and women included.

By analysing the case of the 2009 prohibition of gambling in Ukraine and the formation of illegal gambling markets in this country, we aim to create a comprehensive account about the nature of this illegal conduct in a state that is not capable to enforce the ban. The case of state prohibition of the gambling began with an illegal act of the state itself when it refused to reimburse the cost of the licensing immediately after the introduction the ban, which may be qualified as grand embezzlement or theft. Firms that paid € 150.000 for the official license in spring 2009, were not reimbursed after the sudden ban and received no explanation. It confirms a previous observation that the Ukrainian state administration has been captured by members of organised criminal groups, who are obviously not accountable to the citizens of Ukraine (Markovska and Serdyuk, 2015).

In the pre-2009 gambling era, both legal and illegal companies paid bribes to operate. Legal companies paid to the state administration and organised criminal groups, and illegal companies paid to police and organised criminal groups. All paid some 'extralegal' money to remain operative. Post the 2009 prohibition period this mechanism had not changed dramatically except that now all companies operating within the gambling industry are illegal, and according to our study, pay protection money to police and organised crime groups alike. The following case study discusses the way the illegal providers of the gambling services stayed in business post 2009.

The 2009 gambling ban

The ban on gambling in the Ukrainian context takes a radical stance on the entire industry. It affects not only casinos but also slot machines and bookmakers. The Law *On Prohibition of Gambling Business in Ukraine* signed by Viktor Yuschenko into law on June 23, 2009, also prohibits online gambling (Verhovna Rada, 2013). The law also describes criminal

sanctions for gambling business and any participation in gambling in Ukraine. “On January 6, 2010 the Cabinet of Ministers excluded gambling from the list of economic activities, which can be licensed” (The Cabinet of Ministers resolution No.14 of Jan. 6). The law, however, lists some activities that it does not recognise as gambling. These include: lotteries, creative competitions and sporting events, pool, bowling, free draws carried for purposes of advertising, charity, promotion and education. Importantly, the Gambling ban criminalises both organisations of gambling business and gambling equipment as illegal. “The law provides that any organiser of gambling should be fined, while the gambling equipment and the revenue received is subject to transfer to the budget of the country” (Verhovna Rada, 2013: n.p.).

Following the ban, a number of lobby groups have been involved in drafting the new gambling law and regulations, however due to the political instability in the country these initiatives have not been explored for further development by the state policy makers (see Vasil Kisil and Partners, 2010).

Even during the legal period, the law and regulation of the gambling industry have not been developed properly. Ukraine has never had a distinct legal framework for the gambling industry to operate. Gambling business belonged to the group of ‘other business activities’ that from the year 2000 was subject to licensing. Licenses were issued by the Ministry of Finance to allow the organisation and operation of gambling establishments. Specific regional requirements were established in 2005. At first these provisions were developed in western Ukraine, and later covered the seven regions of the country. By 2009, the system of the so-called *double licensing* developed, one at the national level by the Ministry of Finance, and another one at the regional level, where the local authorities were tasked by the Ministry of Finance to overview the compliance with the license.

This division has significantly complicated the control mechanisms. According to the Ministry of Finance, around 200 registered gambling companies contributed \$700 mln to the budget annually (Bilousiva, 2014). By 2008, around 4.000 legally registered companies operated 13.000 gambling halls. The cost of a five-year official license to operate was € 150.000 (*ibid*). These licenses allowed an unlimited number of gambling locations to be open. One license holder opened around 80 gambling locations.

Reality proved to be different. According to the Head of the State Enterprising Committee Mr. Tretiakov, up to 60% of the industry (with

the reference to the on-slot machines in particular) used protection offered by the police to avoid paying the official license (Pogrebnyak, 2008). The official license fee was prohibitively high for many small companies; in the same time, the readiness of police to offer protection to keep the blind eye for the non-licensed spots operating the gambling machines was strong. So, many gambling operators worked illegally, without licensing even before 2009.

Post-ban gambling Odessa

Generally, the present illegal gambling business in Ukraine can be divided into four parts: casinos, bookmakers clubs, sport poker and on-slot machines (fruit machines). Each aspect of the gambling business has its own distinctive features. For example, sport poker clubs can be divided according to the betting rate selected and the types of players. Similarly, the casino players differ depending on their financial ability. The on-slot machines are popularly considered to be the most profitable part of the gambling industry. Even in casinos, the on-slot machines bring more money than black jack or Russian roulette. Where casinos usually attract wealthy customers, the on-slot machines are open to be used by anyone from teenagers to grannies. Because of this it resonates more negatively in the public opinion, and is considered to be the biggest evil of the gambling industry. In Ukraine, the percentage of the winning in on-slot machines is very difficult to control. The required margin is 85-92%, the reality is that the owners could interfere and set it as low as 50%.

How exactly did the industry adapt to the post 2009 realities? The answer to this question is important as it provides us with a better understanding of further developments of the black market structure in the country. When the gambling business in Ukraine was banned, the big legal structure that previously existed 'exploded' and the fragments of the old legal industry became small hubs of what were now illegal activities. Little of the previously legal industry was lost with the ban. Most clubs remained the same. However, after the ban, the industry's profile has changes dramatically, with fragmentation or specialisation being the most visible feature. Not many illegal clubs could offer the different varieties of gambling under one roof; so the answer was in streaming the activities.

Some ended up specialising in illegal poker club, some in betting shops, etc.

We start with the observation that the service providers (gambling business) did not comply with the official ban, and as such selected certain mechanisms to deal with the system in order to sustain the gambling business. The discussion that follows is based on the interviews with two service providers in the city of Odessa in the spring of 2015. We argue that following the 2009 ban, there are at least three strategies adopted by some of the service providers: (a) stay independent and go underground (invisible), (b) attached underground (attempting to mimic the legal business) or (c) be above the ground (visible and open).

a. 'Independent' underground

This strategy relates to small underground clubs that tend to exist beyond police and organised crime protection. This strategy has been employed by small-scale enterprises that mostly operate in rented apartments in residential areas. These operators have a rather narrow client base, minimal and often no protection at all. This strategy is most likely to be adopted by small poker clubs and, very rarely, casinos.

To understand this strategy it is important to go further into the details of the *poker* industry. The small poker clubs will differ depending on the starting pot and betting limits. It is interesting to note that in sport poker the players are playing against each other and not against the establishment which takes a certain percentage from final pot (usually from 2-5%, the bigger the pot the smaller the percentage). So, in order to open such an underground club you need an organiser with an established client base, suitable premises and equipment. The personal relationships with clients are very important here, especially so in order to avoid unnecessary connections with the police or, in some cases, in order to use police connections effectively as an information source. The organiser is required to understand the dynamics of the group game, and gather people with similar financial and psychological profiles. In the absence of any visible protection, the organisers will be looking for non-violent clients. The reputation and ability of the organiser to compose such a group of players is a key to success in this strategy. In terms of suitable premises, the organiser will need the help of renting agency that has a developed database of suitable apartments. These clubs are not turning significant profit, and as such

very often cannot afford protection. Nevertheless the local police seems to be interested in clubs of this type but only as show off examples of the fight against organised crime, or in cases when the recorded crime statistics need to be topped up for certain period in order to achieve the target required. So, naturally these clubs tend to minimise their connection with the police and any state agencies. According to our study, protection moneys are paid rarely, and if paid, the police do not provide the full cover (there is no guarantee that police would not use the club known to them in their PR campaign to present the fight against organised crime in the media). So ‘independent’ underground poker enterprises conduct their businesses outside of the usual protection service.⁴

b. ‘Attached’ underground

This post 2009 strategy features small poker clubs, similar to the once discussed above, or providers of on-slot machines. The crucial point here is that these will be physically based within the legal establishments, such as bars or pool clubs, hence our suggested title, attached underground. This will provide them with a wider client base. Police protection becomes necessary due to their visibility. However, even with the police protection, these clubs do not exist for long periods of time. Before 2009, the on-slot machines were open to everyone and found everywhere. The expenses associated with maintaining this business are very small, requiring a small office and a minimum of two members of staff. The biggest expense here is the machine. One respondent quoted that before 2009, the profit of this type of gambling enterprise in one office in Odessa was around \$100.000 a month.

We understand that attached underground is a very complex mixture of different strategies. During the first three years of the ban, when the legislation kept changing, some operated in the semi-closed regime. It

⁴ Protection provided by police following the unofficial payments is an interesting topic to study by itself. In this chapter we point towards the suggested amounts paid directly to the police in the city of Odessa, but we don’t discuss in details of what exactly is offered by this type of protection and how is it different from the protection that is provided by organised criminal groups. Our understanding is that from 2009 and up to the beginning of the 2015 the payments were made to police regularly by type b (attached underground) and types c (above the ground) establishments. Police role was to oversee the collection of payments and we believe to redistribute the payments further down the administrative chain.

meant searching for the loopholes in the new law. For example, at times the machines were turned into computers and computer games; or winners would win the lottery tickets that were then bought back by the office representatives. Once all the loopholes have been exploited, the closed part of the regime became dominant. It is the regime of hiding, literally hiding underground, hiring the cellars in the clubs.

There are at least two reasons for police to be interested in this type of establishment. This is the more profitable activity, and thus protection payments can be accordingly higher. In addition, this is also the type of illegal activity that involves the on-slot-machines, which creates the biggest outrage among certain groups of the public.

By publicly closing clubs like these, the police not only improved its performance indicators (by fulfilling the targets on organised crime), but improves public image and media relationships. Interestingly, our respondents noted that due to the political instability of the last few years, the idea that you pay and you are protected has not always worked with the police. The police became a target for the government, and re-shuffling staff became a weekly procedure. 'Attached' underground, is often seen as the provision of services on the side of the legal entertainment industry.

c. 'Above the ground'

Visible or 'above the ground' establishments differ significantly from the two types discussed above. To remain open and visible during the prohibition regime is to acquire a distinct type of operation for the gambling club. In this category the establishments will differ depending on the membership policy: restricted or open memberships.

Restricted membership establishments are mainly situated in central locations. This type is most likely to include casino facilities. There are two well-known examples: the club *Argus* in the city of Kharkiv, and casino called *Rishelje* in the city of Odessa. The organisers have a very loyal, 'checked and approved' client base. Entrance without recommendation will not be possible. Usually clubs of this type officially rent large premises in central locations. For example, in the city of Kharkiv a casino was officially registered as a chess players' club. The monthly costs of running this type of club could reach up to \$80.000 (without the cost of protection). It is known that monthly protection payments of a restricted club to the police in Odessa were in the region of \$100.000.

Up until spring 2015, the casinos operated regularly, and were not shut for longer than one or two days. This is perhaps one of the reasons why the underground casinos were not established as they did not meet demand. Those who visit casinos regularly are more inclined to visit bigger establishments because here they felt more protected. It is very difficult to find those interested in playing casinos in a small underground flat. It is also because of the risks of the game. The casino game is built in such a way that the longer the game the more likely the casino will be winning. In a smaller enterprise the entrepreneur (the organiser) does not have a guarantee that the winner would not cash and pack up immediately after the win.

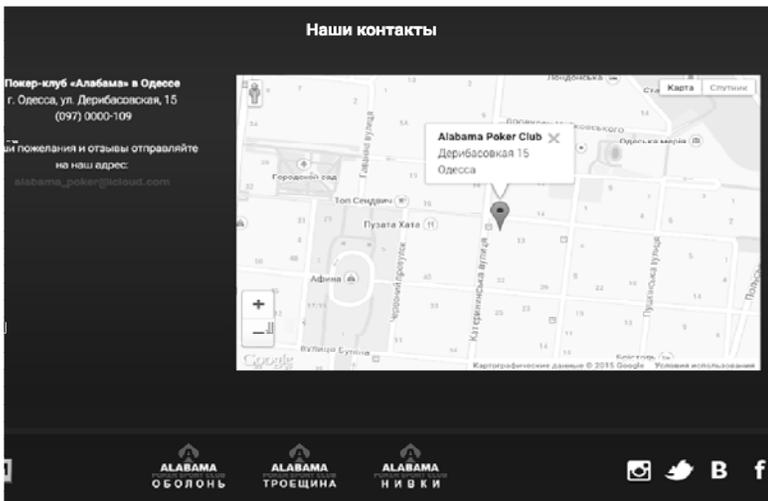
Strict membership criteria for the closed clubs works for the selected few and leaves many to seek other alternatives. The answer is in open membership establishments centrally located with free access. The biggest advantage of open membership is large but changing client base. Open clubs will require significant investment in protection that is more likely to be extended beyond just the local police in the city, with some indications given that the regional and national authorities might be involved. The example of this type of establishment is Alabama club in Odessa as well as some bookmakers clubs. The Alabama club was officially registered as the International Organisation against Human Rights Violations, a very ironic company name.

Photo 1. The Building of the Alabama club (1st and 2nd floor).



This is a type of establishment that resembles the legal pre 2009 gambling industry. Up until April 2015 Alabama was an open club, situated in 4 floors of the beautifully restored old building in the city centre. The club started with 17 poker tables, but extended its provisions to include casinos and on-slot machines in order to be more profitable. During our study it was difficult to establish who was behind the organisation of the club or who the corrupt protectors were. The management of the club operated on a professional level. The club had its official webpage where it would post all the job adverts and ask clients to comment on the services by using the email (see photo 2).

Photo 2. A screenshot of the official website of Alabama



To ensure the safe open door policy the club provided security facilities similar to the airport checks. Members of their security team at the entrance were equipped with metal detectors and lockers were provided for firearms. It was clear from the way the club was set up, that there was a zero tolerance of violence. At some stage in the Spring of 2015 the club had also extended security provisions to patrolling the surrounding streets. The presence of an open club such as Alabama in the city makes the work of the smaller illegal clubs almost impossible. The estimated monthly protection payments directly to police was about \$ 50.000.

The above strategies suggest an interesting pattern in the development of illegal industries, and thus in the black market economy. The big clubs do require police protection. For these clubs to operate in central locations, be it openly or with a restricted membership, police are bound to become involved. The smaller clubs can rely on self-surveillance and operate more successfully outside of the police view. As such, there are different layers of the black market: the upper one protected by the police, and the bottom one that is working without police protection. The success of the upper layer depends strongly on the links between the organised criminal groups and police. The success of the bottom one depends on the ability to keep the business invisible to the outside world, including police, and engage with the available players across different groups of the society. We argue that the success of the upper layer is not in the adopting a new strategy, but rather in coping the strategy of the pre-ban legality. High visibility of the clubs will ensure the best client base, and can be provided by improving the ties with the police through bribery and corruption.

Conclusion

This chapter discusses the reasons behind the Ukrainian government's decision to enact a prohibitionist approach on gambling and evaluates the consequences of the ban for the gambling industry's main players. In order to achieve these goals, we reviewed the literature on the factors behind the formation of black markets and discussed the organisation of criminal commerce and the constraints on black markets in weak states. We also developed a thorough descriptive account of the entrepreneurial landscape

of the illegal gambling industry in the city of Odessa in the aftermath of the 2009 ban.

Based on a qualitative exploratory analysis of the illegal gambling industry in Odessa supported by interviews with gambling entrepreneurs, we observed that the prohibition of gambling in Ukraine, a transitional political regime with pervasive corruption and little intervention by civil society, has created a criminogenic environment, in which illegal gambling entrepreneurs managed to stay in business by developing various kinds of adaptation strategies.

First, small illegal gambling entrepreneurs who are not capable of buying protection from criminal bosses or bribing the law enforcement tend to stay underground, operate under the veil of secrecy and keep away from the public. This *'independent underground'* strategy can be found in developed states too, where illegal service providers keep away from the non-corrupt law enforcement and the public oversight. Such enterprises cannot use any marketing strategies to expand the consumer base and have to rely on a small number of regular clients. With regards to the *'attached underground'* strategy, illegal gambling entrepreneurs seek to infiltrate the legal trade by *'mimicking'* legal entrepreneurship while running front enterprises of a questionable legal status. Visible or *'above the ground'* establishments differ significantly from these two types and can hardly be found in countries with hands-on law enforcement, solid investigative journalism and watchful citizens who can raise awareness about a range of public safety issues such as crime. To operate successfully, illegal entrepreneurs of this type have to use corruption that allows them to enjoy protection from law enforcement. The availability of corruption as a mechanism of law enforcement neutralisation will be more prevalent in developing countries or countries in transition, such as Ukraine. Therefore, the *'above the ground'* strategy is only available to further illegal entrepreneurs who are protected either by organised crime groups or corrupt public officials (or both when they fuse). For the illegal gambling to prosper in the city of Odessa, the general population should be at least ambivalent to its illegal status. In this case it is likely that from the point of view of the general public, the visible and open establishments, such as Alabama, provide security and protection for the users and for the public. The *'real underground'* small illegal providers who tend to rent private apartments within residential dwellings will find it more difficult to appeal to the loyalty of the next-door neighbours, and as a result will attempt to adopt violence-

free techniques of operating on the premises. As discussed earlier, the part of the gambling industry that evokes strong feelings of the public is on-slot machines, where the enforcement failed to establish strict control as to the location of the on-slot machines or hall operating on-slot machines.

Given the state of governance in Ukraine, prohibiting gambling activities created a highly criminogenic environment. It can be argued that the prohibition regime's potential to increase the profits of organised crime groups that already control and service the gambling market is very high. The underground gambling industry thus generates a steady return of profits that far exceed the revenues if the gambling would be legal. Thus, we note that prohibition of gambling in Ukraine did not curtail the gambling industry. Instead, it has empowered organised crime groups and has led to increased police corruption.

Post Script

This chapter will be incomplete without the story of the Alabama club. By Spring 2015 Odessa, as many other cities in Ukraine, has seen some sporadic 'formations', a number of city self-defence units, including the pro-nationalist one, aiming to defend independence and fight corruption. Masked representatives of one of the groups had raided the Alabama club twice in March 2015. The first attempt ended up in the raiders drinking all free alcohol and stealing the cash. The second raid was more organised, more violent and more media orientated. Masked men forced entry into the building shouting that they had uncovered corruption, illegality and vice, and that the business should be destroyed. The security of the Alabama club could not fight back and eventually the police were called. With the police came the media. The story about the 'discovery' of the illegal hub was widely circulated in Ukraine. Although, the questions asked were very different, some commented on the corruption and the links to the authority, while the others questioned the accountability of the men in the masks. Were the men in the masks the long awaited sporadically formed civil society defence groups, or were they yet another organised formation trying to re-shape the illegal market? Whoever they were, they have managed to instil fear in the local police and at the time of this book going to print the club remains shut.

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Russian organised crime and criminal economy. 95 years of history

*Ilona Karpanos*¹

Introduction

Russian organised crime has deep roots. It has cast its shadow across the 400-years history of Russia's peculiar administrative bureaucracy but it really flourished during the seven decades of Soviet hegemony that ended in 1991 (see Nove, 1990). This ancestry may help to explain the pervasiveness of organised crime in today's Russia as well as its close alignment with political institutions. It cannot be fully understood without understanding its place in the context of the Russian political and economic system (Finckenauer and Voronin, 2001).

This historical approach may help us to assess, not only the nature and extent of organised crime in Russia, but also the nature and extent of the threats that derives from it. It helps us to clear away some of the 'conceptual chaos' which dogs research in this area (Van Duyne, 2005) while enabling us to understand the curious interaction between governments and organised crime in this country. Did the criminals capture the state, or did crime become institutionalised?

This chapter devotes its attention to the *criminal economy* of Russia from the revolution of 1917 to the first half of the 2000s, its emergence, formation, evolution and transformation from a disorganised to a highly organised criminal system, and the causes thereof. It will examine its expansion and its infiltration into every facet of social, political and economic life, while studying the correlation with the political and economic changes that took place in the late 20th Century. The chapter also seeks to demonstrate the negative consequences of underground economic activity in the Russian economy as a

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whole and the legal pathways organised crime groups have gone through to obtain political and economic power.

More specifically, we look closely at political and economic events in the 1980s and 1990s which resulted in new opportunities for both criminals and businessmen to develop new activities, and which offered them the motivation to sometimes merge those operations and blur the lines between criminality and legitimacy (Rawlinson, 2010). As those lines blurred, we will study a period when organised crime groups gradually stepped away from 'traditional' criminal activities, and began a process of infiltration into state institutions and business.

The key concept

Much like organised crime, the study of institutions is handicapped by a problem of definition, particularly when we start to discuss the informal institutions of an illegal economy. This becomes more problematic when we attempt to chart the decentralisation of the planned economy in the Soviet Union and the transition to the market economy of modern-day Russia. This momentous change has been depicted by economists, politicians and, scientists as being crucial to the formation of organised crime.² Despite that, few debates have been conducted on the intertwinement of official and unofficial institutions that encourages and facilitates the emergence and formation of organised crime.

We can think of institutions in a couple of ways: as formal, restrictive organisations that shape human behaviour by mean of norms, rules and constraints (Rodrik, 2008), or as the practical result of habits of thought, principles, historical traditions, and legacies (Rodrik, 2008). Either way they emerge as benchmarks of economic stability and political order, democracy if necessary, and ultimately, of the state.

Formal institutions regulate the normal functioning of the economy and free market on one hand, and on the other, they seek to constrain the actions of agents and organisations that might jeopardize their regulations or laws. These institutions maintain conformity to the established order and while lending support state institutions. The quality of the state institutions deter-

² See, for instance, Patricia Rawlinson's book *'From fear to fraternity: a Russian tale of crime, economy and modernity'*, 2010

mines the viability of informal institutions, such as a black market economy, corruption or organised crime.

Failing state institutions encourage the emergence and formation of informal institutions which serve the shortcomings of the market due to the state. They make it easier for criminal practices and behaviours to become embedded within its corrupt formal framework. In other words, profit-driven crime becomes 'institutionalised' though not in a formal sense. This is facilitated by a widespread system of bribes and corruption.

The kind of institutional vacuum which can create these conditions coincides with periods of stress. Economic crisis, revolution and political upheaval can fulfil this role (Williams, 1997) and in transit literature about Russia most theories discuss how the collapse of the Soviet Union's state institutions in the 1990s gave rise to the phenomena of economic crime, to the shadow economy, unlawful privatisation, and eventually 'organised crime'. The state as an institution, and as a regulatory structure, stopped functioning.

In fact, we find that most of the research on Russian organised crime does indeed concentrate on the 1990s, and for an obvious practical reason. This is when the information became available, and a period for which researches could obtain the relevant data. This has helped to foster the popular view that Russian organised crime is a thing of the very near past, a product of malfunctioning institutions and very often associated with the particular power structure or, even a particular leader.

But the story is not as simple as that. It seems doubtful that such an extraordinary phenomenon could materialise fully-shaped out of this transnational crisis. Some authors (Galeotti, 2002 and Varese, 2001) have indeed sought the origins of the present Russian organised crime in the fertile ground of the 1980s and 1990s. From the early Russian state to the Soviet Union and on to the early years of the post-Soviet state we can chart only the ebb and flow of organised crime and its relationship with power. This shows that Russian organised crime, considered here as a product of the illegal networks of formal institutions, illegal entrepreneurs and criminals, has always been central to the economy of the post 1917 Russian state, the Soviet Union, and the early post-Soviet state. In contrast to many prevalent views based upon studies analysing Russian organised crime (Finckenauer and Voronin, 2001; Holmes, 2008; Varese, 2001), this chapter conceives the phenomena of Russian organised crime not as a recent institutional problem but actually as a recent manifestation of the much longer historical trend. It shows that the

phenomena has gone through the evolutionary stages each of which reflects the political and economic upheaval of the corresponding period.

We will focus on four crucial phases of the post 1917 Russia: (1) the period of Post Russian Revolution of 1917 when Lenin's New Economic Policies (NEP) were introduced; (2) the 1970s and the first half of the 1980s; (3) the second half of the 1980s and the first half of the 1990s; (4) the second half of the 1990s and the first half of the 2000s. The suggested phases are important given the significance of the political and economic events that explain a great deal of the institutionalisation of organised crime.

The period of Post Russian Revolution of 1917

After the revolution of 1917 all existing Tsarist institutions were demolished along with their bureaucracy. New Soviet state institutions were formed with the appointment of a new officialdom that consisted of Bolshevik representatives who were conspicuous for their lack of education or experience in civil service and quietly often 'pleased themselves' (Nove, 1990) by expropriating resources under the pretext of nationalisation. And even those who were more intellectual, amid the recruited official staff, had "*little grip on the realities of administration*" (Nove, 1990: 44). This was a damaging vulnerability for the new Soviet State. Barley and Tolbert (1997: 96) have rightly observed that new institutions, lightly burdened by a relatively short history and without a widely accepted authority, are more susceptible to challenge and less apt to influence action.

To make matters worse, the economic policies of the Soviet Union were dictated by Bolshevik ideology (Nove, 1990): private manufacturing and private trade in food was outlawed; the procurement of grain was handled solely through official channels; nationalisation of all industry was proclaimed. This deluge of measures along with the low-quality of the administrative system facilitated anarchy and an institutional chaos that was marked by confusing, contradictory policies and orders, the emergence of food shortages and, in turn, the emergence of the black market. The prevalence of the black market was palpable and became a fundamental part, though illegal, of the economic life of the state. It was here, in the period immediately after the revolution of 1917, that the roots of the modern Russian shadow economy originated.

Order had to be restored, and some degree of economic freedom was entrusted to Russians to engage in small-scale production with the New Economic Policies (NEP), introduced from 1921. It led to a form of mixed economy (Nove, 1990). The state controlled the banking sector, foreign trade and large-scale manufacturing, while private agriculture, some private trade and small-scale manufacturing was now permitted. With an objective to invigorate a feeble and ineffective economy (Nove, 1990) people were not only permitted, but were encouraged to engage in private trade.

The economy did recover but the changes encouraged the illegal accumulation of assets and the squandering of state resources, all this through a tight, unlawful collaboration between state officials and entrepreneurs, by means of bribes and other forms of corruption (Larin, 1927). This period is characterised by the growth of corruption among formal institutions and entrepreneurs that in turn sowed the seeds for an established criminal network which exploited those links.

The officialdom was authorised to cooperate with the private sector. A new phenomenon, illegal network between state institutions represented by state agents and private entrepreneurs, emerged and yielded the accumulation of black assets. All this by means of bribes and corruption, two inherited legacies from tsarist Russia, that predetermined the formation of Russian organised criminal network.

The *Great Purge* of 1937-1938, the period that was renowned for Stalin's repressions, not just enfeebled but, paradoxically, fuelled the process of the strengthening of these illegal bonds. Two mutually complementary factors, economic and psychological, were at stake within this illegal nexus. The planned economy of this period was guided by a multiple pricing system for one kind of product, namely the rationing price and the commercial price of consumer goods, that manifested itself in price disparities. Rationing prices were exceedingly high compared to commercial ones. There were repressions, not only on so-called political, but also on economic grounds, where making an error resulting in financial loss, was considered treason. The fear of becoming a victim of Stalin's terror and being sent to the labour camps was a psychological and social reality. Thus the speculative resale of consumer goods became a tool of state agents to conceal their financial shortcomings. Nove acutely observed (1990:239-240) that the multiplicity price system ". . . gave excellent opportunities for speculative resale, and there were many instances of state enterprises illicitly selling or reselling in higher price categories".

In the Russian culture the behavioural pattern of engaging in bribes and corruption is considered as a normal way of conduct. Zucker (1977) explains this as *“inheritance of a conception of reality by ancestors, who enacted this social reality”* . . . *“The young are enculturated by the previous generation, while they in turn enculturate the next generation. The grandparents don’t have to be present to ensure adequate transmission of this general cultural meaning. Each generation simply believes it is describing objective reality”* (Zucker, 1977: 728). From that fact, the practice of bribes and corruption in the Russian culture can be understood as a socially defined and—therefore – deeply rooted reality. Hence, the system of illegal connections that emerged by means of bribes and corruption could not be avoided or prevented, and therefore was a ‘natural’ outcome, of which the inevitable effects had far reaching implications on the formation of Russian organised crime.

Following the abolishment of the NEP in 1924, and for the next 50 years, the economic policies and the political course of the Soviet Union underwent radical changes that were ‘clothed in ideological grab and are justified by reference to high principles’ (Nove, 1990; McCauley, 1993; Millar, 2009). Those changes eventually resulted in increased, strengthened and consolidated illegal links among state agents at all levels within the Soviet machine that became an institutionalised phenomena.

The 1970s - first half of the 1980s

After the Second World War the Soviet economy was preoccupied with the reconstruction of heavy industry. It was a massive drain on cash resources (Linz, 1984) that encouraged the state to yield to economic pressure and once again legalise the private sector.

During this period, roughly until Stalin’s death in 1953, there were about 150.000 private enterprises all tightly cooperating with state factories named ‘donors’. Officially, donors had been sanctioned to provide private enterprise with wasted, rejected or defective material. In reality they were trading high-quality raw materials with private cooperatives that shared territory with state factories, thereby establishing a supply chain. Alongside the formal, legal economy, new illicit industries and sectors were successfully established. It is remarkable to note that Soviet shadow economy was able to completely fulfil

(Grossman, 1977) the requirements of the population for consumption of illegally produced goods.

Josef Stalin's death acted as a further launch pad for the expansion of the shadow economy presaging as it led to two significant political and economic changes which had far reaching implications for the consolidation of the criminal world and the state bureaucracy. This was a turning point in the advancement of the Russian organised criminal network. First, economic policies toward the private sector were radically changed by Nikita Khrushchev, who not only outlawed the private sector once again, but also adopted the death penalty as a punishment for being engaged in a private economic activity (Kline, 1987). Secondly, as an outcome of changes to criminal law, around 8 million inmates were gradually set free from gulags and prisons. Notwithstanding the fact that the majority were not criminals (see Applebaum, 2003), those of them who represented the criminal world in the true meaning of the word served as a recruitment drive for the black market. This fresh cohort of additional criminals played a vitally important role in organising, shaping and advancing the existing criminal network between officialdom and illegal entrepreneurs.

On the one hand, the liberated criminals were actually a burden to the existing 'free' illegal entrepreneurs. Stimulated by lucrative opportunities to amass tremendous wealth, those criminals extorted money from illegal enterprises which reluctantly paid out in return for being left alone. On the other hand, they ended up being a most useful ally for corrupt state officials who were able to establish an illegal chain of distribution for scarce products.

During the 1970s and 1980s under Leonid Brezhnev's regime, empty shelves and endless queues for scarce basic products became a way of life within the Soviet system. The official economy was stagnating if not shrinking, that is "*increases in money incomes were not matched by the rise in supplies in goods and services, which was reflected by the growing gap between official and free-market of foodstuffs . . .*" (Nove, 1990: 372). The shadow economy with its inherited corruption and *illegal networks of state officials, entrepreneurs and criminals* took a leading role within the legal economy of the Soviet system by supplying scarce goods. This can be attributed to the earlier institutionalisation of Russian organised criminal network where the state was one of key organisers. This claim is reinforced by the fact that the state turned a blind eye to the spread of this illegal network that was carving a way for the rapid growth of a Russian brand of organised crime.

Economic stagnation and the weakening of the centralised control and legal protection under Brezhnev prompted two phenomena. First, corruption was elevated to the status of an informal institution and became a hallmark of Russian economic life in the 1970s. One of the most celebrated examples was the Minister of Culture, Ekaterina Furzeva who would have taken bribes in the form of diamonds and expensive outfits in return for granting permission to famous artists to go on overseas tours (Vishnevskaya, 1998).

According to the note of the Department of Administrative Apparatus of the Communist Party from 21 May 1981, cases of bribe taking by state officials, rose from about 4,000 in 1975 to about 6,000 in 1980 (Moiseev, 2014: 19). This increase of 50%, reinforces the idea that bribes and corruption were a common or 'institutional' practice in Russia at the time. By the 1970s, the number of technically illegal small enterprises had mushroomed all over the country while the Kremlin turned a blind eye to them. A vivid example is the research of Vladimir Treml (1985). According to Treml, the illegal production of alcoholic beverages and its speculative distribution in 1979 provided an unregistered income equal to 2,2% of the Gross National Product.

The spread of private enterprises increased the predatory opportunities to organised crime groups as indicated earlier in this chapter. Actually it was carving a way for the rapid growth of a new Russian underworld. Individuals who run small private companies had to pay off criminal groups who thereupon began to coalesce into informal business structures involved in the construction sector, in drug trafficking, in the illegal trade in goods from state shops, and in the theft of industrial alcohol and sugar (Keeran and Kenny, 2010). As ever, these illegal activities would not have been possible without close cooperation with a highly corrupt official system such as the police.

The abuse of economic opportunities were not only a matter of bottom-up. Those further up the corrupt 'food chain', in the upper echelons of power, had privileged access and once they had established the routes to engage in illegal trade they set up a near monopoly in the illicit trade in state resources. Minister of Fisheries, Alexandr Ishkov, showed quite some insolence with his enterprise to sell caviar to the West in herring tins. Subsequently Ishkov set up the firm Rybpromsbyt as a channel for laundering the profits that never made their way back to Russia but remained in banks in Switzerland.³

³ See A. Konstantinov, *Korrumpirovannaya Rossia. Moscow*, Olma-Press, 2006:120.

Corrupt officials stopped short of openly running illegal businesses or protecting their operations themselves. They needed independent operators who could establish and manage the informal channels for the distribution of scarce products. That required the formation of illegal networks within related sectors, such as transportation and storage, all managed through bribes and corruption. Later on more sectors joined in and adjusted their services accordingly. It is here that we see the beginnings of a genuine merger of the formal state with the informal, and palpable evidence of a slow institutionalisation of organised crime.

It is of great importance to note that each sector was controlled and managed by the corresponding official institution: Ministry of Transportation, Ministry of Health, Ministry of Justice, Ministry of Natural Resources, Ministry of Construction and Communal Services etc. Criminals assumed the role of subcontractor. They worked hand-in-hand with Party secretaries, government officials and the elite of the Soviet Union. The relationship between state officials and criminals was, in effect, a deal for outsourcing, on which those officials came to rely. It was prevalent but selective, and required a quiet specific relationship between officials, illegal entrepreneurs, and criminals. Simply put it was shadow economy providing delivery services to the shadow state in a regular way.

It was a dramatic time. The 1970s and 1980s saw first the emergence of small illegal businesses, new 'cooperative societies', speculative enterprises, and illegal exchange of commodities. Later these groups formed partnerships with criminals, corrupted officials, and the state apparatus. Eventually they moulded and shaped organised crime networks (see Anderson and Boettke, 1997).

This was a heritage of Stalin's rule, with its social, political and economic repression, notorious for its suppression of criminal roots. Ironically, this inheritance had encouraged, you could even say forced, cooperatives to venture into realms of the criminal hidden economy in order to produce and distribute everything that was scarce because the plan economy appeared to fail.

Throughout the Brezhnev period, both the scarcity of commodities, provided by the underground economy, and the heavily corrupted state officials stimulated criminal roots to evolve into the tentacles of genuine organised criminal network, with the collaboration of 'former' criminals, namely the 'thieves in law', the shady entrepreneurs who formed new illegal entrepreneurial class, and state institutions. Social networks and highly developed personal ties played a significant role in transforming criminal entrepreneurs

into organised networks. The underworld became specialised, each group playing to its special skills. Without the support and cooperation of corrupt Party officials the process of consolidation of illegal businesses would have been very different, but this period saw the flowering of the key principle, ‘abuse of office’, which manifested itself in corruption. State officials were enthusiastic proponents of the corruption, and consumers adhered the bribes, and by doing so became irreplaceable; a vitally important business partner in the mutual illegal enterprise. Unwittingly and unintentionally, organised crime had become an integral part of the process of institutionalisation. By drawing on an analogy with the mafia’s tactics to maintain control and fight its own internal political struggles, Serio (2008: 18) correctly observed that “*ever since its founding, the Party was a bizarre collection of conscientious hard-working rank-and-file members, entrepreneurial black marketeers, career politicians, corrupt bureaucrats, and common criminals*”. The lines between the criminal underworld and the party had been rapidly blurred.

The second half of 1980s – the first half of the 1990s

The rise to power of Mikhail Gorbachev in 1985 brought about a number of political and economic changes. The economic changes were inevitable as economic stagnation, inherited from Brezhnev’s era required immediate remedy. Those changes had twofold interconnected outcomes. First, they introduced loopholes in legislation that well suited criminals and illicit producers by offering grounds for legalising their enterprises. Those loopholes also benefited Communist Party elites by effectively giving them the ability to seize newly emerged economic opportunities. Secondly, Gorbachev’s changes weakened and jeopardised existing institutions, exposing them to an easy proliferation of organised crime into institutional structures. The new economic and political changes facilitated and advanced further institutionalization of already existing criminal practices and the criminal behavioural patterns of the state agents. Most importantly, they contributed to the ‘affiliation’ of former criminals who were now legal. It was a period which consequently witnessed the start of a new, significant cycle in the infiltration of organised criminal network into the institutional structures of the public administration. Both the criminals and the corrupt officials become more powerful.

Early economic reforms proved to be not only unsuccessful but counter-productive. An anti-alcohol policy, proclaimed by Gorbachev between 1985 and 1987 encouraged illegal production of alcohol and consequently illegal accumulation of assets. This, in turn, stripped the due taxes and excises from the state budget.

Russia's centrally planned system strictly controlled – or rather restricted – state determined prices, import licenses, industrial subsidies and currency exchange. Untill 1989 it was impossible, politically and ideologically, to dismantle the planned economy. Politically, because the party officials, represented by and with the aid of the secretariat, a body that dominated the decision making and controlled State legislative bodies, resisted to the economic reforms (Millar, 2009: p.141; McCauley, 1993). *“Ideologically, because . . . the belief that the Soviet system was . . . the best system in the world” and “. . . the entire Russian population had been educated under it (the Soviet system), brought up their own children under it (the Soviet system), and given all their lives to building its achievements, with which they naturally identified”* (Figes, 2014: 416–417).

Yet the proclamation of new economic reforms, aimed at transition to the new open economy, abolished all restrictions, thereby triggering political, economic and social challenges. Consequently, the prerogatives of state officials became undermined. To make matters worse, the unchecked power of the party officials in controlling state institutions was invalidated. Article 6 of the constitution of the State that secured party officials' superior power over the State institutions, was revoked in 1990 (Millar, 2009). Thus, the only way to preserve at least the exclusive access to the state property and resources was to legalise the right of private access to state property and to keep it in the hands of erstwhile party elite.

The main objective of the Law on State Enterprise that was adopted in 1987, was to increase the efficiency of state enterprises by creating healthy competition in the market. The Law essentially aimed at the number of significant changes in the production and financial and economic structure of state enterprises. The interventional policy of Ministries were also subjected to changes: from now on they could not appoint a director of state enterprises, workers were granted rights to elect one; state enterprises become financially self-sufficient without the intervention of state ministries; state enterprises were granted right to directly engage in export and import, meaning the inflow of foreign currency; the curtailment of direct interventional policy by State officials (Joyce, 1989). Nevertheless, in reality, the new pro-

claimed law unintentionally benefited enterprise directors, state officials, criminals and illicit entrepreneurs. How?

State enterprise directors were either not ready or deliberately reluctant to step on the path of self-sufficiency. It resulted in significant outcomes that had far reaching implications on the further consolidation of criminals and state officials appropriating state assets. The enterprise directors, either unwittingly or intentionally, preferred to increase prices and consequently wages rather than increasing profitability of the enterprise. Such a mode of operation was deemed to fail in developing self-sufficiency and naturally enterprises went bankrupt. State officials and managers of state enterprises by the virtue of their high rank posts, were the first to seize the opportunity to buy out bankrupt state enterprises, thereby gaining an exclusive access to the state resources. Finckenauer and Voronin noted (2001:7) that

“because of its connections to officialdom and to the shadow economy, organised crime took part in what became the enormously lucrative scheme of privatization. As a result, the assets controlled by organised crime gave it enormous economic power, and hence political power as well”.

As a part of economic reforms, directed at decentralising the plan economy, the Law on Cooperatives was proclaimed in 1988. The principal objective was to make legal what were essentially private illegal enterprises, but it was the unforeseen effect of these politics and economics that was more dramatic. It was a vague and crudely drafted law which effectively gave criminals a speedy upgrade from outlawed entrepreneurs to *bona fide* businessmen. It ‘laundered’ criminal’s illegal connections with official agencies, and functioned to reward their corruption with legitimacy. Organised networks of entrepreneurial criminals became a full and rightful players and owners of the new emerged enterprises in the open economy. Through a piecemeal merger with the underworld, underworld crime-entrepreneurs had successfully become an institution in their own right, and one which flourished in the new Russian economy.

The Law on Cooperatives, 1988, also established the idea of private ownership through joint ventures between private enterprises and the foreign-trade sector (foreign companies). It sparked a rush to form a huge number of such ventures, bringing together foreign firms, cooperatives and government officials. Those officials now very openly wore two hats: they were tied to private enterprises in newly established joint ventures; and directors of state

enterprises. This simple fact of this conflict of interest implied they were in it for their own ends. On top of this, the absolute elimination of the Ministry of Foreign Trade's control over the foreign trade operations only helped to facilitate the process of hiding stolen assets abroad. Accordingly, state's assets and properties passed swiftly into the pockets of criminals with further transfer abroad through the joint ventures foreign companies. Published in 1997, Shelley (1997) presented a World Bank study which showed that at least 40% of the total \$ 2 billion outflow from Russia was through organised crime.

The Law on Legislation of Assets, proclaimed in 1987, fuelled the process of amalgamation of criminals and state officials, legal and illegal. All assets from 'black market' activities were legalised. This stage was a tipping point in the criminalisation of the economy, blurring the line between state officials and criminals, legal and illegal.

Table 1
Organisational change of illegal enterprises as a direct response to government's four stages of legislation of illegal economy under Gorbachev reign, 1985-1989

Formal economic activity Informal economic activity	Legalization of underground business: The Law on cooperatives, 1988	The Law on State Enterprises, 1987	Legislation of assets, 1987
illegal enterprises	legal enterprises	seized control of state resources and property	legal assets
criminals	legal enterprise	control of state resources and property	legal assets
illegal assets	legal assets	tool in appropriating state assets	legal assets

New legislations proclaimed legitimacy for joint ventures. Accordingly, state officials, sought to combine the freed state enterprises for which they were responsible with the (formerly) illegal enterprises they were running with the help of (former) criminals as protectors. It meant that criminal groups, entirely on a legal basis gained, not just access to the State resources, but through new legislation, proclamations, and adoption of new laws they also acquired a new status of legal entrepreneurs, with formalised connections to

official agencies. This moment with legitimate business partnership being forged with official agencies was the keystone in the path towards substantial infiltration into the state institutions, political and economic.

The economy was infiltrated not only by criminals of the ‘old school’, or ‘thieves in law’ who gained prominence in the early 1970s, and was not solely an outcome of ill-defined new legislation. A new breed of criminals had emerged to exploit the widespread corruption, lawlessness, and the inefficiency of the institutions that was prevalent in this period. New criminal groups were formed primarily of former sportsman and security staff (Williams, 2016). They were engaged in conventional crime such as extortion, robbery, contract murders and settlement of disputes between influential criminal groups in Moscow. Other traditional illegal activities such as racketeering, protection of small and medium enterprises, stealing cars, prostitution, gambling also belonged to their domain. They also engaged in economic criminal activities furthered by economic changes: trading in stolen and smuggled non-ferrous metals, illegally producing counterfeit brands of alcoholic beverages (Volkov, 2002). Racketeering was rife throughout the economy.

The chaotic nature of “*the legal situation in Russia*” with its “*overlapping and conflicting Laws and decrees*” at this period left no choice but to adapt a “*do-it-yourself approach to protection*” (Varese, 2001:246). This concept resonates with the ‘property rights approach’, that emerged in South Italy, Sicily, as the result of ‘the lack of trust’ (Gambetta, 1993) in state security institutions, that are law enforcement, police and military forces. There was extortion from kiosks and small shops. And there was extortion from medium and large enterprises under the guise of ‘security services’ and ‘debt recovery’. Very often, ‘protection’ took the form of seizure of shareholding control and eventually criminal representatives became shareholders. By the mid -1990s it was estimated that 80% of businesses had paid protection money in Moscow and Leningrad (Varese, 2001).

The second half of the 1990s – the first half of the 2000s

“You must not be involved in any shady affair or business, no arrests, no detentions. You are a different person and you must to start thinking differently. This period is an ordinary change of generations, in ten year time guys like you will be at the helm. We’ll infiltrate the highest sphere of power structure. We possess everything: money, power, authority, and the only thing we are lacking is the legal power. And we’ll procure through the help of guys like you”.

Vladimir Suchov, 1998, *I am a thief in law*. p. 11

Anna Politkovskaya (2004) suggested that the peculiarity of the Russian economy encounters three conditions:

1. To get successful one has to be the first in appropriating state assets. This is why the vast majority of big businessmen are former members of the Communist Party, nomenklatura (p. 151);
2. Once one has managed to appropriate state assets, one has to concentrate on prospering the business. The only way to guarantee your business is running smoothly is ‘to return the favour’ to the authorities, who did not hamper the process of appropriation, but impatiently expect an immediate repay (p.152).
3. To set up an advantageous friendship with the law-enforcement agencies, that among others empowered legal proxies they ‘were endowed by plenary power’ of exceeding their commission by weeding the personal files of new businessmen/criminals from the archives of the police (152).

Once Russian organised crime had effectively legalised itself and new legislations paved the way toward the state institutions, the final cycle – the completion of the institutionalisation process of crime – can be observed. DiMaggio and Powell (1983) have stated that organisations compete not just for resources and customers, but for political power and institutional legitimacy (p. 150). The completion of the institutionalisation of Russian organised crime took the form of a settling down inside the institutions. There was a redistribution of power, the creation of new policies, and the creation and organisation of new bodies responsible for controlling and implementing those new policies.

The second half of 1990s and the early 2000s witnessed a diverse band of criminals: state functionaries, state functionaries, corrupted law enforcement agencies, business entrepreneurs, and ‘thieves in law’ becoming entwined, joining forces to gain financial and economic profit by getting deeply involved in social, politic and economic processes in Russia.

The vivid example of this involvement is the ‘image transformation’ of ‘thieves in law’. By this time, encouraged by those social and economic conditions of the previous decades, the status of ‘thieves in law’ evolved to become the highest level in the criminal hierarchy. One of the key duties of ‘thieves in law’ was maintaining a common monetary fund, or *oshchak*, that was set up through profits from traditional criminal operations and from illicit commerce since the post-World War-I, and which was aimed at serving variety of criminal purposes. Reportedly more than 50% of *obzhak* had been expended on corrupt officials, police, lawyers, and lobbyists (Serio, 2008). By this period the number of ‘thieves in law’ in Russia purportedly reached around 500, when only 15 of them controlled and maintained the *obzhak*, from which billions of roubles flowed thanks to criminal activities (Serio, 2008).

Such a vast amount of money smoothed the path to creating new lucrative opportunities by involving in all facets of Russian life. Newly created economic, political, and social structures, in turn, have changed the appearance of the ‘*thieves in law*’. They removed tattoos and learned good manners. They became successful businessmen and politicians who could facilitate the legitimisation and investment of ‘criminal’ money into economy. This observation is reinforced by their direct involvement in the privatisation process, enabled by endemic corruption and connections with government agencies which made it all seem like one mutual enterprise. Criminals were updated at every stage of privatisation about the forthcoming auctions of the state property. Subsequently, being provided with an information about a potential buyer, they made it possible through coercion, threats and violence, to win the auction by ‘politely’ persuading potential buyers to withdraw their participation in bidding. This widespread practice of appropriating and seizing state assets at relatively low prices by collaboration between state officials and criminals could be observed throughout whole Russia.

One extraordinary example of this happening came in a privatisation process that took place in Nizhniy Novgorod, a major industrial city in the central Volga. Yuri Igonin, a privatisation expert for the local police, depicted the process of privatisation where officials who were in charge of the privati-

sation collaborated with criminals by selling them information about all possible contenders with their addresses and telephone numbers. Igonin said that the potential investors were asked 'politely' to leave the city without a chance to participate in the auctions.

"They were stopped at the door of their hotel on the day of the auction by local criminals who said: 'You don't want to go to the auction, all right?' and then they took out guns" (Gordeev, 1994).

The privatisation process was the legal and most convenient way criminals could adopt for laundering the money gained from illegal activities, and served to further transform their criminal businesses into legal ones. A significant change, distinctive to this period, was the rise of police power that replaced criminal groups' everyday ordinary activities. There are ongoing debates among scholars that speculate that organised crime ceased to exist at the beginning of the 2000s with the police forces assuming the role of an agency that provided protection to small and medium sized enterprises. Indeed, many smaller businesses passed under the control of the police. The police took advantage of its executive power and pursued their own selfish ends with a clear purpose of amassing wealth. Over and above this, managers of security companies, who seized control over their client's businesses, were former policemen that always could negotiate with their fellows (Varese, 2001).

The police seized control over prostitution businesses, drug businesses, as well as operating protection rackets among smaller businesses. And very often, law enforcement agencies were involved in criminal activities by cooperation with organised criminal organisations.⁴ Hence, their first and foremost aim was to ensure the immunity of criminal leaders and to guarantee that criminal enterprises operated successfully and safely in the criminal business environment (Varese, 2001).

Substantial sums from illegal operations helped pave the path to the infiltration of the political sphere by setting up political parties and guaranteeing good chances for certain candidates get elected in representative bodies. Not only were criminals ambitious to move into political and economic institutions but the financial interests of those institutions made them receptive to

⁴ From interview with former head of Criminal Investigation Department of Moscow, Alezandr Trushkin:
<http://shturmnews.info/content/byvshiy-glava-mura-rasskazal-o-marazme-v-policii.html>

criminal groups being the only likely source of funds. Political triumph implied an allocation of ministerial portfolios.

The rest was just a matter of time. The process of embedding criminal mode of behaviour, norms, beliefs, and rules within the state institutions had been created and internalised. Once the process of institutionalisation had been accomplished, 'new designated policy makers', or statesman, set about organising of new bodies and new governmental institutions that were responsible for overseeing their criminal operations.

The 'Uralmash group' is one example that well describes this process of organised crime infiltrating the legal and political system.⁵

This was a region where non-state players struggled against each other under the protection of representatives at every level of the state. The success of Uralmash was due to the election of their political candidates as well as the election to office from their inner circle. Charity activities were another useful tool for building a public relation campaign as an attempt to create an image of philanthropy. The group used to arrange fashion shows aimed at raising funds for children.

Then there was the election of the governor of Nizhniy Novgorod, Andrey Clementiev, who was a 'thieve in law', or criminal authority ('avtoritet'). We also had the election of the mayor of Vladivostok, Vladimir Nikolaev, who was likewise a criminal 'avtoritet', nicknamed Vinnie the Pooh. Then there was Atari Kvantrishvili, who started his criminal activity in the 1960s to become a wrestling trainer with the police in the 1980s and who later became a vice-president of a charity firm that engaged in export of natural resources with support of government associates. In the same period Kvantrishvili was an influential figure among well-known criminal groups in Moscow, among them Lyubers (Sergio, 2008; 12).

Interestingly during this period, the population in regions where criminal had yet to muscle their way into powerful positions, very often preferred a criminal, rather than the more 'mundane' legal and political authority. Indeed, criminals resolved many social problems. They created working places, subsi-

⁵ Uralmash Group is a Russian organised crime group that set up by brothers Tsyganov, former sportsmen, in the late 1980s in the city of Yekaterinburg. The main activities of the group included control of most businesses in Yekaterinburg including Uralmash Plant, corruption, racket, illegal export trade in non-ferrous metals, money laundering and assassinations. In the late 1990s they legitimised their criminal business and formed a political party.

dised many theatres, public organisations, schools, nurseries, homes for the elderly, hospitals, etc. They even maintained and financed municipalities and the police. And all this by means of that vast kitty – the *oshchak*. Russian law enforcement sources estimated that the *obshchak* of one large Moscow-based group amounted to ten millions of dollars, which was kept in accounts in a major Russian bank. One of the individuals who oversaw this *obshchak* maintained a public persona as a businessman and celebrity but was deeply involved with the criminal world (Serio, 2008: 161).

Conclusions

The phenomenon of Russian organised crime has its origins in relationships to the state since the Russian Revolution of 1917. There always has been a link between illegal economic activity, the Russian state and criminals. Three mutually connected economic and political pillars formed the unique character of Russian organised crime that we have seen in this century. It has varied through time. It has gone through different stages of evolution. But it has always been an important institution in the Soviet political-economy and a product of periodical changes in political and economic policies of the State. This relationship was defined by the official state structure as well as by the economic environment, and thereby it has become an element of the economic environment.

This long history of illegal entrepreneurs, an illegal shadow economy, criminals and state officials challenges the impression that nowadays day Russian organised crime is a particular result of the past 20 years and specifically associated with marketisation and personified by President Vladimir Putin and his regime.⁶ This article has traced the historical roots and the much deeper channels of this ultimately institutional relationship between the official power structures and illegal economy, and demonstrated that the phenomenon of Russian organised crime originated and grew from the NEP, through to the institutional network that emerged during the Brezhnev era. From the Gorbachev period onwards, illegal entrepreneurs were legitimised, and de-

⁶ The study of Karen Dawisha *Putin's kleptocracy: who owns Russia*, 2014 vividly displays the institutionalisation of organised crime through a corrupt state organisation: the FSB.

ployed as free entrepreneurs. And so an illegal network of criminals, entrepreneurs and corrupt officials, that took the form of legal official structure.

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Organised crime in the UK: Presentations and realities

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Introduction

Like other contemporary social problems, organised crime is the subject of various debates. These include discussions as to its meaning, the harm it produces and the appropriateness and effectiveness of the strategy, tactics and institutions involved in tackling it. Unsurprisingly, the literature on OC in the United Kingdom echoes these and this chapter aims to contribute to those discussions on the nature and extent of organised crime in the UK and its policing. These are important debates for many of the official announcements on countermeasures and subsequent discussions on their appropriateness and effectiveness start with a description of the nature and extent of the problem. Unfortunately, many of the official claims, facts and figures are simply taken at face value and repeated by journalists and academics. The widespread willingness to accept the official discourse means at best the official sources become society's primary definers, setting the agenda of political debate. At worst, it creates a dominant, if not hegemonic picture of this issue which is left untested. However, it would be wrong to assume the willingness to accept and repeat the official facts and figures is always due to laziness or ideological agreement on the part of interested journalists or academics. Much is due to the fact many journalists and academics do not have the resources or ability to gather or access large-scale information on organised crime. Put simply, it is very difficult for those outside of policing circles to test aspects of the official discourse or to provide quantitative and qualitative insights on the nature and extent of organised crime in the country.

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Despite, or perhaps because of, the author's limited resources and lack of access to police intelligence, the chapter tests aspects of the official discourse and provides quantitative and qualitative insights on aspects of organised crime by examining the publicity of the National Crime Agency (NCA) and its predecessor the Serious Organised Crime Agency (SOCA). Hence the title *Organised crime in the UK: Presentations and realities*. By undertaking a content analysis of press releases produced by the main agency tasked with policing organised crime between 2009 and 2015 the chapter aims to provide evidence-based insights on the existence, importance and extent of particular crimes and themes frequently associated with organised crime in the publications of the UK government and the agencies tasked to police organised crime.

In detail, the chapter searched the press releases for information on the following seven types of crimes:

- drug trafficking,
- money laundering,
- fraud,
- computer-enabled crime,
- people smuggling,
- human trafficking and
- arms trafficking.

And three themes:

- group size,
- transnationality and
- violence.

As already noted, these types of crime are frequently associated with organised crime by the authorities in Britain. The choice of these seven simply reflects those crimes found in the following paragraph taken from one of the Government's organised crime strategy produced during this period: According to the strategy:

“Organised crime has many manifestations. About half of all identified organised crime groups affecting the UK are involved in drug trafficking and distribution, which, in turn, fuels a huge amount of acquisitive crime. Organised crime is also allegedly behind the trade in people smuggling and human trafficking; a significant proportion of the fraud perpetrated against individuals, business and the state;

the supply of illegal firearms; and computer-enabled crime. Most significant organised crime groups will also be involved in money laundering activities.”²

The themes were chosen for similar reasons. The attempt to ascertain the size of the ‘groups’ involved was included because many academic³ or legal definitions of organised crime demand a certain number of participants. For example, the UN Convention Against Transnational Organized Crime requires three or more people.⁴ Moreover, whilst there was no numerical requirement within English law during the period examined, the authorities often took a similar position. Thus one organised crime strategy published during the time noted: “[f]or the purposes of this strategy, the definition of organised crime is individuals, normally working with others . . .”⁵ Putting aside the obvious tautology in a definition that allows for an organised crime ‘group’ to be an individual (or partnership), the size of a criminal entity could be an important element in assessing the importance of the threat, risk or harm it poses should its members threaten or use violence. Here is the apt place to note the chapter uses the ambiguous word entity instead of ‘group’ (in inverted commas) because of the tautology and the fact the use of latter could lead to confusion, given the same word is used without inverted commas to refer to organisations consisting of three or more people.

The second theme – transnationality – is often, but not always, associated with organised crime in the UK, indeed it has been posited as the reason the UK created national policing organisations to deal with organ-

² H M Government. (2011) *Local to Global: Reducing the Risk from Organised Crime* (London: The Stationery Office) para.6 p. 6 It went on to suggest “It also has other manifestations, including metal theft and the illegal trade of wildlife and waste trafficking”. None of these were found

³ For a variety of academic and legal definitions that note a specific number or implied at least two through their use of words such as group or association see Von Lampe’s website <http://www.organized-crime.de/organizedcrimedefinitions.htm>

⁴ Article 2 of The UN Convention Against Transnational Organized Crime states: “‘Organized criminal group’ shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit”.

⁵ H M Government. (2011) *Local to Global: Reducing the Risk from Organised Crime* (London: The Stationery Office) para 13 p. 8.

ised crime. The official literature – by which it is meant that produced by the authorities – associates organised crime and transnational dimension in two ways. The first is simply an identification of cases that involve cross-border crime. This latter is often explained by reference to globalisation, for example, the 2009 update to the United Kingdom’s organised crime strategy declared: “. . . *globalisation has delivered many benefits for the UK economy, it has also created opportunities for serious organised criminals – both in ‘old’ crimes, such as drugs trafficking, and ‘new’ crimes, such as cyber crime*”.⁶ The second association references the composition of organised Crime Groups (OCGs), thus the Serious Organised Crime Agency’s 2009–10 annual plan declared: “*significant number of foreign nationals are also involved*” in serious organised crime activity that directly affect the UK, based in the UK and abroad.⁷

As for the third theme to be examined – violence – it too was habitually association with organised crime by the authorities during this time. For example, the Government’s organised crime strategy of 2009 suggested: “[o]rganised crime brings fear and violence to our communities”⁸ whilst the SOCA’s threat assessment for 2009–10 provided more details on its nature, suggesting:

Violence or the threat of violence is often implicit in the activities of organised criminals, and some are willing to commit or sponsor kidnapping, attacks, and murder, to protect their interests, including the recovery of debts. Violence also stems from personal disagreements and gang-based rivalries. In some instances, violence or intimidation is used to coerce innocent victims into facilitating crime.⁹

This then takes the chapter onto the dataset itself.

⁶ Home Office (2009) *Extending Our Reach: A Comprehensive Approach to Tackling Serious Organised Crime* (London: The Stationery Office) p. 27.

⁷ Serious Organised Crime Agency (2009) *Annual Plan 2009/10* (London: SOCA) p. 9.

⁸ Home Office (2009) *Extending Our Reach: A Comprehensive Approach to Tackling Serious Organised Crime* (London: The Stationery Office) p. 7.

⁹ Serious Organised Crime Agency (2009) *The United Kingdom Threat Assessment 2009/10* (London: SOCA) Key judgment No. 4 p. 6

Filtering the data set and producing the database

As for what was to be searched, the dataset consisted of the publicity materials produced by the main policing body tasked with combating organised crime in the United Kingdom. As such it consisted of two parts. The first and most easily accessible was the ‘*news listings*’ from the National Crime Agency found on its website. In detail, this meant all of 238 press releases produced by the NCA between its first one of 30th September 2013 and the 21st January 2015.¹⁰

The second source consisted of 285 ‘*news stories*’ and ‘*press releases*’¹¹ from the predecessor to the NCA – the Serious Organised Crime Agency. This was not easy to obtain for several reasons. The first was that SOCA had existed for only approximately 16 months and consequently the news stories existed in a set of archived websites. Moreover, because each of these websites had been archived at a different date, the reports contained in one archived website would usually overlap to varying degrees with those archived at a slightly earlier and later date.¹² The newest SOCA story was dated 06 September 2013, the oldest 19th June 2009. Once duplicate stories were removed, this meant a combined collection of 523 publicity reports spanning the period from 19 June 2009 to 21 January 2015, albeit one that was heavily weighted towards the latter date. In sum, those from the NCA constituted the whole population of news reports at the time; those from SOCA are a large but probably unrepresentative sample weighted towards more recent reports.

The author examined both collections to identify the variety of things frequently reported and attempted to produce a spreadsheet to capture this. However, it soon became apparent that the news reports were not simply about successful law enforcement operations but they also included reports on arrests, organisational change, publications and warnings issued to the public or parts of it such as the financial sector. Given one aim was

¹⁰ The first NCA story was entitled “NCA presence at the Border”, 30 September 2013; the final one examined was “Most-wanted fugitive guilty of £40m drug plot” dated the 21 January 2015.

¹¹ The ‘new releases’ took the form of pdfs found on the website.

¹² The newest archive was dated 8 September 2013 and the earliest 12 December 2009
http://webarchive.nationalarchives.gov.uk/*/http://www.soca.gov.uk/news/archive

to ascertain what could be said about the threat posed by organised crime it was decided to include only those cases which were finalised by a conviction. The decision to examine only reports on those convicted was made because some of those arrested would be released without charge, some of those charged would never be tried, and some of those tried would be found not-guilty. It also meant excluding reports solely on confiscations.

