Europe is not a quiet province, certainly not in terms of the prevalence of cross-border crime and corruption. As a matter of fact, there is a constant pressure on the integrity of its institutions, whether it concerns the Member States of the European Union or the countries outside this ‘family’, but applying for this coveted membership. This pressure does not only come from the ‘outside’: within the European Union there are also continuous criminal inroads being made on its integrity. This is not a new phenomenon. However, the intensification of cross-border mobility as well as recent complex legislation concerning criminal liability, also cross-border, e.g. for corruption, have changed the landscape and widened the risks of such criminal inroads.

From trading across the Finnish-Russian border to new candidate countries in Southeast Europe, there are new threats looming. The Balkan countries, standing on the threshold of Europe are still ripe with corruption. Within the European Union there are serious doubts about the solidity and efficiency of the institutions which are supposed to counter the threat of ‘organised crime’, corruption or other menaces against the integrity of the financial and economic system and its other interests.

In this tenth volume of the Cross-border Crime Colloquium series these questions have been addressed by twenty four expert European scholars. Their recent or on-going research projects and studies are presented within 16 chapters. This volume provides a number of well-reasoned answers while making the reader aware how many questions still have to be addressed in this field.

This volume is based on selected, peer-reviewed presentations at the eleventh Cross-border Crime Colloquium.
CROSS-BORDER CRIME INROADS ON INTEGRITY IN EUROPE
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Petrus C. van Duyne
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(eds.)
Cross-border crime inroads on integrity in Europe

Petrus C. van Duyne, Georgios A. Antonopoulos, Jackie Harvey, Almir Maljevic, Tom Vander Beken, Klaus von Lampe (eds.) Wolf Legal Publishers (WLP), 2010

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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 eleven times:

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(Crime-)money, corruption and the state

Petrus C. van Duyne

An intertwined or unholy trinity?

The ‘state’ and money have always bedevilled man’s mind. Between the two there looms the evil interaction of corruption. Is this an unholy trinity? In history money or its equivalent, gold, has always been disputed just because of its potentially moral corrosion. The Spartans perceived it as threatening their pure lifestyle. So they banned it and replaced it by iron bars, while culturally degrading their society by an autere life-style. The myth of king Midas who turned everything he touched into gold also serves as a warning against the barren nature of gold, while the adoration of the biblical Golden Calf is a symbol of the seductive attraction of material wealth in general, and money in particular, and the related loose morals.

Reflections on the state, its best form or its necessity, used to be critical too. From Plato onwards questions have been raised on what should be the best form of state, without tyranny, greed and corruption. Against a background of corrupt rulers and violent political upheavals, history shows a continuous striving for a virtuous state, with disappointing and often violent outcomes. The causes of such outcomes are inherent in the drive for virtue itself: it leads to totalitarianism. Why? In contrast to gold which has levels of carat and is easy to mix with less noble metals, virtuousness is ‘non-dilutable’. One cannot have just half or three-quarters of virtuousness. As a Dutch minister of Internal Affairs once remarked about corruption: “It is like pregnancy: you cannot be a bit pregnant and you cannot be a bit corrupt” (Huberts, 1992). Therefore, this drive tends to be total.

Though there is a compelling logic in this statement, attempts to realise it have not brought much happiness. Zealots of whatever form of pure society more often than not saw dreams and lives end violently. Their list is long, cruel and wide indeed: from religious purists like Jan van Leyden (Anabaptist), ending in a cage of the bishop of Münster (1536) (Klötzer, 1992), to the ‘incorruptable’ Robespierre who could indulge for only 12 months in his political purist ideas, before he was beheaded himself (1794) (Soboul, 1994). Those who thought
mankind should be liberated from the tyranny of the corrupt state and who un-
folded the banner of anarchism ended at the gallows too, particularly in the 19th
Century Russia (Sievers, 1980). The biggest ‘real live experiment’ to establish a
pure (socialist) society by which the state would become superfluous, lasted al-
most seventy years and imploded two decades ago after a miserable record of
covered failures. Indeed, history does not provide many positive examples to put
much trust in moral fundamentalists turned into political purists. It rather proves
the price to be paid: total virtue requires total control, which is only feasible in an
absolute state. And how many absolute states were without corruption?

