

A tall, vertical stack of smooth, grey stones is the central focus of the image. The stones are stacked on a beach covered with smaller, similar stones. In the background, the sea is visible under a sky with soft, colorful clouds from a sunset or sunrise. A dark, rocky cliffside is on the left, and a small building is visible on the shore in the distance.

Mafiaround

Europe

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University of Essex, UK
2021

C.R.I.M.E.

Countering Regional Italian Mafia Expansion

Dr Anna Sergi (Project Lead – Principal Investigator)

Dr Alice Rizzuti (Research Officer - Associate)



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Project & Report

C.R.I.M.E (Countering Regional Italian Mafia Expansion) is a project funded by the UK ESRC Impact Acceleration Account at the University of Essex. The project - led by Dr Anna Sergi (Senior Lecturer – Associate Professor – of Criminology at the University of Essex) received funding in December 2019 for a start in April 2020 and a projected end in October 2020. The project is meant to use existing and ongoing research to **accelerate impact** on a variety of institutions, for policy and practice.

Initially, the project was designed to involve a unique type of placement for a Research Officer from the University of Essex – Dr Alice Rizzuti– within Eurojust in The Hague. The Research Associate was supposed to liaise with relevant desks in Eurojust under the direction of the Italian Desk and also with relevant units in Europol. Due to the restrictive measures taken by national states during the Covid-19 pandemic, the project was initially delayed and eventually simplified and modified. With a start in September 2020 and an end in May 2021, the Research Officer has firstly conducted desk-based research and collected some primary data for the first phase of the project. The Project Lead has constructed an analytical framework to read the data. For a second phase, the Project Lead has organised further interviews to collect data, specifically on cross-border cooperation challenges.

C.R.I.M.E has been reshaped, therefore, to support a different kind of research and impact acceleration activity, more exploratory in nature, looking at the main trends on the mobility of Italian mafias in Europe today. In order to do so, the Project Lead has still liaised with Eurojust Italian Desk, Eurojust Operations, and Europol Italian Organised Crime unit as privileged participants and partners of this project, but the project has remained autonomous from both institutions. These institutions, together with others (such as different Antimafia District Prosecutor Offices, the DIA – Italian Direzione Investigativa Antimafia through its reports and the Department of Public Security within the Ministry of Interior of Italy) have supported the project through ad-hoc interviews and exchanges of non-operational and non-personal data on Italian organised crime in Europe. Thanks to these **knowledge-exchange** interactions embedded in the project, this uniquely built report will impact practice and policy.

The objectives of this report are:

- To summarise the current **criminological map (“mafia map”)** of the presence of Italian mafias in six countries in Europe (Germany, Switzerland, Netherlands, Belgium, Spain, Romania), prioritised as those requiring more support in judicial cooperation. A focus on Italy has been added for clarity. A seventh country, the United Kingdom, has been added due to the peculiarity of its position in Europe, following the exit from the European Union since 1 January 2021.
- To present applicable **substantial criminal law** in these countries specifically in relation to the following offences: a) participation in organised crime groups (conspiracy, membership, participation) b) drug importation / trafficking and c) money laundering.
- To identify some of the **challenges in judicial cooperation** across Europe, with specific focus on the relationships between these countries and Italy.

Notes on Methods

For the first part of the project, data was collected from open sources (including reports and judicial files) and then enriched through primary data. Published academic research on the matter is scarce but still present for all countries (1-2 articles in relation to each country). In terms of primary data, the Project Lead and the Research Officer have firstly contacted scholars who had recently conducted some fieldwork in one or more countries of interest in relation to the Italian mafia presence and, additionally, have included investigative journalists and legal experts who could help with the other sections of the report. The national legislation has been compiled also mostly in this phase.

For the second part of the project, specifically looking at international cooperation, the Project Lead has contacted police forces, judicial authorities and other institutions with relevant function and experience in the countries of interest for the report. The Project Lead and the Research Officer have conducted interviews and focus groups specifically focused at confirming the data collected in the first phase and to further collect data to compile the specific section on cross-border cooperation. For a full list of participating experts and institutions see the **Acknowledgement** section below. A total of 40 meetings have been held, some of which in the form of focus group or collective interviews.

The majority of the secondary data has been extrapolated from a content analysis of the bi-annual reports of the Direzione Investigativa Antimafia (from mostly 2014 onwards) and the annual reports of the Direzione Nazionale Antimafia (mostly 2014 onwards). Access to the Europol Platform for Expert has been granted by Europol.

Arrest warrants and other files from individual investigations were available thanks to the personal research archive that Dr Sergi has been building in the past years throughout her inquiries in the field and thanks to the support of some journalists in Italy.

An analytical framework – **a conceptual matrix** – is provided; this framework must be intended as a non-prescriptive way to read the data, a suggestion for further research and analysis. This analytical framework has been eventually applied to each country, apart from Italy, for illustrative purposes; it must be intended as **a possible framework to read mafia mobility**.

The **limitations** of this project are obvious. First, the bulk of the data almost exclusively comes from Italian sources (both primary and secondary) even if ad hoc interviews with actors in different countries have tried to balance this aspect. Second, a proper analysis of each country needs to be conducted locally; this report can offer only a starting point to each country's scenarios. And more importantly it can offer a methodology to expand to other states too. Lastly, the report's more technical and legal parts might suffer of some level of approximation, due to the non-technical nature of this inquiry.

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Anna Sergi holds a PhD in Sociology (2014), with specialisation in Criminology, from the University of Essex, where she currently is a Senior lecturer and Postgraduate Study Director in the Department of Sociology. Her specialism is in international and cross-border policing, comparative criminal justice, organised crime, mafia, and drug importations through seaports. She has published extensively in renowned journals and she has authored five books (2021) with one forthcoming in 2022. Dr Sergi is the recipient of the 2017 Award "Italy Made Me" by the Italian Embassy in London, the 2018 Early Career Research Impact Award at the University of Essex, for her research on the Calabrian mafia in Australia, and the 2018 Italian Chamber of Commerce award "Talented Young Italians".

For C.R.I.M.E. Dr Sergi has curated contacts with participants and institutions, the analyses and the infographics for both mafia mobility and the cross-border

coordination section of the project, plus oversight over the countries' mafia maps and legal frameworks.

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Alice Rizzuti is currently working as research officer at the Department of Sociology, University of Essex, where she completed her PhD in Criminology in October 2020. In her doctoral research, she analysed the English and Italian institutional responses to harmful and criminal activities committed in the food sector, with a special focus on the involvements of organised and mafia-type groups. She holds a master's degree in law at the University of Palermo and a master in Analysis, Prevention and Fight against Organised Crime and Corruption at the University of Pisa.

For C.R.I.M.E. Dr Rizzuti has curated data collection (and drafting) for the various countries' 'mafia maps' and built the initial legal framework.

Acknowledgements / List of Participants

For the first phase of the project, the authors are thankful to

Eurojust, Italian Desk and Eurojust Operations

Europol, Italian Organised Crime Unit

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Anti-Mafia Team, Dutch National Police

The Bundeskriminalamt, Federal Criminal Police Office, SO 52 (Analysis Italian Organized Crime)

Belgian Central Anti-Mafia Unit within the Directorate for Serious and Organised Crime

Federal Office of Police, Fedpol Switzerland

Mr Teodor Nita, Prosecutor Constanța, Romania

Mr Paolo Sartori, Police Commissioner of Mantova; former Italian Police Expert for Security in Romania (1999-2014)

Colonel Claudio Petrozziello, Guardia di Finanza, Attaché to London Embassy

Ms Sabrina Pignedoli, Politician, EU Member of Parliament

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Mr Francesco Saluzzo, General Prosecutor of Turin.

NOTE: REFERENCES & QUOTES

The Direzione Investigativa Antimafia (DIA) publishes two reports yearly. In the text, for each year, the reference to the reports will be “a” for the first report of the year and “b” for the second report (e.g. DIA, 2017a; DIA, 2019b). All reports can be found and downloaded on the DIA institutional website:

https://direzioneinvestigativaantimafia.interno.gov.it/page/relazioni_semestrali.html

Given the varied nature of this research, and the different levels of confidentiality and security requested by different participants, an executive decision was made by the Project Lead not to quote directly nor attribute directly any of the content to any of the participants.

Executive Summary

- A. The Italian Southern regions of Sicilia, Calabria, Campania, and Puglia are the territories of origins of mafia groups. However, over the years, mafia clans have expanded across the **whole country**. Affiliates, clans and families of 'ndrangheta, camorra, cosa nostra, sacra corona unita, and other regional mafias such as stidda, conduct criminal activities to gain profits and exercise power of governance across the territories. In Italy, there are involvements of mafia clans across the entire legal economy. In addition to their engagement in **drug trade**, infiltration in the legal economy, and generally **money laundering** also abroad, mafia clans typically practice **extortion** that is committed to gain profits and control the **local territory**; loan sharking; corruption; disruption of public tenders to facilitate front or affiliated companies; and have strong connection with **politics**, to the extent that electoral vote bargaining of mafia-type is specifically criminalised in the penal code.
- B. **All Italian mafia groups** are present in the European countries under scrutiny for this report. This presence manifests often through **individual mobility** of affiliates/associates of different clans who travel to engage in a variety of activities abroad. However, **mafias abroad are not really mafias** in the Italian meaning. Groups do not manifest mafia methods and characteristics in the same way, and this creates asymmetries in analysis.
- C. **Once in Europe**, associates of different mafia groups in Italy **cooperate with each other, as well as other groups**, for a variety of business ventures. With this in mind, the distinction operated across the regional mafia groups by the Direzione Investigativa Antimafia (Cosa Nostra, 'Ndrangheta, Camorra, Apulian Clans) not only does not mirror well the European reality but also seems often **obsolete** and, at times, aliments confusion of authorities abroad.
- D. Only in a minority of cases in Europe, some **Italian mafia structures** seem to be more settled in a different country; yet the links with Italy and Italian clans and structures remain predominant.
- E. **Territories** abroad are, for mafia groups, places where they can consolidate certain business or venture into new ones. Different **structures** and mobility

types are recorded in Europe and **activities** span from small-scale to cross-border to – in very few cases – larger-scale businesses. There is a lack of systemic data relating to the use of corruption, higher level criminality or political proximity, which remains instead more **anecdotal**.

- F. Clans move mostly for opportunistic reasons (when it is not necessity) but their **opportunism** is **conditioned** by organisational and structural factors, both at home and at destination.

- G. **GERMANY** is the European country with the highest presence of mafia groups/activities. It is highly attractive for a combination of factors such as economic strength at EU level, geographical closeness to Italy, central position in continental Europe, proximity to the Netherlands and Belgium and, due to a conspicuous migration flow from Italy, presence of a well-established Italian community. In Germany, there are signals of scattered presence of clans of *cosa nostra*, *stidda*, *camorra*, *sacra corona unita* and, most of all, *'ndrangheta*. The **activities** conducted are, first and foremost, drug trafficking (mainly cocaine), but also money laundering (in sectors such as food, estate and construction), vehicle property crime, smuggling of counterfeit goods, providing shelter for fugitives on the run, and extortion practiced usually within the Italian community. Amongst the six countries analysed in this report, Germany is the only country with clear(er) **settlement** of territorial or localised units comprising more *'ndrangheta* clans ("*ndrine*"/*locali*), yet these structures seem more permeable and less fixed than the corresponding ones in Calabria.

- H. **SWITZERLAND** is attractive to Italian mafia groups for the following factors: the territorial proximity to Italy and to Germany; the central location in Europe along the North-South axis linking the ports of Rotterdam and Antwerp to Italy; Italian as one of the official languages; and the still opaque fiscal system. Moreover, Switzerland has often provided shelters to fugitives, escaping enemies or fleeing justice, who found support from family members who had already migrated there. It has been possible to detect territorial **settlements** of *'ndrangheta* clans, but also activities of *camorra*, *cosa nostra*, and Apulian mafia clans in relation to money laundering practices. The Swiss tradition of secrecy in fiscal and financial services has created incentives for facilitating money laundering and subsequent reinvestments in property business, real estate, food service and catering, and other sectors. Yet, cross border cooperation has been particularly proactive in this sense.

Furthermore, Italian mafia groups engage in the following **activities**: drug trafficking (mainly cocaine, but also marijuana and, occasionally, synthetic drugs), arms trafficking (mainly to arm their own and allied clans in Italy), different kinds of frauds, and, lastly, in robberies, loansharking, and circulation of counterfeit money.

- I. The features that attract Italian mafia clans to conduct their activities across the **NETHERLANDS** seem to be the geographical position bordering Belgium and Germany; the essential role played by the ports of Rotterdam and Amsterdam as international drug trafficking hubs (especially for cocaine coming from the South American route); Amsterdam's Schiphol airport; the well-established logistics network; the famous flower market; and the Dutch financial and corporate system. In the country, there are clans of 'ndrangheta and camorra networks, which are active in drug trafficking, money laundering (in sectors such as food service, catering, and art), and for hiding fugitives.

- J. Due to the geographical and political centrality in Europe, the port of Antwerp, the logistics network, and the presence of a long-established Italian community on the territory, mafia groups have long been operating in **BELGIUM**. These clans, mostly of cosa nostra from Agrigento and 'ndrangheta from the Aspromonte area of San Luca, usually have strong family ties and, despite often being of third-generation, they maintain close connections to the families based in Sicilia and Calabria. They conduct a vast range of criminal **activities** such as drug trafficking, money laundering (also at high financial levels), money counterfeiting in connection to drug trafficking, tax evasion, tax fraud schemes in the alcohol trade, financial and social benefits frauds, weapon trafficking, and meat frauds. The clans also provide shelters for fugitives on the run. Interestingly, Belgium is the only country of those analysed in this report that is currently planning to move towards a **policing** model or approach based on countering mafia structures or groups rather than adopting an activity-based focus.

- K. Lifestyle, climate and language accessibility are some of the reasons why Italian mafia affiliates often choose **SPAIN** to hide from justice and internal feuds. Moreover, the ports of Barcelona and Valencia as international drug hubs play a further significant role in the business conducted by Italian mafia clans across Spain. Data converge in showing a stable – yet **not territorially structured** – expansion of 'ndrangheta and, most of all, camorra clans that

often cooperate in drug trafficking. Drug trafficking is the main illicit activity committed by Italian mafia affiliates in Spain: they mostly trade cocaine from South America, marijuana and hashish from Morocco, and, to a lesser extent, MDMA and heroin via Balkan or Asian routes. The money gained from drugs is then laundered through illicit **investments** in sectors such as transport, wholesale, agri-food and fishing, tourism and entertainment, construction, and real estate (e.g. hotels, shopping centres). Camorra clans also engage in tobacco smuggling.

- L. There are many factors that contribute to make **ROMANIA** attractive to mafia groups: the strategic location that connects the European West to the Asian East; the port of Constanța on the Black sea as relevant point of entry of drugs coming through the Balkan route; the transport connections to Italy; the low language barrier (many Romanians are able to speak Italian thanks to TV broadcast); the large Romanian community in Italy; and the many Italian brokers active between Italy and Romania. Italian mafia groups are well-established in the Romanian socio-economic **contexts**, yet not structured nor exercising territorial governance. There are interests of 'ndrangheta, camorra, cosa nostra, and Apulian mafia groups, which engage in diverse **activities**: trafficking of drugs and humans (for exploitation of labour in the agri-food supply chain); illegal online gambling; environmental crimes such as illegal waste disposal; IT frauds and tax evasion; money laundering and illegal investments in private sectors such as real estate, logistics, food catering, and nightlife; shell companies virtually established in Romania and used to get public tenders in Italy and for other illegal purposes; EU subsidy frauds; and hiding fugitives.

- M. The **UNITED KINGDOM** attracts Italian regional mafia groups mostly due the opportunities provided by the financial market and banking systems, not for the drug trade. More precisely, mafia clans (especially of 'ndrangheta) have occasionally infiltrated the UK legal economy through shares and financial stocks, often with the help of colluded or affiliated financial intermediaries and through the creation of shell companies. The clans are not always physically present or structured in the territory, yet they act as economic syndicates operating business transactions to launder dirty profits gained mainly from drug trafficking activities. There is distance between mafias and their money in the UK. Moreover, mafia fugitives have hidden in the UK where they have also been arrested.

- N. All countries have criminalised **participation** in organised crime activities or groups, in addition to criminalising money laundering and drug trafficking of course. Belgium, specifically, also criminalises the use of intimidation, threats, violence fraudulent practices or corruption to further organised crime group's activities, which echo the mafia method in Italian law. The correspondence between the law in books and the law in action is however less obvious everywhere. The applicability of the clause of '**transnationality**' (= belonging to a transnational organised crime group belonging to a group that is based elsewhere and engages in transnational criminal activities) seems to be uneven.
- O. Most problems with cross-border cooperation start with the **conceptualisation** of mafia crimes and mafia structures. **Mafia**, as a term and a concept, is not a neutral concept, is at times applied in what seems an obsolete meaning, and leads to expectations of a phenomenon that is constantly changing, albeit with some clear features. Conceptual and structural issues in cross-border cooperation further include **expectations** placed by different states' authorities on Italian authorities and, vice versa, the expectation that Italian authorities have towards other states when it comes to antimafia efforts and capacities. When it comes to mafias, another problem is with the level of **pre-knowledge and institutional memory**, which is very different and uneven across states. As it is not always the case that mafia crimes, structures and activities manifest in the same way or have the same level of **visibility** across state, the perception of their **dangerousness** of course tends to fluctuate.
- P. On a procedural level, effective cross border cooperation is mostly challenged by **asymmetries** that exist at the normative level across different states, particularly outside the EU zone, but also across EU member states. These asymmetries relate to the **capability** of police forces to investigate certain crime types **proactively**, as well as to the different organisation of policing structures. **Cross-border judicial and investigative instruments**, like the European Arrest Warrant, the European Investigation Orders and other tools for mutual recognition across states do represent significant steps forward in the antimafia fight. The willingness to step up the fight and decrease the criminogenic nature of the existing asymmetries (including digital challenges and the management of joint investigative teams) is believed to remain a matter of **political will**.

Reading Mafia Mobility - Conceptual Matrix

The data collected and presented in this report show many points of convergence and some points of divergence. There are certainly **convergences** concerning:

- The much more pronounced presence, in Europe, of 'ndrangheta clans than other Italian mafia groups.
- The occurrence of crimes related to drug trafficking and money laundering through activities linked to the migrant community and the Italian identity (for example, Italian restaurants and pizzerias).
- The generalised absence of coordination structures between clans abroad, if not the typical ones between original clans, still in Italy, and their outposts outside of Italy.
- The absence of crimes of corruption or higher-level infiltration (with some exceptions).

There are also some **divergences**:

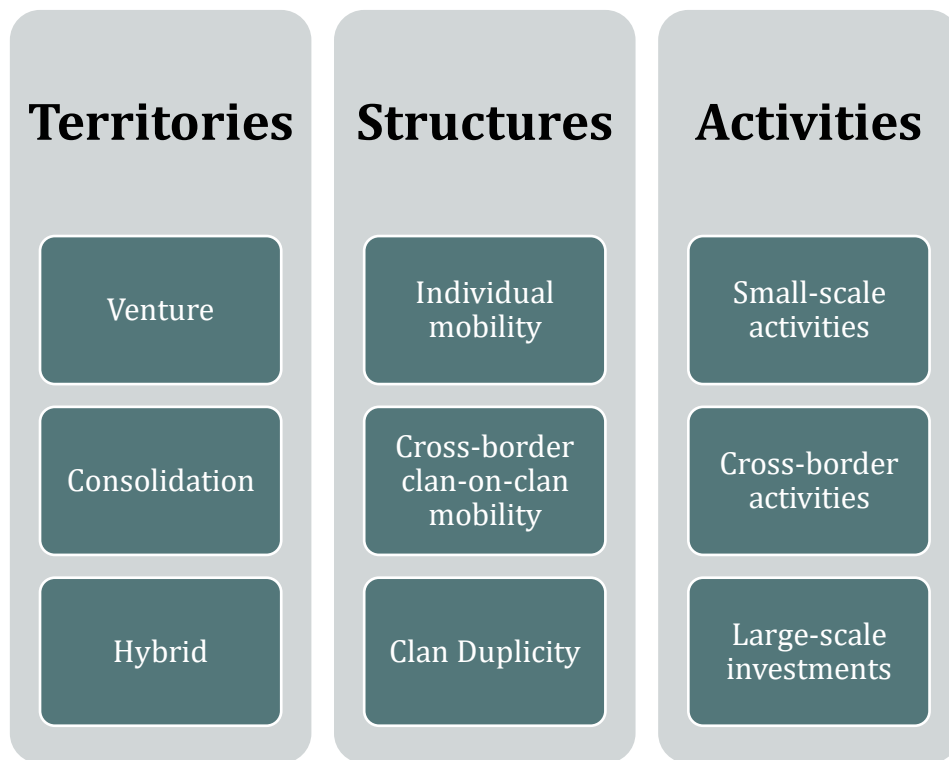
- There is a difference between states for what regards the (perceived) presence of Italian mafias (for example, the German experience with the 'ndrangheta is very different from the Spanish experience with the camorra).
- There is also difference in the *modus operandi* on the part of mafia groups that depend on various intervening factors, including law enforcement action and the ability of clans to take advantage of particular investment opportunities in the country of destination.

Data presents various **limits**, including their being Italian-centric, collected through mostly secondary sources, and not always contextualised to the local areas they refer to. A good starting point for the project was the work of journalists from *Il Fatto Quotidiano* in 2017¹, but of course this report tried to go much further analytically.

¹ United Mafias of Europe: <https://www.ilfattoquotidiano.it/longform/mafia-and-organized-crime-in-europe/map/>

Data can be read thematically and in terms of their contents, on three main trajectories: **territories**, **structures** and **activities**. Obviously, these are not exclusive categories and certainly, in all three of these categories we find many *hybrid* categorizations. The data collected obviously does not represent the 'truth', but these categories, if nothing else, can help a primary classification of the various manifestations of mafia presence in some countries of Europe.

At a glance



Territories

Areas of interests for mafia groups that can be divided into two primary sub-categories: venture territories and consolidation territories.

Venture

Venture Territories can be defined as territories where there is a new or relatively new presence of mafia groups, almost always (or at least initially) engaged in a single activity (mono-crime). This type of territory offers **new** entry opportunities for mafia clans both in **specific sectors** (for example, real estate market, tourism, etc.) or for **specific vulnerabilities** (for example, porosity and proximity of the border with another state) or for **specific enabling factors** (for example, following changes in legislation).

Consolidation

Territories of consolidation can be defined as those where there are **more stable** manifestations (over time or density) of mafia clans, which often engage in more than one activity (poly-crime). The territory offers **recurring opportunities** (sometimes carried out also thanks to the direct or indirect support and/or exploitation of Italian migrant communities up to the second or third generation) of entry and settlement both in **specific sectors** (for example, money laundering through financial systems, trafficking drugs, etc.) or for **specific vulnerabilities** (for example, legal asymmetries on financial regulations) or for **specific enabling factors** (for example, the existence of a number of Italian businesses in the expatriate community).