Following the application of these filtering criteria, a spreadsheet was created and re-examined in light of the aims. This resulted in the creation of additional filters which once again reduced the number of press releases. This filtering process was not undertaken lightly, nor was it an easy task, as there was a genuine concern each potential filter might distort these snapshots of organised crime. In this light, it was decided to exclude that small number of reports that concerned convictions of groups *all* of whose members were convicted abroad because it was felt their inclusion would distort the picture of the threat organised crime posed *to* the UK.

The fear of distorting the picture of the threat to the UK was also the reason the author decided to exclude reports on crimes that were not motivated by profit. This is in line with official sentiments, and the actual working definition of a government strategy of the period which stated:

. . . the definition of organised crime is individuals, *normally working with others*, with the capacity and capability to commit serious crime on a continuing basis, which includes elements of planning, control and coordination, and benefits those involved. A significant proportion of organised criminals are *motivated, principally, by the desire to make money*. Others, such as the perpetrators of organised child sexual exploitation, have different motivations.¹³

It is suggested that the vagueness of the official working definition reflects the fact the NCA, like its predecessor the Serious Organised Crime Agency, also investigated *serious* crime and not solely organised crime. In terms of the content analysis this meant *including* reports on sex-trafficking or prostitution because they were motivated by profit but *excluding* reports on the activities of an animal rights group and contemporary or historical child abuse because they were not motivated by profit.

¹³ H M Government. (2011) *Local to Global: Reducing the Risk from Organised Crime* (London: The Stationery Office) para. 13 p. 8. Author's emphases.

Another problem came in the form of reports that were simply appeals for information on the whereabouts of convicts and suspects who had fled abroad and subsequent reports on their capture. The practical difficulty of these press reports on policing operations such as ‘Captura’, ‘Return’, or ‘Kygos’ resulted from the fact many of them contained very little information on the escaped convict. In the end, it was decided to exclude any reports which contained so little data it was impossible to ascertain the nature and extent of the criminal entity to which the convicted once belonged. A failure to do so would risk including a number of single convicts who would distort the picture of contemporary organised crime.

The final filtering process involved the author going through the remaining spreadsheet to remove repetition. The easiest expression of this was the recurrence of similar names in different reports as members of the same group or network convicted in separate trials or on different dates. The author also attempted to eliminate double counting of the same group by cross-referencing reports on similar methods or locations. The end result was the production of a database of 155 cases which provides descriptions of 155 distinct criminal entities. The database also contained some qualitative data, and some of this has been included, usually when a statistical breakdown of the quantitative data would be meaningless because of the small number. It is to the quantitative and qualitative findings revealed by the content analysis that the chapter now turns.

Quantitative and qualitative findings

As already noted the aim was to use the content analysis to test the existence of the three themes and seven types of crime frequently associated with organised crime by the UK authorities, and more importantly, to produce some useful quantitative and qualitative insights into these aspects of organised crime.

The size of the criminal entities

The first of the themes examined was the *size* of the criminal entities involved in organised crime. The quantitative data gathered suggested the

average size (mean¹⁴) of an entity in the 155 cases was 4,9, rounded up to five, people and the median was four persons. However, the most frequently occurring size of criminal entity – the mode – involved two people. Such criminal partnerships constituted 18% or 28 of the 155 cases.

14% (22) of the 155 cases involved a sole individual (still covered by the definition), and if one removes them, the average size (mean) of 133 remaining entities became 5,55, although the most frequently occurring size (mode) and the median remained the same at two and four respectively. If one prefers a definition of organised crime that requires the involvement of three people, then once the 32% (50) of the 155 cases involving a sole actor or a partnership were removed, the average size of an OCG became 6,2 persons, the mode three or four (they tie at 25 each) and the median five. These answers reflect the following spread which has been included for those particularly interested in this aspect.

Table 1
Frequency division of criminal entity

Size of criminal entity	frequency	% of cases
1-2	50	32
3-5	70	45
6-10	22	15
11-15	6	4
16-20	2	1
> 21	5	3
Total =100%	155	100%

This author believes the real figures on the size of entities are likely to be a little higher. There are several reasons for making this claim. The first is the data was derived from an analysis of reports that mentioned convictions. Some reports listed and named those convicted at a particular trial but revealed the entity was greater in number. Sometimes this total was provided, and sometimes it was estimated one from the other information provided. The second reason is the vast majority of cases involved in cross-border crime and some of these are likely to have had help from indigenous criminals outside the UK before people in the case were prosecuted here. Many cross-border cases involved a single individual and made no reference to foreign criminals, similarly many reports on cross-

¹⁴ The author estimated 761 individuals in 155 cases. This produces an average of 4,90 people per case or entity.

border crimes by partnerships or groups did not specifically mention facilitators abroad.

Transnationality

This then takes us to the second theme investigated here: transnationality. As already noted, the existence of a transnational dimension would be confirmed by the identification of crimes that crossed an international border or the rather crude inclusion of non-British nationals in a case. In practice, both could be present, for example, when foreign nationals were involved in importing drugs or people into the UK. Indeed, the content analysis revealed 79% (123) of the 155 cases involved one or both of these transnational dimensions. In detail, 73% (113) of the 155 cases involved cross-border crime, meaning only 27% (42) involved domestic criminal activity (and one could reduce this number by classifying as cross-border cases that involved the internal distribution of drugs that originate overseas such as heroin and cocaine).

Table 2
Domestic and cross-border crime

Type of crime by activity	frequency	% of cases
Domestic only	42	27
Cross border crime	113	73
Total	155	100%

Eighteen or 16% of the 113 cross-border cases involved sole participants and 19 (17%) were partnerships. In other words 67% (76) of the 113 entities involved in cross-border crime consisted of three or more participants.

Table 3
Size of cross-border criminal entity

Size of entity involved in cross-border crime	frequency	% of cases
Sole perpetrator	18	16
Partnership	19	17
Group of 3 or more	76	67
Total	113	100%

Such figures support the latter part of the official claim: “[m]ost forms of serious organised crime involve commodities, criminal assets or serious organised

criminals themselves at some point crossing the UK border, in many cases illegally”.¹⁵ 79% (89) of these cross-border cases involved importing illegal drugs. The explanation may be the fact many Class A drugs such as cocaine and heroin originate abroad, and Class A drugs was a, if not the, priority throughout the period of the press releases. That is, immediately after setting up the SOCA in 2006 the then Home Secretary suggested the SOCA’s “top priorities” should be: “Class A drugs and organised immigration crime, in that order” while: “[t]ackling the supply of drugs, Class A in particular, continued to be a principal focus of SOCA activity” according to the annual plan of 2011-12.¹⁶

As for measuring the transnational dimension by reference to the nationality of those involved, at least one foreign national was found in 27% (42) of the 155 criminal entities. In detail, 10% (16) of cases appeared to involve solely foreign nationals and 17% (26) contained both a British and foreign national, leaving 73% (113/155) consisting of only British nationals.

Table 4
UK or foreign entity

Type of entity	frequency	% of cases
British	113	73
Mixed	26	17
Foreign	16	10
Total	155	100%

There is little difference in the overall percentage of foreign nationals when one looks at cases involving at least two or three members. If one removes all 22 cases classified as involving only one person, then 26% (35/133) of cases involve at least one foreign national, a figure made up of 7% (9/133) involving solely foreign nationals and 20% (26/133) involving at least one British and foreign national.

¹⁵ Serious Organised Crime Agency (2009) *The United Kingdom Threat Assessment 2009/10* (London: SOCA) Key judgment No.15 p. 7 If one assumes everyone all organised crime policed was ‘serious’.

¹⁶ Serious Organised Crime Agency (2007) *Statement of Accounts 2006-2007* (London: The Stationery Office) p. 3 and Serious Organised Crime Agency (2011) *Annual Plan 2011/12* (Norwich: The Stationery Office) p. 11 respectively. The latter was written in both italics and bold.

Table 5
UK or foreign entity and number of participants > 2

Type of entity	frequency of cases involving 2 or more participants	% of cases
British	98	73
Mixed	26	20
Foreign	9	7
Total	133	100%

As for OCGs with three or more participants, 6% (6/105) involved solely foreign nationals and 21% (22/105) a mixture of such nationals, meaning a total of 27% of OCGs (28/105) involving three or more people contained at least one foreign national.

Table 6
UK or foreign entity and > 3 participant

Type of group	Frequency of cases involving 3 or more participants	% of cases
British	77	73
Mixed	22	21
Foreign	6	6
Total	105	100%

Each of these sets of figures is in line with the official claim: “*significant number of foreign nationals*” were “*involved*” in serious organised criminal activity within in the UK and directly affecting the UK. In practice, the figures involving non-British nationals are likely to be higher for several reasons. The first derives from the author’s methodology. Here it was crudely assumed everyone was British and the convicted were counted as foreign only if the report described them as having been born in another country or holding a foreign passport. As already noted some cases were estimated to contained more people than those named in a report, meaning all of the unnamed were assumed to be British. The second is that many of those classified as British had surnames which originated abroad such as Khan, Zulqurnain, Meric, Ayanoglu, Kursheed to name but a few. While many, if not most, of these are likely to be British as a result of their families’ migration, it is suggested *some* are likely to be foreign nationals. Similarly, it is suggested some of the British entities involved in

cross-border crime would have had help of local criminals operating outside of the UK before their arrest within the UK.

The involvement of foreign nationals is hardly a surprise given we live in an era of globalisation – a concept which implies a much greater number of cross-border movements of goods, workers, tourists and migrants than had occurred a few decades earlier. Finally, here seems the most appropriate place to note the issue of gender was not considered in detail, the main reason being the difficulty checking whether the many names that originated around the world indicated males or females. That said, this ignorant author managed to use his limited knowledge to identify at least one female in 13% of the 155 entities (20) although the convicted appeared to be overwhelmingly male.

Violence

Following this analysis of the transnational dimension, the chapter turns to the search for evidence of the final theme associated with organised crime – *violence*. Here it is suggested the 15% (24/155) of cases contained evidence of an involvement in violence. This involvement usually took the form of drug traffickers possessing a firearm, resisting arrest or intimidating people or a place (13 cases). The other cases were deemed to involve violence because the crime type was viewed as violent *by definition* – either because of the means used (shooting, murder, armed robbery, trafficking in human beings (one case of each), or the product trafficked (firearms) implied violence (four cases). The latter also resulted in including a case of laundering of money linked to arms sales.

Table 7: Use of violence and type of offence

Type of crime perpetrated by those involved in violence	frequency
Drugs	13
Trafficking in arms	4
Trafficking in human beings	3
Armed robbery	1
Shooting in a bar	1
Murder	1
Money Laundering	1
Total	24

The average size of the entities associated with violence was six, the mode being three, the median four. Two of the entities were relatively large, one appeared to consist of 26 people, the other 28. Eighteen of the cases

involved solely British participants and six involved at least one British and foreign national. No cases appeared to involve solely foreign nationals.

Table 8
UK or foreign entity and violence

Type of entity involved in violence	Frequency	% of cases
British	18	75
Mixed	6	25
Foreign	0	0
Total	24	100%

Seventeen of the 24 entities involved in violence were participating in cross-border crime – mainly drug trafficking (10). Of the remaining seven entities involved in violence and domestic crime the most prominent type of crime was also the supply of drugs (3). This meant the most common ‘crime type’ for those reported to be involved in violence was drug trafficking (defined widely to include supply inside the country and across borders) with 13 cases.

Table 9
Type of crime by violent perpetrators

Type of crime perpetrated by those involved in violence	frequency	% of cases
Domestic only	7 (3=drugs)	29 (12,5)
Cross border crime	17 (10=drugs)	71 (42)
Total	24	100%

The seven types of crime

Having described the findings related to the three themes – the size of criminal entities, transnationality and violence – the analysis section now turns to the seven types of crimes officially associated with organised crime, namely (1) drug trafficking, (2) money laundering, (3) fraud, (4) computer-enabled crime and (5) trafficking in people (6) people smuggling and (7) the supply of illegal firearms.

1. Drug trafficking

As already noted official pronouncements suggest the importance of policing drugs continued despite the change of government and policing agency. For whilst its priorities were written in more general terms, at its inception the National Crime Agency launched Operation ASSERT, a series of targeted operations demonstrating the NCA's capacity to use its powers to tackle organised crime. The: "*operation ran alongside NCA 'business as usual'. The impact of ASSERT was immediate and far-reaching, with significant seizures of illegal drugs . . .*"¹⁷. This focus on drugs by both agencies appears to be borne out by the press releases, with 68% (106) of the 155 criminal entities focused on the importation or internal distribution of drugs. Of these, 21 cases involved the importation or distribution of Class B (amphetamines, barbiturates, cannabis, codeine, ketamine, methylphenidate (Ritalin), synthetic cannabinoids, synthetic cathinones (e.g. mephedrone, methoxetamine)) and not Class A drugs (crack cocaine, cocaine, ecstasy (MDMA), heroin, LSD, magic mushrooms, methadone, methamphetamine (crystal meth)).

Table 10
Type of crime and classification of drugs

Type of crime	frequency	% of cases
Not drugs	49	32
Drugs (incl. Class A)	85	55
Drugs (solely Class B)	21	13
Total	155	100%

It is worth noting these figures are written as a percentage of cases rather than a percentage of crime types because the total number of crimes is greater than 155 because some of the criminal entities were focused on more than one type of crime. Here also appears to be the apt place to explain that in order to get a more realistic snapshot of the activities of organised crime the author counted only the main focus of a group rather than every conviction of each member of each group. One can view this as a social scientific rather than strictly legalistic approach.

In terms of the size of the criminal entities involved in importing or distributing drugs, the average size was five ($560 \div 106$), the most common size of an entity was three and five people (with 17 occurrences of each)

¹⁷ National Crime Agency (2014) *Annual Report and Accounts 2013/14* (London: NCA)

with four people constituting the median. 14% of the 106 cases (15) involved sole perpetrators, 15% (16) were partnerships meaning 71% (75) involved groups of three or more. There also appeared to be 10 groups numbering ten or more with the largest appearing to involve 28 people.

Table 11
Kind and size of entity in drug traffic

Size of criminal entity involved in drug trafficking	frequency	% of cases
Sole perpetrator	15	14
Partnership	16	15
Group of 3 or more	75	71
Total	106	100%

The statistics collated here suggest the Home Secretary's may have slightly underestimated the importance of drugs when she noted: "[a]bout half of all organised criminals are involved in the illegal drugs trade" regardless of whether she was considering the number of groups or the number of individuals.¹⁸

A fraction over 80% (85) of the 106 cases involving drugs operated cross-border. As for the other transnational dimension, 74% (78) of the entities involved in drugs appeared to consist solely of British nationals or a single British national if the case involved only one person. 11% of the drugs cases (12) involved only foreign nationals or a foreign national acting alone, and the remaining 16 criminal entities contained at least one British national along with at least one foreign national.

¹⁸ H M Government. (2011) *Local to Global: Reducing the Risk from Organised Crime* (London: The Stationery Office). Home Secretary's Forward section, p. 3. That is, 68.38% (106) of the 155 % cases involved drugs and an estimated 560 of the 761 individuals involved in the cases were from those OCGs involved in drugs.

Table 12
Type of entity in the drug trade

Type of entity involved in drug trafficking	frequency	% of cases
British	78	74
Mixed	16	15
Foreign	12	11
Total	106	100%

The 155 cases revealed that criminal entities were involved in various other crimes, although less than a third (32% or 49) of the 155 cases did *not* focus on drugs – although this figure excludes money laundering on behalf of drug traffickers, and it is to the crime of money laundering the chapter turns.

2. Money laundering

As already noted, the official literature suggested organised criminals were involved in money laundering and it was a major focus of at least 12% (19) of the cases. Here it is important to note only those cases involving laundering on behalf of others, i.e. third party or classic money laundering, were counted. Reports of self-laundering or possession-based laundering were not counted because it was felt this would interfere with the author’s attempt to provide realistic snapshots of organised crime. The latter occur a lot because since the introduction of the Proceeds of Crime Act (2002) the authorities usually charge predicate offenders with possession-based money laundering to facilitate their investigations and the recovery of the proceeds of crime.

In the 19 cases involving money laundering, the most frequently occurring size of criminal entity was four. There were only three cases involving an individual and three involving a partnership.

Table 13
Size of entity and laundering involvement

Size of criminal entity & involved in money laundering	frequency	% of cases
Sole perpetrator	3	16
Partnership	3	16
Group of 3 or more	13	68
Total	19	100%

If one examines all of the 155 cases and removes those that involve single operators then 12% (16/133) of the cases involving entities of two or more involved ‘classic’ money laundering. If one removes all of the cases that appeared to be about an individual or a partnership, the percentage of OCGs specialising in ML remains approximately the same at 12% (13/105).

Ten of the 19 cases appeared to involve cross-border money laundering. There was only one report that suggested a financial gatekeeper was involved in money laundering. The solicitor in question was also charged with failure to disclose and theft. Those focused on money laundering were also involved in other crimes including fraud (1) and dealing drugs (2). Thirteen of the 19 money laundering cases appeared to consist of people classified as British with at least one foreign national found in 6 mixed criminal entities.

Table 14
Type of entity and laundering involvement

Type of entity & involved in money laundering	frequency	% of cases
British	13	68
Mixed	6	32
Foreign	0	0
Total	19	100%

As already noted only one case was linked with the theme of violence in that the report suggested the case involved the laundering of money linked to the sale of firearms amongst other things. The fact the content analysis revealed the narrowly defined crime of money laundering to be the second most frequently occurring crime type was somewhat surprising given it was not one of the two crime types ‘prioritised’ by the SOCA throughout the period. That said, ‘the proceeds of crime’ did constitute one of the four areas focused upon by the SOCA when it was set up in 2006 and the official literature continued to mentioned the crime. For example, the 2011 OC strategy declared: “[m]ost organised crime groups are involved with money laundering to make their money appear legitimate”¹⁹ and it

¹⁹ Serious Organised Crime Agency (2007) *Statement of Accounts 2006-2007* (London: The Stationery Office) p3 and H M Government. (2011) *Local to Global: Reducing the Risk from Organised Crime* (London: The Stationery Office) para 25. p10 respectively.

suggested money laundering specialists provided a service to OCGs, if not a range of criminal groups. It went on to posit a focus on specialist money launderers – especially money service businesses – by those who police organised crime would: “*have a disproportionate impact on organised crime*”.²⁰ It may be these words that explain its policing and its place within the list of most frequently occurring crimes of any type – and not simply of the seven types focused upon here.

3. Fraud

The next frequently occurring category of crime of any type was fraud, a major focus in 15 cases (in 11 it was the sole focus). Once again this was on the list to be tested because the official literature associated it with organised crime and once again there was surprise in the fact this crime constituted one of the most frequent occurring types of crime. The surprise derived in part from the author’s belief this form of white collar crime attracts far less media attention than rightly emotive crimes such as trafficking in human beings and partly from the fact that it did not appear to be prioritised in the official literature to the level of money laundering or POCA offences.

In terms of those involved in fraud, there was one case involving an individual and four involving a partnership. The most frequently occurring size of criminal entity was four: there were six groups of this size. Two-thirds of the cases (10) involved a group of three or more. Thirteen of the cases involved British nationals and two foreign nationals.

Table 15
UK or foreign entity and involvement in fraud

Type of entity & involved in fraud	frequency	% of cases
British	13	87
Mixed	0	0
Foreign	2	13
Total	15	100%

Nine cases (60%) involved cross-border activities including the two involving solely foreign nationals.

²⁰ H M Government. (2011) *Local to Global: Reducing the Risk from Organised Crime* (London: The Stationery Office) para 80 p20.

4. Computer enabled crimes

When pondering why cases of fraud might rank third in the list of the most frequently occurring crime types, the author realised it may be because many of the cases could also be viewed as ‘computer enabled crimes’. This then seems the apt place to examine the fourth of the seven types of crime officially associated with organised crime. One major problem with counting cases of computer enabled crimes was defining the parameters of the term. If the author had produced a definition based upon a literal reading of the phrase, he would have produced a rather high total because he would have had to count every report that mentioned emails, memory sticks, ipads, or a computer, if not those crimes that implied the use of a computer such as the forgery of identity documents or banknotes or the transference of money abroad. The author also decided against using a very narrow legal definition based upon breaches of the Computer Misuse Act 1990 for that would have only produced (two) convictions. Instead he decided computer-enabled crime involved either techniques traditionally associated with financially motivated cyber-crime such as hacking (4), phishing(1) and using malware to obtain financial benefit (1), or the buying and selling financial details over the internet (4). This produces a total of ten cases: one of which was initially motivated by the desire of a couple of Michael Jackson fans to obtain more of his songs.

Table 16
Type of computer crime

Type of computer enabled crime	frequency
Hacking	4
Phishing	1
Malware	1
Buying /selling financial details	4
Total	10

The total of ten meant this crime constituted the fourth most frequently occurring crime type. One explanation of the relative importance of this type of crime is the fact so many of the cases could also be categorised in another way – ironically as one of the other crime categories to be examined here. Another may be the national policing agency tasked to police organised crime is viewed as a centre of excellence by the local forces.

Somewhat surprisingly, given the analysis covered a period of several years and revealed *more* than 155 crimes, *none* of the other crime types examined reached double figures; indeed the publicity revealed less than a handful of cases per crime type in regards to the other officially associated crimes examined here.

5. Trafficking in people and people smuggling (organised immigration crime)

One could claim the next most frequently occurring type of crime was the second of the SOCA's priorities – 'organised immigration crime' – with six cases. However, because of the decision to examine seven specific crime types, the same cases are viewed as three cases of people smuggling and three of trafficking in human beings (or more accurately sex-trafficking). The small number of cases gives the author a good excuse to replace a rather meaningless breakdown of such small quantities with qualitative data. In terms of people smuggling, one case involved four people in a mixed OCG who were caught after approaching undercover officers and offering to smuggle them into Britain. Five illegal immigrants were found in the process. A second involved 11 people sentenced for smuggling illegal immigrants out of the United Kingdom and into Canada. The case involved two airline contractors who assisted the smuggled onto the airplane. The third involved what the SOCA described as: "*the [Ukrainian] head of an organised crime group who facilitated the entry of Ukrainian illegal immigrants into the UK by private yachts and scheduled flights*". The latter illustrates the likely underestimation of the size of OCGs referred to earlier, in that it was classified as a case involving an individual when law enforcement work was still ongoing to locate members of the crime group based in the Ukraine in March 2013. Unfortunately, there was no trace of the case or the Ukraine in any subsequent SOCA or NCA publicity examined in this study.

As for trafficking in human beings, one horrendous case involved the sex-trafficking of a young woman from Nigeria. Instead of embarking upon training to be a nurse as promised, she was raped, told she owed £40,000 and subjected to the African ritual of JuJu to frighten her into compliance with her new role. The three members of a 'Nigerian based' OCG who were jailed for their roles in the trafficking also appeared to be heavily involved in a second type of crime, having produced passports,

identity cards and Home Office letters in what one report described as a 'forgery factory'. A second case involved a British family – a man, his partner and his daughter – who ran an “international prostitution ring”. Again some victims were promised a better life and those from Nigeria were subjected to: “*African rituals designed to frighten them into compliance*” and prostitution to pay-off their ‘debt’ to the traffickers. In the third case, the victim was an Eastern European woman who was promised work as a cleaner but was imprisoned, terrorised and forced to work as a prostitute. She was then ‘sold on’ to two other members of the gang in another part of Britain for £2,000 and was told she would pay off her ‘debt’ by working as a prostitute. This case also illustrates a point made earlier, namely the underestimation of foreign involvement. The four sentenced had surnames Tavoraite, Kadria and Cikaj and first names Xhevdet, Lavdrim, Edita and Tafil (but not necessarily in that order) and were classified here as British. It is reports like this that make the author suspect the perpetrators were not British but were in fact from the same region as the victim.

6. Firearms

The final officially associated crime type tested and investigated was the supply of firearms. Even after being defined widely to include both the cross-border importation and the internal distribution of any firearm, the publicity revealed only four cases of such ‘arms trafficking’. Again the low number of cases allows space for the provision of qualitative data. The most disturbing cases involved a former army sergeant who supplied “*assassination kits*” containing guns to gangs across the UK (he was given an indefinite prison sentence, with a minimum of ten years to be served). In another case a man was given eight years imprisonment after attempting to import a: “*Beretta and Walther PPK semi-automatic pistols and a total of 19 rounds of live ammunition*” through the post from his supplier in Germany. A third case consisted of a Lithuanian who imported two airguns. The main problem was they were replicas of a Glock automatic pistol and Mac 11 sub-machine gun. He was given a 16 week prison sentence, suspended for one year. The fourth involved an individual convicted of attempting to smuggle in “*Walther P22 handgun and 35 rounds of live ammunition*” whilst involved in the smuggling of class A and B drugs. In this case one wonders whether he was involved in smuggling something new into the country or whether he took it abroad for ‘protection’ for various reports

revealed a number of drug gangs were in possession of one or more firearms.

Conclusion

In sum, the author undertook a content analysis of convictions contained within press releases of the main agency tasked with policing organised crime in the UK - the National Crime Agency and its predecessor the SOCA. This was done in order to test the existence of, and to provide evidence-based insights into, particular themes and types of crime associated with organised crime in official documentation. In detail, the themes were the size of the entities involved, the transnational dimension, and the threat or use of violence and the crimes were money laundering, fraud, computer-enabled crime, people smuggling and the trafficking of drugs, human beings and firearms. The content analysed consisted of news reports issued by the NCA or SOCA during the period 19 June 2009 to 21 January 2015. These reports constituted the whole population of (238) news reports from the NCA and a large but unrepresentative sample of 285 reports from the SOCA. The aims necessitated the exclusion of some convictions including those on OCGs convicted abroad or not motivated by profit. Many of those convicted appeared to have been tried together and many reports linked people in one trial to others, allowing the author to attempt to identify 155 distinct cases.

In terms of the quantitative findings, the chapter confirmed the existence of each of the themes and crimes officially associated with organised crime, although confirming at least one case of each existed was not much of a test to satisfy. More importantly, the content analysis produced some interesting quantitative and qualitative data, if not surprising insights, although one's surprise depends on one's pre-existing knowledge and beliefs about (the policing of) organised crime in the United Kingdom.

One important insight (and surprise) was the publicity revealed so few cases - 155 in total. That said, the number of people estimated to be involved in them was 761. The latter is important because this total can be seen as a fair sized sample when compared to the 1.910 the SOCA and NCA claim to have convicted in the slightly longer period April 2009 -

end of March 2015.²¹ Conversely, the total of 761 (or 1.910) can be seen as very low if compared to the contemporaneous official estimates that suggested organised crime in the UK involved: “around 38.000 individuals, operating as part of around 6.000 criminal gangs”.²² The contrast between the pronouncements and the content analysis of the press releases begs the question raised elsewhere by the author²³, namely does the official response to organised crime constitute a phoney war or its appeasement? By this it is meant, was the policing of organised crime by the national body tasked to deal with it successful but the spectre of organised crime exaggerated? Or, was the spectre accurate and the policing by the national agency underwhelming? These are not the only possibilities, for example it could be organised crime was appropriately and primarily policed by local police forces and their regional arrangements and not the NCA or SOCA because the nature – rather than extent – of the threat was exaggerated. Here one wonders if the data on the size of the entities involved supports this. That is, one explanation of the fact 32% (49) of the 155 cases were sole actors or partnerships is the nature of the threat is exaggerated and this explains why many of those convicted by the NCA or SOCA operated in such small entities (even after allowing for the suspicion the data underestimates the size of the entities to a certain extent and the belief the SOCA and the NCA looked at serious and complex unorganised crimes on occasions help was required).

The fact that almost 80% of the 155 cases involved a transnational dimension became a less surprising statistic in light of the high percentage of

²¹ Based upon UK convictions reported in Serious Organised Crime Agency (2009) *Annual Reports and Accounts 2009/10* (London: SOCA) p. 90; Serious Organised Crime Agency (2010) *Annual Reports and Accounts 2010/11* (London: SOCA) p. 93; Serious Organised Crime Agency (2012) *Annual Reports and Accounts 2011/12* (London: SOCA) p. 107; Serious Organised Crime Agency (2013) *Annual Reports and Accounts 2012/13* (London: SOCA) p. 113; National Crime Agency (2014) *Annual Report and Accounts 2013/14* (London: NCA) p. 43; National Crime Agency (2014) *Annual Report and Accounts 2014/15* (London: NCA) p. 40. The figures from the NCA’s first report covers the period 7th Oct-31 March 2014.

²² H M Government. (2011) *Local to Global: Reducing the Risk from Organised Crime* (London: The Stationery Office) Home Secretary’s Forward section, p. 3.

²³ Sproat P (2012) ‘Phoney war or appeasement? The policing of organised crime in the UK’ *Trends in Organised Crime* 15(4) pp313-330.

cases of drug trafficking identified. Given this and the fact cocaine, heroin and much cannabis originates abroad, the revelation at least one foreign national was found in 27% (42) of the 155 criminal entities also became less of a surprise. The fact 10% (16) involved solely foreign nationals surprised the author a little as he assumed foreigners would be found in entities that would be mixed or 'glocal' if you will. Here it is also worth remembering the author's suspicion his methodology underestimated the number of foreign participants.

It is difficult to believe the theme of violence was significantly under-reported, especially relative to other crime types, because of its obvious newsworthiness. The fact that 15% (24) of the 155 cases could be classified as involving violence appeared slightly higher than he expected because of the work he had published on the use of anti-money laundering and asset recovery laws against organised crime in 2009. Amongst other things, this earlier article contained an analysis of 583 pieces of official publicity on the use of the Proceeds of Crime Act which suggested only 7% of cases involved violence or corruption.²⁴ In this newer analysis, the author used press releases from the agency tasked with policing organised crime and a generous category that classified certain crimes as violent *by definition*. If the five cases of arms trafficking as well as *associated laundering* are excluded the data on the actual use or threat of violence produces a lower percentage, one that could be reduced much further if one required the threat or use of violence to be directed towards the general public. Indeed, here is an apt place to note the official press reports noted only one example of armed robbery. They mentioned murder twice: once as a conviction and one suggestion that a member of an OCG involved in drugs was wanted in connection with a murder. These are deemed worthy of note simply because they are also types of crime traditionally associated with British organised crime in cinematographic representations.

If the official statistics on UK convictions are accurate, then the sample here probably represents about a third of the total of the convictions achieved by the SOCA and NCA. If one believes the sample to be representative – and it is difficult to imagine why the authorities would prioritise the reporting of drug trafficking over crimes such as the trafficking in

²⁴ It went down to less than 4% if one required the involvement of 2 or more people. Sproat (2012) 'Phoney war or appeasement? The policing of organised crime in the UK' *Trends in Organised Crime* 15(4): 313-330 p141

human beings or firearms – the content analysis reveals another interesting insight namely, the relative importance of each crime type. The quantitative data produced by the content analysis reveals 106 cases of drug trafficking allowing the author to assert the UK authorities appear to have had far more success in policing drug traffickers than any other form of crime. This crime is distantly followed by classic money laundering, fraud and computer-enabled crime at 19, 15, 10 cases respectively. After that, the frequency of crimes is so small, the next ranking depends upon how one conceptualises the crimes. It could be organised immigration crime with 6 cases, if one merges two of the seven types of crime specifically examined here: namely people smuggling (3 cases) and the trafficking in human beings (3). Alternatively, it could be a category of forgery involving producing false identity documents (4), passports and currency (2), although some of these were a means to achieve a different crime and some of these cases are already categorised as fraud. Nor were there any cases of metal theft, wildlife crime or waste trafficking noted in the 2011 strategy, nor blackmail and extortion which are also often associated with organised crime in American cinematographic representations

The fact that most cases involved drug trafficking was no surprise, as the policing of Class A drugs was very important to the NCA, SOCA and the National Crime Squad before them. That said, the percentage 68% (106) of the 155 was a little higher than expected given the frequent description of numerous other crimes in the official literature. However, the main surprise in regards to crime types was the very low total and percentage of cases on ‘organised immigration crime’. The surprise resulted not only from the fact it the authorities once declared it to be the other main focus of the SOCA during this time but because of the contemporaneous political interest in sex-trafficking and illegal immigration. If one accepts the number of cases (allowing for the sample size) and the spread of cases, it is difficult to avoid concluding its organised immigration crime was greatly exaggerated or appeased by the national agency or was left to local constabularies and regional crime squads to deal with. The fact money laundering and fraud were next two categories in the ranking of crimes was surprising mainly because white-collar crime is frequently viewed in academe as an under-policed category of crime. That said, the author was expecting to see some cases of money laundering and fraud because of the prioritisation of specialist launderers and the fact some frauds are computer-based crimes and the national agency is often viewed as a centre of

expertise on the matter. Lastly, in regards to the types of crimes revealed by the content analysis, the author did not expect there would be so few cases of other type of crimes traditionally associated with organised crime. There was only one report of a conviction for murder, and one of armed robbery.

Finally, even if one views the data produced by the content analysis as a large representative sample and one triples the number of cases so the to produce an estimate of organised crime cases broadly equivalent with the numbers reported to be convicted in the UK during the period, then the total number of cases for each of the categories of crime – bar drug trafficking – still appears very low. Especially when judged over a period of six years. In this regard, the chapter provided the author with some interesting insights into (the policing of) organised crime and organised crime groups in the UK, and some surprises, hopefully it provided some for the reader too.

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The Criminal Entrepreneur: a case study of an organised criminal family

Jackie Harvey and Rob Hornsby¹

Introduction

There is no reason to assume that in dealing with the criminal we are dealing with something extraneous. We are really dealing with all of society even if we begin dealing with the problem of crime.

Frank Tannenbaum, (1938:23)

This chapter reports on a study on a criminal family as an enterprise with an ongoing history of armed robbery, drugs, extortion, fraud and tax evasion. Studying a family, or even a single criminal, may not be considered as conclusive in its findings and, therefore, at the margin of scientific research. Actually, it is far from a marginal approach: it is shared by a multitude of historians, who enliven our knowledge of the past by this human touch. Specific historical studies of *criminal* families are rare, given the political emphasis. But the few available studies on the deeds of a criminal family, such as the Renaissance Borgia family, even providing one of the most ‘colourful’ popes (Hillgarth, 1996), or the young bank robber Stalin and his family in the first half of the previous Century measure up to many criminological studies (Montefiore, 2007). By their nature, these are studies undertaken by hindsight: looking back, based on documentary evidence. The same applies to studies of leading criminals of whom the evidence could be obtained after the end of their criminal career, either by

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death or incarceration. Moreover, more attention is devoted to the leading criminal than to the family. Anderson's (1965) study of an operational New York Casa Nostra family followed by that of Ianni and Reuss-Ianni (1972) are an exception. Using the method of participating observation, it describes 'real time' how the family ramified into the upperworld, more by smart socialising than by violence, which was primarily a part of their underworld branch. A similar ethnographic approach was adopted by Adler (1985) who engaged in participant observation of a San Diego-area group of drug smugglers. These studies were undertaken with the knowledge of the criminal subjects whilst our own study was without such direct access. One of the challenges of studying a criminal who is still very much in operation is ensuring anonymity not only of participants but also of the subjects in order to protect the academics engaged in uncovering the activity.

Compared to these studies, the contribution of our chapter is to specifically align the successful exploits of a particular entrepreneurial criminal family by focusing on their skills and ways of decision making. The attribute 'entrepreneurial' is important, as it refers to the decision making conduct as is more usually seen in legal entrepreneurs. Both face risks in their daily management, not only concerning investment, but particularly in managing people in executing the firm's tasks. Naturally, a crime-entrepreneur faces some additional risks due to operating in a hostile, often violent environment. Overnight he can lose his life or freedom due to respectively fellow-criminals or law enforcement. Surviving these constraints is rather a matter of acumen and skill than of luck which is of interest to describe.

The family we studied – the Baxters, was such a surviving criminal enterprise. It operated in a city in the North of England. The most important person of interest was the eldest son 'Jack', who took over from his father. As will be discussed in the methodology section, the research was conducted over a four year period², long enough for collecting a wealth of material. Studying a criminal over his working life is not new; indeed such 'life-course criminology' (Van Koppen et al, 2010:102) has been used in the analysis of different career trajectories. Others have focused on the

² This work was partially supported by a small research grant funded by our university which was used to employ a research assistant for a two month period.

personality characteristics of criminals, exploring their pre-disposition to a certain type of criminal activity (Bovenkerk, 2000). Yet, focus on such 'criminogenic' determined characteristics as espoused in the rational choice theories that have dominated 'government project' agendas (Garland, 1997, 2001; Morgan, 2000) offers little in the way of additional insight into how criminals manage their business affairs. Instead such studies generally ignore wider and more complex concerns of how diverse moral characters go about business (Van Duyne, 2000; Hobbs, 2013) or the success of life-long criminal careers (Gadd and Farrell, 2004; Laub and Sampson, 2001) The contribution from this chapter is, therefore, to argue that it is not only the type of personality that the criminal has developed but also their entrepreneurial business acumen that has responded to, and been shaped by, the socio-economic background within which they operate.

A brief overview of the socio-economic climate

The political-economy within the region in the North of England has, during an approximate forty year time-frame, fundamentally altered from a solid industrial-based culture and heritage to the post-industrial wasteland supported through the state provision of financial support (Taylor, 1999). In this Northern city, in line with other post-industrial cities once reliant on heavy industry, 1970 witnessed a change in the economic environment. Industries and traditional employment trades closed, leading to an evaporation of traditional working class legitimate work opportunities. A toxic combination of the 1973 oil crisis and union action in remaining labour intensive heavy industry that were the mainstay of the working class blue collar workers in support of demands for higher wages, fuelled both inflation (at historically high, double digit levels) and unemployment (the highly corrosive years of stagflation). It was also a decade that delivered both the three day week (1973-4) and a winter of discontent (1978). Unhappy times indeed and for a generation of school leavers who would have expected to follow their fathers into one of the many heavy industries, jobs were simply no longer available.

Although improved since those dark days of the 1970s, the economic environment continues to be generally more deprived than in other areas

of the country. Data from the Office of National Statistics indicates that although unemployment rates during the early part of the decade were low at approximately 4% (1 million people) the level of unemployment did increase during the mid-1970s before levelling off to some 1.5 million or 5% of the economically active population (Leaker, 2009). Recession in the early part of the 1980s saw again a rise in unemployment with a peak of 12% (3 million) in 1984 before gradually improving to 7% (2 million) by the end of that decade. It currently stands at just over 10% of the economically active labour force.³ This should be noted as a long-standing (and perhaps cyclical) trend within the city and its surrounding regions. It is this changing environment that provided our family with the career opportunities that we discuss.

Method of research

Data for our study was obtained from individuals who were familiar with his career as it unfolded and was captured through formal and informal interviews held with key respondents. The participants involved included associates of the Baxters and law enforcement officials. Key members of the extended criminal family firm were initially contacted through associates to seek their involvement with the study. They declined. Such involvement of active ‘free-agents’ involved in on-going and often serious levels of criminality is generally difficult to acquire (Winlow *et al.*, 2001). Negotiating the problem of such rejection by those we wished to research and who were often scrutinised by the regional media, we sought out other contacts with specialist dealings with the criminal firm, not only from law enforcement agencies but also close associates. The aim of this approach being to shift the research from a ‘policing study’ with its general nuances and biases (Hobbs, 2013), towards a more balanced and objective viewpoint that we hoped would be gained from those more personal affiliations.

³ ‘North East had the highest regional unemployment rate in mid-2013’, Office for National Statistics, available at: <http://www.ons.gov.uk/ons/rel/regional-trends/region-and-country-profiles/region-and-country-profiles---key-statistics-and-profiles--october-2013/key-statistics-and-profiles---north-east--october-2013.html> (accessed 14th September, 2015)

The Criminal Entrepreneur: a case study of an organised criminal family

We employed a social constructionist approach to our enquiry, pooling data from three main sources: building a picture from: formal interviews with police officers; field notes from interactions with those that formed part of the family's social and work sphere; and finally news reports and information otherwise in the public domain concerning the activity of the family. The main part of the data used within the chapter was drawn from the interviews held with key individuals who were well connected with the Baxters and were willing to share their recollections. This enabled us to construct a narrative covering a span of 40 years stretching from the 1970s. The main formal interviews took place with three individuals responsible for law enforcement in the region and whom were well acquainted with the activity of the Baxters. These sources were corroborated by supplemental interviews with a range of individuals, some of whom were engaged at certain levels, in procuring criminal acts while others were on the periphery, employed within the legitimate businesses. As shall be discussed, these included care homes, pubs, taxi firms, wholesale food supply and security businesses. In total eight participants were involved in supplying the data for this study. While interviews with the police respondents (A, B and C) were formally documented (providing us with six hours of interviews that produced 89 pages of transcript), another five further interactions were on an informal basis with field notes only, it being very much a 'grab and bag' approach, jotted down following informal encounters and chance conversations. We used our own intuition to sort this latter group into who were valid/reliable participants by way of their personal/professional histories, reputations and general credibility. Others were left by the wayside due to a lack of validity or because recollections were based on spurious 'relationships' such as: "*He seemed like a decent bloke. I used to drink in his pub*".

The formal transcripts were coded by letter and line identified to enable us to track a range of activity tracing the involvement of a network of 24 named individuals. This data set was then supplemented by a review of all local newspapers which enabled us to build a documented time line around the activity of the Baxters from 1989 (which was the date of first conviction) through to 2013. The information collated from these different sources helped us build a picture of how both this family and its individual members elected to utilise a skill set that is also associated with successful legitimate businesses. This entrepreneurial guile was employed to build a criminal enterprise that merges illegal with legal activity and that is

characterised, as discussed in the next section, as being: profit driven; able to anticipate change and move into different lines of business; and one that actively manages ‘business’ risk. The data shared in this chapter provides an overview of the growth of the Baxter’s ‘business’ empire mapping that entrepreneurial activity. It is illustrated by extracts from the activity of our family to show how they demonstrate use of key entrepreneurial traits as further discussed below.

Characteristics of the entrepreneur

In modern usage we tend to associate the term entrepreneur with high profile individuals who are regarded as being quick witted and risk taking, able to see and seize opportunities that would pass others by – people such as Richard Branson or Bill Gates. People that are very much seen as drivers of change (Kanter, 1996). However, the term ‘entrepreneur’ appears in economic literature as long ago as the early 1920s. For example Dobb (1924), refers to the entrepreneurial function being an accompaniment to capitalism as a necessary way in which the competing frictions between consumers and producers are smoothed. Tuttle (1927) traces use of the term to describe an individual having control not only over the application of his labour but also the way he is able to create wealth through his intelligence. He attributes the first use of the term ‘entrepreneur’ to describe the individual owner of a business to the economist Quesnay in 1757 (Tuttle, 1927: 502). From its use in describing the role of the individual agent, the term became associated more widely with business and corporations wherein the entrepreneur has control over the activity of the organisation (Lewis, 1937).

Recent literature has focused on both migrant entrepreneurs (Collins and Fakoussa, 2015; Khosa, and Kalitanyi, 2015; Soydas, and Aleti, 2015) and on emergent technology and associated access to financing (Stritar, and Drnovšek, 2015; Mamou-Mani, and Burgess, 2015). A further strand of literature focusses on the personal attributes that characterise successful business entrepreneurs. These can be usefully organised across two dimensions: the first relates to management skills and abilities (familiarity with their business as well as management in more general terms) and the second to the characteristics of their personality (a dimension that requires

subjective and intuitive judgment) (Maxwell *et al.*, 2011; Riding *et al.*, 2007). It is possible to identify entrepreneurs as being intuitive thinkers, risk takers and active managers of that risk as well as possessing influential personalities. Further to this they have a solid understanding of and are able to effectively manage the position of their business within the market relative to the market positioning of their competitors.

Dirty Cash: It's all about the money, money, money

As discussed in the section on Entrepreneurs, the attributes and skills they demonstrate can, we argue, be translated into the skill set demanded of particular profit focused criminals. So 'Jack', exhibited the characteristics used by entrepreneurs to build successful legitimate businesses. His understanding of the functioning of particular 'leisure' based markets (particularly drugs) enhanced the economic efficiency and productivity of his loose and fluid 'job-and-finish' specific firms. In so doing he demonstrated an autonomous, creative and malleable framework of business sharpness (Hobbs 1995). This exhibited commitment, robustness, opportunity, obsession and the tolerance of hazard within a variety of trading relationships (Hornsby and Hobbs, 2007; Timmons, 1994). This entrepreneurial guile was employed to build a criminal enterprise that merges illegal with legal activity and that is characterised, as discussed in the next section, as being: profit driven; able to anticipate change and move into different lines of business; and one that actively manages 'business' risk. The data shared in this chapter provides an overview of the growth of the Baxter's 'business' empire mapping that entrepreneurial activity. It is illustrated by extracts from the activity of our family to show how they demonstrate the use of key entrepreneurial traits as further discussed below.

The notion that the criminal can be viewed as an entrepreneur more usually making a negative rather than positive contribution to society has already been discussed in the literature by, for example, Baumol, (1990); Gnutzmann *et al.* (2010) and van Duyn (1998; 2000). This chapter, as with others in this collection, supports the concept of the 'entrepreneurial criminal' and the positioning of criminal activity as a facet of capitalist society. Both criminals and capitalists have a common goal in that both groups can be defined by the search for profit (Hobsbawn, 1969). Van Koppen *et al.* (2010) emphasise that the differences in career trajectories

between different criminal types can be explained by individual personalities and by abilities to cope with and respond to a shifting risk environments (van Duyne 2000).

Contribution to economic growth is dependent, therefore, on how much entrepreneurs, as the embodiment of the free market, devote themselves to the positively viewed productive undertakings as opposed to the ‘unproductive’⁴ criminal endeavour (Baumol, 1990). For some, crime is firmly positioned as “*the consequence of human ambition, and the flip-side of an entrepreneurial spirit*” (McCarthy *et al*, 2014: 2; Gnutzmann *et al*, 2010: 245). In other words from this perspective, crime is most certainly innovative but its execution is seen to contribute negatively and to the detriment of the legitimate economy. Although others have argued that the interface between the two economies operates so easily that it is less clear that criminal enterprise does not make some form of contribution to economic growth through, for example, consumption expenditure. And, with the common drive for profit, boundaries between legitimate and illicit trading are increasingly blurred. For example, the contraband markets in illicit cigarettes (Hornsby and Hobbs, 2007; L’Hoiry, 2013) has been viewed as providing specific consumers with a service (Wiltshire *et al.*, 2001) and has demonstrated that there are few moral distinctions between those illicit operators and big ‘legitimate’ tobacco firms, in securing market position and enhancing profit margins (Joossens and Raw 2012).

Thus the market that the criminal firms seek to exploit “*is largely indistinguishable from the arenas that capacitate legitimate entrepreneurial pursuits*” (Shover *et al*, 2003: 489). ‘Criminal’ enterprises feature interlocking legal and illegal commercial structures engaging with both legal and illegal markets that shape their entrepreneurial options. As will be discussed, this same model of interlocking legal and illegal business structures was also seen within the operations of the Baxters. In particular, the activities employed by Jack to build a criminal enterprise that merges illegal with legal activity can be characterised as being: profit driven; able to anticipate change and move into different lines of business; and one that actively manages ‘business’ risk.

⁴ Unproductive within this context means that the criminal contributes primarily only to the black and not towards the legal economy.

Criminal risk management

Insofar as the motive to commit crime is predicated upon opportunity for personal profit, deterrence effort is constructed around manipulation of the criminal profit formula (Gnutzmann *et al.*, 2010). The formula is presented in two dimensions: the probability of being caught and the severity of sanction imposed if caught. In similar light, rational choice theory (attributed to Cornish and Clarke, 1987) has been applied within criminology to explain the utility driven decision making of criminal actors in which largely short term benefits (immediate gratification of gain) are considered and weighed against longer term costs (incarceration if apprehended). The ability to accurately weigh this decision is bounded by limited information gathering and evaluation of future costs.

Sittlington (2015) argues that the real deterrent is not a stretch of incarceration but the loss of assets for the professional criminal that is most effective and this is highlighted by other research on asset recovery (Levi 2003; Levi and Osofsky 1995). In such circumstances criminal enterprises increasingly adopt a risk-averse strategy to counteract the legal dilemma of demonstrating 'where the money came from'. Hence the move towards renting rather than purchasing/owning high value assets that may subsequently be seized by the authorities. In such manner, they are able to derive full consumer benefits of occupying often very nice property without fear of loss (see, Matrix Knowledge Group, 2007; Van Duyne, 2003). In a similar approach, top of the range cars are hired/rented (Matrix Knowledge Group, 2007) or, as our own research for this particular study found simply 'lifted' from top-of-the-range car dealers. Due to the formidable local reputation of the family, the car sales company felt they had limited recourse to law enforcement nor means to prevent its reoccurrence. As one of our participants divulged:

"We were getting phone calls from a couple of absolute top-brand car sale rooms, and I mean this is Premier League football standard customers, 'Jack Baxter and his brother Sean, they've lifted a Range Rover Sport off the forecourt. It's over £90,000 worth of motor and they've basically come in and said 'Right. We're going to have this for a while. If there's any damage to it, we'll sort it out'.

'So, basically, they're stealing it. So we say: 'Right we'll [police] come to you and take a statement from you. The vehicle will be returned.

You can press charges for theft and we'll take it on from there'. Not a chance, what we got back, on numerous occasions was: 'No way! That is not going to happen. If you could have a quiet word and let them know some concerns have been raised and once they've finished playing with it could they get it back to us in a decent state, That will do it. I really don't want to take it any further than that.

'So, what are we going to do with that? Unofficially and with a quiet word in my ear: 'The Baxters' have stolen one of our top range motors. They won't keep it. They won't sell it on. This is just 'flashing about' for them and their cronies. But, because of their formidable penchant for violent retribution we aren't going to officially report this'.

'See, the way I see it, and I do fully understand their concerns, who'd report it? These are simply deranged playground bullies who have historically made their names through this sort of gutter criminality. This is the rubbish at the bottom who, basically through established and regionally recognised consideration of their violence, and their threat of violence, made it to the top of the tree here''.

Such understanding of the instrumental use and/or threat of violent tactics is often negated within the continuing functional role of establishing a partisan 'brand' of violence where no "*. . . matter how sophisticated and market orientated organized crime becomes, and no matter to what cause its profits contribute, the cultural inheritance of traditional visceral practices remain central to the establishment, marketing, regulation, and culture of illegal markets*" (Hobbs *et al*, 2003: 681). This is a criminal family firm that has 'logoed' the mercantile capacity of its resource of heavy-handed violence - a strategy that has firmly established its branding of the family name in regional folk-lore.

Fear of loss of assets further emphasises the necessity of having 'background operators', often within the legitimate world (Middleton and Levi 2005; Mack and Kerner, 1975) available to discretely launder the proceeds of crime. Sittlington (2015) also shows, as highlighted by Tupman (2015), that there still exists a distinction between criminals who habituate crime to fund a consumption lifestyle and those that are building for a secure financial future in retirement, seeing an end to and change from, criminal activity to that which is law-abiding. For most criminals, even if affluent, that is too high an aim in life. Sittlington (2015) also pointed out that rational thought processes are not as strong as theory suggests, rather that

the interest of criminals is often in relation to their own status and their credibility within the criminal fraternity. We find evidence of both of these areas in relation to our own criminal family.

Just as one can witness entrepreneurs functioning in the licit world are effective at implementing rational strategies to minimise the risks associated with investment decisions, so we were able to witness our influential criminal family employing risk management strategies. These included, from really strategic to more operational for example, changing the focus of criminal activity in response to toughening penalties and to preemptively setting up alibis in advance of activity. Our family was also careful to manage its reputation. Firstly, as already illustrated, within the illicit world they maintained dominance across the criminal sector by judicious threat and application of violence. A further risk management technique we identified was careful management of public image and *creation of a legitimate veneer*⁵ including the use of press interviews to suggest to the public at large that they were being victimised by the police; indeed they freely employed methods to discredit the police. They also utilised ‘trust’ (von Lampe and Johansen, 2004) by only working with and alongside members of their own extended family (our records indicated some ten members of the family and a network of close friends).

Evolution of the criminal entrepreneur – Pills, thrills and bellyaches

Jack Baxter’s father was involved in long-firm fraud and ‘*an affable criminal*’⁶ and his mother was reasonably well educated with no criminal background. The construct of the ‘gentleman criminal’ is one that was popular with the media and it is apparent from our data that the interface with law enforcement was always polite and it seemed stemming from the appreciation that the police had the power to ‘hurt’ either the family or its operations. However, this is in contradiction to other descriptions of the individual that are far less flattering drawing attention to the father’s formidable violent reputation and penchant for the use of control via domestic

⁵ Respondent A

⁶ Respondent B

violence towards both his spouse and his children. As one of our other informal respondents stated:

“He could be a cunt of a bloke to his wife and his kids. You’d often hear it kicking off. He’d come back pissed from the pub, he’d get stuck into the wife, the boys would then jump in and he’d give them all a proper going over. We’d hear them sobbing. He’d kick them out into the back yard and make them sleep, with the dog, in the dog’s kennel. They were brought up with violence in the home, in the community, at school and from the police. They had it hard and they all turned out to be hard-men who could do violence well”.

In similar tone:

“He could be quite a sort of violent, aggressive man – good with his fists. So he built up a bit of a status in that sense but in terms of his antecedence and criminal history I don’t know to be quite honest”⁷. . .

The father viewed himself as the intellect behind the family firm, as both a business man but also as its investment adviser: “*as a business they have a pecking order. The father is the brains ‘the teflon don’⁸ nothing sticks. Not violent but into long firm fraud. He thinks he is a businessman*’. [He] ‘*employs foot soldiers to get involved in the nasty business*’. Further “*it was impossible to get witness statements: They were too frightened*”⁹.

As seen elsewhere, such reliance upon family structure in forging and maintaining a well-established criminal branding are often reliant upon locally established credibility and urban folklore where family, and particularly that of brothers prone to deploying instrumental violence, forge an intrinsic link in upholding reputation (Lambrianou, 1992; Richardson, 2005; Gambette, 1993).

The father was chairman and shadow director of the later to be established pub empire. He appears to have demonstrated some degree of financial sophistication and of recognising the importance of ‘facilitators’, as he was also responsible for arranging that funds were invested offshore through Guernsey using a London-based financial adviser. Interestingly he ensured that minutes and records were kept of family business meetings all being recorded by his wife, Jack’s mother. “*It’s a business structure because*

⁷ Respondent A

⁸ A reference to the Mafia patriarch John Gotti.

⁹ Respondent C

you've got managers and middle managers and foot soldiers who are totally expendable".¹⁰ It was as a result of this business head that his "Sons look to him for guidance on investment of their cash"¹¹ and he helped Jack invest his money.

Jack's background was, therefore, apparently characterised by violence, growing up in a 'tough' part of the city. Our man's first foray into criminal activity was through his initial involvement in low level offences of theft and dishonesty. At school and in his local neighbourhood as a teenager he followed his father and built a reputation of being a "handy lad with his fists at school, a good fighter"¹². His first serious introduction to crime saw him undertaking a junior role in post office (PO) burglaries during the early 1980s. The safes which were stolen from those burglaries would be manually removed from post-offices and deposited into vans and then later cut open using oxyacetylene cutters.

By the late 1980s and with his second group of cohorts (when Jack was in his late teens early 20s), he had graduated into armed PO robberies and cash in transit, the latter being perceived to carry a lower risk factor. The first major undertaking by this group was a 1986 post office robbery for £750,000 of which Jack's share amounted to £160,000 (£435,000 in today's prices).

This cash injection raised the game and led to the establishment of the business as he was now in a position to bankroll a move into other areas. Significant here, in light of prior discussion of the literature, Jack was able to establish his personal and family reputation as top quality criminals, good at what they did where the 'firm' was described as a "strictly controlled group, his little team in organised crime"¹³. Credibility was enhanced (as is usual in organised crime – "violence and organised crime are natural partners" (Hobbs *et al.*, 2003: 834) through building a reputation for violence. This is an important part of position marketing and maintenance of market share with the professional armed robber belonging "to an exclusive club" (Hobbs, 2010: 295). Such high status criminality negated the limited financial rewards and/or lack of excitement and restrictive independence and autonomy perceived to be part and parcel of the legitimate world (Hobbs, 2010; Shover and Honaker, 1992). The establishment of the role of protector/extortionist relies upon the provider of security being more

¹⁰ Respondent C

¹¹ Respondent B

¹² Respondent A

¹³ Respondent A

violent than his clients, and this is crucial in the case of criminal clients who may also be prone to violence as both perpetrators and as victims of violent retribution. However, extortionate relations are not confined to the illegal enterprise and particularly can be found in those enterprises that are situated alongside businesses based on vice. In such cases, extortion is often accepted as an informal tax. Extortion may not involve actual violence but its mere suggestion is often all that is needed, particularly when the criminal and/or criminal group are prone to anarchic, illogical and sporadic violence (Reuter *et al*, 1983; Schlegel, 1987; Hobbs, 2010). Jack Baxter and his family clique established a guarded reputation of being the biggest and meanest hitters in town:

“People were being kidnapped and tortured by the family. People would go 'missing'. People with money, with families . . . with kids, savings, cars and mortgages. . . never to be seen or heard of again. No withdrawals of cash from bank accounts. They disappeared”. They employed “heavy-handed enforcement and extortion of companies in the [region]; Protection rackets; setting fire to restaurants to enforce security contracts stealing valuable things and extorting fees for safe return”.¹⁴

Only fools and horses: Entrepreneurship and organised crime

From this position of strength, Jack is able to ‘franchise’ out his brand by drawing in others who wanted to be associated with the Baxter family name. Van Koppen *et al.* (2010) in a discussion of organised crime draw our attention to “*the importance of social relationships*” (p. 103). In this way the Baxter ‘trade-mark’ would be bought or loaned to a limited number of individuals on a credit-based payment of favours owed or a share of profits received from such business ventures (see Topalli, 2005). Our family was careful only to deal with members that were either relatives or close friends of Jack.

¹⁴ Respondents A, B and C. We cannot add further evidence to this from local press, *albeit* that such is available, as to do so would enable the family to be identified.

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“People working for them would be contacts they met in prison, family friends and friends of friends- there was no alternative to crime, there were no jobs or they were low pay, they were attracted to ‘Jack’ and they did little jobs and were tested for trust”.¹⁵

However, in 1989 Jack was caught and given 15 years for a security services¹⁶ robbery. This was a professionally planned commercial robbery where the Crown Prosecution Service (CPS) mandate for sentencing guidelines is: “*The sentence should be considered in the context of those imposed with those for murder. Starting point for a single armed robbery where no serious injury caused was 15 years*” (Crown Prosecution Service: n/p: undated)

Within a hierarchy of criminal endeavour, graduation to this type of hold-up was major league involving as it did, Special Purpose Automatic Shotguns (SPAS) twelve pump action/semi-automatic firearms and full body armour. And this was against British law enforcement agencies that, at that time, generally armed themselves with little more than truncheons and handcuffs (Waddington, 1991). The proceeds of this robbery were recovered in somewhat bizarre fashion by the police.

The money from the robbery had been stashed in a safe-house in the city. The man whose house was used had left the gang the keys to his property while he was away on a short holiday. It was a dark winter’s evening and some of the gang were in an upstairs bedroom dividing up the proceeds. Unluckily, while this activity was underway a family member of the man who owned the property drove past the house and seeing an upstairs bedroom light on and knowing that the man was out of the country, called the police suggesting a burglary was in progress at the property. The police arrived shortly afterwards. Entering the property they discovered the armed robbery crew in mid-count and were able to apprehend the gang and recover the proceeds.

From this point, the Jack could see that the risk associated with armed robbery was too high and that the time had come to cross over from criminal into semi-legitimate and legitimate business operations. Police reports from 1996 to 1997 indicated their belief that Jack was continuing to run his crime empire from behind bars. Under his direction, via oblique letter communications and prison visits the Baxter sons alongside their established criminal associations set in motion and operated a range

¹⁵ Respondents A and C

¹⁶ He was released in November, 1999 having served 10 years of his sentence.

of new activities. This saw them expand operations into drug distribution, prostitution, taxi operations and running ‘the doors’ of the burgeoning night club scene. Such diversification afforded opportunity to exploit the considerable profits available to be earned from the leisurely drug fuelled youth culture of the period (Collins, 1998) and the rapidly developing Night Time Economy together with its associated security enterprises (Hobbs *et al.*, 2003) alongside the wider distribution of drugs (Collins, 1997). Strategically this decision made perfect business sense as armed robbers were risking receiving lengthy sentences or being shot on the job and many professional armed robbers were switching to lower risk criminal activities (Hobbs, 2010; Smith, 2005). From this point, the Jack could see that the risk associated with armed robbery was too high and that the time had come to cross over from criminal into semi-legitimate and legitimate business operations.

Part of the *modus operandi* that further demonstrated a sophisticated approach to risk management (in anticipation of any further stretch of incarceration), saw Jack deliberately attempt to invalidate the reliability of the police:

“. . . provide a means to convince the jury that the police were lying; writing . . . with information about police corruption and victimization – putting their defence in place before they perpetrated a big crime.”¹⁷

We were told that there was evidence of jury tampering, of having people on the inside within the police “*someone on the inside to negotiate risks and be aware of risks coming your way*”¹⁸ and that Jack was able to very effectively exploit allegations of corruption to discredit police evidence.