Though utopian schemes are considered as something of the past, the ‘state’
ever abandoned its aim of keeping its citizens to the straight and narrow path.
Not within a total utopian grand design, but piecemeal, topic by topic, whether it
concerns safety or sex, health or property. It adapts pragmatically parts of its
criminal law armamentarium to murky markets of ‘vice’ that are constantly
springing up. Vice markets imply that criminal profits are being made. These
crime-mones are considered to have an even greater potential to corrupt than is
attributed to ‘normal’ money. Hence, a new control task developed: controlling
criminal money management, which is supposed to affect the integrity of the
financial system, unleashing a new drive for total control. This has been achieved
through a global law enforcement regime (Stessens, 2000).

With this observation we are back at the triangle of (crime-)money, corrup-
tion and the state. To increase its control capacity the state invokes another moral
principle: transparency. Upholding this principle is not just a concern of single,
national jurisdictions: it must have a global effect. This applies not only to the
(international) financial system, but to all corners of trade and industry where
corruption is looming, whether at home or in transnational transactions.

One may wonder what aspects of society are left unguarded to prevent a
sliding down towards moral desintegration. It is a process of encroaching moral
control: all for the common good. But what about the state itself permeating and
overarching society? Is the state a transparent, ‘open book’ as well? And if open, is
it also readable? Or is the state the ‘self-excepting fallacy’?

This volume deals with various sides of this triangle of (crime-)money, cor-
ruption and the state. Though one may think the order of the three arbitrary, I
think it appropriate to start with discussing the chapters dealing with the subject
where vice starts: corruption. Money may be clean, the state may be virtuous, but
underneath corruption may eat into both sides.
Facing corruption: global and local

The history of corruption is characterised by bad conscience as well as connivance. Abuse of office and bribery has always been frowned upon, usually silently. This ambiguity allowed the launch of occasional accusations of corruption as a stick to beat a (political) dog. For example, the politician (and philosopher) Francis Bacon, ended his career in disgrace after being found guilty of bribery (1621) in a time when non-corrupt administrations did not exist. As a matter of fact, the nascent public administration was a market of coveted positions (Swart, 1990). Indeed, even in the most abject corrupt state, the concept of the immorality of corruption is not absent.

In the course of the 19th and 20th Centuries this connivance receded, but did not fully disappear. In the past decades exposure of corrupt dealings of politicians or high-level civil servants led to the end of their career if not a prosecution. In Europe, however, this was geographically an uneven development. Whether or not it is another cliché, in the protestant Northern Europe this development was more advanced than in the catholic Southern Europe. However, in the past decade, these Northern countries have witnessed a number of high-level corruption cases in Germany, the UK, the Netherlands and even Norway (Andvik, 1994). But the fact that these cases were exposed can be used to underline this cliché. In Italy exposure appears to have fewer consequences: MPs convicted of corruption (or other crimes) are allowed to retain their seats in Parliament (Stille, 2006).

Nonetheless, these uneasy feelings about corruption remained highly selective: while corruption at home was frowned upon, cross-border corruption by western corporations in other countries was condoned. These cases of bribery were considered necessary for obtaining foreign contracts; they were even tax deductable. In this way ‘non-corrupt’ western entrepreneurs declared themselves ‘forced’ to become ‘a bit corrupt’. In the chapter of Liliya Gelemerova on the crusade against foreign corruption the author discusses this aspect of corruption as well as the way it was addressed forcefully by the USA.

What is the case? During the Cold War, the USA and other western countries supported any corrupt state as long as it was anti-communist. It kept kleptocrats like Mobutu in power for decades (Meredith, 2006). Bribery was also rife in foreign trade. But while a corruption condoning foreign policy continued, at least until the fall of the Wall, foreign trade relations did not escape so easily. In the sequel to the Watergate affair 1975, much evidence of foreign trade related corruption was found. Eventually this led to the Foreign Corrupt Practices Act (1977), which was a milestone of the American internationalisation of a domestic moral concern and policy. This internationalisation was preceded by the world-
wide anti-drug policy (Van Duyne and Levi, 2005) and followed by the global anti-laundering policy (Stessens, 2000; Van Duyne et al., 2005; Gelemerova, forthcoming), with which it shares many features.