In addition, there would seem to be territories that can be defined as "**hybrids**" where there has been a historically *consolidated* presence of Italian mafia clans, but of different origins (both by type of mafia and by specific clan of the same mafia group) and with activities that are more usual of *venture* territories.

Structures

The criminal structures that emerge from the data are threefold: individual mobility of the affiliates; clan-on-clan cross-border mobility; duplicity of clans.

Individual mobility

Individual mobility of clan members or associates seems to be the most frequent typology. However, it is often a question of lower-level mobility, in terms of resourcefulness and impact of these affiliates and their business abroad. This type of mobility occurs when an individual from a clan in Italy moves and commits a

crime – or an activity related to a crime – abroad, usually connected to activities originating in Italy. This mobility seems to be **more frequent in venture territories**, which offer new or renewed opportunities. Often, this mobility is also linked to the reception of **fugitives** or affiliates/associates who decide to leave Italy for (their or others') security reasons.

Cross-border clan-on-clan mobility

Cross-border clan-on-clan mobility is also quite frequent. In this typology, the clans abroad maintain links with the clan of origin in Italy (not with the entire criminal organisation of reference, if one exists in Italy, just with their clan) – for the **monitoring** of investments abroad, for the **coordination of funds and assets**, or for handling disputes, but they also are settled more permanently abroad. It is important to recognise that this mobility is a sign of a more structured penetration of the clans into the foreign territory. At the same time, it does not necessarily follow an *a priori* strategy on the part of the clan itself, its affiliates, much less the criminal organisation as a whole, to settle in the foreign territory. In fact, this mobility is often not followed by entire structures abroad, but only by affiliates who take care of specific, sometimes stable sometimes sporadic, activities.

Clan duplicity

A mobility of higher impact is the mobility of some clans that are linked to the mother country, but also more **rooted in the territories of arrival** with their own structures abroad, having a dual nature. These clans are responsible for a recurring activity or activities in a specific territory abroad, more or less connected to crimes originating in Italy; this usually become more visible in consolidation territories. These clans can get to the point of creating **more articulated structures** also in the territories of arrival aimed not only at the accumulation of money but also of power, understood as local power – territorial and/or commercial – which allows or will allow the aforementioned clan to survive beyond the first generation.

Activities

The activities connected and attributed to mafia clans in the countries included of this report seem to lack creativity and diversification. They can be analysed through three different categories, often difficult to distinguish in the empirical data, as the latter mainly refer to groups and not activities. These are small-scale activities, cross-border activities, and larger-scale investment activities, mainly in the

destination territory. There is indeed a **scarce diversification** of activities: the most common activities remain drug trafficking and money laundering.

Small-scale activities

Clans or affiliates mostly invest in short-range – small scale activities usually in **low/medium skilled sectors** and/or **cash-intensive businesses** (such as pizzerias, ice cream shops, real estate, construction, etc.) with a few exceptions. In fact, it must also be considered that, in some countries, the variety of some investments is linked to the prosperity of some sectors or industries (e.g. tourism).

Cross-border activities

Cross-border activities obviously include drug trafficking at the forefront, as the most recurrent activity abroad, followed by the mobility of cash and capitals for money laundering schemes, and the reception and mobility of fugitives. There is a marked tendency for affiliates to **move between contiguous states** when engaging in drug trade, money laundering, other trafficking business or even just for meetings: this would also qualify as cross-border activity despite the proximity of the territories.

Large-scale investments

Large-scale investments are fewer and relate to **particularly lucrative sectors** in the economy of a specific country (for example, due to asymmetric or non-existent regulation) such as the waste disposal sector or even EU frauds. For some of these investments, the open data does not give many recent examples (as probably the investigation activity has never reached conclusive levels) but, in conversations with experts and law enforcement agencies, references are made to a wider range of suspected investments.

Conditioned Opportunism

At a glance

Conditioned Opportunism

- All mafia groups seem to move because of opportunity - with guile and timing calculation, of either a personal/social or an economic nature.
- Some have more success because their conditions of start/origin also enable them to overcome the uncertainty of arrival in the destination countries.
- **Conditioned Opportunism indicates the ability of clans and affiliates to seize available opportunities *thanks to* - or *despite of* - specific factors - both constraints or enablers - of their conditions of origins and in destination countries.**
- Conditioned Opportunism is inherently contextual and depends on different structural and organisational factors.
 - These factors can include:
 - Favourable location for a specific business (i.e. Spanish coasts for tourism);
 - Existing infrastructures (e.g. ports);
 - Financial benefits (i.e. Swiss banking secrecy);
 - Type of trade (e.g. cocaine routes in Spain and to Antwerp);
 - Existent expat community (enabling connectivity for business, immunity, hiding etc., and changing in density) - *both Italian and of the destination country in Italy*;
 - Lack of awareness and knowledge of mafia-type organised crime;
 - Poor regulation of certain sectors (including pre-existing corruption);
 - Legal Asymmetries (e.g. in money laundering or antimafia regulations);
 - Organisational imprinting (e.g. specific group's behaviours, rituals or skillsets including recruitment strategies, reputation and brand name, pre-existing business, cultural specificities).

On the basis of the data collected, not only convergences and divergences can be noted regarding mafia presence in the various states, but above all note how the mobility of Italian mafias is not actually "special" – in the sense of out of the ordinary, when compared with other criminal groups. Nor does there seem to be a strategic ultra-mobility of the clans (or hypermobility). Rather, there is a **high frequency** of mafia movements abroad, mostly dependent on the markets in which the clans are

involved, first of all drug trafficking, obviously transnational and notoriously linked more to the dynamics of legal trafficking than to particular criminal strategies. Probably the high frequency of movements can be interpreted by some as a type of ultra-mobility, almost as a specific intention by clans/associates.

What is often presented by some media and some law enforcement agencies as a criminal strategy to conquer new territories is actually the result of a much more complex interaction of different factors, what we call here **opportunism², albeit conditioned by various factors**. These factors have also been defined as **push and pull factors**. In particular, it is very rare that mafia-type groups abroad behave as such, with the **mafia method**. The mafia connotation of the group according to the provisions of Italian law – the search for power, subjugation, and territorial intimidation – is **almost never activated abroad**, because it does not help to carry on what are essentially economic opportunities. Abroad it is often enough to engage in organised crime, in a more diluted way one might say, instead of showing oneself as a “mafia”. In fact, and this is a relevant finding in the data, a focus on **external collaborators**, professionals, brokers, individuals of the so-called '**grey zone**', is almost completely missing in the data – at least in the data available in the public domain about existing operations/investigations. Not because these relationships do not also exist abroad – as evidenced by in-depth conversations with experts and law enforcement agencies – but because they are more difficult to frame as criminal conduct. An exception to this can be considered the UK, where instead some operations did target financial brokers specifically.

The analysis of the available data confirms how the mafia groups detected in the reference countries move through **calculations of convenience**. Some, however, are more successful than others, or more resilient than others, because their **starting conditions**, their *modus operandi* of origin, allow them to overcome or even prevent some of the uncertainties typical of arrival and investment (mostly

² When we talk about opportunism, here, we refer primarily to the economic theory of transaction costs which defines opportunism as the pursuit of self-interest characterised by shrewdness and from forms of dissimulation. Fundamental, in the critical evolution of this theory, is the analysis of the heterogeneity of groups, the differential capacity of the actors and the structural social factors, which obviously also complicate opportunistic dynamics. The idea behind the concept of opportunism as human behaviour refers to a specific way of collecting the opportunities available to the various actors, centred on personal interest, on dissimulation and the rejection of shared ethical principles, almost as a synonym for resourcefulness. The application of this terminology to organised crime here is therefore justifiable in these terms.

illegal) in other countries. A role in this success might be played by the '**strength**' of **these clans in their territories of origin**: this strength might act as leverage and echo all the way to a different country. On the other hand, most drug trafficking activities of various clans in different states are more likely to fail, or in any case to be interrupted by law enforcement, this being the primary focus of foreign police forces.

Basically, in some cases mafia opportunism is conditioned by factors, **behavioural** (of the group) and **contextual** (of the destination country or of the chosen market) that contribute to the success, or failure, of the criminal gamble.

Conditioned opportunism is the ability of clans or affiliates to seize the opportunities available **thanks to – or despite – specific factors** – both as constraints and as adjuvant factors – relating to their conditions of origin and the contexts found in the countries of destination. These factors are already visible in the data and manifest themselves differently depending on whether the groups move to already known territories (consolidation) or to new territories and markets (venture).

Among these, we can mention some **structural factors** related to criminal activities:

- A favourable position within a territory for a specific activity (e.g. Spanish coasts for tourism).
- Existing infrastructures useful for a particular type of activity (e.g. ports of Antwerp and Rotterdam, with necessary stops in Spanish ports, for drug trafficking).
- Financial benefits of investing in a particular territory (e.g. the secrecy of the banking or taxing system in Switzerland).

Additional factors that can affect the opportunism of mafia clans abroad are also **organisational**:

- The pre-existence of a community of Italian migrants in the destination territory, for example, facilitates business connectivity, the possibility of obtaining immunity at the local level, and the possibility of seeking refuge and protection.
- The lack of awareness and/or the lack of specific attention on the part of the police of what are the characteristics of organised crime of mafia type, including local and transnational level, as well as the poor regulation of some financial and/or commercial sectors (which can facilitate forms of systemic corruption, e.g. regulation on company ownership or use of cash).
- Legal and judicial asymmetries (e.g. anti-money laundering rules or imputation of the aggravating circumstance of transnationality in organised crime offenses or lack of environmental crime regulation).

Furthermore, the **organisational imprinting of origin** can affect the opportunistic behaviour of clans abroad. The existence of a more or less stable organisation – as in the case of some 'ndrangheta clans that currently still enjoy a solid criminal reputation and a prosperous financial availability – can lead to different results in the destination country. To an analysis based on the *familiness* of certain clans, especially in the 'ndrangheta – where the abilities and wills to implement criminal activities by foreign affiliates are often linked to the (real) skills and wills (not always taken for granted) of the mafia family – it is necessary to add an analysis of the rituals of the group, of the recruitment strategies, of the importance of reputation and of the common brand, of the ability of the group – or of the family – to exploit to its advantage the cultural specificities of *Italianness* abroad (not least religious holidays, for example).

An analysis of the factors that condition mafia opportunism abroad necessarily leads to a critical look at mafia mobility. On the one hand, a characterising element of Italian mafia groups in Europe, according to the data of this research (and as also confirmed by research conducted by the Project Lead among others in other Extra-European states) is the **separation between business and criminal organisation**. The organisation often seems to remain in Italy while the business activities abroad can indeed be numerous. On the other hand, not all mafia groups are successful in their business abroad, as shown by the contrasting action, but also the inability to establish more structured presences in certain territories. This would seem to exclude a direct link between the intentionality (strategy) of the mafia expansion and its success. That is to say that, on the one hand, not all the intentions of the clans to expand abroad ultimately succeed positively for the group, and, on the other hand, that not all successful expansions are originally intentional in all passages. **Intentionality**, when present, also manifests itself in opportunism. Mafia opportunism is then conditioned by elements often beyond the control of the group itself.

In line with what said thus far, this report will advance a **quick analysis for every country** (apart from Italy of course) in this report. This should be considered strictly as a preliminary effort. It is in fact certainly necessary to conduct a more thorough type of analysis, contextual, localised country by country, to clarify the relationships between intentionality, opportunity, opportunism, and conditioning factors of mafia mobility abroad.

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ITALY

Mafia Map

Introduction

Since this project focuses on the expansion of Italian mafia groups across seven European countries, it necessitates first and foremost to offer a very brief presentation of the most current presence of mafias in Italy as their country of origin. Indeed, the label 'mafia' itself identifies a type of criminal organisation historically born in Italy. For reasons of conciseness and timing, the open source considered for this purpose are mostly taken from the last report of the Direzione Investigativa Antimafia published in January 2021 and referring primarily to the timeframe January 2020 – June 2020. The following can be considered the most up-to-date picture of mafias in Italy, but of course not the most complete.

Originally native of the Southern Italian regions of Sicily, Calabria, Campania, and Puglia, mafia groups are active across the whole country with diversified areas of influence and activities. Being culturally and historically embedded in the country, mafia groups are physically present (with some specificities for each type of mafia as the following sections will mention) and hold strong power of governance and control over some territories. Moreover, to gain profits, mafia groups seek access to both legal and illegal economic sectors through networks of violence, trusted kinship and the use of corruption throughout the country.

As the following sections will briefly highlight, mafias conduct a vast spectrum of criminal activities such as drug trade, illicit reinvestment in the legal economy, loansharking, and extortion. On top of the main illicit practices conducted abroad (e.g. drug trafficking or money laundering), in Italy mafias commit all those activities that are mostly perpetrated (e.g. extortion) in order to gain and maintain territorial

power. In fact, as discussed in the academic literature³ and in official reports, Italian mafias can be framed as organised crime groups with the characters of both enterprise and power syndicates, which adopt the so-called ‘mafia method’ based on the use of violence, intimidation, subjection, and ‘omertà’ (or secrecy) employed in order to get financial, territorial, social and, political power. Mafia groups often have connections with the public sector and political interests too.

The institutional authorities involved in the fight against Italian mafias are departments of both police and judicial agencies specialised in anti-mafia investigations and prosecution: these are primarily the Direzione Investigativa Antimafia (DIA) with investigative policing functions (it is formed by Polizia di Stato, Carabinieri, Guardia di Finanza, and their specialised units); and, in relation to the judicial power, the Direzione Distrettuale Antimafia (at local level) and the Direzione Nazionale Antimafia (at national level).

On a side note, in light of the current over one-year-long pandemic emergency, the 2020 DIA report particularly focuses on the opportunities and challenges of Codiv-19 and the role of what has been labelled as ‘Welfare mafia’, which refers to the services that mafia groups have at times been providing during the socio-economic crisis caused by the pandemic.

Criminal Actors

‘Ndrangheta

Officially considered the most powerful Italian mafia, originally from the Southern region of Calabria, the headquarters of ‘ndrangheta groups are still based in Calabria: in fact, every group that has migrated is generally believed to refer to the Calabrian headquarters to share business proceeds and, when in need, to receive directions, for example to solve internal fights and to constitute new ‘locali’ (or territorial units). There are some important differences across clans and provinces of Calabria that make this ‘return to the headquarters’ very different at times.

³ See the section “For further reading” in this report

Until today, the DIA counts 46 'locali' of 'ndrangheta in Northern Italy, of which 25 in Lombardia, 15 in Piemonte, 3 in Liguria, 1 in Veneto, 1 in Valle d'Aosta, and 1 in Trentino Alto Adige (e.g. see Operations Altan⁴ on the establishment of a locale in Bra, Piemonte; Operation Scaligera⁵ regarding the locale di Verona in Veneto; Operation Perfido⁶ on the creation of a locale in Lona Laes in Trentino).

Unlike other more hierarchical organisations such as cosa nostra, 'ndrangheta has a partially horizontal structure based on families and blood-ties – hierarchy remains in the family and at the 'locale' level. In June 2020, Operation Malefix⁷, on the clan De Stefano from Reggio Calabria city, has reaffirmed how the strength of 'ndrangheta lies upon its tight secrecy even inside the different compartments of the organisation itself.

'Ndrangheta clans exercise their territorial power through extortion practices (for example, see Operations Helianthus⁸ on clan Labate and Giù la Testa⁹ on clan Tegano, both from Reggio Calabria city). Due to their resources and well-rooted presence in the territory, 'ndrangheta groups often provide welfare services to individuals and companies, on behalf of/that are usually provided by state institutions. They are also very active in loan-sharking practices (see Operation The Shock¹⁰) that, together with extortion practices, strengthen their territorial

⁴ Operation Altan, Gip del Tribunale di Reggio Calabria, OCC n. 22206/19 RG NR 117/20 RG

⁵ Operation Scaligera, Gip del Tribunale di Venezia, OCC n. 4964/17RG NR 3460/18RG

⁶ Operation Perfido, Gip del Tribunale di Trento, OCC n. 2931/17 RG NR, n. 14/16 DDA 1888/18 RG GIP

⁷ Operation Malefix, Gip del Tribunale di Reggio Calabria, OCC n.4902/19 RG NR DDA-4005/19 RGGIP DDA-12/20 ROCC DDA

⁸ Operation Helianthus, Gip del Tribunale di Reggio Calabria, OCC n. 4639/16 RG NR DDA-970/19 RGGIP-12/19-46/19 ROCC

⁹ Operation Giù la Testa, Gip del Tribunale di Reggio Calabria, OCC n. 2743/2017 RG NR DDA-3682/2019 RGGIP-42/2019 ROCC

¹⁰ Operation The Shock, Gip del Tribunale di Milano, OCC n. 27179/18 RG NR, n. 40703/16 RG NR-17786/18 RG GIP, 34659/16 RG

governance and control, and that are believed to have increased due to the economic crisis triggered by the pandemic.

Interestingly, the first 2020 DIA report signals practices of social benefits frauds committed by members of 'ndrangheta clans who have dishonestly gotten the so-called 'reddito di cittadinanza' or basic income (see Operations Dike and Mala Civitas in Reggio Calabria, and Operation Jobless Money in the area of Gioia Tauro).

Apart from drug trafficking that remains at the core business abroad, the clans tend to operate in economic sectors such as real estate, construction, transport, food service, tourism, gaming, fuel distribution, car sale, where, of course, they highly practice money laundering.

As proved by many operations, to get public tenders, 'ndrangheta clans hold special links with professionals and entrepreneurs from the private sector as well as politicians and members of the institutions. The first 2020 DIA report identifies multiple cases of mafia infiltration inside local administrations and municipalities that often led to the dissolution of city councils, an administrative measure provided in Italian law to prevent further mafia influences at the local level. Some examples follow: Operation Thomas¹¹, on the influence of the clan Grande Aracri on the municipality of Cutro (Crotone) highlighted a diffuse corruptive system between 'ndranghetisti and public officers; Operation Eyphemos¹² unveiled activities of political influence, also connected to the results of local elections, of members affiliated to the clan Alvaro (from Sinopoli, Reggio Calabria); moreover, Operation Cemetery Boss¹³ identified the relations between a public officer from the municipality of Reggio Calabria city and representatives of clans Borghetto-Zindato-Caridi, affiliated to the clan Libri and Rosmini linked to the clan Serraino, regarding the creation of a cartel for the re-construction of a cemetery in the neighbourhood

¹¹ Operation Thomas, Gip del Tribunale d Catanzaro, OCCC n. 6959/2015 RGNR Mod. 21 DDA-8059/2015 RGGIP-202/19 ROC

¹² Operation Eyphemos, Gip del Tribunale di Reggio Calabria, OCCC n. 408/19 RGNR DDA-2863/19 RGGIP DDA-33/19 ROCC DDA

¹³ Operation Cemetery Boss, Gip del Tribunale di Reggio Calabria, OCCC n. 7424/2012 RGNR DDA-1744/2013 RGGIP DDA-33/2018 ROCC DDA

Modena in Reggio Calabria; Operation Waterfront¹⁴ unveiled a cartel of entrepreneurs and public officials that were allocating public tenders funded also by EU money in favour of the clan Piromalli in Gioia Tauro; lastly, Operation Helios¹⁵ showed affairs in the waste business in Reggio Calabria among two companies based in Rome, one company based in Reggio Calabria, local politicians, and 'ndrangheta members.

The political influence exercised by 'ndrangheta clans has taken place also outside of Calabria: for instance, in February 2020, the council of the small town of Saint-Pierre in Val d'Aosta was dissolved as a consequence of the results of Operation Geenna¹⁶ (in this report, this operation is also mentioned in the sections on Belgium) that unveiled the presence of a 'locale' – affiliated to the clan Nirta-Scalzone from San Luca (Reggio Calabria) – operating in Val d'Aosta and allegedly influencing the local political life.

Forms of cooperation with other regional mafias groups have been recorded: for example, Operation Scipione¹⁷ highlighted the collaboration with cosa nostra clans from Messina active in drug trafficking and illegal ownership of weapons; and Operation Akhua¹⁸ shed light on the division of management of drug trafficking activities conducted in Rome between 'ndrangheta clans from Rosarno and Platì in charge of trading cocaine, and camorra clans Licciardi in charge of selling hashish.

Thanks to their sophistication and entrepreneurial skills, 'ndrangheta clans also cooperate with foreign organised crime groups such as South American drug cartels or Western Balkans groups.

¹⁴ Operation Waterfront, Gip del Tribunale di Reggio Calabria, OCCC n. 1120/2017 RGNR DDA-1432/2018 RGGIP DDA-36, 38/2019 and 17/2020 ROCC

¹⁵ Operation Helios, Tribunale di Reggio Calabria, p.p. n. 5756/17 RGNR Mod. 21 DDA Reggio Calabria

¹⁶ Operation Geenna, Gip del Tribunale di Torino, OCCC n. 33607/14 RGNR-50003/15 RGGIP

¹⁷ Operation Scipione, Gip del Tribunale di Messina, OCCC n. 7621/16 RGNR 4944/17 RG GIP

¹⁸ Operation Akhua, Gip del Tribunale di Roma, OCCC n. 51627/16 RGNR 34404/18 RG GIP

According to the DIA, a clear sign of the efficacy of the territorial power exercised by 'ndrangheta clans (even beyond the areas of origins in Calabria) relates to the long periods spent by mafiosi on the run. As evidenced in the other sections of this report, affiliates – fugitives – can find useful shelters outside of Italy, in Europe, and beyond: for example, in March 2020, a drug trafficking broker with links to the clan Pelle-Romeo from San Luca was arrested in Ecuador; he had fled following his arrest warrant released in the context of Operation Pollino-European 'ndrangheta connection¹⁹ in December 2018.

Camorra

Camorra clans use violence and power of intimidation and exploit local trust to gain control of economic markets and territorial power. Typically, more clans can cohabit in the same area in the region of Campania, adopting different business strategies and structures. This often leads to feuds (if not even wars) triggered by one clan to gain full control over the others. As a result, many camorra fugitives have been on the run, often also outside of Europe. For instance, there have been cases of cooperation between camorra and foreign organised crime groups for the purposes of providing shelters and territorial help to fugitives (e.g. in Dominican Republic, a fugitive linked to the Contini clan from Naples was caught laundering the clan's money in local businesses²⁰).

In the province of Naples, the most active camorra groups are clans Mazzarella, Di Lauro, Vanella-Grassi, Amato-Pagano, Polverino, Nuvoletta, Orlando, Gionta, and D'Alessandro. A cartel called 'Alleanza di Secondigliano' (created by clans Licciardi, Contini and Mallardo) is also operative in the area of Naples. To add, the Casalesi clan is active in the province of Salerno.