Indeed, whilst in prison Jack gained a reputation and ‘*controlled the landings*’ and “*was entrepreneurial, . . . extracting intelligence from a cross section of people*”. He was deft and manipulative “*striving for publicity, credibility and reputation*”.¹⁹ On one occasion, as a publicity stunt to affirm the family’s ‘noble’ status the City’s Bishop’s crook, which had been previously stolen from the cathedral, was ‘recovered’ by the Baxter family and returned to the Bishop under a blaze of regional press camera flashes and reportage.

¹⁷ Respondent B

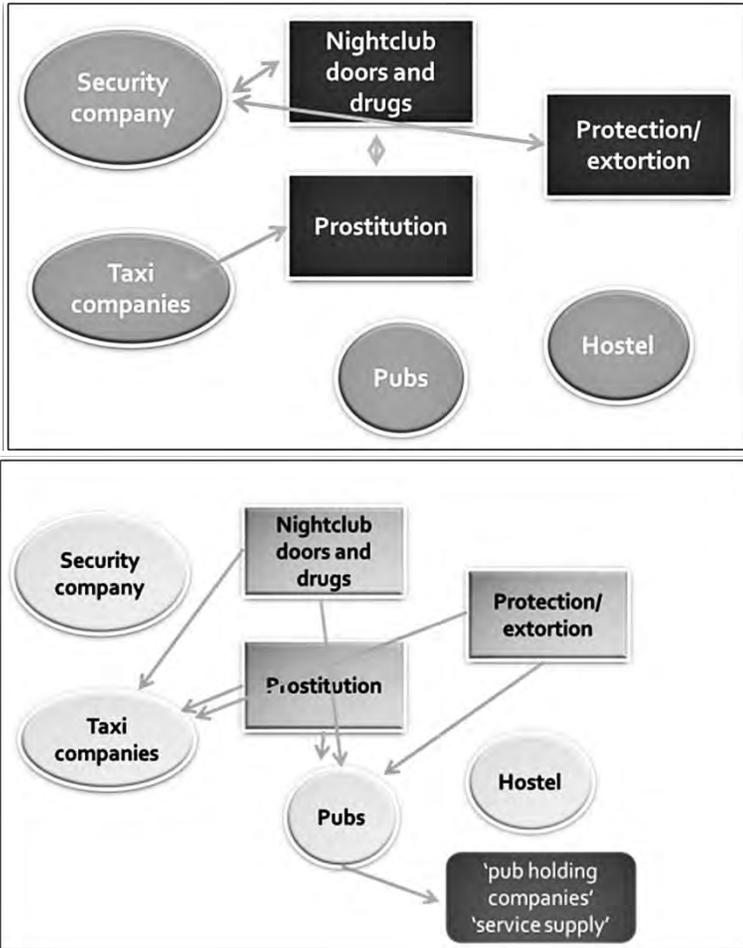
¹⁸ Respondent A

¹⁹ Respondents B and C

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In the early 2000's, Jack Baxter moved into heavy handed enforcement (marketing violence as a commodity or tool to deal with competition) and extortion of multiple companies in the region primarily based around restaurants and car dealerships under the guise of 'security contracts'.

Images 1 and 2 – the Business organisation and money flows



Note: oval companies are those in the legitimate economy; the oblong shapes are those in the illegal economy.

As indicated in the images above, over the period from 2000 to 2005, the family gradually established a range of legally incorporated firms that enabled investment in a network of pubs, security firms and taxi firms ensuring their “businesses were profitable to secure their future income stream”. While utilising control of the floors and doors of the night time economy, Jack Baxter and his brothers expanded into the ‘adult’ industries. Further, being

able to successfully trade on the threat of violence, they expanded into the City's pubs, restaurants and food supply business. This was simply achieved by informing the owners of a wholesale food distribution company that they would be 'selling' their company to the Baxters (at a fraction of its actual value). Having entered into the wholesale supply business they secured their market by ensuring that targeted restaurants purchased supplies from their company. Acquisitions took place "*by threats and violence as well as coercion*". They employed similar methods to "*supply flowers and food to pubs and restaurants*".²⁰ Examples were made of those initially unwilling to engage with the services of the Baxter delivery and 'security' services. Two Mediterranean restaurants were burned out after forced entries. As one of our participants²¹ told us:

"It's a pretty simple and thuggish way of screwing money out of people. It works like this. You have your business, pub, cafe, restaurant . . . whatever. And in he comes.

'I'm offering security...delivery of food...bread buns'; it could be whatever the business will need and probably already has.

'Thanks mate, but I've already covered that stuff. We're fine as we are and have it all taken care of, thank you'.

'Ok, but do have a good think about it, wont you? If you have any problems just give me a call, Okay?.'

'A week later your boozier is smashed up, chairs going through the optics and the mirrors. A break in during the small wee hours at your restaurant and it's burned out. You pay up or fold in. That's the choices you are left with. What you going to do? He then turns up again and says: 'I heard on the grapevine you had some trouble with some thugs and they made a right old mess of your boozier? As I said the other week, I can help you out here. It's 400 quid a week and we're on call 24/7 all year round. We'll be up, mob-handed, to sort out any shit in three minutes flat from your call. No one will ever fuck with you or your gaff again if you get us on board. My name goes over the bar: 'These premises are protected by Baxter Security Services'.

'So, I'm basically giving money for nothing. Aside that instance (above) all we have had here in the 15 years I've had this pub is the odd drink fuelled fight-which are very rare-and these generally get

²⁰ Respondent A and C

²¹ Pub landlord

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stopped by the people sat around. When he (the extortionist) arranged to smash my pub up that was the only time it had happened. You try not claim on your insurance, as it comes back to bite you with the premiums. That damage of that 'raid' cost me over £1,300 and also put the jitters into some regulars and the staff we have in the pub. So basically, I'm giving him four hundred quid a week, as are the other six boozers round here, not to smash up our businesses. I know of people who pay him five-hundred pound a week not to put his name up over the bar and not to call in now and then for a free pint. Paid him off to simply him keep away."

Aside from the acquisition of taxi firms, this move into the catering and hospitality trade by criminal entrepreneurs was also observed, within the Dutch economy, by van Duyne (1998). The use of criminal proceeds to acquire legitimate cash based businesses led van Duyne to refer to the individuals as 'mixers' *'reinvesting their crime-money in hardly viable enterprises'* (1998: 368; also see Van Duyne, 2003).

The functioning of the criminal entrepreneur within both legitimate and illicit markets is frequently facilitated by a blurring of the characteristic frameworks that define 'organised' crime as distinct from 'legitimate' business organisations. Simple economic exchange and consumption bring both worlds bumping up against each other. As globalisation has intensified (Robertson, 1992; 1995), the organisation of criminal activities has mirrored trends in the administration of the legitimate economy (Ruggiero, 2003; Hobbs, 1998). It is also evident that legitimate players are equally willing to cross over to the darker side by, for example, paying cash for services delivered to avoid payment of VAT. Just as with their legal counterparts, the criminal entrepreneur is "*constantly trying to better or maintain his position by choosing between alternative courses of action*" (Bois-sevain, 1974: 6), shifting between various actions, markets or activity as they weigh the accompanying risks and plan the execution of their criminal act (Cohen, 1977).

Whilst Jack was in prison, Baxter senior, using proceeds from his son's legitimate and laundered criminal profits invested into a men's hostel, creatively using the latter for benefit fraud. During the late 1990s and into the 2000s, the father capitalised on state deregulation and the hollowing-out of state welfare interventions that saw a neo-liberal shifting of this social policy into the private sector. He invested into and legitimately ran

a number of care homes for pensioners. In particular he ran an old aged people's home specialising in dementia care, the residents of which were paid for by the State through welfare payments. Despite this legal switch into a growing market for private sector provision of a previously supplied public sector good, much of the day-to-day running of that care home was decidedly dubious. As one of the care-home workers who previously worked there claimed:

“Often, more often than I care to remember, you'd go to the bank to withdraw some of the month's wages on pay-day and there would be no payment. The wages hadn't gone through. And I'm skint, literally no money to feed my kids or pay for petrol. You know? That end of the month skintness? So, all the staff hadn't been paid again, and then the phone calls start asking from the staff: ‘Where's my money? This isn't on’. A day or two later he'd (Jack's Dad) would turn up at your house-I mean-what the fuck-at your house-and open up a big black satchel full of brown envelopes with each of the care home's workers names on them and with each envelope stuffed with notes and coins and a: “Sorry for the late payment. There's an extra tenner in there for you for your troubles”. I mean, what the fuck? What type of an organised business model was that?”

Ironically, Baxter senior was recently arrested, charged and committed to trial for a multi-million pound income tax evasion fraud related to his care-home businesses, mortgage frauds and crooked pub accounts. After the pre-trial hearing the case was dropped due to medical reports claiming he was suffering from fronto-temporal dementia and was considered unfit to plead and to stand trial. Although tiring and struggling on with his old age, Baxter senior is currently semi-retired. A brother Jack Baxter has recently rescinded his criminal status and has reportedly turned his back on a life of crime. Jack Baxter continues managing his businesses.

Conclusion: Mirror images – licit and illicit worlds

From this discussion of the activity of the Baxters and in particular that of Jack, we have drawn attention to the development of a criminal business from armed robbery through to a highly profitable organised supply and

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distribution of recreational drugs through ‘controlling the doors’ of night-clubs in the City. They then branched out via the ‘high jacking’ of other legitimate businesses through a combination of extortion and threat (through legitimate security firms and food wholesalers), before finally investing in their own legitimate businesses (including legitimate acquisition of run down pubs on sink-estates) that also provided cover for fraud, laundering and tax evasion whilst latterly recognising the business opportunity provided through ‘care homes’. Jack in particular exhibited the characteristics associated with successful legitimate entrepreneurs being adept at risk management and having an influential personality. Importantly, he was aware of the significance of brand management (through enforcement and his reputation for violence) and of a status portraying the family as the victim of police vendetta.

Many of these ‘skills’ mirror the licit world demonstrating a nimble response to changing market conditions by moving out of high risk armed robbery into lower risk drugs. As with other legitimate entrepreneurs, acute appreciation of the market position and brand image of the business (and of how it can be protected) saw Jack establish a monopolistic position within the city. Juggling multiple businesses requires understanding of their structure and of the need to ensure that their management was executed only by those close associates and family members who were trusted. His highly developed sense of public *persona*, his ability to manipulate the local media and his resultant media profile and finally his ability to both exploit and expose police corruption “*the big white elephant in the room*” shows both intelligence and a sense of humour and willingness to engage in “*the game - villains and the cops and the courts and the barristers*”.

Whilst part of the family appear to be moving towards ‘legitimation’ and cross over into the licit world it remains to be seen whether Jack will similarly follow suit. We rather expect that his ‘status’ within the criminal fraternity will see his continued operation in the illegal sector. If the socio-economic environment in this Northern town had offered wider legitimate career choices, our conjecture is that he could have been a very successful business man rather than being a pillar of the criminal one instead.

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Exploring the cyber-organised crime narrative: The hunt for a new bogeyman?

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The puzzle

There was a broad consensus among scholars and practitioners about the criminogenic potential of the automobile and the telephone in the first decades of the last Century. One hundred years later we see a similar concern: criminals facilitated by new information and communication technologies (ICTs), which form the tools of what is called ‘cyberspace’. These tools connect people and facilitate commerce, but at the same time they are also instruments enabling various types of offenders to take advantage of new criminal opportunities for carrying out illegal activities (Grabosky, 2007; Yar, 2006). ‘Cybercrime’ has become the object of research of an increasing number of scholars and a key element in governments’ security agendas.

The extent to which ‘organised crime’ (hereafter OC) is involved in the exploitation of ICTs is still unknown but this is increasingly becoming an object of academic debate, with the OC rhetoric being used to refer to a wide array of alleged criminal groups and activities in cyberspace.

Organised crime is an umbrella concept; a whole range of different crimes and groups are included within the same label of ‘organised crime’ (Calderoni, 2010; Finckenauer, 2005). As far as it concerns the international discourse, the reference frame for a definition is the 2000 United Nations Convention against Transnational Organised Crime, according to which an ‘organised criminal group’ is simply

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‘a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit’ (art. 2(a)), a ‘structured group’ being ‘a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure’ (art. 2c)).

The use of the OC label, however, is problematic and potentially misleading: this label has long been used to identify mafias as well as new and loosely knit illegal market players. However, the OC label may be misplaced resulting in ‘mislabelling’: criminals are increasingly using ICTs to ‘organise’ their activities in a myriad of ways that do not necessarily reflect common definitions and understanding of what OC is supposed to be. Furthermore, there are both groups operating only in cyberspace and gangs heavily involved in ‘offline activities’ that nonetheless exploit ICTs in many different, complementary ways to their core business. This basic but fundamental distinction – which carries key implications for regulatory measures and policing – is lost by relying one-sidedly on the OC label to cover all.

A further problem is that this imprecise conceptualisation seems to be increasingly used not only in academic endeavours but also and above all in policy making by security and intelligence agencies, centres, and other relevant institutions. This fact is particularly relevant both in crystallising a certain ‘security language’ and in setting policy agendas, with important consequences in terms of resource allocation and action prioritisation. To borrow the words of Edwards and Gill (2006: 265): “*In crime control discourse, the definition of a problem and the promotion of certain policy responses is [. . .] an inherently political enterprise*”.

This chapter looks at the significance and the scale of the use of the OC representation when it comes to cybercrime and other Internet-facilitated crimes at the European and international level by conducting a document analysis of official outputs of the major security and intelligence agencies, centres, and other relevant organisations addressing the possible intersections between OC, cybercrimes, and internet-facilitated crimes. This contribution problematises the current use of the cyber-OC narrative

and shows how this appears insufficient to guarantee a common level of understanding in public and scientific debates.

Before moving to the core of this contribution, the following sections provide a concise overview of the existing academic literature dealing with cyber-OC and related problems. It will show how evidence-based research is still indecisive as to the degree of organisation of offenders operating in cyberspace.

On cybercrime, internet-facilitated crime, and their organisation: the state of the art

In the criminological discourse, cybercrime has been broadly interpreted as a crime generally related to ICTs; that involves the use of ICTs in the commission of the offence: targets ICTs themselves, or in which ICTs are used incidentally for the commission of other offences (Smith et al., 2004). Research on cybercrimes is a relatively new area of inquiry. Despite the broad consensus on the threats to the economy and security interests due to cybercrimes, little is known about their extent and their characteristics. There is not even agreement to whether ICTs have allowed the existence of new types of crimes, or have rather created a new environment in which traditional crimes are committed by non-traditional means (Brenner, 2004; Clarke, 2004).

The more comprehensive and inclusive classification is probably the one proposed by Wall in his 2007 monograph. He distinguishes among three basic groups of criminal activities, each one requiring a different legal and criminological understanding:

1. computer integrity crimes;
2. computer-assisted crimes;
3. computer content crimes.

This categorisation is not comprehensive but it has proved helpful in guiding criminological understanding. For the scope of this chapter Internet-facilitated crimes are generally not considered as cybercrimes: these concern activities in which the Internet has been used as a primary crime facilitator but it is not necessarily an inherent part of the criminal activity per se (Lavorgna, 2015) (for instance, Internet-mediated drug trafficking). This set of crimes form a category that started receiving

scholarly attention only over the past few years.

As anticipated above, the alleged presence of traditional OC groups exploiting ICTs and of new OC groups formed in cyberspace has increasingly become object of academic analyses. Already more than one decade ago it was suggested that new ICTs were changing the organisational ‘life of crime’ (Brenner, 2002), but the earlier studies raising this issue were mainly speculative without much empirical evidence. Indeed, it is natural to think that new criminal opportunities should be attractive for existing OC groups. But it is not self-evident whether these groups have the interest and skills to exploit such opportunities. Given the huge differences between the physical world and cyberspace, this gap could prevent the effective transfer of certain existing criminal activities and social relationships on which they are based online. Criminal organisations that have proven successful in the physical world are not necessarily equipped for exploits in a digital environment (Brenner, 2002; McCusker, 2006).

In the previous decade, several studies presented anecdotal evidence on what types of groups would operate online. Williams was among the first to claim that there is ‘growing evidence’ that “*the dark side of the Internet*” involves not only ‘disorganised crime’ as in the case of individuals or paedophile rings, but also criminal organisations (2001: 22). According to Williams, however, even if OC and cybercrime are not synonymous and never will be – since the former continues to exist in the real world and the latter is often perpetrated by individuals – they are increasingly overlapping. Choo and Smith (2007) and Grabosky (2007) reached a similar conclusion: in particular, Choo and Smith identified three categories of groups exploiting ICTs, namely:

1. traditional OC;
2. ideologically and politically motivated groups, and
3. organised cyber criminals.

While the first two groups use computer networks only to enhance and facilitate their illegal activities in the real world, organised cyber criminals are less structured and operate exclusively online in smaller group. However, according to Choo and Smith, these three groups might converge on financially-motivated crimes in the virtual international economies, but unequivocal evidence is so far missing. More recently McGuire and Dowling (2013) published for the Home Office an overview of the scale and nature of cybercrime in the UK. A small section of the report is dedi-

cated to 'organised cybercrime' but it mostly refers to these early studies without adding new research-based evidence.

In more recent years a few systematic studies on the nature of groups engaging in cybercrimes were published. McGuire (2012) wrote on behalf of BAE Systems Detica (now BAE Systems Applied Intelligence, a private security company) a report based on a review of secondary sources. That report was broadly quoted as if it suggested that 80% of cybercrime is carried out by OC. McGuire, however, wrote more cautiously that "*upwards of 80 percent of digital crime may now originate in some forms of organised activity*" (p.49, *emphasis added*), and that "*more detailed data and analysis [is needed for this] to be further substantiated*" (p.60). The fact that a crime is somehow organised does not necessarily imply that it is carried out by OC. Moreover, in the report OC was mostly indicated as loose types of crime networks that just partially resemble offline organised criminality, and the report itself recognised that many of the associations identified were highly transitory in nature (p.17). McGuire also proposed a typology of cyber crime groups. In this typology only a minority of the groups identified (mainly 'type III hierarchies', i.e. traditional OC groups exporting some of their activities online) maintain certain core characteristics of OC.² Similarly, Krebs (2014) reported that 'partnerkas' (i.e., Russian-speaking criminal networks involved in spam activities) are often defined as 'organised cybercrime'. However, he soon had to specify that 'partnerkas' would be better defined as 'disorganised cybercrime'. The reason is that these groups have no continuity and are formed by loosely affiliated individual contractors who only remain in the partnership as long as it is economically efficient for them to do so. Also Tropina (2013) described a 'possible transformation' of cybercrime into something global run by OC groups (either traditional or new) (p. 47) and recognised that "*it is still not clear how organised networks in cyberspace are structured and how they operate*" (p. 56). She concluded, however, that new forms of OC are emerging in cyberspace, although they are not yet consolidated, and that "*it is obvious that there is a certain level of organization occurring on these platforms [cfr. forums online] for*

² He presents (page 7) a table with standards definitions of OC but then adds "*For the purpose of this research a 'realist' stance was adopted, where the primary focus was upon outcomes and measurable indicators of crime rather than definitions*". Therefore, he never defines one single working definition of OC, but still broadly relies on this concept. After the report was published, several media played with this and reported that "*80% of cyber crime is OC*".

information sharing of criminal techniques], at least on the administrative level” (p. 54). But it still remains highly speculative.

To sum up, the existing criminological literature, although focussing more and more on the way in which new ICTs allow new types of crimes, has not yet sufficiently addressed the nature and the rate of criminal adaptability. Cybercrimes are increasingly said to be perpetrated by and exhibit traits of OC, but their degree of organisation is still not clear. As implicitly recognised also by the authors that have relied on the ‘cyber-OC’ (or ‘organised cybercrime’ or ‘organised digital crime’) rhetoric, making inferences from the (still scarce) studies on the presence of OC in cyberspace “*may result in an ecological fallacy*” (Hutchings, 2014: 3). Online criminal opportunities are exploited by lone as well as cooperating offenders, but there is still scarce evidence as to whether new criminal actors created organised groups in cyberspace and/or ‘traditional’ OC groups operate in online marketplaces. Rather, evidence points in the direction of the presence in cyberspace of loose, flat, and fluid networks, generally without a common functional unit (Wall, 2014). Recent literature often refers to the earlier speculative or anecdotal studies, to reports published by security companies (such as Symantec 2008 and McGuire 2012), and to some of the reports discussed in the rest of this chapter. Some references (for instance, the Europol reports) seem to substantiate the relationship between OC and cybercrime, but the methodologies employed in these reports and the lack of solid empirical evidence do not allow definitive conclusions.

As regards more specifically Internet-facilitated crimes, recent research has shown that, while new ICTs are opening opportunities for new criminal actors, only some types of traditional OC groups so far took advantage of criminal opportunities provided by new ICTs in carrying out their traditional activities (Lavorgna and Sergi, 2014). For example, research has shown that the Internet has been used by these groups to build new business ties, to sneak into the clients’ attitudes and spending habits in order to promote smuggled products, or to check on people to avoid being deceived by undercover law enforcement officers (Lavorgna, 2015).

As already remarked by Lusthaus (2013), there is a need to apply scholarly rigour to the question of whether criminals operating in cyberspace can fit the present formal definitions of OC (and even of ‘mafia’). Without denying the possibility of traditional OC increasingly operating online and of the creation of new OC groups in cyberspace, the limited reliable data

available do not allow to carry out an exact comparison between the existing 'offline' criminological categorisations of OC and the new groups and networks of offenders operating online.

This chapter explores the current use of the cyber-OC narrative at the European and international level and tries to assess the existence of a process of imposition of such an OC-rhetoric in policy making (and in the 'fear management' creating gullibility, to borrow the words of Van Duynes, 2011).

Methodology: data collection and analysis

Document analysis was conducted on data from official outputs of the major security and intelligence agencies and other relevant institutions at the European and international level addressing the possible intersections between OC, cybercrimes, and Internet-facilitated crimes.

First, a list of major institutions and agencies with a relevant remit were identified at the International (Interpol, UNODC) and European (Euro-pol, Eurojust, OLAF, EMCDDA, ENISA, CEPOL) levels (see the Appendix for further information). Second, for each identified institution, organisation, and agency a keyword search was run in their online databases to identify all relevant documents (reports, website pages, official speeches, and press releases). Note that job applications files and web pages that merely referred to the publication of a report of another agency or organisation were dismissed from the search (see Table 2 in the Appendix for details). Documents published until 15 April, 2015 were identified. Once the documents were identified, they were manually sorted out to dismiss those that were not relevant to the study. The actual sample size was thus much smaller and comprised 67 documents (see Table 3 in the Appendix for details).

NVivo, a qualitative data analysis software, was used to organise, analyse, and interrogate the documents. It allowed to classify, sort, and arrange information, as well as to examine relationships between the data, and to combine these pieces of information in textual and visual ways. Files were uploaded on NVivo according to the different institutional actors. Detailed coding was then carried out throughout the files to capture the relevant content. This data-dependent process took into

consideration a wide variety of diverse themes (such as offenders' motivations, policing approaches, types of OC in cyberspace, etc.) and other relevant information (such as the year of publication, the type of source, etc.). Codes (called 'nodes' in NVivo) were then combined into related categories. Memos and annotations were used to make sense of data as I proceeded. This allowed a continuous and systematic process of interplay between data and analysis according to the principles of grounded theory (Glaser and Strauss, 1967; Bowen, 2009).

Special attention was paid to the language and the narratives used. Indeed, the *framing* as used by the language is important: language is a whole reality. Framing is, "*the process by which a source defines the essential problem underlying a particular social or political issue and outlines a set of considerations purportedly relevant to that issue*" (Nelson et al., 1997: 222). Hence, the language used in presenting the cyber-OC is of pivotal importance not only for the social construction of the phenomenon but even more importantly for its presentation by policy makers to political decision makers, law enforcement and to the broader public, including academics. Via the 'emphasis framing effect', in fact, a speaker can lead individuals to focus on certain considerations when constructing their opinions. In this way, they will focus on certain aspects or characterisations of an issue or problem instead of others (Druckman, 2001) – the fact that criminal actors in cyberspace are 'OC' in this case. This OC might allow an 'emotional kick' that helps to get resources and powers (Levi, 1998: 336).

Findings

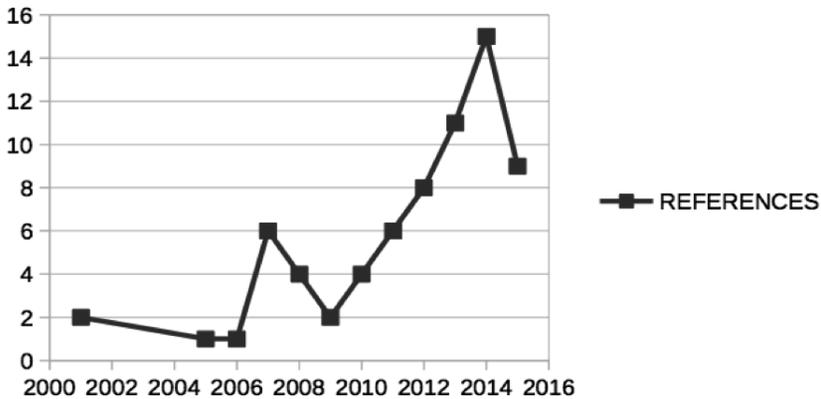
Referencing and the linguistic shift

The textual analysis indicates that the cyber-OC narrative first appeared in 2001 (by Interpol)³, and progressed (led by Europol and UNODC) slowly and un-regularly until 2009. Since then a regularly increase in the number of references (i.e., a count of the number of selections within sources that

³ Please note that terms such as 'cyber criminal organisation', 'organised crime online', 'organised cyber crime', etc. were considered as synonyms and taken into consideration as well.

have been coded to any node) to OC in cyberspace can be found (see Figure 1. Please note that for the year 2015 only documents released until 12 April were taken into consideration). Before this narrative made inroads, reports and other outputs stressed the use of new ICTs as crime facilitators but without making assumptions on the degree of organisation of criminals and criminal associations behind cyber and Internet-facilitated activities (see, for instance, the 2009 EMCDDA annual report).

Figure 1
Number of references to OC by year

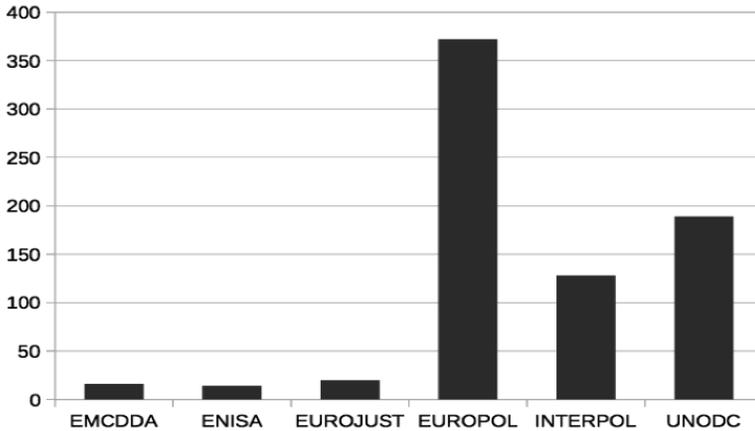


Europol has the majority of documents and of single references within documents reporting a cyber-OC narrative (as shown in Figure 2). Most of the sources identified for the analysis were media releases (n=31), followed by reports (n=18). The fact that the cyber-OC narrative is mainly found in media releases and pretended ‘key findings’ sections emphasising the most important results suggests that this narrative is mainly used as a catchphrase. Consider the following example from the Key Findings of the Europol iOCTA Report 2014 (p.11):

“Traditional organised crime groups (OCGs), including those with a mafia-style structure, are beginning to use the service-based nature of the cybercrime market to carry out more sophisticated crimes, buying access to the technical skills they require. This trend towards adopting the cybercrime features of a more transient, transactional and less structured organisational model may reflect how all serious crime will be organised in the future”.

However, in the Report there is no conclusive empirical evidence indicating whether this is the case. One may wonder whether the phrase ‘key finding’, empty in this context, should not be considered as an example of deceptive ‘emphasis framing’.

Figure 2
Total result text search ‘cyber organis/zed crime’ (including stemmed words)



Interestingly, the cyber-OC narrative is not uniformly used. Interpol, for instance, relies significantly on it when framing cases on online trafficking of counterfeit pharmaceuticals in the dedicated webpages and in other outputs, but the same way of presenting is not that widespread regarding other activities. The UNODC employs more often the cyber-OC narrative on cases of cybercrime in a narrower sense (such as hacking attacks) and child pornography. Emblematic is the ‘peak’ in the references reached by Europol in between 2012 and 2015.

The increasing attention directed towards cyber-OC by Europol can be explained with the creation of the European Cybercrime Centre (EC3) within Europol, launched in January 2013 to strengthen the law enforcement response to cybercrime in the European Union, and specifically to contribute to faster reactions in the event of online crimes. It is also a way of using a recognised ‘narrative’ as a means of platform building: the more emphasis on the phenomenon in the narrative, the higher the platform.

Morover, it is worth noting that, while references to the documents analysed are found in the academic literature, the reverse is not observed. The above-mentioned documents refer in most cases not to independent, peer-reviewed academic research. Only a few references to academic research were found, and not to those articles based on strong empirical data. Indeed, in the document analysed there were references to the reports published by 'colleague' security companies mentioned above (such as Symantec, 2008 and McGuire, 2012). Similar to what Van Duyne (2011) complained with regard to (transnational) OC and its policy making, there is the risk that the cyber-OC rhetoric crystallises not because of new compelling evidence but because of a biased, referencing within the own social circle: a mechanism of cross-fertilisation of sources and references, resulting in a common 'belief'.

In addition, what was considered just a risk in the earlier publications mysteriously becomes a fact in the latest ones through the shift of modal verbs (may/can) to the asserting verbs (is/have) without the clear presence of new data to substantiate the change in the language. It is interesting to note the parallelism with the slipping from 'may' and 'might' to 'is' in the rhetoric of the anti-money-laundering policy as shown in Van Duyne *et al.* (2005), without empirical evidence to substantiate the change in the language.

The new paradoxes

Paoli in 2002 published a seminal work identifying and problematising several paradoxes around the notion of OC. The notion of cyber-OC presents again and takes these paradoxes further. The following sections will explore this parallelism by focussing:

1. on the definitional ambiguities of the notion of cyber-OC,
2. on the theoretical underpinnings it relies on, and
3. on the (attempt of) its superimposition in the official discourse.

a. Prospects on (cyber) organised crime

OC has become a notion widely accepted in the narratives of academics, policy makers, and law enforcement officers. However, the definitional debates behind the notion of OC itself remain a problem impeding our understanding of its presence and extent in different crime domains. Not

only several disciplines, ranging from criminal law and criminology to sociology and international relations, deal with OC in their research agenda and debate about its definition according to their different scientific focus (Longo, 2010). In a broader sense, literally around the world, OC is also conceptualised in different ways depending on cultural traditions and historical contexts (Hobbs, 1998; Albanese *et al.*, 2003). Overall, the expression OC seems to have been used as “*a catchphrase to express the growing anxieties*” on the expansion of illegal markets and the perceived growing undermining of the legal economy and political institutions (Paoli, 2002: 51).

Academic literature has already extensively underlined how various and heterogeneous criminal phenomena are lumped together within the frame of reference of OC (von Lampe, 2008). This has its reasons: defining a group involved in illegal activities as ‘organised crime’ suggests that at the other side of the blue line there exists a whole mechanism to tackle it. This implies an orientation of the law enforcement efforts (Cressey, 1969; 2008: 299) while triggering a demand of greater investigative powers and tougher sentences in many countries (Van Duyne, 2004; Levi, 1998; 2014). As a result, this “*umbrella concept*” (von Lampe, 2002: 191) appears insufficient to guarantee a common level of understanding in public and scientific debates, as too much indifference in the use of concepts risks to obscure significant differences among practices (Edwards and Gill, 2002). However, the political and law enforcement reaction remains rather similar: more budget and investigative powers.

As summarised by von Lampe (2008), when we boil down the notion of OC we find three different perspectives on OC. First, OC can be about *crime* when it encompasses criminal activities characterised by a certain level of sophistication and continuity. In this perspective OC is generally associated with the provision of illegal good and services (Paoli, 2002).

Second, OC can be about the *organisation* when this notion denotes the presence of (more or less stable and structured) links among offenders. A criminal organisation is generally understood “*as a large-scale collectivity primarily engaged in illegal activities with a well-defined collective identity and subdivision of work among its members*” (Paoli, 2002: 52). Different OC typologies have been developed. For instance, in the article mentioned above, Von Lampe (2008) identified four different types of OC organisations in nowadays Europe: (a) territorially based mafia-like associations, (b) fraternal associations without a territorial base, (c) family

clans, and (d) outlaw motorcycle gangs. More recently Lavorgna and Sergi (2014) distinguished among simple criminal organisations, mixed criminal networks, migrated mafia groups, and mafia-like OC. OC organisations are supposed to be functionally different from other types of offenders: as explained by Levi (2014) among others, the underpinning idea is that a high level of organisation within a criminal group creates economies of scale by reducing the time needed to search for co-offenders, integrating the functional elements in crimes, and offering reputation benefits. On the other hand, OC carries also the disadvantages of possessing such a reputation, namely by attracting greater countermeasures.

Third, OC can be about the concentration of *power*, when the focus is on the presence of a systemic condition in the form of an underworld government or an alliance between criminals and political and economic elites (von Lampe, 2008). Therefore, OC is not only ontologically different from ‘lone offender’ or ‘opportunistic individual’, but it also evokes the idea of an interpersonal and social threat and because of this it constitutes a *bigger* threat. The idea is that what individuals can do, organisations can do it better.

As stressed by Edwards and Levi (2008: 364), ambiguities and inconsistencies around the notion of OC entail not only analytical weakness but also political strength for producing consensus around increased resources, domestic powers, and international co-operation. OC remains “*an ambiguous catchphrase*” (Paoli, 2002: 60). As such the phrase has an attractive capacity to paper over differences. In the attempt to better capture conceptual complexities, some efforts have been made to modify the lexicon (for instance by introducing the terminology ‘transit crimes’ or ‘the organisation of serious crimes for gain’, see respectively Kleemans, 2007 and Levi, 2014) but the woolly OC vocabulary remains prevalent having too many social and political advantages.

Without lingering in the legal definitions of OC and their attendant criticism, it is at least worth noting that very loose and vague definitions of OC have been adopted at the international level (2000 UN Convention on Transnational Organized Crime: see Van Duyne and Nelemans, 2012) and at the EU level (2008 Framework Decision on the fight against organised crime). These legal frameworks, seeking to find a compromise definition based on different legal traditions, set extremely low standards for inclusions of different and diverse phenomena as ‘OC’ with the risk that “*the concept might become an empty signifier*” (Carrapico, 2014: 11). As

reported by Paoli (2002: 62), already in the debates surrounding the 1994 UN Conference on Transnational Organised Crime (anticipating the 2000 UN Convention) the semantic meaning of the expression ‘organisation’ was extended up to an inconsistent way to reflect the empirical evidence of loose and fluid networks.

A similar path emerges from the narrative that has been recently built around cyber-OC. More specifically, in the case of cyber-OC the ‘cyber component’ amplifies the problems surrounding the ‘OC’ component. First, from the NVivo analysis it emerged how in the cyber-OC narrative the OC-component is extensively used as a catchphrase without much lingering on its true meaning. The fact that most references to cyber-OC were found in press releases is emblematic. Second, beside the three different perspectives coming from the OC lexicon (see above section), we find two additional perspectives on the ‘cyber’ component. The document analysis shows in fact how the word ‘cybercrime’ and the attribute ‘cyber’ in the cyber-OC narrative are used to indicate both a *facilitator* – when it is implied that traditional OC groups operate also online [example 1] – and a *crime* – when they encompass large-scale criminal activities occurring in cyberspace [example 2]. In this latter case cybercrime is sometimes listed as a new core activity of traditional OC (intended as organisations) [example 3].

Consider the following examples:

Example 1

“Cybercrime cannot be isolated. It is a huge facilitator for organised crime in many ways and is high-jacked by organised crime groups” (Interview with Mr Troels Oerting Assistant Director of Europol and Director of the EC3, in Eurojust News, issue 7, 2012).⁴

Example 2

“In a relatively short period of time, cybercrime has transformed from a low volume crime committed by an individual specialist offender to a common high volume crime [. . .]” (UNODC, Comprehensive Study on Cybercrime, February 2013).

Example 3

⁴ Troels Oerting left his post as director of Europol’s European Cyber Crime Unit (EC3) in February 2015 to become Group CISO at Barclays Bank.

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“[. . .] the Council adopted, in line with the EU policy cycle, eight priorities at EU level for the fight against organised crime, among which the fight against cybercrime and the criminal misuse of the Internet by organised crime groups” (Eurojust News, issue 7, 2012).

Table 1
The cyber-OC matrix

OC-CYBER	Crime	Organisation	Power
Crime	✓	✓	
Facilitator		✓	

The cyber-OC narrative seems to completely ignore the perspective of OC as power, which implies an underworld government or an alliance between criminal, economic, and political elites (von Lampe, 2008). Overall, the fact that a certain degree of planning and organisation is required for most crimes is recognised, but it is forgotten that this is not the *quid pluris* that should define certain crimes as OC. Rather, ‘organised’ is used *en passant* as an attribute of a criminal activity of crimes being perceived as ‘serious’: another example of the effect of a fuzzy delineation allowing imprecise associations.

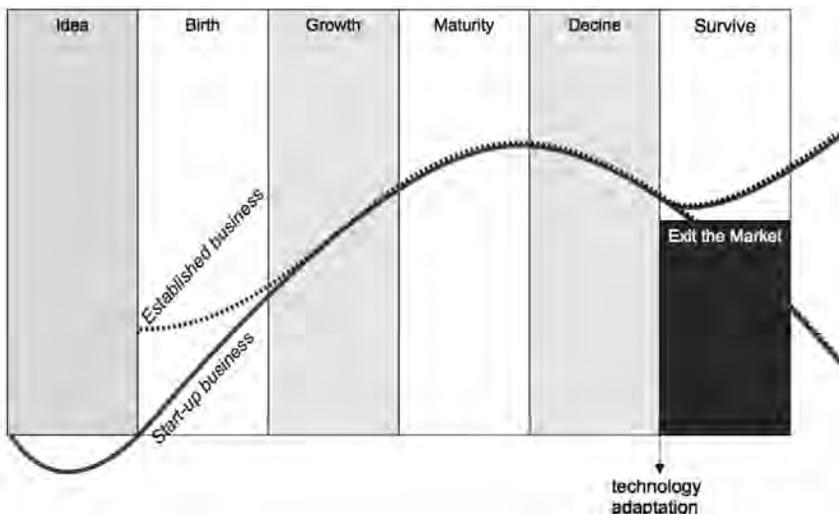
b. Theoretical underpinnings

The early conceptualisation of OC coincided at that time with its interpretation as a (foreign and) ethnically homogeneous criminal group – an image inspired by the presence of mafia-type organisations in the US – in line with the Alien Conspiracy theory (Potter, 1994; Antonopoulos, 2009). As explained by Paoli (2002) among others, the main alternative paradigm that was later developed is the ‘illegal enterprise’ one. The enterprise model proposed by D.C. Smith Jr. in the mid-1970s was one of the first contributions that tried to de-mystify the popular notion of OC as a secret criminal society. Smith formulated clearly how OC is based on the same assumptions of a legitimate business organisations: *i.e.*, the economic considerations that drive every company to maintain and extend their share of the market (Smith Jr, 1975; 1978). OC, here associated with the provision of illegal good and services, is easily comparable to a profit-driven company where the flow of trafficked products to willing consumers needs a structure to be maintained over time. This was confirmed by

the findings from a criminal file analysis in the Netherlands (Van Duyne, 1993). In the following decades, the vision of a *Homo Economicus Criminalis* (McCarthy, 2011: 22) as a metaphor to enlighten the understanding of OC has become more and more common. According to this view, OC is versatile: like a firm in the legal economy, OC, that is actors operating under this construction, shall react and adapt to contingent drivers, including technological developments.

When it comes to cyber-OC, this latter theoretical underpinning is implicitly embraced in the totality of documents (including the overwhelming majority of academic contributions) as regards traditional/offline OC allegedly “*moving into cyberspace*”. This is regardless either deep-rooted criminal organisations comparable to well-established businesses or emerging criminal groups taking advantage of specific criminal opportunities comparable to start-up enterprises). OC, as any other business company, is indeed expected to adapt to new ICTs to stay competitive and survive in the market (as shown in Figure 3), or otherwise it would be pushed to a corner or die out to be replaced by younger and more ICTs-savvy new-comers.

Figure 3: Lifecycle of a business



While the parallelism is certainly of interest, it underestimates some major differences between criminal and conventional business activities. Particularly, due to the law-enforcement pressure, criminal businesses follow peculiar patterns to finance themselves and to develop goodwill while remaining in hiding. Moreover, in criminal markets there are different

mechanisms to enforce contracts and protect property rights, since criminals cannot rely on law-enforcement to protect their expectations. Therefore they need other means (such as violence and intimidation) to look after their interests, which might require for example their physical presence over a certain territory (Gambetta, 1996; Albanese, 2008). Research suggests that at present only specific types of OC find it convenient to exploit criminal opportunities in cyberspace, namely ‘mixed criminal networks’ and to a certain extent ‘migrated mafia groups’ (Lavorigna and Sergi, 2014).

As for new OC groups formed in cyberspace, motives and skills are expected to depend on the nature of the crime in question, and besides the search for profit (in accordance with the enterprise model) other more emotional factors such as challenge, revenge, and lust cannot be omitted.

Moreover, even if we maintain the ‘enterprise’ metaphor, just like a firm in the legitimate market a criminal business is *efficient* when it obtains the maximum output from a minimum quantity of inputs such as labour, capital, and technology, and it uses every resources at its best. Within this crime-entrepreneur narrative we should expect criminals to be rationally geared to the needs of their criminal activity. It is therefore reasonable to think that efficiency shall be reached by relying on a minimum degree of organisation. As underlined by Wall (2007: 39ff.), thanks to the technological developments, it is likely that also individuals can carry out complex and far-reaching activities, given their possibility of a greater control over the criminal process. Thus, where a structured criminal association was once needed because a certain degree of organisation and sophistication was necessary in order to commit certain crimes, some organisational layers can be cut out now because of ICTs-related facilitations. One or two co-offenders could be as efficient as a traditional criminal network (Lavorigna, 2015). The ironic consequence is that the more crime-entrepreneurs master ICT skills, the less organisation they need and that OC is bound to become marginalised.

c. The superimposition of a narrative

To conclude the parallelism between the ambiguities in the OC and cyber-OC narratives, a few words should be devoted to how these notions have been used in security discourses.

As explained by Carrapico (2014), OC has shifted from being an issue

of relatively little concern to being considered one of the key security threats. OC first became the object of serious political debate in the US in the 1930s, and it was mainly regarded as an economic problem depending on the public demand for illegal goods and services (Woodiwiss, 2001; 2003; Sheptycki, 2003; Carrapico, 2014). As American concerns were gradually externalised in international fora (such as the UN and the G8), OC gradually entered into a global threat discourse with slow developments that paved the way for the 1994 UN Conference on Transnational Organised Crime and the later 2000 Palermo Convention (Van Duyne and Nelemans, 2012). To borrow Hobbs' words, the construct of OC was "*exported like a criminal justice version of Starbucks*" (2013: 12). The mainstream US discourse, however, proved to be flexible enough to adapt to the local particularities, being its OC narrative strongly inter-textual (because of the linkages between political, media, academic, literary, and cinematographic narratives) and intertwined with local dynamics of socio-political power (Stritzel, 2012).

At the European level, OC became a serious security concern only by the 1980s, influenced by American and international debates but also with some member states (namely Italy and Germany) particularly active in creating awareness of this issue in Europe. From this moment on, the EU has gradually expanded its counter-OC efforts through legal and political instruments, to the point that OC is nowadays recognised as one of the major security threat in the EU (Crawford, 2002; Fijnaut and Paoli, 2006; Carrapico, 2014; Shepherd, 2015). OC is consistently portrayed "*as an attack on political-economies that are assumed to be satisfactory, or at least non-criminogenic, and should, ipso facto, be secured in their existing format*" (Edwards and Gill, 2006: 268). OC is overall perceived as a threat affecting the economic sphere more than the social one. This is in line with the theoretical model (OC is comparable to a profit-driven company) presented above. The underpinning idea is that a response at the EU level is needed to prevent and counter business-like OC (or 'mixed networks', Lavorgna and Sergi, 2014), as individual member states cannot deal with such a cross-border threat on their own. Year after year, the EU has increasingly expanded its initiatives to cover as many forms of OC as possible (Carrapico, 2014). Interventions in this area have been repeatedly justified by presenting OC time and again as a 'new' threat, "*whose novelty lies in the increasing involvement of criminal organisations in the supply of criminal goods and services*" (Fijnaut and Paoli, 2006: 312), even if such 'novelty' has a long antecedent

history (Smith, 1978; Rebscher and Vahlenkamp, 1988; Van Duyne, 1993, 1996, 1997).⁵ The securitisation of OC (*i.e.*, the social construction of OC as a threat) has not been fully successful because of the absence of practical implementation of the EU's understanding of OC by national governments and the lack of cooperation between national governments and Europol (Carrapico, 2014). However, an attempt in this direction took place with the EU gradually expanding its counter-OC efforts through both political and legal instruments (as explained in Carrapico, 2014), and with the notion of OC being superimposed in the official discourse at different policy levels (Paoli, 2002).

It is too early to assess whether the appearing trend in using the cyber-OC narrative will result in a successful superimposition of this notion as it happened for OC. For the moment being, three options remain open to explain the results of the document analysis from this perspective of superimposition:

- At least as regards the EU there is the following questions: is this an attempt to bring forward the securitisation process of OC, by considering cybercrime as part of that exponential growth of OC activities that is already part of the EU discourse in justifying the prioritisation and expansion of EU activities in the domain of counter-OC efforts (as stressed in Carrapico 2014)? Or are the discursive practices analysed part of a 'parallel' superimposition process?
- Is cyber-OC a label used 'in bad faith', looking for sensationalism and big headlines while increasing confusion and analytical ambiguities?
- Or is cyber-OC 'just' a label used improperly but in good faith because, as Lusthaus put it, "*conventional criminal labels applied to cybercrime are themselves often poorly understood by those who employ them*" (2013: 52)?

Whatever the answer, the institutions considered are succumbing to the temptation to deploy the vague concept of OC in order to make the case for effective crime repression. After all, evoking threat images to keep OC

⁵ As policy evolved, in the EU's official discourse besides the OC narrative the expressions 'serious crime' and 'serious and organised crime' started to be used, marking a shift of focus from the structure of criminal groups to the activities and the harm they cause. However, this new narrative is not consolidated yet and it muddles with the predominant OC terminology, causing confusion without solving the definitory problems with the OC vocabulary.

a political priority is not something new (see Van Duyne, 2004 and Van Duyne and Vander Beken, 2009),

Cyber-OC as the emerging threat?

Does the awareness of ICT tools and facilities, brief the ‘cyber world’, play a similar role as complaints about criminals using the automobile and telephone in the first decades of previous century?

Overall, it can be concluded that with the cyber-OC narrative a convergence between OC and cybercrime is often assumed without being supported by empirical evidence. One could argue that a commonality of understanding (comparable to the metaphor of ‘congregation’ in Van Duyne, 2011) is more important than definitional precision, but in the case of cyber-OC this does not seem the case. The terminology employed in official sources seems to play with ambiguity, with the threshold to consider something as OC being lowered, if possible, even more.

The existing literature has already stressed how the notion of OC has been superimposed in the official discourse at different policy levels (Paoli, 2002). The nature of the OC threat, however, remains elusive, with the problem of OC being the ambiguity that this concept carries with itself (Edwards and Levi, 2008: 364). This problem in the institutional language has been recognised by Sergi (2015) with reference to the UK. Sergi explains this impasse by relying on the Hume’s law (or *is-ought fallacy*), a philosophical principle according to which in the economy of a speech there is a ‘logical’ leap between ‘what is’ and ‘what ought to be’: the label OC is assigned to certain criminal threats perceived as particularly harmful as if they were a unique threat (‘the ought to be’), making it a matter of national security policy, while losing sight of the fact that OC (from an historical, criminological, and ‘law in action’ perspective) refers to certain types of unlawful associations (‘what is’). The same fallacy can be recognised in the international and European discourse considered in this study, where the notion of cyber-OC is used to emphasise certain security threats as they ‘ought to be’ OC without much empirical evidence supporting this.

All the actors involved in the framing of an emerging security issue – ranging from academic to law enforcement agencies – should be careful

and rigorous in the terminology employed. The risk, otherwise, is that evolutions in the criminal panorama will just shift attention and resources from the current anti-OC efforts without a serious reflection on how to deal with old, and new presumed challenges in an effective and efficient way. This is not new, with ‘cyber’ been used as an amplifier attribute similar to what happened with ‘transnational’ (Van Duyne, 2011; Van Duyne and Nelemans, 2012). Rather, these evolutions urge reconsiderations of the capacity of our current criminological paradigms and definitions to capture current and emerging trends in the criminal scenario.

APPENDIX

Organisations considered

Interpol, an intergovernmental organisation facilitating international police cooperation, has expanded its scope to deal with cybercrimes by building a new centre in Singapore with the aim of becoming a global coordination body on their detection and prevention.

The United Nation Office for Drugs and Crime (UNODC) through field-based technical cooperation projects, analytical work, and normative work assist Member States in their struggle against illicit drugs, transnational crime, and terrorism.

Eurojust is an agency of the EU dealing with judicial co-operation in criminal matters to improve handling of serious cross-border and organised crime.

The European Police Office (Europol) is the law enforcement agency of the EU that handles criminal intelligence and combat serious international organised crime by means of cooperation between Member States. Within Europol the European Cybercrime Centre (EC3) was launched in 2013. EC3 aims at supporting Member States and the European Union’s institutions in building operational and analytical capacity for investigations and cooperation with international partners in the following areas of cybercrime: that committed by organised groups to

generate large criminal profits such as online fraud; that which causes serious harm to the victim such as online child sexual exploitation; and that which affects critical infrastructure and information systems in the European Union.

The European Anti-fraud Office (OLAF), a General Service Directorate General of the European Commission, is in charge of fighting frauds affecting the EU budget, as well as corruption and any other irregular activity, including misconduct, within the institutions of the EU.

The European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) is an agency of the European Union serving as the reference point on drug usage for the EU's member states, and to deliver reliable and comparable information about drugs in the EU.

The European Union Agency for Network and Information Security (ENISA) is an agency of the European Union with the aim to improve network and information security for the benefit of the citizens, consumers, enterprises, and public sector organisations of the European Union.

The European Police College (CEPOL) is an agency of the EU that brings together senior police officers across Europe with the aim of encouraging cross-border co-operation in the fight against crime, maintenance of public security, and law and order.

Table 2 – Keyword search on online archives (numbers = match(es))

Keyword search	Interpol	UNODC	Europol	Eurojust	Olaf	EMCDDA	Cepol	Enisa
'organised crime' + Internet	313	238	173	135	133	300	6	0
'organized crime' + Internet	759	289	14	19	21	300	1	1
mafia + Internet	274	98	9	37	23	300	0	0
'organised crime' + online	247	208	124	17	171	300	4	2
'organized crime' + online	694	282	9	17	41	300	0	1
mafia + online	206	78	5	22	36	300	0	0

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'organised crime' + cyber	156	91	71	41	10	2	2	1
'organized crime' + cyber	626	176	12	8	1	2	0	1
mafia + cyber	116	40	3	12	0	2	0	0

Please note that in the EMCDDA online archive most of the results identified via keyword searches were not pertinent, so that manual searches with the different keywords were carried out in the material retrieved from the section publication of the EMCDDA website.

Table 3 – Sample documents

	Interpol	UNODC	Europol	Eurojust	Olaf	EMCDDA	Cepol	Enisa
Relevant files (n=)	26	5	28	2	0	4	0	2

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“Three Tales / Two Threats”.

Prosecutors in Italy, England and the United States narrate national and transnational organised crime

*Anna Sergi*¹

Introduction

The past years have seen an increase in legislation and policies to regulate manifestations of organised crime at both the national and transnational level, as if these two levels correspond to two different threats. This work will present the narrative used by public prosecutors when defining, re-defining and adjusting their conceptualisations of organised crime. Because the job of prosecutors is ideally placed between the interpretation of the law and the consideration for public interest, their conceptualisation of organised crime can influence the way policies meet criminal justice needs. This work is, therefore, exploring to what extent the conceptualisations of (transnational) organised crime in policies inform the work of practitioners at the prosecution stage.

As laws are not prescriptions and are the result of evolving concepts and political negotiations, they leave latitude for interpretations, which are determined by the working environment and own views of law enforcement officers and courts. These interpretations are formed on the basis of ‘conceptualisations’, which are important for developments in the administration of (criminal) justice, whether juvenile crime or serious organised crime. As each country presents a different social and legal working environment, differences are to be expected. The underlying conceptual grounds remain usually implicit and to a certain extent individual. However, as conceptualisations of this sort influence to a certain extent the interpretation of the law, it is important to let them come to the surface.

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One of the ways to do this is to help practitioners bring these conceptualisations to the surface themselves by ‘narrating’ their own practice with a ‘think-aloud’ method.

By relying on interviews with prosecutors conducted in England, Italy and the USA, this paper uses narrative criminological approaches – enriched by comparative research methods – to follow how the ‘label’ of organised crime is received and how it changes to fit the needs of prosecution and pre-trial phases. It is crucial to remember that, beyond criminal law labels (the crime of organised crime or the crime of conspiracy for example), each national state necessary has its own political concept of organised crime to which the law follows. Geographical differences in the interpretation of organised crime, therefore, are certainly political but will have a practical dimension.

This work – through the words of law enforcement practitioners – will explore similarities and differences among individual interpretations of public prosecutors in three countries when asked to conceptualise organised crime for the purposes of their investigations and their daily practice. For the purposes of this work, organised crime is left undefined, to allow free associations of ideas and concepts of the respondents to emerge from the discourse without setting *a priori* categorised. Through these lenses, this work questioned what is meant by organised crime in the three jurisdictions, whether there is a difference when the adjective ‘transnational’ is associated to the label of organised crime and to what extent these differences might result in a tension among interpretations.

Context and background

Organised crime is one of the most debated concepts in criminology, political sciences and in international relations studies. There is consensus in uncertainty, whereas scholars seem to agree that it is inappropriate and often counterproductive to share over-inclusive definitions. The concept periodically undergoes revisions and updates in policy and law especially at national level. On the other side, investigators, prosecutors and in general law enforcement agents, need to translate the concept into criminal procedures.

Among the most debated terminologies in the field of study of organised crime, is transnational organised crime, as label and categorisation that has been harshly criticised by scholars for its abstract character and its empty connotation (Van Duyne, 2011; Van Duyne and Nelemans, 2012; Hobbs, 2013). However contested, the *rhetoric* of transnational organised crime is a successful one, as field of research and as alleged security threat at both national and international levels (Edwards and Gill, 2003). Whereas on one side ‘organised crime’ evokes old and consolidated images from popular culture, the adjective ‘transnational’ has been often presented as an added value of a concept that seemed obsolete in today’s globalised world together with other cross borders security risks. The immediate consequence of this has been the penetration of security connotations into criminal law (with the UN Palermo Convention classifying organised crime as a transnational threat for example).

This study departs from these considerations to evaluate terminologies and overlapping narratives in criminal procedure and law from the perspectives of public prosecutors when it comes to cases broadly labelled as ‘organised crime cases’. The main question this study addresses is how prosecutors in the three different countries conceptualise organised crime, what influences their concepts, their differences and similarities. While doing so, this study will necessarily enquire about the differences, at the stage of prosecution, between organised crime as category of criminal law and organised crime as security threat.

Data collection and analysis

To address the research questions this study adopted a qualitative methodology through interviews with those who in practice lead criminal investigations to trial and therefore implement legal requirements of criminalisation of organised crime depending on specific requirements of each jurisdiction. Three sets of in-depth interviews with high profile public prosecutors have been compared, for a total of 24:

- eight in Italy (between Reggio Calabria and Rome, Direzione Nazionale Anti-mafia and Direzione Distrettuale Anti-mafia, coded I-1 to I-8);

- eight in London (barristers working with the Crown Prosecution Service, coded E-1 to E-8);
- and eight in New York City (between the Organised Crime Task Force and the District Attorney Office in Manhattan, carried out between mid-2012 and early 2014, coded NY-1 to NY-8).

Interviewees were contacted on a non-random basis based on their specific expertise as specialist prosecutors working in organised crime divisions/units within prosecuting agencies. They were contacted directly, via email. Response rate was high, with 33 people contacted in total and 24 respondents. Each conversation lasted an average of 50 minutes, during which we spanned across various topics related to the procedures of prosecuting organised criminals, defined as they wished to define them and not pre-defined in the study. The interviews have been recorded but not transcribed; thanks to the use of note-to-speech software, using directly taken notes linked to specific portions of the conversation for ease of access to the audio files.

For the purposes of this chapter, mainly the first part of the interviews, which specifically touched upon conceptualisations of organised crime, has been used. In fact, given the exploratory nature of the study, qualitative research on the work of prosecutors has essentially focused on the way the talk about their work. The quotes presented below are intended as representative of the analysis of narratives. Even though the sample is limited, the aim of the research is to explore narratives and, therefore, is not concerned with generalisability; subjectivity is the core of an analysis of narratives. The topics covered during the interviews spanned from specific characteristics of respective national criminal procedures, to historical aspects preceding the enactment of laws and to general conceptualisations of organised crime in their jurisdiction and its manifestations in the country of interest and beyond.

As previously said, the interviewees have been approached for their involvement with high profile organised crime investigations as part of their work as prosecutors and/or investigative magistrates/lawyers depending on the jurisdiction. Some of them had also been involved in judging cases of organised crime or in defending clients charged with crimes related to organised crime. Their expertise and knowledge of the juridical aspects as well as the phenomena their criminal justice systems target, therefore, is composite and rich.

Lastly, this is a comparative study and as such it is aligned to methods of research in comparative criminology and criminal justice. Studies in comparative criminology and criminal justice are essentially aimed at intertwining crime, justice and culture (Nelken, 1994) to go beyond stereotypes and to improve reflexivity on a given aspect of the criminal justice process (Nelken, 2000). Comparative criminal justice is both a method of research and an exercise of legal skills (Hodgson, 2000; Legrand, 1995) and it demands the researcher to *infiltrate* the culture of different countries, as an anthropologist or a sociologist would do. The attempt to permeate another culture “*at the very least to understand its institutional structures, laws and procedures*” (Hodgson, 2000: 140) means engaging with “*its languages, customs, ideologies, legal cultures and practices*” (Hodgson, 2000: 141). In this penetration of cultures and ideologies lies the connection with using narratives. When focusing on narratives, the production of discourse becomes intrinsic to data collection while rejecting a preconceived idea of ‘reality’ and/or ‘truth’ (Pressers, 2009). The focal point of research is therefore to build the story, the narration, rather than finding out whether there is truthfulness or reliability in its factual content. Indeed, as clarified in literature (Pressers, 2013; Pressers, 2012; Sandberg, 2013), the accuracy of stories is not a concern of narrative criminology; the narrative itself that holds meaning and reveals not simply opinions, but rather constructions of discourse. In this sense, it is obvious how narratives can be very revealing of the interpretations of policy categories among their users.

The combination of a focus on narratives and comparative criminal justice approaches, therefore, offers an analysis based on story-telling of criminal procedures. Comparative criminal justice research between Italy and England has already revealed how to divergent policy approaches to organised crime there correspond nevertheless convergences in policing approaches (Sergi, 2015a). On the other side, Edwards and Gill (2002: 247) have already demonstrated how policies to control transnational organised crime – within the realms of criminal justice, policing, as well as security – are essentially ‘*governmental savoirs*’, and as such they need to rationalise the crime to find its solution.

The narratives collected are essentially stories about how organised crime fits in the boxes of criminal justice and prosecution in different jurisdictions. These stories are an added value to comparative approaches, which are often limited to textual analysis and interpretations of laws and policies. Indeed, it is possible, within the remit of this paper, to match

narratives of prosecutorial practices with narratives on security and criminal policies of organised crime. It is in this exercise that convergences and differences emerge between the way national/local and transnational/international organised crime are perceived and described between policy and practice.

Organised crime and secrecy

Once upon a time, and especially following the extremely influential work of law enforcement and academics in the USA since the mid-1960s, organised crime meant only mafia, buried in the inhospitable fractures of Sicilian territories, rooted in Sicilian culture and migration to the US (Abadinsky, 1994; Cressey, 1971). The imagery of mafias – which still inevitably and successfully populates popular contextualisation of phenomena of organised crime – is probably linked to the undying fascination with affiliation rituals and to the secluded character of Sicily that reinforced the withdrawn character of criminal alliances (Di Forti, 1982). As one of the Italian prosecutors in Reggio Calabria (I-1) said:

“[as prosecutors] we were attracted by this phenomenon in an unknown reality, never properly investigated and most of all secret. The mythology of mafia, well I have always thought of it as a mythology of the secrecy of a reality to which everyone referred to, in politics, in society, even in literature – we are talking about the end of the 1970s – but eventually remained secret to the majority.”

The secrecy of Italian mafias is the first emerging character in the notions of organised crime as shared by the interviewees. While on one side it feeds into that popular imagery of the phenomenon, giving a very distinct connotation also to geographical characteristics, secrecy in mafia-type groups “*is not binary*” (Paoli, 2003: 102), in the sense that it existed once and then it ceased existing. Quite on the contrary, secrecy remains a quintessential feature of organised crime in Italy, it manifests itself at various degrees and it is intrinsically linked with the use of violence. As noticed by one of the interviewees (I-4):

“We only really know about what is going on within the clans when something happens, when there are gunshots. We wait for the manifes-

tations of mafias in front of our eyes. However, to a closer look, we see that behind that manifestation is a world that uses gunshots only when needed, the rest of the time they choose to keep a low profile, why wouldn't they?”