Of course, there were sound national interests involved: if American companies wanted to avoid becoming outcompeted by foreign corporations the anti-corruption policy should be accepted universally. Ever since this the US government has endeavoured to make other countries accept the same policy, particularly through the US dominated OECD: in 1997 thirty three countries signed the ‘OECD Anti-Bribery Convention’ promising to make bribery an offence in domestic legislation.

The author describes how the US fight against international corruption turned into a crusade, comparable with the anti-laundering policy. Technically there is also much overlap between the two and a free field of fire for the prosecution: there is no corruption without laundering. In both fields the law has the immense dimension of a trawl net, drawing in whatever small it finds in its way: e.g. operating fully abroad but using a US server or bank account is sufficient for criminal liability in case of ‘having attained an illegal advantage’. Another common element is the rule of due diligence, which is imposed in both fields. But they differ in clarity: concerning cross-border corruption the criteria of this rule lack proper precision and transparency. Surveying the case history the author concludes that the industry is left to itself to find out what criteria law enforcement will apply: it dodges its own transparency demands. What applies to potential offenders does not necessarily apply to the state.

As is usual, law in the books and law in action are different things, certainly with trading in remote corners, such as at the border between Russia and Finland. The chapter on corruption in this remote area by Minna Viuhko, Martti Lehti, and Kauko Aromaa makes clear that the OECD Anti Bribery Convention has little impact here, whether Finland has ratified it or not. At this point other rules prevail: no transport company is able to operate if it does not play along with the ‘system’ of the Russian Customs. And giving presents implies more than a bottle of vodka: it is a matter of being regularly ‘milked’ at the customs or interacting at a higher level with the corrupt predators. It is interesting to observe that cognitively there is no ‘moral relativism’ indeed between the Finns and Russians there appears to be little difference in understanding of the meaning of corruption. But there is a wide difference in acceptability. To the Finnish entrepreneurs bribery in whatever form is unacceptable, but they resign to playing along nevertheless. The Russian interviewees display more ambiguity which must be projected against a background of rampant corruption in the form of a top-down system which has its roots deep in the socialist era (Brovkin, 2003). In terms of own experience, the
Finns said to have to cope with it daily at the Russian border, while Russian interviewees referred in general terms to the widespread corruption in their country but said that they did not have experienced it themselves. Therefore the authors could not penetrate into the details of the corruption system. But if there is a system it can be anticipated, which was preferred by the Finish entrepreneurs, allowing them to pay a monthly instead of the unpredictable daily bribery. But who ‘owns’ the system when the owners deny ownership while those who are plausibly involved never happen to notice anything personally?

Obviously corruption is a troubled water phenomenon, not to be addressed by a one-causal or one-dimensional approach, as the authors Gudrun Vande Walle and Arne Dormaels elaborate in their chapter about the Belgian Customs Organisation. Besides other explanatory variables which the authors adopt from Gobert and Punch (2003), an important personal variable is the defence mechanism. This may take the form of rationalisations, neutralisation or flat denial, the concrete forms being determined by the surrounding landscape. A ‘corruption tariff system’ as is operated at the Finnish-Russian border gives little latitude for denial but the individual can evoke ‘the system’ as excuse. Whether this is the case within the Belgian Custom Organisation is less clear. Here another tension is created because of the intertwinement of two contrasting service attitudes: serving trade and industry by speeding up the handling of custom clearance and serving the public fund by levying the taxes due. This is a working environment which on the one hand, favours economic interests, furthered by pressure and the temptation of presents and favours. On the other hand, it gives cause to public scrutiny which at present is highly sensitive to profiteers. This has to be balanced against the organisational culture within the service itself: the management striving to reach commercially favourable targets, while the control units at ground level daily interact with transporters, balancing different interests. An organisational landscape in which it is not difficult to find self-serving rationalisations. Even if corruption is moderate (compared to the Finnish-Russian situation), there is a strong lid on the basket preventing much evidence coming out.