According to the DIA, the structure of camorra is two-fold: next to traditional, well-structured clans, there are also other smaller clans, family-based, that are able to

¹⁹ Operation Pollino-European 'ndrangheta Connection, Tribunale di Reggio Calabria, p. p. 6089/2015 RGNR DDA, p.p. 2868/2016 RGNR DDA and 2109/2016 RG GIP

²⁰ Gip del Tribunale di Napoli, OCCO n. 1718/11 RGNR-206/19 OCC

control portions of the territory, often as spokesmen or representatives of the larger groups.

Camorra groups are active in extortion, drug trade, and management of gaming and gambling; moreover, one of their expertise is the smuggling of counterfeit products and tobacco (see Operation Blonde Arabs²¹ against the clan Di Lauro). To gain local trust, these groups often try to provide welfare services.

Camorra clans are active in the entire legal economy – e.g. health sector, agri-food supply chain, food service, tourism, real estate, waste cycle, construction, transport, funeral services – through front-companies or company shares, often based in other Italian regions (e.g. Liguria, Lazio, Lombardy, Emilia Romagna, Molise). An investigation ended in May 2020 unveiled the capacity of the clan Vanella-Grassi to infiltrate the whole spectrum of legal economy from the sector of judicial auctions to private security and surveillance to disinfection services.²²

Like other mafias, camorra clans have great interests in public tenders: for a recent example, in January 2020, two companies linked to entrepreneurs close to the clans Schiavone, Russo and Casalesi (families Iovine, Zagaria and Bidognetti) were allegedly involved in illicit practices related to the allocation of public tenders on construction and maintenance of public interventions commissioned by the local public administration in Caserta²³. Indeed, the proximity between camorra clans and local administrations emerges clearly in the many operations that unveiled the influence of such clans in the local elections and the activities of electoral bargain.

Cosa Nostra and Stidda

Originally from Sicily, the structure of cosa nostra is heterogeneous and geographically two-fold: in the Western part of Sicily (Palermo and Trapani) there

²¹ Operation Blonde Arabs, Gip del Tribunale di Napoli, OCCC nr 13700/17 RGNR-12263/17 RGIP-420/19 OCC

²² Gip del Tribunale di Napoli, OCCC n. 21350/17 RGNR-177/2020 OCC

²³ Gip del Tribunale di Napoli, OCCC n. 26061/2017 RGNR-12301/2017 RGGIP

are strictly structured, hierarchical families that hold strong ties with the territory and that are gathered into 'mandamenti'; whilst, in central and Eastern Sicily (Agrigento, Caltanissetta, Catania, and Messina) cosa nostra groups present more fluid and flexible structures.

Despite the many investigative operations that contributed to dismantle the organisation, cosa nostra clans are currently believed to be in the process of restructuring. The DIA notices that, thanks to the resilience of the territorial branches rooted into traditional rules and cultural customs, Sicilian cosa nostra clans are moving from the traditional hierarchical structure towards a denser and more horizontal structures that would enable more interactions among local and provincial groups.

Interestingly, the same re-organisation is happening abroad as Sicilian cosa nostra families (from both Agrigento and Palermo) are currently re-contacting and re-bonding with the representatives of other cosa nostra families, especially those who emigrated to the US after the mafia wars in the 1908s (Gambino from Palermo, Genovese and Lucchese from Corleone, Colombo from Villabate, and Bonanno from Castellammare del Golfo). For examples, see Operation Cupola 2.0²⁴, Operation New Connection²⁵, and Operation Passepartout²⁶ which regard the clans from Sciacca ('mandamento del Belice'), Gambino family members in New York and other representatives from the clans from Agrigento in Canada.

The strength of cosa nostra lies on the families' power over socio-economic contexts and their control of every aspect of the local territory: for instance, Operation Padronanza²⁷ discovered how in Cruillas, a neighbourhood in Palermo, citizens had asked the local cosa nostra family to solve private issues instead of looking for State involvement.

²⁴ Operation Cupola 2.0, Tribunale di Palermo, p.p. 719/16 Mod. 21 DDA

²⁵ Operation New Connection, Tribunale di Palermo, Sezione GIP, N. 4847/18 RGNR, No. 7605/19 GR GIP

²⁶ Operation Passepartout, Tribunale di Palermo, Fermo di Indiziato di Delitto, n.8684/17 RGNR

²⁷ Operation Padronanza, Tribunale di Palermo, OCCC n. 14664/2017 RGNR and n. 5956/2019 RG GIP

The activities carried out by cosa nostra clans are wide-ranging: extortion that is necessary to maintain territorial control (Operation Resilienza²⁸); loansharking (like in the case of camorra and 'ndrangheta, cosa nostra is very active in providing loans and other social benefits, also in order to gain social trust); drug trafficking and trade (see Operation Shoes²⁹ on the links between clans from Catania and Albanian clans based in Lazio; Operation Street Drug³⁰; Operation Casuzza³¹ on clans from Favara and Canicatti, close to Agrigento)³²; legal and illegal gambling and gaming (Operation Mani in Pasta³³ on horse-racing illegal gambling in Sicily, Lombardia, Piemonte, Emilia-Romagna, and Liguria); infiltrations (usually for money laundering purposes) in the sectors of construction, transport, agri-food (Operation Mani in Pasta), waste, energy production, procurement of inert materials, and EU subsidy frauds (especially in agriculture, as in Operation Nebrodi³⁴). Often infiltrations in the legal economy and interests towards public tenders are carried out through influence and control of corrupted public officers,

²⁸ Operation Resilienza, Tribunale di Palermo, October 2020

²⁹ Operation Shoes, Tribunale di Catania, Proc. Pen. n. 9472/2017 RGNR

³⁰ Operation Street Drug, Tribunale di Palermo, Proc. Pen. n.11864/18 RGNR and n. 8628/18 RG GIP

³¹ Operation Casuzza, Tribunale di Agrigento, OCCC n. 1112/2019 RGNR and n. 3091/2019 RG GIP

³² Despite not directly involving cosa nostra, Operation Halcon (Tribunale di Catania, OCC n. 7555/2019 RGNR DDA n. 894/20 RG GIP) must be recalled since it unveiled the essential role of Catania as hub for the importation of drugs from South America; the investigative and judicial authorities have wondered if cosa nostra families can accept the presence of other organised crime groups, also of mafia-style, operating across the same territory and for the same practices and illicit interests.

³³ Operation Mani in Pasta, Tribunale di Palermo, proc. pen. n. 3275/19 RGNR and 2153/2020 RG GIP

³⁴ Operation Nebrodi, Tribunale di Messina, Proc. Pen. 890/16 RGNR e n. 5053/17 RG GIP

politicians and entrepreneurs (e.g. Operation Mazzetta Sicula³⁵, Operation Ius³⁶, Operation Nebrodi).

Cosa nostra groups cooperate and have business relations with foreign organised crime groups such as Western Balkans and Albanian (mostly for drug trafficking matters), and Nigerian and Pakistani clans (mostly for human trafficking for sex work and modern slavery in the agri-food sector).

Lastly, in Sicily, next to cosa nostra groups there are also other powerful mafia-type clans such as stidda from the areas of Caltanissetta and Gela (but active also in Lombardia, Germany, and Belgium) that is structured in a similar way to cosa nostra (yet more horizontal) and with similar methods, economic interests, and territorial power (see Operation Leonessa³⁷).

Apulian groups

When referring to Apulian mafias there are three main clan-types: groups from Foggia, camorra barese (from Bari), and Sacra Corona Unita from the Salento area (Brindisi and Lecce). They all have roots into camorra and 'ndrangheta groups to whom they are very similar for methods, economic interests, and tools for territorial control.

Apulian clans are involved in activities such as extortion, drug trafficking (Operation Tornado³⁸), infiltrations in public tenders, and money laundering. Infiltrations in the legal economy take place in a broad spectrum of sectors such as health, private

³⁵ Operation Mazzetta Sicula, Tribunale di Catania, Pen. n. 2025/18 RGNR

³⁶ Operation Ius, Tribunale di Caltanissetta, Proc. Pen. n. 1793/14 RGNR

³⁷ Operation Leonessa, Tribunale di Brescia, OCCC n. 13650/17 RGNR and n. 6870/19 RG GIP

³⁸ Operation Tornado, Direzione Distrettuale Antimafia di Lecce, June 2019.

security, waste disposal (Operations Black Cam³⁹ and Bios⁴⁰), disinfection, food service and food supply chain, tourism, printing and silk-screen printing, marketing, IT, fuel smuggling, and tobacco smuggling (Operation Vinculum⁴¹ regarding clans from Campania and Puglia and a Calabrian smuggler who had moved to Switzerland). Apulian clans are also involved in loan sharking activities and in providing welfare services (for example, see Operation Golden Money⁴² concerning representatives of the clans Capriati, Diomede, and Strisciuglio from Bari).

Moreover, Apulian clans have established links with local politicians and public officers (as seen in Operation Reset⁴³ on Sacra Corona Unita in Brindisi, Operation Tabula Rasa⁴⁴ regarding the electoral bargain in Taranto, and Operation Tornado⁴⁵). Proximity to licit economic actors, through favours and corruption, often takes place by infiltrating frontmen inside companies used to launder dirty profits (for instance, Operation Final Blow⁴⁶ on clan Pepe from Lecce, Operation Dirty Slot⁴⁷ on Sacra Corona Unita groups active in legal and illegal gambling in Lecce, Brindisi, and Taranto, and Operation Scommessa⁴⁸ on clans from Bari laundering money from illegal gambling).

³⁹ Operation Black Cam, Tribunale di Bari, OCC n. 7245/17 RGNR-6139/18 RG GIP-157/19

⁴⁰ Operation Bios, Tribunale di Bari, OCC n. 14101/15RGNR-17504/16RG GIP

⁴¹ Operation Vinculum, Tribunale di Bolzano, P.p. n. 226/16 RGNR

⁴² Operation Golden Money, Procura della Repubblica di Bari, p.p. n. 21116/15 mod. 21

⁴³ Operation Reset, Tribunale di Lecce, OCCC n. 1722/18 RGNR- 11/2018 DDA

⁴⁴ Operation Tabula Rasa, Tribunale di Taranto, 2020

⁴⁵ Operation Tornado, DDA di Lecce, Giugno 2019

⁴⁶ Operation Final Blow, Tribunale di Lecce, CCC n.9621/2017 RGNR-88/2017 DDA-8125/2018 GIP

⁴⁷ Operation Dirty Slot, Tribunale di Lecce, OCCC n. 6447/17 RGNR-59/17 RG DDA,

⁴⁸ Operation Scommessa, Tribunale di Bari, 2018

Last, Apulian mafia clans are involved in drug and weapon trafficking, sectors in which they often cooperate with Albanian organised crime groups (e.g. Operation Kulmi - She⁴⁹).

Thinking Further

Noting the latest operations in Italy against Italian mafias, we can highlight the following:

- Both DIA and Italian authorities more generally tend to have a regional focus on mafia groups based on their original place of settlement and following their 'mobility' from there. This choice has a number of repercussions on the way the data is presented: in other words, it is organised heavily around groups rather than highlighting trends in activities more broadly.
- The 'ndrangheta clans maintain a primary role in the country because of the availability of funds from drug trade, the ability to access public funding, and the infiltration at political and financial level. Their presence abroad also nourishes this dominance.
- The resurgence of cosa nostra has been observed in the past few years; this resurgence is not only connected to foreign contacts – primarily in the USA – but also to a never lost grip on the territory and a perpetuation of the myth of 'mafiosi brava gente' (mafiosi as good people, helpers and benefactors of the community).
- Camorra clans appear entrepreneurial, often prone to violence and still atomised in many areas without clear organisational structures.
- Apulian clans manifest some element of novelty, first of all in new structures in the province of Foggia, and in the restructuring of the Sacra Corona Unita groups in the Southern provinces of Lecce. Their activities remain collaborative with other groups especially when they are less local.

⁴⁹ Operation Khulmi-She, Tribunale di Bari, OCCC n. 6713/2018 RG GIP-94/2019 GIP

Italy – Main Legal Framework

<p>Participation in organised crime group</p>	<p>Penal code Crimes against public order</p> <p>Article 416 Unlawful association to commit a crime</p> <p>When three or more persons associate in order to commit several criminal offences, those promoting or setting up or organizing such association shall be liable, for this sole offence, to imprisonment for 3 to 7 years.</p> <p>For the sole fact of participating in the association, the punishment shall be imprisonment for 1 to 5 years.</p> <p>Those directing the association shall be liable to the same punishments as those promoting it.</p> <p>If the participants in the association carry out armed raids of the country or of the public roads, the punishment shall be imprisonment for 5 to 15 years.</p> <p>The punishment shall be increased if the association includes ten or more persons.</p> <p>Whenever the organization is aimed to commit any of the crimes referred to in Articles 600, 601 and 602, and Article 12, paragraph 3-bis of the provisions on the regulation of immigration and the status of foreigners, set forth in the legislative decree 25 July 1998 n. 286, imprisonment from five to fifteen years in the cases provided for in the first paragraph, and from four to nine years in the cases provided for in the second paragraph shall be applied.</p> <p>Whenever the organization is aimed to commit any of the crimes referred to in Articles 600-bis, 600-ter, 600-quater, 600-quater.1, 600-quinquies, 609-bis, when the crime is committed against a minor under eighteen years, 609-quater, 609-quinquies, 609-octies, when the crime is committed against a minor of eighteen years, and 609-</p>
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undecies, the imprisonment from four to eight years, in cases foreseen in the first paragraph, and imprisonment from two to six years, in cases provided for in the second paragraph, shall be applied.

Article 416bis Mafia-type unlawful association

Any person participating in a Mafia-type unlawful association including three or more persons shall be liable to imprisonment for 7 to 12 years.

Those persons promoting, directing or organizing the said association shall be liable, for this sole offence, to imprisonment for 9 to 14 years.

Mafia-type unlawful association is said to exist when the participants take advantage of the intimidating power of the association and of the resulting conditions of submission and silence to commit criminal offences, to manage or at all events control, either directly or indirectly, economic activities, concessions, authorizations, public contracts and services, or to obtain unlawful profits or advantages for themselves or for others, or with a view to prevent or limit the freedom to vote, or to get votes for themselves or for others on the occasion of an election.

Should the association be of the armed type, the punishment shall be imprisonment for 9 to 15 years pursuant to paragraph 1 and imprisonment for 12 to 24 years pursuant to paragraph 2.

An association is said to be of the armed type when the participants have firearms or explosives at their disposal, even if hidden or deposited elsewhere, to achieve the objectives of the said association.

If the economic activities of which the participants in the said association aim at achieving or maintaining the control are funded, totally or partially, by the price, the products or the proceeds of criminal offences, the

punishments referred to in the above paragraphs shall be increased by one-third to one-half.

The offender shall always be liable to confiscation of the things that were used or meant to be used to commit the offence and of the things that represent the price, the product or the proceeds of such offence or the use thereof.

The provisions of this article shall also apply to the Camorra, 'ndrangheta and to any other associations, whatever their local titles, even foreigners, seeking to achieve objectives that correspond to those of Mafia-type unlawful association by taking advantage of the intimidating power of the association.

Art. 416-bis 1. Aggravating and attenuating circumstances in crimes linked to mafia activities (1)

For crimes punishable with a penalty other than life imprisonment committed using the conditions set out in article 416-bis or in order to facilitate the activities of the associations provided for in the same article, the penalty is increased from one third to one half.

The extenuating circumstances, other than those provided for by articles 98 and 114 concurrent with the aggravating circumstance referred to in the first paragraph, cannot be considered equivalent or prevalent with respect to this and the penalty decreases are applied to the amount of penalty resulting from the increase consequent to the predicted aggravating.

For the crimes referred to in article 416-bis and for those committed by making use of the conditions provided for by the aforementioned article or in order to facilitate the activity of mafia-type associations, against the accused who, by dissociating himself from the others, endeavours to avoid that the criminal activity is led to further consequences also by concretely helping the police authority or the judicial authority in the collection of decisive elements for the reconstruction of the facts and

for the identification or capture of the perpetrators, the penalty of Life imprisonment is replaced by that of imprisonment from twelve to twenty years and the other penalties have decreased from one third to one half.

In the cases provided for in the third paragraph, the provisions referred to in the first and second paragraphs are not applied.

(1) Article inserted by art. 5, paragraph 1, lett. d), Legislative Decree 1 March 2018, n. 21.

Articles 461bis + Article 110 (External Participation in Mafia-Type Organisation)

Article 416bis as above.

Article 110 “Penalty for those who concur in the commission of the crime”: When more people concur in the same crime type, each of them is subjected to the penalty for that crime type, if not disposed otherwise”.

Article 416ter Vote-exchange between politicians and members of mafia (1)

Anyone who accepts, directly or through intermediaries, the promise to procure votes from persons belonging to the associations referred to in Article 416-bis or through the methods referred to in the third paragraph of Article 416-bis in exchange for the disbursement or the promise of disbursement of money or any other benefit or in exchange for the willingness to satisfy the interests or needs of the mafia association is punished with the penalty established in the first paragraph of article 416-bis.

The same penalty applies to anyone who promises, directly or through intermediaries, to procure votes in the cases referred to in the first paragraph.

If the person who accepted the promise of votes, following the agreement referred to in the first paragraph, is elected in the relative electoral consultation, the penalty provided

<p>Transnationality</p>	<p>for by the first paragraph of article 416-bis, increased by half, is applied.</p> <p>In the event of a conviction for the crimes referred to in this article, there is always a perpetual ban from public office.</p> <p>(1) This article has been amended by art. 1, paragraph 5, L. 23 June 2017, n. 103, starting from 3 August 2017, pursuant to the provisions of art. 1, paragraph 95 of the same Law no. 103/2017. Finally, this article was thus replaced by art. 1, paragraph 1, Law 21 May 2019, n. 43, starting from 11 June 2019.</p> <p>Ratification of the Palermo Convention -with Law 16 March 2006, no. 146</p> <p>Penal Code</p> <p>Art 61 Aggravating circumstance of transnational crime</p> <p>For crimes punished with a prison sentence of not less than four years in the commission of which an organised criminal group engaged in criminal activities in more than one State has contributed, the penalty is increased from one third to one half. This is applicable as well to the second section of article 416-bis 1 (participation in mafia type organisation).</p>
<p>Money Laundering</p>	<p>Penal Code</p> <p>Crimes against property</p> <p>Article 648-bis Money laundering</p> <p>Apart from participation in the [predicate] offence, any person who substitutes or transfers money, goods or assets obtained by means of intentional criminal offences, or who seeks by any other means to conceal the fact that the said money, goods or assets are the proceeds of such offences, shall be punished by imprisonment for between</p>

4 and 12 years and by a fine of between 2 million and 30 million liras.

The punishment shall be increased if the offence is committed in the course of a professional activity.

The punishment shall be decreased if the money, goods or assets are the proceeds of a criminal offence for which the punishment is imprisonment for up to 5 years.

The final paragraph of article 648 shall apply.

Article 648-ter Utilization of money, goods or assets of unlawful origin

Apart from participation in the [predicate] offence and from the cases as per articles 648 and 648bis, any person using for economic or financial activities money, goods or assets obtained by means of a criminal offence, shall be punished by imprisonment for between 4 and 12 years and by a fine of between 2 million and 30 million liras.

The punishment shall be increased if the offence is committed in the course of a professional activity.

The punishment shall be decreased pursuant to paragraph 2 of article 648.

The final paragraph of article 648 shall apply.

Article 648-quater Confiscation

In case of conviction or of application of punishment upon request of the parties pursuant to art. 444 of the Code of Criminal Procedure, for one of the offenses under Articles 648-bis and 648-ter, it is always ordered the confiscation of the goods which constitute the product or the profit, unless they belong to persons unrelated to the crime.