Even in today's scenario, especially in Calabria where the 'Ndrangheta is today believed to run most of the underworld businesses among Italian mafias (DNA, 2014), secrecy appears still predominant in affiliation rituals and in the narcissistic recognition that members of the criminal organisations enjoy among each other. As noticed (I-2):

“The 'ndrangheta has strict regulations, rituals and sanctions, that they need to keep secret for the simple reason that they are a qualified minority that seeks to keep control”.

When we leave Italy, the echo of Italian mafias and their symbolism is still powerful. One of the prosecutors in New York City (NY-2) held:

“As soon as we started looking at the enterprise that produces the criminal activity, we had to start thinking at the way organised crime worked and I think there were misconceptions because, apart from a few *pentiti*, we didn't have much of an insight into organised crime except that it was perceived as a secret crime-producing machine and that somehow we had to get to that machine.”

The secrecy of criminal organisations, while on one side not surprising – crime is, after all, not something that usually receives publicity by criminals themselves – remains both the fascination and the challenge of organised crime, whether intended as mafia-type or other type of criminal association. While this remains true for national manifestations of organised crime, it seems to lose supremacy when describing the characteristics of transnational forms of organised crime. Indeed, whereas at the national level secrecy of organised crime is paired with a certain power over the territory of influence – and it acquires at times very symbolic and mythological dimensions – the same cannot always be said of forms of organised crime activities across borders. These are described as complex criminal activities mostly concerned with trafficking of illicit goods and/or services that can either include members of structured criminal networks or occasional criminals instead (Kleemans, 2014), that encompass all criminal activities that are complex, serious and across borders and involves more

than three people (UNODC, 2012). As noticed by one interviewee in London (E-5):

“There are over 30 languages spoken daily in the streets of London and some of them are not easy or common languages. You can get away with what you need to do in terms of criminal activities just by speaking a language that others around you don’t understand. There is no secret, no mystery apart from obviously being cautious about what you are doing. But by the time we [investigators] manage to understand what criminals are saying, if we happen to intercept them, they have come and gone with their crimes, they moved.”

What, therefore, seems to be the other side of the coin of secrecy is *recognition*. At national/local level, where there is commonality in language, this naturally brings recognition among offenders. Secrecy, intended as exclusion of non-affiliates, is, therefore, a tool to reinforce mutual recognition. In transnational activities, instead, language is the tool of recognition, as arguably language is a stronger barrier to international trafficking than to local criminal activities. In transnational activities, secrecy becomes less of a reinforcement of affiliation and it is used as cautionary method to hide the criminal nature of the activities. The link between recognition and secrecy is valid also for online activities, when they overcome the boundaries of national jurisdictions. As noticed (E-6):

“Even when you know or foresee online criminal activities going on in New York City, even if you go as far as predicting victims will be in Manhattan, if it is internet crime then one or more elements, the investors, the perpetrators, the goods, the server will be based in other jurisdictions. Apart from legal issues, this also requires the ability of criminals in sharing and diffusing their own language across platforms. It’s a secret language, you see? The way they speak online it’s a secret code, it’s the language that reinforces recognition, it’s the language that ensures secrecy”.

In the narratives of prosecutors across three jurisdictions, the way organised crime links to secrecy is not only on a gradient but it also depends on the use of language for purposes of recognition. From local mafia-type organised crime to cross-border activities both on the ground and online, criminals need recognition among each other, either through qualified affiliation and oaths on secret codes or through language.

Organised crime, ‘the self’ and ‘the others’

Conceptualisations of organised crime, between national and transnational connotations, mirror in policing approaches, investigative powers and legal provisions adopted for countering purposes (Sergi, 2015a). The way prosecutors speak of organised crime is often interlinked with cultural outlooks to certain phenomena in specific locations and countries. In other words, the way prosecutors in Italy, in London, in New York City see their practice against organised crime and evaluate policing approaches, is influenced by their concept of organised crime. This implies, for example, different attitudes to the various criminal phenomena approached from more or less emotional points of view. That organised crime carries an ‘emotional kick’ (Levi, 1998: 336) is understandable in the light of what is previously said about secrecy and recognition. This emotional kick, however, can persist in prosecutors’ attitudes towards the phenomena at certain latitudes. At national level, when discussing local forms of organised crime, we find an alternation between national pride and national curse. In an abstract spectrum from pride to curse, Italian prosecutors would oscillate between both categories, while English prosecutors would be placed on the national curse side and Americans would be in the middle.

When it comes to Italians, it is obviously a *negative pride*, coming not only from decades of primacy of Italian organised crime in public perceptions, but also a *positive* one resulting from the realisation that the Italian Anti-Mafia system does serve as one of the model legislations against organised crime around the world (UNODC, 2012; UNODC, 2004). As exemplified in one of the interviews, while talking about the Calabrian mafia, the ‘ndrangheta (I-8):

“Obviously the best way to capitalise is by reinforcing your routes for drug trafficking. In this market, and not only in Italy, the ‘ndrangheta is unchallenged and, because of that, because of this supremacy – if it is not a monopoly of the market it is definitely at least an oligarchy – it has become the only credible financial subject in a very depressed area such as this one [Calabria] and in other areas in Italy”.

In order to face this criminal oligarchy prosecutors rely on the capacity of criminal law to embrace the complexity and historical impact of mafia crimes. This is echoed in discussing criminal procedure against mafias and organised crime in Italy (I-7):

“Italy has a legislation, a legal, juridical sensibility, in theory and in practice, which no one else has, which is obvious. This enhanced sensibility to certain phenomena follows an enhanced knowledge of those phenomena. We have felt them on our skin”.

In the Italian context to a deep knowledge of the phenomenon of mafias and organised crime, which sounds like a national (negative) pride, is also paired a feeling of *isolation* in the fight against this curse Italy is burdened with. The reality portrayed by Italian prosecutors is one of solitude in understanding the phenomenon and frustration in handling international cooperation when it comes to Italian criminals abroad, especially in the rest of Europe. Says one of the interviewees (I-3):

“Europe is not paying attention. You hear all sorts of policies and agreements are in place, but truth is that half of the time European countries don’t know what they are dealing with. They don’t see the gunshots and they think all is quiet; they don’t understand the new faces of mafias. It is disrespectful to Italy when other countries choose to look the other way”.

On the other side of Italian isolation is the rhetoric of *otherness*, made of *contagion* or *heritage*, which can be found in American and English narratives. In this regards, specifically linked to the Italian sense of self and ownership of the issue of mafias, is the American vocabulary on ‘the mob’, which still permeates conceptualisations of organised crime, as heritage of Sicilian migration to the US (NY-4).

“We used to joke about it, you know, about the Godfather. If you think in terms of the joke, mythology, culture and you think of, let’s say England, you think, I don’t know, of Robin Hood and Richard Lion-hearted! Here, it’s cowboys, Indians and the Italian mob! We’ve grown up with that, it was forced, out of historical circumstances, on what is now our DNA”.

Furthermore in England, the narrative of organised crime is based both on an attribution of certain behaviours to others and on a preservation of an

identity of what organised crime looks like in the country. Specifically, organised crime is often equated to gang crime and as such distanced from mafias and their seriousness or dangerousness (E-1):

“When we talk about organised crime what we really mean is serious criminal activities. Almost invariably, if you witness serious criminal activities, they are going to be organised, planned, anyway sophisticated. We don’t have any religious belief or faith on what organised crime is or was or it is supposed to be, some crimes obviously are organised in a gang style, you know, some aren’t. There are various types of gangs, we don’t have that type of organisations that Italy has. In this sense our organised crime is potentially less threatening but more fluid too.”

On the other side, however, the English narrative of organised crime is also rooted in the *otherness*, in the *contagion*, in alignment with very well-known alien conspiracy theories (Woodiwiss and Hobbs, 2009), as very visible in the interviews (E-4):

“There are other organised crime gangs, of Turks, Kurds, Eastern European groups that act in mafia style in their countries and they bring their mafia-style activities, their mafia style allegiances, their mafia style feuds to London. We had a period when there were serious feuds between Kosovar and Albanian groups, you know, executions in the streets, people shot at traffic lights and these were feuds which had partially to do with criminal activities here, like gun smuggling or drugs, but also with feuds that were going on elsewhere. There is a subset of mafia style criminal activity but it tends to be from incomers.”

A narration of mafia activities as inherited from others, from *incomers*, is clearly linked to migration of certain ethnic groups, but also it refers to the realisation that organised crime can have different manifestations and as such, calls for different counter measures. This is especially true for prosecutors in New York, who recall the experience of setting up the Racketeer Influenced Corruption Organisations Act 1970 as a specific response to the dangers posed by Sicilian Cosa Nostra, on the basis of what was the alien conspiracy theory (Cressey, 1969; Paoli, 2002) (NY-3):

“When they rolled up their sleeves to draft it in a way that was specifically against Cosa Nostra – without mentioning it though – it was an

anomalous approach fuelled by the belief that the big problem was organised crime infiltrating legitimate business in the state. This produced the RICO statute, which was then fixed by case law. If you can prove that someone participated in the affairs of Cosa Nostra, engaging in a pattern of racketeering activities, then you have a high sentence, it was ideal. But we had to learn what these activities were or could be. It was an exercise from both common law and statute”.

The tension between syndromes of *pride* and *isolation* and syndromes of *contagion/otherness* across jurisdictions does not seem to change when prosecutors move from analysis of national manifestations of organised crime to transnational criminal activities, with the exception of organised forms of cyber-crimes. This is indication of two trends: first, prosecutors tend to merge national experiences and local conceptualisations of organised crime and/or mafias with transnational ones. An understanding of organised crime groups as cross-border threats characterises both countries where manifestations of organised crime have always been culturally national and local (such as Italy) and those systems, which relied upon alien conspiracy and ‘otherness’ to shape their policies of organised crime (such as the US in the 1970s and the UK more recently). In brief, the conceptualisation of organised crime as threat that can be transnational is shared both by countries with a strong identity of local/national organised crime and those who claim organised crime is linked to aliens. Basically, organised crime today is transnational anyway. Indeed, this can be understood from two complementary sides. On one side, local/national organised crime groups committing cross-border criminal activities - and/or migrating to commit criminal activities - are seen as incomers from the point of view of the destination/arrival countries. On the other side, these groups are seen as exporters of criminal activities, therefore transnational criminals, from the origin countries. As identified by an Italian prosecutor (I-7):

“Some groups, like mafia groups, in their territory have certain possibilities and they move in certain ways. Out of their territory, they have other possibilities. Arguably their scope is always to boost their profits through criminal activities abroad. It seems obvious that the more they move outside their territory, from local to national to transnational, the more they resemble networks, which are solely criminal, enterprises of crime that move according to specific necessities. The farther they go

from their territory the more they lose their cultural, that is their social connotation”.

Whichever the point of view on transnational crimes, however, prosecutors are aware that the remit of their work is first and foremost at the national/local level, even though it is not unusual, and actually, it is often the case, that even national/local criminal groups need to be understood by looking at their or others’ international projections and/or cross-border activities. As confirmed by an English prosecutor (E-8):

“Organised criminals are above chaotic offenders; there are different types of organised crime groups and they are categorised by geography, type of criminality, online or offline reach. Most of all, we classify them for scale of the harm. We have territorially-based policing; we deal with local levels of criminality. Organised criminal groups, which go beyond the local territory, when they go international, it’s because they have a higher degree of sophistication, at that level we need more specialised officers and more equipment, but we still see them within the territories where police forces are active, if we are talking about prosecutions”.

The conceptualisation of organised crime, as both local and transnational phenomenon, makes little or no difference at the practical level for prosecutors. Furthermore, the characterisation of transnational organised crime as threat to security seems not to affect the prosecutorial practice, which is still concerned and based on the application of criminal law, as discussed in the next section of this paper. Narratives of prosecutorial practices in the three jurisdictions, therefore, seem independent from conceptualisations of organised crime groups in terms self-identity or otherness, isolation, contagion or pride as explored before.

Organised crime and prosecutions

With a direct link with what was previously discussed, prosecutors across the three jurisdictions do tend to differentiate between national/local forms of organised crime and transnational ones, essentially because their powers are often limited to act against the former rather than the latter. In particular, the question of who we prosecute, and how, is connected to

both the conceptualisations of organised crime groups and their activities as well as to the results achieved and advertised to the public (Sergi, 2015a) together with considerations on budget and jurisprudence. As previously said, the narratives shared by prosecutors reveal how a differentiation between national and transnational organised crime exists in light of different social and historical perceptions of the threats, but it does not necessarily affect the way manifestations of organised crime are seen during investigations and prosecutions in national/local jurisdictions. This remains true also when exploring the relationships between conceptualisations in organised crime narratives, both as criminal threat and as threat to security, and the actual procedures to prosecute organised crime. We find that national/local manifestations of organised crime are treated differently from transnational ones and that substantially the work of prosecutors is still, in any case, circumscribed and based on national procedural law. This does not surprise if we consider that whereas criminal procedure might be internationalised through cross-border policing and mutual assistance provisions, criminal law remains largely the realm of state sovereignty.

Additionally, in terms of classification of the threat, prosecutors' understanding of organised crime is very clearly linked to the actual possibility to criminalise activities. In particular, whereas national/local forms of organised crime might be threats against public order, competition, health and communities in general, depending on the jurisdiction, transnational forms of organised crime are confirmed as threats to democracies and national safety. This however, falls beyond the scope of national prosecutors. As noticed in England (E-2):

“It is obviously the case that we target criminals for crimes committed across a range of activities and a range of locations. However, we need to collect evidence and charge offenders with something they have committed and we can prove they have committed. Clearly, if you are charging someone with conspiracy to sell drugs in a neighbourhood in London or across England is different from charging someone because they trafficked the drugs from abroad. I mean, the first is a damage to the community, the second is a damage to both England and the other countries this individual or group touched; it is a problem for border controls as well.”

The link between the seriousness of the threat, the transnationality of activities and security of borders and countries is again confirmed as pre-

dominant in narratives, but it is not influential when applying criminal law at national/local level. In fact, in terms of criminalisation of activities of organised crime, the way prosecutors have framed their understanding of organised crime is largely dependent upon the legal frameworks they work with. For example, both Italian and US-based prosecutors share a clear characterisation of organised crime as a crime of collective responsibility, where the danger is represented by the criminal structure or the criminal enterprise. The higher the power of the criminal structure, the more dangerous the crime. Conversely, English prosecutors link their understanding and conceptualisation of organised crime as serious crimes, which are organised and therefore dangerous. It is the seriousness of the criminal activity rather than the structure committing it that brings the dangerousness. This is in line with Structure and Activity models already identified in Italy and in the UK (Sergi, 2015a; Sergi, 2014b). Necessarily, aspects such as individual or collective criminal responsibility come into play when exploring the narratives both in terms of local and transnational organised criminal activities. When speaking of national organised crime, an Italian prosecutor says (I-4):

“The crime of membership in a criminal association has a symbolic meaning first and foremost. Even though sometimes it is much easier and convenient to prove the substantial crime, the association gives an idea of the strength of a group people, it is something more than simply achieving a good result in trials. Obviously when you don’t have a manifested crime, the association crime is your only option.”

This does sound similar to what said by a NYC-based prosecutor, explaining the shift in mentality that brought to the RICO legislation (NY-1):

“The recognition of the mob as syndicated criminal activities brought us to think in terms of an organisation and there were charts of the hearing conducted, all the families in various cities. It became something not simply legal but also symbolic. We had movies about it. However, once you got to those complex conspiracies you reached an end point. You cannot put boundaries on criminal activities, in terms of time and typologies of crimes that appear to be connected but you cannot really prove how. This is why we got RICO, to respond to syndicated crimes, whereas the relationship between an individual and an organisation was not only deemed irrelevant but also prejudicial”.

Contrarily, in England (E-5):

“Organised crime in a court is different from other crimes. In practice, we associate it with certain species of serious crime or it has been set up in a more sophisticated way by a group of persons. We are mostly influenced by the background of these people, who they are, are they career criminals? And also, the way they are behaving, in terms of violence or corruption. For these reasons, conspiracy is quite useful as a tool, it focuses on the actual criminal conduct. Targeting the organisation, like in Europe or in the US, is alien to English law, we simply don’t do it”.

In other words, targets change according to how the law works. It seems clear that, behind a criminal law choice – and behind criminal procedure – lays the question of ‘who do we prosecute’. A crime of membership targets the dangerousness of the organisation, intended as “*a dangerous entity corrupting society*” (Italian prosecutor), while a crime of conspiracy targets “*professional criminals, who are dangerous for the whole country*” (English prosecutor). As this paper proposes narratives, it shall not question the effectiveness of these approaches, which, however, are part of other investigations (Sergi, 2014a; Sergi, 2015b). In any case, the question of ‘who do we prosecute’ seems to be the core issue for prosecutors and does reflect different conceptualisations of organised crime together with opportunity considerations. In particular, to a membership and/or enterprise offence, in Italy and in the US, corresponds a net-widening approach that not only targets criminal organisations, but also their ramifications into the legal world. As noticed by an Italian Prosecutor (I-6):

“In the criminal typology of organised crime we also consider the external participation to mafia affairs, those people who benefit or support the acts of the criminal groups but that are not officially affiliated for obvious reasons, the grey area as it is known, politicians, lawyers, entrepreneurs, businessmen. The offence of mafia association is still abstract, but it allows targeting the real nature of the offending and that includes externals.”

Similarly, the ramification of organised crime groups beyond criminal activities represents one of the main reasons RICO was passed in the US, as identified by one of the prosecutors in New York (NY-7):

“Let’s say you have a syndicate of people committing crimes for profits. These profits obviously go to those who engage in the activities, but they also go into legitimate businesses. These legitimate businesses, with illegal profits, cannot be run legitimately, so criminals need to resort to various other criminal activities. This is a pattern in RICO, from the corruption of legitimate businesses to the commission of subsequent criminal activities.”

The necessity to move from simple conspiracies and substantial crimes to crimes of membership in unlawful association has been affirmed in the US, as well as in Italy, thanks to the peculiar characterisation of local organised crime groups and their modus operandi in the criminal and extra-criminal world. This is not the same tale told in England (E-5):

“Individuals who repeatedly appear in court are professional criminals, not just because they don’t do anything else but because they are consistently involved in high value, serious crimes, they have a criminal record, a criminal background. There might be different people within these groups, some of which might or might not have important contacts at high levels, others might provide just lower support, but this is occasional, which is why it is difficult to counteract, these are fluid networks.”

The way organised crime is narrated, therefore, influences the way it is prosecuted, and this, again, should not surprise. To a narrative of organised crime as criminal conspiracies and opportunistic networks corresponds a prosecution narrative based on capturing the loose character of organised crime; this is the English experience, largely based and focused on individuals, as professional organised criminals. On the other side, and this is the experience of Italy and the US, to a narrative of organised crime as criminal syndicates and enterprise corresponds a prosecution narrative based and focused on criminal groups. Criminal law has to adjust to the manifestations of organised crime in different jurisdictions. The limits of criminal law and its stretching beyond individual penal responsibility, in the US as in Italy, does not come without problems, especially when it comes to moving from the national/local to the transnational dimension of criminal activities. As previously said, transnationality is a sign of seriousness of the threat and it is often thought of as an aggravating factor to

organised crime activities at national level and in criminal law. As specified by an Italian prosecutor (I-3):

“The globalisation, the delocalisation of mafias has brought us to overcome our own national criminal law, article 416bis² for example, which is based on the link with the territory. We have been supported by the notion of transnational crime, from the Palermo Convention of 2000. The concept of transnational crime group is arguably wider than the one of association, it indicates yet another level of serious danger.”

And this is true also for an English Prosecutor (E-4):

“It’s always a matter of how sophisticated the criminal activity is. In our threat assessment we need to see first and foremost if there are transnational ramifications of the criminal activities under investigation. If there are then we need to make use of other types of tools, there is no way we can cover everything under national law, some things simply are beyond national powers”.

While it is confirmed that the focus of prosecutors is and remains anchored to national powers, their narratives show how organised crime is perceived differently and narrated differently when it comes to prosecuting national criminals in transnational activities. There is a perception, confirmed across narratives in the three jurisdictions, that the transnationality of organised crime implies more sophistication in crime, and an increased seriousness whether it is an individual professional of the underworld, or a criminal enterprise.

Discussion: three tales of two threats

The interviews show both similarities and differences across the three jurisdictions. In particular, the way organised crime is constructed and narrated by these prosecutors mirrors their work practice and also represents the intersection between perceptions of criminal phenomena with criminal policies. In other words, the way organised crime and its manifestations are narrated by these prosecutors can be considered directly dependent upon the way their justice system understands and integrates concep-

² Crime of Mafia-type association

tualisations of organised crime in law and procedures. A number of inferences can be made out of these interviews and their analysis.

First, there is indeed a difference between the way organised crime is seen at local/national level and as a transnational phenomenon. In particular, while on one side prosecutors focus their practice on their own jurisdiction, the notion of transnational criminal activity populates criminal policies and descriptions of the phenomenon of organised crime, oscillating between a threat to communities and a threat to state borders. It seems, however, that transnationality is not autonomously part of substantial criminal law. There is obviously the concept of organised crime activities and organised criminals crossing borders; these activities and these criminals are however either more sophisticated versions of local activities/individuals or yet another manifestation of local criminality. In Italian narratives, prosecutors link delocalisation and migration of criminal groups to the radicalisation of mafia power in a given territory. In their discourse, mafia groups are able to migrate and commit cross-border crimes *because* they are rooted and in control of their territory. Conversely, in the English narrative, prosecutors see the criminal groups committing transnational crimes *in addition to* their being also present at the local level, that is, independently from their local presence. The idea of transit crimes (Kleemans and de Poot, 2008; Kleemans, 2007) as crimes that touch upon various territories but do not belong to the country of reference, but is embedded in English narratives of organised crime while alien to Italian ones. What is missing in England is the perception of organised crime as clearly identified British phenomenon. There is, instead, a constant need to compare English criminal groups with common perceptions of mafia groups, by way of justification and mirroring. Statements like “*English organised crime is not like the mafia you have in Italy or the New York families*” show how the concept is split in prosecutors’ perceptions: on one side, there are local forms of organised crime, which are not as organised as mafia is supposed to be; on the other side, transnational manifestations of organised crime, are very different from any traditional forms of organised crime (including the mafia, again). These transnational activities are the ones that prosecutors characterise as the most serious and sophisticated, but fall often beyond the scope of their daily work. In this respect, New York’s experience is in the middle, as the prosecutors’ words narrate how the system incorporates a perception of organised crime as local phenomenon inherited from abroad, the knowledge of the pervasiveness of

certain phenomena in local affairs, as well as the awareness of the complexity of transit crimes and transnational criminal activities, which might or might not be linked to local groups and their strengths on the national territory.

Second, linked to this dichotomy between national/local and transnational/cross-border organised criminal activities is also the discourse around the complexity of organised crime investigations because of its secretive features alongside the complication of language barriers. As previously seen, the perception of organised crime as a set of secret relationships and secret activities is linked to the complexity associated to organised crime and the necessity to minimise the risks for offenders. Both national and transnational organised crime are perceived as protected by secrecy. However, in national forms of organised crime, as confirmed by Italian and American prosecutors, secrecy serves also a symbolic purpose – to maintain the criminal associations as elitarian hidden realities. In cases of cross-border crimes, because of the necessity to differentiate prosecutorial tasks, the element of secrecy is not prominent symbolically, but rather is visible in the advantage that prosecutors recognise to criminals who can disguise their contacts and activities also thanks to language differences and geographical distances. On the investigation side this fits within a national security categorisation: threats to national safety fall within the remit of criminal intelligence and therefore, naturally, carry a degree of secrecy and hidden character (Carley, 2013).

Third, the origin of organised crime as criminal policy category also plays a part across jurisdictions and across systems. Indeed, the existence of a national identity, to which organised crime activities and networks are conducive, has a twofold effect: on one side organised crime becomes integral to society and, on the other side, society is permeable to organised crime infiltration. This is indeed more perceptible in the words of Italian and, to a less extent, American prosecutors, who describe organised crime as national product in what we called a form of national pride. Basically, where organised crime is Italian or American organised crime, or Italian or American mafia, it follows a feeling of familiarity in the recognition in the phenomenon, which still is a burden to carry, but it is, nevertheless, a national burden and, as such, it has characteristics that can only be understood and shared in light of national cultures and specifics. Hence, the narratives of pride, isolation and misunderstanding that characterise Italian practice when talking about practices abroad. Where, instead, organised

crime does not carry a national identity, like in the English case, a discourse of (negative) pride cannot apply. Rather, conceptualisations of organised crime as an alien threat to national safety seem to be logical consequences and link in with discourses on the foreignness of organised crime as contagion or infection of society’s values from incomers. The American case in this sense is an interesting and composite one. In fact, in the US we have the birth of the alien conspiracy theory applied to organised crime of foreign (Sicilian) origin. This was progressively abandoned when the phenomena linked to organised crime rooted into American society and criminal markets, to create a very distinct, and predominant worldwide, national identity of organised crime.

The alternation between pride and curse – which depends on the existence and/or establishment of a national identity of the phenomenon of organised crime in common perception – also mirrors in the way justice systems label organised crime as a matter of criminal policies. The question on “who to target” for countering and policing organised crime remains anchored to what is the identification of organised criminals. The differentiation between local/national forms of organised crime and its transnational manifestations, come into play here as well. While national/local organised crime forms can be treated differently according to national perceptions and requirements – which might mean different focuses on criminal conspiracy or unlawful association – the idea of transnational organised crime evokes sophistication and ‘more’ seriousness of criminal activities in all three jurisdictions. In the rhetoric of transnational organised crime the practice of prosecutors appears, however, secondary as their work is bound to the national criminal law. Eventually, transnational crimes become relevant only when they touch local grounds. The security dimension that transnational organised crime has acquired in the recent years, in fact, remains precisely that: a security dimension at a higher more abstract policy level. Transnational organised crime, as criminal law threat, does not exist in prosecution practices unless it drops that transnational adjective.

Conclusion

This study has focused on narratives collected through interviews with 24 prosecutors in three countries (Reggio Calabria and Rome in Italy, New York City in the United States and London in the United Kingdom) discussing conceptualisations of organised crime and investigative practices and approaches to counter manifestations of organised crime. The analysis has focused on converging themes for discussion and has portrayed how terminologies and discourses on organised crime impact upon practice and criminal procedures. This work has explored whether the conceptualisations of (transnational) organised crime in policies affect the work of practitioners at the prosecution stage. From another point of view, the analysis has evaluated whether organised crime as category of national criminal law and justice is independent from the discourse of transnational organised crime, as threat to security. The study has confirmed that each national criminal law dimension of organised crime exists independently from the security dimension of transnational organised crime. In the daily practice of bringing offenders to justice, the transnational dimension of organised crime groups remains at the background of prosecutorial practice as something the law cannot do much about. Prosecutors across the three jurisdictions in this study agree that, because of the need to root their work in national/local jurisdictions, the transnational character of certain activities necessarily becomes no more than an aggravating factor in building cases, when it does not represent a different criminal category altogether.

If this is the case, the conceptualisation of organised crime as security threat which is so popular in criminal policy, might create an unjustified overlapping between local and national threats falling within the 'organised crime' definition. On the other hand it can place undesirable expectations on law enforcement in delivering results that do reflect upon national security strategies as well as on criminal justice successes. Certainly, considering that a part of the conceptualisation of organised crime is actually the criminal component, it can be argued that it is this component that should be regarded as primary. Indeed, until criminal law remains a domain of national sovereignty, with criminal procedures having the sole possibility to be object of mutual legal assistance cross-border, it seems that a over-inclusive transnational dimension of organised crime is not beneficial and out of focus when it comes to the work of law enforcement. This

chapter has argued that the transnational characterisation of organised crime so dear to policy-makers not only does not apply in daily application of criminal law but certainly is not embedded in daily conceptualisations of organised by prosecutors applying the law. This, at the very least, should redirect the focus to organised crime in the local and, afterwards, redirect resources to a better coordination between the local and the national.

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The role of the German foreign intelligence service BND in fighting organised crime

*Klaus von Lampe*¹

Introduction

This chapter discusses the role of Germany's foreign intelligence agency *Bundes-nachrichtendienst* (BND) in the fight against organised crime. Arguably in most countries, the question of the involvement of intelligence services in combating organised crime is one of 'how', not of 'if'. In Germany, however, this is a principle matter of the role of the intelligence services, among them the BND, in the overall security architecture of the country against a backdrop of a rather strict separation of intelligence function and police function since the end of World War II.

Four main points will be addressed in the following sections:

- the nature and purpose of the BND;
- the position of the BND in the German security architecture, namely its relationship to the other intelligence services and to the police;
- the legal framework that defines what the BND can do with respect to organised crime, and
- the actual contribution the BND makes to the fight against organised crime.

The discussion of the latter point cannot go beyond a very sketchy assessment given that only very little pertinent information is publically available.

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The History of the *Bundesnachrichtendienst*

It is not possible to understand the nature and role of the BND unless one takes its origins and history into account. The BND is a product of World War II and of the Cold War.

Members of an intelligence unit attached to the army general staff (*Oberkommando des Heeres*) of the German *Wehrmacht* formed the nucleus of what would eventually become West Germany's foreign intelligence agency. The unit under the leadership of General Reinhard Gehlen, called *Fremde Heere Ost* (foreign armies in the East), had collected and analysed information on the Red Army and also on the economic and political conditions in the Soviet Union (Weisser, 2013: 74). *Fremde Heere Ost* had a pure intelligence function. Counterespionage and covert operations were the domain of other agencies, namely that of the *Abwehr* at the *Wehrmacht* supreme command (*Oberkommando der Wehrmacht*) and of the *Reichssicherheitshauptamt* under Heinrich Himmler's SS (von Schramm, 1986: 25–26).

In the last weeks before Germany's surrender, Gehlen moved the archives of *Fremde Heere Ost* and his core staff to Bavaria which he knew would soon be occupied by U.S. forces. It did not take long before the Americans came to realise that the men they had taken captive could be put to use as tensions with the Soviet Union grew. When the two super-powers came into open conflict over the removal of Soviet troops from Persia in 1946, Gehlen struck a deal to form a new intelligence organisation under American supervision for the purpose of mobilising the resources of *Fremde Heere Ost* for the fight against communism (Ulfkotte, 1997: 78–79; Weisser, 2013: 82). The new organisation, dubbed *Organisation Gehlen* (or Gehlen group), marked perhaps the gravest violation of the principle of discontinuity that the Allies had established for Germany's post-War transition. While the German military was dismantled and the police, courts and administration were more or less ambitiously cleared of elements of the Nazi-regime, the *Organisation Gehlen* not only gave *Fremde Heere Ost* a second life but also embraced a large number of veterans from other branches of the Third Reich's security apparatus, namely former members of the *Abwehr*, *Reichssicherheitshauptamt*, *Gestapo* and *Waffen-SS* (Rass, 2014).

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It was not until 1956, seven years after the founding of the Federal Republic of Germany, that the *Organisation Gehlen*, now an organisation with a staff of 1.245, was incorporated into the West German government as *Bundesnachrichtendienst* with Reinhard Gehlen at the helm who reported directly to the Chancellor and Chancellor Konrad Adenauer (Weisser, 2013: 91).

The main task of the BND was to collect and analyse information on military, political and economic developments in foreign countries. However, at first no law existed that would have given the BND proper authorisation and set limits to its activities (Weisser, 2013: 91). Such a law was passed in 1990 only after the German Supreme Court, in a landmark case on data privacy, had ruled that the collection and storing of personal data by the government require a specific legal foundation (Bäumler, 1991). Until then, the work of the BND had been defined solely by directives from the Chancellor or the cabinet (Singer, 2002: 232).

Over the years the BND has been embroiled in a number of scandals. The question has always been if and to what extent the BND, under the veil of secrecy, has overstepped its boundaries. For example, against its mandate as a foreign intelligence service, during the reign of Gehlen, who retired in 1968, the BND maintained files on public figures in West Germany and investigated their background, mainly with respect to possible communist links, in some cases upon the explicit request of Chancellor Adenauer. The existence of these dossiers was made public in 1974 in the course of a parliamentary inquiry (Hechelhammer, 2014). Other scandals found the BND involved in, for example, arms exports (Ulfkotte, 1997: 115) or, in the recent past, the surveillance of German businesses by the U.S. intelligence agency NSA (Faiola, 2015). This history of scandals explains in part why there are reservations against granting the BND a role in fighting organised crime.

Since the 1990s the BND has tried to improve its reputation and to step a bit out of the shadow of secrecy. Having a website and inviting unsolicited job applications are presently perhaps the most visible signs of these efforts. The relocation of the agency from Pullach near Munich to Berlin, to a complex in the direct vicinity of the German government and parliament, to be completed in 2016 or 2017, can also be seen as a move towards greater transparency. A further development that can be expected in the year 2016 is an overhaul of the legal framework for the BND, with more parliamentary oversight and a denser web of regulations, and more

restrictions, especially as regards the collection of information abroad (Denkler, 2015). The following discussion is based on the status quo at the time of this writing in the year 2015.

The Nature and Purpose of the BND

As indicated, the acronym BND stands for *Bundesnachrichtendienst*, or federal intelligence service. It is an agency with a staff of some 6.500 and a budget of € 615 million in 2015.² The BND is the only German *foreign* intelligence service, which means that among the German intelligence agencies, only the BND has a reach outside of Germany's national borders. There are two other federal intelligence agencies dealing with matters within Germany: the domestic intelligence service *Bundesamt für Verfassungsschutz* (BfV) and the military intelligence service *Militärischer Abschirmdienst* (MAD) (Rose-Stahl, 2006: 15). In addition, each state (*Land*) has its own *Verfassungsschutz* agency. These state-level agencies operate to some extent under the coordination of the BfV (Rose-Stahl, 2006,: 36-41).

Unlike intelligence agencies in other countries, namely the CIA, but similar to *Fremde Heere Ost* and *Verfassungsschutz* and MAD, the BND's task is limited to a pure intelligence gathering and analysis function. The BND has no authority to conduct covert operations designed to purposefully influence events (Gusy, 2014: 1269; Porzner, 1993: 244; Rose-Stahl, 2006: 18).

The BND, likewise, has no police powers. The security architecture in post-war Germany has been characterised by a strict functional and organisational division between law enforcement agencies on one side and the intelligence agencies on the other. Originally, this principle had been established in the process of enacting the West-German constitution (the *Grundgesetz*) in 1949. Because Germany was under military occupation, the new constitution required Allied consent and the three western Allies,

² In the past, the size of the BND had been kept a secret. The figure of some 6.500 is taken from the BND website www.bnd.bund.de. The budget figure is taken from the federal budget plan for the year 2015, chapter 0404 (http://www.bundeshaushalt-info.de/fileadmin/de.bundeshaushalt/content_de/dokumente/2015/soll/Haushaltsplan-2015.pdf).

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the US, Great Britain and France, decreed that the domestic intelligence service, the only one debated by the creators of the *Grundgesetz*, shall not be granted police powers (Werthebach & Droste, 1998: 91-92). This principle was later incorporated into the BND Act of 1990 (section 1, paragraph 1).³

Since the reunified Germany gained its full sovereignty in 1992, the legal status of the principle of separation of police and intelligence agencies has been called into question. While some argue that the Allied consent of 1949 is no longer binding and the separation is justified largely by practical considerations (Werthebach and Droste, 1998: 95), others argue that the merging of the responsibilities of an intelligence service and of the police in one agency would be an unconstitutional concentration of power (see Zöller, 2007: 767).

In the absence of any executive powers, the role of the BND is limited to an advisory function *vis-à-vis* the federal German government. The specific task of the BND is to collect information not otherwise attainable that the government needs to make sound decisions (Porzner, 1993: 235; Uhrlau, 2009: 453). According to the BND Act of 1990, section 1 (paragraph 2), the BND's mission is to collect and analyse data to gain insights of relevance for the foreign policy and security policy of the Federal Republic of Germany where these insights pertain to events and situations outside of Germany. Collecting and processing information on other countries does not mean, however, that the BND is barred from being active within Germany (Bergemann, 2012: 926). The BND can, for example, question refugees on German soil in order to gain insights on developments in other countries.

The BND collects data from open sources as well as from sources that are not publically accessible, and some of the information is collected overtly and some covertly. Reportedly, most of the information analysed by the BND is derived from open sources such as published government reports and media reports (Gazeas, 2014: 147; Singer, 2002: 287-288). The BND also obtains information from other government agencies in Germany and from intelligence services of other countries. In addition, the BND is authorised, under certain circumstances, to (openly) request information from private entities, namely banks, telecommunication services providers, and airlines (Soiné, 2006: 205-206).

³ Gesetz über den Bundesnachrichtendienst (BND-Gesetz - BNDG).

Covert means of data collection can be divided into two main categories: human intelligence (HUMINT) and technical intelligence, also known as signal intelligence (SIGINT) (Hanning, 2005: 87-88). HUMINT comprises the use of undercover agents and of informants and comes closest to traditional *diché* imagery of the spy business. According to a public statement in 2005 by the then-President of the BND, August Hanning, human intelligence has not lost its importance even in the age of large-scale electronic surveillance (Hanning, 2005: 87).

Technical intelligence, the collection of information by technical means, occurs at two levels, in an operative context on a case-by-case basis in the form of, for example, covert audio and video recordings, wiretapings and intrusions into computer systems, and on a strategic level in the form of the systematic monitoring of flows of communication (Soiné, 2006: 206). Strategic intelligence collection serves the generation of leads. It entails filtering large amounts of voice, text, telefax, telex and email communication transmitted via satellite or fibre-optic cables. Potentially relevant content is identified through long lists of search terms, so-called selectors, such as code words for weapons. The filtered content is then subjected to examination by analysts (Scheele, 2014).

The legal and practical ability to conduct strategic technical intelligence sets the BND apart from the other German intelligence services. In Germany, only the BND is authorised to systematically monitor communication in search of potentially relevant information. In this respect, the BND is also in an important position *vis-à-vis* intelligence services of other countries, namely the American NSA, because the BND has access to the busiest internet hub in the world, DE-CIX in Frankfurt Main where some 1200 fibre-optic cables from all over the world converge (Mascolo, 2015, p. 13). However, the BND is restricted in the use of the communication it has the technical ability to access. Three constellations have to be distinguished (see also Fig. 1):

- Communication within Germany which is off limits for strategic intelligence collection by the BND;
- Communication between Germany and the rest of the world which may be subject to strategic monitoring within strict limits;
- Communication outside of Germany which, as of the year 2015, can be monitored by the BND with no special restrictions even though the constitutionality of this practice in the absence of an explicit legal

foundation has been called into question (Bäcker, 2014: 560; Huber, 2013: 2574).

Figure 1:
Strategic Monitoring of Telecommunication by the
Bundesnachrichtendienst
as of 2015



Arguably the main products that come out of the work of the BND are complex situation reports at the strategic level (Hanning, 2005: 88, 97; Huber, 2000: 394; Porzner, 1993: 244; Soiné, 2004: 20; Soiné, 2008: 111). However, more narrowly focused investigations of individuals and groups have also been part of what the BND has been doing (Hanning, 2005: 97).

Control Mechanisms

It lies in the nature of the BND as an intelligence service that it operates clandestinely. This does not mean that the BND is free from supervision and control. There are, in fact, several control mechanisms that place restraints on the BND. In principle, individuals who are the targets of surveillance by the BND can petition the federal administrative court *Bundesverwaltungsgericht* as the court of first and last appeal.⁴ However, since individuals are typically unaware of BND surveillance, there is no judicial oversight of future and ongoing surveillance operations. Only after the conclusion of a surveillance operation, there is a legal obligation of the BND – under certain circumstances – to notify targeted individuals who then can retrospectively challenge the legality of the measure (Dietrich, 2015: 6–8). The mere suspicion of being affected by the BND is not sufficient. In a recent ruling, the *Bundesverwaltungsgericht* declared that litigants have to be certain they are personally affected before they can file a complaint against the BND.⁵

Given the difficulties of judicial oversight, the main control mechanisms currently in place are administrative oversight by the Chancellery and parliamentary oversight by the German federal parliament *Bundestag*. As indicated, the BND is integrated into the federal government directly under the Chancellery, *i.e.* under the head of government. The Chancellery, within the bounds defined by the BND Act, formulates a set of tasks for the BND that is updated in regular intervals (Daun, 2011: 175; Vorbeck, 2010: 20), although the BND also collects information without specific assignments (Soiné, 2006: 204). In the future, this may no longer be permitted (Denkler, 2015). The Chancellery is also supervising the BND's ongoing activities, and the BND, in turn, is obliged to continuously report to the Chancellery on its activities (Dietrich, 2015, p. 5). In addition, the BND (through the federal government) has to report to parliament. The members of the *Bundestag* individually can ask questions about the BND, although typically the responses are sparse with reference to security concerns. The *Bundestag* can also set up temporary investigative committees.

⁴ Section 50, paragraph 1, no. 4 *Verwaltungsgerichtsordnung* (VwGO).

⁵ *Bundesverwaltungsgericht* (BVerwG), judgment of 28 May 2014, docket no. 6 A 1.13, published in *Die Polizei* 2014: 238–239.

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The main function of parliamentary control over the BND and the other federal intelligence agencies, however, is performed by three permanent committees:

- the Confidential Committee of the *Bundestag*'s budget committee charged with reviewing the budgets of the intelligence agencies;
- the Parliamentary Control Panel (*Parlamentarisches Kontrollgremium*) which continuously reviews the activities of the intelligence services, and
- the so-called G 10 Commission which reviews and authorises individual and strategic surveillance measures with respect to the postal service and telecommunications in accordance with Article 10 of the German constitution.

By reviewing and authorising strategic surveillance, the G 10 Commission serves as a functional substitute to the courts that otherwise, for example in criminal proceedings, would have to authorise surveillance measures that infringe on individual rights (Huber, 2014). The members of the G 10 Commission are appointed by the Parliamentary Control Panel and do not need to be members of parliament themselves (Dietrich, 2015: 8-10). One of the main features of the reform of the BND that is expected for 2016 and 2017 is to create an office with permanent full-time staff of a Commissioner for the Intelligence Services within the *Bundestag* administration (Denkler, 2015).

From the threat of communism to “new” transnational threats

Up until the fall of the Iron Curtain, most resources of the BND were invested in espionage against Soviet Bloc countries. Other countries and regions of interest, namely in Latin America, Africa and Asia, figured far less prominently on its agenda. Since the demise of the Soviet Union, unstable regions like the Balkans, the Middle East and Central Asia have been in the sights of the BND and its work has become defined more by thematic foci (Hanning, 2005; Uhrlau, 2008). Apart from the proliferation of military-grade weapons and weapons of mass destruction and Islamic fundamentalist terrorism, these thematic foci have increasingly included matters that are commonly associated with organised crime. Reportedly,

these phenomena have come under scrutiny by the BND very early on. For example, the illegal arms trade since the beginnings of the agency, drug trafficking since the early 1980s and illegal migration since the 1980s.⁶ But it was only in the late 1980s, it seems, that these efforts became more systematic and more profound. In 1989, the BND was specifically tasked to investigate the international drug trade and money laundering, and in 1996, the assignment followed to also monitor human smuggling (Soiné, 2004: 13). The new thematic orientation has also been reflected in organisational changes within the agency. In 1991, a unit on drug trafficking was set up,⁷ and in 2001 a newly formed department encompassed the analysis of international terrorism, terror financing, money laundering and transnational organised crime, the latter primarily in the sense of drug trafficking and illegal migration (Soiné, 2004: 14).

There are two conflicting discourses about the shift from Cold War tasks of spying on the Soviet Bloc to intelligence gathering on proliferation, terrorism and organised crime. One discourse is about a crisis of legitimacy of the BND with the disappearance of its nemesis in the East. From this angle, the shift to new thematic foci appears as an attempt to justify the continued existence of the agency into the 1990s and into the new millenium (Gusy, 2014: 1262).

The other discourse is about a crisis of law enforcement. According to this line of reasoning, Germany is faced with new threats since – and partly as a result of – the demise of the Soviet Bloc and the end of the Cold War, including terrorism and transnational organised crime, and these threats, the argument goes, cannot be tackled by the police and the criminal justice system alone. It is argued that to effectively combat terrorists and organised criminals, it takes the expertise and the resources of the intelligence services as part of a new German security architecture (Daun, 2011: 185).

Advocates within the intelligence community and in politics contend that law enforcement agencies are limited in their ability to detect and explore clandestine offender structures. The police in Germany are bound by the legality principle which means that investigations have to be conducted with the immediate aim of prosecuting crimes rather than com-

⁶ Response of the Federal Government to an inquiry by *Bundestag*-member Ulla Jelpke, 22 June 1992, Drucksache (BT-Drs.) 12/2884: 2.

⁷ Response of the Federal Government to an inquiry by *Bundestag*-member Ulla Jelpke, 22 June 1992, Drucksache (BT-Drs.) 12/2884: 2.

prehensively and continuously monitoring and analysing criminal structures and activities. Such a strategic approach, it is argued, naturally falls within the domain of the intelligence services (Droste, 2002: 59; Soiné, 2008; Werthebach, 1993: 64–65).

A second argument is that the BND is better equipped to gather information outside of Germany than the police which are restrained by the shortcomings of international law enforcement cooperation in investigating cross-border crime (Gusy, 2014: 1270). This is obvious with respect to countries with high levels of corruption or direct government involvement in criminal activities.

Finally, it is argued that the BND as well as the other German intelligence services are much better positioned than the German police to exchange information with agencies in other countries. The German intelligence services are not bound by the legality principle. They can safeguard information entrusted to them much more effectively because they are not legally obliged to use relevant information in criminal prosecutions (Werthebach, 1993: 65–67; Werthebach and Droste-Lehnen, 1994: 62).

In this respect, the German intelligence services, including the BND, are considered crucial for fully integrating Germany into the security infrastructure of the Western world with respect to the fight against terrorism and organised crime. In many Western countries, unlike in Germany, police have discretion in the cases they investigate, there is no strict organisational separation of police and intelligence functions, and it is also quite common that intelligence agencies investigate not only terrorism but also other crime phenomena (Droste, 2002).

Does the BND have a mandate to monitor and investigate (organised) crime?

If and to what extent the BND has a mandate to monitor and investigate crime phenomena, including those that are subsumed under the label ‘organised crime’, is a matter of controversy among legal scholars. There is no explicit authorisation of the kind that some *Länder* have given to their

Verfassungsschutz agencies. In Bavaria,⁸ Hesse⁹ and the Saarland,¹⁰ the *Verfassungsschutz* has the legal mandate to investigate ‘organised crime’.¹¹ With respect to the BND, the question boils down to whether insights into crime phenomena can be of relevance for the foreign policy and security policy of the German federal government, as this is the only criterion, laid down in section 1 of the BND Act of 1990, by which the tasks of the BND are delineated. The BND is not authorised to operate outside of the bounds of the mandate so defined (Porzner, 1993: 242).

According to one view, the concept of ‘security’ needs to be interpreted broadly to include internal security (Droste, 2002: 55; Rupprecht, 1993: 134; see also Werthebach and Droste, 1998: 102). This would mean that one mission of the BND is to identify and assess crime threats that are of relevance to the domestic situation in Germany. Such an interpretation of the meaning of ‘security’ in section 1 of the BND Act, however, is guided more by the notion that the BND is urgently needed in the fight against organised crime rather than by a careful examination of the historical intentions of the legislature and the systematic context of the BND Act within the legal framework of the Federal Republic of Germany. When in 1990, the mission of the BND was codified for the first time, the intention was to capture the nature and purpose of the BND as it had developed during the 1950s through 1980s, not to break new ground and change or broaden the thematic scope of the BND’s work (Singer, 2002: 235, 258). The concept of the foreign-policy and security-policy relevance in section 1 of the BND Act pertains to the dual function of the BND as a civil and military intelligence service with the term ‘foreign policy’ referring to the civil side and the term ‘security policy’ to the military side where ‘security’ has to be understood in the sense of external security as opposed to internal security (Porzner, 1993: 237). Importantly the two terms of foreign and security policy are directly linked to Article 73, paragraph 1, no. 1 of the German constitution, which gives the federal

⁸ Article 1, paragraph 1, Bavarian *Verfassungsschutz* Act (BayVSG) of 10 April 1997 (Gesetz- und Verordnungsblatt 1997: 70). The authorisation to investigate “organised crime” had originally been introduced in 1994 by an amendment to the BayVSG of 8 July 1994 (Gesetz- und Verordnungsblatt 1994: 551).

⁹ Section 2, paragraph 1 *Verfassungsschutz* Act Hesse.

¹⁰ Section 3, paragraph 1, no. 4 Saarland *Verfassungsschutz* Act.

¹¹ Two other Länder, Saxony and Thuringia, had similar authorisations but have stricken these from their laws for legal and political concerns.

government exclusive authority over matters of foreign affairs and military defence. In contrast, the federal government has only very limited legislative and executive authority in matters of policing and criminal justice which largely fall in the domain of the *Länder*. This means that even if it had been the intention of the creators of the BND Act of 1990 to give the BND a mandate in the area of crime control, such a mandate would be void because it violated the constitutionally prescribed division of tasks between the federal and state levels (Singer, 2002: 251).

At first glance, legislation enacted four years later, in 1994, must appear as a breach of this federative order when the BND, as part of sweeping anti-crime legislation, was given the authority to strategically monitor international telecommunication with regard to drug trafficking, currency counterfeiting and money laundering, and to pass the resulting intelligence on to the police and prosecutor's offices.¹² Later, in 2001, this catalogue of crimes was even extended further to also include human smuggling and all forms of money laundering, not just the laundering of proceeds from drug trafficking and currency counterfeiting.¹³ As of 2015 the BND may scan communication between Germany and the rest of the world with respect to the following four types of (organised) crime in addition to terrorism and the proliferation of military-grade weapons, as spelled out in section 5 of the G10 Act:

- drug smuggling into the EU at a significant scale with relevance to Germany;
- currency counterfeiting abroad at a scale that is threatening the monetary stability in the Euro zone;
- internationally organised money laundering in cases of significance;
- alien smuggling into the EU in cases of significance, involving a large number of smuggled individuals, if the cases have some relevance to Germany.

Given that the BND had originally been permitted to use its exclusive strategic surveillance capabilities only for the purpose of averting a military attack (Porzner, 1993: 247), it seems natural to view this new legislation as a fundamental redefinition of the mission of the BND. Indeed, some legal scholars have classified it as an extension of the BND's mandate in the direction of policing and law enforcement (Droste, 2002: 54; Gusy, 2014:

¹² Section 3 G10 Act of 28 October 1994, *Bundesgesetzblatt I*, pp. 3186, 3194.

¹³ Section 5 G10 Act of 26 June 2001, *Bundesgesetzblatt I*, pp. 1254, 2298.

1270; Huber, 2000: 394; Riegel, 1995: 176). However, the new responsibilities have explicitly been granted only within the bounds of the BND's mandate as spelled out in section 1 of the BND Act (collect intelligence of foreign-policy and security-policy relevance).¹⁴ The legislature, in other words, acted under the assumption that phenomena such as drug trafficking and currency counterfeiting are phenomena that can well be of relevance for the foreign and security policy of the Federal Republic of Germany even when one narrowly defines security policy in terms of military security. The German Constitutional Court (*Bundesverfassungsgericht*) has accepted this line of argument. In a landmark decision it held that the surveillance of certain crime phenomena by the BND can fall within the domain of the federal government – as opposed to the criminal justice domain of the *Länder* – as long as the main purpose remains the advisement of foreign and security policy and the intelligence passed on to law enforcement agencies is an unintended by-product of the strategic analysis function of the BND.¹⁵

There are several constellations imaginable in which phenomena commonly associated with organised crime, including drug trafficking, currency counterfeiting, alien smuggling and money laundering, can be of foreign and security policy relevance in accordance with section 1 of the BND Act. Some of these constellations have been pointed out by the Constitutional Court by way of example.

Generally speaking, there are two angles from which organised crime phenomena can appear in the sights of the BND. One is as a facet of the situation in countries that are of geopolitical importance for Germany; the other in the form of crime threats that call for international responses and thus become a matter of foreign policy.

The investigation of criminal activities and criminal structures is covered by the mandate of the BND when these phenomena shape the political, economic and social conditions in a country that is of relevance for Germany's foreign and security policy (Rupperecht, 1993: 134; Singer, 2002: 240; Soiné, 2006: 204). Understood in this way, organised crime

¹⁴ Section 1, paragraph 1, no. 2 G10 Act of 1994, *Bundesgesetzblatt I*, p. 3186, 3194; see also Singer (2002: 264).

¹⁵ Ruling of 14 July 1999, docket no. 1 BvR 2226/94 et al., published, inter alia, in volume 100, p. 313, of the official collection of Constitutional Court decisions (*Ämtliche Sammlung der Entscheidungen des Bundesverfassungsgerichts*, BVerfGE 100, 313).

constitutes a factor that the German government cannot simply ignore in devising policies with respect to these countries. One can think, for example, of the Andean states where drug trafficking is an industry of national importance (Thoumi, 2003), or of those myriad countries where criminal structures significantly influence politics or where political elites themselves have formed criminal structures and engage in criminal activities (von Lampe, 2016: 261-291). In each case, the foreign and security policy relevance does not result from the impact these crime developments might have on Germany, but from the principal importance the German government ascribes to the respective countries as such.

Criminal structures and criminal activities are also covered by the mandate of the BND when they have a significance that places them on the diplomatic agenda, be it in bilateral or multilateral relations. The Constitutional Court mentions two such scenarios. One scenario involves transnational criminal activities that are supported or at least tolerated by foreign states. The foreign policy relevance follows not so much from the scale or severity of these illegal activities but from the fact that German interests are negatively affected by conduct attributable to another subject of international law. A second scenario pertains to criminal activities that because of their nature and magnitude require an international response such as in the hypothetical case of counterfeiting at a scale that jeopardises the stability of the currency in Germany and, importantly, the German government cannot handle without the support of other countries.¹⁶ A third scenario that is not mentioned by the Constitutional Court but following from the advisory function of the BND includes cases where Germany is not directly affected by transnational (organised) crime but is confronted with a crime problem as part of the international community. When, for example, the European Union or the United Nations address a crime threat, insights gained by the BND would have foreign policy relevance, not least in order to be able to determine to what extent the conjured threats actually do exist.

¹⁶ BVerfGE 100, p. 371.

The legal framework for sharing intelligence with law enforcement agencies

That the BND has a mandate to collect and analyse information on certain manifestations of organised crime does not necessarily mean that this information is available for law enforcement. In fact, it was one of the main goals of the legal reforms of 1994 to facilitate the flow of information from the BND to the police and prosecutor's services (Arndt, 1995: 170). The legal framework that is in place as of 2015 largely puts the sharing of intelligence at the discretion of the BND. In principle, information can be passed on provided this is necessary for the fulfilment of the BND's own tasks or, in the case of the police and prosecution, the information is needed by these agencies for maintaining public safety, which includes the purpose of crime fighting (Bergemann 2012: 958; Droste, 2007: 519-520). An exception to this general rule exists with regard to information obtained through the strategic surveillance of communication between Germany and the rest of the world. As indicated, communication within Germany is off limits for strategic surveillance while communication with no link to Germany and German citizens as of now is not subject to any specific restrictions and the general rules of intelligence sharing apply.

In the case of strategic technical intelligence under the G10 Act, information can be shared with law enforcement agencies only if it pertains to specific serious crimes and only if there is some factual basis for the assumption that a crime has been committed or is being planned. In other words, strategic intelligence can only be shared if there is some level of certainty that it will indeed be helpful in preventing and prosecuting serious crimes.

The serious crimes on which intelligence from strategic surveillance can be forwarded to law enforcement agencies are contained in a list of criminal offenses, including certain forms, respectively, of currency counterfeiting, money laundering, drug trafficking, human trafficking, robbery, extortion, and human smuggling.¹⁷ Obviously, this list only partially overlaps with the list of crimes for which the BND is authorised to conduct strategic surveillance (see above). This allows for accidental findings to be made available to law enforcement under certain circumstances.

¹⁷ Section 7 G10 Act.

There is no legal obligation on the part of the BND to forward information on organised crime as commonly understood to the police and prosecution. Such an obligation only exists with respect to terrorism and other crimes against the state.¹⁸ In addition, it is commonly accepted that the general legal obligation under section 138 of the German Criminal Code (*Strafgesetzbuch*) to report serious crimes such as murder also applies to individual BND officials and the knowledge of crime they have obtained in the course of their official duties (Bergemann, 2012: 958; Droste, 2007: 554; Gazeas, 2014: 378). It is not clear if these parallel and partly contradictory legal regimes have led to any conflicts in practice (see Soiné, 2008: 111).

The ability of the BND to forward information to law enforcement agencies has given rise to concerns that the BND might become a mere extension of the police (Gazeas, 2014: 439; Riegel, 1995: 177), or that the BND can manipulate the police into becoming its *de facto* executive arm (Zöller, 2006: 499), to the effect that the functional separation of intelligence services and the police becomes obsolete. These concerns have grown in recent years with the establishment of fusion centres where police and intelligence agencies, including the BND, communicate and collaborate under one roof. One of the thematically focused centres, set up in 2006 and dealing with illegal migration, is explicitly devoted to combating organised crime (Klee, 2009). While the same rules of intelligence sharing apply that are also in place otherwise, the centres are designed to further facilitate the exchange of data on a practical level (Klee, 2009; Weisser, 2011: 145).

The Constitutional Court has indicated in several rulings that the current framework of cooperation and data sharing is taxing the limits of the German constitutional order. It has stated that the forwarding of information from the intelligence services to the police needs to be the exception to the rule of a separation of both spheres.¹⁹ So far, the BND's activities in the realm of organised crime control seem to hold up to these standards. From what is publicly known, the BND is not central to the fight against organised crime, and the fight against organised crime is not central to the BND, especially when compared to the fight against terrorism. In other

¹⁸ Section 9 BND Act in combination with section 20 of the Bundesverfassungsschutz Act.

¹⁹ Ruling of 24 April 2013, docket no. 1 BvR 1215/07, published, inter alia, in *Juristenzeitung* 68(12), 2013, 621.

words, the responsibilities explicitly given to the BND with respect to organised crime do not seem to have led to a fundamental change in the relationship between BND and law enforcement.

The BND's practical role in investigating organised crime

Only very limited information is available to assess the nature and extent of the investigation of organised crime phenomena by the BND. From scattered public statements of BND officials it seems that among the thematic foci, organised crime ranks fairly low on the list of priorities, certainly lower than terrorism. For example, in 2008 the then-President of the BND, Ernst Uhrlau, highlighted three main areas of interest for the BND: Islamic fundamentalist terrorism, proliferation of arms of mass destruction, and regional conflicts with transregional implications (Uhrlau, 2008: 43–44). Three years earlier, Uhrlau's predecessor August Hanning had mentioned a more detailed set of thematic priorities where organised crime appears in the third place: international terrorism, proliferation and illegal transfer of technology, international organised crime, international arms trade, international drug trade, money laundering, illegal migration (smuggling activities and movements), information warfare (Hanning, 2005: 92).

August Hanning has also provided the most detailed publically available account of what exactly it is the BND is doing with respect to organised crime, even though this account is still very sketchy and vague. In 2005, Hanning claimed that with the information collected abroad the BND is making an important contribution to the fight against international organised crime, tasked primarily with an early-warning function, including:

- the identification of links between organised crime, business and politics;
- the investigation of organised crime structures;
- the identification of new methods of money laundering;
- the detection of new routes and infrastructures of the drug trade or of illegal migration (Hanning, 2005: 95).

It is not clear in what proportion certain sources and means of information collection are used in these efforts. From the available material, however,

one can surmise that the full arsenal of instruments is used in the monitoring of organised crime phenomena, including human intelligence (see Foertsch, 1999; Hanning, 2005; Soiné, 2004; Soiné, 2006).

The most concrete data on the extent of investigation of organised crime phenomena are available on the strategic monitoring of cross-border communication since insofar the BND has to go through an external approval process. Interestingly, it seems that the BND has not been overly eager to take advantage of the legal framework that has been put in place since 1994. Several authors have pointed out that the BND has made only very limited use of its new powers in the first few years. For example, in the areas of international terrorism and international drug trade, only a total of 204 potentially relevant communications were analysed by BND staff between March 1996 and August 1998, none of which were forwarded to other agencies. This low turnout resulted in the BND temporarily ceasing to carry out any strategic surveillance measures in these two thematic areas in early 1998 (Huber, 2000: 395–396). Overall, as one author noted in 1999, there had only been 33 incidents of intelligence from strategic surveillance passed on to law enforcement agencies since 1994 (Möstl, 1999: 1396). This confirms the general contention that the BND collects strategic intelligence and only occasionally generates information that is immediately relevant for law enforcement purposes (Soiné, 2008: 111).

A broadly similar picture emerges from an analysis of more recent available statistical data on strategic surveillance (see Table 1). Again, it needs to be emphasised that these data pertain to the strategic monitoring of communication between Germany and the rest of the world, but not to the legally unrestricted monitoring of communication outside of Germany. What is immediately apparent is that, generally speaking, strategic surveillance produces a large number of potentially relevant hits but identifies only a small number of communications that in the end are deemed relevant by analysts. What is also clearly discernible from Table 1 is that the strategic monitoring of cross-border communication is used primarily for investigating terrorism and the proliferation of weapons, and only to a limited extent for investigating drug trafficking and alien smuggling. However, the ‘hit’-‘relevant’ ratio appears to be much more favourable for these latter two thematic areas.