Knowing and talking about widespread corruption while finding so few actual cases or the ‘owners’ of the system is not restricted to Russia or Belgium. The researchers Petrus C. van Duyne, Elena Stocco, Miroslava Milenović and Milena Todorova report a similar outcome in their chapter on corruption in Serbia: allegedly a country with rampant corruption with an amazing shortage of facts, apart from a few scandals which were difficult to hide. On the other hand, unlike Russia, Serbia is forced to fight corruption if it wants to join the EU family. But this aim intersects with many established corruptive interests like jobs, positions and political power, which are ‘owned’ as Medieval fiefdoms. Again the question is: Who
‘owns’ the corrupt system, which in Serbia means: who owns the country? Before 1989 it was the Socialist Party. Now there are many owners: the state looks rather like a kind of old socialist apartment block after privatisation, being split up between a few powerful bidders with impoverished dependent tenants.

This turns the unfolding anti-corruption policy into an up-hill struggle of reformers with other interesting actors causing regular setbacks and delays. The authors capture this in the metaphor of Sisyphus, who had to push a stone up-hill but that rolled down again as soon when it got near the top. This counter reaction is not a matter of street-level bribery, but of strategic, higher level corruption, which has an interest in maintaining an opaque landscape.

Keeping things opaque does not only concern the actors’ conduct. As a matter of fact, the authors found the whole situation, but particularly that concerning data management about corruption devoid of basic transparency. Databases which should match failed to do so. But whatever database the authors analysed, the number of convictions for bribery are dismal low. And even if ending in a conviction, the time taken to process the cases was very long: from reporting to sentencing it took on average 3.8 years, usually ending in mild sentencing (often on probation).

The state of corruption with an emphasis of fraud against the EU finances in the neighbouring state of Serbia is described in the chapter about Croatia by Brendan J. Quirke. In terms of corruption which accompanied the rise of a new Croatian elite, there are many similarities with Serbia. A combination of former war heroes, criminals and wily entrepreneurs connected to the authoritarian regime of Tudjman took over the best positions to serve their interests. Corruption did not end with the rule of Tudjman and his party. The corruptive stakes are too important and too much engrained in the tissue of the public administration to disappear with a regime change.

However, Croatia does not stand alone as it strives to be accepted in the EU family. This entails that another party, the EU Commission has come to the fore with strict demands concerning good governance, if only to protect its own financial interests. This produces an interesting picture of attempts to fulfil the demands and standards set by the EU, interacting with its ‘fraud watch dog’, OLAF (Office Européen de Lutte Anti-Fraude), and scandals which have come to light, which damaged European financial interests. As has been the case with other candidate countries, the process is far from flawless, which cannot be attributed to these countries only (Quirke, 2008; 2009). There were also defects at the EU side and OLAF demonstrates regularly that it is an organisation with a questionable learning capacity (Quirke, 2010). In many respects guidance and education is lacking and the Croatians are sometimes left to their own devices. How-
ever, in these cases the Croatian officials outdid OLAF: they took the initiative to organise things themselves, like educating and the establishment of an anti-fraud network (AFCOS).

Reviewing these chapters on corruption it becomes clear how difficult it is to penetrate the opaqueness surrounding the whole field: clarity is suspect. Obviously, the best informed actors are the most silent. However, this is not an unavoidable predestination. Quirke’s chapter provides us with a spark of hope.

**Crime-money: knowing and managing**

While corruption research is difficult because so many do not want to know, and those who know do not want to be known, in the field of crime-money with so much emphasis on ‘know your customer’ and ‘evidence based policy’ the researcher should justifiably expect a knowledge oriented attitude. After all, together with transnational organised crime and corruption, crime-money undermines the integrity of the financial system and consequently our whole society. This was the knowledge assumption of the researcher Antoinette Verhage when she set out to take stock of what is known of crime-money and laundering in Belgium. In her chapter she describes her search for the knowledge grail.

Having previously investigated the Anti-money Laundering Complex from the perspective of the compliance industry (Verhage, 2009, a&b), she had proper reasons to address the law enforcement agencies with the simple question: “What do you know?” Knowledge presupposes some system, so she set out to take stock of the objective signs of a knowledge production by the law enforcement agencies. And the primary token of knowledge production should consist of accessible and transparent data. This is not a too audacious assumption. Actually after twenty years of anti-laundering policy the EU-commission came to the same assumption and started to look around in the Member States. What did they find, the EU-commission in Europe as well as Antoinette Verhage in Belgium? Nothing but crude, rudimentary data, no transparency and no comparability. After two years the Financial Crime Subgroup or Eurostat had nothing to report: European anti-laundering policy is still a matter of *camera obscura*, as observed three years ago (Van Duyne, 2007).