Whenever confiscation in the first paragraph is not possible, the Court orders the confiscation of amount of

<p>Further Provisions</p>	<p>money, goods or other utilities which the offender has at his disposal, even through a third party, for a value corresponding to the product, profit or price of the crime. In relation to the offenses referred to in Articles 648-bis and 648-ter, the prosecutor can perform, within and for the purposes of Article 430 of the Criminal Procedure Code, any investigations that may be necessary concerning the properties, money or other benefits to be confiscated in accordance with the previous paragraphs.</p> <p>Law Decree 21 November 2007, no. 231 - Prevention of the use of the financial system for laundering purposes and for financing terrorism (In receipt of EU directive 2005/60/CE and 2006/70/CE - last update 16/07/2020)</p> <p>Article 2 Aims and Principles</p> <p>1. The provisions of this decree apply for purposes of prevention and contrast of the use of the economic and financial system for the purpose of money laundering and terrorist financing. Any limitations to the freedoms enshrined in the Treaty on functioning of the European Union, resulting from the application of the provisions of this decree, are justified pursuant to of articles 45, paragraph 3, and 52, paragraph 1, of the same Treaty.</p> <p>2. For the purposes referred to in paragraph 1, this decree dictates measures aimed at protecting the integrity of the economic system and the correctness of the conduct of the operators held to their observance. These measures are proportionate to the risk in relationship to the type of customer, to the ongoing relationship, to the professional performance, product or transaction and their application takes into account the peculiarity of the activity, of the dimensions and complexity of the obliged subjects who fulfil their obligations under this decree taking into account the data and information acquired or possessed in the exercise of the own activity institutional or professional.</p>
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	<p>3. The preventive action is carried out in coordination with the repression of the crimes of recycling, of those to it conditions and terrorist financing offenses.</p> <p>4. For the purposes referred to in paragraph 1, laundering means:</p> <ul style="list-style-type: none">a) the conversion or transfer of assets, carried out by being aware that they come from a criminal activity or from one participation to such activities, with the aim of hiding or to conceal the illicit origin of the goods themselves or to help anyone involved in such activity to avoid the consequences legal status of their actions;b) the concealment or dissimulation of the real nature, provenance, location, disposition, movement, ownership of the assets or of the rights thereon, carried out being aware that such assets come from a criminal activity or from a participation in such activity;c) the purchase, possession or use of assets being a knowledge, at the time of their receipt, that such goods originate from a criminal activity or from a participation in such activity;d) participation in one of the acts referred to in letters a), b) and c) the association to commit such an act, the attempt to perpetrating it, helping, instigating or advising someone to committing it or facilitating its execution. <p>5. Money laundering is considered as such even if the activities that they generated the goods to be recycled took place outside the national borders. The knowledge, the intention or the purpose, which must constitute an element of the actions referred to in paragraph 4 may be inferred from objective factual circumstances.</p> <p>6. For the purposes referred to in paragraph 1, the financing of the terrorism any direct activity, by any means, to the supply, collection, funding, intermediation, al deposit, custody or disbursement, in any way realized, of funds and economic resources, directly or indirectly, in whole or in part, usable for completion of one or more conducts, with the purpose of terrorism according to what provided for by the criminal laws, this regardless of the</p>
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	<p>actual use of funds and economic resources for the commission of the aforementioned conducts.</p> <p>((6-bis. The processing of personal data carried out for the purposes referred to in paragraph 1 is considered to be of public interest to pursuant to Regulation (EU) 2016/679, of the European Parliament and of Council and related national implementing legislation.))</p> <p>Codice Antimafia (Antimafia Code) on preventive anti-mafia measures (e.g. confiscation of assets, management of confiscated aspects) (Law Decree 6 September 2011, n. 159) updated through law decree 16 July 2020, n. 76, converted into law 11 September 2020, no. 120), which includes, but it is not limited to confiscation and Seizure of</p> <ul style="list-style-type: none"> • Proceeds of crime derived from offences covered by the Palermo Convention • Property, equipment or other instrumentalities • Proceeds of crime transformed or converted into other property • Proceeds of crime intermingled with legitimately obtained property • Income or other benefits derived from the proceeds
Drug Trafficking	<p>Decree of the President of Republic 9 October 1990, no. 309 – Unified text of the laws regarding the regulation of narcotic drugs and psychotropic substances, prevention, treatment and rehabilitation of the related drug addiction states</p> <p>Article 73 Illicit production, trafficking and possession of narcotic drugs or psychotropic substances</p> <p>1. Anyone who, without the authorization referred to in Article 17, cultivates, produces, manufactures, extracts, refines, sells, offers or offers for sale, transfers, distributes, trades, transports, procures to others, sends, passes or ships in transit, delivery for any purpose narcotic or psychotropic substances referred to in table I provided for in article 14, is punished with imprisonment from six to</p>

	<p>twenty years and with a fine from € 26,000 to € 260,000 (1).</p> <p>1-bis. Anyone who imports, exports, purchases, receives for any reason or in any case illegally holds, without the authorization referred to in Article 17, is punished with the same penalties as per paragraph 1:</p> <ul style="list-style-type: none">a) narcotic or psychotropic substances which in quantity, in particular if higher than the maximum limits indicated by decree of the Minister of Health issued in concert with the Minister of Justice after hearing the Presidency of the Council of Ministers - National Department for Drug Policies, or of presentation, having regard to the total gross weight or the fractional packaging, or for other circumstances of the action, appear destined for a non-exclusively personal use;b) medicinal products containing narcotic or psychotropic substances listed in Table II, Section A, which exceed the prescribed quantity. In this latter case, the aforementioned penalties have decreased by one third to one half. <p>2. Whoever, being in possession of the authorization referred to in Article 17, unlawfully transfers, puts or procures from others market the substances or preparations indicated in Tables I and II referred to in Article 14, is punished with imprisonment from six to twenty-two years and with a fine from € 26,000 to € 300,000.</p> <p>2-bis. [The penalties referred to in paragraph 2 also apply in the case of illicit production or marketing of the basic chemicals and precursors referred to in categories 1, 2 and 3 of Annex I to this consolidated act, which can be used in the clandestine production of substances narcotic or psychotropic drugs provided for in the tables referred to in Article 14.] (2).</p> <p>3. The same penalties apply to anyone who cultivates, produces or manufactures narcotic or psychotropic</p>
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	<p>substances other than those established in the authorization decree.</p> <p>4. When the conduct referred to in paragraph 1 concerns the medicines included in table II, sections A, B, C and D, limited to those indicated in number 3-bis) of letter e) of paragraph 1 of article 14 and not if the conditions referred to in Article 17 are met, the penalties established therein, decreased by one third to one half, are applied.</p> <p>5. Unless the fact constitutes a more serious offense, whoever commits one of the facts provided for in this article which, due to the means, the manner or the circumstances of the action or the quality and quantity of the substances, is minor, is punished with the penalties of imprisonment from six months to four years and a fine from € 1,032 to € 10,329.</p> <p>5-bis. In the case referred to in paragraph 5, limited to the crimes referred to in this article committed by a drug addict or by a drug or psychotropic substance abuser, the judge, with the sentence of conviction or application of the penalty at the request of the parties pursuant to Article 444 of the Code of Criminal Procedure, at the request of the accused and after hearing the public prosecutor, if he does not have to grant himself the benefit of the conditional suspension of the sentence, he can apply, instead of the custodial and pecuniary sentences, that of the public utility work referred to article 54 of the legislative decree 28 August 2000, n. 274, according to the procedures therein. With the sentence, the judge instructs the local external criminal enforcement office to verify the effective performance of the public utility work. The office reports periodically to the judge. Notwithstanding the provisions of the aforementioned article 54 of legislative decree no. 274 of 2000, the public utility work has a duration corresponding to that of the imprisonment sanction imposed. It can also be arranged in private structures authorized pursuant to article 116, subject to their consent. In case of violation of the obligations related to the performance of public utility work, notwithstanding</p>
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the provisions of the aforementioned article 54 of legislative decree no. 274 of 2000, at the request of the public prosecutor or ex officio, the prosecuting or executing judge, with the formalities referred to in article 666 of the criminal procedure code, taking into account the extent of the reasons and circumstances of the violation, orders the revocation of the sentence with consequent reinstatement of the one replaced. An appeal to cassation is allowed against this revocation measure, which has no suspensive effect. The community service can replace the penalty no more than two times.

5-ter. The provision referred to in paragraph 5-bis also applies in the event of a crime other than those referred to in paragraph 5, committed, for one time only, by a drug addict or by habitual user of narcotic or psychotropic substances and in relation to one's own condition of dependence or habitual employee, for which the judge imposes a penalty not exceeding one year of detention, except in the case of an offense provided for by article 407, paragraph 2, letter a), crime against the person.

6. If the offense is committed by three or more persons in competition with each other, the penalty is increased.

7. The penalties provided for in paragraphs 1 to 6 are reduced by half to two thirds for those who take steps to prevent the criminal activity from being brought to further consequences, also by concretely helping the police or judicial authorities in theft. of resources relevant to the commission of the crimes.

7-bis. In the event of a conviction or application of a penalty at the request of the parties, pursuant to Article 444 of the Code of Criminal Procedure, the confiscation of the things that are the profit or the product thereof is ordered, unless they belong to a person unrelated to the crime, or when it is not possible, except for the crime referred to in paragraph 5, the confiscation of assets available to the offender for a value corresponding to such profit or product (3).

(1) The Constitutional Court, with sentence of 23 January - 8 March 2019, n. 40, declared "the constitutional illegitimacy of art. 73, paragraph 1, of the decree of the President of the Republic October 9, 1990, n. 309 (Consolidated law on the discipline of narcotic drugs and psychotropic substances, prevention, treatment and rehabilitation of related drug addiction states), in the part in which it provides for the minimum legal penalty of imprisonment to the extent of eight years instead of six years".

(2) Paragraph repealed by art. 1, co. 1, b), Legislative Decree 24 March 2011, n. 50.

(3) With sentence 12 - 25 February 2014, n. 32, the Constitutional Court declared the constitutional illegitimacy of art. 4-bis of the decree-law of 30 December 2005, n. 272 (which provided for the modification of the heading and paragraphs 1, 2, 3, 4 and 5 of this article, and the introduction of paragraphs 1-bis, 2-bis and 5-bis to this article).

Article 74 Association aimed at the illicit trafficking of narcotic or psychotropic substances

1. When three or more persons associate for the purpose of committing more than one of the crimes set forth in Article 70, paragraphs 4, 6 and 10, excluding operations relating to substances referred to in category III of Annex I to Regulation (EC) n. 273/2004 and the annex to regulation (EC) no. 111/2005, or by article 73, whoever promotes, establishes, directs, organizes or finances the association is punished for this only with imprisonment of not less than twenty years.

2. Who participates in the association is punished with imprisonment of not less than ten years.

3. The penalty is increased if the number of associates is ten or more or if among the participants there are people addicted to the use of narcotic or psychotropic substances.

4. If the association is armed, the penalty, in the cases indicated in paragraphs 1 and 3, cannot be less than twenty-four years of imprisonment and, in the case provided for in paragraph 2, twelve years of

	<p>imprisonment. The association is considered armed when the participants have the availability of weapons or explosive materials, even if hidden or kept in a place of storage.</p> <p>5. The penalty is increased if the circumstance referred to in letter e) of paragraph 1 of article 6. If the association is established to commit the facts described in paragraph 5 of article 73, the first and second paragraphs of article 416 of the penal code apply.</p> <p>6. If the association is established to commit the facts described in paragraph 5 of article 73, the first and second paragraphs of article 416 of the penal code apply.</p> <p>7. The penalties provided for in paragraphs 1 to 6 are reduced by half to two thirds for those who have effectively worked to ensure evidence of the crime or to steal resources from the association that are decisive for the commission of the crimes. 80 occurs.</p> <p>7-bis. The confiscation of the things that served or were intended to commit the crime and of the goods that are the profit, or the product is ordered against the convicted person, unless they belong to a person not involved in the crime, or when this is not possible, goods available to the offender for a value corresponding to such profit or product.</p> <p>8. When laws and decrees refer to the offense provided for by article 75 of law no. 685, repealed by article 38, paragraph 1, of law no. 162, the reference refers to this article.</p>
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GERMANY

Mafia Map

Introduction

In line with Eurojust data, when it comes to investigations on organised crime and mafias, Germany is the country that requires a higher level of policing and judicial cooperation with Italy. A combination of factors such as the economic strength at EU level and globally, the geographical proximity to Italy and central position in continental Europe, and the conspicuous migration flow from Italy, have made Germany the EU country with the highest (perceived) presence of Italian mafia groups. Traditionally, Germany has been a destination country for migration flows departing from Italy since the 1950s. Following these flows, in the 1970s and 1980s affiliates to some criminal groups that had moved to Germany re-organised into new localised structures. As the numerous investigative operations recorded by the DIA show, Germany has typically been a place of arrival for fugitives or “latitanti” (especially from Camorra or Neapolitan mafia clans), but also for people who wish to relocate and fall off the radar. Moreover, the port of Hamburg and the proximity to the port of Rotterdam (the largest in Europe) both very relevant for drug trafficking purposes, but also the presence of the international airport/hub of Frankfurt in Central Germany, contribute to make Germany highly attractive to the eyes of Italian mafiosi.

According to the 2019 Bundeskriminalamt (BKA) annual report on organised crime, German law enforcement agencies conducted 15 investigations against members of Italian mafia-like groups, with an overall of 269 suspects reported, amongst whom 161 Italian. More precisely, out of 19 investigations, 14 have been treated as Italian organised crime and having links to Italian mafias in other 4 operations.

In terms of law enforcement, the authorities responsible for investigating mafias in Germany are the BKA or Federal Criminal Police Office (which deals with terrorism and other serious crimes such as money laundering and other cross-border/transnational crimes at federal level) and the Landeskriminalamt (LKA) or State Criminal Police Office. The BKA cooperates with the Italian Direzione

Investigativa Antimafia (DIA) in the Core Group of the Operative Antimafia Network @ON in order to tackle “serious organised crime groups”, also of “mafia-style”.

In the fight against mafias, law enforcement agencies adopt an operational definition of *Organisierte Kriminalität* or organised crime⁵⁰ that refers to:

“The planned commission of criminal offenses determined by the pursuit of profit or power, which, individually or in their entirety, are of considerable importance if more than two participants share the work for a longer or indefinite period, using commercial or business-like structures, using force or other intimidating means or interacting under the influence of politics, media, public administration, justice or economy”.

More precisely, in relation to Italian regional mafias, the BKA refers to “members and supporters of Italian organised crime mainly in the areas of drug, counterfeiting, property and economic crime (...) with a high degree of organization and professionalism”; furthermore, the BKA acknowledges Germany “as a place of escape, rest, retreat and investment” (BKA website⁵¹).

Italian mafias have expanded in Germany through a vast range of profitable activities: first, through drug trafficking and money laundering practices to reinvest dirty profits; second, through the ownership and management of restaurants and pizzeria across Germany, used for money laundering, reinvestment purposes, and as logistics and meeting points as well.

The presence of Italian regional mafias in the German territory is mixed. There are signals of presence of *cosa nostra*, *stidda*, *'ndrangheta*, *camorra*, and *Sacra Corona Unita*. Briefly, the main activity of these mafia-like groups is drug trafficking, mainly cocaine smuggling, money laundering, and vehicle property crime. More precisely, it can be said that Italian mafias in Germany have specialised in specific sectors such

⁵⁰ Zwischenbericht der Gemeinsamen Arbeitsgruppe Justiz/Polizei zur Strafverfolgung Organisierter Kriminalität, 1990, Anlage 1, S. 8-9.

⁵¹See

https://www.bka.de/DE/UnsereAufgaben/Deliktsbereiche/OrganisierteKriminalitaet/organisiertekriminalitaet_node.html

as drug trafficking for 'ndrangheta, construction industry for Cosa nostra, and smuggling of counterfeit goods for camorra.

Criminal actors

'Ndrangheta

Data show that the Calabrian mafia or 'ndrangheta is the Italian mafia association with the highest level of expansion in Germany. To provide some numerical data, the 2019 BKA annual situational report highlights 10 organised crime proceedings involving 179 alleged members of 'ndrangheta. These mafia associates were charged for drug trafficking and smuggling (four proceedings), suspicion of the formation of a criminal organisation (three cases), suspicion of money laundering (two proceedings), and property crime (motor vehicle property offenses in one case).

According to the DIA, in Germany, 'ndrangheta clans have exported the criminal model typically applied in Calabria and replicated the same structures and dynamics, in terms of both geographical and relational dimensions. The German BKA and the Italian DIA agree in saying that there are currently between 18 and 20 territorial units or localised structures comprising more 'ndrangheta clans (aka "ndrine") active in Germany. These units maintain strict links to the clans in the Calabrian provinces where they are from. In light of a parliamentary inquiry requested by the German Green party in 2019, the German Ministry of Interior and Justice claims that between 800 and 1000 'ndrangheta members are currently operating in Germany⁵².

One of the first relevant anti-mafia operations – the undercover Operation Fido, jointly conducted by the BKA, the LKA from Thüringen, Carabinieri, and Reggio Calabria's public prosecutor's office – dates back to 2001⁵³. Operation Fido regarded

⁵² See <http://dip21.bundestag.de/dip21/btd/19/105/1910541.pdf>

⁵³ See <https://www.mdr.de/thueringen/mitte-west-thueringen/erfurt/polizei-schleuste-verdeckten-ermittler-in-italienische-mafia-ndrangheta-100.html> ;

the presence of suspected members of a 'ndrangheta unit (with supposed connection with the public administration) in Erfurt, Thüringen. This operation investigated the money laundering activities taking place through the re-investment in food services and real estate of illicit money obtained from drug trafficking in Thüringen and in Sachsen (Eastern Germany). This operation stopped in 2002 for practical issues in conducting bilateral-investigations, yet it proves how deeply rooted (also in historical terms) the presence of 'ndrangheta is in Germany and the attention of authorities to the phenomenon.

Today, the most active 'ndrangheta affiliates detected in Germany are still mainly first generation of migrants, arrived around the 1970s and all born in Italy. Despite this, expert interviewees and documentary sources stress that it is difficult to understand how new generations of affiliates are organised, whether the terminology of their organisation means the same in Germany as it does in Italy. This is specifically for the territorial unit called "locale", the group of "'ndrine" in a certain locality. "Locale" in Germany can at times also be indicated as "società", instead. The "società" is another coordination structure among "'ndrine" on the same territory, based on an acknowledgement of existing rankings among members. Despite having a certain level of independence and autonomy, these structures in Germany are still strictly linked to the headquarters in Calabria. In fact, these headquarters seem to be linked to the individual "'ndrina" or "locale", rather than to higher coordination structures of the 'ndrangheta existing in Calabria (such as the "mandamenti" or the "Provincia"). It can be noted that, in Germany, 'ndrangheta clans are well-established and structured in territorial units, yet these structures are more porous than the corresponding structure in Calabria.

A media investigation conducted in 2021 shed light on the possibility that a "Crimine" structure might exist in Germania as independent control body (or Chamber of Control) set up to assure peace amongst the 'ndrangheta groups active in the country by resolving feuds within the clans (that might gain police attention), but with no power of deciding the groups' criminal businesses. Although the authorities agree that the clans are indeed working together and organising their relationships, whether or not this structure is actually a "Crimine" in the Italian sense of the term, or could just be a "Società", remains unconfirmed.

<https://www.mdr.de/thueringen/mitte-west-thueringen/erfurt/erfurter-gruppe-mafia-ndrangheta-geheime-abhoerprotokolle-100.html#sprung1>

Data converge in indicating how the expansion of 'ndrangheta clans takes place through two main systems: 1) the export of the 'ndrangheta criminal model from Calabria to Germany, with new territorial units being autonomous but at the same time closely linked to the Calabrian original units; 2) the expansion of criminal activities inside the local Italian community in Germany.

In relation to scenario 1), clans tend to reproduce behaviours and *modus operandi* typical of the territory of origin, mostly within the Italian-Calabrian communities in Germany. For example, these behaviours include: offer of protection; attempts to exercise some degree of territorial control, order or governance; use of violence, threats and intimidation; exploitation of kinship; relevance of their pre-acquired criminal reputation. For instance, 'ndrangheta clans exercise their power within the Italian community based in Germany by imposing the purchase of goods and services sold by mafia-affiliated food companies to Italian restaurants and other food companies (in Italy, this would qualify as a form of extortion).

For the first time, in 2008, Operation Crimine⁵⁴ confirmed the expansion of 'ndrangheta in Germany by unveiling the macro-presence of local units across the territory (e.g. in Frankfurt, Radolfzell, Rielasingen, Ravensburg, Engen, and Duisburg). All the territorial units had strong links to those in the area of Reggio Calabria where the 'ndrangheta structures are the most well-known, from a judicial perspective. Moreover, the link with Calabria was confirmed by Operation Rheinbrucke⁵⁵ (developed from Operation Helvetia⁵⁶) that discovered some members of a clan from Fabrizia (Vibo Valentia) active in Baden-Württemberg and operating in the so-called "Società di Singen" (whose mafia *character* has been eventually denied by the Italian Supreme Court of Cassation in 2019). Similarly, in

⁵⁴ Operation Crimine, Tribunale di Reggio Calabria, n. 1389/08 R.G.R.N DDA, n. 3655/11 R.G. GIP/GUP, sentence n. 106/12; Final Sentence Court of Assise di Reggio Calabria, n. 106/12

⁵⁵ Operation Rheinbrucke, Corte Suprema di Cassazione, RGN 29434/2018 n. sez. 1200/2019

⁵⁶ Operation Helvetia, Tribunale di Reggio Calabria, RGNR DDA-2629/2015 RGGIP DDA, OCCC n. 4636/2015

2018, Operation Stige⁵⁷ unveiled the interests of the clan Farao-Marincola (from Cirò, Crotone) in Hessen and, again, Baden-Württemberg.

In relation to point 2), some clans manifest a higher level of social embeddedness and infiltration inside the local community, yet a lower profile in terms of capacity of territorial governance. In both cases, in Germany, 'ndrangheta clans reinvest in legal economy in activities such as food catering (mostly in the West) or construction (in the East). The ongoing trial connected to the investigation of Operation Pollino⁵⁸ taking place in 2021 at the Court of Duisburg⁵⁹ shows the wide interests of the clans in Germany and a focus on their activities in the country.

Geographically, 'ndrangheta clans are located in the Southern regions of Baden-Württemberg and Bayern, in the Western Nordrhein-Westfalen, and in the central Hessen. In terms of relations to the "ndrine" back in Calabria, investigations have revealed connections mostly to the following clans: 1) Romeo-Pelle-Vottari and Nirta-Strangio from the Aspromonte village of San Luca (Reggio Calabria) and Pesce-Bellocco from Rosarno (near the port of Gioia Tauro), active mostly in Nordrhein-Westfalen, Bayern, Baden-Württemberg, and Hessen; 2) Farao-Marincola from Cirò (Crotone), mostly operating in Baden-Württemberg and Hessen. Operation Platinum DIA⁶⁰, of early May 2021, uncovered a drug trafficking venture run by the Giorgi clan (aka "Boviciani") from San Luca, active with their associates in Überlingen, on the Northern shore of Lake Constance/Bodensee in Baden-Württemberg near the border with Switzerland. The group has been investigated also for investments in Germany in the form of restaurants, and other food related commercial ventures. Particularly important, in this case, appears to be the mobility from Italy, across Switzerland into Germany, and from there to other European states for purposes of drug trafficking.

Lastly, the states of Thüringen and Sachsen are interesting for 'ndrangheta groups from the Aspromonte region, especially the clan Pelle-Vottari from San Luca who

⁵⁷ Operation Stige, Tribunale di Catanzaro, P.p. n. 3382/15 RGNR and n. 2600/15 RG GIP

⁵⁸ Operation Pollino-European 'ndrangheta connection, Tribunale di Reggio Calabria, p.p. n. 6089/2015 RGNR DDA, p.p. 2868/2016 RGNR DDA and p.p. 2109/2016 RG GIP

⁵⁹ See <https://www.tagesschau.de/investigativ/ndr-wdr/mafia-prozess-101.html>

⁶⁰ Operation Platinum-DIA, Tribunale di Torino, p. p. n. 23180/16 RGNR, n. 18466/17 RG GIP

could take advantage of the relatively more difficult economic conditions of the East – primarily after the reunification in the 1990s and the shift towards a capitalistic economy.

‘Ndrangheta clans operating in Germany are believed to cooperate with other organised crime groups such as groups from Western Balkans or Turkey, mostly for drug trafficking matters. Moreover, they are active in financial and real estate operations, often in joint ventures with Eastern European criminal organisations such as clans from the Western Balkans. To add, there are traces of frictions between ‘ndrangheta clans and Serbian-Balkan clans in matters related to weapon trafficking. There are in fact examples of illegal trade of weapons in connection to drug trafficking.

As seen, German mafia settlements – especially for the ‘ndrangheta – are used by fugitives (or “latitanti” in the DIA reports) fleeing from Italy: e.g. in 2017, the arrest of one member of the ndrangheta clan Gallico (from Palmi, Reggio Calabria) in Saarbrücken (Saarland) located in the South-West at the border with France; or, in 2019, when a representative of the clan Morabito-Bruzzaniti-Palamara from Africo Nuovo (Reggio Calabria) was arrested in Neuwied (Rheinland-Pfalz) in Central-West.

As said, ‘ndrangheta clans are mostly active in drug trafficking (see Operation Pollino⁶¹ or the recent Operation Freccia⁶²), money laundering through primarily restaurants or other food-related stores (pizzerias or ice-cream parlours). In Operation Imponimento⁶³, members of the clan Anello from Filadelfia (near Vibo Valentia) were arrested: they were active in drug and arms trafficking and in reinvestments of illicit profits in the food sector – they own a restaurant in Mainz, (Central Germany) as well as illegal investments in real estate and constructions (so-called “baumafia” as per Operation Hermes (DIA, 2018b)).