Table 1:
Intercepted communication between Germany and the rest of the world, 2005-2013

Year		Terrorism	Proliferation	Drugs	Alien Smuggling	% Drugs + Aliens.
2005	hits	24.427	110.531	8054	0	5,63
	relevant	21	522	2	0	0,37
	% hits	0,09	0,4723	0,02	0,00	
2006	hits	462.432	885.771	17.917	0	1,31
	relevant	9	424	4	0	0,92
	% hits	0,002	0,05	0,02	0,00	
2007	hits	2.913.812	2.343.252	83	0	0,00
	relevant	4	370	0	0	0,00
	% hits	0,0001	0,0158	0,0000	0,00	
2008	hits	349.855	1.861.935	385	0	0,02
	relevant	9	312	0	0	0,00
	% hits	0,0026	0,0168	0,00	0,00	
2009	hits	1.807.580	5.034.145	0	0	0,00
	relevant	69	209	0	0	0,00
	% hits	0,004	0,0042	0,00	0,00	
2010	hits	10.213.329	27.079.533	0	45655	0,12
	relevant	29	180	0	4	1,9
	% hits	0,00	0,001	0,00	0,009	
2011	hits	329.628	2.544.936	0	436	0,02
	relevant	136	56	0	98	33,8
	% hits	0,04	0,002	0,00	22,4	
2012	hits	1.804	849.497	0	390	0,05
	relevant	137	107	0	44	15,3
	% hits	7,6	0,013	0,00	11,3	
2013	hits	906	14.411	0	84	0,55
	relevant	73	32	0	13	11,0
	% hits	8,1	0,2	0,00	15,5	

Source: Scheele (2014); Parlamentarisches Kontrollgremium, 8 January 2015, BT-Drs. 18/3709

Table 1 shows for the years 2005 through 2013 the thematic areas for which the strategic monitoring of international communication was authorised. As already indicated, the authorisation is done by the federal government in conjunction with the parliamentary G10 Commission.

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Subject to approval are the communication channels from which communication is extracted, the volume of traffic that is scrutinized, and the search terms with which the extracted communication is filtered for relevant content. The search terms, in turn, define the thematic areas under investigation (Scheele 2014: 34). A total surveillance of all communication that can technically be monitored is not permitted under the existing framework (Bäcker, 2014: 558-559).

The data show that terrorism and the proliferation of weapons have been targeted continuously during the time period 2005 until 2013 while the strategic collection of intelligence on drug trafficking and alien smuggling has been authorized only for limited numbers of years. For example, the “0” in the “hits” row under “Drugs” for 2009 and subsequent years indicates that there was no strategic surveillance of cross-border communication with the aim of gaining insights on the international drug trade between 2009 and 2013.

Likewise in quantitative terms, communication pertaining to drug trafficking and alien smuggling makes up only a fraction of the overall volume of communication that is being filtered. For most years the share has been less than 1%. For example, in 2005 of 8.054 potentially relevant communications (“hits”), only two were actually considered relevant when examined by analysts.

Interestingly, drug trafficking and alien smuggling figure much more prominently with regard to the share of communication that analysts have deemed worthy of further examination. In 2011, for example, only 0,02% of the filtered communication pertained to alien smuggling but these 0,02% accounted for 33,79% of all the relevant communication gleaned from strategic monitoring conducted during that year.

The publically available data do not permit an assessment of the quality of the intelligence produced by the BND. No evaluation of its responsibilities in the area of organised crime has been carried out, certainly not by outside evaluators, as far as can be seen. Likewise, no incidents of success or failure have come to light. The only indication of the value of the work of the BND with respect to organised crime is the attitude of the political class as the main recipient of the products of the BND’s intelligence collection and analysis. At least the two main political blocks in the Bundestag and coalition partners in Angela Merkel’s current cabinet, the Conservatives and the Social Democrats, seem to be in full support of tasking the BND with investigating (organised) crime phenomena. While

the expansion of the BND's responsibilities into the area of organised crime has originally been primarily a political project of the Conservatives (Mehler, 1993: 53) as well as a desire articulated by the agency itself (Porzner, 1993: 247). Now there appears to be a consensus that this move has been justified. Even in the current turmoil over the revelations of Edward Snowden and the subsequent disclosure of damaging information on the BND, the BND's role in monitoring organised crime has not come up as a point of critique. On the contrary, while the pending BND-reform prepared by the Conservatives and Social Democrats includes, for example, a restriction of surveillance measures of the BND within the EU, this restriction is not supposed to apply, reportedly, to matters involving terrorism, organised crime and illegal arms dealing (Denkler, 2015).

Summary and conclusion

The role of the BND in fighting organised crime can be summed up as follows. The BND is not a law enforcement agency. It investigates organised crime only to the extent it is relevant for its mission to advise the federal German government on matters of foreign policy and (military) security policy. The BND apparently uses the full arsenal of intelligence tools to collect information on criminal structures, criminal activities and the links between criminal and legitimate structures outside of Germany. Under certain restrictions the BND can share information it generates in the course of its strategically oriented work with law enforcement agencies, including the police and prosecutors' offices. This has been greatly facilitated in practical terms by the creation of fusion centres with the participation of law enforcement agencies and intelligence agencies, including the BND. Such fusion centres have been established in the past few years on such matters as terrorism and alien smuggling. However, the BND has apparently not been overly eager to take advantage of the tools it has been given to investigate organised crime, and the German Constitutional Court has established high hurdles for a further integration of law enforcement agencies and intelligence services into a more cohesive security architecture. This means that the role of the BND in fighting organised crime is limited by the nature of its mission as a pure intelligence agency, by the legal restrictions on the sharing of data between the BND

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and law enforcement, and also, it seems, by choice in that namely in the area of strategic surveillance of communication, resources have gone into investigating terrorism and arms proliferation rather than organised crime phenomena such as drug trafficking and human smuggling. To the extent the BND does investigate organised crime, it is not possible to pass a judgment on the value of these efforts from the perspective of an outsider. What would be interesting to know, for example, is how effectively the BND, as well as other intelligence services, are able to track illicit money flows in comparison to what the global Anti-money-laundering regime under the FATF is able to accomplish.

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Investment and long firm fraud

Local and cross-border

Petrus C. van Duyne and Alan Kabki¹

Introduction: diversity and defining

It is an old tune: ‘Crime does not pay’ which serves rather the hope of the citizens than describing the reality. Many forms of crime do pay and committing fraud pays the best. Does this point to neglect on the side of law enforcement? It is true that attention to fraud and economic crime has to compete with other types of crime, such as organised crime. Whereas drug trafficking is comfortably included within the organised crime discourse, fraud requires argumentation. On the other hand, in times of financial and economic crises there is more attention to various manifestations of fraud: bank and investment fraud, foreign social benefit fraud or even EU-fraud, while warnings against ‘innovative’ internet fraud abound. Actually, the latter is usually old wine in new sacks. For we find on the internet buying without paying (or selling without delivering), promising golden mountains and deceiving those who desperately need loans. While the internet² has an undeniable impact on the dimensions of time, space or reach (Grabosky, 2009), in its essence fraud is about the abuse of trust, whether personal or organisational trust. In this regard it differs from other forms of property crimes: burglars do not need to look their victims in the eye and say: “*Trust me, I will make you rich*”. Besides that, the victims of fraud are not forced by violent means to hand over their money to the perpetrators: they entrust it voluntarily albeit under deceitful circumstances.

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This chapter is based on the dissertation (2014) of Alan Kabki.

² In 2014 about 11,2% of the population of the Netherlands of 15 years or older has experienced one the many forms of cybercrime (CBS, 2015).

Whether increasing or decreasing policy and law enforcement attention is a reflection of the underlying volume of fraud is difficult to say. There are many reasons (Roest, 2009; Kabki, 2014) why fraud remains undetected or unreported even if detected. In the first place, the committed fraud remains undetected, for example because the manipulation blends into the business policy and routines: it looks so normal. Then there is the “*trust me*” effect: victims continue to believe their financial guru against better judgement: rationalising that there was “*only a setback*”; “*the market was volatile*” and other reasons to strengthen one’s belief that there is no foul play. If awareness has emerged the “*trust me*” can also have a shaming effect: “*how could I have been so stupid?*” with a tendency to hide one’s victimisation lest other people would say: “*Yes, that was pretty stupid.*” Also the response of law enforcement may keep justified complaints about fraud unrecorded by dismissing them as civil disputes over transactions that have gone sour or anticipating the prosecution service response: “*no legal proof of fraud*”. Clearly, the extent of fraud remains and has always been underestimated.

Irrespective of the question of underreporting, fraud remains a significant problem. As has again been underlined during and after the financial crisis of 2008 and thereafter, trust is the mainstay of business, whether at individual or at the economic sector level (Albrecht *et al.*, 2011; Perri, 2011).³ Given the huge variety of economic sectors, there is a commensurate diversity in types of fraud such that valid generalising statements across all types are difficult to make (Bloem and Hartevelde, 2012). Fraud against the public funds (*e.g.* VAT fraud, subcontracting labour fraud) differs widely from investment or bankruptcy fraud. The first one requires different *modus operandi* than the second in terms of (false) documents, network, front companies, types of victims *etc.*

This does not mean that a common definition would be impossible. In this research the following definition was formulated: *fraud is wilfully deceiving (natural or legal) persons by means of pretences, incorrect information, or violation of trust with the aim of obtaining advances from these persons or institutions.*

This definition provides a proper cover, but underneath there is still much heterogeneity, such that extrapolations from one type of fraud to another should not be taken for granted. All this implies that to obtain

³ As Volkswagen experienced: at the time of writing this grand fraud came to light, which reduced trust in this world brand.

insight through research one has to process piecemeal and to make comparisons between types of fraud often *post hoc*.

These methodological considerations still leave the question unanswered which types of fraud are most relevant to address first. Should we look at the number of victimised persons? Indeed, victims of fraud abound, but from numbers alone it is difficult to deduce an ‘importance scale’. How to determine that lottery fraud, with its many low income victims is less (or more) important than consumer fraud affecting us all (Pak and Shadel, 2007)? Or EU fraud compared to advanced fee fraud? Specific fields of fraud may be considered ‘elitist’, which does not make the harm less. For example art fraud, victimising or corrupting museums (Lervik and Balcells, 2014) and deceiving well-to-do art collectors for millions with devastating *public* impact on the prestige of the art market (Charney, 2009; Kila and Balcells, 2014)? As a matter of fact, there is no yardstick. Nevertheless, the on-going disclosures of huge investment fraud and the inroads of bankruptcy fraud in commercial relations as well as the relative scarcity of research, pointed at the importance of these two types of fraud which were selected for the research project.⁴ The choice of these two phenotypes of fraud is based on three justifications. The first concerns the social relevance based on the estimated extent of damage – financial and non-financial trust in financial system – caused by perpetrators of these types of fraud (Roest, 2009). The second reason for choosing these two types of fraud was the condition that there must be contact between the fraudsters and their victims: either personally or through intermediaries. By posing this condition, many forms of fraud committed from a distance (like internet-fraud) were excluded from this research, which was aimed at unravelling the *modus operandi* and motives of fraudsters. Finally the choice is also based on the availability of criminal investigation cases. Based on a short exploratory research and some interviews with the experts in the field of investigation and prosecution, the conclusion was drawn that criminal investigations regarding these two types of fraud were available.

This research was financed by and initiated from the *Dutch Police Academy*, in order to contribute to knowledge acquisition, not only of the po-

⁴ The third fraud issue selected for research are fraud schemes in which banks are involved as victims. This part of the research project is not represented in this chapter. See Kabki (2014).

lice investigators but also all other institutions involved in the fight against financial and economic crimes.

Reflecting the needs of the field of investigation and prosecution, the research questions were centred on identifying the *modus operandi* of the fraudsters and on their *motives* for planning and committing fraud. These are the main questions from which more detailed points of research were deduced and highlighted in this chapter:

- The similarities and differences between these fraud types;
- The personal backgrounds, knowledge, skills and other characteristics of the perpetrators;
- The motives as ‘drives’ of their conduct: is it only money or are there other motives acting as drivers for fraud?

Based on the research questions, this research has two main focuses: on the one hand the ‘phenomenology of the crimes and the actors involved’ and on the other hand the possible motives of the fraudsters deduced from the gathered data.

Short description of investment and bankruptcy fraud.

a. Investment fraud

As is the case with most schemes to make money out of promises of high returns, investment fraud is no novelty. Historically the best known case is the so-called Ponzi scheme, named after the Charles Ponzi, an Italian who lived illegally in the US in the first half of the 20th Century. Ponzi discovered a scheme to make money from stamps and international reply coupons for sending mail back to another country. Due to different inflation rates between countries there were price difference and therefore profits to be made. Ponzi promised his friends a 100% return of their investment in 90 days. However, he did not invest the money as promised but paid the first investors from the deposits of later investors. Soon word spread of this profitable investment opportunity and new investors crowded around Ponzi’s office to invest. Failing to make use of the international reply coupon scheme, Ponzi kept his enterprise going only by “*robbing Peter to pay*

Paul”. Negative publicity created a rush of investors to get their money back, which was not longer there and the scheme collapsed.

This *pyramid* swindle remained a trusted *modus operandi* of investment fraud that exploits individual greed and gullibility. Examples of multi-million cases abound: the most recent case was the Bernard Madoff investment scheme with estimated damages of \$ 64,8 billion in which 4.800 clients were involved of which half were victimised. He started with the direct personal “trust me” approach within his Jewish social circle, which was soon taken over by (international) banks acting on his behalf once his reputation was established. But Madoff’s management firm did not invest client’s money; instead he borrowed money to pay dividends. All went well until the 2008 financial crisis which prompted investors to want to retrieve their money, which Madoff no longer had. Madoff was sentenced to 150 years imprisonment. Naturally, this was not the only mega Ponzi scheme which came to the surface during the credit crisis: Allan Stanford was charged for defrauding his investors for an amount of \$ 8 billion for which he was sentenced to 110 years.⁵

There are other forms of investment fraud such as ‘boiler room’ schemes in which investors are pressured by aggressive telephonic sellers to buy worthless stocks. This fraud may be accompanied by ‘pumping and dumping’, deceptively inflating the market price of small securities (penny stocks) or objects of pretended value such as gems, which are then dumped at the height of the price curve (Van Duyne, 1990; 1995). At the time of the research project there were no convictions of boiler room scams in the Netherlands, though the Financial Market Authority issued a warning against seven active criminal operators in this field.⁶

b. bankruptcy fraud

Another form of commercial deceit is through bankruptcy fraud: accumulating debts and going bankrupt after the firm’s assets have been appropriated or otherwise brought out of the reach of the Receiver. Fraudsters can also order goods and services in the name of their companies without

⁵ “Warning signs showed Stanford Empire was built on ‘threats and innuendos’”. *The Guardian*, February 2, 2009; retrieved 5-10-2015. “Stanford lure clients with ‘no worry’ promise and rates”. *Bloomberg*, February 19, 2009. (accessed 15 September 2015)

⁶ Fraudehelpdesk.nl, Jan. 2014.

paying for those orders. To that end they may establish or take over legal entities. Of course, in essence there is also violation of trust, but the operational principle is not “*trust me*” but ‘timeliness’: taking over insolvent firms, stripping them in a timely manner and getting away with the proceeds with a “*get me if you can*” (behind the straw man) hurled over their shoulder. In the English literature this is called ‘long firm fraud’ (Levi, 2008).

The principle of “*get me*” implies more than just running off with the money. To be successful one needs a front firm headed by a straw man as a stage screen for hiding one’s identity; preferably more than one front firm and straw man are used. Therefore, this type of fraud is also the narrative of the universal straw man, often addicted and in need of some odd job without a real understanding of being abused for acting as ‘last director’ of the front firm, a legal person, usually with limited liability (Ltd). The construction of front firms can sometimes reach ‘artistically’ complicated proportions creating difficulties for the investigator to find the assets as well as the ultimate responsible person (Van Duyne, 1995; 1997; Kabki *et al.* 2011).

Bankruptcy fraud is a technically suitable *modus operandi* for a range of underlying criminal offences, such as buying and selling without paying or delivering, VAT and illegal labour fraud, obtaining loans without repayment or ‘sanitising’ businesses by transferring debts (also staff) to a new firm that is destined to go bankrupt (Hilverda, 2012; Knegt *et al.*, 2005).

Of all these potential bankruptcy fraud schemes the research focussed on cases in which private firms had been victimised and in which at least two legal persons have been (ab)used in the commission of the crime.

Methodology

In this research project 15 cases of investment fraud and 15 cases of bankruptcy fraud have been studied. In all cases the principal fraudster had been prosecuted, found guilty and sentenced. Though the criminal files (investigation, indictment and verdict) contained the core information about the fraudsters and their *modus operandi*, other sources of information have also been consulted. In the first place, in all these cases at least one detective and in five cases two detectives have been interviewed. In addi-

tion, in seven cases the public prosecutor was interviewed as well. If they were available, also the reports of the Receivers, the seven probation reports or behavioural expert reports (psychologist or psychiatrist) have been studied. Also the data of the Judicial Documentation Service were available: these contain records of previous decisions of Prosecution Service and Courts (settlements out of court by prosecutors and Court decisions). As required by the Prosecution Service, the selected cases were all anonymised. This requirement had an effect on the presentation of data specific to the cases, such as age and precise amounts of damage which had to be rounded off such that they could not be attributed to recognisable cases.⁷

The selection of fraud cases was carried out by means of a snowball sampling method. This was due to the circumstance that sampling by means of catchwords or Criminal Code (CC) articles is not possible: in the Dutch CC fraud is not a legal term (Mevis and Sackers, 2000) and consequently does not exist in the databases. These are based on the first four charges and the prosecution service entry number, per person and not per case. The charges are ordered according to the maximum penalty imposed.

The size of the samples allowed no more than descriptive statistics of the main variables, such as: personal characteristics (*e.g.* age, sex, criminal record), number of perpetrators, duration of the scheme, damage/profits, number of victims, (un)knowingly involved persons or the spending and saving of the crime-monies. This variable list was not only used for quantitative overviews but also for a qualitative analysis. In total a list 42 variables was designed. This variable list was discussed in three sessions with detectives (fiscal and general police) and public prosecution to see whether they recognised the relevance of the variable list and to elicit their suggestions or additions.

The fraud in the selected cases had to be carried out in a professionally commercial setting (no sweet talk cheating of old lonely grandmas). Another selection condition was that the fraudster was convicted in each case, at least in the first instance.

⁷ The Public Prosecution Service got a preview of the dissertation to check whether the anonymity requirement was sufficiently fulfilled.

Findings

In this section the outcome of the analysis of the data of the two types of fraud is presented. We will first present the investment fraud findings followed by the outcomes of the analysis of the bankruptcy fraud data.

1. Investment fraud

The 15 selected investment cases do not constitute an homogeneous set under the shared characteristic of just selling ‘dream gold’: expectations of profits which did not come true. To become familiar with the analysed cases and to understand their context they are briefly presented in the following section.

Short description of the cases⁸

Mistress was a financial services provider who ‘borrowed’ money from her friends, customers and strangers to ‘invest’ against an annual return of 8 to 16%. To silence some of her victims she provided a job or sex; therefore, she is named *Mistress*.

Together with some friends, *Keeper* had offered investments in real estate with an annual promised return of 12,8%. A significant portion of the money is not recovered and is believed to be kept abroad; therefore, the case name *Keeper*.

Poet who justified his actions in poetical terms and invested in real estate as director of a firm for a group of friends and acquaintances, with a promised return of 100%.

Aimer was a financial intermediary aiding his clients to get a higher mortgage which he borrowed back promising returns of 20 to 120%. He set himself high financial aims written down on a secret note: therefore the case name *Aimer*.

⁸ In order to underwrite the anonymity of the involved natural and legal entities, the selected cases are presented such that they cannot be converted to the historically involved persons. To that end all persons are given aliases, some data are rounded off, such as the age of the fraudsters, the amount of the fraud, number of victims and imposed punishments.

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Dreamer. Under the guise of investing in real estate the *Dreamer* lured some investors with a promised return of 8% per annum. His dream of a great investment scheme was shattered by early intervention of the authorities.

Ethicist recruited his victims through intermediaries and through brochures offering investment products with annual returns of 8 to 12%. As he described his proposed investments as ecological and ethical: therefore *Ethicist*.

Fixer, a financial intermediary, 'borrowed' money from his clients to 'invest' for them with promised returns 16 to 100% per year. He pretended to fix compensation for the damage, deserving the case name *Fixer*.

Gold Digger, financial services provider, invested on behalf of its customers, friends and family promising a return between 48 and 180% per year. He was thought to have found the goose laying golden eggs; he is called *Gold Digger*.

Gentleman, the manager of a financial consulting firm, enjoyed much respect from those who knew him. He had promised returns of 7 to 240% per year. Because of his gentlemanly conduct, the case is named *Gentleman*.

The Pair – childhood friends Tom and Bas – offered investments in real estate (return of 12,5%). They featured earlier in *the Keeper* and planned their own scheme. They were obstructed by the authorities at an early stage.

The Director was a financial intermediary and offered his customers as well as strangers investment products with promised returns from 7 to 14% per year.

Gourmand, account manager at a financial consulting firm, approached clients to manage their assets without a fixed rate of return. The proceeds were mainly spent on his taste for food and drink. Therefore the name, *Gourmand*.

Junky recruited victims for sustainable investments and promised returns of between 12 and 24%. Beside strangers there were also some relatives

among his victims. A large part of the loot was spent on drugs: he was a swindling *Junky*.

Landlord, no job, but started ‘investing’ for his victims who were recruited through brochures and ads promising a return of 30%. He spent much of the proceeds on enjoying the life as a *Landlord* in a castle in France.

Widow: husband and wife started their scheme by ‘borrowed’ money from their victims for investment with 50 to 200% profit per year. When the husband died the *Widow* continues with the business.

The dream gold products

The ‘dream gold’ has to be presented as tempting investment products which ‘guaranteed’ the promised returns.

Table 1
Offered investment products

Investment product	Frequency	Duration in months
Financial product	2	32,5
Real estate	3	33
General investment	4	33,4
Financial products + general investment	4	40,5
Financial products + real estate	1	67
Real estate + general investment	1	23
Total	15	37
Mean = € 13,8 million Median = € 5 million		

The average damage caused in these investment fraud cases was € 13,8 million. Investment fraudsters offered their victims ‘investments’ in a variety of financial and non-financial product, but rarely made any investment. As can be observed, ‘general investment’ and ‘financial products’, often combined or in combination with real estate, were the usual financial products being offered. The average duration of the fraud scheme was about three years with two outliers at the high and low end: 70 and 6 months respectively, both concerning ‘general investment’.

a. Perpetrators and victims

1. Perpetrators

Given the circumstance that the set of selected cases are not a representative sample from the hypothetical population of fraudsters, we are hesitant to extrapolate the characteristics of the main offenders as summarised in Table 2.

Table 2
Age, marital status and profession of principal fraudster

Average age	40 years
Marital status	
Married	6
Single	4
Divorced	2
Partner	3
Profession	
Financial service/intermediary	5
Financial advisor/salesman	3
Entrepreneur	3
Unknown/other	4

On average these investment fraud schemes lasted about 37 months, with a wide range from between 6 and 70 months. The fraudsters in our sample were no youngsters having an average age of 40 years. This is not a surprising finding. These were experienced professionals with extensive networks who were in two-third of the cases (self)-employed within the financial service industry. Two third were also married or had a partner. Two of the leading fraudsters in the scheme were (single) women who operated respectively as an investment sales woman and as a financial consultant.

Being a professional or recognised as specialist of a particular investment sector is an important asset for designing and executing a scheme: for luring new investment and instilling trust for example by showing off the technical skills required for dealing with real estate or ‘green’ products. Eight fraudsters were employed in the financial industry and three of them were intermediaries or consultants.⁹ Apparently no check by the regulator

⁹ In the new ‘regulation on financial intermediaries’ effective since April 2004, there are more stringent requirements regarding clearance for providing finan-

on being 'fit and proper'. Two other fraudsters were businessmen and one was even director of a large corporation. Being already employed in the sector implied access to databases for addressing potential clients/victims. That came down to fraudulently moonlighting with the employers' clients or abusing their own regular clients' data.

The *criminal history* of the fraudsters was diverse: four of them had no criminal records at all and in the remaining cases three fraudsters had no records for fraud, but antecedents of other non-property crime (traffic and weapons). Given the small absolute numbers and the diversity of the criminal records no other generalisation can be made but that the fraudsters without any criminal record were all older than 40 years and were, with one exception, established financial intermediaries or consultants. This variation concerning these variables also points at a heterogeneity of the fraudster population and has earlier been confirmed by Weisburd and Waring, (2001).

Investment fraud schemes, initiating and keeping them running requires an organisation but not always with co-offenders: in four cases the fraudster operated without fellow fraudsters. As advisers, account managers, intermediaries or professionals, they worked alone or with the support of one or two unwitting aides for various tasks. Some fraudsters had used their friends, families or employees in order to establish or to execute their fraudulent acts. The fraudulent intentions of the fraudsters were not always known to these 'abused' actors, who acted for example as acting as straw men, such as by putting a legal person in their name.

In the other eleven cases 24 co-offenders were involved or employed. Befriended fellow-fraudsters were more often employed than family: in five cases 13 friends were involved against three relatives (two spouses for laundering and one nephew for recruiting new investors). In one case (*Keeper*) the principal fraudster involved seven old and new friends, all in the know, to perform specific tasks, such as putting a legal person in their name, designing brochures and websites or channelling money abroad (to Turkey). Two of these friends decided to leave this enterprise and to establish a swindle firm of their own, supported by a German friend who did the PR and internet tasks on behalf of the firm. Eight co-offenders

cial products to consumers. However this no guarantee for preventing intermediaries committing fraud.

had a more formal relationship with the principal fraudsters: either as contractual business associates or as employers, both well paid.

2. Unwittingly involved persons

The fraudsters made use of a broad range of persons who were not aware of the real nature of the enterprise. 31 persons were involved in the running of the schemes without realising (or against whom there was not sufficient evidence) that they performed various functions in a scam. Fifteen of them were engaged in selling investment products or in recruiting new clients. The accounting was done by six persons who failed to get suspicious about the underlying fraud. Unwitting others were also used to put legal persons in their name, for laundering purposes or to hide the identity of the principal fraudster. Either way or whatever their function, they felt misled and abused, in particular when they were relatives. In four cases the wife, children and sisters of the fraudsters were used (and paid) for the execution of a multitude of tasks, such as selling and recruitment. They were seen as ‘credible ambassadors’.

3. Legal persons

What was the involvement of legal persons, the legal instrument of fraudsters to begin with? According to the Dutch Criminal Code legal persons have a criminal liability for all law breaking and can be prosecuted and punished as any other (natural) person, except in the case of imprisonment. However, legal persons are not very often registered as suspects and even less frequently prosecuted once the suspected natural person is prosecuted and sentenced. Yet, for other purposes it can be practical to register legal persons involved as suspects. This happened in seven cases though legal persons have been used in all cases: establishing a legal person is the first step to initiating a fraud scheme as something official – a company – must be demonstrated. Once the fraudulent enterprise has taken off and money is flowing in, legal (foreign) persons are used for laundering purposes or to dodge criminal liability (six times). Legal persons were also used to create a formal but phoney employment in order to pretend regular employment and to justify payments as ‘white’ salaries, a not uncommon form of laundering. Also the financial advisors, being in normal (non-criminal) employment of a licit financial service firm, used legal persons as a front for their fraudulent moonlighting.

4. Victims

A quantitative presentation of the victims of fraud has many *caveats* as many victims preferred not to become identified: they may not (want to) believe they have been defrauded or remain silent for reasons of self-respect ('how could I have been so stupid'); they do not want to report on the fraudster who proved to be a close relative or friend; the invested money was not reported to the tax administration and the victim feared a retrospective tax collection. Therefore, the number of *identified* victims of about 5.000 should be considered as a minimum. The average number of the victims per fraud case is about 360.

Naturally anybody willing to believe the promises of the fraudster could be victimised: from their own spouse to unknown customers. Indeed, we find this whole range, but most of the victims were unknown to the fraudsters and in seven cases the fraudsters' targets consisted *only* of clients with whom he had no personal connection. This leaves eight cases in which the fraudster victimised relatives, friends and known customers alike. This looks like reckless conduct, however, it is partly a consequence of the reputation of a successful investor, which is the precondition of attracting new investors and new money to maintain the ponzi scheme. Therefore, relatives (four cases) and friends (five cases) who learned about these 'fabulous opportunities' addressed the fraudster to invest their capital on similar terms. The fraudster could hardly refuse such a request lest that would expose him or otherwise raise suspicions. Also, when the scheme was about to falter and the fraudsters needed new money (in one case to maintain his cocaine addiction), they displayed no scruples and turned to close relatives, friends and in one case his congregation (of '*The Right Path*') for investment deposits. One fraudster showed much duplicity in first lavishing his lover with expensive presents while subsequently taking her savings 'for investment'.

Apart from these risky circumstances, using relatives was also a cheap and safe method by which to recruit new investors. It was also the case that fraudsters who were already intermediaries or employed as consultants thought it safe to victimise their customers: they already had a relationship of trust and it was just one step to address their customers with an 'extra offer' instead of their usual fund arrangement. This happened in six cases. In three of them the fraudster did not target unknown new customers but resorted instead to relatives as investors.

b. *modus operandi*

Naturally, the first *modus operandi* is inspiring trust without which the scheme cannot start. Success inspires trust, so they ‘are’ successful businessmen and the showing-off of material wealth is intended to underline that image. This was reinforced by a regular return of the deposited money or interest (11 cases).

Approaching potential victims while maintaining trust has many modalities: it can be like entering a job interview, in which the first impression counts; or an expensive advertisement in newspapers; a personal persuasion of an old ‘friend’ or slick canvassing during social events. Table 3 presents the identified approaches.

Table 3
Modes of approaching victims

Way of approaching	Frequency of mode of approach*
Personal	10
Brochure	8
Intermediary	6
Customer	5
Ads	4
Call centre	4
Information meetings	3
Other	3

* More than one approach could be used

The ways of approaching victims varied greatly: two fraudsters used only one *modus*, the personal approach, and one fraudster had a repertoire of five modes of addressing victims. Naturally consultants approaching their own clients for some ‘extra investment’ overlapped with the personal approach. A social approach could consist of organising cosy information ‘cheese and wine’ evenings to introduce financial products to potential investors and convince doubters. This required personal skill in direct confidence tricking. A semi-personal approach was selling product by means of *unwitting* intermediaries. More organisational effort was observed in public campaigns: advertisements, mailing brochures (one case 30.000), designing an own business website and engaging (unwitting) call-centres. These were approaches ‘at distance’ which occurred very often: in seven cases the victims were unknown persons. This modifies the general image of the slick personal confidence trickster or the charismatic personality

such as in the *Gentleman* case in which a most respectable businessman seduced more than 300 unwitting victims.

The comparison of the *modus* of approach with findings on other variables, such as duration of the schemes and financial damages, or age of the fraudster revealed no statistically significant correlations. This corresponds with the flexible and tailor-made way of working of the fraudsters which is reflected in the broad range of promised returns: between 7 and 240%, frequently adapted to what the client would like to believe. The highest returns were highly unrealistic 200% and 240%. But contrary to popular opinion fraudsters did not always merely appeal to blind greed. Depending on the customer or targeted victim or their own insights, prospects of the usual great gains were scaled down to a percentage which did not deviate too conspicuously from normal interest rates on saving deposits. In six cases the return of the investment ranged between 7-8% to 14-16%. One fraudster discussed with his victims some 'realistic' options: a 7% return and deposit both guaranteed or 14%, but no guarantee. Most victims chose for the 7% 'guaranteed'. Some fraudsters used a subtle psychology and one even pretended to dissuade potential clients from investing: "*If you doubt, you must not participate!*" which was the last small push to step over the doubt and invest, as anticipated.

c. The loot: spending, spilling and hoarding

While it is obvious that fraudsters are profit driven, it is not generally the case that they just collect the loot and disappear or keep it all hidden. Fraudsters engage in long term interactions with their clients. In our sample such interactions could last up to five or six years and led to a visible social life of fraudsters amongst their victims. While doing so, they lived and spent money at the expense of their victims. How did they do that without raising suspicions? One can differentiate between visible and hidden spending.

Naturally there were many ways to spend the money. In seven cases the income from the fraud scheme was devoted to keeping their own (licit) firm going and/or to use it as a vehicle for money laundering (four cases). Keeping the firm afloat is also required for maintaining confidence, as that would erode as soon as rumours about the bad state of the firm emerged. Overlapping with this category, in eleven cases, is that part of the spending on clients was an element of the pyramid construction: first

investors have to be paid their promised return (or just enough) to keep them on board *and* present them as tokens of success. Some of them were ‘privileged’ first investors, mainly relatives, who received their deposits plus interest back.

Other forms of spending also have an instrumental function, such as in maintaining the previously mentioned visibly luxurious lifestyle to create trust and social status. Such status is also created by *social spending* to enhance social respectability and inspire broader confidence. This was done by four of the fraudsters who spent money on the local sports clubs: it furthered their reputation as a *bona fide* fund manager by demonstrating that they were not the usual greedy business men and genuinely cared for their community. One of them, the *Aimer*, spent money helping the victims of flooding in his home country (in South America) which was appreciated by investors coming from that region. It strengthened their trust in the fraudster who ‘managed’ their money for four years and who had saved enough to spend some (their) money on a humanitarian action. As ‘being social’ is not only functional, but also pleasing, *Gourmand*, *Gold Digger*, the *Aimer* and the *Gentleman* spent much money on social events in which they indulged also personally: wining and dining, wine-taste evenings and luxurious parties, that were also used to lure new investors.

Naturally, the fraudsters also lived their ‘out-of-sight’ financial life, hidden to the victims as well as the authorities, though the assets concerned were anything but hidden: a little castle in France, a luxurious apartment in Luxembourg, expensive cars in Switzerland and Belgium.

While the assets and expenses could be identified, together with lifestyle spending and paying off investors for revenue/damage assessment, there were still eight cases with (hidden) *surplus* profits with four cases of money laundering activities. Three fraudsters laundered the proceeds within their own firms: the *Ethicist*, the *Director* and *The Mistress*. Two other cases with surplus proceeds, the *Aimer* and gold *Digger*, used straw men for laundering purposes. The *Dreamer* and the *Fixer* cases showed no discernible surpluses, but detectives were certain they used straw men for laundering purposes. In most cases there were no detailed and reliable data available about the amounts of money that has been transferred abroad or in other ways has been laundered. In many cases a combination of money laundering methods were used: *e.g.* the (ab)use of legal entities combined with straw men.

Surveying the findings we observe much diversity which makes it difficult to come to general conclusions, particularly concerning the perpetrators. While pyramid fraud schemes followed their general pattern of 'rise and fall', the actors and actual procedures were highly idiosyncratic: confidence building, selective dividend payment, hitches in further recruiting leading to inevitable disclosure are only general phases. Then there are the perpetrators, victims, the *modus operandi* and management styles. Many perpetrators were charming confidence tricksters or calculating manipulators, but a sizeable part did not know their victims and approached them only 'at distance': by means of advertisements, brochures and call centres. At least they had one common trait: they spared nobody, whether they were unknown clients, relatives, friends, members of the same congregation or their own partners.

2. Bankruptcy fraud

For the subproject of bankruptcy fraud also an equal number of cases have been selected: 15. A short description is presented in the next section in order to become familiar with the cases and to understand their context of commission.

Short description of cases

Architect traded in legal entities in financial difficulties. He took them over and moved them to a foreign address, then let them go bankrupt: creditors were left empty-handed. In his extensive fraud constructions he looked like an *Architect*.

Buyer has put legal entities in the name of straw men and ordered goods without paying. After selling them he let the firms go bankrupt. In essence the fraudster was acted in the name of 'doomed' companies: therefore named *Buyer*.

Florist was an entrepreneur taking over insolvent firms. He sold the assets of the companies and ordered goods without paying. When fully stripped, he let them go bankrupt. *Florist* used the proceeds to purchase a flower shop for his daughter.

Investment and long firm fraud – Local and cross-border

Builder was continuously involved in fraud. With three friends he acquired legal entities, cashed their assets, ordered goods without payment, with bankruptcy at the end. Trading mainly in construction materials, he is referred to as *Builder*.

Calculator acted as ‘business-doctor’ and broker in legal entities. He ‘helped’ firms get rid of their debts by bankruptcy leaving creditors empty handed. He showed a sharp and shrewd mind which deserved the name *Calculator*.

Racer was a garage owner trading cars as well as mediating for criminal clients who could not lease at regular firms. Leased cars were sold instead of returned, his front firm went bankrupt but he continued with the next firm as the new front.

Greengrocer operated with six close relatives. He took over firms or established new ones with straw men. He ordered fruits and vegetables across Europe without paying and sold them in Germany. This case is called *Greengrocer*.

Shepherd called himself a broker in companies, but acted mainly as a straw man for insolvent firms. He took over these companies and let them go bankrupt. The name *Shepherd?*: he started his criminal career by stealing cattle.

Mercenary, a straw man, took over insolvent companies on command of other fraudsters to let them go bankrupt victimising the unpaid creditors. He was also a suspect in the case *Florist*. Given his role his case is nicknamed *Mercenary*.

Womanizer bought a variety of items and bought or leased cars through his companies without paying. He also made purchases on behalf of other unwitting companies. Because of his womanizing conduct the case is called *Womanizer*.

Camper was a failed entrepreneur who drifted into fraud. He used his companies for VAT and long firm fraud in addition to mortgage, credit card and lease fraud. The goods and proceeds were intended for a camping in France.

The *Captain* owned a transport company that acted for diverse legal (Internet) shops. His operations proved to be a string of ongoing em-

bezzlements of goods and payments. As *Captain* the fraudster spent much time on his boat.

Jurist was an insolvency consultant who consulted companies in financial difficulties. He harmed creditors, tax authorities and the government organisations by fraudulently disputing their claims. He pretended to be *jurist*: the case name.

The *Cleaner* acted as a straw man for companies with cash flow problems, which were taken to go bankrupt, leaving unpaid creditors. His task was cleaning up the paper work by making it disappear. Therefore the case name *Cleaner*.

Voyager owned a travel agency with two branches. In a short time he sold cheap trips and vacations both through his or other travel agency. After having sold thousands of travels, he took the money and diverted it to other countries.

a. Types of defrauding

As is to be expected, the set of cases contains much variety, with three common characteristics.

In the first place, many fraudsters operated as advisors or consultants to desperate directors of heavily indebted firms who were eager to get rid of their corporate burden. So they were most eager to sell their firms, even if they had to pay for the transaction.

In the second place, once in possession of a company, the fraudulent buyers stripped it bare of any assets (goods, savings and claims). Subsequently, they burdened the firms with new debts by placing as many orders as possible with the intention not to pay. The acquired goods were quickly sold and with so many debts the firms went bankrupt. Naturally, the creditors can whistle for their money. In legal terms: the perpetrators commit fraudulent bankruptcy and *long firm fraud* (Levi, 2008), combined with forgery of the accountancy including keeping the (cash) transactions out of the books or destroying all paper work.

In the third place, fraudsters also operated as *company traders*, though such a trading may be little more than finding a straw man as new owner, plundering the company and subsequently leading it to bankruptcy.

Lastly, some of the fraudster acted in addition as *mala fide* ‘company doctors’, being well paid for lending technical support in dodging the claims of creditors, in particular the tax service.

Table 4
Way of defrauding and damage or proceeds

Types of defrauding	Frequency	Damage or proceeds in mill □ Median value
Take-over of firms	3	€ 2
Take-over + other fraud	4	€ 3,4
Asset stripping	3	€ 2,3
Asset stripping + other fraud	2	€ 4
Other	3	€ 0,4
Total	15	∑ estimated damage in 7 cases: € 12,5 ∑ estimated profits in 8 cases: €16

Because the same firm can be used for so many fraudulent activities before it is ‘buried’, the frequencies of the ways of defrauding exceeds the number of cases. In four cases the take-over was followed by trading. *Asset stripping* was in half of the cases carried out separately or in combination with other offences such as documentary forgery. It was mainly carried out by or with the help of straw men. Contrary to usual findings in other *modus operandi*, for the *trading* of legal persons no straw men were identified.

The deployment of *straw men* in the scheme forms one of the difficulties for the assessment of criminal profits. Usually these subordinate offenders get only a fraction of the profits. When the leading fraudster succeeds in hiding his identity while veiling the flows of money by the same or other straw men, one can only try to add up the damage in terms of unpaid bills and embezzled assets. Another impediment to the assessment of the damage as well as the profits is the varied willingness of victims to report. A further limiting circumstance is the decision of the public prosecution and/or the detective squad to limit the investigation to a ‘slice’ out of the whole criminal operation. Older or vaguer indications of fraud are left outside the perimeter of the investigation. And finally, many transactions are without paper evidence. The following example illustrates these impediments.

The fraudsters in the cases of the *Architect* and the *Shepherd* operated for more than six years, but the fraud squad and prosecutor decided to limit the period of investigation to 67 months. The *Architect* was involved in take-overs and bankruptcy frauds of around 400 cases; The *Shepherd* figured in 74 corporations. The take-overs were legally carried out by notaries for a symbolic sum of one Euro while a substantial sum was paid under the counter, not by the buyer (the fraudster), but by the seller for being relieved of his burden. Depending on the debts and risks of the traded firm the price ranged from € 500 to € 25.000, with the *Architect* buying firms in the higher price range. In addition, the *Architect* also plundered the firms which were then traded to other entrepreneurs. With these data the estimations must remain within broad margins, here between two and five million Euros.

Two fraudsters made use of unwitting persons by recording firms in their name in the Registry of Companies and subsequently ordering goods also in their names, until complaints of non-payments flowed in. Three fraudsters used empty or sleeping firms having no history of (unpaid) debts and therefore considered credit worthy. In these cases credit insurance companies were more willing to insure transactions which set insured suppliers at rest against potential default of payment. Two ‘company doctors’, one of them also acting as trader, walked a tightrope of (il)legality advising desperate entrepreneurs how to dodge creditors and the tax service in particular.

b. Perpetrators and victims

1. Perpetrators

The perpetrators in the sample do not represent the ‘fraudster type’, if such exists. They are slightly older (average 42 years) than the investment fraudsters and more often divorced or single. Three of the divorced fraudsters still lived with their ‘ex’: it was an arrangement for putting the proceeds in the name of the ‘ex’. Only three fraudsters were married and four lived with a partner. All were male.

Table 5
Age, marital status and profession of principal fraudster

Average age	42
Marital status	
Married	3
Single	3
Divorced	5
Partner	4
Profession	
Company trader & ‘doctor’	2
Insolvency advisor	1
Entrepreneur	7
None	5

There was no correlation between the role of offenders in the cases and their marital state or age. The most common professional occupation is that of ‘entrepreneur’, a very unspecified concept. Three of the entrepreneurs acted as straw man as well as ‘principal’ fraudster. Three of the offenders of whom no profession is mentioned acted as straw man only.

One can differentiate between principal fraudsters, straw men and a mixture of the two: fraudsters who functioned for a while as a straw man and straw men who evolved to the position of the ‘intellectual perpetrator’. The detectives described three of the fraudsters as smart, self-determined and eloquent, but also vain enough to display their knowledge of corporate techniques and (their own) constructions during the interviews, against the better advice of their lawyers.

Contrasting with these prominent fraudsters were the straw men on whom the sun never shined. They were abused and pressurised to put the firms in their names. Most did not understand the implications of their conduct, got a pittance for their aid and sometimes had not even a place to stay. One of them ended on a plank at the Salvation Army night shelter.

As far as their *criminal history* is concerned, all fraudsters had criminal records, and all had at least one time been convicted. In two cases this was *not* for fraud. The cases showed a broad range of antecedents as well as convictions. One of the elderly straw men had the highest antecedent frequency for fraud: 26. The popular notion that fraudsters are less prone to violence is not confirmed by this sample: nine fraudster had 33 police records for violence, three of them also for the possession of weapons. One fraudster had even ten antecedents for violence, but not for weapons.

In addition, *criminal traffic offences* (driving and drinking, serious speeding and driving during disqualification) was after fraud the most prevalent category of antecedents (42). With 37 antecedents *theft* was the third largest category. It was spread over 10 fraudsters. Seven fraudsters had a high frequency of antecedents ($\geq 10 - 32$), also including theft and violence. Six fraudsters, most in the lower antecedent frequency range, had drug antecedents (< 10).

When we look at *co-offenders* we note that most bankruptcy fraudsters did not operate alone: in twelve cases more offenders were involved, usually friends (24 in nine cases). In four cases relatives were also involved. The *Greengrocer* employed five relatives, direct family such as his brother, father and son as well as more distant relatives. Among others, these relatives had the function of putting companies in their name. Though using relatives for identity hiding is a risky method, as an organisation the *Greengrocer* and his family organisation were successful: their criminal revenues were in the highest category of € 3 – 5 million. In three other cases the fraudsters involved their wives, also to put companies in their name, to avoid liability as well as to launder money.

Straw men played an important role in the facilitation of the fraudulent operations. As mentioned before, they played a role in the disguise of the identity of the fraudsters: the firm was recorded in the Company Registry in their name and they signed the orders and invoices as lead manager or director. Another important role was the channelling the proceeds out of reach of the creditors and the authorities. In seven cases these functions were combined. In four cases the straw man was only used for laundering purposes which was effective to the extent that only the *damage* could be assessed: two times € 1,5 and two times € 4 million (interval midpoint). These straw men themselves remained as poor as ever: the *Shepherd*, lost his social allowance and ended at the Salvation Army. The other straw man, the *Cleaner*, hardly understood the implication of his actions, but needed the money for living.

Not all straw men remained at the bottom of the ‘fraud hierarchy’. A few learned the tricks and evolved into independent fraudsters themselves: four cases have, therefore, been recorded as ‘fraudster/straw men’. Their ambiguous status does not correlate with the level of damage or proceeds: two were in the highest financial classification of € 2 – 4,5 million and the other two at the lowest estimate range of € 0,4 and 1,5 million profits, but

were still relatively well off. As we have will see below, also relatives could fulfil function of straw men, but for a better reward.

In nine cases the principal fraudsters involved together 24 friends, who mainly functioned in the *Calculator* (seven friends) and the *Florist* (seven friends). Together with the *Mercenary* and the *Builder* they were mutually connected and seemed to facilitate each other with information about firms ripe for take-over, straw men for safe bankruptcies or to channel the appropriated goods to the market, which happened also in the earlier mentioned *Greengrocer*.

There were also suspicious interactions with the wider environment of shady traders and bankruptcy mongers, who were mentioned as ‘known to the police’ (that means no further investigation). They played a role in the mutual availability of legal persons and straw men. In this network the intermediaries, mediating legal persons for entrepreneurs also figured, such as the *Architect*, one of the highest earning fraudsters (€ 3 – 5 million), who was continuously looking for companies. One of the suspicious background figures, a certain *Walter*, regularly surfaced as a provider of straw men and empty firms, who was himself sometimes also in need of a straw man for a bankrupted exit of one of his firms. This could be observed in five cases, in which the independent fraudsters also accepted the role as straw man. Functions proved to be fluent.

2. Unwittingly involved persons

There were ten unwitting persons involved in the fraud schemes. In four cases these were the own partners or wife, abused for putting legal persons in their name. The *Camper* deceived successively his first and his second wife. The latter gave him access to all bank details and internet banking. “*Whom you love you have to trust*” was her explanation, after which she ended up in therapy and on sick pay. The homeless, the *Builder* appeared to be a perfect target for abuse to cover the identity or the profits of his principals.

Others involved unwitting persons were (temporary) employers, buyers in good faith of embezzled assets and indebted entrepreneurs turning to the fraudsters acting as ‘company doctor’ not realising that the doctor crossed the line of legality.

3. Legal persons

The use of legal persons in all these fraud schemes is obvious: legal persons are for fraudsters a kind of ‘get-away-car’ (Van Koningsveld, 2015). Nevertheless and despite the fact that according to Dutch law legal persons are criminally liable, they were rarely recorded as suspects themselves. Using legal persons enabled the start of a fraudulent operation: the fraudster needs a legal person from the beginning to the end when (financial) traces have to be covered and the proceeds moved out of the reach of the law or creditors. Interestingly this did not happen in all cases: in two of them no legal persons but a straw man was used for laundering the profits. In three cases legal persons together with straw men were used to hide the identity of the principal fraudster. Perhaps the police could not penetrate through this protective shield and detect the financial traces of laundering.

Foreign legal persons have been used in three cases: the *Greengrocer*, the *Voyager* and the *Architect*. These were not off-shore companies to channel the proceeds through far-away jurisdictions. The *Architect* used Belgian, German and Luxembourg based companies under which his other firms were positioned; the *Greengrocer* used a German legal persons for selling (unpaid) goods in Germany and the *Voyager* needed a Turkish legal person for managing his real estate in Turkey.

4. The victims

It is difficult to determine the extent of damage or the number of victims: also with this type of fraud some victims refused to admit that they have been deceived. One bank account manager refused to admit to the police investigators that the uncovered cheques cashed by the *Greengrocer* (total value € 160.000) were part of a criminal scheme: this was not fraud but a ‘usual credit risk’ of banks. Consequently the bank refused to report the crime. This was also the case with other credit providers: in seven cases at least € 1.071.000 of credit was provided and lost.

Many victims of buying-without-paying may also have just written off the ‘bad debtors’. This is a hindrance in proving *long firm fraud*: one or two unpaid sellers are not sufficient evidence for this type of offence. Collecting evidence takes time during which the fraudsters can continue to buy and sell (m)any goods. The fraudsters, such as the *Womaniser* used payment cards of petrol stations; the *Racer*, rented and never brought back cars, or the *Florist* ordered the equipment and interior of his daughter’s shop (also

flowers). These are all cases with multiple victims of which it was uncertain whether they reported to the police.

Apart from victimised sellers of goods and services there are the existing creditors of the firms that were originally to be jettisoned. Their claims cannot be met as the firm's assets have been embezzled and the receiver finds only an empty purse. In addition the tax service was systematically victimised as the firms had an existing tax debt while for the further transactions with the misappropriated assets no VAT or corporate tax was paid.

With the exception of the *Voyager* and the *Racer*, cases there were only businesses victimised. The *Voyager* sold travel holidays but only pocketed the money without bringing its customers to the pretended holiday resort, and in so doing duping about 4,500 travellers. However, these victims were compensated by the Travel Insurance Fund which reduced the harm to a non-monetary disappointment of a failed trip. The clients of the *Racer* who leased cars by his mediation were also victimised.

c. *Modus operandi*

Though the adage still is that “opportunity creates the thief”, the intellectual thief has to create his own opportunities or look for it actively in the first place. The fraudsters in our sample did so with verve and skill. Those who acted as insolvency advisors, ‘doctors’ or in general as ‘problem solvers’ for indebted companies, addressed their clients directly or through ads or by fax. These clients were not victims, but entrepreneurs whose confidence was easily inspired as they were looking for a solution to their financial problems. This was successfully taken advantage of by the *Jurist* and the *Calculator*. In their opinion it was not criminal to sell their company for a symbolic price of one Euro to a ‘trusted businessman’ whose profession was to refurbish the firm, even if handsome sums were paid under the counter.

Once the ‘trusted businessman’ was in the possession of a legal person the game of asset stripping, selling the empty firm and/or committing long firm fraud with bankruptcy as a closure, could run its course. From the beginning the basic requirement is the *identity hiding*. Hence, a firm that has been taken over changes its name and/or moves to another address. Simply moving to a neighbouring country can be enough to discourage creditors who must choose between being resigned to their loss or incurring costs in the recovery of their claims. In addition, the renamed firm

can be put in the name of a straw man as part of their task of masking the principal, as was done by the *Cleaner*, the *Builder*, the *Florist* and the *Merch-nary*.

For further commercial activities personal contact can be unavoidable which entails: heeding the ‘trust factor’. Smooth talk helps, but not always: the *Captain* had to pay his first orders in a timely fashion before he could make a ‘good deal’, which meant a large order on credit. Sending order faxes (five cases) in the approaching phase of targeted victims was also used: it presented the company and/or the order ‘on paper’ as a piece of ‘evidence’. In three cases it was complemented with telephonic conversation.

Depending on the commodity market, professional conduct and procedures can be essential for creating confidence: The *Greengrocer* hired (unwitting) Spanish and French speaking staff to place telephonic orders. The company traders had the transfers of the legal persons settled and confirmed according to law by a notary. As the Calculator commented: “*As you know, it is a bit near the knuckle (of illegality), but I don’t con the lot . . . there are notaries involved*”.

Once declared insolvent, the court appoints a Receiver who enters an empty premise (thirteen cases), where the books are destroyed or absent, the straw man knows nothing (or pretends to: eleven cases), or the fraudster is untraceable (eight cases). Without proper paperwork the Receiver has to reconstruct the deeds of the bankrupted firm, hampered by the fact that not all harmed creditors report their claims.

Managing the inherent risks in the fraudulent operation can be considered part of the *modus operandi*. Obviously, the measure of bankruptcy – after having skimmed the company – is built-in. The two cases without asset stripping concerned insolvency advice. The other risk management measures concerned disappearing, either in combination or singly: disappearance of the paper work (11 cases); oneself (eight cases) and the money (six cases) if possible by putting a straw man in place. Organising ‘trace erasing’ can be a real management task as was observed with the *Greengrocer* organisation with his unwitting telephonic buying staff. He moved them around his companies or dismissed them to prevent their exposure to creditors’ complaints. That went well until one of the employees became suspicious and sounded the alarm.

Contrary to generally accepted opinion (Friedrichs, 2010; Perri, 2011; Weisburd *et al.*, 1991) (threat of) violence as a ‘measurement tool’ is far

from exceptional: in five cases threats of violence were expressed against complaining creditors, a ‘difficult’ or strict Receiver, a previous company owner as well as against each other. In a telephonic discussion the *Architect* gave a clear warning against the non-performing *Racer*: “I will tear your head from your body!”

d. The loot: spending, spilling and profiteering

As mentioned before, it is difficult to assess accurately the damage as well as the criminal revenues. Likewise it was in many cases also not possible to determine the ways the money has been spent or hoarded as a nest egg. Only in two cases was it possible to trace the destiny of the profits, because they were invested in legal enterprises; a camping resort in France of the *Camper* and the insolvency advice bureau of the *Jurist*. The *Greengrocer* cashed his bills in Germany where he sold the non-paid commodities after which the money remained untraceable. Probably it was channelled to Turkey. Four other fraudsters did not want to make statements about the whereabouts of their profits but it is likely that they hid part of the revenues as a nest egg. One of them, the *Voyager*, transferred all saved money to Turkey where he bought an apartment complex.

In the remaining eight cases there was more evidence of the ways of spending the revenues. If we abstract from expenditure on daily living costs, there are a number of financial questions that remain of interest. In the first place: is there money left (according to the files and the detective’s suspicion) and was that laundered? For the straw men this question can be answered negatively: they were glad to pay their daily living. In seven cases not all the money was spent, though the amounts saved could not be specified.

The next question is: were the saved monies laundered? That happened in five of these seven cases. The *Camper* spent it on his camping resort in France and apparently did not bother to hide it: he thought this investment licit. The *Greengrocer’s* finances were untraceable, making statements about laundering speculative. The other four fraudsters who had saved and laundered money also had ‘legal’ business expenses in the form of staff salaries and ‘representation’ expenses such as prestigious offices and expensive cars to inspire confidence as a successful businessman.

Almost half of the fraudsters spent heavily on gambling, alcohol, sex and drugs: the traditional sins of a fast criminal life. Three of them still managed to have surplus savings despite gambling, alcohol and sex: two girlfriends and expensive sex parties, occasionally brightened up with escort ladies plus an otherwise luxurious life style. The sister of the *Womaniser* reproached him for squandering € 60.000 in one week of which € 20.000 to one of his sex mates. Three fraudsters who also had a drug problem had no money left at the time of their arrest.

Of the eight fraudsters with no money left, four lived a criminal *cliché*-life: expensive cars (often more than one), villas (also multiple), luxurious camper, boats and lavishing gifts and luxuries on their partners to remain guaranteed of their sexual services.

In seven cases the investigators mentioned the laundering of proceeds, also in the three cases in which no money was left. Technically all forms of managing crime-money can be qualified as laundering: also the simple transfers of the money to Turkey by the *Greengrocer*. However, sophisticated money-laundering activities were not observed other than putting property and bank accounts in the name of the (ex-) wife.

In all bankruptcy cases other persons than the fraudsters shared in the revenues of the fraud schemes. Not all of them need to have been aware of the criminal origins of the revenues. We have already mentioned the partners enjoying luxury as well as relatives enjoying cars and holidays paid with crime money (ten cases). In addition, there were company traders and the previous owners of companies who gained by being relieved of their debts of which it is uncertain whether they realised their involvement in a fraud scheme.

Lastly, there were cases with unidentified criminal leading background operators who were the real profiteers while their four straw men lived a frugal life with too meagre incomes to indulge in the usual temptations of criminal life let alone having saved any money left for laundering.

Conclusion and discussion

The findings of this research demonstrated in the first place that a comprehensive theory of fraud is well-nigh nonexistent; behind the denotation of ‘fraud’, itself a cluster of different criminal code offences, there is a wide variety of offenders. This heterogeneity is such that striving for ‘robust’ and valid generalisations is not likely to be productive. Even if one subdivides the field and the set of perpetrators into rough categories, each of these appears in their turn to be characterised by heterogeneity. For this reason the research project focused on only two main sub-populations – investment and bankruptcy fraudsters – and aimed to explore similarities, backgrounds and ‘drives’ of the perpetrators.

Investment fraudsters form a curious flock of birds: they are usually older (over 40 years) and male with two occasional women as confidence tricksters. The fraudsters in our sample are professionals in their own way, though some had a real legal profession as financial consultant employed by a firm or self-employed. Such an occupation was for them a tempting ‘open gate’ to defrauding their regular clients who knew and trusted them already for years. In such cases the investment fraud took off as an occupational crime and can be explained from the opportunity theory. As we have seen, in most cases there were no such occupational temptations: the fraudster had to create the favourable circumstances himself. There are sufficient indications to assume a real drive from within most of the fraudster to cheat virtually all people around him – as long as they have money to invest.

We have demonstrated that fraudsters are not only characterised by drive, but also by skills and affinities, mainly in the inter-human relational sphere: “*trust me*”: not everybody can utter that with the desired result. They lured not only unknown clients, distant acquaintances, but also relatives, even their own girl friend. Was this all for satisfying the greed, of perpetrator and victim alike?

There are no straight answers to most of the questions how these grand frauds came about and developed, as most answers are partly ‘yes and no’, which is unsatisfying. Indeed, many victims were lured into investing by the *cliché* of the ‘warm voice and blue eyes’ of the fraudster, but in addition, many victims have also been recruited impersonally: by ads, brochures and call-centres without ever having seen the investment fraudster.

And, were all driven by an insatiable greed? Again ‘yes and no’. Indeed, there were proposals of most implausible shining ‘dream gold’ investments, such that only a victim benighted by greed could have swallowed it. These fabulous promises go in parallel with suggestions of moderate returns, just a few percents above the saving deposit rate and even with warnings to clients against risk taking. Of course, this radiated trust, also to the not-so-greedy clients.

What about the greed at the fraudsters’ side? Of course they were greedy and many too greedy to stop at the right moment and pull out. They exposed themselves because they did not realise that also fraud games have a ‘final gong’: detection comes as soon as the pool of investors eventually dried up. Six professional con men heeded this rule and attempted to pull out in a timely manner and disappear with the loot. That is greed-with-discipline.

Most fraudsters could not do that: partly because they may have lacked the discipline (which is a speculation) but also, and more important, because in some way or other they lived in the midst of their victims. That entailed other type of financial conduct: spending with a ‘social lining’: spending on appearances and acting as a successful businessman among the friends and acquaintances he knew and was helping to become a bit richer too. “Trust me, I am not after your money because I am already rich”, could be very convincing. This type of fraudster seemed to have a kind of double greed: they craved for money as well as social esteem. To that end they invested in social, altruistic undertakings as well as in their life style. This may be termed, ‘*confidence expenses*’, which appeared to be more prominent with investment than with bankruptcy fraudsters (10 versus five cases). The first had to keep their clients on board, the latter deal with firms for a quick run before disappearing.

When it comes to *luxury* spending and sex, drugs, alcohol and other ‘recreational’ expenditures, the patterns are roughly the same with somewhat more of such indulgence with the bankruptcy fraudsters.

Another motive was getting money to *keep the company afloat*: this was observed with the financial consultants/investment fraudsters as well as the bankruptcy fraudsters. Obviously seeing their own firm sink into a state of insolvency is a dent in one’s pride as well as a danger to one’s economic survival and an extra stimulus to make ends meet by fraud. However, if their own firm is beyond redemption and requires a continuous infusion, the fraud becomes an on-going main business.

In both types of frauds about half of the offenders had a surplus saving which presupposes forms of laundering if the money is not just hoarded. In at least eight cases (a part of) the loot was diverted to an untraceable place as a nest egg. In this regard not much sophistication could be determined which contrasts with the usual threat images of criminals allegedly becoming increasingly sophisticated. Exporting the cash proceeds to the home country by immigrants or putting the assets in the name of relatives were the most common ‘techniques’ of laundering.

By its nature investment fraud is not a loner’s undertaking: fraudsters have to organise people who are not necessarily aware of being abused for criminal ends. Brochures have to be designed, ads placed or a call-centre hired. In addition, fellow fraudsters have to be designed specific tasks. Keeping this going is more than just saying “trust me”: it is a fully-fledged ‘organisation of deceit’. Should this be qualified as ‘organised crime’? It is remarkable that in the organised crime debated this question is rarely raised while the offender gallery of grand fraud is filled with this type of organised fraudsters. This type of organized fraudsters, aim directly at the opportunities to gain financial advantages are also known as ‘opportunity seekers (Weisburd and Waring, 2001).