Verhage pursued her search in Belgium and met as little cooperation as transparency of data. Most important: she did not find a unity of counting units between the responsible services. It was not possible to match the output from the reporting financial institutions to the input of the FIU or to the next processing link in the chain: the Public Prosecution Office. The latter office ‘guaranteed’ an
additional database pollution by mixing the money-laundering cases with the offence of ‘receiving stolen goods’ making any effective measurement impossible. The Belgium Asset Recovery Office refused any cooperation.

Undaunted the author continued to look through the frosted glass of the Belgium law enforcement offices to distinguish the contours of the throughput and output of laundering cases. Combining whatever data were available she observed a dismissal rate of the laundering case input of almost 80% and a conviction rate of 12% (but with the cases of ‘receiving’ included). The author concluded to a Belgian camera obscura, which she contrasted with the financial expenses of the anti-laundering policy imposed on the financial institutions and society at large. A more appropriate conclusion would be: the authorities have put themselves in this field also in a state of self-exception concerning transparency standards, while at the same time imposing these standards on the private sector and letting them pay the expenses of compliance.

Given the EU-commission’s admission of this state of affair, the Belgians do not stand alone. The image of an international lack of AML transparency is confirmed time and again. Also Sweden, orderly and in general high on the transparency valuation does not escape this judgement. However, from the chapter of Vesterhav about the situation in Sweden, one does not deduce law enforcement fear reactions about the phenomenon of crime-money. There is an awareness that many commercial sectors are obviously underreporting suspicious transactions. But the Swedish authorities are also aware of the vagueness of the laundering concept, its overlap with receiving stolen goods, the burdening obligations imposed on businesses and the very small part of all the suspicious transaction reports which eventually result in a conviction. It is remarkable that this did not lead Sweden to be rushed into a moral panic, resulting in more repression or broadening the already fuzzy laundering concept by also penalising self-laundering. This course of action appears to be favoured by many jurisdictions like the UK, the Netherlands or Belgium, though with equally meagre results. Instead, decentralised monitoring, persuasion and researching the unclear selection mechanisms (or hurdles) in the chain of case processing are chosen as the appropriate policy.

I think that this moderate policy is justified by what is empirically known about profit oriented law breakers and their revenues in Sweden. Johanna Skinnari provides us with an account of the financial management of drug crime in Sweden. Interestingly, she uses the phrase ‘financial management’ instead of ‘money laundering’. And for good reason, as laundering is a legal construction, apart from the fact that self-laundering is not punishable in Sweden (and does that make the situation in Sweden worse?). The basic question of the research project concerned the threat posed by the drug money and the management thereof. The research-
ers collected a broad range of information: court files, interviews with drug dealers, and various registries, among them information from the Tax Office. While realising that each source has its own caveats, the findings fitted with observations from other research (Van Duyne and Levi, 2005; Levi, 2009).

Just like the proverbial saying that the truth of the pudding is in the eating, so the truth of the threat of the drug money laundering is in the way it is being used. What did the researcher find? Her most important observation is that there is little drug money left for laundering: the lower and middle layers of the drug trade have no or little money left after life-style and business expenses. As observed in other research (Van Duyne and De Miranda, 1999; Van Duyne and Soudijn, forthcoming), the distribution of income and savings is very skewed: few own much and many own little. And in the cases in which money is saved, criminals act economically the same as their fellow foreign criminal traders (Van Duyne, 2003): they buy a dwelling (abroad), some a legal enterprise such as a restaurant or a pub only to realise that legal business routines in the upperworld require other skills than the ones they use in the smuggling business. Against this background it is not surprising that the author does not find much evidence of sophisticated laundering techniques.