⁶¹ Operation Pollino-European ‘ndrangheta connection, Tribunale di Reggio Calabria, p.p. n. 6089/2015 RGNR DDA, p.p. 2868/2016 RGNR DDA and 2109/2016 RG GIP

⁶² Operation Freccia, Tribunale di Milano, OCC n. 21745/17 RGNR and n. 20856/19 RG

⁶³ Operation Imponimento, DDA di Catanzaro, Decreto di Indiziato di Delitto, n. 7198/15 RGNR; <https://www.ilvibonese.it/cronaca/78461-imponimento-clan-anello-filadelfia-svizzera-germania/>

Germany is also in the focus of transnational anti-mafia investigative operations into the interests of the 'ndrangheta because companies formally registered in Germany (as well as in Switzerland) hold shares in mafia-affiliated companies registered and operating in Italy (see Operation Isola del Vento by the Guardia di Finanza in Crotona in 2017⁶⁴).

Lastly, data indicate some events of proximity – not at the level of systemic infiltration – between local politicians and members of 'ndrangheta clan. Although such proximity might be observed, investigations in Germany are not seeing any wrongdoing yet.

Camorra

The following camorra affiliates have been identified in Berlin, Hamburg, Dortmund, and Frankfurt: the so-called “Alleanza di Secondigliano” made by clans Licciardi active in Scampia and Secondigliano at the outskirts of Naples, clan Contini active in San Carlo all’Arena (Naples), clan Mallardo from Giugliano in Campania, clans Rinaldi from Naples, clan Ascione from Ercolano, clan Cava from Quindici, clan Moccia from Afragola, clan Fabbrocino from San Giuseppe Vesuviano, clan Sarno from Ponticelli in Naples, clan Gionta from Torre Annunziata, and clan Di Lauro active in Secondigliano and Scampia.

Despite the high presence of 'ndrangheta, camorra or Neapolitan clans are also active in Germany and their main activity is smuggling of counterfeit products such as tobacco (see Operation Gran Bazar⁶⁵). Counterfeit goods such as clothes are often produced abroad in countries like Turkey, then imported in containers to Germany and the UK, and finally sold across Italy. Yet, there is also evidence of camorra activities in the field of drug trafficking. Moreover, in relation to vehicle property crime, a series of document frauds have linked Camorra clans (e.g. clan Mazzarella

⁶⁴ See <https://www.lameziaterme.it/operazione-isola-del-vento-parco-eolico/> ; DIA, 2017a

⁶⁵ Operation Gran Bazar, Tribunale di Napoli, O.C.C. nr. 105/16, p.p. nr. 20613/13

from Naples) active in Italy to an international trade of luxury vehicles imported from Germany (e.g. Casalesi clans in Operation Galaxy⁶⁶).

Recently, camorra and 'ndrangheta clans (from the areas of Naples and Reggio Calabria) have been found active in fuel tax fraud in Operation Petrol-Mafie SPA of April 2021⁶⁷: the camorra clan Moccia from the North/East of Naples and 'ndrangheta clans Piromalli, Cataldo, Labate, Pelle, and Italiano from Gioia Tauro, Delianuova and Reggio Calabria city, Bonavota from Sant'Onofrio, Anello from Filadelfia and Piscopisani from Catanzaro, were allegedly investing in enterprises and opening bank accounts in six EU countries⁶⁸ among which Germany, to avoid taxes on fuel trade.

As well as the other Italian mafias, Camorra has used Germany as shelter for fugitives who are suspected to collaborate with local criminal groups.

Cosa nostra

In 2019, the BKA reported that the law enforcement authorities carried out two investigation proceedings against 44 members of cosa nostra after suspicion of criminal organisation and drug trafficking. The German states with a higher infiltration rate of cosa nostra clans are mostly concentrated in the Southern-Western areas such as Nordrhein-Westfalen, Bayern, Baden- Württemberg, and, to a lesser extent, Hessen. Unlike 'ndrangheta, cosa nostra clans active in Germany are hardly structured.

⁶⁶ Operation Galaxy, Tribunale di Isernia, OCCC 46/18 RGNR – 57/18 RGGP

⁶⁷ Operation Petrolmafie, Dedalo, Tribunale di Catanzaro, GIP and GUP, Proc Pen. No. 4823/2020 RGNR + no. 1727/2020 RG GIP + no. 52/2021 RMR

⁶⁸ The other countries involved in the investigation are Bulgaria, Croatia, Hungary, Malta and Romania; see <https://www.eurojust.europa.eu/action-counter-italian-fuel-tax-fraud-worth-almost-eur-1-billion> and <http://www.strettoweb.com/2021/04/petrol-mafie-71-nomi-arrestati-reggio-calabria-catanzaro-napoli-roma/1156733/>

Clans from Agrigento are the most active in Germany, followed by clans from Caltanissetta (clan Barrafranca active in Niedersachsen as per Operation Ultra⁶⁹ in 2020), Gela (Clan Rinzivillo in Operation Druso-Extra Fines⁷⁰, Operation Exitus⁷¹ and Operation Cleandro⁷² regarding the activities of clan Rinzivillo operating drug trafficking in Germany, and Operation Samarcanda⁷³), Palermo (Operations Cinisaro and Meltemi⁷⁴), Catania (Operation Matrioska⁷⁵), and some members of stidda (in the area of Lüneburg in Niedersachsen).

Cosa nostra fugitives often find shelter in Germany as proven with the arrest of Antonio Falzone (clan Santapaola-Ercolano from Catania) caught in Baden-Württemberg in December 2020⁷⁶.

Cosa nostra clans are active in drug trafficking, weapon smuggling, illegal investments in food service (restaurants, pizzeria, etc.) mainly for money laundering purposes, smuggling of oil, online betting⁷⁷, and, mostly, in the construction sector

⁶⁹ Developed from Operation Kaulonia, See [https://direzioneinvestigativaantimafia.interno.gov.it/Materiale_ETON/Press%20release/9.%20OP%20KAULONIA%20\(1%20LUG%202020\)/operazione%20Kaulonia%20-%20Press%20Release.pdf](https://direzioneinvestigativaantimafia.interno.gov.it/Materiale_ETON/Press%20release/9.%20OP%20KAULONIA%20(1%20LUG%202020)/operazione%20Kaulonia%20-%20Press%20Release.pdf)

⁷⁰ Operation Druso-Extra Fines, Tribunale di Caltanissetta, 2020; See <https://www.lastampa.it/novara/2020/03/25/news/mafia-padre-e-figlio-condannati-a-10-anni-e-8-mesi-erano-il-ponte-tra-novara-e-gela-un-anno-e-otto-mesi-ciascuno-1.38635913>

⁷¹ Operation Exitus, Report DIA, 2020a

⁷² Operation Cleandro, Report DIA, 2020a

⁷³ Operation Samarcanda, Tribunale di Caltanissetta, OAMC n. 1525/15 RGNR and n. 580/16

⁷⁴ Operation Cinisaro and Meltemi reunited in Tribunale di Palermo, OCCC n. 9244/17 RGNR and n. 6628/17 RG GIP

⁷⁵ Operation Matrioska, Tribunale di Catania, OCCC n. 4463/14 and n. 11419/15 RGGIP

⁷⁶ See https://www.ansa.it/sicilia/notizie/2020/12/16/mafia-arrestato-in-germania-il-latitante-antonino-falzone_c36616c7-2ca9-4bd9-b985-f0dcee4d1eb2.html

⁷⁷ Operation Doppio Gioco, See <https://www.siracusanews.it/operazione-doppiogioco-le-mani-del-clan-sulle-scommesse-sportive-on-line-23-misure-cautelari-3-a-siracusa/>

("baumafia"). Regarding the latter, clan members from Agrigento, Enna, and Caltanissetta have been under investigation for setting up construction companies through front men. These companies were used for money laundering purposes through a system of bogus invoices (Operation Scavo⁷⁸).

Apulian groups

There is little, non-established, and unstable presence of Sacra Corona Unita and Apulian mafia clans in the country. However, it seems plausible that Germany is used as shelter for fugitives (e.g. clans Rogoli-Buccarelli-Donatiello from Brindisi in Mecklenburg-Vorpommern, clans from Mesagne in Baden-Württemberg, clans Pellegrino and De Tommasi-Notaro from Lecce in Nordrhein-Westfalen, Rhineland, Baden-Wurttemberg, Hessen, and Bayern). Moreover, there is (scarce) evidence of drug and weapon trafficking, also in collaboration with Albanian organised crime groups. Interestingly, in 2019, a joint Italian-German operation (Operation Oro Giallo⁷⁹) unveiled a criminal association based in Foggia and active in Italy and Germany for the production, packaging, and sale of counterfeit extra-virgin olive oil. On a side note, the interests of mafia clans from Foggia, considered a 'new', emerging mafia, have been picked up by Italian investigations more and more in the past years.

⁷⁸ Tribunale di Agrigento 2013, Report DIA, 2017a, see <http://www.agrigentotv.it/blitz-scavo-tra-italia-e-germania-la-mafia-dietro-il-business-illegale-delle-truffe/>

⁷⁹ Tribunale di Foggia, OCC 15419/14 RGNR and 1116/18 RGGIP; See http://www.salute.gov.it/portale/news/p3_2_1_2_1.jsp?lingua=italiano&menu=notizie&p=nas&id=1374

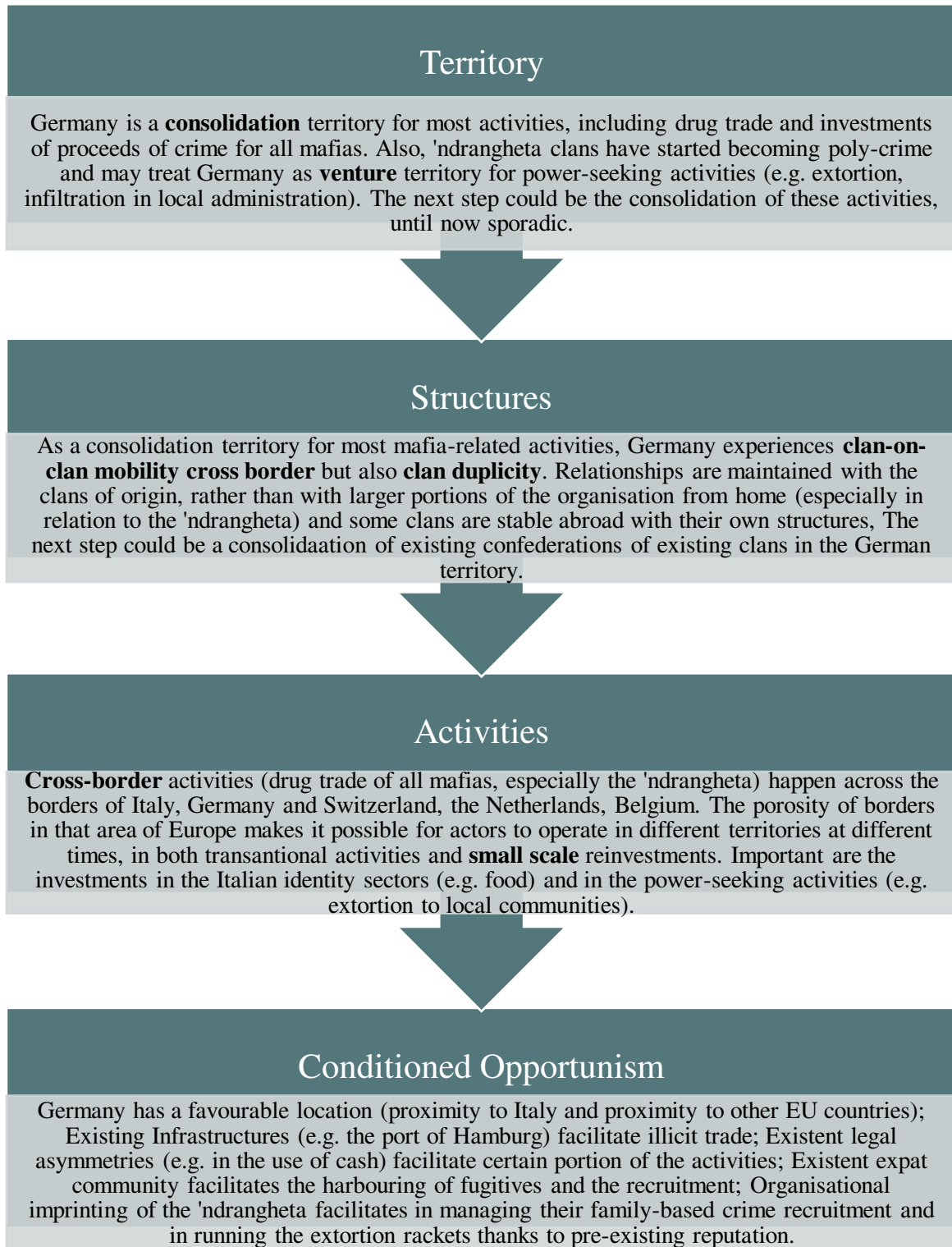
Thinking Further

Overall, the data coming from Italian sources (DIA and DNA reports, expert interviews and interviews with prosecutors and police) mostly match the ones emerged in the German sources. Indeed, the position of Germany at the centre of continental Europe, bordering relevant countries such as Switzerland, France or the Netherlands, has represented an incentive for Italian mafias, especially the 'ndrangheta, to operate in or across Germany. There have been investigative operations that pointed out transnational activities of 'ndrangheta representatives across the borders of Germany and Switzerland (see Operation Helvetia¹), and Germany, the Netherlands, Belgium, and beyond (see Operation Pollino-European 'ndrangheta connection¹).

A few things to point out:

- Italy tends to apply the terminology used in the Italian context when referring to localised structures (see the debate about the use of the word "locale" or "Società" or even "Crimine") also in Germany, while German authorities are more cautious about the applicability of this terminology on their territory.
- Similarly, from an Italian point of view, members of Italian mafia groups emigrating to Germany are almost always referred to as "fugitives", whilst from a German perspective these individuals have often moved to Germany for work reasons and are not flagged as being "on the run".
- German authorities receive a lot of information from Italian prosecutors and investigators. However, in Germany the focus on Italian organised crime is subjected to waves of interest and prioritisation, with other social dangers often taking priority.
- Due to different approaches in policing, intelligence gathering and prosecution, from a German perspective issues remain: a) with institutional knowledge accumulation when it comes to mafia-style groups; b) with investigations on the cooperation across clans from different 'regional mafia groups' that modify the clans' structures of origin in Germany, but not in Italy; and c) with different approaches across German states in 'counting' mafia members and identifying their activities.
- Notwithstanding the acknowledgement that most information sharing on Italian mafias happen between Italy and Germany, the nature of Italian mafia activities often involves other countries, such as Belgium, Netherlands, Switzerland, requiring cooperation to go beyond Italy.
- One could hypothetically advance an idea that the structures of the 'ndrangheta in Germany could support and coordinate operations across other countries as well, making Germany particularly relevant in Europe for the 'ndrangheta.

Germany- Country's Quick Analysis



Germany - Main Legal Framework

<p>Participation in an organised criminal association (founding, participation, recruitment, support)</p>	<p>Penal code</p> <p>Offences against public order</p> <p>Section 129 Forming criminal organisations</p> <p>(1) Whoever forms an organisation or participates as a member in an organisation the objectives or activities of which are directed at the commission of offences which incur a penalty of a maximum term of imprisonment of at least two years incurs a penalty of imprisonment for a term not exceeding five years or a fine. Whoever supports such an organisation or recruits members or supporters for such an organisation incurs a penalty of imprisonment for a term not exceeding three years or a fine.</p> <p>(2) An organisation is a structured association of more than two persons, established to exist for a longer period of time, regardless of whether it has formally defined roles for its members, continuous membership or a developed structure and whose purpose is the pursuit of an overriding common interest.</p> <p>(3) Subsection (1) does not apply</p> <ol style="list-style-type: none"> 1. if the organisation is a political party which the Federal Constitutional Court has not declared to be unconstitutional, 2. if the commission of offences is only one objective or an activity merely of subordinate importance or 3. to the extent that the objectives or activities of the organisation relate to criminal offences under sections 84 to 87. <p>(4) The attempt to form an organisation referred to in subsection (1) sentence 1 and subsection (2) is punishable.</p> <p>(5) In especially serious cases under subsection (1) sentence 1, the penalty is imprisonment for a term of between six months and five years. An especially serious case typically occurs where the</p>
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	<p>offender is one of the ringleaders or persons operating behind the scenes of the organisation. In the cases under subsection (1) sentence 1, the penalty is imprisonment for a term of between six months and 10 years if the objective or activity of the organisation is directed at the commission of offences of the type referred to in section 100b (2) no. 1 (a), (c), (d), (e) and (g) to (m), and nos. 2 to 5 and 7 of the Code of Criminal Procedure, with the exception of offences under section 100b (2) no. 1 (g) of the Code of Criminal Procedure, in accordance with sections 239a and 239b of this statute.</p> <p>(6) In the case of parties to an offence whose guilt is minor or whose contribution is of subordinate importance, the court may, in the cases under subsections (1) and (4), dispense with imposing a penalty.</p> <p>(7) The court may, at its discretion, mitigate the penalty (section 49 (2)) or dispense with imposing a penalty pursuant to these provisions if the offender</p> <ol style="list-style-type: none">1. makes voluntary and earnest efforts to prevent the continued existence of the organisation or the commission of an offence consistent with its objectives or2. voluntarily discloses what he or she knows to an authority in time to prevent acts the planning of which he or she is aware of; <p>if the offender succeeds in preventing the continued existence of the organisation or this is achieved without any effort on the offender's part, no criminal liability is incurred.>></p> <p>Section 129b Foreign criminal and terrorist organisations; confiscation</p> <p>(1) Sections 129 and 129a apply to foreign organisations. If the offence relates to an organisation outside the Member States of the European Union, this only applies if the offence was committed by way of an activity carried out within the territorial scope of this statute or if the offender or the victim is a German national or is in Germany. In cases which fall under sentence 2,</p>
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	<p>the offence is prosecuted only upon authorisation by the Federal Ministry of Justice and Consumer Protection. Authorisation may also be granted for an individual case or in general for the prosecution of future offences relating to a specific organisation. When deciding whether to give authorisation, the Federal Ministry is to take into account whether the organisation's activities are directed against the fundamental values of a state order which respects human dignity or against the peaceful coexistence of nations and which appear reprehensible when weighing all the circumstances of the case.</p> <p>(2) Section 74a applies to cases under section 129 and section 129a, in each case also in conjunction with subsection (1).</p>
<p>Transnationality</p>	<p>Adherence to Palermo convention - with ratification in June 2006</p> <p>Presence of transnationality in the main domestic legislation: article 129b and see below section 261(8) in money laundering offence</p>
<p>Money laundering</p>	<p>Penal code</p> <p>Section 261 Money laundering; concealing unlawfully acquired assets</p> <p>(1) Whoever hides an object derived from one of the unlawful acts referred to in sentence 2, conceals its origin, or obstructs or endangers the investigation of its origin, its being found, its confiscation or its being secured incurs a penalty of imprisonment for a term of between three months and five years. Unlawful acts within the meaning of sentence 1 are:</p> <ol style="list-style-type: none"> 1. serious criminal offences, 2. less serious criminal offences under <ol style="list-style-type: none"> a) section 108e, section 332 (1) and (3) and section 334, in each case also in conjunction with section 335a, b) section 29 (1) sentence 1 no. 1 of the Narcotics Act and section 19 (1) no. 1 of the Precursors Control Act (<i>Grundstoffüberwachungsgesetz</i>),

	<p>3. less serious criminal offences under section 373 and under section 374 (2) of the Fiscal Code, in each case also in conjunction with section 12 (1) of the Common Market Organisations and Direct Payments Implementation Act (<i>Gesetz zur Durchführung der Gemeinsamen Marktorganisation und der Direktzahlungen</i>),</p> <p>4. less serious criminal offences under</p> <p>a) sections 152a and 181a, section 232 (1) to (3) sentence 1 and (4), section 232a (1) and (2), section 232b (1) and (2), section 233 (1) to (3), section 233a (1) and (2), sections 242, 246, 253, 259, 263 to 264, 265c, 266, 267, 269, 271, 284 and 299, section 326 (1), (2) and (4), section 328 (1), (2) and (4) and section 348,</p> <p>b) section 96 of the Residence Act, section 84 of the Asylum Act, section 370 of the Fiscal Code, section 119 (1) to (4) of the Securities Trading Act (<i>Wertpapierhandelsgesetz</i>), sections 143, 143a and 144 of the Trade Mark Act (<i>Markengesetz</i>), section 106 to 108b of the Copyright Act (<i>Urheberrechtsgesetz</i>), section 25 of the Utility Models Act (<i>Gebrauchsmustergesetz</i>), sections 51 and 65 of the Design Act (<i>Designgesetz</i>), section 142 of the Patent Act (<i>Patentgesetz</i>), section 10 of the Semiconductor Protection Act (<i>Halbleiterschutzgesetz</i>) and section 39 of the Plant Variety Protection Act (<i>Sortenschutzgesetz</i>) which were committed on a commercial basis or by a member of a gang whose purpose is the continued commission of such offences and</p> <p>5. less serious criminal offences under sections 89a and 89c and under section 129 and section 129a (3) and (5), in each case also in conjunction with section 129b (1), as well as less serious criminal offences committed by a member of a criminal or terrorist organisation (section 129 and section 129a, in each case also in conjunction with section 129b (1)).</p> <p>Sentence 1 applies, in cases of tax evasion committed on a commercial basis or as a gang as defined in section 370 of the Fiscal Code, to expenditure saved by virtue of the tax evasion and of unlawfully obtained tax refunds and tax rebates, and, in the cases under sentence 2 no. 3, sentence 1 also applies to an object in relation to which fiscal charges have been evaded.</p> <p>(2) Whoever</p> <p>1. procures an object indicated in subsection (1) for themselves or a third party or</p>
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	<p>2. keeps an object indicated in subsection (1) in their custody or uses it for themselves or a third party if they were aware of the origin of the object at the time of obtaining possession of it incurs the same penalty.</p> <p>(3) The attempt is punishable.</p> <p>(4) In especially serious cases, the penalty is imprisonment for a term of between six months and 10 years. An especially serious case typically occurs where the offender acts on a commercial basis or as a member of a gang whose purpose is the continued commission of money laundering.</p> <p>(5) Whoever, in the cases under subsections (1) or (2), is recklessly unaware of the fact that the object is derived from an unlawful act referred to in subsection (1) incurs a penalty of imprisonment for a term not exceeding two years or a fine.</p> <p>(6) The act incurs no penalty pursuant to subsection (2) if a third party previously obtained the object without having thereby committed an offence.</p> <p>(7) Objects relating to the offence may be confiscated. Section 74a applies.</p> <p>(8) Objects derived from an offence committed abroad of the type referred to in subsection (1) are equivalent to the objects indicated in subsections (1), (2) and (5) if the offence is also punishable at the place of its commission.</p> <p>(9) Whoever</p> <ol style="list-style-type: none">1. voluntarily reports the offence to the competent authority or voluntarily occasions such a report to be made, unless the act had already been discovered, in whole or in part, at the time and the offender knew this or, based on a reasonable assessment, should have expected this or2. in the cases under subsections (1) or (2), under the conditions of no. 1 causes the object relating to the offence to be officially secured does not incur a penalty under subsections (1) to (5).
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	<p>Whoever is liable on account of participation in the prior offence also does not incur a penalty under subsections (1) to (5). Exemption from punishment under sentence 2 is ruled out if the offender or participant puts into circulation objects derived from an unlawful act as referred to in subsection (1) sentence 2 and by doing so conceals its unlawful origin.</p> <p>(10) (repealed)</p> <p>Money Laundering Act , section 11</p> <p>(1)Whenever factual circumstances exist that indicate that the assets or property connected with a transaction or business relationship are the product of an offence under section 261 of the Criminal Code or are related to terrorist financing, obliged entities shall promptly report such transaction, irrespective of the amount involved, or such business relationship to the Financial Intelligence Unit of the Federal Criminal Police Office and the competent prosecution authorities orally, by telephone, fax or via electronic data transmission. The reporting obligation pursuant to sentence 1 shall exist as well where factual circumstances indicate that the contracting party failed to comply with its duty of disclosure under section 4 (6) sentence 2.</p> <p>(1a) A requested transaction may not be executed before the public prosecutor's office has informed the obliged entity of its consent, or before the expiry of the second working day following the transmission date of such suspicious transaction report unless the transaction's execution was prohibited by the public prosecutor's office; in this respect Saturday shall not be considered a working day. If it is impossible to postpone the transaction, or if doing so could frustrate efforts to pursue the beneficiaries of a suspected criminal offence, the execution of the transaction shall be permitted; the suspicious transaction report shall be filed subsequently without undue delay.</p>
Drug trafficking	<p>Narcotic Drugs Act (28.02.1994 (BGBl I S. 358) most recently amended on 14.01.2021 (BGBl I S. 70) coming into effect on 21.01.2021)</p> <p>Section 29 Criminal offences</p>