How does this compare with our second group, the *bankruptcy fraudsters*? Within this group we find even more diversity as with the investment fraudsters. As a matter of fact, the term denotes the legal *end* of a criminal game in the upperworld: bankruptcy which is a normal legal upperworld event. Before that happens a lot of diverse *mala fide* actions take place, in which various actors become involved. Underlying this social and criminal variety is the phenomenon of *insolvency* and the skills how to make personal profits out of these corporate debts. Depending on the firm, assessed risks or indebtedness there are various approaches, but in the end the defaulting firm had to disappear, together with its unredeemed debts. This disappearance goes in stages, a take-over being a first step. To avoid personal civil and criminal liability, a *straw man* is indispensable. This take-over implies an interaction with licit entrepreneurs desperate to get rid of their debts. There appeared to be no shortage of defaulting entrepreneurs. How complicit is the selling entrepreneur? Selling companies for a symbolic price of one Euro while paying extra under the counter points certainly at a *mala fide* involvement of the ‘upperworld’ in this phase of the fraud scheme. In the follow-up phase the new owner strips the firm of its assets (stock, equipment and bank deposits) which implies again an in-

volvement of the underworld but not necessarily with an awareness of the underlying fraud. The same applies to the last commercial end of life: the debt accumulation. This implied buying as much as possible without paying before the close-down by instituting bankruptcy procedures. In the end the Receiver enters an empty premise, perhaps with only a straw man present.

As is the case with investment fraudsters, bankruptcy fraud requires 'human capital management', beginning with the straw men for hiding the identity of the principal fraudsters. This figure should be considered a function and not only a down and out pitiable figure. The straw man could exist on paper only, the name taken from the phonebook; then there was the 'classic' straw man picked up from the gutter, only used to sign documents he did not understand and lastly, a 'climber' straw man, who learned the tricks while doing and became in the end a principal fraudster of his own. There is social mobility, also among fraudsters.

The criminal history (antecedents and convictions) of this sample of fraudsters is difficult to extrapolate, but compared to the investment fraudsters the bankruptcy fraudsters had more criminal antecedents, among these also more often for violence. Also in the ways of doing business we find (threats of) violence, which are absent in the investment fraud sample. Does this point at a different social strata: the investment fraudsters coming more often from socially respected layers of society and the bankruptcy fraudster from lower classes? The available data do not allow such an easy extrapolation except that differences in professional skills, for example trader versus financial consultant, point at different affinities. The traders juggling with firms-to-go bankrupt (Van Duyne, 1996), for example buying and selling fruits and vegetables, have other skills and know-how than the elegant con man with just "trust me": sweet talk but no threats.

This does not mean that the bankruptcy fraudsters did not need human capital, such as management skills. On the contrary: elaborate networks between otherwise independently operating perpetrators could be identified. Sellers of empty corporations or 'company doctors' were known and had a network of client-offenders. The networks of investment fraudsters concerned only client-victims. A trader who seriously entered the international market of vegetables used his (complicit) family as well as unaware staff speaking the languages of the national markets on which he operated. This required a layered organisation: legal persons and staff to be managed.

Still, this type of organised fraud usually gets only a cursory mention in the organised crime literature (see: von Lampe, 2016)

What does it take to plan, organise and execute a fraud scheme? It can be compared with a complex motor which does not run of itself. Apart from basic elementary energy mainly fanned by greed, fraudsters needs technical skills and basic know-how of the financial products or legal constructions to remain coherent and professional. This is the technical side which must be completed by imagination and last but not least social skills for conviction. To this observation we add that many people, not only the less educated one, do not need much sweet talk: they are desperately indebted or ready to believe that the ‘dream gold’ is projected in the sky is something on earth. But even with this combined ‘raw material’ the fraudster has to construct a make-belief world to turn this psychological potential into a profit.

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Czech organised economic crime: Some characteristic cases

*Miroslav Scheinost*¹

Introduction

It was repeatedly said, that:

“the essence of the threat and expansion of economic crime, as well as the difficulty of obtaining evidence of it, lies in the similarity of legal and criminal economic conduct in terms of the commercial instruments used in both cases. Schemes of criminal economic activity are, in terms of their instruments and courses of action, practically identical to schemes of legal economic activity. Of course, legal behaviour abides by the law, but due to this ‘commercial similarity’ it is sometimes very difficult to prove that the law has been broken. Both with regard to the drafting of laws, and with regard to their application, the boundary between licit and illicit activity in the economic sphere is often difficult to draw” (Scheinost *et al.*, 2005: 146).

In the Czech Republic the borderline between the legal and illegal economic activity was even more complicated than usual due to the process of transformation from the planned economy based on near total state ownership to the liberalised market economy based on differentiated forms of ownership with a strongly prevailing private sector. Moreover this process of transformation occurred very rapidly. Regulations were prepared hastily, new instruments organising the economic landscape, economic relations and forms of communication had only to be developed during this process. Lawmakers lacked the legislative experience and last but not least specialist know-how was in short supply. In addition there was a lack of practical experience in enforcing these measures among

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professionals from law enforcement authorities. This experience was gained directly and step-by-step by being at the 'firing line'. In a certain sense this process and concurrent legislation or regulation was a kind of experiment being simultaneously tested by praxis (but the results of testing if being disputable were sometimes undervalued by the political authorities and put aside in order not to hinder the speed of process). Economic behaviour lacked the self-regulating rules – let us rather say economic or entrepreneurial ethics – and newly adopted formal economic regulations and laws were often formulated without sufficient tools of enforcement or even sanctions.

Under these circumstances it was sometimes the penal law that was posted for the role of regulator of economic life and to rectify the aberrations and violation of economic laws. Being in this role, *i.e.* to substitute the insufficient economic regulations or lacking professional ethics, is inappropriate in itself and more that this: penal law underwent at the same time a process of transformation. As well as being able to define and prosecute economic crime, it meant newly defined forms of economic crime in a new economic landscape. At the same time, the penal law was forced to undergo a major change, with a shift of priorities from the protection of 'property in socialist ownership' to protection of the rights and legitimate interests of private economic entities and to safeguard the fairness of economic behaviour which had been an untrodden (and unnecessary) field in the socialist period.

In general, the legislative reforms concerning the economic sphere were adopted often in an *ex post*, rather than an *ex ante* fashion, including the changes in the penal law that were designed to protect legal economic interests. As a result, the penal law was for some time incapable of fulfilling in a satisfactory manner its protective function, let alone the regulative one. And still, the penal law code is not designed to perform a regulative role in relation to economic life neither in standard setting nor in stabilising economy relationships.

That is why we can only guess at the true extent to which economic crime in times of transformation might well have exceeded the figures of crime that were known, detected and registered. In nature and scale, economic crime as it developed during the transition period is incomparable with that of the very early 1990s (and the pre-1989 period even more so). In the Czech Republic, economic crime constituted just 5% of the number of all criminal offences in 1990-1994; yet by 1997 the

figure was 7,5% and in 2002 had risen to 11%. It now stands at approximately 10%.² It is reasonable to assume that a significant part of economic crime was (and still is) hidden in 'dark figures', *i.e.* crime which goes either unreported or undetected (Cejp and Scheinost, 2012).

In the research undertaken by the Institute of Criminology and Social Prevention in 2004, the opinions of professionals employed by law enforcement authorities were sought by means of a questionnaire. The professionals were asked about the proportion of the economic crimes committed each year they thought remained undetected.

A majority of respondents from the professions consulted considered the proportion of economic crime that goes undetected to be very high. Only 3% to 6% of respondents considered this proportion to be below 40%, while 23% of judges, 33% of public prosecutors and 37% of police officers believed it to be over 60% (Scheinost and Baloun, 2005).

Now it is useless to weep over the past and to dispute whether the process of transformation could run less hastily and whether it could be managed under stricter regulations. It is true that after this period of the 'wild nineties' there has been a positive change both in the quality of economic and penal legislation and in the activities of the regulatory bodies and law enforcement authorities. This change entails that certain dubious business activities from the 'founding period' can no longer be conducted. Some cases of deliberate and serious economic criminal activity were gradually brought to light and the culprits have been prosecuted, even if, particularly in major cases involving significant damage, the criminal proceedings have been extremely protracted.

From this point of view, the public expressed great displeasure as a reaction to the presidential amnesty declared by Czech President Václav Klaus on the 1st of January 2013. The President declared an amnesty – aside from other articles – for criminal offences that should be punished under the penal law by the imprisonment not over ten years, that were prosecuted more than eight years ago (up to 1-12013) and of which the criminal proceedings still has not been terminated. This part of the amnesty halted the criminal prosecution of some prominent suspects of economic and financial crime and provoked very strong and emotional discussions among public, professionals and politicians.

² Statistics of the Czech Police

Some illustrative cases

Let us illustrate this development of economic (and organised) crime by means of selected cases which are in some way characteristic of certain periods of the history of the above mentioned transformation and for the development of economic activities. The aim is to describe the *modus operandi* in the context of the specific social and economic situation and show some common and characteristic features of committing crimes of such type.

The first one pertains to the Czech offenders and it was committed within the first period of transformation. The offenders reacted to the lack of housing inherited from the socialist period, they made use from the social situation when there was a shortage of flats to rent while many people lacked sufficient capital to build or buy their own house or flat as quickly as they needed. Therefore, many people searched for the possibility of cheap housing and trusted apparently 'advantageous offers and advertisements'. This case might also serve as an example of general trust of people at a time of the initial period after the fall of socialist regime, i.e. trust in 'the fairness of market and goodwill of participants in market'. People generally trusted in the good intentions and integrity of new entrepreneurs although their plans and project were at a glance at least questionable (e.g. investment companies that promised the quick profit of 14 and more percent from invested money?) The costs for this trust was sometimes quite high and painful, but the 'learning experience' was also worthwhile in light of the damage. But without joking, in the eyes of the public similar dubious and fraudulent activities damaged the reputation of the newly established entrepreneurial sector as a whole. The impact of this damaged reputation continues to be a burden on society.

The second fraud scheme took place later in the relatively more stabilised period and made use of the chances given by the new legislation regulating economic life, especially by the law on bankruptcy. Bankruptcy was definitely quite a new phenomenon that had not previously existed in a socialist economy. The legislation related to bankruptcy was, of course, also a new one even if the lawmaker followed the legislative patterns of countries with an established market economy. Offenders misused the gaps in legislation and developed an effective organisation of activities and collaborations in order to induce an artificial 'bankruptcy' of a company

and withdraw from it the active capital. It was the first example of economic crime that was prosecuted as so-called 'criminal conspiracy': interpreted as organised crime under the Czech Penal Code.

The common denominator of the prosecuted cases could be identified as so-called 'tunnelling'. This refers to the execution of transactions whose sole purpose is to extract funds from a prospering, legally functioning company with the aim of self-enrichment. These transactions are committed by persons who exerted control over the relevant company and in that capacity could siphon off the assets (Baloun and Scheinost, 2002).

The first case that was prosecuted also bears the features of the well-known 'pyramid' or *Ponzi Scheme*. This means that only some of the first clients were winners: they got their deposits back and on top that the promised dividends. In the fraudulent housing scheme the construction of the winners' housing was covered by money collected from the many subsequent clients.

The third example is a description of *modus operandi* that was (or maybe still has been) used for financial activities whose aim is to arrange tax evasion. This scheme has been used within the Czech Vietnamese community, a community that is quite large and traditionally settled in the country.

The position of Vietnamese people in the country has changed significantly after the fall of socialism because before the transformation the Vietnamese residents were predominantly workers or students. During the transformation period they aimed mostly to become entrepreneurs, usually starting as petty merchants. They are fully integrated in the Czech society: they are mostly accepted by the Czech majority having the reputation of hardworking people that carefully try to avoid any conflicts with the majority. The conflicts with the law have been taking place predominantly in the economic sphere, *e.g.* violating the regulations of trade-marks, avoiding the payment of customs and taxes *etc.* As a matter of fact, the public is aware of this law breaking and to a certain degree rather tolerant of it. But the described activity is far from innocuous: it can be characterised as a significant financial crime having significant cross-border extensions. The scheme is very well organised and also involves Czech collaborators which is also significant for its integration of Vietnamese people into the Czech environment. This case concerns the organisation of tax and custom evasion when importing legal goods.

1. Case of the so-called ‘H-SYSTEM’

‘H-SYSTEM’ was the name of the joint-stock company that was active since 1993. Its commercial purpose was declared as “*building cheap housing in the near surroundings of Prague*”.

The owners of a housing company developed a massive advertising campaign using the market situation (aforementioned lack of housing and a demand for cheap housing). In this advertisement campaign they even brought some popular personalities to the fore, *e.g.* from music world, media *etc.*

The owners and organisers seduced hundreds of clients with tempting offers. The final number as mentioned in the court file was 1.095 people. With the exception of two victims, all of them were individual persons. These clients had to pay an average entry fees of about one million crowns (approximately 37 thousand Euros). It was said that people searched for cheap housing and it is true that this amount of money was insufficient to buy or build their own small house or larger flat. Nevertheless, for many people it represented their ‘life reserved funds’. As a guarantee they received the blank statement of the deposit guaranteed from the so-called ‘First Czech-American Real Estate Company’ (FCAREC) that very much sounded like a solid guarantee. But this bill was absolutely fictitious; the executive manager of H-System who was the head of organisation and the key organiser of activities was at the same time also the executive manager of FCAREC. This company had no American capital at its disposal and had nothing to do with any American partners in contrast to the perception given to the clients. It was only the word ‘American’ that resonated as apparently trustworthy.

Clients entering the H-S company concluded a contract about membership in the H-System based on an entry fee. There-upon they received an affirmative covenant about the future buying contract on an apartment or lodge for an advantageous price. In fact, in the housing scam only the first 34 clients from the total number of 1.095 were actually served.

Where was the problem or the ‘fruit seed’? H-System had from the beginning of its activity been overburdened with debts. Building land for housing was given as security to the bank for extending credit. Any guarantee for deposits or entering fees of clients did not exist: the blank bills of

exchange were of no value because they were issued in the name of a company that only existed on paper.³

Moreover, the executive manager and his collaborators established in 1993 the so-called H-S conglomerate of seven companies with the pretended purpose of building. These companies were interconnected and ruled by themselves (*i.e.* the manager and his collaborators). They transferred the collected money from clients to this 'conglomerate'. In this way they transferred a substantial part of collected capital to their own firm.

H-System owed the banks nearly half a billion crowns for the bank credits that should have been refunded from the profit of selling the housing. But the building of housing never actually took place. Collected and transferred money were used by the organisers for some dubious investments (lottery, trafficking in securities *etc.*), *i.e.* for quite different purpose than was declared to the clients. During the investigation it was argued by the principal offender that he wanted to finance the building activities from the profit of these investments.

The total damage for clients was above 980 million CZK (EUR 36 million); the commitments to banks and other creditors exceeded CZK 1,5 billion.

It was proved that at the time of entering the contracts with clients, the offenders knew that they were unable to keep the contracts because the collected capital did not allow for all clients' claims. The pretended efforts to keep the contracts depended upon a very dubious investment that was not declared to clients. And, principally, the money of clients was siphoned off to several interconnected companies of H-System.

What was the development of the prosecution and trial of this case? The prosecution of six offenders (let us add that they were aged between 38–59 years and mostly highly educated) started in 1999 for the offence of fraud and prejudicing of creditors. The case was not prosecuted as criminal conspiracy (criminal organisation) though the activity of perpetrators showed the clear features of a planned and organised sequence of steps. This prosecutorial outcome is not really strange: cases of economic and financial crime were usually not prosecuted as organised crime. Their prosecution required presentation of convincing proof and this was usually complicated enough, without proof of the organised character of the

³ See *e.g.* the decision of High Court in Prague from June, 2006

group of perpetrators in accordance with the wording of the relevant provision of the penal law.⁴

In 2004, the leading offenders were sentenced to 12 years in prison while in addition, the court also imposed on them a ban of fulfilling a managerial position in the building industry for 10 years. Three other offenders were sentenced to nine years and six months in prison and two of the offenders to suspended sentence.

The Court of Appeal upheld the sentencing in 2006; but subsequently the Supreme Court asked for unconditional sentences for all prosecuted offenders. That is why the trial continued with some of offenders and did not finish until the end of 2012. And paradoxically as a result their prosecution was finally abolished by the presidential amnesty from January 2013 because the criminal procedure had lasted more than eight years.

The significance of this case consists of the fact that it was one of the first prominent cases of economic crime in the period of transformation that was detected, investigated and prosecuted. It attracted at the time huge public attention due to the number of damaged ‘common people’ together with the attendant attention of media. A special and quite important factor in this case was that the damaged subjects were not economic entities such as investment funds or banks or other institutions of the financial market but common people that had entrusted their money into this business. For this reason this case entailed a strong impact on the trust of people in enterprises. It still casts a shadow on the life of damaged clients of H-System, none of whom were recompensed.

2. Case of Judge J.B.

This case is known in the media and in the public under the name of the judge who was one of the key figures in spite of the fact that he probably was not the principal organiser. He was the judge of regional court in the Northern Bohemia and amongst others, he presided over cases of bankruptcy and subsequent compulsory liquidation of companies. His task was to declare a firm in state of bankruptcy and subsequently to appoint the bankruptcy receiver. The bankruptcy receiver then managed the sale of

⁴ See Section 129 “criminal organization” of Criminal Code No. 40/2009 Coll.; previously termed “criminal conspiracy”, Section 89 (17) of Criminal Code No. 140/1961 Coll.

remaining assets (property) of the bankrupted firm in order to satisfy the creditors. This process was in accordance with the law on bankruptcy that entrusted judges with this competency.

The investigation of the deeds of Judge J.B. started in 2003 in relation to the suspicion that the declared bankruptcy of one bank was not underlined sufficiently. The investigation discovered that the judge ordered bankruptcy of companies even in cases when there was not any urgent need and while these legal subjects had still sufficient assets. It was further uncovered that some of these companies relocated their residency (registered office) into the region of competence of this judge immediately before the bankruptcy order was declared. At least seven companies were, in this suspicious way, sent into compulsory liquidation.

In 2004, the judge and several other people were charged with a serious crime committed in an organised way. It was the first case of economic crime charged and prosecuted as a so-called ‘criminal conspiracy’ (it is defined by the Czech Penal Law “*as association 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.*” In the new Czech Penal Code adopted in 2009 the criminal conspiracy was renamed as criminal organisation but the legal definition has remained the same without any change.⁵

Indicated and charged as principal organiser was a lawyer, who was an university teacher, and who prepared the scheme, organised collaborating offenders and disposed of contacts to the entrepreneurs and to the state administration officers. As involved offenders and members of the organisation and also charged in addition to the judge were two bankruptcy receivers, one civil servant, one authorised expert (assessor) and a couple of other suspects.

What was the *modus operandi*? The offenders sought out the companies or businesses that had debts or commitments that represented to some extent a burden but not necessarily of a financially fatal nature. These firms were registered in the respective region of the competence of the Judge J.B. (or were later shifted to this region). The commitments were repurchased by firms or people collaborating with the offenders and these

⁵ Section 129 “criminal organization” of Criminal Code No. 40/2009 Coll.; previously termed “criminal conspiracy”, Section 89 (17) of Criminal Code No. 140/1961 Coll.

'buyers' consequently filed a petition for bankruptcy. Judge J.B. very quickly ordered a bankruptcy, appointed the bankruptcy receiver and the property of the company was sold below market price (sometimes on the basis of a false opinion of the authorised assessor). This sale was beneficial to the 'friendly', *i.e.* collaborating firms and people involved into the chain. The company being in a state of bankruptcy was closed and the organisers and buyers received the substantial profits: the difference between the sales price and the real value of sold property. It was said that the sales price could be even six times lower than the real value.

It should be mentioned that in this case one of the bankruptcy administrators testified as the key witness. His testimony helped significantly to refute that of the organisers and other offenders.

There were also some suspicions about the relationships of perpetrators; not only extending to the criminal underworld within the region but also to the top positions in the state administration mediated by the key organiser. However, these suspicions were not proved nor were they brought up at the trial.

It was considered that this case may represent the 'tip of the iceberg'. Are these constructions of fraudulently provoked bankruptcy really so rare or is it more likely that these constructions of tunnelling companies with profitable assets are not sporadic but are carried out by networks or organised criminal groups? The suspicion of the persisting existence of similar networks involved in fraudulent insolvency practices was even expressed by the Czech Minister of Justice.

In addition, the investigators confirmed the existence of such schemes based on their pieces of knowledge: the core of this kind of activity consists of a small group of offenders that collect and analyse information on companies. These organisers collaborate with firms and businessmen who purchase the commodities (sometimes in agreement with bank staff because the banks are often in the position of creditors) and then file the bankruptcy petition. In collaboration with the competent judge the bankruptcy is ordered and the assets of the bankrupted company are sold. The executive members of these conspiratorial networks include the receivers in addition to collaborating experts such as assessors *etc.*

In 2010 Judge J.B. and the (supposed) organiser were sentenced to nine years in prison for fraudulent activities and participation in criminal conspiracy. Other offenders were sentenced to seven to eight years in

prison. Based on the appeal of the sentenced persons, the High Court⁶ abolished the verdict in 2012 and the case was recommitted to the regional court. In 2013 the trial was halted due to the amnesty of President Klaus. In 2014 the Supreme Court agreed with the protest of the Supreme State Attorney against this amnesty, the trial was renewed and the case was again recommitted to the regional court. In November 2015 the regional court decided again about the sentence. Judge J.B. was sentenced to 8,5 years in prison which was the severest punishment among all prosecuted offenders.⁷ However, is it the end of the story?

The seriousness of this case is above any doubt. Its worst feature is the involvement of a member of the judiciary. It was probably the most important case of personal guilt of a representative of judiciary and shattered trust in justice. Apart from that, this case pointed out to the possibility of abuse of the relevant law. The bankruptcy law gave the final and decisive authority to the judge what was intended to be a maximal guarantee of objectivity. But if a judge himself is corrupted or collaborates with criminals the crime is perfectly facilitated and covered. Under such circumstances it is extremely difficult to detect and prove the criminal offence.

The discovered case proved what was already assumed: criminal organisations do also exist in economic crime and are able to develop very profitable activities, causing huge damage, generate very effective covering and affecting the basic pillars of the state power. It was shown and proven that even the protective power of law and justice may fail.

3. Case of tax and customs evasion

This case is related especially to the illegal activities of Vietnamese people in the CR. It is useful to be reminded that the Vietnamese constitute the third most numerous minority in the CR. The first Vietnamese came into the former Czechoslovakia during the period of socialism. As a result, many of them are familiar with the conditions and life here, are very well adapted to the Czech environment and coexist with broad contacts to the majority population (Nozina and Kraus, 2009).

⁶ The hierarchy of Czech court system is as follows: district court – regional court – High Court – Supreme Court

⁷ The decision of Regional Court in Tábor from 25.11.2015

The illegal activity of the Vietnamese minority in Central Europe that is usually discussed has consisted of smuggling and trafficking in cigarettes. Regularly repeated expert inquiries have established that current criminal activities of the Vietnamese in the Czech Republic consist of drug production and smuggling. This is the kind of criminal activity that was not traditional for Vietnamese in the CR but has developed quickly during the last couple of years. It is a very intensive criminal industry and it created serious problems, not only for the Czech Republic but especially for Germany as the target country of export. Other criminal activities consist of counterfeiting of software, electronics, textile, cosmetics; the production of alcohol and cigarettes; prostitution and trafficking in women. Money laundering, violent crime, illegal migration, customs and tax fraud and human trafficking and forced labour also appear to be part of their criminal repertoire (Cejp and Scheinost, 2011). While not considered 'traditional' for Vietnamese, it is still traditional underground economy.

This case concerns the illegal operation of the Vietnamese that is widespread and is related to their main field of activity in the CR, *i.e.* trading in the licit upperworld market in general, not just of a criminal nature. This case concerns trading while evading excises and taxes.

It was discovered that there are groups of perpetrators specialised in the avoidance of tax and custom duties offered as a 'service to hire'. These groups called 'custom service' organised and ensured the transfer of goods – mostly from China – to the CR and the payment of tax and custom duties. The process is as follows: it begins with the Vietnamese merchant – shopkeeper that orders the goods in China and pays the producer or distributor for them. The merchant receives the basic documents and the Chinese distributor despatches the goods in containers to some European seaport. The merchant then addresses the 'custom service'. This is a Vietnamese entrepreneur in the CR respected within the Vietnamese community. This person manages other involved executive persons, but indirectly through the nearby collaborators who are usually the members of his broader family. He also disposes of a broad network of contacts to the transport firms.

As a subsequent step he receives the payment for the complete service from the merchant and also some documents, usually without invoice or certificate of origin. These substantial documents are produced / counterfeited by his 'custom service'. The core of the scheme consist of the fact that the invoice mentions a much lower price of cargo – usually only

about 20–30% of the actual value. The custom duty is paid from this lower price and a smooth clearance is secured by the collaborating custom official. During the time when import limits were imposed on goods from China to the EU, the certificates of origin were also forged. Invoices are issued on behalf of legal entities (companies, firms) whose owners are outside of the CR. The activities of these firms have not been formally stopped and they are still registered in the register of firms. These firms are at the disposal of the ‘custom service’.

The ‘custom service’ ensures the transport of goods from seaport to the merchant and implements the payment of custom duties. In the frame of this operation the ‘custom service’ collaborates usually with the same approved transport firms and ‘reliable’ custom officials.

The payment from the merchant is divided among these subjects and ‘custom service’ but the profit due to the false price difference is for the ‘custom service’ – still reasonable enough and gained with relatively low risk. The addressees of invoices cannot be found because they are absent in the CR. Goods are delivered to the big storages or emporia where they cannot be identified, or at least to do so is very difficult. It is supposed that these ‘custom services’ in the CR provides their services also to Chinese and Vietnamese communities in Poland, Germany, Hungary, and Slovakia.

What can be identified in this *modus operandi*? Firstly, it could serve as the model of clearly well-organised or organising economic criminal activity with broad international crossover. The secondly, the essential feature is the close collaboration of Vietnamese and Czech firms and people including the Czech officials which is the sign of effective involvement into the Czech *milieu*. The control over the operations remains in the hand of Vietnamese organisers but Czech firms and officials are involved at the executive level. And all the firms, activities and services are organised into one effective chain of handling goods, forms and invoices.

This *modus operandi* points to the specialisation in committing illegal activity. They have developed the specialised service to enable the smooth routing of goods and to avoid the payment of legal fees. Regarding the organisers it seems a plausible interpretation that the relationship between them and their ‘clients’ (*i.e.* merchants) is not only based on a ‘hire and pay’ agreement but also on trust and on the authority of organisers within the Vietnamese community where they are referred to as ‘distinguished /

respectable men' (Nozina and Kraus, 2009). It is an incomparably strong position in comparison with the Czech collaborators – transporters and state administration officers (custom officials) that are hired or corrupted.

From the point of view of law enforcement agencies it is clear that the control over the firms by revenue authorities and registration courts is insufficient. This creates a fertile soil for similar fraudulent activities of this kind.

Conclusions

The presented cases may be taken as characteristic regarding certain periods of the development of the economy, market relations and society in the Czech Republic after the fall of socialist regime and socialist economy. They are significant for the character of economic/financial crime committed within these periods. But of course these are only three cases representing only a very small part of the spectrum of types of crime being committed and by no means they do not represent an exhaustive list. But the distinctive features are common to most economic criminality.

The first period runs through the early phase of private enterprising. The offenders addressed problems and shortages inherited from socialism, namely shortage of housing, and took advantage of the effort of people desiring quick solutions to these problems and also the trust of people in 'new circumstances'. People in general were not sufficiently familiar with the economic reality, were not able to evaluate different offers and advertisement realistically and to be critical of suspiciously advantageous offers. If in advertisements or in the names of companies, funds *etc.* some word referring to the West (as American, British *etc.*) was included it was often understood as a guarantee of solidness. This is similar to the well known affair of the so-called 'Harvard Investment Funds' that played a very prominent role in the period of 'coupon privatisation' when people entrusted these funds with their 'coupons', which represented claims to take part in the privatisation of state property. The founder of these funds accumulated a large number of these coupons (based on the promise to multiply the profit) and subsequently also a huge profit from the assets from privatised state property. Suffice to say that only a minority of shareholders of these funds received any return. The founder and his closest

collaborators have been for years living abroad and their prosecution appears to be endless. And it is also redundant to state that the founder had nothing to do with Harvard ... but at that time it sounded very 'trustworthy'.

The characteristic feature of the first case (and of the mentioned case of the privatisation fund in the period of coupon privatisation) is that these activities were targeted on common people, citizens, clients as persons, not on economic subjects as firms, plants, banks. In the first period normal people were the simplest target for fraudulent economic activities. As mentioned above, the result and social damage (except of direct damages caused to clients) consisted in the substantial loss of trust to the newly formed entrepreneurial layer.

The second case belongs to the later period and perpetrators' targeted not people but economic entities, they operated inside the world of economic and financial relations abusing the existing regulations and legislation. From this point of view perpetrators and victims were 'insiders' within the economic sphere.

This case could be seen as a failure of the 'state' and its mechanisms or more precisely as failure of the specific state officials including the members and representatives of the 'third pillar of state power', i.e. the judiciary. It was failure of dignitaries who held high office to guard and maintain the law and to judge the conduct of participants in economic activities (there we may remind you of the Latin question "*quis custodiet ipsos custodes?*": who controls the controllers). If the previous case meant damage of trust in new entrepreneurs, this case brought damage to the authority of state and judiciary. What was unpleasant was the fact that new regulations could be misused and the system is not only vulnerable to attacks from outside, which is presumed and that is what regulations and officers are for, but also from inside. But the defense against insider attacks is complicated. With some irony it is possible to state that laws are drafted to be maintained at least by their 'guardians', unless they belong to the category of 'symbolic legislation', which is certainly not the case with the laws protecting property.

Of course there could be some gaps and pitfalls in laws that were not taken into consideration at the time of drafting the bills: the potential of misuse because of the inept wording could be underestimated at the beginning. In this sense criminal cases as such contributed to some legislative

amendments to mend the proven loopholes. Another situation is when these gaps seemed not to be the result of omission but of intention. The infamous case of so-called light fuel oils (based on replacement of diesel oil with fuel oil and difference in taxation) testifies of such an intent of rent seeking from a long standing imperfect norm. Even such that when one gap was substituted by another the regulation still provided the possibility to dodge it. Though the offenders were not the state officials, there existed suspicion of the criminal operators' ties to the high state officials.

The third case represents the classic tax and custom fraud schemes including counterfeiting of documents that runs in relatively stable environment with given regulations. It means a situation characteristic for the state of law enforcement and the economy of all times. Violators of regulations attack from the outside which can be considered as 'everything is as usual'. Noteworthy is the relation to the concrete national minority that is well-settled, is familiar with the environment and regulations, and is able to establish an effective criminal organisation and to ensure functional ties to the majority members in order to accomplish fraudulent, criminal activities. Tax and custom fraud is itself nothing extraordinary but this case was chosen as an example of well-organised financial cross-border crime by a well-integrated minority adapted to different environments.

All three cases document the development of transformation. They do not show an exhaustive picture of criminal activities during the period of transformation but they bring partial views on different phases of development for which they are in some sense exemplary. They show that economic and organised crime in its different forms is part of social and economic development. The example of the Czech Republic may substantiate how the shape and forms of economic and organised crime have been affected by the concrete social, politic and economic situation.

We may conclude with the meaning of experts expressed in the frame of regular inquiries. It is expected that the radius of action of organised groups will extend to include other criminal activities. There will especially be a significant rise in computer crime and in crime perpetrated by using computer technology. There will be a rise in criminal activities in the economic sphere, which represents high profits and revenues. Organised crime will invest much more into the legitimate economy. Extensive bank fraud, tunnelling of government and European Union subsidies may be expected. Currency speculations by organised crime, once the Czech Republic introduces the Euro, may be presumed. Currency and docu-

ment forgeries will improve. More sophisticated fraud in the area of tax crime may also be expected, including chains of companies running stores offering valueless goods, ending with the fictitious export and price increments including VAT refunds, as well as fraud involving the failure to pay consumer tax on fuel, alcohol and tobacco. All in association with increased corruptive pressure applied on the employees of the relevant state authorities (tax offices, customs officers, and the police) (Cejp and Scheinost, 2011).

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A comparison of English language online media coverage of Czech and Portuguese drug decriminalisation

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Introduction

Drug policy is a contentious issue in many Western countries, with conflicting reports on what constitutes an effective policy. The impact of the media on policy makers is unavoidable, so this study examines the English-language media coverage of two countries – Portugal and the Czech Republic – which have implemented decriminalisation policies, to compare how they are portrayed to the Western audience. Europe is frequently a source of examples of liberal drug policies for Western media. Many non-European countries have begun adopting decriminalisation or legalisation policies, citing the success of such programs in Europe, primarily Portugal. While this works within the paradigm of evidence-based policy, there is also the issue of political intervention in the choice of evidence. In truly unbiased evidence-based policymaking (if that exists), all evidence directly related to the question at hand would be included. By focusing on two countries with similar policies and very different media portrayals, this paper aims to highlight how the inequality in media treatment can impact ‘evidence-based’ policy, when the evidence presented is uneven.

While the media might be considered outside the realm of public policy, meant to inform the general population, the influence that the press has on policy formation is undeniable (Miller, Stogner, Agnich, Sanders, Bacot, and Felix, 2014; Roberts, 2014; MacGregor, 2013). Exposure to news and the spin that is placed on it by the media strongly impacts public opinion (McCombs and Shaw, 1972). One example of this is the produc-

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tion of ‘moral panics’ (Cohen, 2002), when the media frames a situation as a more significant problem than it is, implying a threat to the moral fabric of society and causing an unnecessary level of concern in the public. For behaviours such as crime and drug use, moral panics often arise through a process of ‘deviance amplification,’ the over-exaggeration of a deviant act as a societal problem (Cohen, 2002). Print media has been found to correlate more closely with public opinion than television news (Shoemaker *et al.*, 1989), which may translate to online media as more print sources are digitally converted. Dubois (2002) found that public opinion on crime issues tended to reflect the media reports rather than the actual police crime data, a trend that appears to be continuing (McCarthy, 2014). As evidenced by the success of cannabis decriminalisation referenda in some states of the United States, public opinion can influence policy through public action, but it also influences policy through its effect on policy makers. Politicians are ultimately a part of the public and subject to the same media exposure and biases. Though they have research staff, printed news articles are frequently used as sources, often in *lieu* of peer-reviewed academic research (Ritter, 2009). Expansion of online news availability has only enhanced the power of the media over public perceptions by making the news more accessible and filling a need for immediate gratification (Eveland *et al.*, 2004). The legitimacy of online news sources is, however, more difficult to establish, putting the public at a greater risk of reading falsified news (Forsyth, 2012). With minimal time for editing due to quick turnaround times, accuracy in online media is often questionable, even in legitimate outlets, but is progressively a more important source of information for the general public.

When it comes to drug-related issues, media coverage is not known for its accuracy (Ayres and Jewkes, 2012; Boyd and Carter, 2010; Coomber *et al.*, 2000). Frequently this has resulted in the creation of moral panics over drug use in society, exemplified by the crack cocaine ‘epidemic’ in the US in the 1980s and more recently with methamphetamine and ‘legal highs’ (Alexandrescu, 2014; Baldwin *et al.*, 2012; Armstrong, 2007; Cohen, 2002; Hartman and Golub, 1999; Reinerman and Levine, 1997; Shoemaker, *et al.*, 1989). On issues of drug policy however, there does not currently appear to be such a trend in panic reporting. Hughes and Stevens (2012) noted that there was greater media coverage of reports on the success of Portugal’s drug decriminalisation programme, examined further

in the policy section, than reports on its failures. Negative coverage of the Portuguese policy came from drug-free media sources in favour of prohibition, while major media outlets published the positive reviews of the policy (Hughes and Stevens, 2012). As public opinion towards drug use and decriminalisation shifts, positive reporting on drug decriminalisation and extensive coverage of the failures of the ‘war on drugs’ by traditional media seems to have increased.

Evidence-based policy became the gold-standard in the UK and US in the 1990s (Duke and Thom, 2014; Black, 2001; Reuter, 2001). It has been used to justify decisions in all areas of policy, but is particularly prevalent in health-related contexts (Black, 2001). However, in the case of drug policy, evidence-based policy is often touted but frequently cast aside, as the evidence can contradict political opinions (Reuter, 2001). In an attempt to promote evidence-based policy, drug policies in use on the European continent, such as a controlled illicit cannabis market in the Netherlands and decriminalisation in Portugal, are used as examples for how decriminalisation could work in the UK (Home Office, 2014). Though this is a fair method of writing policy, there are shortcomings. As Pawson (2002) noted, the policy cycle moves more quickly than the research cycle, so real-time synthesis and evaluation of findings elsewhere are difficult. Politics also get in the way of evidence-based policy, as policy makers frequently select evidence that supports their own views (Duke and Thom, 2014; MacGregor, 2013; Monaghan, 2014; Lenton, 2007; Moravek, 2007). This is a prevalent practice in the formulation of drug policy, and is as equally evident in academia and the media as it is in the political sphere (Adams, 2014). Separating opinion from evidence, and considering all available evidence, are factors that are frequently emphasised in the policy-making process while often not being exercised.

The purpose of this chapter is not only to explore the differences in the media portrayal of drug policies in Portugal and the Czech Republic, but also to focus on how improved academic and media collaboration could advance the process of policy-making. It begins with a brief overview of the policies in place in both countries and following discussion of the literature, moves on to provide an overview of the current academic literature, to provide a context for the media content analysis. Textual analysis of online English language media was used to compare the coverage of Czech and Portuguese decriminalisation. Mentions of each country in terms of drug

policy were tracked and counted, while the text of articles was compared for factual accuracy and tone. Following that analysis, the chapter concludes with potential explanations for the differences in media coverage and a suggestion for more academic saturation of online media sources.

Policy background

Portugal and the Czech Republic both have broadly liberal drug policies with regard to personal usage and possession. Both countries allow possession and use of small amounts of illicit substances without criminal penalties, with the priority placed on treatment of problem drug users rather than punishment (European Monitoring Centre for Drugs and Drug Addiction [EMCDDA], 2014; Hughes and Stevens, 2007; Zábanský, 2004). What makes the two countries unique amongst many other decriminalisation attempts is the inclusion of a wide variety of substances, rather than a focus on 'soft' drugs. The policies of the Czech Republic and Portugal are very similar in regard to the threshold levels of drugs allowed, albeit with differences in implementation. Despite the similarities in the final drug policy result, the history of drug use and its associated problems differ widely in the two countries, making the paths they took to reach the same conclusion an interesting study. These differences supply a range of experience in drug liberalisation which could provide policy makers with important information on the effects of decriminalisation, but the current coverage of the policies is so disparate, both academically and journalistically, that the whole picture is not being considered. While there are other countries that have implemented decriminalisation policies, these two were selected based on policy similarity, described in detail below, and media presence.

The Czech policy

Drug use in the Czech Republic was first decriminalised in 1990, after the dissolution of the USSR. There was drug use under communist jurisdiction, but it was limited by the lack of free trade and primarily consisted of homemade methamphetamines and opioids, as well as the abuse of medicaments (Miovsky, 2007; Zábanský, 2004, 2007). With democracy and

open trade came an influx of new drugs, including heroin, which eclipsed homemade opioids in popularity. When the Czech Republic separated from Slovakia in 1993, drug possession was not a criminal offense in either country, but the Czech Republic maintained a more liberal policy after the split (Klobucky, 2012; Zábanský, 2004). Though an HIV outbreak never occurred on either side, making the Czech Republic and Slovakia outliers in Eastern Europe, increases in drug use led to increased crime, or at least the reporting of it, and the government ‘re-criminalised’ drug possession in 1998 (Zábanský, 2004). Technically the law stated that possession of drugs in an amount “*greater than small*” were subject to criminal sanctions, so it did not actually repeal the decriminalisation, but placed boundaries on possession. In 2010, exact amounts for each substance were defined, so that ‘small’ was no longer at the discretion of judges and the administrative costs of prohibition would be minimised. It also differentiated between cannabis and ‘hard’ drugs for the first time, with lesser penalties for cannabis. These thresholds were further refined in 2013. The current law allows approximately 10 doses of any substance except marijuana, which is more lenient, with trafficking still a criminal offense (EM-CDDA, 2014a). The amount considered 10 doses is of course debatable, with some users requiring more than others, but the allowed amounts in grams are higher than previous police guidelines for what should be considered “*greater than small*”. The specific levels for each drug are similar to those enacted in other European countries with decriminalisation policies.

Portuguese policy

Prior to 1974, drug use in Portugal was a limited, or at least secretive, problem. The availability of drugs greatly increased following the end of Caetano’s dictatorship, which, coupled with economic instability, led to an addiction epidemic in the late 1980s and 1990s (Hughes and Stevens, 2010). High numbers of intravenous drug users triggered an outbreak of HIV that prompted the government to act. Portugal instituted a decriminalisation policy in 2001 as part of an overall drug control strategy that focused on treatment for problem drug users and dissuading drug use (Hughes and Stevens, 2010). Rather than being arrested, users are sent to ‘dissuasion committees’ which provide support and evaluate the need for treatment. Repeat offenders are more likely to be issued compulsory

treatment. This policy was the direct result of the public health risk of increasing HIV rates from intravenous drug use, rather than political motivations as in the Czech Republic. Trafficking and sales are still subject to criminal penalties, as they are elsewhere in Europe. Currently a user can possess any substance to an amount equal to 10 days' worth of use without criminal sanctions (EMCDDA, 2014b), which is similar to the Czech policy. Once that quantity is exceeded however, the crime becomes one of supply, whereas the Czech Republic has a lesser charge for personal possession.

Methodology

Portuguese drug decriminalisation is well-known in the UK and US due to media coverage. Since the policy has drawn a large audience in the English-speaking world, it would logically follow that other European drug policies would be equally covered. For comparison the Czech Republic was selected, as its policy is quite similar to that of Portugal, and with a longer track record of decriminalisation it was expected to have some coverage in the Western media. This study was designed to determine the extent of the difference between coverage of Czech and Portuguese policies in English language online media. Additionally, the question was also raised whether the reporting provided an accurate description of the drug policies and whether it reflected the results of academic studies on the topic. An exploratory text analysis was conducted of drug policy articles in top online news sources, both directly from the source websites as well as through search engines. Sources were selected based on Nielsen ratings² for the most viewed news sites in the US and the UK, with the top five from each group included (Olmstead, Mitchell, and Rosenstiel, 2011).

US sources included MSNBC, Time, and the New York Times. British sources included BBC, MailOnline, Guardian, and Telegraph. Yahoo News overlapped on both, and was included only once. In place of CNN, which was within the top five in Nielsen ratings but had an incompatible

² The Nielsen Company is a research firm with a focus on audience measurement of online, mobile, television, and audio media for targeted marketing (www.nielsen.com).

search algorithm, Google News was used, which was in the top five in another usage survey conducted by Hitwise³. According to the Pew Research Center's Project for Excellence in Journalism, Google is the most likely site to drive traffic to news sites with 30% of traffic to the top 25 English-language news sites originating there, so it was selected as the primary search engine for this study (Olmstead, *et al.*, 2011). The other search engines included were Yahoo and AOL, which both appeared on the Nielsen ratings lists in the top five.

Academic sources were included to determine if any differences in coverage was only present in the media. Sources for academic articles included Google Scholar and the publicly available search area of the university library system of the University of Leeds. Grey literature was included in both academic searches. After determining all of the sites that would be searched, they were then grouped into four categories: (a) top results from search engines, (b) academic sources, (c) US media sources, and (d) UK media sources.

In the searches using Google and the University Library, search terms were run both with no filters, and using the 'News' filter. Google Incognito mode was used and cookies were cleared between searches to anonymise the searches as much as possible.

Relevant search terms related to drug policy and decriminalisation were selected using both American and British English spelling variations⁴. Terms were decided based on the overall goals of the research, primarily to determine the difference in drug decriminalisation coverage and descriptions between the Czech Republic and Portugal. While some references to decriminalisation may have occurred outside these search terms, situations in which decriminalisation was discussed without using either of the terms *drug policy* or *drug decriminalisation* were unlikely, so the American and British versions of those terms were used along with the country

³ Hitwise is a product of Experian marketing services that monitors and ranks digital media usage (www.experian.com/hitwise).

⁴ Search terms used were: "drug policy" and "drugs policy"; "drug policy" "Portugal" and "drugs policy" "Portugal"; "drug policy" "Czech Republic" and "drugs policy" "Czech Republic"; "drug decriminalisation" and "drug decriminalization"; "drug decriminalisation" "Portugal" and "drug decriminalization" "Portugal"; "drug decriminalisation" "Czech Republic" and "drug decriminalization" "Czech Republic"

names. All search terms were applied to all sources unless otherwise noted in the results. Searches were conducted in December, 2014.

Following the initial search, the content of the articles was analysed. While search engines returned too many results to feasibly review, the first 25 results that contained the search terms in a relevant way (*i.e.* not in a sidebar or in an unrelated fashion) were reviewed. The number of search results (25) was chosen arbitrarily, but since search engines filter by relevancy, it ensured that the articles compared for each country would actually pertain to the drug policy of that country rather than tangentially related topics. The most common type of non-relevant article to appear were those related to the use of performance enhancing drugs in sports, so the goal was to exclude articles that veered too far from the overall comparison objective. Each article was evaluated on the following variables: if the selected country was identified as decriminalised, if it included the correct year of decriminalisation, if the policy was linked to increased or decreased drug use, and/or if the policy did not impact drug use. Additional notes were made if significant points were addressed, such as the issue of drug tourism. Results from search engines that fell into another category (*i.e.* they appeared in one of the UK or US primary sources) were included under the alternate heading.

Academic overview

Portugal had more than twice as many hits as the Czech Republic for both Google Scholar and the University of Leeds library system. If the academic literature influences or reflects policy and media output, it would be likely for research on Portuguese outcomes to be more widespread than Czech research, despite the similarities in the policies. When looking at the authors of these pieces, the Czech policy articles were overwhelmingly written by Czech researchers. Articles regarding Portuguese policy were written by British, Australian, and American authors in addition to Portuguese, demonstrating a broader interest in Portuguese policy in the Western world. Whether this is the cause of the media differential or the result of it is worth consideration.

Content-wise, the findings were similar. Portugal had more available publications, which led to more diverse findings. There is evidence in the

Portuguese literature that supports both a rise and a fall in drug use, without any general consensus, which also depends on the population being observed (Hughes and Stevens, 2012). Admission to rehabilitation programs increased since the law passed and the rates of infectious disease decreased, which is indicative of success on the public health front (Hughes and Stevens, 2012; Greenwald, 2009), though impacts on drug use and crime potentially detract from that success (Coelho, 2013). The public health gains, as evidenced by decreased new infections of HIV, from the Portuguese decriminalisation are frequently mentioned in Western media.

Research from the Czech Republic shows similar increases and decreases in different populations of users, which the researchers consider to be a net change of zero level, declaring that the strictness of the penalties has no impact on drug use (Zábranský, *et al.*, 2001). In the Czech case there is not a clear before-and-after evaluation, since the change came at the time of a major governmental shift, but there has been research on how penalties for possession impact use.

In addition to country specific research, both Portugal and the Czech Republic were included in a UK Home Office review of eleven countries drug policies in 2013-2014. This study concluded that there was no link between penalty severity and drug use (Home Office, 2014). The lack of connection between drug policy and drug use seems to be a common theme in the academic research, so it was expected to appear in the media reports regarding the decriminalisation policy. Each media source was evaluated on the representation of drug policy affecting drug use to determine the influence of academic research on the article.

Quantitative counts

The purpose of this analysis was to establish quantitatively which country was more commonly reported. Results for each search term (including spelling variations) were added together, so the resulting number is higher than the number of discrete articles.

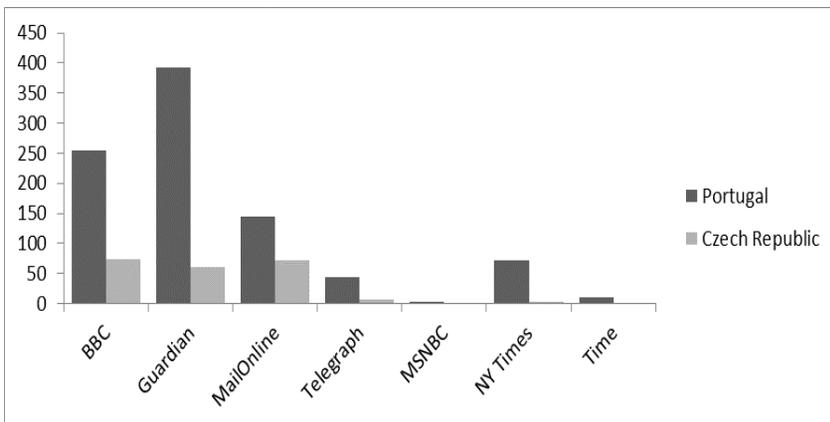
Search engine results

All the reviewed search engines – Google, Yahoo, and AOL – returned more than twice as many results for Portugal as for Czech Republic under ‘drug policy’. As a reflection of the total number of results for ‘drug(s) policy’, these are small numbers, but significant if the majority of the results were for US and UK resources. For example, the total number of results for ‘drug(s) policy’ was 4.569.000 on Google, so 7,6% of the total results mentioned Portugal, while only 3,3% mentioned the Czech Republic. For drug decriminalisation the results were more varied. Google showed a similar ratio to the results for drug policy, though Czech Republic did have some gains in the decriminalisation search. Yahoo actually had the opposite result, with Portugal gaining even more of a lead under decriminalisation searches.

The difference between the number of results for Portugal and the Czech Republic was greatly reduced when filtered for news in Google, but increased in the University system. Interestingly, the Czech Republic actually had a higher number of absolute results when searching for ‘drug policy’ than Portugal in Google News, but Portugal ended up with a higher total due to the huge disparity in the numbers for ‘drugs policy’. This may indicate a stronger presence of the Czech Republic in sources that use American spellings, while those that use the British spelling favour Portugal.

US and UK sources

Figure 1 US and UK sources



In the UK and US news searches, unrelated results were less likely to appear than general search engine results. There were several articles that related to athletic use of performance enhancing drugs, or in which the country was mentioned in passing, but the majority were relevant. The most notable result from the US sources was how few results were returned. As seen in Figure 1, there were very limited articles on Portuguese policy and Czech was practically non-existent. In both cases, the results were limited to references to ‘drug policy’ as ‘drug decriminalisation’ was not mentioned. Considering that several states have either legalised or decriminalised marijuana usage, these numbers were expected to be higher. It would be logical to include comparisons to similar drug policies, but comparative accounts were notably lacking in US outlets.

UK sources had a large amount of material on Portugal and far less on the Czech Republic, though greater than the US sources on both counts. The difference when compared to the US is not unexpected, as the UK is geographically closer to both countries and more likely to include European nations in general news reports. Why Portugal is dominant is still a question however, as the countries are similarly distant from the UK and do not share many common characteristics.

Analysis of texts

In Table 1, the results for each source are listed along with the search term that was used in that case (priority was given to decriminalisation over policy). The availability of articles for each term was used as the basis for each, as none of the US sources had country specific references to drug decriminalisation. In those cases the review was conducted on the drug policy articles.

Table 1.
Summary results of analysis for Czech Republic articles

	Czech Rep. decrim.	Czech Rep. decrim. 1990	Czech Rep. decrim. 2010	Increase drug use	Decreases drug use	No increase use/ No impact	Total
Search Engines	49	3	25	3	8	23	53
Google news (decrim.)	14	0	6	2	3	7	16
Google news (policy)	6	1	1	1	0	3	10
University library news (decrim.)	1	0	0	0	0	2	2
BBC (decrim.)	1	0	0	0	0	0	1
Guardian (decrim.)	2	0	0	0	0	2	2
MailOnline (decrim.)	2	0	0	2	1	1	4
New York Times (policy)	1	0	0	0	0	0	1
Time (policy)	0	0	0	0	0	0	1
Total	76	4	32	8	12	38	90

Since the Czech decriminalisation policy is complex and has gone through several iterations, one of the factors included was the year of decriminalisation. Threshold limits for drug amounts were introduced in 2010, which attracted some attention, though it did not change the underlying reality of the law. Though it is not essential to know the year in order to understand the results, erroneous dates did result in several articles claiming that the Czech policy had not been in place long enough to evaluate, which is untrue. Of the 90 articles included in the analysis, 32 stated that the Czech Republic decriminalised in 2010, while only four indicated a decriminalisation in 1990, when it first occurred. Those that mentioned the recent change did not actually state what the policy was prior to 2010, aside from stating that possession was ‘criminalised’, which it technically still is over the threshold limit. The distortion of basic facts by so many articles makes the remaining content difficult to trust, and highlights the lack of attention that the Czech policy has received in English language media. To state that possession was previously criminalised is a gross misrepresentation of

the law, implying a zero-tolerance policy akin to that of many US states. The reality of the Czech policy would present a more complete picture of the effects of decriminalisation, but it is left unclear in these reports, and downplays the progressiveness of the Czech government. As an example from one such article:

“In 2010, the Czech Republic was one of the last countries to decriminalise the possession of illegal drugs” (*Times of Malta, 2014*).

This quote not only reports the wrong date, but implies that the Czech Republic was lagging behind other, more progressive, countries, when in fact it was among the first to decriminalise possession. Particularly striking is that this report came from a search engine result and was thus a European news source, which might be expected to be more familiar with the laws of other European nations than a US source.

As to the effect of decriminalisation on drug use, the majority indicated that decriminalisation either had no impact on drug use or at least did not increase use. Assuming that the academic data is factual, this is accurate. Since there is conflicting evidence in the academic reports, the most common finding, no impact on use, was used as a control for evaluating the articles. If the article stated that decriminalisation either increased or decreased use, it was checked for a research link to support that conclusion. There were media sources on both sides of the issue presenting evidence of both increasing and decreasing use from decriminalisation, generally from countries other than the Czech Republic. For the purposes of accuracy, the impact on use cannot be used because of the contradictory evidence, but it can be used to determine the tone of the article and whether the author was promoting or discouraging decriminalisation. This was also used to determine if the article was reporting directly on a research study, and thus influenced by academic research rather than purely political means. It is promising that most of the outlets were aligned with known research, but the confusion about the criminality of drug use in each country remained.

The Czech Republic was presented repeatedly as a country that had criminalised drug use, seen negative outcomes, and changed its ways. Though in some respects that point could be argued, the policy change in 2010 is much less significant than it is portrayed and was more of a clarification than a substantive change. It also points to how general much of the reporting on drug decriminalisation is, as nearly every article that

mentioned the Czech Republic also discussed other countries, and rarely in detail. When reporting on multiple countries occurred, the tone towards the Czech Republic was frequently negative, as seen in these two examples from the UK:

“But if Portugal is apparently a success story for liberal drug policies, the Czech Republic is the opposite, at least on the face of it”. (*Telegraph*, 2014)

“Mr Clegg failed to mention the Czech Republic, which had similar drug possession laws to Portugal yet had ‘levels of cannabis use among the highest in Europe’”. (*MailOnline*, 2014)

An interesting thing to note was how often think tanks and NGOs were referenced, particularly regarding Portugal. Even when established academics were quoted, they were often tied to a think tank or NGO rather than as stand-alone experts, as in this quote from the *New York Times*:

“. . . the data on the effects of the overseas policy has been studied and written about in a paper published last month in *The British Journal of Criminology*, according to the Drug Policy Alliance . . .” (*New York Times*, 2010)

To compare to the reviewed articles that mentioned Czech policy, a selection of articles on the Portuguese policy were drawn from the sources that had very limited coverage of the Czech decriminalisation. Though the year is less of an issue in the Portuguese case, it was included for the purposes of comparison, to check the accuracy of details in reporting. In the case of these 61 articles, whether or not decriminalisation impacts on use was much more divided. By a slim majority, decriminalisation decreasing use came out on top, but it was too close to be considered a significant difference. Think tank reports indicating a decrease may have had more of an impact regarding Portugal, as the results are more compelling than reporting a lack of change.

In the Czech Republic, only one major study has been conducted on the impacts of drug policy, and found a negligible difference between decriminalisation with and without a personal possession penalty. This does not provide much evidence for the media, which may explain the generalities that surround Czech policy coverage. In Portugal, several studies have been conducted that also presented conflicting evidence, so

there is more material to draw from when reporting on drug policy impacts. The political affiliations of the media source likely impacted which evidence was included, which led to the contrasting findings reported. Within the findings, we see that the slightly more left-leaning BBC and Time presented decriminalisation as either decreasing or not having an impact, while the more conservative MailOnline presented all of the articles that claim an increase in drug use.

Table 2
Analysis of select articles on Portuguese policy

	Portugal decriminalised	Portugal decriminalised in 2001	Increase drug use	Decrease drug use	Does not increase drug use/ No impact	Total
BBC	35	5	0	6	2	35
Time	7	2	0	1	4	7
MailOnline	18	0	8	6	3	18
MSNBC	1	0	0	0	0	1
Total	61	7	8	13	9	61

A strange occurrence in the articles about Portugal was their tendency to ignore other countries with similar policies. While nearly all of the Czech articles mention Portugal, most of the Portuguese articles emphasise the uniqueness of Portugal’s policy. Examples include Portugal being lauded as the first European country to decriminalise drugs:

“Portugal, which in 2001 became the first European country to officially abolish all criminal penalties for personal possession of drugs” (*Time*, 2009).

“. . . it has already been ten years since Portugal became the first European nation to take the brave step of decriminalizing possession of all drugs within its borders” (*Informationclearinghouse.info*, 2011).

And the successes claimed that do not necessarily match the research:

“Tax and regulate—something that smart countries like Portugal have already gotten a huge lead in and have had huge success” (*MSNBC*, 2012).

Some claim that Portugal inspired the policy of the Czech Republic, which first decriminalised 11 years previously. Articles regarding Portugal's success often mentioned the low rate of teen cannabis use, compared to Italy, Spain and Czech Republic's high rates. All of those countries have also decriminalised cannabis possession. However, using cannabis usage to indicate a reduction in drug use in Portugal is not meaningful, since the rate was already one of the lowest in Europe prior to decriminalisation.

These errors indicate a general lack of knowledge about drug policy in Europe, which is then transferred to policy makers. While the factual accounts of decriminalisation in various European countries could be informing Western drug policy, inaccurate media accounts are hindering progress. In the case of the UK, a fellow European country is being fed misinformation about drug decriminalisation which influences both public opinion and political action. It also represents, in the Portuguese case, the opposite of a moral panic. In essence the media is promoting the idea of drug decriminalisation as a good one, so when a country does not fit that narrative, they are demonised or ignored as a poor example of decriminalisation policy rather than as an alternative outcome. Considering the number of countries that have used decriminalisation in some form, and the relative scarcity of media coverage regarding them, it suggests that the Portuguese experience of decriminalisation may be more of an outlier than a typical example.

Discussion

Looking strictly at the quantitative counts previously reported, Portugal clearly dominates the discussion of drug decriminalisation in the English-language media. Both in unedited and edited sources, the majority of decriminalisation news revolved around Portugal with occasional mention of other countries. News about the Czech Republic tended to be brief, less detailed, and less accurate than articles about Portugal. Notably, the edited news sources did demonstrate a higher degree of accuracy, but several sources that should have provided accurate information, such as reports from drug research organisations found through Google, did not. Many of the news articles also featured data from the same sources, which limited

the variability of the results. In particular, an article about the Portuguese decriminalisation released by the Cato Institute was frequently referenced in sources that mentioned Portugal. Clearly the Cato Institute has an effective method for disseminating research that merits consideration by other researchers. Regardless of media saturation by certain sources however, the degree to which Portugal is covered is disproportionate. There are many possible reasons that this may be, including the appeal of Portugal's public health story, a Western media bias, and the timing of reforms. In any event, lack of interest by academics also plays an important role evidenced by the sheer lack of research on the Czech policy as opposed to Portugal.

The first potential reason to explore is Portugal's success story. The most highly touted aspect of the Portuguese program in academia has been a decrease in intravenous drug use and a decrease in associated HIV and Hepatitis C infections. When drugs were decriminalised and treatment for problem users became mandatory, the rates of HIV infection, which had been rapidly increasing, dropped dramatically (Hughes and Stevens, 2007). Even when the rates of drug use among adults were noted to have increased in the news reports, the benefits to public health far outweighed the risks of an overall increase in drug use. However, increases were only acknowledged in anti-decriminalisation sources.

The Czech Republic does not have this shocking statistic picture associated with decriminalisation, as it had low rates of HIV to begin with. Otherwise there was more continuity; even under Soviet jurisdiction, drug use in the Czech Republic (then Czechoslovak Republic) was regarded as a public health risk. Harm reduction measures for injecting drug users were implemented starting in the 1980s, preventing the sorts of outbreaks seen in other countries. Hence, the majority of new infections came from sexual contact. A comparative reduction in HIV rates linked to decriminalisation in the Czech Republic is therefore impossible, which makes it a much less exciting program to write about. Issues such as an increase in drug use would also become more prominent without the mediating influence of public health impacts, making the policy appear less effective in the Czech Republic than in Portugal if comparable increases in drug use were reported. This success in the public health arena also makes Portugal an inadequate comparator for most other countries. Unless the country in question is also experiencing a major public health

episode (increase in HIV), it would be unlikely to have results that match Portugal's. If other countries deem decriminalisation programs to be failures based on public health outcomes it could have negative consequences for drug policy reform.