If that observation has a more general bearing, we are left with the unanswered question of the corruptive precipitation of the crime-money in society, also in Sweden. One of the outlets could be the four Swedish casinos. These are state casinos because gambling is considered a vice against which the authorities have a moral obligation.1 Not being able to stop gambling, the state now controls this vice. This control is the more urgent as casinos are not only a place of sinful gambling, but may also be an outlet of crime-money and laundering, aggravating the immorality. In these institutions the threat of the crime-money from drugs and other serious crimes may therefore be acute. The researchers Johanna Skinnari and Lars Korsell investigated the Swedish casino situation to determine this threat. They could again make use of an extensive array of law enforcement registries (tax office, FIU, police, courts) to find out who was frequenting these facilities. Of course, the specific question was whether offenders of serious crime, like drug trafficking, placed their money in the casinos and if doing so would be posing a threat. To keep a long story short: they didn’t. For professional risk avoiders/managers the casinos are too hot a place: from entrance to exit one is watched, photographed and monitored. Not attractive for a professional crime-entrepreneur. Did that mean that the Swedish casinos are ‘clean’ (except for the

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1 Similar to the Netherlands: “Thy shall not tempt fate”, which led first to the prohibition of gambling, then to a state monopoly (of sin). Now the European Commission is fumbling at this closed door, as monopolies are banned in the EU.
vicious gambling?). No, that would be almost surrealistic. Of course apart from the lion’s share of normal visitors, people with an economic criminal back ground appear to be more often high-frequency visitors: in short the ‘criminal upper-world’. Do they use the casinos to launder their crime-monies? The researchers could not find support for this threat-hypothesis. They concluded that casinos in Sweden are outlets for letting the money roll according to life style needs of normal citizens and affluent (economic) criminals alike: they just display the same economic conduct of letting money roll. Does that corrupt the closely watched Swedish casinos and through this institution the integrity of the financial system? Though puritans (and the FATF and FIUs) may still find reason for concern, the financial waters they have to protect were being troubled by pollution from a far more dangerous source.

What happened in the first decade of this century was far worse and had a deeper cause than the infiltration of crime-money into the financial system. The system destabilised and corroded itself with massive levels of debt, re-assembles into financial ‘products’, sold around the world and which nobody knew how to value. In the end they proved to be ‘poisonous’. This occurred because ironically private interests regulated regulatory bodies: their thinking, models data and rules.

Was this a global ‘Ponzi scheme’? Nicholas Dorn tries to project this dramatic financial episode against a broader background, steering us away from an easy criminal interpretative framework. Indeed, there were villains like Madoff and Stanford, but they operated in a climate of defective oversight which was created by many interested financial actors. They all were looking for financial ‘innovations’ few could (or pretended to) understand while passing the risks to participants outside their scheme.

The most plausible explanation of what happened was a ‘state capture’ by the financial sector: the confluence of private interests and governmental duties but in such a way that the regulatory bodies adapted their view to the interests of those they had to supervise. As if the history of defective collective decision making in ‘group-think’ situations had never been written (Janis, 1972; Janis and Mann, 1977), the supervisors and supervised adopted a similar way of (rosy) thinking. Is this a manifestation of collective incompetence rather than criminal intent? Following the French social theorist Pierre Bourdieu, Dorn re-interprets regulatory incompetence and failure in terms of a broader shift in the political and economic framing of knowledge, so displacing questions about criminality to the margins of his analysis.

That may be a bit naive: there was not only self-deception but also (criminal) negligence and deceit in knowingly (or ‘should have known’) passing overvalued
bonds and other opaque financial instruments to third parties: a sliding towards ‘Ponzi-finance’.

When we take these two sides of the threat to the financial system together, we observe strange interactions between the state, the financial institutions and money. In the interaction between the state and the financial sector there are two trends in almost two separate policy spaces. One may be called the ‘laundering space’ in which the state demands full transparency and cooperation to keep crime-money out. The financial institutions grumble and resist a bit, then sigh and accept the burden, nevertheless complaining about the ineffectiveness (Harvey, 2005; 2008). The other side I call the ‘financial instrument space’. Here the state and the same financial institutions have inverted their roles. Now the financial sector sets the tune and demands a liberalisation of oversight, which is bound to lead to less transparency. In their turn the state and regulatory bodies give in and relinquish their grip by allowing themselves to be grasped, though now without any demur. And while the ‘launderers’ (are supposed to) bring at any rate money into the closely guarded banks, the bankers of the same banks managed to evaporate multi-trillion of assets. Not of criminals, as Van Duyne and Soudijn (forthcoming) argued elsewhere, but of ordinary savers who trusted their banks.