	<p>(1) A term of imprisonment of up to five years or a fine shall be imposed on any person who</p> <ol style="list-style-type: none">1. illicitly cultivates, produces and trades in narcotic drugs or, without engaging in their trade, imports, exports, sells, supplies, otherwise places them on the market or acquires or procures them in any other way,2. produces an exempt preparation (section 2 subsection 1 number 3) without a licence pursuant to section 3 subsection 1 number 2,3. possesses narcotic drugs without being in possession of a written licence for their acquisition,4. (deleted)5. contrary to section 11 subsection 1 sentence 2, carries narcotic drugs in transit,6. contrary to section 13 subsection 1 a) prescribes narcotic drugs b) administers narcotic drugs or puts them at the disposal of another person for immediate use,7. contrary to section 13 subsection 2 a) supplies narcotic drugs in a pharmacy or in a veterinary house dispensary, b) supplies diamorphine as a pharmaceutical entrepreneur,8. contrary to section 14 subsection 5 promotes narcotic drugs,9. gives incorrect or incomplete information to obtain a prescription for a narcotic drug for himself, for another person or for an animal,10. affords or grants another person an opportunity for the unauthorized acquisition or unauthorized supply of narcotic drugs, informs about such an opportunity publicly or out of selfish motives or entices another person into using narcotic drugs in an unauthorized manner,
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	<p>11. affords or grants another person an opportunity for the unauthorized use of narcotic drugs without holding a licence pursuant to section 10a or informs about an opportunity for such use which exists outside a facility pursuant to section 10a out of selfish motives or publicly,</p> <p>12. publicly, at a meeting or by disseminating written material (section 11 subsection 3 of the Criminal Code) encourages the use of narcotic drugs which have not been prescribed as permitted,</p> <p>13. makes available financial means or other assets to another person for the commission of an unlawful act as defined in numbers 1, 5, 6, 7, 10, 11 or 12,</p> <p>14. acts in contravention of an ordinance pursuant to section 11 subsection 2 sentence 2 number 1 or section 13 subsection 3 sentence 2 number 1, 2a or 5 where such ordinance refers to the present penal provision in respect of a specific offence.</p> <p>The supply of sterile disposable syringes to drug-addicted persons and public information about this supply shall not constitute an affording of and public information about an opportunity for use within the meaning of sentence 1 number 11. (2) In the cases mentioned in subsection 1, sentence 1, number 1, 2, 5 or 6 (b), the attempt shall be punishable. (3) In particularly serious cases, the punishment shall be imprisonment of not less than one year. A particularly serious case is usually deemed to exist if the perpetrator 1. acts on a commercial basis in the cases mentioned in subsection 1, sentence 1, number 1, 5, 6, 10, 11 or 13 2 endangers the health of several human beings by one of the actions designated in subsection 1, sentence 1, number 1, 6 or 7. 4).</p> <p>If the perpetrator acts negligently in the cases under subsection 1 sentence 1 number 1, 2, 5, 6(b), number 10 or 11, the punishment shall be imprisonment of up to one year or a fine. (5) The court may refrain from imposing punishment pursuant to subsections 1, 2 and 4 if the offender cultivates, produces, imports, exports, carries in transit, acquires, otherwise procures or possesses narcotic drugs merely in small quantities for his personal use. (6) Insofar as they concern trading, supplying or selling, the provisions of subsection 1, sentence 1, number 1, shall also be</p>
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applied if the act relates to substances or preparations which are not narcotic drugs, but which are presented as such.

Section 29a

Criminal offences(1) A term of imprisonment of not less than one year shall be imposed on any person who 1.as a person over the age of 21 illicitly supplies narcotic drugs to a person under the age of 18 or, in contravention of section 13 subsection 1, administers them to such a person or puts them at their disposal for immediate use, or 2.illicitly trades in narcotic drugs in quantities which are not small, produces or supplies them in quantities which are not small or possesses them without having obtained them on the basis of a licence pursuant to section 3 subsection 1.(2) In less serious cases, the sentence shall be imprisonment ranging from three months to five years.

Section 30a Criminal offences

(1) Anyone who illicitly cultivates, produces, trades in or imports or exports narcotic drugs in quantities which are not small (section 29 subsection 1 sentence 1 number 1), acting as a member of a gang formed in order to commit such offences repeatedly, shall be punished by a term of imprisonment of not less than five years.

(2) Such punishment shall also be imposed on anyone who 1. as a person over the age of 21 causes a person under the age of 18 to illicitly trade in narcotic drugs or, without engaging in their trade, to import, export, sell or supply or otherwise place them on the market or to encourage one of these acts, or 2. illicitly trades in narcotic drugs in quantities which are not small, or without engaging in their trade, imports, exports or procures them and, in so doing, carries a firearm or other articles which by their nature are suited and intended to inflict bodily injury.

(3) In less serious cases, the sentence shall be imprisonment ranging from six months to ten years.

Section 30b Criminal offences

	<p>Section 129 of the Criminal Code shall also apply in cases where an association, whose purpose or activities are aimed at the unauthorised distribution of narcotic drugs within the meaning of section 6 number 5 of the Criminal Code, does not or does not only exist within the domestic territory.</p>
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SWITZERLAND

Mafia Map

Introduction

According to the 2013 Europol threat assessment on Italian organised, several Italian regional mafia clans are active in Switzerland. In reporting fifteen entry bans and two expulsions of mafia-linked individuals, the most recent (2019) Swiss Fedpol Report has stressed that Italian mafia clans, settled in Switzerland more than forty years ago and now attracting younger generations of criminals, are widespread across the Swiss cantons⁸⁰. Growing awareness across federal institutions can be clearly detected in Switzerland⁸¹.

The territorial proximity to Italy and Germany⁸², the location at the centre of the European continent on the north-south axis that links the ports of Rotterdam and Antwerp (ports of entry of drugs from South America) to Italy, Italian as one of the official languages of the federal Republic, and the historical opaque fiscal legislation (which has, however, now become more regulated) are amongst the main factors that make Switzerland attractive to Italian mafia groups. Switzerland has often provided shelters to fugitives, escaping enemies or fleeing justice and finding support and practical help from family members who had already migrated in Switzerland. Last, the tradition of providing fiscal and financial services can create

⁸⁰Fedpol Report, 2019 accessible at:

https://www.fedpol.admin.ch/fedpol/it/home/publiservice/publikationen/berichte.spajabe-2019-i.app/fedpol_jabe-2019-i/html5/index.html

⁸¹ See <https://www.swissinfo.ch/eng/italian-mafia-milks-swiss-covid-funds-for-expansion-/46612700>

⁸² Due to the physical proximity, the case of Switzerland shall be interpreted in close connection to the findings gathered in relation to Germany.

incentives for money laundering and subsequent reinvestments in property business, food industry, and other sectors.

In terms of law enforcement agencies, the main authority responsible for investigating mafias in Switzerland is the Federal Police that deals with terrorism, organised crime and other serious crimes such as money laundering. At both federal and cantonal levels, criminal prosecution offices and the security forces collaborate. In October 2019, the Swiss federal council approved the 2020-2023 Strategy of the Federal Police in the Fight against Crime. This document recognises Italian mafias as a serious threat to Swiss institutions and economy and highlights that mafia clans have been active for several years across different economic sectors. To tackle this phenomenon, the focus is on public-private collaboration across the banking system by tracking money flows, which would allow law enforcement to “follow the money” and spot criminal proceeds. To do so, Fedpol has launched “Countering Organised Crime” as a multi-dimensional approach to strengthen the cooperation between cantonal and federal levels, involving security authorities, and also migration, social, financial, market and competition authorities to create a “joint intelligence base (intelligence-led policing)”, combining prevention, repression and cooperation, in the fight against organised crime and Italian mafia groups⁸³.

Since 2008, Switzerland cooperates with Eurojust under the premises of the Cooperation Agreement. It also shares Joint Investigation Teams with other jurisdictions to conduct joint operations and share intelligence in relation to mafia investigations (see the recent Operation Imponimento⁸⁴, with members of the clan Anello from Filadelfia, Vibo Valentia, allegedly involved in drug and weapons trafficking and in illicit investments in food service and estate sector, with links to the German city of Mainz, as seen in the section on Germany)⁸⁵. As money laundering is one of the main criminal practices, there is a special office for communications on

⁸³ See <https://www.admin.ch/gov/it/pagina-iniziale/documentazione/comunicati-stampa.msg-id-77407.html>

⁸⁴ Operation Imponimento, Procura della Repubblica Presso il Tribunale di Catanzaro, p.p. N. 7198/15 R.G.N.R. DDA Decreto di Fermo di indiziato di delitto.

⁸⁵ See also <https://www.ilvibonese.it/cronaca/78461-imponimento-clan-anello-filadelfia-svizzera-germania/>

money laundering issues, which communicates to the investigative forces by providing suspicious warnings sent by financial mediators and intermediaries.

Since the 1950s, Switzerland has seen a conspicuous migration flow, mostly for economic reasons, from Italy, especially from the Southern regions of Campania, Puglia, Calabria, and Sicily. This could have eased the possibility for mafia members to exploit migration flows and, as already said, it could have later contributed to making Switzerland an ideal shelter for fugitives. Moreover, until 2015, 'banking secrecy'⁸⁶ attracted organised crime groups, also of mafia-type, who considered the Swiss financial market ideal for money laundering purposes, through investments in sectors such as real estate. To tackle illegal practices of laundering dirty money coming from crimes committed outside the Swiss jurisdiction, in 2015 the Italian and Swiss Ministers of Finances signed an agreement on informative exchange⁸⁷ regarding fiscal transparency ending the banking secrecy.

Drug trafficking into Switzerland is predominant and has been since the 1980s. Despite the new stricter regulation, according to Italian sources, the main and most relevant activity committed by Italian regional mafia groups in Switzerland remains money laundering. As said, mafia members use the Swiss financial system to launder money and to reinvest it in criminal activities, especially in the property and real estate business, and restaurant trade (food service and catering). To add, all Italian mafia groups engage in various criminal activities and are very opportunistic: drug trafficking (mainly cocaine, but also marijuana and occasionally synthetic drugs⁸⁸), which, according to Swiss sources, is the main source of income; arms trafficking (mainly to arm their own and allied clans in Italy); different kinds of frauds; hiding fugitives or "latitanti"; last, if the opportunity arises, they are also involved in robberies, loansharking, and circulation of counterfeit money. Clans are described as "poly-criminal". Differently from other states in Europe, in Switzerland they have been occasionally engaging also in human trafficking and in activities related to prostitution.

⁸⁶ Banking secrecy refers to the conditional agreement between a bank and its clients that allows the clients' activities to remain secure, confidential, and private.

⁸⁷ Protocollo d'Intesa in Materia Fiscale del 23 febbraio 2015, available at <http://documenti.camera.it/leg17/dossier/pdf/ES0408.pdf>

⁸⁸ The trafficking of heroin is of lesser importance for these clans (there is in fact tight control by ethnic Albanian groups).

The presence of Italian regional mafias in Switzerland is varied but with a clear, higher presence of 'ndrangheta clans. If interests of camorra, cosa nostra, and Apulian mafia clans are only found in relation to money laundering practices, records of physical settlements of Italian mafia clans in Switzerland are related mostly to 'ndrangheta. Geographically, clans are located across the whole country with a relevant presence in the Cantons of Ticino, Valais, Graubünden, and Thurgau, and in urban areas. Interestingly, most clans are located at the borders with Germany and Italy. Data show that this proximity signals and facilitates the activities with the clans based in Germany and in Northern Italy.

In the context of a pacific, although often competitive, coexistence, mafia groups active in Switzerland often cooperate (especially in drug trafficking) with other criminal groups such as Albanian and Turkish organised crime groups, as well as Outlaw Motorcycle Gangs, but also with Nigerian and Dominican Groups.

Criminal actors

'Ndrangheta

Data based on Italian sources – and eventually presented by media⁸⁹ - describe a structured presence of 20 'ndrangheta clans based inside the Swiss territory. Some of them would be already settled in Switzerland at the beginning of the 1970s.

According to the data, there are three types of 'ndrangheta presences in Switzerland: 1) presence of fugitives, especially in the cantons closer to Italy where Italian language is spoken; 2) presence of money laundering activities, which translates into the use of fiscal, professional services in Switzerland; 3) presence of structured

⁸⁹ See <https://www.swissinfo.ch/eng/mafia-numbers-in-switzerland-higher-than-previously-thought/45928000>

units of 'ndrangheta (similar to the "locali") the most famous of which would be the so-called "Società di Frauenfeld" (as per Operation Helvetia⁹⁰).

In relation to 1), 'ndrangheta clans' fugitives (often middle-level ndrangentisti) have traditionally fled from Italy (as a result of internal feuds or criminal justice interventions) and chosen Switzerland as shielding destination. This could also be connected to already present mafia settlements in Switzerland (see point 3). For example, in December 2017, a fugitive (Salvatore Josè Signorello), from the clan Chindamo-Ferrentino, active in the area of Laureana di Borrello (Reggio Calabria), was arrested in Zurich in Operation Lex⁹¹. Moreover, in 2016, affiliates of the 'ndrina Nucera (active in Piemonte and laundering the criminal proceeds in Switzerland), belonging to the locale of Condofuri (Reggio Calabria), were arrested in Canton Valais.

Regarding 2), 'ndrangheta members (as well other mafia groups) have often invested their criminal proceedings in Switzerland (see Operation Stige⁹² for a possible case of food service infiltration). For example, in 2018, following Operation Money Monster⁹³, Italian police forces in the region of Liguria discovered bank accounts and other high valuable objects (e.g. a painting by the famous painter Caravaggio) hidden in Lugano (Canton Ticino) by an associate of the Farao-Marincola clan from Cirò Marina (Crotone). The same clan has been already mentioned in this report with regards to Germany. Moreover, in Operation Galassia⁹⁴, members of the clans Tegano and De Stefano (from Reggio Calabria city), Piromalli (from Gioia Tauro, Reggio Calabria), Pesce and Bellocco (from Rosarno, Reggio Calabria) were investing money in illegal online gambling through 23 companies based in Switzerland, as well as in Malta, Romania, and Netherlands Antilles.

⁹⁰ Operation Helvetia, Tribunale di Reggio Calabria, RGNR DDA-2629/15 RGGIP DDA, OCCC n. 4636/2015

⁹¹ Operation Lex, Tribunale di Reggio Calabria, RGNR DDA 3318/14

⁹² Operation Stige, Tribunale di Catanzaro, RGNR DDA 3382/15 and RG GIP DDA 2600/15

⁹³ Operation Money Monster, Tribunale di La Spezia, p.p. n. 11/2017

⁹⁴ Operation Galassia, Tribunale di Reggio Calabria, RGNR DDA 5585/2015

In relation to 3), Italian sources record territorial settlements of 'ndrangheta clans in Cantons Ticino and Thurgau that are close, respectively, to the Italian and the German borders. In 2002, Operation Quatur had already unveiled the presence of clan Ferrazzo from Mesoraca (Crotone) in Lamone (Lugano)⁹⁵. This group was also involved in drug trafficking from Calabria to Ticino, and arms trafficking from Switzerland to Southern Italy (Operation Isola Felice⁹⁶). More recently, Operation Helvetia⁹⁷ unveiled one 'ndrangheta territorial unit – named “locale” to match Italian terminology – in Frauenfeld (Canton of Thurgau). This locale was established by members of the clan Nesci from Fabrizia (Vibo Valentia) and kept strong bonds (in terms of both illegal activities and also identity and traditional rituals) with the headquarters that is their family clan in Calabria. The clan seems connected to higher structures of the 'ndrangheta, i.e. the Crimine of Polsi (San Luca, Reggio Calabria), but it is unclear how much higher structures in Calabria – as opposed to the members of the clan in Fabrizia – actually have much to say on the Swiss arrangements. According to the authorities, the clan in Calabria provided financial assistance and shelter to fugitives, and practiced money laundering in Switzerland. Similarly to what happened in Germany with the “Society of Singen”, in November 2019, the Italian Supreme Court of Cassation rebutted the sentence from the Appeal Court in Reggio Calabria regarding the conviction of clan representatives for membership in mafia-type association (article 416-bis of the criminal code) by claiming that the Appeal Court did not prove that the mafia method, such as intimidation, was used in Frauenfeld⁹⁸.

Regarding the structures of 'ndrangheta groups, there is evidence of the capacity of 'ndrangheta clans to operate in Switzerland through structures and *modi operandi*

⁹⁵ See <https://www.tio.ch/ticino/focus/1251533/la-svizzera-e-la-mafia-un-rapporto-che-dura-da-50-anni>

⁹⁶ Operation Isola Felice, Tribunale di L'Aquila, OCCC n. 1657/14 RGNR – 13/16 OCC GIP

⁹⁷ Operation Helvetia further developed into Operation Rheinbrucke (Corte Suprema di Cassazione, RGN 29434/2018. n. sez. 1200/2019) that unveiled the so-called “Società di Singen”; this further proves the connections between the 'ndrangheta clans based in Germany and those based in Switzerland.

⁹⁸ Operation Helvetia, Corte Suprema di Cassazione, RGNR 29434/18 n. sez. 1200/2019

that match those used in the Calabrian headquarters, with whom there still are strong links.

Fedpol distinguishes between 1) formal structures that bring together several groups (or representatives of a group) and 2) individual groups or individuals representing a group that act relatively autonomously. One “locale” (which actually seems to indicate a ‘ndrangheta territorial unit) is confirmed in Frauenfeld (Canton of Thurgau) with connections to Fabrizia (Reggio Calabria) and possibly to the “Società di Rosarno”. Moreover, there are strong indications regarding the presence of units or “locali” in Müllheim (Canton of Thurgau) connected to the Calabrian village of Dinami (Vibo Valentia) and Winterthur (Canton of Zurich) connected to the villages of Galatro, Palizzi, and Brancaleone (Reggio Calabria), for whom the locale of Frauenfeld seems to have a coordinating function. Furthermore, there are indications of: one further unit/locale in Basel (connected to the village of Melicucco (Reggio Calabria) and to other Calabrian and, possibly, Sicilian groups; one unit/locale in Brig/Visp (Canton of Valais) and Lucerne, both connected to the villages of Condofuri, Roghudi and, possibly, to the “Società di Melito di Porto Salvo”; one unit in Zurich connected to the town of Nardodipace (Vibo Valentia); one unit in Davos connected to Giffone (Reggio Calabria); and, possibly, one unit in Lausanne connected to Melicucco (Reggio Calabria).

In addition to this picture, Fedpol identifies additional offshoots of Calabrian “ndrine”: the ‘ndrina Gallace from Guardavalle (Catanzaro) in the Biel-Grenchen area and in the city of Bern; the ‘ndrina from San Calogero (Vibo Valentia) probably linked to the clan Mancuso in St. Gallen and surroundings; the ‘ndrina Gallelli (Macineju) from Badolato (Catanzaro) in Wetzikon (Canton of Zurich); the ‘ndrina Ferrazzo in the Canton of Ticino and Aargau; the ‘ndrine Iozzo-Chiefari, in the Canton of Grisons; the ‘ndrine Forastefano and Abbruzzese in the Cantons of Solothurn and Basel-Landschaft. In many of these cases, it is not clear yet if these ‘ndrine act autonomously or if they belong to an existing locale.

Fedpol assumes, and Italian prosecutors confirm, that, due to border porosity, some structures close to the border (e.g. Basel, Brig – close to the Italian town of Domodossola – and Frauenfeld) have a liaison function (some kind of “camera di passaggio”) connecting and communicating with structures on the Italian side of the border. Often meetings that should happen in Italy end up happening in Switzerland. Moreover, the position of such structures coincides also with important traffic nodes (e.g. for drugs or illicit investments). This border permeability has also eased the movements of cross-border criminals commuting between Italy (where they might live) and Switzerland (where they might work).

In Switzerland, 'ndrangheta groups act as transnational actors, with branches connected to Calabria, but also to structures in a) Central and Northern Italy (e.g. Fedpol records the case of a person convicted for belonging to a criminal organisation who, although living in the Canton of Bern, regularly attended meetings of the locale of Seregno in Lombardia) b) Germany (e.g. affiliate Giuseppe Larosa lived in the Canton of Grisons, shuttled back and forth between Giffone, the locali in the province of Como, and those of Eastern Switzerland up to Germany) and c) other European countries. These connections are based on strong kinship ties and business opportunities.