Bias is another possibility for the disproportionate reporting. As English-language media serves the Western world, there is a risk of Western bias against Eastern Europe, even if it is unintentional. While the Czech Republic is technically Central Europe, countries that were formerly part of the Eastern Bloc tend to be held under the “*Eastern*” title by US and UK publications. There is a sense of “*otherness*” about Eastern Europe that may make it harder to relate to, and in this case to compare policies to, for Western readers (or so it is assumed). This leaves a huge gap for evidence-based policy. Several articles that discussed the Portuguese policy also mentioned Italy and Spain when discussing decriminalisation, while leaving out the Czech Republic. There are other countries throughout Europe that have utilised decriminalisation policies, but not all of them appear in Western media. Research concerning other countries, in both Western and Eastern Europe, could be conducted to establish a trend in reporting, though in the articles evaluated there was a tendency to focus on Western nations over Eastern. If only Western countries are used as ‘evidence’, it provides a skewed representation of potential policy outcomes. While the Western world may feel more at ease with comparisons to Portugal, Italy, or Spain, those countries in reality are no more like the US or UK than the Czech Republic, and will provide the same amount of insight into the potential effectiveness of a decriminalisation policy. Since Portugal and the Czech Republic had very different drug situations prior to decriminalisation, it would make sense to evaluate how decriminalisation has worked in both countries to provide a broader view of expected outcomes. Instead, focus is placed on Portugal's successes and the Czech Republic is ignored or marginalised by the Western media. The fact that the Czech Republic has undergone a 20-year process of refining the policy that included several implementations might make it more generalisable to other countries, but this prospect is rarely considered in either the media or academia.

A less malevolent possibility is the timing of the Portuguese legislation. The most common errors in the articles about the Czech Republic were misstating the date of the decriminalisation policy and indicating that pos-

session was a criminal offense prior to 2010, but is not currently. Of those that mentioned a date, nearly all unedited sources listed 2010 as the start of Czech decriminalisation policy. Only four correctly indicated that the Czech Republic first decriminalised in 1990. All of the sources that listed a date correctly reported 2001 as the onset of the Portuguese decriminalisation policy. In 1990, the structure of news media was very different than it is now. Portugal decriminalised at a time when internet usage was common worldwide, and the ‘war on drugs’ was losing its lustre. Italy and Spain both decriminalised possession for personal use prior to the internet era as well, and while they are mentioned in passing in articles praising Portugal, neither has reached the levels of media saturation of the Portuguese policy. Academic research on the drug policies of both Italy and Spain falls between the values for Portugal and the Czech Republic, and both are far less referenced in Western online media. It is possible that if print media were compared, rather than online sources, there would be more coverage of the Czech policy.

Another note on timing is the appeal of the policy to researchers. Decriminalisation in the Czech Republic occurred following the devolution of the USSR, so a before-and-after comparison is not feasible. It is more plausible to do a comparison of the different implementations of Czech policy, which summarises the research done on Czech policy to date. Portugal’s decriminalisation did not follow a major governmental shift, so it provides a more appealing before-and-after scenario. This may have attracted more interest, leading to more research which could then be publicized and picked up by media outlets. If that is the case, which seems likely based on the timing of research publications and the upswing in Portuguese policy media references in 2009–2010, it highlights the importance of researchers in influencing media and public policy through the dissemination of research findings. The Portuguese policy also followed a general increase in drug policy and monitoring in Europe. The European Monitoring Centre for Drugs and Drug Addiction was founded in 1993, and settled in Lisbon in 1995, leading to increased monitoring of drug issues throughout Europe. As it is based in Portugal, the country was placed at the forefront of drug issues research, possibly leading to more publicity and outside policy awareness.

Academic impact and conclusions

Academics in the realm of public policy likely have an interest in how policies are formulated and implemented. That alone could drive their involvement in media and governmental activities, but often does not. Cook *et al.* (1983) noted that media impact on policy can be fuelled not only by public awareness, but also collaboration between the media and government staff. By working together with media, policy makers were influencing public opinion without directly addressing the public. This collaborative method also works on the academic side. Academics often have knowledge about policy issues that is never considered by their representative governments. This may be due to a lack of interest in policy involvement on the part of the researcher, though that is confounding in the field of public policy, but could also be due to the inability of researchers to disseminate the information to the appropriate recipients. Policy makers rarely consult academic literature and are more likely to use internet research, statistical data, and input from other policy makers (Ritter, 2009). That basically places the responsibility on the academic to disseminate information to the right sources. As Lenton (2007: 6), brilliantly stated “*There is no point in doing policy research if no one who can make a difference knows about it.*” This also gains particular importance when we look at the emphasis on research impacts in academia. No longer is output a sufficient measure of researchers’ abilities as impact has gained prominence (Lenton, 2007). One way to expand both public and policy maker knowledge is collaboration with media. The circulation of erroneous or incomplete information only leads to uninformed public policy, which benefits no one. Academics have a responsibility to disseminate accurate data and counter misinformation, not only amongst themselves via peer-reviewed journals, but also through traditional and new media channels.

Interestingly, several media sources praised the Czech Republic for involving academics and addiction experts in the development of drug policy, which makes the lack of coverage of Czech policy even more problematic. A potentially educational scenario of involving scholars in the policy process is being lost due to poor media exposure. The inclusion of outside researchers in countries with decriminalisation policies would help, as it appears to have with UK, US, and Australian researchers in Portugal, but also following the examples of those that are successful with

research dissemination. The Cato Institute study on Portugal, authored by Glenn Greenwald (2009), is a prime example.

Greenwald's report was full of praise for the Portuguese program, often pulling the most positive data available to present a glowing review of the decriminalisation (Hughes and Stevens, 2012; Greenwald, 2009). Hughes and Stevens (2012), in a review of previous research on Portugal, found that some of the data was directly contradicted by other studies which were not mentioned in the report. However, these studies are also not presented in mainstream media. Greenwald's report was frequently cited in the reviewed articles, demonstrating an effective technique for research dissemination that would be beneficial if used by additional sources. Think tanks and NGOs should not be the sole beneficiaries of media influence on public policy, though researcher collaboration with them could increase media coverage.

While this study draws on a small sample of news media, it demonstrates an unequal amount of coverage of two drug policies which are strikingly similar. It also represents the ability of the media to frame policies in ways that can be persuasive or frightening to influence public opinion. Unlike most drug reporting, the Western media has shied away from panic reporting in this case, and instead promotes the Portuguese policy as a beneficial alternative to drug prohibition. As long as we continue to promote 'evidence-based' policy in the field of drug policy, consideration of what evidence is being used should be a prominent factor. This is far from a new idea, but it is a continual difficulty in the policy field (Stevens and Ritter, 2013). Whether media use for information by policy makers is a good thing or not is debatable, but the fact that it occurs is not. Use of the media to promote research is one potential method to engage policy makers with research that may lead to policy changes, or at the very least informed decision-making based on facts. While this study was highly limited in its scope, it was primarily limited by the lack of media coverage of the Czech decriminalisation, which could be remedied by more involvement of policy researchers. By engaging the media by promoting their research, academics could provide greater coverage of international policies which would provide additional evidence for consideration by policy makers.

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A comparison of media coverage of Czech and Portuguese drug decriminalisation

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Malta and the fight against EU Fraud: Is it a Maltese Cross?¹

Brendan Joseph Quirke²

Introduction

As any visitor to Malta will soon realise, it is a very Catholic country. In Catholicism, one is taught from a very early age to accept the trials and tribulations of life. When something unpleasant or difficult happens, as a Catholic, you are told by the Catholic Church that you should feel privileged: “*You are helping Christ to carry his cross*”! This chapter will consider whether the responsibilities and duties that Malta has accepted as a member of the European Union in terms of fighting EU fraud have become a burden (or cross in the Catholic sense of the term), or has Malta despite some difficulties that have been faced, accepted its responsibilities and sought to make a positive contribution as a full and active participant in the fight against EU budget fraud.

Malta became a fully fledged member of the European Union in the large expansion of the organisation which occurred in 2004. Along with its Mediterranean neighbour Cyprus, it joined another eight countries which had previously been under communist rule. These countries such as Latvia, the Czech Republic and Hungary had received many millions of euros of pre-accession aid which Malta and Cyprus did not. Therefore, it can be said that there was not a level playing field in terms of pre-accession aid and assistance, to a large extent. The Maltese felt that they were left “*to get on with it*”.³ Maltese officials also believed that they had

¹ The research methodology comprised a review of secondary materials such as Maltese Government reports and official documents, EU reports and a series of semi-structured interviews with Maltese Government officials in September 2013

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³ Interview with Maltese officials, September 2013

not been supported as fully as they probably needed – “*OLAF wants everything done yesterday*”⁴ and: “*at times, dealing with OLAF is like a one way street, everything goes in one direction*”.⁵ The study commissioned by Brussels into assessing the capabilities of candidate states anti-fraud structures and systems, undertaken by the consulting arm of the OECD, Sigma, does make the same point although perhaps in more tactful and diplomatic language.

Malta’s Accession to the European Union

Malta had a relatively smooth accession to full membership of the European Union. There were none of the controversies associated with the paths taken by Romania and Bulgaria for example, where both the “*carrot and the stick had to be used*” (Quirke, 2009; Quirke and Doig, 2011). The view of Malta as a country that shared common attributes with its European neighbours, such as a belief in democratic values, a respect for human rights and an acceptance of the rule of law led to a widely held view amongst the political and governing classes that Malta’s future and indeed its destiny lay with the European Union.⁶ Malta first submitted an application for membership in 1990 and a decision was taken at the Helsinki European Council in December 1999, to open accession negotiations with Malta and the remaining Central and East European applicant states. Malta was given the go ahead to begin negotiations in February 2000 and negotiations were formally concluded in December 2002. A referendum was held in March 2003, on the question of whether Malta should become a member of the European Union in the next enlargement in May 2004. 143,094 votes were cast in favour and 123,628 votes against (53,6% in favour and 46,4% against) (Vassallomalta, 2013). Despite the wish of the political and governing classes, there was not an overwhelming majority in favour of membership.

In terms of the hurdles Malta had to surmount in order to succeed in terms of acceding, she had a far easier ride than did Bulgaria and Romania in the next enlargement in 2007. Malta was not perceived as having the

⁴ Interview with Maltese officials, September 2013

⁵ Interview with Maltese officials, September 2013

⁶ Interview with Maltese officials, September 2013

same problems in terms of corruption as did Romania and Bulgaria. Indeed, Malta has fared much better than Romania and Bulgaria in Transparency International's Perceptions Corruption Index (PCI) where she achieved a score of 6,8 (where the nearer to 10 indicates lower levels of perceived corruption and the nearer to 0 indicates higher levels of perceived corruption) and ranked 25th whereas Bulgaria received a score of 4,1 and ranked 54th and Romania ranked even lower – a score of 2,9 and a ranking of 87. These results do not tell the full story as they relate only to perceived corruption in the public sector, but broadly they do present some indication of perceived levels of corruption.

Corruption in Malta

Despite Malta's relatively respectable showing in Transparency International's PCI, corruption appears to be an issue in Maltese culture and life. Malta is a small island, inevitably there are close connections, often based upon family and extended family. There is the potential, therefore, for informal networks to operate just as in certain Balkan countries for example and such networks can be linked to corrupt behaviour (Quirke, 2010; Quirke and Doig, 2011). From just a casual perusal of the Maltese press, one can see that practically every time a story is ran about corrupt behaviour, there is quite a large amount of blogging concerning how the authorities do not take corruption seriously and how corrupt the politicians are and so on. Now of course blogging often involves anonymity: people 'hide' behind outlandish names and so on. How seriously one should take these claims does depend upon whether there is any corroborating evidence. At the other end of the spectrum, it would be disingenuous to claim that Malta is corruption free, as there have been some high profile cases reported in the media. Indeed in the European Commission's anti-corruption report published in 2014, a survey by Eurobarometer on corruption from 2013 is quoted which found that 83% of respondents considered corruption to be a widespread problem in Malta and 29% said it affected their daily lives. 53% said corruption was particularly widespread among officials issuing building permits. Also 43% of companies reported that when they competed for public contracts in the last three years, corruption prevented them from winning the contract. So, it does appear that

concerns about corruption are certainly on the agenda for many people in Malta.

Some examples of corruption or alleged acts of corruption are for instance, former officials who were involved in privatising Enemalta's petroleum division were accused of receiving gifts from or being pressurised by an individual who had been charged with bribery in an oil procurement scandal. Mario Mizzi who was the former CEO of Malta Investment Management Company Limited which is represented upon the adjudicating committee within the privatisation unit and an employee named Victoria Wilson; both said they had received nothing from former Enemalta Chief Projects Officer, Ray Ferris. The case is ongoing at the time of writing (*Times of Malta.com*, 2014)

There have also been allegations in the media concerning scandals in the oil procurement sector. One example is that of George Farrugia who is the local agent of the French oil company, Total, who alleged that he was blackmailed by the then Enemalta chairman, Tancred Tabone into giving him commissions on oil procurement and storage contracts. In evidence to a related legal case, Mr Farrugia alleged that Mr Tabone had told him either to pay up, or contracts would be given to another company. He alleges that the commissions were shared between Mr Tabone and a Mr Sammut who acted as a consultant to the Enemalta chairman (*Times of Malta.com*, 2015).

These examples illustrate that although Malta is indeed a small country, it is not without problems in terms of corruption and it would be very complacent to take the view that EU funds are likely to be safe and secure from nefarious activity.

Establishment of the AFCOS Network

In order to establish effective cooperation between OLAF and the national administrations in the candidate countries as well as seeking to have in place organisational arrangements which would be capable of preventing and detecting frauds and irregularities, as Murawska (2004) outlines, OLAF supported the creation of independent anti-fraud structures at a national level in the then candidate countries. The rationale behind such structures was to ensure effective co-ordination between legislative and

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administrative measures dealing with EU fraud policy (Murawska, 2004). OLAF provided some training and support, although as the consulting arm of the OECD in its assessment report of Malta's Anti-Fraud system makes clear – OLAF can be very demanding of Member States, but at the same time, is not very generous towards them (Sigma, 2006). As outlined above in the introduction, Malta certainly did not receive the same degree of support and financial assistance as the former communist countries which joined the EU at the same time⁷

AFCOS in the Maltese Republic was established during the negotiations for accession in the year 2000. At that time, the existing Internal Audit and Investigations Directorate (IAID) was appointed to serve as the Anti-Fraud Coordination Structure, based in the Office of the Prime Minister. Malta's application for EU membership and the government's commitment for ensuring transparency in its departments were the two driving forces for soliciting the financial investigative function to be co-ordinated also by the IAID. In 2001, the IAID was also given the responsibility to be the sole contact point for the European Anti-Fraud Office (OLAF) in Malta and to act also as the chairman of the Co-ordinating Committee to support investigations into irregularities with a possible criminal intent emanating from the Police, Customs and the Attorney General amongst others.

At the time of the Sigma assessment in 2004, there appeared to be very little known about the functions of AFCOS and its mandate and operational capacity were not fully understood by relevant parties.⁸ This suggests something about the amount of time devoted to Malta by the Commission and OLAF and also says something about the investment Malta made into disseminating relevant information through training seminars and workshops. Candidate/member states have to fully play their part in this process. Blame cannot solely be laid at the doors of OLAF and the Commission. Yet given this assessment took place just as Malta joined as a full member, it could be argued that there were significant parts of the anti-fraud structure/network that were not fully prepared to assume the responsibilities of membership.

Sigma, the consulting arm of the OECD in Paris, was in 2004 commissioned to undertake an assessment of the anti-fraud structure in Malta

⁷ Interview with Maltese officials, September 2013

⁸ Interview with Maltese officials, September 2013

and it reported in 2006. The objectives of Sigma's assessment was to evaluate the operational and administrative capacities of AFCOS and its partner institutions in the protection of the European Community's financial interests and where needed, to put forward proposals and recommendations for strengthening these capacities. The financial interests under consideration are those under the control of the Maltese authorities and can be either EU funds allocated for disbursement within Malta, or own resources (*e.g.* customs duties, agricultural duties, value added tax) collected by the Maltese authorities on behalf of the European Union.

As with previous assessments with other candidate states, Sigma's evaluation of the operational and administrative capacities of AFCOS and its partner institutions was made around the basic responsibilities of AFCOS: co-ordination, co-operation and communication ('the 3 C's') that are designed to signify the ability:

- To co-ordinate, within Malta, all legislative, administrative and operational obligations;
- To co-operate with OLAF and its partner institutions whenever OLAF requires investigative assistance or, on the other hand, whenever OLAF assistance is required;
- To communicate with OLAF and its partner institutions with regard to mandatory reporting and information exchange.

The main findings of the Sigma Report were as follows:

- There was no formal, written anti-fraud strategy. This was problematic as a strategy for fighting fraud in Malta would be useful in harmonising the various efforts undertaken by different ministries and bodies to protect both national and international financial interests, including the EU budget and own resources. Such a strategy would have emphasised Malta's commitment to take action in this respect. Sigma (2006) did note that in practice, the IAID did follow the essence and spirit of an anti-fraud strategy and did operate "within the vision of an anti-fraud strategy" (Sigma, 2006: 13). The Internal Audit and Financial Investigations Act provided for procedures on how to act in case of fraud. Article 16 of the Act states that if an entity has reason to suspect any irregularity and/or case of fraud of public funds, it shall refer the matter immediately to the Director of the IAID and shall supply all information relating to the suspected fraud. However, although there were procedures for developing and investigating frauds, there was not a

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strategy with an action plan to fight fraud and protect the EU's financial interests.

- Although, it did not use a risk minimisation strategy, the IAID was able to identify weaknesses in the national systems regarding the management of EU funds. Systems audits had been carried out to verify the application and effectiveness of the management and control systems, that co-financed operations had been implemented in accordance with the relevant EU rules and policies and that a sufficient audit trail exists. In relation to the EAGGF (Guarantee section) because the IAID is the certifying body in terms of Article 3 (1) of Commission Regulation (EC) No.1663/1995, it did manage to complete a certification audit which was carried out in terms of internationally accepted accounting standards. Also, the IAID was able to carry out audit reviews and audit assignments in relation to EU pre-accession and transitional facility funds which had been granted to Malta and as a result of this process, the IAID was able to identify weaknesses in existing systems and also to identify those elements within systems that needed to be improved.

It is axiomatic that AFCOS should be positioned within an organisational structure that preserves its independence in a functional, operational and administrative sense. The issue in Malta, as the Sigma experts (2006) explain in their report is that AFCOS, being part of the IAID, is fully dependent on the status of the IAID. Malta has positioned the IAID as a centralised function reporting to the Cabinet through the Cabinet Secretariat. In the opinion of the authors of the Sigma Report (2006), two of the critical conditions for effective internal audit are: (1) adequate status and functional independence and (2) sufficient authority to ensure that the widest range of audit coverage is fulfilled. Given that the IAID is a self-contained independent unit, positioned within the Ministry of Finance, its work is overseen by the IAIB (Internal Audit and Investigations Board) which is the policy-making body and regulator of the Internal Audit and Investigations Function. Its primary function is to oversee, support and appraise the work of the IAID and to follow up actions by the Permanent Secretaries (senior civil servants who head government departments) in response to IAID recommendations in accordance with Part III of the Internal Audit and Financial Investigations Act. The functional independence of the IAID is guaranteed not only by the fact that its work is exam-

ined closely by the IAIB, but also due to the fact that it falls under the responsibility and scope of the Cabinet Secretary.

In terms of administrative procedures, the view of the IAID is that its operational independence is regarded as being guaranteed⁹. There is a legal basis to this guarantee contained in the Internal Audit and Investigations Act 2003. There is one reservation and this is that irregularities of an administrative nature are to be reported to the audit subject's Permanent Secretary who should inform the IAID of the actions taken. The IAID will then monitor the case until the irregularity is actually rectified. There is, however, a lack of clarity concerning whether the IAID can take further action by itself, if it is not satisfied with the action taken and the information forwarded by the auditee's Permanent Secretary.

In terms of criminal procedures, the Sigma reviewers took the view that the operational independence of AFCOS is limited, as from the moment a suspected irregularity becomes a criminal offence, AFCOS hands over the case to the Malta Police Force, the Attorney general or for some cases the Comptroller of Customs. Officials of the IAID have commented that co-operation can be difficult sometimes with the Police Force "*who on occasion, like to keep things to themselves*"¹⁰

In 2005, as the Sigma experts (2006) note, there was a view held by the Managing Authority (which is the Planning and Priorities Co-ordination Division-PPCD) which is a government department responsible for ensuring the efficient absorption and management of EU funds, did not consider AFCOS as the focal point for reporting irregularities. However, now the Manual of Procedures for Structural Funds Malta 2004-2006 requires that if an irregularity becomes apparent, then a Structural Funds Irregularity Report should be prepared listing the details of the suspected irregularity which should be submitted to the Managing Authority – the PPCD.

In terms of staffing, the Director of the IAID is appointed by the Prime Minister, although the Internal Audit and Investigations Act does not mention this procedure, nor the terms for dismissal of this official. Sigma also makes the point that the AFCOS function is not formally described and is not separated from the function of the Director of the IAID. Also at the time of Accession, the IAID structure was based upon a staff comple-

⁹ Interview with Maltese officials, September 2013

¹⁰ Interview with Maltese Officials, 2013

ment of 37 full time equivalents (FTEs). However, at the time of the Sigma assessment only 21 of the 37 posts had been filled. Given the varied tasks that IAID performs, where the AFCOS role is just one of them, then this was a serious understaffing situation which must impact on all functional areas. In the response to Sigma, the IAID Director resolved to increase the staff establishment to 27 members including the Director and one Assistant Director. This has been done and as of 2012 there were 30 members of staff, of which 27 were auditors, risk management staff and data analysis staff.¹¹

Sigma also found that the IAID has many responsibilities and that AFCOS is only one of them and may not necessarily be the first priority. There is much work for the IAID to do, but the resources at its disposal, both human and financial, are limited. In terms of protecting the financial interests of the European Union, this in itself, is somewhat worrying.

The IAID sits at the very centre of the Co-ordinating Committee where all the existing national inspection, audit, investigation and judiciary agencies should interrelate with each other. This involves exchanging information and offering support to fellow agencies/departments in order to prevent mismanagement, fraud and irregularity with regards to public funds, including EU funds. Sigma expressed concerns about this, because the IAID is present at almost every level of control of the management of EU funds and that if an irregularity occurs, it is the IAID that investigates and defines the incident. Yet the IAID is involved in this whole process. As there is in effect a combination of internal audit and inspection in one service, there is a concern that this could cause conflicts of interest. This could impact on the cooperation offered to the IAID, if managers believe that the information gathered could lead to the starting of an administrative investigation. Yet, it is difficult for a small country like Malta with limited resources, both financial and in terms of personnel, to introduce a fully delineated separation of duties.

Sigma (2006) recommended that the Co-ordinating Committee should be expanded to include all partner institutions involved in the management of EU funds. There also needed to be formal agreements between national administration, investigation authorities and prosecution authorities and between these institutions and OLAF, in relation to investigating suspected fraud or EU irregularities. In addition, there was a need for a

¹¹ Interview with Maltese officials, September 2013

national anti-fraud strategy which would formalise the relationships between national administration, investigation authorities and the prosecution authorities and AFCOS. This would involve exchanging information about suspected fraud cases: how investigations should be managed and how the results of the administrative and/or criminal inquiries should be brought together at AFCOS level.

Training was also deemed to be of crucial importance and an organised training programme should be established with the help of either internal or external trainers. It is somewhat ironic that this recommendation should have been made, as one of the priorities in the pre-accession period should have been to organise a comprehensive training programme. The EU Commission and OLAF should have taken a more pro-active stance and liaised with their Maltese counterparts more closely in seeking to ensure that comprehensive training was delivered prior to accession. It should have been clear to the authorities in Brussels that a nascent anti-fraud service would not have the expertise to deal with the complexities of the Common Agricultural Policy and the Structural funds. It is not always up to the candidate states to come to Brussels with the 'begging bowl'. This having been said, some responsibility must also lie with the Maltese authorities. They should have undertaken a needs assessment to identify gaps in their skills and knowledge and then made a request/requests to OLAF and the Commission. It is not solely the responsibility of OLAF and the Commission. Member states must take ownership of their own training needs.

Response of the Maltese Authorities

In response to these observations, the Maltese authorities drafted an anti-fraud strategy which has the following objectives:

- *Capacity Building:*

The fight against irregularities, fraud and corruption can only be effective and efficient if all the necessary skills and tools are available to the national partners to enable a professional and competent approach.

- *Communication strategy:*

Public relations is one of the key tools in the fight against fraud and corruption. It must target the general public and also key people in the

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public sector in key areas. It must provide secure and confidential channels to encourage people to come forward and give information on fraud and corruption.

▪ *Maximisation of national co-operation:*

To encourage and facilitate collaboration at an early stage of any investigation, capturing efficiencies and synergies and allowing holistic approach

▪ *Maximisation of International Co-operation:*

Cross-border fraud and corruption is a reality that can be addressed through collaboration with international partners. It allows the Island to satisfy its international obligations and streamline and exploit all areas of mutual assistance (Office of the Prime minister, 2008).

The strategy does emphasise the importance of AFCOS and the responsibilities of Malta in terms of respecting and meeting the obligations it has in terms of protecting the EU's financial interests: it does emphasise the key role of AFCOS in ensuring the implementation of the strategy. It does not, however, identify the training needs of the anti-fraud bodies in Malta. It also fails to identify what the base level of anti-fraud expertise is and how Malta can move from this point to a higher level where it has the necessary enhanced skills and expertise it needs in order to meet its responsibilities effectively. There does appear to be an awareness of the need to enhance skills and expertise in the anti-fraud strategy as the strategy does state that an analysis of skills and expertise should be undertaken. Perhaps it might have been advisable to have undertaken such an analysis prior to drafting the anti-fraud strategy, in order that measures to address skills and expertise deficiencies could have been outlined in the strategy itself.

The separation of inspection from internal audit is partially achieved with a designated AFCOS unit of four officials within the IAID. Yet a situation could still develop where in effect, the IAID is investigating itself. The Sigma experts also express concern as the same organisation could be gathering data which could lead to an administrative investigation of the IAID itself. This may well make certain managers in the auditee organisation nervous about co-operating fully.

The strategy also does not make clear what the position of the Director of the IAID is in terms of appointment, security of tenure and removal from office.

There was an attempt to address concerns expressed by the Sigma experts with respect to understaffing of the IAID. As mentioned above, the staff establishment has been increased from 21 to 30 members of staff, 27 of whom are auditors, risk management analysts or data analysts.

One issue that has not been addressed is the different types of organisation within the AFCOS regime. Some are police such as the Maltese Police Force and the Customs Service, others such as the IAID itself and the Managing Agency and Payment Agency are administrative organisations. Given that the IAID is not a police-type organisation, great care must be taken that when it for example undertakes investigations, it does not make errors when it is conducting on the spot investigations in terms of taking statements and collecting evidence. If such errors are made, this could potentially compromise subsequent legal cases because the rules have not been followed. In an attempt to try and minimise this risk, as far as is possible, the IAID does ask the police to attend when they conduct on the spot investigations.¹²

Although IAID is described in the strategy as being the ‘*nucleus*’ of the AFCOS system, and the main point of contact with OLAF, this does not always prove to be the case. There have been instances when OLAF has paid visits to Malta to collaborate with the Customs Service while the head of AFCOS has known nothing about the OLAF mission.¹³ In one instance the Director of IAID was at a meeting in Brussels and an OLAF official said to her: “*I was in Malta last week on a mission – working with Customs*”, she knew nothing about said mission.¹⁴ Given the time and effort that has been expended on creating the AFCOS networks across all the candidate countries and new member states since the year 2000, then for OLAF to undermine the communication protocols in the way it has, is unfortunate to say the very least and this has not just happened in Malta, it has also happened in the Czech Republic as well as Bulgaria (Quirke, 2008; Quirke and Doig, 2011).

Another issue which is of importance is the fact that Malta did not ratify the PFI Convention¹⁵ until January 2011. The convention as Fenyk

¹² Interview with Maltese Officials, September 2012

¹³ Interview with Maltese Officials, September 2012

¹⁴ Interview with Maltese Officials, September 2012

¹⁵ The *Convention on the protection of the European Communities financial interests*, introduced by the Council Act of 26 July 1995 drawing up the Convention on the protection of the European Communities financial interests.

(2007) details, requires that member states shall incorporate frauds against the European Communities financial interests into their criminal codes. As a consequence of this they should take the necessary steps to ensure that fraudulent behaviour and conduct is punishable by criminal penalties that are effective and reasonable. The Convention also requires that definitions on what is termed corruption, both active and passive (Articles 2-3) be assimilated into the criminal code. 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 that damages or is likely to damage the European Communities financial interests (Fenyk, 2007). Although the National Anti-Fraud strategy published in 2008, states that all criminal laws have been amended in accordance with various international treaties and protocols, it does not specifically state that they have been amended in accordance with the PFI Convention. This is not surprising, given that the Convention was not ratified until 2011.

It is vital that there is a level playing field across the EU with respect to legal definitions and penalties within the relevant criminal codes. If this does not happen, it is likely that some offences could go unpunished in certain member states and that criminals could take advantage of such loopholes. Malta was required to ratify the PFI Convention along with the Treaty of Accession, which should have been made absolutely clear to the Maltese government. A similar situation happened with the Czech Republic as Quirke (2008) outlines. It does make something of a mockery of the rules of accession for Brussels to turn a 'blind eye' to this sort of omissions and it is yet another example of a self-inflicted wound.

Types of EU fraud case in Malta

As any Maltese official is likely to tell a visiting academic: "*we are a small country*", and it is accurate to say that so far, there have not been a significant number of the massive frauds that have occurred as in other EU nations. "*The 10,000 euro threshold for the reporting of irregularities to OLAF means that we do not report that many.*"¹⁶ There are not therefore the exam-

¹⁶ Interview with Maltese Officials, September 2013

ples of EU fraud cases in Malta that there are in countries like Romania and Bulgaria for instance.

Examples include the uncovering of fraudulent sugar imports to Malta through the use of false documentation in 2004 and 2005, after Malta joined the European Union. OLAF co-ordinated the investigations which revealed that sugar which originated from Brazil and which was refined in Bulgaria was imported into Malta and that false documentation was presented in Malta at the import stage in order to disguise the true origin of the consignments. The fraudsters were attempting to take advantage of the system of preferential trade agreements with the Africa-Caribbean-Pacific (ACP) countries. Mis-describing 4,000 tonnes of raw sugar resulted in tax evasion in the region of € 2,000,000. Several batches of the imported sugar were declared as having originated in ACP countries such as Zimbabwe, Malawi and Zambia from which countries under the ACP agreement the price of sugar is guaranteed and the beneficiary countries are allowed to export a fixed amount of sugar at zero duty to the EU. False documentation which included (EUR.1 movement certificates) had been presented at import to disguise the real origin of the goods. The importer was no novice in this field: he had already been involved in similar irregularities with regard to imports of sugar from the Western Balkans (*Malta Independent*, 2007). This type of fraud is the exception rather than the rule so far in Malta's post accession experience.

There have been instances for example, where six local councillors allegedly over-claimed travel expenses to the tune of € 96,000. This allegedly occurred between 2004 and 2007 when they travelled to attend meetings of the Committee of the Regions. There have also been allegations of a case of fraud concerning a solar panel supplier and EU funds. A solar panel supplier and an employee of Malta Enterprise which is the development agency which promotes international investment in the Maltese islands. The fraud is alleged to have involved an EU funded scheme to help consumers purchase solar panels at advantageous rates. The scheme necessitated that consumers supply three quotations for the installation and purchase of solar panels, but in fact one company, Di Natura, allegedly used to provide customers with three separate quotations, two of them were under the names of fictitious firms. Depending upon the outcome of the legal case which is still ongoing, Malta risks losing up to 20 million Euros as a result of this alleged fraud.

In the Customs area, given Malta's strategic location in the Mediterranean Sea and the existence of the Malta Freeport, it is not surprising that there have been instances of cigarette smuggling for example. As of 2012, the following taxes/ duties were levelled on a carton of 200 cigarettes: € 3,34 of import duty; € 26,40 of excise tax and € 6,40 of VAT¹⁷, it can be seen that if thousands/hundreds of thousands of cartons are smuggled into/through Malta each year, there is a potential significant loss to the Maltese Treasury. Maltese Customs has a Container Monitoring Unit which continually monitors ship manifests regarding cargos. It undertakes risk assessments in respect of the consignee, shipper, the weight parameters of the containers, from where the ship has sailed, also the last time it was in port at Malta: all these variables are considered. The most successful year for customs was 2009 when there were 45.000.000 counterfeit cigarettes seized at Malta Freeport, most of them emanated from China and the United Arab Emirates. In the same year there were already 81.000.000 contraband cigarettes seized.¹⁸

Seizures however, do not just come from containers. In 2008, a passenger on a flight from Moscow was stopped in the green '*nothing to declare*' channel at Luqa airport and was found to be carrying 150 cartons of cigarettes, each containing 200 cigarettes. The seized cigarettes represented a potential loss to the Treasury of € 3.450 in excise duty, € 501 in import duty and € 865 in terms of VAT. The individual concerned was fined €11.808 and of course the property was confiscated¹⁹.

Customs officials acknowledge very close working relationships with OLAF²⁰ which is very commendable and useful, but also can be problematic when the lead AFCOS body, the IAID, is not informed about cooperation and OLAF missions to Malta. Customs should be more transparent about its dealing with OLAF, without of course compromising operational confidentiality.

Scandal within the IAID

Since the autumn of 2012, the IAID (the lead AFCOS body), has been affected by the scandals engulfing its Director, Rita Schembri. It was al-

¹⁷ Interview with Maltese Customs officials, September 2013

¹⁸ Interview with Maltese Customs officials, September 2013

¹⁹ Interview with Maltese Customs officials, September 2013

²⁰ Interview with Maltese Customs officials, September 2013

leged that Ms Schembri had given consultancy services/advice to a gaming company, FEE (Far East Entertainment Group plc) that was interested in purchasing a 40% stake in a Maltese casino, the Casino di Venezia. Although Ms Schembri had been given permission by the Permanent Secretary of the Maltese Civil Service to hold a non-executive directorship in Brait SE, a private investment holding company, it was understood to be unconnected to the services she was alleged to have given to FEE in their bid to acquire a stake in the Maltese casino. She was accused of using government resources – email, telephone in connection with the casino bid and also of arranging a meeting with other local representatives to discuss the company's investment strategy in the offices of the IAID itself.

There were also allegations that Ms Schembri had made illicit use of personal data. The Maltese National Audit Office (NAO) when it investigated these allegations found that she had used sensitive information which was made available to her in her official capacity as head of the IAID to request adjustments to her own remuneration package from the IAID. Specifically, in an email to the Permanent Secretary of the Civil Service, she made a direct reference to the remuneration package enjoyed by another senior officer of the same grade, to draw a comparison between the duties she was responsible for and those of the officer. The NAO judged this to be unacceptable on ethical grounds.

There were further allegations that Ms Schembri had instructed civil servants from different departments to remove documents that had been officially filed in government department's registry files. These files included documents from audits of projects that benefited from EU funds. This is regarded as a serious offence in Malta and the fact that she pressurised junior officials to remove the files for her only accentuated the seriousness of the offence according to the NAO. Ms Schembri was the permanent secretary responsible for governance and sadly committed an offence that she was responsible for ensuring that others did not commit.

As a result of these allegations, Ms Schembri had to take extended leave whilst they were investigated. This potentially harmed the effectiveness of the IAID, given her experience in EU fraud investigation. The investigation undertaken by the NAO found that Ms Schembri had not been truthful when she claimed that she had only used her personal email with respect to the casino bid, there were in fact 89 emails from her government email account in connection with this private business. The NAO also found that she lied under oath to a Board of Review which

investigated the abuse of her public office. As a result, Ms Schembri has been forced to resign from her post as Director of the IAID and also from her position as a member of OLAF's Supervisory Board. It has been a sad and spectacular fall from grace. The fact that Ms Schembri who was responsible for governance matters in Malta and also had a governance oversight role with respect to OLAF, was engaged in such activities and behaviour is very damaging, not just to her personally, but also to the IAID and of course to the Supervisory Board of OLAF. There is also damage to the Maltese AFCOS, because obviously it does not reflect well on the organisation that its lead member has engaged in such activities, but also that it has lost someone whose personal failings aside, was regarded as a very competent and capable Director, not just in Malta, but also in Brussels. It will no doubt take some time for the AFCOS service to recover from this unfortunate situation.

Conclusions

Malta has made good progress in terms of setting up the AFCOS network and in terms of making adequate preparations to protect the financial interests of the EU. It has ratified the PFI Convention and associated protocols, yet this ratification only happened in 2011, while it should have taken place in 2004. The convention is designed to help harmonise the definitions of fraud, the legal penalties with respect to fraud and thus attempt to secure consistency across 28 different legal systems. It also was a condition of accession that the Convention be ratified along with the Treaty of Accession. This is a serious omission on the part of Malta, although to be fair Malta has not been the only state at fault in this regard.

Malta has not so far, experienced the large scale frauds that countries like Romania and Bulgaria have and although it cannot be said that Malta is corruption free, so far there do not appear to have been the large scale and organised attempts to defraud EU funds that have occurred in some other member states. The Maltese AFCOS after a slow start, when it was not even recognised as the main vehicle for reporting irregularities by some of its constituent bodies, has developed and does appear to be respected by Brussels and other member states. As with other AFCOS networks, OLAF could have been more supportive in terms of training and addressing skill

deficiencies. The relationship of OLAF with member states should not be a “*one way street*”, where they pass with a begging bowl to ‘Brussels’.

There are also concerns about the degree of fragmentation with a variety of police type and non-police type organisations involved and the consequent scope for confusion, inefficiency and misunderstandings. Also, the Customs service should be more transparent in terms of its dealings with OLAF and should keep the IAID informed as the lead AFCOS body, about various missions undertaken by OLAF in Malta. Given that communication is a two process, there is scope for OLAF to communicate more effectively with AFCOS about this as well.

Given the unfortunate case involving the then Director of IAID, Rita Schembri, this has affected the AFCOS network, as it has lost someone who in many respects was regarded as a very effective leader, but the attendant negative publicity at least in the short term has undoubtedly tarnished the image of the organisation. For the chief ‘fraud-buster’ to be accused of dishonesty and malpractice, is unfortunate to say the very least. On the whole, Malta for a small country with limited resources, does appear to have established an effective AFCOS network and current setbacks notwithstanding, appears to have the potential to make a significant contribution to the fight against EU budget fraud.

It appears that Malta does not regard its role in fighting EU fraud as unduly burdensome and something of a ‘*cross*’ that it has to bear, rather, despite some of the difficulties it has had to face, it has sought to play an active part in tackling this phenomenon.

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List of acronyms

AFCOS – Anti-Fraud Coordination network

EAGGF – European Agriculture Guidance and Guarantee Fund (Financial framework for the Common Agricultural Policy).

IAID – Internal Audit and Investigations Department (lead AFCOS body in Malta)

OLAF – European Fraud Prevention Office

Compliance duties and bankers at work

Coping with tensions

*Mihaela Sandulescu*¹

Introduction: standing up to the AML compliance challenge

Looking back over more than twenty years of anti-money laundering regulations, one can easily notice the important changes undergone within the banking environment, both at an organisational and operational level. As far as the organisational aspect is concerned, banks have organised dedicated compliance departments by hiring specialists that could spot suspicious cases of money laundering, draw up and implement internal AML directives and implement training for employees. Moreover, the approval process of the new clients has become much more structured, such that the management often gets involved into the decision of on-boarding risky clients.

On the other hand, banks have continuously faced significant operational limitations due to AML procedures. First of all, banks must pay particular attention to the sanctions in place regarding the provision of financial services to clients residing in certain countries (consider for example the various sanctions lists – OFAC, UN, UK, *etc.*) as well as collaborating with financial institutions from countries not having a satisfac-

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tory AML framework in place. Secondly, protecting the bank from possible reputational and regulatory risks means turning down profitable business opportunities, especially when the boundary between black and white is blurred. Thirdly, the significant financial and human resources that have to be continuously invested into the internal AML compliance machine as well as the red tape often created by the due diligence procedures, divert the bank's profit from other growing opportunities.

Despite the costs it entails, there are several acknowledged benefits to compliance: avoiding the criminal's access to the banking system and hence the perpetration of crime, safeguarding the bank's reputation, lowering regulatory risks, while collecting additional information about the client could prove useful for marketing purposes.

This chapter aims at evaluating how the Swiss banking system has adapted to an AML compliant culture, identifying the obstacles that were overcome and discussing its current position. More precisely, after we ran a past study collecting empirical evidence from the compliance officers (see Sandulescu, 2014) we are now interested in the relationship managers' part of the story. As such, we investigate initial reactions of relationship managers toward the compliance's requirements of doing a sort of financial 'striptease' of the client, whether these initial problems have been overcome as time went by and which are the aspects that are still obstructing an efficient collaboration between the relationship manager (RM) and the compliance officer (CO). As was the case with the previous study, we wondered whether the different objectives and '*forma mentis*' these two actors have, can give birth to interpersonal conflicts. Last but not least, we tried to identify some communicational and operational strategies that could make their collaboration easier.

We chose to focus on Switzerland for several reasons. First of all, given the long standing tradition of banking secrecy and respect for one's privacy, we would expect a significant opposition toward the requirement of collecting detailed financial information from the client. Moreover, foreign governments have exerted continuous pressure on the Swiss financial industry for its banking secrecy, considered to be an obstacle to an efficient and transparent AML framework. Secondly, as most of the Swiss banks offer private banking and wealth management services, the trust that is established between the RM and the client is pivotal for a successful relationship. Hence, requesting a RM to doubt and eventually report a client could put this trust at peril. Thirdly, given the size of the banking

sector in Switzerland we believe that our findings could be representative of the challenges and problems faced by banks in other countries.

After this introduction the chapter is organised as follows: section two will briefly discuss the relevant findings in the AML literature regarding the challenges faced by banks when coping with AML requirements; section three is dedicated to the particularities of the Swiss AML apparatus and more precisely the financial intermediaries' due diligence duties; the research questions are formulated in section four; section five describes the data collection process; sections six to eight go through the results collected from our interviews regarding the relationship managers' first reactions to the imposed AML duties, how they have integrated such duties into their daily working routine over the time, what are the perceived benefits of AML compliance and which are the problems that obstruct the collaboration between the RM and his colleagues from the compliance department; section nine concludes with several remarks regarding the future of AML compliance as dictated by actual and future regulatory changes as well as possible strategies meant to facilitate the collaboration between the relationship manager and the compliance officer.

The switch to an AML compliant culture

Prior to the events of 9/11, the research interest in the AML field was rather limited and the majority of publications were written by criminologists and jurists (*e.g.* Levi, 1992; Van Duyne, 1998) or international organisations (*e.g.* UNODC, 1998; IMF, 2001).

The terroristic attacks of 2001 and the subsequent update of many national AML laws gave birth to a new stream of literature analysing these regulatory updates in the country-specific context: examples can be found for the US (Johnson, 2002; Preston, 2002), Canada (Murphy, 2003), Germany (Blöker, 2002), France (Bardin, 2002), South Africa (de Koker, 2002), China (Ping, 2003) and Mexico (Vargas *et al.*, 2003).

Recent publications in the field focus on the economic impact and the practical issues associated with the implementation of the AML regulations. The constraints that governments face in terms of resources and access to financial information would not have allowed them to efficiently counteract money laundering. They have thus transferred the

monitoring tasks to the financial sector, to the extent that nowadays “*the entire intelligence gathering and target acquisition process is in the hands of the private sector*” (Gallo *et al.*, 2005:329). This shift of responsibility meant forcing the financial intermediaries to do what the public sector was previously required to do: monitoring risk, assessing terrorist threats, defining the risk profiles of the politically exposed persons, dig into the client’s private affairs, etc. (Pieth *et al.*, 2003, Levi and Maguire, 2004).

The transition of powers from the public to the private sector was not as smooth as expected. First of all, for the banks, it entailed considerable investments in the acquisition of software and specific know-how. All the surveillance procedures meant acquiring global watch lists (used especially in the KYC ‘know-your-customer’ procedures) and electronic profiling tools together with the installation of software that could monitor financial transactions continuously (Levi and Wall, 2004; Shields, 2005). Specific AML training has also been provided to all employees. In numbers, compliance costs connected with the prevention of money laundering could vary from CHF 8.374 (EUR 7.612) *per capita* for small banks to CHF 5.059 (EUR 4.600) *per capita* for large banks (according to a study focusing on Swiss wealth management industry carried out in 2003, see Bühler *et al.*, 2005).

Secondly, banks’ expertise and resources are aimed at the design and promotion of financial services, which is completely different from undertaking criminal prosecution (Geiger and Wüensch, 2007). To cover this gap, banks have hired compliance professionals that were supposed to have the required expertise for identifying potential money laundering cases. Two similar surveys carried out in France (Favarel-Garrigues *et al.*, 2008) and in Belgium (Verhage, 2011) widely analysed the figure and the role of the compliance officer inside the bank.

Thirdly, the duty to observe the AML requirements had an important impact on the commercial activities of the bank. Canhoto (2008) argues that AML/CTF compromised the fiduciary duty of financial institutions to their clients, whereas Sinha (2014) claims that banks justify their moral blindness on the fact that critical inquisition of potential customers – legitimate or illegitimate – will simply turn them towards rival banks. Hence, on the one hand, banks can no longer accept certain types of clients, no matter how profitable they are; on the other hand, the questions asked for AML purposes can violate the client’s privacy and

deteriorate the trustworthy relationship between him and his advisor, thereby pushing the client to leave the bank.

Another important challenge experienced by banks when incorporating AML tasks into their working routine is the management of possible conflicts between the RM and the compliance officer. Since they belong to different departments, their pre-assigned tasks and goals can sometimes be conflicting. As a matter of fact, there have been several cases in which the compliance officer's duty of safeguarding the bank's reputation can prevent the relationship manager from reaching his annual profit targets. Edwards and Wolfe (2004) draw attention to the thick line between what may be deemed to be just acceptable by the compliance function and what may be just unacceptable. According to the authors, when an activity is on the cusp of being compliant RMs will be faced with conflicts of interest between maximising their bonus and dutifully drawing the attention of the compliance officers.

Despite its importance for the bank's performance, there are very few empirical studies regarding the CO-RM conflicts. However, there is one point upon which various authors seem to agree: the limited popularity enjoyed by the CO, considered as "*bearer of the poisoned chalice*" (Harvey, 2004), "*business prevention officer*" (Verhage, 2011), and "*petty sovereign*" (Favarel-Garrigues, 2008; 1-19). As far as the CO's relationship with the RM is concerned, Canhoto (2008) noticed that "*they are not easy bedfellows*", whereas a study by Ernst & Young noticed that one of biggest challenge around banking culture is solving the potential conflicts between the two actors (EY, 2012), especially since many banks have still inadequate safeguards in place to mitigate RM's conflict of interest (FSA, 2011).

Particularities of the Swiss AML Complex

The mechanisms for fighting money laundering in Switzerland have been in place since 1977, when the 'Agreement on the Swiss banks' code of conduct with regard to the exercise of due diligence (CDB)' has been introduced. Although said Agreement does not have any regulatory power, it enumerates the minimal due diligence standards regarding the identification of clients and beneficial owners that banks should observe in

their course of business. Moreover, the agreement prohibits banks from actively assisting their clients with tax evasion and the flight of capital. Designated investigators and a CDB Supervisory Board assess breaches of the Agreement, and offences are punishable by fines up to CHF10 million (€ 9,1 million). The CDB is revised and updated every five years, with the last version coming into force in 2016.

Two decades after the CDB, the Federal Act on Combating Money Laundering and Terrorism Financing in the Financial Sector (AMLA) was enacted and became effective from the 1st of April, 1998. The AMLA is a framework law, in the sense that it sets out the principles that subsequently had to be adapted by the authorities to the concrete business activities they are supervising. The AMLA's provisions are further detailed in a corresponding ordinance issued by Swiss Financial Market Supervising Authority (FINMA): the Ordinance on the Prevention of Money Laundering and Terrorist Financing (AMLO-FINMA).

A significant part of the AMLA is dedicated to the due diligence and reporting duties imposed on the financial intermediaries in relation to the handling of third party assets. As such, all the natural persons or legal entities that are subject to the law are required to:

1. verify the identity of the contracting partner and of the ultimate beneficial owner (Art. 3 and Art. 4);
2. repeat the verification if doubt arises as to the identity of the contracting partner and/or of the ultimate beneficial owner (Art. 5);
3. identify the nature and purpose of the business relationship wanted by the customer (Art. 6, paragraph 1);
4. clarify the economic background and the purpose of a business relationship/ transaction if it appears unusual, if it bears a high risk, if there are indications of money laundering or terrorism financing or if the names of the involved persons appear on an official Sanction List (Art. 6, paragraph 2);
5. keep records of transactions carried out for a minimum of ten years (Art. 7)
6. provide adequate AML training to the staff (Art. 8)

A peculiarity of the Swiss AML reporting system is that it is based on the notion of 'reasonable suspicion'. As such, if the financial intermediary knows or has reasonable grounds to suspect that the funds originate from a felony or aggravated tax misdemeanour, they belong to a criminal organi-

sation or they serve the purpose of financing terrorist acts, it must immediately file a Suspicious Activity Report (SAR) with the Reporting Office (see Art. 9). Whereas in other countries reporting certain (suspicious) transactions is almost an automatic process, the Swiss banks must first run an ‘in-house’ investigation and gather sufficient objective proof before reporting to the authorities. However, since the notion of ‘suspicion’ is extremely subjective and is not always possible for the financial intermediaries to obtain enough elements for justifying a suspicion, the legislator provided them with the right to report any observations that assets may originate from a felony (Criminal Code, art 305^{ter}). A SAR sent by virtue of the right to report entails a simple suspicion, whereas one which is sent by virtue of the duty to report entails a reasonable/grounded suspicion.

Once a SAR has been filed, the financial intermediary is prohibited from informing the persons or third parties affected (Art. 10a). Moreover, if the Swiss FIU informs the financial intermediary that the case has been forwarded to the prosecuting authorities, the assets that were the object of the SAR must be frozen until further notifications from the authorities are received, but at most for five working days from the time the financial intermediary was informed that the case has been forwarded to the prosecuting authorities (Art. 10). If the financial intermediary is contacted by the Swiss FIU, it must provide all the information available that is connected with the client/transaction triggering the SAR.

As far as the monitoring systems put in place are concerned, the Swiss legislator opted for a risk based approach to AML, leaving the financial intermediaries the opportunity to tailor their supervision depending on their type of customers, products and markets targeted.

Research questions and methodology

a. Four questions

Building upon the existing findings about the controversies encountered during the implementation of AML compliance in the banking sector, this paper aims to provide empirical evidence about the integration of these duties in the RM’s daily working routine. More precisely, we are interested in understanding whether and to what extent the RMs managed to

deal with the new AML tasks in the beginning and whether after almost three decades since the AML law's introduction, they have accepted the compliance duties as part of their job and duly cooperate with the compliance department requests.

Considering the significant different ways of doing business in the Swiss banking sector before 1998, we would expect a great opposition toward the new legislation at the time it was introduced. Hence, our first research question (RQ1) sets out to document the initial reactions to the requirement of integrating compliance tasks into the business culture.

As time unfolded and international pressures for tougher regulation grew, the employees should by now have started to exhibit greater acceptability of the AML regulation and hence of the compliance officer. Hence, our second research question (RQ2): As of today, to what extent have the business oriented employees (such as the relationship managers) accepted the compliance duties as part of their job?

If the RM exhibits a certain reluctance toward these duties, what are the underlying causes of this reluctance and can it trigger a conflict between the two units (RQ3)?

Finally, if the above mentioned conflict exists, what are the best solutions/attitudes to be adopted in order to mitigate it (RQ4)?

b. Data collection

The lack of private data in the AML field, has pushed many researchers to resort to the use of surveys and or interviews. For example, Webb (2004) interviewed thirty money laundering reporting officers in order to study their attitudes toward money laundering regulations. Favarel-Garrigues *et al.* (2008, 2011), Harvey and Lau (2009) and Verhage (2011) all interviewed several AML actors among which compliance officers, bankers, law makers and law enforcement officials in order to have a complete picture about their duties, difficulties and the communication flows that were established among them. Masciandaro *et al.* (2001) used an indirect survey technique by asking bank managers how the clients reacted to the various requests made by the bank in order to fulfil its compliance obligations.

Since this study aimed at understanding the RM's difficulties in accepting and incorporating AML due diligence duties in his daily work,

we collected data from 25 RMs working in the cantons of Ticino, Zurich and Geneva – Switzerland's main financial centres.

Bearing in mind the precise framework of themes to be explored, the interviews were organised as a free-flowing discussion with the interviewee around the relevant themes. In the case of our research, the use of semi-structured interviews brought us three advantages. First, it allowed new ideas to be brought up during the interview as a result of the interviewee's answers. Secondly, instead of asking direct, open ended questions to which the RMs could prove reluctant to answer, having a free discussion around a certain theme was more comfortable for our interviewees. In fact, the RMs' reactions, fears and constraints observed while doing the first interviews helped us to better refine our interview scheme. Thirdly, a 'free' narration of one's personal experiences allowed for real stories and concrete examples to emerge.

The interview guide was divided in seven different parts. We always tried to ask identical questions, even though the same sequence was not, in most of the cases, respected. The first three parts were meant to set 'the scene' and create a common ground between the interviewer and the interviewee.

In the first part we asked general questions regarding the background, the years of experience and the type of clients managed by the RM.

The second part asked the respondent details about the way in which he was introduced to the AMLA and what was his initial opinion about the due diligence and reporting duties.

The third part tried to assess the impact that the observance of all the AML compliance duties has on the usual tasks of a RM: what percentage of his working time is dedicated to compliance issues and how this affects the quality of the service offered to the client.

The fourth part explored the relationship between the RM and the compliance department, focusing on the pros and contras of the role that this department has.

The fifth part aimed to understand what arguments were brought forward by the RM when requiring additional information from the client for due diligence purposes. Additionally, we wanted to know whether the RM perceived an on-going conflict between the compliance duties and the request to preserve the trust established between him and the client. Finally we explored the measures taken in order to avoid tensioned situations.

The sixth part was dedicated to the reactions, attitudes and measures taken in case doubts/suspicious of money laundering arise.

The last part of the interview was conclusive and collected opinions about the future of the Swiss banking sector as a consequence of stiffer regulation.

Before scheduling the interviews, we informed every participant about the purpose and procedures of the research and about the modality of the interview. Additionally, we emphasised the voluntary nature of their participation and the measures taken to guarantee anonymity. Since not all the participants agreed only 11 interviews were recorded as mp3 files. In most of the cases, the interviews were conducted at the interviewee's place of work. The interviews lasted between 45 and 90 minutes. Interviews were conducted in Italian in Ticino and in English in Geneva and Zurich.

In order to trace additional participants or informants, we used the snowball method. The latter consists in asking the participants to recommend other people that could be interviewed (Babbie, 1995). The people through whom access is gained are called gatekeepers (Groenewald, 2004).

Findings

a. Introducing the AML: historic background and first reactions

While a historical analysis of the Swiss banking system is out of the scope of this chapter, several elements must be mentioned in order to better understand the existing social and economic circumstances at the time when AMLA was introduced.

Switzerland's armed neutrality and national sovereignty were the main elements attracting foreign capital into the country during the eighteen Century. However, it was during the following two centuries that the Swiss banking system registered an unprecedented growth, owed mainly

to the stable political climate and to the formal codification of the Swiss banking secrecy in 1934.²

After WWII, the unsettled political situation that reigned in Europe further pushed investors to transfer their savings into Switzerland. As Dick Martin³ emphasised during a recent interview⁴, the exponential growth verified during the years 1960s to 1990s by the Swiss banking system gave birth to a ‘social phenomenon’: the lack of personnel pushed many banks to ‘steal’ qualified workforce from other sectors such that they could accommodate the management of all the new clients. At the same time, the success and wealth exhibited by the banking employees encouraged younger generations to focus predominantly on banking careers.

As the international attention to money laundering and organised crime started to unfold in the US in the early 1980s, Switzerland was among the first countries to introduce a national AML framework.

Given the above mentioned historical context and the specific Swiss culture of privacy, the introduction of the AML law in 1998 created major problems for the RMs that were now required to follow precise KYC procedures.

In order to introduce their employees to the topic, banks started to organise AML training during which the new duties and the risks connected with the inobservance of the law were discussed: “*We had seminars on the topic; we were all sitting in a meeting room, with an external specialist explaining all the changes, the cases to which we had to pay special attention; we were doing role-plays on certain types of clients*” [RM 16]. At the end of the seminars, the employees “*were given a test to control that we understood which were our duties and the responsibilities in case something went wrong*” [RM 20].

The first argument raised by the RMs against the AML law was that it required them to carry out a task that belonged to another entity, i.e. the authorities: “*The main problem was that we were assigned a task which was definitely not ours: to play the role of the policemen and gather intelligence information*” [RM9]. Another RM showed his frustration regarding the matter: “*For me it was obvious that certain tasks were to be handled by the public prosecutor. Then, these investigative tasks have been assigned to the financial system*” [RM21].

² Federal Act on Banks and Savings Banks (Swiss Banking Act of 1934)

³ Member of the Swiss Council of States (since 1995) and former member of the Parliamentary Assembly of the Council of Europe.

⁴ Falò, RSI, the 3rd of September 2015

A second problem was the huge responsibility that the AML law placed on the RMs' shoulders, by asking them to run a first screening of their new clients and attentively monitor the transactions of the existing ones: *"I was very critical toward this law because I saw it as an obstacle for the business. Moreover, it was a sensitive issue for the banker as he was responsible for identifying what was unusual. Since we had a lot of payments to verify, we had to learn how to identify unusual cases by really understanding the profile of the client's business"* [RM 14].

The great majority of our respondents perceived this burden to be unfair since they did not have enough sensibility toward the matter, specifically underlying the fact that *"we are bankers, not policemen"* [RM20]. As a matter of fact, existing studies such as Favarel-Garrigues *et al.* (2008) already underlined that financial professions were not meant to identify and manage suspicious transactions. Moreover, in a country where banking secrecy and the respect for privacy reigned, the requirement to dig deeper into the client's personal affairs created a certain confusion among the RMs: *"My ex-boss, who has been working as a RM for the last 40 years thought it was unimaginable to start asking the client how much he earns, whether he is married and has children, whether he and his wife had agreed on the separation of assets"* [RM3]. As our respondents have indicated, prior to AMLA, the bank had no interest and legal obligation to collect information that was not connected with the account's purpose and expected transactions.

In order to quantify the magnitude of the changes brought up by the new law it is enough to consider the rudimentary due diligence checks that were typically made by the banks prior to its introduction:

"The biggest effort that I had to put 40 years ago when I started working was controlling that the name of the account holder corresponded to that on the ID of the person I had in front of me. The bank knew in very broad terms what the client was doing for a living. Many clients said they were 'businessman'. But we would never investigate what kind of business they were in. Maybe the RM would have some additional details, but they weren't written anywhere" [RM4].

As our results show, the practice of not interfering with the client's private sphere seemed to be common across Switzerland at that time, as another RM indicated:

“There were fewer questions. The client would bring his suitcase packed with bills, we would ask for an ID and his occupation. Very often, the client would say, in very broad terms, that he is an entrepreneur. But nobody would ask him in which industry, since when and all the other information” [RM20].

Beside the responsibility of identifying suspect cases, the AML law imposed another heavy responsibility on the RM: the legal accountability for facilitating money laundering. Prior to AMLA, banks were given only the right to report suspicious money laundering cases (as dictated by Art. 305^{ter} introduced by the Swiss lawmaker in the Penal Code in 1994). However, it was the AML law that forced Switzerland to align to the international standards by introducing the obligation to report any actual or potential case of money laundering. As they managed the clients’ interaction with the bank, relationship managers were now required to collect all the necessary information such that the bank fulfilled the newly introduced due-diligence requirements. Failure to do so exposed the bank to a significant legal and reputational risk, which ultimately spilled over the RM himself. In fact, almost half of our respondents considered themselves to be the ‘scapegoat’ if something went wrong: “*We are the first ones to be interrogated and fined if something happens*” [RM5].

Even though they understood that there was no room for errors “*If the judge calls you up, you cannot tell him ‘sorry I didn’t know’*” [RM3], the respondents could not refrain from mentioning their frustration regarding bank’s behaviour in such cases: “*We were asked to pay attention to any money laundering attempt, as we will be responsible if the client manages to use the bank to launder his dirty money*” [RM 19]. As a matter of fact, several respondents in our sample said that the bank would “*abandon*” them: “*If I commit an error when evaluating an operation/account opening procedure I will be the one to meet the public prosecutor*” [RM4].

Another problem exacerbating the acceptance of the new AML law was the opposition that the clients were making toward the RM’s requests. This was especially the case with existing clients for whom it was very difficult to understand why the bank has suddenly started to ask them so many questions: “*Discretion and privacy are at the heart of the private banking services. At the beginning, the clients were very reluctant toward our requests*” [RM14]. Many RMs recall that besides the specific AML training, they did not receive any guidelines on how the new *modus operandi* was to be

communicated to the client. As a consequence, they leveraged on their experience and on their argumentative capacities in order to make the conversation as less embarrassing as possible: “*At the beginning, we used to apologise in front of the client, blaming the law for all the questions we were asking*” [RM26].