Clichés, tinkering at the organised crime ‘altarpiece’ and symbolism

Even if the governmental guards appear to be oblivious of many shady actors making inroads on the integrity of society, these guards are a fact of life representing a governmental protection task. Of course, this task is a too broad framework and it must be filled in with topics and budget: that is policy making. Jon Spencer and Rose Broad in the chapter on SOCA and human trafficking raised the question how such a policy making is connected to popular topics like ‘organised crime’ and human trafficking. The answer is surprisingly easy. Like a medieval carpenter, painter or other craftsman enrolled to work on the decoration of an altarpiece, policy makers take an existing mould which the public, parishioners, recognise immediately and without further reflection: be it crucifixion, the hell, resurrection or a few devils. In criminal policy making ‘organised crime’ is such a mould. Indeed, for the past twenty years criminal policy craftsmen have been working, updating old threat images with a few new devils, as long as these resembled the recognisable old ones.

If there have been any innovations put forward they concern the establishment of large and mainly ineffectual organisations, like Europol and in the UK
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the Serious Organised Crime Agency (SOCA) with its ‘subtenant’ the UK Human Trafficking Centre (UKHTC). Human trafficking could easily be taken on board because it could be fit into the frame of reference: illegal foreigners look and speak differently, live where nobody wants to live and some succeed in overcoming the hurdles of entry surrounding the country by relying on others to organise this aspect of their illegal mobility. All this does not require much craftsmanship to put this into the altarpiece of ‘organised crime’.

Is this a correct update? Or was it merely a question of fitting in a few clichés which do not cover underlying reality but which must justify the organs involved. That would cast a shadow over their effectiveness. In line with my observations about governmental transparency, for researchers and Parliament alike, it proves to be virtually impossible to obtain insight into the functioning of these ‘guardian bodies’: with a staunch ‘knowledge denied’ policy, they succeed in fending off criticism of their ‘invisible added value’. Apparently, transparency is good, but for ‘the other’. Another token of self-exception.

The fitting of the illegal migrant problem into the ‘organised crime altarpiece’ could also be observed in Greece, as is elaborated in the chapter of Georgios Papa nicolaou and Georgios A. Antonopoulos. In a detailed account they describe the development of Greece as a transit and destination country of asylum and economic luck seekers since the 1990s. Greece thrived on the influx of cheap labourers, advantageous to a broad range of entrepreneurs; from the construction industry to small farmers, as well as the middleclass housewife who could go shopping because she had a cheap nanny at home. However, as soon as economic advantage waned, the migrant workers’ presences turned into an experience of nuisance followed by a process of criminalisation. From then on, a similar social-psychological process of policy making as in the UK (and elsewhere) emerged. It required little thinking to follow the international trend on subsuming illegal migration under the organised crime definition. The Greek authorities also follow a ‘knowledge denied’ policy, this time applied to themselves by neglecting the scarce empirical research there is. This negligence allows them to persist in casting the international illegal mobility within and through their country into the ‘organised crime’ mould, updated this time with the adjective ‘transnational’.

This is not just a bit of tinkering with the police altarpiece. That would be little more than innocuous symbolism. This symbolism is very real in its consequences in terms of police powers, prosecution and sentencing, even if the majority of the human smugglers are not transnational organised criminals but are Greek operating in small networks with hardly any organisational features (which does not exclude the existence of more elaborate organisations).
Maybe we should learn to look at ‘organised crime’ from a more basic human perspective: if ‘organised criminals’ are rational and calculating offenders, we should keep in mind that they too are subjected to the general laws of psychology. One of these laws says that humans are (cognitively) rather simple than complicated, with a limited memory span of five plus-minus two elements (Miller, 1956). Above seven memory units mishaps become frequent. But humans are capable of creating and sustaining a lot of mental chaos, which is then called ‘complex’ because we eschew chaos. What does this mean for the ‘organised crime’ theory except confirming Reuter’s (1983) disorganisation description?

Has this psychological angle relevance for understanding or preventing ‘organised crime’? When it comes to the particular manifestation of what is strongly associated with ‘organised crime’, namely the protection racket, one may wonder how complex that really is. Stefano Caneppele and Francesco Calderoni provide a survey of what is known about criminal protection in Europe. Apart from definitional problems, this proved to be beset with methodological caveats, due to serious underreporting or low prevalence. That is difficult to determine, but higher prevalence regions like Southern Italy and Bulgaria (now declining), make clear that a situational combination of mal governance and sufficient ‘strong men’, provide a fertile breeding ground.