Even if 'ndrangheta infiltrations in local administrations is expected, like in Germany, there is still no record of criminal governance of territories. However, within the 'ndrangheta, some structures (such as the locale of Frauenfeld) claim absolute power on their territory and strive to control illegal activities. Clans tend to exercise power over Calabrian migrant communities, which might recognise the 'ndrangheta's language of intimidation and are more exposed to serious consequences if they do not behave as expected. Cultural and religious Italo-Calabrian associations are often the main target.

When it comes to the 'ndrangheta, clans from every province invest in Switzerland, especially those clans who are known to be mostly active in drug trade elsewhere. For example, in Operation Purgatorio⁹⁹, members of the clan Mancuso from Limbadi and Nicotera (in the province of Vibo Valentia) were involved in antiques trafficking between Calabria and Switzerland. Furthermore, in Operation Malapianta¹⁰⁰ investigations across Spain and Switzerland discovered drug trafficking and money laundering practices run by affiliates of the 'ndrina Grande Aracri from Cutro (Crotone). This clan, which today is active between Calabria, Emilia Romagna and abroad, is particularly well versed in developing a portfolio of semi-legal activities too.

Italian sources stress that what characterises the Swiss case is that, through professional services (accountants, lawyers, notaries, shell corporations and front men) provided by the Swiss fiscal and financial sector, 'ndrangheta clans conduct

⁹⁹ Operation Purgatorio, DDA di Catanzaro 2015, in Report DIA, 2015b

¹⁰⁰ Operation Malapianta, Tribunale di Catanzaro, OCCC n. 5065/2017 RGNR-896/2017 RGGIP-97/2019 RMC

their financial operations in Switzerland in order to avoid confiscation from Italian authorities (Operations Hydra¹⁰¹). As stressed by some participants, most of the times the ultimate goal of these operations is to reach Extra-Schengen tax havens. For example, in Operation Olet¹⁰², the Italian Fiscal Police confiscated 10 million euros from an organised crime group connected to 'ndrangheta clans between Italy and Switzerland. In this case, to reinvest the money, the clans used Swiss trust companies to run offshore societies based in tax havens such as Panama, Virgin British Islands and Marshall Islands.

All the 'ndrangheta groups active in Switzerland are all well-connected and usually cooperates on common legal and illegal activities. There have been cases of collaboration amongst clans of 'ndrangheta, camorra and cosa nostra (e.g. the case of a female entrepreneur active in the construction sector and resident in Switzerland who was found guilty of laundering money in the interests of the clans Facchineri from Cittanova and Feliciano from Oppido Mamertina, Reggio Calabria). Collaboration, especially in delocalised, opportunity-based, marketplaces, is not unusual.

Camorra

Camorra clans have been less active – or less visible - than 'ndrangheta groups but they have also been involved in illegal financial operations and money laundering activities (see Operation Risorgimento¹⁰³ and Operation At Last¹⁰⁴). Operation Risorgimento unveiled bank accounts used for laundering money coming from crimes committed by clan Guida (from Naples). Similarly, in 2018, the court of Naples has confiscated assets of an entrepreneur close to clan Lo Russo (Naples) for suspicious financial operations conducted in Switzerland, amongst the other crimes.

¹⁰¹ Operation Hydra, Tribunale di Reggio Calabria, OCC n. 47335/12 RGNR DDA and 7106/13 RGIP

¹⁰² Operation Olet, Tribunale di Bergamo, RGNR GIP 4150/14 and 3688/14 GIP

¹⁰³ Operation Risorgimento, Tribunale di Milano, OCCC n. 50545/2014 RGNR and n. 10773/2014 RGGIP,

¹⁰⁴ Operation At Last, Tribunale di Venezia, OCCC n.7063/09 RGNR-n. 5732/10 RGGIP

Once again, it appears that the ability to exploit the same opportunities depends on the capacity and agency of each clan.

Camorra groups show particular interest in the Canton of Ticino, where clans have been involved in various money laundering activities and investing heavily in the catering industry. Moreover, the area of Lucerne has also recorded some activities of persons associated with camorra mostly for matters of smuggling of counterfeit goods and money.

Cosa nostra

Historically involved in money laundering practices across Switzerland (see the famous Operation Pizza Connection), cosa nostra clans have used Switzerland to conduct 'blurry' fiscal operations through Swiss banks for reinvestments of criminal proceedings, often through dummy corporations based in multiple countries such as Switzerland (Operation Revolutionbet - Gaming online¹⁰⁵).

Activities of individuals or groups of individuals affiliated to cosa nostra have been identified in several cantons, especially in Ticino and Geneva. Moreover, they have been particularly visible in the area of Basel and they seem to have connections with the locale of 'ndrangheta suspected to exist there; it is not clear whether the Sicilian and Calabrian groups coexist or are even involved in the same structure (locale).

There are scarce traces of activities that can be tracked to the Sicilian stidda.

¹⁰⁵ Operation Revolutionbet, Tribunale di Catania, RGNR n. 5227/2016 and RGNR n. 11982/2017

Apulian groups

For Apulian mafia clans, Switzerland is attractive for hiding fugitives and in relation to financial operations (e.g. Operation Twelve¹⁰⁶, clan Sinesi Francavilla from Foggia). These clans have mainly been reported in the area of Fribourg (Canton Neuchâtel) and Biel, but also in Canton Aargau. They seem to have close links to the 'ndrangheta clans operating in the same area especially with subjects tied to the 'ndrina Gallace from Guardavalle (Catanzaro).

Sinti Clans

In 2018, members of the Sinti clans Di Silvio, settled in Rome, have been caught using shell companies located in Switzerland for the perpetration of fiscal frauds (Operation Arpalo¹⁰⁷).

¹⁰⁶ Operation Twelve, Tribunale di Pavia, Ordinanza di convalida di fermo e di applicazione di misure cautelari n. 1335/18 RGNR and n. 952/18 RG GIP

¹⁰⁷ Operation Arpalo, Tribunale di Latina, RGNR 1308/15 and RG GIP 7566/16 P

Thinking Further

There are some things to note in the different narratives related to Italian mafias in Switzerland:

- On the one hand, Italian sources stress the relevance of the Swiss financial system to ease the commission of money laundering that is believed to be the central activity of mafia groups (especially of 'ndrangheta). On the other hand, Swiss sources highlight that mafia groups are poly-criminal and predominantly active in the drug trade since the 1980s. Moreover, even if money laundering through the Swiss financial services and intermediaries is considered certainly important for the mafia, money laundering through restaurants and investments in real estates (the money often arrives to Switzerland when it already has been laundered) could be considered as significant.
- Regarding the terminology, Fedpol prefer to talk about settlements or cells of 'ndrangheta and not necessarily about "locali", also to avoid a figure of 'ndranghetisti which is much higher in Italy than in Swiss intelligence. In Switzerland, as it was in Germany, the 'ndrangheta does not appear as monolithic and faithful to its rules as expected by Italian authorities. Even the 'ndranghetisti of Frauenfeld were sometimes unsure of how certain things should be done and how to constitute a locale or give the ranking (as proved by interceptions in Crimine and Helvetia). Whatever the term used, with locale or local settlement Fedpol refers to a group of people, not necessarily related, who have proven contacts with 'ndrangheta members (known or convicted) and who are involved together in suspicious activities.
- In its fight against criminal organisations, Switzerland has decided to attack the mafia and its activities on all fronts and especially has developed a series of administrative tools, such as expulsions and bans. Therefore, it is not only a question of criminal prosecution but also of actions that can be carried out by the authorities responsible for the control of competition, hygiene in the catering industry, import and export of goods and materials. An exhaustive list is therefore difficult to make.
- Notwithstanding an historical reputation with opaque fiscal regulation, most of the difficulties in obtaining cooperation on the financial investigations front seem to have been overcome with new regulations of the past years.
- Mostly, the differences between Italy and Switzerland remain at the level of preventative measures (in Italy) that are difficult to apply in Switzerland, and of policing work that is differently done across the two countries, especially because of the federal nature of Switzerland. For example, crimes related to the trafficking of drugs, weapons or human beings, are the responsibility of the cantons. As soon as it is possible to prove the existence of a criminal organisation in the sense of art. 260ter of the penal code, the competence becomes federal.

Switzerland – Quick Country’s Analysis



Switzerland - Main Legal Framework

<p>Participation in a criminal organization</p> <p>PLEASE NOTE: The Swiss Parliament has accepted a new and extended definition of criminal organization. The new text will, according to the current plan, enter into force on 1 July 2021.</p>	<p>Penal code</p> <p>Felonies and Misdemeanours against Public Order</p> <p>Article 260 ter Criminal Organisation</p> <p>1. Any person who participates in an organisation, the structure and personal composition of which is kept secret, and which pursues the objective of committing crimes of violence or securing a financial gain by criminal means, any person who supports such an organisation in its criminal activities is liable to a custodial sentence not exceeding five years or to a monetary penalty.</p> <p>2. The court has the discretion to mitigate the penalty imposed (Art. 48a) if the offender makes an effort to foil the criminal activities of the organisation.</p> <p>3. The foregoing penalties also apply to any person who commits the offence outside Switzerland provided the organisation carries out or intends to carry out its criminal activities wholly or partly in Switzerland. Article 3 paragraph 2 applies.</p> <p>Article 3</p> <p>1 Any person who commits a felony or misdemeanour in Switzerland is subject to this Code.</p> <p>2 If the person concerned has served a sentence in full or in part for the offence in another country, the Swiss court must take the sentence served into account in determining the sentence to be imposed.</p> <p>3 If the person concerned has been prosecuted in a foreign country at the request of the Swiss authorities, then unless the offence involves a gross violation of the principles of the Federal Constitution or the Convention from 4 November 19505 for the</p>
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	<p>protection of Human Rights and Fundamental Freedoms (ECHR), he is not prosecuted in Switzerland for the same offence if: a. the foreign court has acquitted him and the judgment has taken full legal effect; b. the penalty to which he had been sentenced in the foreign country has been served, remitted or become time-barred. 4 If the person prosecuted abroad at the request of the Swiss authorities has not served the sentence or has only served it in part, the whole sentence or the remainder shall be served in Switzerland. The court decides whether a measure that has not been executed abroad or has only been served in part must be executed or continued in Switzerland.</p>
<p>Transnationality</p>	<p>Adherence to Palermo convention - with ratification in October 2006. The UNTOC is a directly applicable legal base in Switzerland as are, for Mutual Legal Assistance and extradition, the respective conventions of the Council of Europe, including the supplementary agreement between Italy and Switzerland.</p> <p>Presence of transnationality in the main domestic legislation:</p> <p>Par 3 of Article 260 ter penal code above The foregoing penalties also apply to any person who commits the offence outside Switzerland provided the organisation carries out or intends to carry out its criminal activities wholly or partly in Switzerland.</p> <p>Law 26/11/2006 - RU 2006 5861; FF 2005 5961 - that applied the Palermo Convention in Switzerland</p> <p>Article 3</p> <p>(1) This Convention applies, unless otherwise provided, to the prevention, investigation and prosecution of: a) offenses established pursuant to articles 5, 6, 8 and 23 of this Convention; and b) serious offenses, as per article 2 of this Convention; where the crimes are of a transnational nature and involve an organised criminal group.</p> <p>(2) For the purposes of paragraph 1 of this article, an offense is transnational in nature if: a) it is committed in more than one</p>

	<p>State; b) it is committed in one state, but a substantial part of its preparation, planning, direction or control takes place in another state; c) it is committed in one state, but an organised criminal group is involved in it, engaged in criminal activities in more than one state; or d) it is committed in one State but has substantial effects in another State.</p> <p>Article 18 – Mutual legal assistance</p> <p>(1) States Parties shall grant each other the widest mutual legal assistance in the field of investigation, prosecution and judicial proceedings for the offenses referred to in this Convention as provided in article 3 and extend similarly to each other assistance in the event that the requesting State Party has reasonable grounds for suspecting that the crime referred to in Article 3, paragraph 1 a) or b), is of a trans-national nature, including cases in which victims, witnesses, proceeds , the instruments or evidence relating to such offenses is located in the requested State Party and that an organised criminal group is involved in the offense.</p> <p>(2) Mutual legal assistance is granted to the fullest extent possible under the relevant laws, treaties, agreements and arrangements of the requested State Party in connection with the investigation, prosecution and prosecution of the offenses that can be found liable a legal person in accordance with article 10 of this Convention in the requesting State Party. (...)</p>
<p>Money laundering</p>	<p>Penal code</p> <p>Felonies and Misdemeanours against the Administration of Justice</p> <p>Article 305-bis</p> <p>1. Any person who carries out an act that is aimed at frustrating the identification of the origin, the tracing or the forfeiture of assets which he knows or must assume originate from a felony or aggravated tax misdemeanour is liable to a custodial sentence not exceeding three years or to a monetary penalty.</p>

	<p>2. In serious cases, the penalty is a custodial sentence not exceeding five years or a monetary penalty. A custodial sentence is combined with a monetary penalty not exceeding 500 daily penalty units. A serious case is constituted, in particular where the offender:</p> <ul style="list-style-type: none"> a. acts as a member of a criminal organisation; b. acts as a member of a group that has been formed for the purpose of the continued conduct of money laundering activities; or c. achieves a large turnover or substantial profit through commercial money laundering. <p>3. The offender is also liable to the foregoing penalties where the main offence was committed abroad, provided such an offence is also liable to prosecution at the place of commission.</p>
<p>Drug trafficking</p>	<p>Federal Act on Narcotics and Psychotropic Substances</p> <p>Article 19</p> <p>1 Any person who without authorisation:</p> <ul style="list-style-type: none"> a. cultivates, produces or otherwise produces narcotic substances; b. stores, sends, transports, imports, exports or carries in transit narcotic substances, c. sells or prescribes narcotic substances, or otherwise procures for such substances for another or places such substances on the market; d. possesses, keeps, buys, acquires or otherwise obtains narcotic substances; e. finances the unlawful trade in narcotic substances or arranges its financing; f. publicly encourages the consumption of narcotic substances or publicly announces the opportunity to acquire or consume narcotic substances; g. makes preparations for any of the acts mentioned in letters a–f, <p>is liable to a custodial sentence not exceeding three years or to a monetary penalty.</p>

2 The offender is liable to a custodial sentence of not less than one year, which may be combined with a monetary penalty, if he or she:

- a. knows or must assume that the offence relates to a quantity of narcotic substances that could directly or indirectly endanger the health of a large number of people;
- b. acts as a member of a group that has been formed in order to trade unlawfully in narcotic substances;
- c. achieves a high turnover or substantial profit through commercial trading;
- d. offers, provides or otherwise makes available narcotic substances in educational institutions attended primarily by young persons or in the immediate vicinity of such institutions.

3 The court may at its discretion mitigate the penalty in the following cases:

- a. an offence under paragraph 1 letter g;
- b. an offence under paragraph 2, where the offender is dependent on narcotic substances and the offence was intended to finance his or her own consumption of narcotic substances.

4 The offender also commits an offence under the provisions of paragraphs 1 and 2 if he or she committed the offence abroad but is apprehended in Switzerland and is not extradited, provided the act is also an offence at the place of commission. If the law at the place of commission is more lenient, it shall be applied. Article 6 of the Criminal Code⁸⁰ applies.

Article 19 bis

Any person who offers, supplies or in any other way makes accessible narcotics to a person under 18 without medical grounds for doing so is liable to a custodial sentence not exceeding three years or a monetary penalty.

Article 19a

1. Any person who wilfully consumes without authorisation narcotics or any person who commits an offence in terms of Article 19 for his or her own consumption is liable to a fine⁸³.
2. In minor cases, no proceedings may be taken or the penalty may be waived. An official caution may be issued.
3. If the offender is or makes himself or herself subject to medically supervised care due to consumption of narcotics, prosecution may be waived. Criminal proceedings shall be conducted if the offender withdraws from care or treatment.
4. If the offender is dependent on narcotics, the court may order him or her to be admitted to a hospital. Article 44 of the Criminal Code⁸⁴ applies *mutatis mutandis*.

Article 19b

1 Any person who prepares a negligible quantity of a narcotic for his or her own consumption or supplies a person over the age of 18 free of charge for the purpose of consuming the narcotic together at the same time does not commit an offence.

2 10 grams of a narcotic containing an effective concentration of cannabinoids constitutes a negligible quantity.

Article 19c

Any person who wilfully incites or attempts to incite another to consume narcotics without authorisation is liable to a fine.

Article 20

Any person who:

- a. makes an application containing false information in order to obtain an import, transit or export licence for him or herself or for another;
- b. without a licence diverts narcotics or substances in accordance with Article 3 paragraph 1 for which he or she holds a Swiss export licence to a different destination in Switzerland or abroad;

c. without a licence cultivates, produces, imports or exports, stores or places on the market substances and preparations in accordance with Article 7;
d. as a medical professional⁸⁹ uses or dispenses narcotics other than in accordance with Articles 11 or 13;
e. as a physician or veterinary surgeon prescribes narcotics other than in accordance with Article 11;
is liable to a custodial sentence not exceeding three years or to monetary penalty.

2 The offender is liable to a custodial sentence of no less than one year if he or she achieves a large turnover or substantial profit through commercial trading. The custodial sentence may be combined with a monetary penalty.

Article 21

Any person who wilfully:

a. fails to file reports under Articles 11 paragraph 1bis, 16 and 17 paragraph 1, issue the required delivery notes or make narcotics controls or provides false information therein or omits to enter information that he or she should have included;
b. uses delivery notes or narcotics controls that contain false or incomplete information;
is liable to a custodial sentence not exceeding three years or monetary penalty.

2 The offender is liable to a fine if he or she acts through negligence.

Article 22

Any person who wilfully or negligently:

a. fails to fulfil his or her duties of care as a person authorised to deal with narcotics;
b. breaches the provisions on narcotics advertising and information;
c. breaches storage and retention obligations;

d. breaches an implementation regulation issued by the Federal Council or the relevant department, the contravention of which is declared a criminal offence, or an order issued to him containing a reference to the penalty under this article; is liable to a fine

Article 23

1 If a public official responsible for implementing this Act wilfully commits an offence under Articles 19–22, the penalty shall be increased appropriately.

2 A public official responsible for combating unauthorised dealings in narcotics who accepts an offer of narcotics in order to assist with investigations does not commit an offence, even if he or she does not disclose his or her identity and function.

Article 24

1 Unlawful assets located in Switzerland shall be forfeited to the State even if the offence is committed abroad. Where there is no place of jurisdiction under Article 32 of the Criminal Procedure Code of 5 October 2007⁹⁵ (CPC), the canton in which the assets are located is responsible for arranging their forfeiture.

2 The relevant authorities shall confiscate the narcotics obtained in implementing this Act and arrange for their disposal or destruction.

NETHERLANDS

Mafia Map

Introduction

Connecting South America to Europe through its ports and airports, the Netherlands is one of the central international hubs for drug trafficking (especially cocaine). This appears to be the main reason that explains the interests of Italian mafia clans in the country. The geographical position of the Netherlands bordering Belgium and Germany, the essential role played by the ports of Rotterdam and Amsterdam, the Schiphol airport in Amsterdam and, in relation to this, the well-established Dutch logistics network, the Dutch financial system, and, lastly, the general weak social sensitivity towards “mafia” (probably due to prejudices on its meaning), have attracted Italian mafia clans and allowed them to expand their activities across the country. The first study into the presence of Italian criminal groups was conducted by the Fijnaut Research Group in the context of a Parliamentary Enquiry Committee into criminal investigation methods in mid-1990s. Moreover, in 2012 the Dutch Ministry of Justice commissioned a report aimed at shedding light on the Italian mafia clans’ presence across the Netherlands. This followed a study done in a master program by a student investigating the presence of mafias in the country which attracted wider public attention, matching growing police concerns. To conduct the report, a joint team of Dutch national police, tax authorities, Fiscal Intelligence and Investigation Service, and Public Prosecution Service gathered a database of 276 mafia-related crime cases investigated from 1989 to 2014 and based on such data published a final report in 2017. To date, the so-called CercaTrova Project is the most recent institutional effort to map the presence of Italian mafia clans (with special attention for relevant sectors for the Dutch economy such as flower market, food, wholesale, and entertainment), their interests and their activities on Dutch territory. This report confirmed the presence of Italian mafia groups in the Netherlands – particularly ‘ndrangheta and camorra clans – and highlighted that most activities detected are indeed related to the drug trade. Moreover, analysis of

tax documents¹⁰⁸ identified activities of suspected fugitives hiding in different places across the country often running business under the directions of the respective clans back in Italy (e.g. in 2016, a member of the camorra clan Mazzarella from Naples was arrested Utrecht and, in 2018, a member of the camorra clan De Simone from Torre Annunziata was captured in Amsterdam).

Since the publication of the CercaTrova report in 2014-2015, in the Netherlands serious and organised crime is referred to as "*onder-mijnende criminaliteit*", which translates into the English expression of "undermining", "subversive" or "disruptive" crime. The central Dutch law enforcement forces active against organised crime and, hence, also against Italian mafia groups, are the Dutch National Police and the Fiscal Information and Investigation Service (FIOD or "*Fiscale inlichtingen- en opsporingsdienst*").

Between 2018 and 2020, the Italian Desk at Eurojust has received 9 requests of cooperation involving the Dutch jurisdiction for mafia cases. According to the DIA, there are settlements of 'ndrangheta clans in the Dutch territory, yet no clear evidence of where they are settled could be found in the data. The DIA confirms that the main interests of Italian mafia clans lie upon drug trafficking, illicit investments for money laundering purposes (e.g. in the food service, catering, and art gallery sectors) and the use of the Dutch territory for hiding fugitives (usually not high-level mafia representatives).

As posed by Europol (2013), together with Spain and Belgium, the Netherlands is one of the central ports of entry of cocaine in Europe. The CercaTrova report highlights that almost 60% of mafia-related activities in the Netherlands related to different types of drugs, but mostly cocaine. Clearly, drug trafficking is essential to provide profit to sustain mafia fugitives hiding in the Dutch territory and beyond: since the 1970s, the Netherlands have served as shelter for camorra and 'ndrangheta fugitives fleeing Italy, such as members of the camorra clans La Torre (from Caserta), Polverino (from Marano di Napoli), Gionta (from Torre Annunziata), Gallo (from Torre Annunziata), Sarno and Di Lauro and Mazzarella (from Naples), of the Nirta-Strangio 'ndrangheta group (from San Luca, Reggio Calabria) or the

¹⁰⁸ The Dutch investigation offices of the Federal Police use the so-called "Criminal and Unaccountable Assets Infobox" to enable the collaboration between institutions such as Intelligence, Public Prosecution Office, Fiscal Intelligence and Investigation Office, Financial Intelligence Units, and chambers of commerce.

'ndrina Commisso from Siderno (Reggio Calabria), clan Mammoliti (from San Luca), clan Belfiore (from Gioiosa Ionica, Reggio Calabria) or lastly 'ndrine Pelle and Romeo (from San Luca).