However, as our respondents indicated it was not always easy to obtain the needed information by simply putting forward the argument of the new requirements imposed by the AML law. Beside the challenge of educating the clients, the RMs were confronted with another challenge: convincing those clients whose privacy was being “invaded” not to leave the bank. Indeed, “*the educational process toward the clients has been difficult and painful and we lost several clients due to these legislative changes*” [RM13].

Hence, the introduction of the AML law not only placed a lot more professional and legal responsibility on the RMs’ shoulders, but it also made it harder for them to reach their annual client acquisition and retention targets thus increasing their risk of losing their job.

b. AML compliant culture: where we stand today

As the fight against money laundering became tougher a whole compliance industry started to develop, providing the financial industry with several intelligence tools meant to facilitate their decision making process (Verhage, 2011): criminal databases, company information registers, negative news matching software, unusual transactions monitoring programs. Besides these IT investments, banks also deployed significant resources to create dedicated AML compliance departments meant to oversee the implementation of the KYC and CDD procedures. This section sets out to document how these procedures have been introduced in the banking culture and how the RMs feel about having to deal with them on a daily basis.

A first assessment of the respondents’ answers indicates that despite the initial reluctance toward the AML duties, they have quickly understood that the way of doing business was set to change. Such change was dictated not only by the growing international pressures upon Switzerland’s banking secrecy as a consequence of both 9/11 events and the recent economic turmoil but also by the significant developments of the cyberspace that made banks more vulnerable to fraud attempts. In fact, over the last

years the regularisation of the banking sector has developed to such extent that a medium-size bank would be expected to have a compliance department for any service it offers: current accounts, credits, investment products, trading, etc.

One important finding is that these regulatory developments have inevitably pushed for a greater collaboration between the sales/front office employees and the compliance department:

“The commercial department has been continuously increasing its sensibility toward the compliance issues. If in the past, these two were running in an almost parallel manner with small occasional intersections, today we work in tandem. Our collaboration is very tight during the account opening procedures but also during the life of the account” [RM1].

As further investigation will show, this collaboration between the RM and the CO has become fruitful for three reasons.

First of all, more than 50% of the respondents indicated that the presence of a dedicated department that independently evaluates and supervises the client’s transactions makes them feel more secure. More precisely, since the RM might disregard some important points during the meeting with the client, the ‘four eyes’ principle entails lower operational errors:

“It’s true that all the compliance requests may stress the client, but I feel safer knowing there is somebody else controlling the account opening requests. Sometimes, the compliance officer sees and understands things that I missed” [RM9].

By evaluating the account opening profile, the CO can make sure that the bank has collected the KYC information requested by the law, while controlling if the client is involved in any criminal investigation or judicial proceeding. Moreover, since he sees the picture from a detached perspective: he is able to issue a bias-free judgement regarding the possibility of proceeding with the account opening “*Today we see him as a support to the business, whereas 5-7 years [ago] we considered him a kind of scarecrow for the clients. He is our partner, who makes sure that my reasoning is valid*” [RM26].

A second reason for which the CO could facilitate the RM’s work is because of the greater objectivity with which the former can evaluate a case. When meeting a client for the first time, the RM might tend to

focus his attention on the financial aspects of the business while leaving aside details such as the client's personal background and economic history that can prove useful in understanding how he has accumulated his wealth. Since the CO is not paid for bringing new clients to the bank, he is not in danger of getting "enchanted" by the client's financial potential; rather, he is expected to duly verify if the client could have rightfully acquired the wealth he possess given his age, occupation, family background/connections. The same logic applies to existing clients: since the CO is not 'emotionally involved' with the client, he can evaluate the client's behaviour in an objective way, which makes it more easy for him to spot unusual transactions:

"We might tend to underestimate some risks if we have been managing an account for the last 30 years and nothing strange happened. I will always remember what my teacher at the driving school told me: 'if I am driving on a street for the first time I will notice each sign on the road, but if that is the street I'm driving to get home, at a certain point I will know all the signs by heart and so, I will not pay attention to them any more. Let's imagine that a certain point a sign is changed: who is more likely to have an accident? The first or the second person?' The same logic goes for RM with old and new clients. You are more careful and maybe also more suspicious when it comes to new clients" [RM3].

Thirdly, about 30% of our sample considered that the obligation to construct a detailed KYC profile allowed them to better understand the client's needs. Not only the RMs considered this information useful for marketing purposes but also as an indicator of how to better focus their energy on those "*healthy business opportunities in which the clients' situation is clear*" [RM6].

As far as the integration of the compliance duties in the RM's everyday work is concerned, our data suggest that the increasing client awareness regarding the banks' AML obligations has significantly facilitated the process. Both those RMs that worked before AMLA's introduction and the younger ones indicated a good level of client awareness when it comes to current AML practices. This trend is due not only to the international attention that the fight against money laundering has increasingly gained over the years, but also to the proportions taken by the war on terror since the events of 9/11. Moreover, in order to be able to protect their clients

from cyber and identity fraud, banks were forced to collect more detailed information about their counterparties. An early survey by Masciandaro and Filetto (2001) reports that banks' customers are well aware of the existence of AML laws, even if 44,5% of the respondents thought that most clients regard the information collection as a violation of their confidentiality.

As mentioned in the previous section, when the AMLA came into force, the clients' opposition toward the RM's due diligence requests was a significant barrier to overcome when trying to reconcile compliance and commercial objectives. Whereas in the beginning the common strategy adopted by the RM for getting along with the clients was blaming the law itself, in recent times we notice different arguments that are put forward when requesting additional information from the client. In most of the cases the RMs would tell reluctant clients that the bank's AML policy is meant, first of all, to protect the clients themselves:

“The great majority of our clients are businessmen, so I expect them to understand my need for cooperation. If they refuse to give me details, I usually ask them ‘*would you be placing an order with a supplier that doesn't give you all the information you require?*’ It's important for the client to understand that these questions are more important for him than they are for us: for sure he would not like to read a headline about his bank failed to duly apply the AML directive” [RM24].

Secondly, the information collected for CDD purposes enables the bank to better meet the client's needs:

“one must not stand in front of the client with a survey and after each question tick the box . . . I find this very uncomfortable and intrusive. Instead you should exhibit interest in the client's story, what were the successful factors that allowed him to build his wealth, etc. It's a mix of communication and psychology; one has to make the client understand that we need those information in order to build a long-term, trust-worthy relation and offer him the services that better suit his needs” [RM6].

Another important factor facilitating the adoption of a compliant culture by the RM was the responsibility that the latter was assigned when knowing and understanding the client to such an extent that he should be able to spot any unusual behaviour. More than 60% of our respondents

claimed that the probability of being held liable for unknowingly facilitating money laundering is an important deterrent when accepting clients whose intended business purpose is not clear. Moreover, bearing this responsibility in mind, they also find it easier to collect the additional information requested by the compliance department:

“I am always straightforward with my clients. I know I have to obey the rules and if there is something that is not clear I have no problem in contacting the client and asking for clarifications. It’s true that we have a relationship based on trust, but is still a working relationship . . . and the client pays me to do my job” [RM4].

The results presented above reveal how the bank and hence the RM have significantly changed the way in which they perceive and interact with their clients in nowadays. Differently from the past two to three decades when banks would eagerly pursue profits at any costs, the AML responsibility has pushed them to see the client not only as an opportunity but also as a liability. The various frauds against banks, suffered as a consequence of poor due-diligence procedures together with the many judicial cases in which the client has blamed the bank in front of the authorities for aiding him in committing (fiscal) crime, has definitely showed the banks that compliance has its advantages. A testimony from one respondent summarises the current way in which the RM perceives the client:

“I would say that 30 years ago there was kind of a romantic relationship between the RM and the client, with each of them following his personal interest while making everything that was needed for their relationship to work. Today, this kind of romanticism diminished since the RM has understood that he can be used by the client. In the case of an investigation, very often the client blames the RM for the crime he committed. This is mostly the case for fiscal crimes; over the years, we slowly started to think about our clients as a liability” [RM23].

In fact, many respondents stress the fact that even if in the private banking industry the personal contact between the RM and the client is much more intense than in the retail banking, it’s better to avoid friendships with the clients:

“We should never see the client as a friend. Actually, your friends and relatives should never be your clients, as the money involved may ruin your relation. You go playing tennis with your clients, have lunch, dis-

cuss the news but still he is only a client, not a friend. To my opinion, a tiny bit of suspicion should always exist regarding a client” [RM21].

This section has underlined the encouraging progress that has been made regarding the switch to a compliant banking culture, totally different than the one that reigned in Switzerland before AMLA’s introduction. Whereas there are still certain jolts that prevent a smooth collaboration between the CO and the RM which will be discussed in the next session, we can safely conclude that as previous field studies in the AML compliance sector have shown, the AML compliance procedures have become routinely embedded into the work of financial institutions (Ball *et al*, 2013) and most bankers perceive them as part of everyday work (Subbotina, 2009).

c. RM’s reluctance toward compliance duties – causes and effects

One of the major drawbacks of compliance that has been repeatedly mentioned in the AML compliance literature, is the administrative burden associated with its implementation. More precisely, beside the costly investments in designated software and personnel training, AML rule observance also requires a considerable amount of time for collecting the required information, filling in the clients’ profile forms and verifying the credibility of the provided information. A decade ago, a study by Gully-Hart (2005) reported that a private banker devoted approximately 30% of his time to all the regulatory matters. Nowadays, our respondents testify that such a percentage corresponds to the average time dedicated only to AML compliance matters. They nevertheless distinguish between the account opening phase and the ongoing monitoring of the account, as the first one requires significantly more time (*i.e.* ranging from 40% to 60%). Another important difference that needs to be mentioned is between the RMs managing resident clients and the ones managing foreign clients, with the latter indicating a higher time that needs to be devoted to AML practices (*i.e.* 50% as compared to 25-30%).

Even though they value the safety associated with the requirement of ascertaining the clients’ origin of funds, RMs underline that the time needed for compliance matters grows at the expense of the one available for clients’ needs:

“The compliance requests are complicating the daily business because they are forcing me to dedicate time to certain activities which do not produce real business” [RM1].

This “*diversion of resources from other aspects of the bank’s work*” (Johnston, 2006:57) creates frustration among the RMs as they have less time for doing what they are originally supposed to. In fact, both the old and the young RMs in our sample indicated that the financial advisory discussions are rather limited when meeting with the client and that the recent economic, political and regulatory developments have created the need for a RM that acts as a ‘*factotum*’:

“We are not only bankers; often we are lawyers, compliance officers, fiscal advisors . . . the role of the banker changed significantly. If 30 years ago was enough for us to have a certain background, today the requirements for a certain culture and preparation have increased” [RM1].

Moreover, in most of the cases, the challenge lies not only in acquiring all these professional skills, but also in being able to develop the interpersonal ones:

“Lately is very usual that I go visiting a client to speak about his financial situation and instead I find myself playing the role of the psychologist for 1 hour and 45 minutes” [RM5].

Beside the increased workload, the compliance duties pose another burden to the RM’s daily work, as tougher regulations are limiting his possibility of pursuing certain business opportunities. As such, the RM often finds himself under the pressure of reaching annual profit targets while coping with an immense amount of legal requirements:

“We have the feeling that we are becoming more and more controlled, and not only with regard to AML. We are experiencing a conflict because we have the pressure to increase the profit while taking care of all these legal requirements . . . it is like ‘climbing a mountain wearing chains’” [RM14].

This inherent conflict of interest between ‘the commercial ethos’ and regulatory injunctions (Favarel-Garrigues *et al.*, 2008) can significantly affect the RM’s commitment to meet the assigned AML duties (Siminova, 2011). Since in most of the cases the RM’s salary and bonus will depend

on the new Assets under Management (AUM) he can bring to the bank, he might tend to disregard some of the compliance aspects, constructing a superficial client profile. In fact, a study run by the FSA on 27 banking groups in the UK reported that front-line staff, particularly RMs, dismissed or withheld negative information about the client when the bank could profit significantly from the business relationship (FSA, 2011). When asked about the temptation to “*close an eye*” just to meet AUM targets, most of our respondents acknowledged that the pressure exercised by the bank is an important factor impacting the RM’s attitude toward his commitment to AML tasks:

“Is hard when you know you can gain some AUM, but it depends also on the bank . . . some may be more aggressive on the objectives. This pressure makes it harder for the RM because he knows he can be fired at the end of the year” [RM17].

The RM’s fear of losing his job if failing to reach his yearly AUM target is further exacerbated by two recent developments which significantly limited the banks’ growth opportunities: the severe drop in net new money growth registered after 2008 and the shift to a tax compliant banking sector. A report by PWC regarding the Swiss Private Banking industry indicates that AUM per employee have declined by roughly 40% from 2006–2007 to 2011, while mentioning that above average growth can only be achieved by stealing market share from competitors and/or by reducing the outflows from existing clients through retention measures (PWC, 2013).

Given the current banking environment, acquiring new clients has become some sort of ‘treasure-hunt’ where one must juggle regulatory requirements, market-specific difficulties, bank objectives and career plans. Combining all these issues successfully is a challenging task, even for more experienced RMs who have expressed their frustration about the duty of growing the bank’s AUM, while taking all the responsibility both in front of the client when communicating changes/operational restrictions and in front of the authorities in the case of an investigation. These conflicting behaviours expected from the RM can negatively influence his performance, increasing the perceived stress and dissatisfaction as suggested by Rizzo, House and Lirtzman’s (1970) study on role conflict. In fact, the current legal limitations have cut off some of the RM’s past enthusiasm as he continues to see the ‘red light’ from the compliance officer:

“before I was the one providing, authorising and implementing the solution . . . today I can say I am rather an ambassador than a captain” [RM13].

Beside the decreased performance, another important problem created by the obstacles that the RM must continuously overcome is the experience of interpersonal conflicts with the colleagues from the compliance department. An early study by Kahn *et al.* (1964) found that persons reporting role conflict testified a lower trust, personal empathy and lower esteem toward the persons who imposed the pressure while also avoiding communication with these persons. The tensioned and often conflicting relationship between the RM and the CO has been typically considered to be due to the different backgrounds and professional objectives that the two of them have (Verhage, 2011; Favarel-Garrigues *et al.*, 2011; Siminova, 2011). Regarding the first aspect, a legal background as well as a previous experience in the regulatory industry allows the CO to better understand the regulatory risks for the bank when drawing and enforcing the AML internal policy. However, the legal/compliance language can sometimes be difficult to understand by the RMs, especially when they do not find any added value in doing so:

“Sometimes is annoying because instead of answering my questions, he just sends me the law articles . . . I am not a lawyer and I shouldn’t spend my time on reading them instead of taking care of what I am supposed to” [RM9].

Since he is required to identify potential cases of money laundering, the CO should possess some sort of ‘investigative mindset’ that allows him to distinguish those grey cases that meet the conditions of being reported to the authorities. In several cases though, the CO may tend to be overzealous and exhibit a certain behaviour that the literature has previously defined as ‘defensive’ or ‘umbrella’ reporting, meaning that they would report any suspicion just to be on the safe side (Harvey, 2004; Levi, 2007). In fact, several respondents have mentioned the CO’s tendency of overreacting to certain elements that do not pose any threat to the bank’s integrity:

“Today, their approach is: we assume that the client is a criminal, so he must prove us the contrary. My approach is: the client is not a crimi-

nal, but he must prove that he is ‘clean’. These are two totally different things” [RM2].

Whereas they share a common goal – i.e. contribute to the bank’s profitability – as members of separate departments, the CO and the RM take a different view regarding the way in which the said goal can be attained. To a certain extent, this can be due to the specific objectives each of them has: safeguarding the bank’s reputation versus increasing the bank’s client and assets base. In some cases, the compliance department decisions would limit the bank’s growing opportunities, even though the commercial department fights to do the opposite. The challenge lies in understanding the thin line between what is deemed to be acceptable from a compliance point of view and what is to be considered suspicious. One problem signalled by the majority of our respondents is the CO’s lack of empathy for the business: “99% of them never saw a client and they never take the common sense of life to understand our needs” [RM13]. Being the bank’s communication interface with the clients, the RM often finds himself forced to manage delicate discussions with the clients. This is especially the case with old clients to whom requesting certain documents/explanations feels like betraying the sort of friendship that has been created over the years.

Beside their different background and objectives, we believe there is yet another element that hinders the collaboration between the two departments: the way in which they perceive *risk*. As banks are financial institutions which profitability depends on their ability to both leverage upon and hedge against risk, we can expect some clashes between the employees’ attitudes toward this concept. Due to the phenomenon they are supposed to counteract, AML laws have been inevitably designed in such a way as to consider the hazardous aspect of risk. Hence, the CO’s actions and decisions are guided by the need of protecting the bank from the risk of being used for criminal purposes. However, risk can also present itself as an opportunity (Demetis and Angell, 2007). Given his growing objectives, the RM will, by default, size any new client as an opportunity.

Considering the conceptual and operational discrepancies between the CO and the RM we wondered whether they could actually translate into a conflict between the two of them. A previous study focusing on the CO showed how the latter often experienced tensioned discussions with the RM (75% of the cases, N=46, for details see Sandulescu, 2014). As far as

the RM's opinion toward the same matter is concerned, our results show no different picture. In fact, more than 70% of our sample interviewees have experienced a conflict with the compliance colleagues:

- *“Ah, some CO are more Catholic than the Pope”* [RM13]
- *“Yes, there is a conflict. Some compliance officers are really business stoppers that unfriendly dig into things that are not relevant . . . sometimes they really are a pain in the neck.”* [RM15]
- *“The CO is not the eternal God who came down on Earth”* [RM2]
- *“Among us we always say that who runs the bank is the compliance department, given that they decide whether ‘you can’ or ‘you cannot’”* [RM5].
- *“We still live in different worlds and sometimes they really give me the impression that they enjoy nagging us as they hope to find something criminal”* [RM10].

Nevertheless, we must emphasise that no single respondent held a categorical view against compliance and that the mentioned conflictive situations were about specific episodes that the RMs recalled from personal or from other colleagues' experience. Overall, we collect a positive general attitude and acceptance of the AML compliant culture as described in the previous section, with some particular cases of conflicts, depending on the CO's and RM's eagerness of defending their assigned professional objectives.

Conclusions and hints for a smoother collaboration between the RM and the CO

After having described the changes brought by the AML law into the Swiss banking context and the difficulties encountered when coping with compliance requests, this concluding section sets out to document several strategies meant to facilitate the collaboration between the CO and the RM.

As a consequence of FATF's decision to include tax evasion as a predicate offence for money laundering, the majority of its members have adhered to Automatic Exchange of Information agreements that are to become effective in the next couple of years.⁵ Moreover, since the Swiss “White Money Strategy” and the many European tax amnesty programs

⁵ 2017-2019

were implemented, a huge percentage of the offshore funds that were deposited inside Swiss Banks left the country or have been duly declared to the fiscal authorities. The same goes for the American clients, for the supervision of which the Foreign Account Tax Compliance Act, 2010 (FATCA) has been implemented. In this given picture, the likelihood that somebody who wants to hide criminal/untaxed money will choose Switzerland is very low. As such, we can expect that the compliance controls that have to be run when onboarding new clients will be considerably lighter, at least with regard to tax matters. Consequently, there should be fewer arguments that could possibly trigger a conflict between the RM and the CO.

On the other hand, given the creativity displayed by criminals when exploiting regulatory loopholes it is difficult to believe that by tightening tax controls financial institutions will incur lower money laundering risks. Nowadays, the use of cash has increasingly become unusual – at least in the developed countries – forcing (criminal) people to revert to the use of banking facilities. In fact, the most frequently used instrument by money launderers is banking institution (Ping, 2010) and the vast majority of convicts hold their financial assets in banks (Van Duyne, 2009). As such, even though it is true that lately the international fight on money laundering has been (covertly) focusing on tax offences (Davies, 2007), there is still a great deal of controls and supervision to be done by the compliance officers with regard to other types of frauds and economic crimes. Moreover, as banking regulation will continue to become tougher, the RM will struggle searching for growing opportunities while fighting operational limitations. Hence, he will inevitably find himself arguing over certain cases with the compliance department. After surveying the respondents' stories about the conflictual interactions they have had with the compliance colleagues, we were interested in understanding whether there are any strategic operational and communicational moves that could soothe the collaboration between the two departments. Below we summarise our findings regarding both the RM and the CO:

A: The compliance Officer

- Have no religious, political or national prejudices. The CO should evaluate each case objectively and give the right weight to the client's

potential risk due to his country of residence, political association and religious beliefs;

- Do not be alarmed by important amounts. Whereas the AML legislation has established that certain thresholds could arouse money laundering suspicions, the CO should always try to see the bigger picture behind a client's financial background: an amount that can be high for an affluent client can be "peanuts" for a wealthy one.
- Evaluate a client's case thoroughly before asking any questions of the RM and clearly state the information/documents that are to be obtained such that the client is disturbed as less as possible. By requiring all the information at once, the RM will feel more at ease with the client. Moreover, the CO should be aware that certain documents take time to be produced and unless they are vital for reconciling any money laundering suspicion, the business should not be discontinued until the receipt of said documents.
- Provide explanations as to why additional information is needed. Unless clearly explained how the missing information affects the bank's integrity, the RM will not understand the necessity of bothering the client with requests that he deems to be superfluous. Furthermore, a detailed explanation should also be given when the compliance decides that certain transactions cannot be undertaken. In both cases, the RM will be better prepared in front of the client and will be able to explain him the bank's decision.

B: The Relationship Manager

- Take a long term approach when on-boarding risky clients; whereas such clients can seem profitable, their specific financial behaviour can later become problematic and complicate the RM's daily business. As such, the incentive of taking responsibility (in front of the bank and/or of the authorities) for risky cases should always be balanced with respect to the gaining opportunities.
- Do not blame compliance for the requests addressed to the client. Such conduct not only demonstrates a low commitment toward the bank's internal policies but also endangers the future collaboration with the CO, seen rather as an enemy and not as a partner. As suggested by Edwards and Wolfe (2004) the compliance function is to be recognised within a wider partnership approach, which takes account of good

compliance and ethical practice. Ethics are distinguishable from rules as 'rules tell you how to act while ethics tell you how to think before acting'.

- Take a proactive approach and try anticipating what kind of complementary information the CO could ask. This will not only save time for both the RM and the CO but it would also avoid unnecessary communications with the client. Moreover, being thoroughly when collecting the needed information, the RM can better understand the drawbacks that the compliance is likely to identify regarding the client's situation. As such, not only the RM will manage to close *ex-ante* some information gaps but he will also avoid telling the client that certain transactions can be undertaken whereas later on will be blocked by the CO.
- Do not have a 'tick the box' attitude; try to understand why the CO asks for certain documents and how the absence of such documents can put the bank at peril. Once said documents have been provided, run a first check and see if they answer the CO's needs; otherwise, inform the client that the quality of the produced documents is not satisfying.
- Do not take possible conflicts personally and do not leverage on possible friendships with the compliance colleagues. Be aware of the CO's duty of protecting both the RM and the bank against regulatory and reputational risks.

Whereas these lofty recommendations may smooth the interaction between the two professionals, we believe that the different tasks that the two of them must accomplish will always leave room for tension, at least to some degree. The RM will favour risk-taking for growth objectives, while the CO will try to mitigate regulatory and reputational risks by blocking shady business opportunities; this conceptual gap will inevitably lead to clashes as to where the threshold for risk taking must stand. In conclusion, banks will have to dedicate continuing attention to the RM-CO conflict, encouraging a broader acceptance of the compliance culture inside their institution and putting in place remuneration schemes that can diminish the potential for unnecessary risk taking.

List of acronyms

CO	Compliance Officer
RM	Relationship Manager
AML	Anti-money laundering
AUM	Assets under management
FINMA	Swiss Financial Market Supervisory Authority
AMLA	Anti-money Laundering Act
SAR	Suspicious Activity Report

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Scary monsters

The bikers: a moral panic?

*Paul Larsson*¹

Introduction

This chapter will shed light on the following question: has there been a moral panic concerning bikers in Norway? Over time there has been periods where bikers have been labelled as criminal groups and a threat to society. But were these reactions manifestations of moral panic? To answer this question this chapter describes what happened when root-Norwegian clubs started to associate with US clubs like the Hells Angels and Bandidos and the social reactions to this.

Motorcycle-clubs (MC) have existed since the first decades of the 20th Century². There is a wide variety of MC cultures and clubs. They range widely from granddads on Goldwings, youngsters on off-road trial bikes, speed ‘demons’ on racers and muscle-bikes, common everyday motorcyclists to what we call bikers. Most clubs are for ‘ordinary’ motorcycle enthusiasts. The subculture of *bikers* is a phenomenon often historically linked to restless WW2 veterans having problems re-adapting to society after the war (Barker, 2007).

The first biker clubs in Norway and Scandinavia were established in the late 1970s and early 1980s. Different terms are used to describe these clubs: as ‘one-percenters’, ‘Rockers’ in Denmark and Germany and as criminal MC clubs or gangs elsewhere. Bikers represents an American lifestyle associated with Harley Davidson motorcycles; their dress and looks are quite uniform with the vest with its colours as the most signifi-

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² The Oldest US club is the Yonkers MC, New York from 1903. American Motorcycle Association was founded in 1924. In Europe such clubs came later often in the 1950s and 1960s.

cant symbol. The customised bikes is the most central symbol, heavy with lore and meaning.

The core values of the biker lifestyle is the *brotherhood*, the freedom and the 'life outside the straight world'. The clubs are all male.³ There is a certain hierarchy in the biker-world with the Hells Angels on top. Media and films have been central in the creation and spread of the lifestyle: the movie *Easy Rider* is iconic as such. During the last decades, the Hells Angels, Bandidos and Outlaws have established chapters worldwide. This development is often presented by the police in terms of 'taking over', and 'control of crime markets', but also in terms of 'power and domination' of other clubs.

But what does it mean when a club becomes a chapter of Hells Angels? The bikers themselves underline the meaning of becoming part of a brotherhood and a superior club (in positive terms), while the public view is overall negative. There seems to be substantial differences and variation between clubs, even within one nation or smaller area when it comes to the criminal activities of members. Danish Hells Angels have been closely linked to the hash market in Christiania in Copenhagen, while members of the Norwegian clubs do not seem to have a central role in the cannabis market, but their history in dealing with amphetamine is well documented. Internationally it is often pointed out that members of biker groups are closely linked to a criminal lifestyle, and in some instances they are described as organised crime groups *per se* (Barker, 2007).

A substantial part of the members of the biker groups in Norway have a criminal conviction. In most cases this concerns petty crimes, theft, use and possession of drugs and violence. Much of it is juvenile crime. It should be stressed that there seems to be a gap between the picture presented by representatives of the police and media of the bikers as *the most dangerous criminal networks* and how the Oslo police, the bikers themselves and some researchers⁴ present them as associations where crime plays more secondary role.

In the 1980s a number of colourful home-grown biker clubs were established. The style was dominated by chopped, modified Harley Davidson hogs, vests with club colours, working class male ideals of being

³ Wolf's book "The Rebels" is still one of the best introductions to the biker culture. (Wolf, 1991).

⁴ Larsson (2016).

strong, able to work on your bike and hold your ground: an ideology of individual freedom and a certain look with tattoos, beard and a solid male body (Wolf, 1991).

There was a number of clubs like: Rabies, Hydra, Holy Riders (Christian bikers), Rowdies, Shabby Ones, Screwdrivers, Gladiators, Customizers and Renegades to name a few. Many of these clubs ended up as Hells Angels or Bandidos chapters from the 1990s on. One of the most interesting aspects is the massive public attention these clubs received when they ‘changed vests’.

The worst fears became reality with the outbreak of open rivalry between the Hells Angels and Bandidos on a Nordic level from 1995 to 1997. The massive use of force and violence between the clubs is well documented (Høyer, 1999). In media it is often presented as a war concerning drug markets. Bay (1998), one of the few having done research on the bikers in Denmark, states that it was basically a feud that got out of control. There has been open violent conflicts between groups of bikers in Denmark since the early 1980s. Much of this seems to be on a personal level, but since these groups are closed such conflicts easily develop into feuds which are hard to control. Some hostility has also been observed in Norway, but the ‘rocker war’ was primarily a Danish conflict that spread to Sweden, Norway and Finland. After the Danish ‘peace agreement’ was signed in late 1998, there has been no more open conflicts in Norway.

Rowdies become Hells Angels.

The Rowdies in Trondheim became friends with the Hells Angels in 1989 and formed a chapter in August 1992 (Leliënhof and Jenssen, 2014). The media interest for the clubs started to grow when clubs began to associate with Hells Angels. On the 13th February 1992 we can read in *Adresseavisen*:

“The MC club MC Norway in Trolla will soon become fully fledged members of the Hells Angels. If we are to judge them by their criminal records they have to the highest degree deserved to become members in an organised league of criminals. They have been either sentenced, reported or charged for the total number of 70 misdemeanours or crimes in the last two and a half years.” The rest of the article goes on

with alarming claims from the police. “If MC Norway (used to be Rowdies) are accepted as members of HA we have a genuine league of criminals among us.”

The way statistics are used is interesting. All information about any form of criminal deviance, whether the persons were sentenced, have been reported or charged is swept and mixed together. It is not mentioned that this club, and others, have been among the favourites for police attention and supervision for years. This way of using statistics, ‘vacuum cleaning’ the police registers for all information on infractions and violations and presenting the clubs as comprising hardened criminals is more or less identical to the way Kripas presented Hells Angels 20 years later (see below). It is one-sided, all ‘facts’ being presented as confirmation of criminal intent. When the bikers are presented as ‘the worst threat’ there are no groups or information to match these statements. Media coverage, at that time, presents a more well known picture. The members of the clubs are said to be active in the traditional Norwegian activity of large scale moon shining, but also in the more ‘un-Norwegian’ distribution and use of amphetamines.⁵

Media coverage was dense. On 5 August 1992, the police in Trondheim stated: “*Hells Angels Norway is the most serious form of organised crime that ever has threatened the country.*” (*Adresseavisen*) The head of the criminal section in the Trondheim police had visited USA and Denmark to learn from their experiences and could tell of things to come.

Elsewhere I have stated that Hells Angels and the ‘one-percent clubs’ were essential in forming the idea of organised crime in Norway (Larsson 2008, 2016). The term organised crime was more or less empty before these groups came to embody the concept. As we see from the media clippings the language and terms used has been negative and one-sided from the start. Even when the news seemed to be positive – “*Peaceful party at the Angels*” – (*Adresseavisen* 1992, 7 September) the main news was that eight Swedish brothers had been stopped and taken to the police arrest for check of identity, and held for some hours until they could later return

⁵ Moon shining, is by most citizens not considered to be particularly dangerous in contrast to dealing with amphetamine. In one case (*Adresseavisen* 18/2 - 1992) a member of MC Norway (later HA) was convicted for producing 102 liters of moonshine, buying 40 grams of amphetamine, stealing a car and driving under the influence of alcohol. In the club of Rams MC in Trondheim two tons of sugar was found. Moonshine was big business at that time!

home. The same procedure was used on four Danish citizens that should have been to the same party. Such approaches are still used: there is nothing new in the use of sharp preventive police methods. These kinds of police interventions are also channelled to the media for publication confirming the existing image.

The period after the 'biker war' from 1998 to 2011 was characterised by calm, especially in Oslo. Despite that, the police warned for the expansion of the clubs and the dangers of new feuds and conflicts between the clubs (Politidirektoratet, 2003). Much of the criminal activity was linked to the supporters and different crews, not to the main clubs. There developed a split between the way the Oslo police department and Kripos (National Criminal Investigation Service Norway) were dealing with the bikers that will be described below. Even if there was regular warnings from the police there were other crime problems that got the attention of media and the politicians. But this was to change.

Time for a change

Something happened in 2011. More or less overnight the official policy of the police towards the biker groups changed. A more aggressive tone became the norm and this was supported by political initiatives and a broad coalition against the MC problem. This change seems to be the result of a co-ordinated effort. The official reason for this was the threat from the growth in numbers of supporter groups, like the Support X- team (Bandidos), the Red and White Support Crew but also from the number of biker clubs associated to the Hells Angels and Bandidos. This seems to be justified by developments in this time span. The first decade of the 21st Century witnessed an expansion in the number of clubs that were on friendly terms especially with the Hells Angels. Most of these were in a network called the Norwegian Model. The reason behind this development was said to be the Hells Angels taking over criminal markets, especially in amphetamine, and consolidating their power. It was a warning sign that new turf wars could break out, especially between the Hells Angels and Bandidos.

The main target for the police were therefore the Hells Angels and clubs, like Devils Choice, that clearly expressed sympathies with HA. This

was *not* big news for law enforcement. These groups had been under police scrutiny for years. What was new was the energy and the methods used by the police and other agents to counter these clubs. If some problem is pointed out as a serious threat, this does not automatically lead to the use of certain tough police strategies. Preventative approaches may come first, representing a wide variety of ways to deal with certain problems. Social preventive methods range from low-level help and support to zero-tolerance and confrontation to “scare of”. Often a mixture is used: the hard hand concealed in a velvet glove.

In Oslo the preferred approach to the bikers problem had since the end of the 1990s been a combination of contacts and dialogue backed by surveillance and the use of police powers. This is called the ‘dialogue model’ and is often presented as a ‘soft’ approach. After 2011 this changed: the strategy in use has been more inspired by the Danish police and their confrontation and zero-tolerance (Larsson, 2015). The Danish approach was not restricted to the police; the municipalities and local authorities in their reactions to unwanted clubs also leaned to the Danish model.

Once the police went into action there was a massive media coverage of their raids on the clubs and supporters. The term *criminal MC-club* or gang, that had been in use by the police for years, became ‘normalised’. Critical questions about the substance of these descriptions are rare. The clubs are steadfastly presented as a serious threat to society. “*The Criminal MC-clubs are in many ways trendsetters in the field of grave violence and serious crime . . . This represents a threat to society.*” (Politidirektoratet 2003: 3) “*Despite convicted members, clubhouses used to conceal illegal weapons, drugs and money, the 1% clubs themselves state they are not criminals, and they try to look like enthusiasts with interests in motorcycles, leather jackets and tattoos.*” From the magazine *Norsk politi* (nr. 2 – 2012).

Biker rhetoric, a part of their ‘ideology’, is taken at face value in publications and presentations and presented as the final confirmation of their criminal lifestyle:

“A 1%-er is the one-percent of us who have given up on society. And the politicians One Way Law. This is why we look repulsive. We are saying we don’t want to be like you or look like you.”⁶

⁶ This ‘oath’ is published in nearly all action plans and threat analysis as a proof of anti-social values and lifestyle.

The source of this credo cannot be found. This ‘proof’ of anti-social behaviour has time and again been presented as one of the most important evidences of the fact that these groups are criminal. The point that bikers themselves state that these words while having little connection to the realities of the 21st Century, is never mentioned.

Most of the media attention has been alarmist and one-sidedly negative. Feeding information to the media was a central police approach and the media for their part seemed insatiable (Cedergren, 1998). It was signalled that the “*police had lost its fight against the clubs*” and that they were even taking over the society.⁷

What really made a difference after 2011, was the joint actions against the bikers. Police received earmarked resources from the cooperative body (Samarbeidsorganet) to take action against clubs.

A trip to Denmark to learn of Danish experiences with bikers was organised in 2011: 110 representatives from 19 municipalities took part. The Danish approach has been dominated by confrontations since the 1980s (Høyer, 1998). The seminar included presentations on how to tackle bikers, or rockers as they are called in Denmark. The seriousness of the problem seemed to be beyond any doubt.

After the trip a plan for the preventive work in the municipalities was developed by KS.⁸ Local municipalities were urged to contribute by using regulatory law to reduce the possibilities for clubs to establish and open a club house.

“In these days the KS is calling upon the municipalities to join forces against the criminal MC gangs, KS is urging the municipalities to declare criminal MC-gangs as unwanted.” (Labour party 31.03. 2011)

The police activity resulted in an action plan on the bikers (Politidirektoratet, 2012). This plan followed the previous one for the period 2003 – 2008.⁹ The action plan did not come alone. It should be read as a companion to the white-paper “The fight against organised crime – A com-

⁷ <http://www.vg.no/nyheter/innenriks/gjengkriminalitet/ny-handlingsplan-skal-stoppe-mc-kriminalitet/a/10035599/>

⁸ KS is short for Kommunenes sentralforbund, this is the federation of the Municipalities.

⁹ Handlingsplan for bekjempelse av kriminelle MC-miljøer i perioden 2003–2008. (Action plan for the combat of criminal MC networks in the period 2003 – 2008).

mon approach”¹⁰ and the action plan on criminal gangs.¹¹ In the Kripos threat assessments, bikers were presented as one of the gravest problems in organised crime. The irony of this should not escape the reader. For years the police had used considerable resources to get the clubs, especially the Hells Angels, sentenced for breaking the so-called Mafia-paragraph, § 60a in the General Civil Penal Code of Norway¹². All attempts had failed. According to Norwegian law and the Supreme Court these clubs were *not* organised crime.

The action plan itself did not signal a clear shift.¹³ There were few, if any, new perspectives or arguments in the strategy. The main goals, methods and rhetoric were quite similar to what had been expressed during the last two decades. One could see a drift towards a tighter cooperation between municipalities, politics and the police concerning preventive tasks. But on most points the old and the new plans looks identical. The main shift in approach happened outside the plan, on a political level, inside the police system and at the top in the municipal sector.

The signals in the media, as set out in the next section, had been clear for quite some time: in the past two decades the National Police Directorate and Kripos stated that bikers was a growing crime problem that had to be stopped.¹⁴ Similar statements came from the KS¹⁵ and The Norwegian National Crime Prevention Council – KRÅD.¹⁶ These statements were duly picked up by the media. In Parliament primarily the Conservative party pressed on for more resources to the Kripos and stated that there

¹⁰ Meld. St. 7 (2010–2011) Melding til Stortinget, «Kampen mot organisert kriminalitet – en felles innsats».

¹¹ https://www.politi.no/vedlegg/rapport/Vedlegg_1140.pdf

¹² “An Organised criminal group is here defined as an organized group of three or more persons whose main purpose is to commit an act that is punishable by imprisonment for a term of not less than three years, or whose activity largely consists of committing such acts.” The General Civil Penal Code of Norway §60a.

¹³ https://www.politi.no/vedlegg/lokale_vedlegg/politidirektoratet/Vedlegg_1096.pdf

¹⁴ <http://www.vg.no/nyheter/innenriks/gjengkriminalitet/ny-handlingsplan-skal-stoppe-mc-kriminalitet/a/10035599/>
<http://www.vg.no/nyheter/innenriks/gjengkriminalitet/krip-os-om-mc-kriminelle-de-maa-stoppes/a/10035412/>

¹⁵ The KS is the association of the Norwegian Municipalities.

<http://www.ks.no/news-in-english/english-articles/about-ks/>

<http://www.ks.no/globalassets/rapport-oppgaver-uten-grenser-2011.pdf>

¹⁶ <http://www.krad.no/forebygging/organisert-kriminalitet/mc-kriminalitet>

should be a joint action against this most pressing problem.¹⁷ Samarbeid-sorganet (The cooperative body on organised crime) established in 2010, supported this activity economically. The ‘biker problem’ had top priority at Kripas.

The outcome of this interaction of media, police and politics was that different forces joined hands in a common strategy on the ‘criminal MC groups’. In the previous period there had been a wide spectrum of approaches to the bikers in the police districts. The priority of policing bikers were often low in rural districts, where other problems were more urgent. With the new plan the role of Kripas and their strategy of prevention by confrontation was strengthened while the districts were forced to pay more attention to the bikers.¹⁸

Was all this the outcome of a moral panic?

A moral panic?

What is ‘moral panic’? The term moral panic is associated with stigma theory. In short a moral panic can be described as a process whereby a group is defined as dangerous, as folk devils threatening the moral order, values and interests of society.

Some basic elements needs to be in place to develop a successful moral panic. First of all *something* must happen. “*Fully- fledged moral panics need an extreme or especially dramatic case to get going.*” (Cohen 2002: xiii) But this is not enough: dramatic things can happen without developing a panic. You also need a *suitable enemy* – “*a soft target, easily denounced, with little power and preferably without even access to the battlefields of cultural politics*” (I: xii). A *suitable victim*, someone you can identify with: “*a consensus that the beliefs or action being denounced were not insulated entities*” but part of a much wider problem. The evils have to be defined as a *threat to societal values and interests*.

¹⁷ [https://www.stortinget.no/no/Saker-ogpublikasjoner/Publikasjoner/ Representantforslag/2010-2011/dok8-201011-173/1/](https://www.stortinget.no/no/Saker-ogpublikasjoner/Publikasjoner/Representantforslag/2010-2011/dok8-201011-173/1/)

¹⁸ “The goal is to reduce the number of clubs and recruitment by stressing members, making it harder to be a member or to associate with clubs.” (POD plan 2011-2015)

A moral panic needs some central hostile *actors*. Mass media play a central role in shaping these actors. The enemy is presented in a stylised and stereotypical fashion by mass media. Bikers and especially Hells Angels suit this role. They are presented as very different from the law abiding majority and a threat to society. But behind the sensational front there is the daily drudgery. This fact was pointed out early on in Hunter Thompson's classic book "*Hells Angels*". The two different worlds he described, on the one hand, the often dull and boring realities of being a biker, broke with a toothache, and on the other hand, the sensational picture, the Mongol warrior on his iron horse, presented by the press, seems so far apart that it is often hard to understand that they are talking about the same people. Of course the sensational side is the only newsworthy. The biker groups first became 'real celebrities' after some well-known cases: the Monterey "Rape", Hollister and the Altamont put bikers and Hells Angels figures prominently in the spotlight. Quite a few enjoyed it and made a reputation, but the cost of being 'known villains' was high.

Commentators, and experts are central to this process. The experts are police officers, lawyers, researchers and politicians, but also journalists. Police officers and journalists have been the most cited 'experts'. The role of journalists as experts is intriguing. The Swedish journalists Wierup and Larsson author of the book "*Swedish Mafia*"¹⁹ have been used and consulted as experts by Norwegian police. The book has been a 'must read' on courses arranged by the police and the KS. This is similar to the role the journalist Yves Lavigne and his books on the Hells Angels used to have.²⁰ These journalistic books sell well and don't have any ambition of being based on scientific research. Books with the right tone that suits the alarmist language in the media are more asked for than 'dry' scientific reports. This is policy making by entertainment and not the evidence based policy making so often idealised in reports and white-papers. Scien-

¹⁹ <http://www.bokus.com/bok/9789173135221/svensk-maffia-en-kartlaggning-av-de-kriminella-gangen/>

²⁰ On the back of the book "*Hells Angels into the abyss*" it is stated that Lavigne is "the acknowledged North American expert on the Hells Angels Motorcycle Club."

tific researchers have not been consulted as experts by the police or in seminars.²¹

Moral panics often result in changes in legal and social policy, police methods and allocation of resources. In Denmark a so-called Rocker law was introduced at the end of the 1990s. This did not happen in Norway, even if the police pushed on in this direction.²² But resources, at least since 2011, were extended. There had already been a development in the use of secret and extraordinary police methods in the last two decades in the field of organised crime (Larsson 2014) and there was the new Mafia paragraph in the Penal Code §60a (above). In accordance with this law extra long sentences, adding up to an extra 50% on top, could be meted out under certain circumstances. In many ways the police had already got most of what they wanted.

There were some limitations when it came to the possibilities of developing a moral panic concerning bikers in Norway. There was a lack of extreme and dramatic cases. In 2011, the Oslo police raided the clubhouse, the Angels-place. Eleven guns were confiscated and the police tried to get a confiscation order on the clubhouse through the Norwegian legal system.²³ In 2013 and 2014 their power to confiscation was not approved by the court. The appeal by the police ended in the Supreme Court by the rejection of the case in October 2015. The Hells Angels were convicted for possession of illegal weapons, among these there were historical guns from WW2 and shotguns, but also functional arms. Anyway, this case was not sensational or dramatic, even though media covered it extensively and presented it as 'hot news'. The growth of the supporter groups was also presented in alarming tones, but this was not sufficient to spark of anything like a moral panic.

²¹ With the exception of Tore Bjørgo who contributed with a general theory of crime prevention. Anyway, he shared the general view of police and media concerning bikers.

²² http://www.politiforum.no/filestore/Politiforum/Filer/PDF_av_bladet/2004/April2004.pdf

²³ <http://www.vg.no/nyheter/innenriks/politiet-tar-beslag-i-hells-angels-hov-edkvarter/a/10127426/>

Dramatisation of evil and ‘othering’.

Central in the process of moral panics is the dramatisation of acts, persons or groups. This is what Tannenbaum called the “*dramatisation of evil*” and what later the stigma theory of Becker (1963) pointed out as the central element of the social reaction. A moral panic is in many ways the same process but on a larger scale. In relation to the bikers we see attempts by media to dramatise acts. There seems to be few reservations by the press when it comes to naming and shaming. Clubs are depicted as criminal, members as violent and central in many forms of crime. If a Hells Angels or Bandidos member are arrested for ‘private’ crimes, like violence towards partners or speeding offences this is normally covered in media as “*Hells Angels sentenced for violence*”. In nine cases out of ten the picture presented is negative. The bikers are seen as genuinely different from ‘us’ the law-abiding community: they are the *other*. They threaten our way of living because they stand outside and are different (Young, 2011). At the same time they are objects of thrill and ambiguous admiration since they personify the outlaw, the traditional working class male ideals of the strong and free. There are actors in the police force that suits the term moral crusaders well (Becker, 1963): indeed no moral crisis without crusaders. These are central in the process and feed the media with information to prove there is a problem. Their motives is mixed. It is easy to depict the moral crusader as a cynical person, but in most cases they believe in the threat. Such a belief can easily be blended with self interest, to get attention, resources and build a reputation as an expert that media, politicians and to which others will listen.²⁴

²⁴ Two police officers that is among the absolute experts in the field of MC did discuss this topic quit openly with me. They stated that they in the early 1990s “found” the “biker problem” and saw that this “was a golden opportunity” (their words) and a win-win situation. The only thing they had to do was to keep on warning of what might come. “Happily” for them the biker war broke out shortly afterwards.

A culture of tolerance?

It is useful to put the ‘hype’ surrounding the Bikers into perspective. The type of moral panics Cohen describes seems to be rare in Norway. One may wonder whether open hatred and stigmatisation in the media of criminals or deviants is un-Nordic or un-Norwegian. The world’s attention towards our societal reaction on the terror attacks on the 22 July 2011 reflected often puzzlement. The cry of revenge was muted, the normal reaction was a collective process of mourning and sympathy with the victims and their closest. It is not easy to predict how the reaction had been if the killer had *not* been “one of us”. For a short while on Friday the 22th it was unstated, but taken for granted, that this must be a terrorist act committed by Muslims. Then the media started to broadcast that the act was not by an outsider. It can be discussed if he really was *one of us*, or an outsider per excellence with his extreme anti-Muslim worldview. This question is as complex as the one concerning how to judge the significance of his mental state and twisted mind. In many ways the case is so extraordinaire that it might not be a good example for throwing light on the Norwegian culture. But there are other examples, one of them is presented by the American criminologist David Green (2008) in his book “*When Children Kill Children*”.

Green asks what can explain the differences in the reactions when children kill children in England and Norway. The starting point for his analysis is the Bulger and the Redergård cases in 1993 and 1994. In England a classic moral panic swept media with demands of harsh penalties for the offending kids. Politicians, experts and others demanded that something had to be done. The kids were presented as monsters of the worst kind and there were changes made in the penal laws concerning punishing kids. The reactions in Norway was mainly grief and sorrow. The kids were perceived and treated as co-victims and what happened as an accident and result of children’s game. In short it was not seen as something for the health service. The main question was how to help and not damage the children. While the Bulger case was placed firmly within the Criminal Justice system, Norwegian media reactions were much more calm. Green’s explanation for these differences points to aspects and processes that might also explain why the ‘biker threat’ never developed into a moral panic.

The Nordic countries, including the Netherlands, is often presented as nations dominated by a culture of tolerance (Downes, 1993). One might ask, whether this is true and what it means. When it comes to the penal field it is pointed out that penalties on average are short and the use of prisons low even by European standards. This is often called the Scandinavian exceptionalism. There exists an acceptance of forms of deviance, sexual orientations and religious freedom. But there are some differences between the nations. Denmark is often presented as moving away from some of the common ideals of tolerance (Scharff Smith, 2014). This can be seen in the politics of immigration and penal policy. There are aspects where the Scandinavian countries are not particularly tolerant. The Swedish and Norwegian policy on drugs is one example. These countries have a strong belief in the use of punishment and police powers when it comes to the belief in a criminal law regulation of this field (Bewley-Taylor, 2012). Penalties for drug related crimes are by Nordic standards harsh. Such is also the case when it comes to tax-related crimes, which are generally seen as cheating the population and as anti-social acts. This view stems from the solid trust in the state. There is a very high trust in the police and the justice system and they are dominated by a civilian outlook; Norwegian police has not been armed until recently.

Hofstede *et al.* (2010) points out some cultural dimensions in their analysis of differences between countries. In this context, despite the image of the warriors from the north, it is interesting that the Nordic countries are presented as 'feminine cultures'. Femininity stands for a preference for cooperation, modesty, caring for the weak and quality of life. Society at large is consensus-oriented, at the end of the day we all want the same things. Conflict of interest can and should be solved by agreements. This in contrast to preference for achievement, heroism and material rewards for success.

The politics of the Scandinavian countries are dominated by a high degree of consensus. The Social democratic idea is central in the politics, even to a large degree shared by conservative parties. Equality is good. The fair society is the one where there is not too much difference between people. This is seen in the shared belief in the value of the welfare system. The Nordic countries still have strong welfare systems. Crime is to a large extent conceived from a welfare-ish perspective (Garland, 2001). Crime is rarely seen as evil as such, but rather as a symptom of lack of social support, integration and personal problems.

Crime has a central place in Norwegian newspapers and media. There has been a tendency to a drift towards a politisation and populism of crime in the media, but compared to many other nations the level of noise is still low. This probably has to do with the fact that so far, with exceptions, there has been a rather limited possibility to gain much politically by law and order populism. The exception, already mentioned, is the field of drug policy but also the bikers. It is on the verge of being a political suicide to openly support a decriminalisation in the field of drugs.

The heat of the media-coverage of the bikers needs an additional explanation. As with drugs, the bikers are presented as a threat from abroad and ‘not one of us’. This can also be the reason why the alarm clocks started to ring when the clubs got new names and colours. As set out before, the media-stories of the Hells Angels, Bandidos and Outlaws were already well known in Norway. The guys in the Rowdies, that became Hells Angels, were themselves sceptical to the club before they got to know them directly:

“When I grew up, we had heard of Hells Angels and read about the club in *Kriminaljournalen*²⁵ . . . It must be said that in the beginning there were different opinions and views concerning this (joining HA), both for myself and others, that were both positive and negative.” (Leiliénhof and Jenssen 2014, s. 97)

The clubs are seen as representing un-Nordic values and morals.

One explanation of why the media has a more sober tone in publishing most crime cases can be related to the overall media picture in Norway. As Green points out Norwegians are, or better used to be, newspaper readers par excellence. Most households used to hold at least one paper, often a local. Sale of newspapers was not dominated by national broad-sheets but by local ones. It is a much more mixed media picture than for example the UK. Crime news is not that ‘hot’ to determine the selling rates of papers in the street.

Even if the main newspapers was rather one-sided in their focus on bikers, there has always been counter-voices and they seems to have had some effect. The clubs themselves in many cases could present their views and comments. Parts of the media have been open to quote statements from the clubs. For example, in connection to the establishment of the

²⁵ Popular crime journal in the 1960s and 1970s.

Hells Angels supporter-group Devils Choice in Bergen, an occurrence that resulted in alarmist news-reports, Bergensavisen (BA) aired the view of the club itself: “*This (membership in Devils Choice) is the result of years of friendship between the clubs, but also a reaction on the harassment and stigmatisation for years by government of the Norwegian MC-clubs*”, says Devils Choice in a press statement. (BA 15th October 2013).

Hells Angels Oslo have frequently been in the media. Their spokesperson Rune Olsgaard, aka “Supern”, is a well known public figure. His ability to present the Hells Angels as ‘normal people’ with an ironic twist has been a gift. This was his reactions on a police bust on the clubhouse in Oslo:

“The Police have chosen a line of provocation waving their automatic guns in your face when you are out to get your socks and trousers. We hope the system of Justice works according to its principles”, says the HA spokesperson Rune Olsgaard” (VG 30 Oct. 2013).²⁶

The biker clubs have their own pressure-group working with counter-information: *Payback*. They have been invited to present their viewpoints on busts, negative media and policy documents concerning the bikers. Payback can be found on Facebook. There are also internet sites collecting information to present the world view of the clubs. One such is the club Devils Choice’s website named: *Devils mouth*. On this site you can find white-papers, reports from Parliament, media and news clippings, links to threat assessments and so on. John Christian Elden, one of the most renowned defence attorneys in Norway, has been working for Payback in court cases defending Hells Angels. Elden is openly supporting the rights of the bikers in media as well as in court. Even if some of these counter-voices at times have been ridiculed and presented as out of touch with reality, it would be wrong to say that the media picture has been wholly one-sided.

²⁶ <http://www.vg.no/nyheter/innenriks/elden-hells-angels-huset-gaar-ikke-sin-vei/a/10136502/>

The hot air goes out of the balloon (again).

As this chapter has shown, the focus on the bikers groups have been like a roller coaster ride with its ups and downs. There have been periods of alarm verging on panic interrupted by calm. In the 2016 trend-report on organised and serious crimes by Kripos, the bikers are no longer on the list of main threats.²⁷ They are to be found under ‘gangs and criminal networks’, not honoured with a chapter on their own in the report. Bikers are still described as “*highly active*” in the drug markets, mainly with amphetamine, but otherwise the report is rather quiet. What can explain this shift? The clubs are still there. Today there are more clubs associated with the biker culture in Norway than in 2011. The main goal of the police, to reduce the number of clubs and their recruitment of members, can hardly be called a success. So what are the reason for this shift? It might be as simple as Cohen points out in his book: there are fluctuations, *no moral outrage can go on forever* (italics added).

It maybe that the police and the municipalities had no alternative. Their ammunition was used and the results seemed quite meagre. At the same time the aging bikers of Hells Angels, most of them now in their 40s and 50s, were laying low. Public and political attention was shifting from the local thugs towards the threat from abroad. Immigration and exploitation of workers was now shouting for attention, while so called mobile criminals had effectively dropped down on the priority list. Crimes in connection to immigration and trafficking of humans topped the list, number two is “*arbeidsmarkeds kriminalitet*”, a new construction with a mixture of crimes in connection to the labour market.²⁸

Reports as the Kripos threat assessments can, and should, be read in different ways. Both media and the public often view them as more or less ‘objective’ representations of anticipations of developments in serious crimes: “*This is how the serious crime-problems look like now*”. In fact they are political documents reflecting the interests of the day and the ‘popular’ themes in media and politics. They also reflect the tasks and perspectives of the institutions that produce the reports. They are often better as mir-

²⁷ https://www.politi.no/vedlegg/lokale_vedlegg/kripos/Vedlegg_3188.pdf

²⁸ Arbeidsmarkeds kriminalitet seems to be a Nordic construction, translated it means labourmarket-crimes. It is crimes in connection to the labour market, the use of illegal workers, tax fraud, sale of untaxed goods, exploitation of workers under appalling working conditions and so on.

rors of structural and institutional processes than of crime problems. They also reflect international pressure towards harmonising rules, laws and police co-operation. The new trend-report definitely reflects a change in political priorities. But it is also a document influenced by the fact that Kripos are searching for a new role in the ongoing police reform in Norway. Parts of their tasks in the field of intelligence and organised crime is going to be downscaled in connection to the build-up of new “super districts”. The orientation towards the explicitly international problems is not only a reflection of changing global situation with massive numbers of refugees, it also suits the role of Kripos well as the national central hub in international police co-operation.

Organised crime as a scarce resource

This chapter started with a question: has there been a moral panic concerning the bikers in Norway. The answer to this depends on how we define a moral panic. We have seen fluctuations in attention and alarmist reports in media. In periods the bikers and especially Hells Angels, have been almost universally labelled as anti social, a criminal group and organisation and a threat to society. These groups have emerged as what Nils Christie called “*suitable enemies*” (Christie and Bruun, 1985). That is, a suitable threat to join forces against. The social reaction on these groups have been an ‘*othering*’, presenting them as outsiders, representing something un-Nordic, a threat and different from the law abiding common man. This looks like the start of a moral panic, indeed. I will still argue that it was not. Because in most cases there was no single occurrence or dramatic act. There was one remarkable exception. The time for a real panic should have been during the biker-war in 1997 after the bombing of the Bandidos clubhouse in Drammen.²⁹ Here you had both suitable enemies, the bikers, and a suitable victim, a woman in a car accidently passing by who was killed in this violent encounter. But in contrast to what happened in Denmark, the reactions were rather calm. This is a pattern that can be observed time and again. Alarmist media-reports that usually calms down after a short time. Two aspects pointed out by Green (2008) can

²⁹ <http://www.vg.no/nyheter/innenriks/bandidos-bomben-i-drammen/sliksprenget-de-drammen/a/9925143/>

explain this. The dynamics of the media and the political aspects in relation to crime do not heat up sufficiently. Until recently there has been something close to a general agreement on the basic aspects of criminal policy, at least in Norway. This implied that there was not much political points to be earned by going for draconian reactions. The media also let counter voices be heard, something that might have had a calming effect.

Moral panics usually results in repressive changes in laws, regulations, police methods and other forms of societal reactions to stamp out the problem. What seemed to happen in Norway, and the other Nordic countries was that the establishment of the international bikers came to symbolise the threat of organised crime. Organised crime was a term that more or less had no history in the Nordic countries before 1990 (Korsell and Larsson, 2011). It was associated with Italian and US Mafia. The unchallenged enemy in the criminal politics of the Nordic countries until the late 1980s had been drugs. There had been a process starting in the late 1960s culminating in the mid 1980s where the level of punishment, the use of ‘new’ police methods and the level of resources had grown immensely (Christie and Bruun, 1985). The concept of organised crime had to be filled with a suitable meaning and with a fitting image. Drugs and drug crimes had been singled out for this role, linked to so called ‘drug sharks’, but there seemed to be very few of such figures around. Anyway, drugs had already peaked: there were not much more to get in resources or penalties in this policy field. In this situation the bikers, often linked to drugs, became the moving force behind the introduction of extraordinary police methods (NOU, 1997:15), police reforms (NOU, 2013:9), international police cooperation, new laws and growth in budgets (Korsell and Larsson, 2011; Larsson, 2008).

While the drug peak levelled off, the bikers came in at the right time and seemed ideal to embody the idea of criminal brotherhoods. In their ‘uniforms’, threatening looks and the rumours of violence and serious organised crime they got the role of organised crime bogey. In the police they were also connected to their old favourite, drugs. The links between bikers and drugs made them well fitted: they came to be seen as synonymous with parts of the drug trade. Traditional and well established forms of organised crime, like moonshinig and trafficking of alcohol and tobacco, were not generally conceived as ‘real crimes’ or a big threat and was rather unsuitable as symbols of organised crime (Johansen, 2004). Bikers, even if many of them were also in the alcohol business, seemed a

much better fit. They may even fit the role too well. Most other criminal networks, as Paoli (2002) and Johansen (2005) points out, try to be invisible, not attract too much attention. The bikers openly advertise a lifestyle that flirts with anti-social messages, showing off, often being their own worst enemies when it comes to avoiding police attention.

The answer to the questions posed in this chapter, “has there been a moral panic concerning bikers in Norway”, the short reply is no. At least not in the full blown version presented by Stanley Cohen. This said, the bikers, and especially the Hells Angels, have for the last quarter of a century been among the favourite bogymen in the mainstream media. The media- and police attention towards these groups have fluctuated from alarmist reports to periods of calm, but the main message have remained constant. These groups are hard-core serious criminals with international networks and the public should not be fooled by media-stunts and open-days at the club houses.

So, why was there no real panic? The bikers had all that is necessary to start of a moral panic. One explanation might be that there is cultural and historical limitations to the application of Cohens and indeed other criminological theories. There are substantial cultural differences between the neighbouring countries, UK and Norway, that makes moral panics very rare. These are related to politics, the way media works, basic social values and the role of crime as a political factor. Some of these differences are described by the term Scandinavian exceptionalism. Even if there are some obvious ‘holes’ in the tolerance, the term still has meaning. Crime and being tough on crime is not a topic that alone will bring political victory. The differences between the political parties concerning the criminal policy is less important than the similarities. The most central political questions in the political campaigns in Norway during the last decades have been related to welfare, education and economy. This is reflected in the coverage of the media. This view is also shared by most police officers. This might also explain the reason for the tough line on drugs. Drugs is basically seen as a social problem. Drugs kill people and are viewed as anti-social. This maybe explain the mixed feelings both in the public and the media concerning bikers. These clubs are associated with negative and anti-social activities. Their bragging about being outside society and relationship to drugs are clearly seen as negative. At the same time much of other biker’s core values are in accordance with those traditionally held high in Norway. The values of brotherhood and comrade-

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ship, the loner on his bike with the elements (that can be really rough), the handy-man fixing his bike and the adventurer (the Viking). These clubs represent working class ideals, the typical strongman, that today have become more or less suppressed in mainstream society, but still are shared by substantial parts of the population.³⁰ The growth in the number of biker clubs, despite the bad publicity, in Norway during the last decade is an indication that they have something to offer to grown up men. The biker style today has become mainstream. Tattoos, vests, colours and chopped Harley Davidson machines as a kind of ‘motorised drekkar’ is something everyone can buy (Lyng and Bracey 1995). The biker and Viking-ish lifestyle have become a commodity. This sharing of values and commoditisation of a counterculture makes the biker less suited for *othering* than often claimed.



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