That brings us to the chapter of Klaus von Lampe on the situational prevention of ‘organised crime’. This preventive approach is not a grand design to combat ‘organised crime’, but a detailed responding to the sequence of events, social and technical conditions which determine the organisation of operations and the facilitating surrounding landscape. It mirrors the thesis that the organisation of crime is draped around a core business, be it car theft, cigarette smuggling or VAT fraud. In its essence the commodity determines the operational conduct in bits and pieces. Learning these bits and pieces (also socially) or ‘slicing up’ the operations of the core business and environmental interactions allows a targeted approach to criminal organisations in preventing their operations. For correct reasons the author mentions a number of aspects of the organisation of crime for profit, which differentiate them from ‘non-organised crime’. It is true, they are more resourceful, better embedded and with a broader grip on time and place. But, as in normal licit life, few possess all these traits. And if some of them do, it is more likely that we find them in the vicinity of Madoff and Stanford.

It is interesting to observe that by stepping down to the earthly level on which people do their daily work, the symbolism and the clichés of the altarpiece fade away. This applies to criminals as well as to the highest organs of state, including the Courts of Justice at the European level, encompassing the EU as well as the Council of Europe. But how does this apply and does the –symbolism – fades
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away likewise? Among the many aspects in this complicated field two stand out. First, these institutions must protect citizens’ fundamental rights, in particular against (the organs) of the (EU) state. Secondly there is the legal symbolism or fiction that the EU cannot violate human rights. This amazing tension has been elaborated by Severin Glaser discussing the sensitive question of the protection against the European fraud watchdog OLAF. This is not a police organ, but it has nevertheless many investigative powers concerning corruption in the EU institutions and fraud against the EU funds. At EU level the subjects of this volume, ‘state, money and corruption’ come together in this body. In the execution of its watchdog task OLAF can make serious inroads on the human rights of citizens and entrepreneurs. However, there should be no right of intrusion without protection. Therefore the author raises the question: How to protect against this biting watchdog? Glaser’s concern appears to be correct, because for years the highest European judicial instance, the European Court of Human Rights, has been wavering about the protection of human rights against acts of the EU, i.e., OLAF. Apparently the highest European Court was most reluctant and withheld a robust and straightforward answer in favour of the European citizens. Instead, the legal fiction of an EU which is immune to human rights violation is maintained. A sublime display of ‘statal’ exception of wrong-doing.

Have we passed the three sides of the triangle ‘money, corruption and state’ or did we transform it into a spiral penetrating ever more complicated relationships between these three phenomena? In whatever metaphor we want to cast these relationships, and if it looks like a triangle, it is not a simple one if alone that no side of it is trustworthy. But the opening question of this introduction we can answer now: it is an unholy trinity.

Author's note
All numbers are in European normal continental annotation: the comma is for the decimals and dots for the thousands.

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Europe is not a quiet province, certainly not in terms of the prevalence of cross-border crime and corruption. As a matter of fact, there is a constant pressure on the integrity of its institutions, whether it concerns the Member States of the European Union or the countries outside this ‘family’, but applying for this coveted membership. This pressure does not only come from the ‘outside’: within the European Union there are also continuous criminal inroads being made on its integrity. This is not a new phenomenon. However, the intensification of cross-border mobility as well as recent complex legislation concerning criminal liability, also cross-border, e.g. for corruption, have changed the landscape and widened the risks of such criminal inroads.

From trading across the Finnish-Russian border to new candidate countries in Southeast Europe, there are new threats looming. The Balkan countries, standing on the threshold of Europe are still rife with corruption. Within the European Union there are serious doubts about the solidity and efficiency of the institutions which are supposed to counter the threat of ‘organised crime’, corruption or other menaces against the integrity of the financial and economic system and its other interests.

In this tenth volume of the Cross-border Crime Colloquium series these questions have been addressed by twenty four expert European scholars. Their recent or on-going research projects and studies are presented within 16 chapters. This volume provides a number of well-reasoned answers while making the reader aware how many questions still have to be addressed in this field.

This volume is based on selected, peer-reviewed presentations at the eleventh Cross-border Crime Colloquium.