Mostly 'ndrangheta and camorra clans seem active in the Netherlands. There are minor indications of cosa nostra clans and Apulian mafia clans. In addition, there are various cases of 'free riders', Italians established in the country for decades, not connected to specific mafia clans but often working for various clans depending on opportunities. There are no conflicts among different regional mafia groups, who tend to cooperate more when operating abroad. So far, no clear clan territorial formation based in the Netherlands has been detected.

Italian mafia groups, especially 'ndrangheta clans, are involved in import-export activities, which in some cases provide a front to gain access to logistics facilities and drug-trafficking operations. In Operation Acero-Krupy¹⁰⁹, for example, which was a cross-border effort among Italian, Dutch and Canadian (Ontario-based) authorities, the interests of the 'ndrangheta clan Crupi (from Siderno) involved in the import-export of flowers in Amsterdam in partnership with a Dutch legal supplier, had echo in Toronto, where the clans planned to invest the proceeds of crime through family ties and local opportunities.

Due to its global network, efficient logistics, and loose controls, the attractiveness of the Dutch flower trade as drug trafficking hot spot has recently been discussed by an investigation conducted by the police, four local councils, public prosecutors, and the Royal Flora Holland growers' cooperative. The results of this investigation are summarised in a report¹¹⁰ that also highlights the vulnerability of the sector to money laundering and labour exploitation. In this document, Italian mafia networks are reported as highly active in the floriculture sector (also in joint ventures with Dutch and Albanian criminal groups).

¹⁰⁹ Operation Acero-Krupy, Procura della Repubblica presso il Tribunale di Reggio Calabria, n. 7428/2010 R.G.N.R. DDA and n. 57055/12 RGNR DDA

¹¹⁰ <https://www.royalfloraholland.com/media/15099979/onderzoeksrapport-mainport-in-de-tweede-linie.pdf>

There have been a few cases of political proximity with mafia-linked individuals (always at regional level), but, to this day, they have not led to criminal investigations.

Criminal Actors

‘Ndrangheta

‘Ndrangheta representatives have been active in the Netherlands since the 1970s. Since 2011, the Dutch police argued that ‘ndrangheta activities represented a threat to the Netherlands¹¹¹. ‘Ndrangheta clans do not seem to be territorially organised and structured in Dutch territory.

Data converge in showing that, by keeping close ties with the clans in Calabria, ‘ndrangheta representatives are active in drug trafficking, running the trade of cocaine between South America (e.g. Colombia) and Europe through the port of Rotterdam. These are some of the most relevant drug trafficking operations of the last five years: Operation Provvidenza¹¹², clans Piromalli-Molè (from Gioia Tauro); Operation Area 51¹¹³, ‘ndrina Gallace (from Guardavalle, Catanzaro); Operation Old Story Eden¹¹⁴, members of clan Trimboli (from Platì, Reggio Calabria) and the cosa nostra family from Acqua Santa-Arenella (from Palermo); Operation Mar Jonio¹¹⁵, members of clans Ruga-Loiero-Metastasio (from Monasterace, Reggio Calabria); Operation Hermes, clans Pelle-Vottari (San Luca) and clan Cualetto (from Natile di

¹¹¹ KLPD, De ‘Ndrangheta in Nederland. Aard, criminele activiteiten en werkwijze op Nederlandse bodem. Driebergen, Dienst Nationale Recherche, 2011

¹¹² Operation Provvidenza, Tribunale di Reggio Calabria, p.p. n. 206/2017 RG NR Mod. 21 DDA

¹¹³ Operation Area 51, Tribunale di Milano, OCC n. 41946/15 RG NR-13146/15 RGGIP DDA

¹¹⁴ Operation Old Story Eden, Tribunale di Milano, O.C.C. n. 17652/15 R.G.N.R. and n. 3982/15

¹¹⁵ Operation Mar Jonio, Tribunale di Milano, p.p. 51299/11 RG NR and 22604/17 RG GIP

Careri, Reggio Calabria) (DIA, 2018b); Operation Rio¹¹⁶, clans Bellocco (Rosarno); Operation Aquila Nera¹¹⁷, members affiliated to 'ndrina Gallace (Guardavalle, Catanzaro); Operation Gargano¹¹⁸, links between mafia clans from Gargano (Puglia), 'ndrangheta groups and Colombian drug cartels; Operation Ossessione¹¹⁹, clan Mancuso (Limbadi, Vibo Valentia).

In 2015, Operation Acero-Krupy¹²⁰, paired on the Dutch side of investigations with Operation Levinius¹²¹, unveiled how, to support the cocaine trafficking from South America, the clan Crupi – affiliated to the clan Commisso (from Siderno) and to the clan Aquino-Coluccio (from Marina di Gioiosa Ionica, Reggio Calabria) – was involved in activities in the flower market in Aalsmeer (the most important market for flower import-export globally) where some companies affiliated to the clan were committing frauds. It is important to remember how this operation is linked to Canadian investigations as well (Operation Acero in particular, as Acero means 'Maple').

Similarly, Operation Pollino-European 'ndrangheta connection¹²² discovered that the clans Pelle-Vottari, Romeo, Giorgi (from San Luca), Cuaietto (from Natile di Careri, Reggio Calabria), and Ursini (from Gioiosa Ionica, Reggio Calabria) were involved in international drug trafficking and money laundering of financial assets across several North European countries comprising the Netherlands. More

¹¹⁶ Operation Rio, Procura di Reggio Calabria, p. p. n. 3108/16 RGNR; see <https://www.corrieredellacalabria.it/2019/11/29/lholding-internazionale-della-coca-in-mano-ai-bellocco-video-e-nomi/>

¹¹⁷ Operation Aquila Nera, Tribunale di Roma, n. 948/2108 RGNR and n. 8832/18 RG GIP

¹¹⁸ Operation Gargano, Tribunale di Bari, n. 7405/17 RG

¹¹⁹ Operation Ossessione, Tribunale di Catanzaro, n. 1732/2017 RGNR DDA

¹²⁰ Operation Acero-Krupy, Procura della Repubblica presso il Tribunale di Reggio Calabria, n. 7428/2010 R.G.N.R. DDA and n. 57055/12 RGNR DDA

¹²¹ DIA, 2018a, page 337

¹²² Operation Pollino-European 'ndrangheta Connection, Tribunale di Reggio Calabria, p.p. n. 6089/2015 RGNR DDA, p.p. 2868/2016 RGNR DDA and 2109/2016 RG GIP

precisely, these clans invested money in restaurants that were used as strategic and logistics hubs for cocaine coming from South America.

Operations Buslijnen¹²³ and Edera¹²⁴ highlighted the links between Belgium and the Netherlands regarding the drug trafficking activities of the 'ndrangheta groups Nirta-Scalzone and Giorgi-Ciceri (from San Luca), Barbaro (from Platì) and Pelle-Gambazza (from San Luca). Usually, clans operating drug trafficking activities in the Netherlands are physically based in Germany where the money laundering regulation is considered to be less strict and where structures of 'ndrangheta are more solid.

In March 2021, Operation Molo 13¹²⁵ discovered the existence of a transnational organised crime network set up by representatives of the family Gallace from Guardavalle to import cocaine from Colombia and Brazil in order to sell it in the Netherlands, but also Spain, the UK, Slovenia, Australia, and New Zealand.

In the Netherlands, 'ndrangheta clans often cooperate with foreign organised crime groups: for example, in May 2020, in Operation Eat Enjoy¹²⁶ one member of the 'ndrina Gallico from Platì (Reggio Calabria) was arrested while collaborating with an Albanian criminal group based in Rotterdam for the supply of cocaine and heroin to send to Italy.

Camorra

Since the 1970s, camorra clans have been involved in illegal smuggling of goods (e.g. cigarettes), transiting Dutch ports such as Rotterdam. Furthermore, the clans have

¹²³ Operation Buslijnen, Tribunale di Firenze, OCCC n. 8006/15 RGNR and 4778/16 RG GIP

¹²⁴ Operation Edera, Tribunale di Reggio Calabria, OCCC n. 1634/2016 RGNR DDA, 1621/2016 RGGIP DDA and 44/2016 ROCC

¹²⁵ Operation Molo 3, Tribunale di Catanzaro, Sezione Gip- Gup, RGNR N. 609/2017 RG.N.R.Mod.21 N. 58212017 R.G.I.P. + N. 259/2020 R.M.C. Ordinanza di Accoglimento della Richiesta di Applicazione di Misura Cautelare Personale

¹²⁶ Operation Eat Enjoy, Gip del Tribunale di Trieste, OCCC n. 324/18 RGNR DDA-209/19 RG GIP

used the country as a strategic hub for international drug smuggling (as unveiled already in 1992 with Operation Campina). To launder proceeds of crime, mafia-affiliated individuals invested in casinos and Italian restaurants that soon became meeting points for members of the Italian criminal groups visiting the Netherlands such as clans La Torre (from Caserta), Polverino (from Naples), Gionta (from Torre Annunziata), Gallo (from Torre Annunziata), Sarno (from Ponticelli, Naples), Di Lauro (from Secondigliano, Naples), and the so-called “Alleanza di Secondigliano” (from Secondigliano, Naples). The case of Raffaele Imperiale provides an example of a free rider drug trader with links to camorra. Famous drug broker linked to camorra environments, Imperiale has often been under investigation for cross border drug trafficking and related shady businesses (e.g. he received a painting by Van Gogh, stolen from the museum in Amsterdam and found in the villa of Imperiale’s parents)¹²⁷.

Today, the main criminal activity perpetrated by camorra groups is drug trade as the Netherlands represents the connecting bridge between production countries such as Colombia and European markets such as Italy: for example, Operation Cuba Libre¹²⁸, clan Nuvoletta and Polverino (from Marano di Napoli); Operation Scugnizza 2¹²⁹, clan De Micco (from Naples); and Operation Nuovo ¹³⁰, clan Gallo-Vangone-Limelli (from Torre Annunziata).

Last, in June 2020, an operation conducted by the Distrezione Distrettuale Antimafia from Salerno unveiled the role of groups from Campania in supplying drugs to sell in the area of Salerno¹³¹.

¹²⁷ See <https://www.corriere.it/video-articoli/2018/01/16/i-cento-mafiosi-italiani-che-fanno-affari-olanda-il-narcotraffico-tanti-latitanti-nascosti-qui-si-mostrano-come-normali-simpatichi-italiani-bravi-cucina/1633aae4-fae3-11e7-88bf-04c0b4baa14a.shtml> ; and <https://www.comitato-antimafia-lt.org/raffaele-imperiale-condannato-latitante-ma-libero-di-rilasciare-interviste-da-dubai/>

¹²⁸ Operation Cuba Libre, Tribunale di Napoli, OCC n. 21/2018 GIP, p.p. n. 22272/13 RGNR and 18518/16 RG GIP

¹²⁹ Operation Scugnizza2, Tribunale di Napoli, p.p. n. 22272/13 RGNR and n. 21/18

¹³⁰ Operation Nuovo Impero, Direzione Distrettuale Antimafia di Roma, p.p. n. 33025/05

¹³¹ DIA, 2020, page 420.

Interestingly, data show that camorra groups are also interested in the Dutch flower market: in Operation Mercato dei Fiori¹³² (Flower Market) members of clan Ceserano (from Castellammare di Stabia) were discovered running a transport logistics company in Campania in order to have monopoly over flowers, bulbs and pots coming from the Netherlands to hide drug products. Similarly, there is evidence of alliances between camorra and 'ndrangheta clans: more precisely, the camorra group Contini from Naples and the 'ndrangheta clan Commisso from Siderno (Reggio Calabria) infiltrated the flower sector in order to transport vast quantities of cocaine inside plants¹³³.

Cosa Nostra

There are few cases of expansion of cosa nostra groups in the Dutch territory, yet there is evidence of some forms of infiltration for drug trafficking purposes: in Operation I Vicerè¹³⁴, an affiliated member of clan Laudani (from Catania) was caught involved in a drug trafficking network (cocaine and MDMA) across South America, the Netherlands, Germany, and Malta.

Apulian groups

First traces of Apulian mafia clans linked to the Netherlands date back to the 1990s. Lately, these clans have flourished again mostly in connection to drug trafficking business. For example, the latest DIA report (2020a) highlights the activities of individuals affiliated to clans Palermiti and Capriati (from Bari) regarding the supply of drugs in the Netherlands.

¹³² Operation Mercato dei Fiori, Tribunale di Napoli, OCCC n. 4647/2015 and RGNR-219/19 OCC

¹³³ Tribunale di Napoli, OCCC n. 1718/11 RGNR-206/19 OCC

¹³⁴ Operation Vicerè, Tribunale di Catania, OCCC n.2250/10 RGNR and n.779/11 RG GIP

Moreover, Operation Skipper¹³⁵ has recently shed light on the drug trafficking network connecting Brazil, Amsterdam and Puglia, and whose leader was an individual who, in the past, had been linked to Sacra Corona Unita.

Lastly, in October 2017, an individual (already convicted for mafia-association and drug trafficking) close to clan Libergolis from the area of Gargano (the so-called “mafia del Gargano”) was found dead in Amsterdam. In January 2019, the killer was arrested in Puglia by the Italian Carabinieri and in cooperation with Eurojust and the Dutch Police¹³⁶.

¹³⁵ See https://www.quotidianodipuglia.it/lecce/olanda_salento_cerfeda_droga_cocaina-5740390.html

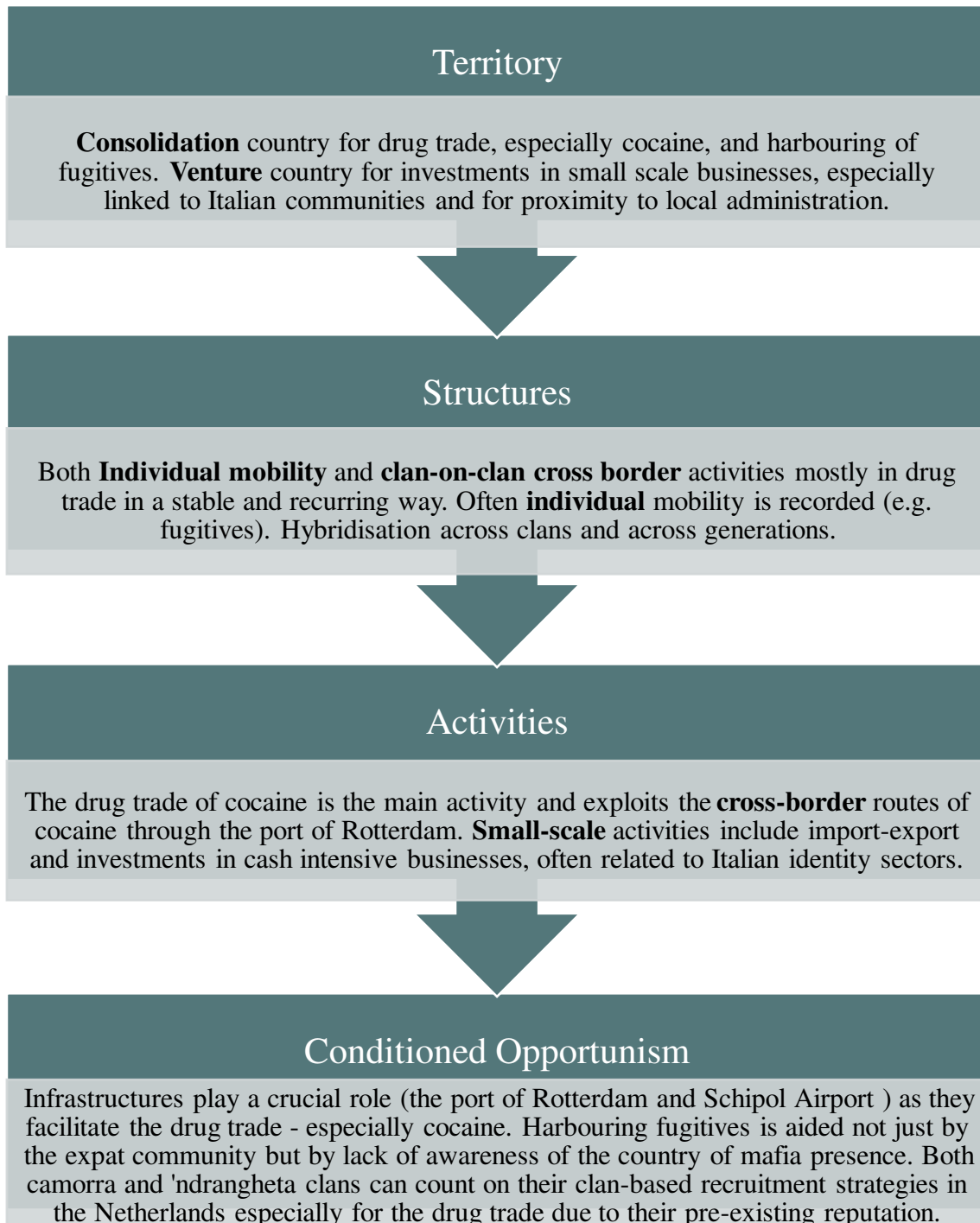
¹³⁶ See <https://www.lagazzettadelmezzogiorno.it/news/foggia/1098490/uccise-boss-in-olanda-e-si-costitui-62enne-di-manfredonia-in-carcere.html>

Thinking further

The Dutch policing approach is activity-based and results-oriented, by focusing mostly on the criminal activities (mainly of drug trafficking and trade) connected to organised crime networks. A few things to notice:

- Dutch sources highlight the presence of so-called 'free riders', i.e. criminals who established themselves in the Netherlands already in the 1970s and who work as freelancers for various mafia group on commission and opportunities. Italian sources, instead, often presume much stronger mafia connections based on Italian nationality and/or proximity of places of origin in Italy.
- The connections between second and third generation Italian migrants and the world of mafia affiliation appears to be loosening. The education levels of 2nd and 3rd generation migrants, their language skills and their knowledge of the territory are often exploited by other Italians interested in business (also of a criminal nature) in the Netherlands.
- Thanks to a modern and easily accessible financial system, these free riders often are considered more similar to CEOs or white-collar individuals rather than an old-fashioned style of mafia-type affiliated. At times they offer consulting support, financial or logistical. Therefore, the investigations into their activities might not fall into organised crime in the Netherlands. Most operations on Italian mafias *strictu sensu*, in the Netherlands remain confined to drugs.
- The difficulty to investigate the enablers of mafia-type crime in the country (both for cases of suspected political proximity and/or for brokerage into financial and regulatory systems) is due to different policing approaches.

Netherlands- Quick Country's Analysis



Netherlands – Main Legal Framework

<p>Participation in criminal association</p>	<p>Penal Code</p> <p>Crimes against public order</p> <p>Article 140</p> <p>1. Participation in an organisation which has as its purpose the commission of serious offences, shall be punishable by a term of imprisonment not exceeding six years or a fine of the fifth category.</p> <p>2. Participation in the continuation of the activities of an organisation that has been declared prohibited by final judicial decision or is prohibited by operation of law or against which an irrevocable declaratory judgment has been pronounced as referred to in Section 10:122(1) of the Civil Code, shall be liable to a term of imprisonment not exceeding one year or a fine of the third category.</p> <p>3. The terms of imprisonment for founders, directors or managers may be increased by one third.</p> <p>4. Participation, as defined in subsection (1), shall also include the provision of financial or other material support as well as the raising of funds or the recruitment of persons on behalf of the organisation defined in said subsection.</p>
<p>Transnationality</p>	<p>Adherence to Palermo convention: ratification in May 2004</p> <p>Presence of transnationality in the main domestic legislation: not found</p> <p>The Palermo Convention was ratified on the 26th of May 2004, but an additional mention here is the <i>Protocol to Prevent, Suppress and Punish Trafficking in Persons, in particular Women and Children, established in New York on November 15, 2000</i>, supplementing the United Nations</p>

	<p>Convention against Transnational Crime (hereinafter: Palermo Protocol). The Palermo Protocol contains the definition of human trafficking, which was later also taken as a starting point in the other international legal instruments. In the implementation of the Framework Decision and the Palermo Protocol in Dutch criminal law, the system of criminalizing human trafficking from the Palermo Protocol and the Framework Decision in the Criminal Code has been adopted. An implementation can be found in article 273f Criminal Code:</p> <p>Any person who:</p> <p>by coercion, act of violence or any other act or threat of violence or threat of any other act, by extortion, fraud, deception or abuse of a position of authority arising from de facto circumstances, by abuse of a position of vulnerability or by giving or receiving remuneration or benefits in order to obtain the consent of a person who has control over this other person recruits, transports, transfers, harbours or receives another person with the intention of exploiting this other person or removing his organs;</p> <p>recruits, transports, transfers, harbours or receives another person with the intention of exploiting this other person or removing his organs whereas this person is under the age of eighteen years;</p> <p>recruits, removes or abducts another person with the intention of inducing this person to make himself available for the performance of sexual acts with or for a third party for remuneration;</p> <p>compels or persuades another person with one of the means referred to in 1° to make himself available for the performance of work or services or to make his organs available or under the circumstances referred to in 1°, takes any action which he knows or has reasonable cause to suspect will lead that other person to make himself available for the performance of labour or services or make his organs available;</p> <p>induces another person to make himself available for the performance of sexual acts with or for a third party for</p>
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	<p>remuneration or make his organs available for remuneration or takes any action in regard of another person which he knows or has reasonable cause to suspect will lead that other person to make himself available for the performance of these acts or services or make his organs available, whereas this person is under the age of eighteen years;</p> <p>intentionally profits from the exploitation of another person;</p> <p>intentionally profits from the removal of the organs of another person while he knows or has reasonable cause to suspect that his organs have been removed under one of the circumstances referred to in 1°;</p> <p>intentionally profits from the sexual acts of another person with or for a third party for remuneration or the removal of his organs for remuneration, whereas this other person is under the age of eighteen years;</p> <p>compels or induces another person by any of the means referred to in 1° to provide him with the proceeds of his sexual acts with or for a third party or of the removal of his organs;</p> <p>shall be guilty of human trafficking and as such shall be liable to a term of imprisonment not exceeding eight years or a fine of the fifth category.</p> <p>Exploitation shall at least include exploitation of another person in prostitution, other forms of sexual exploitation, forced or compulsory labour or services, slavery or practices similar to slavery or servitude.</p> <p>The offender shall be liable to a term of imprisonment not exceeding twelve years or a fine of the fifth category, if:</p> <p>1°. the offences, defined in subsection (1), are committed by two or more persons in concert;</p> <p>2°. the offences defined in subsection (1) have been committed against a person who is under the age of sixteen years.</p> <p>If any of the offences defined in subsection (1) results in grievous bodily harm or is likely to endanger the life of</p>
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	<p>another person, a term of imprisonment not exceeding fifteen years or a fine of the fifth category shall be imposed.</p> <p>If any of the offences defined in subsection (1) results in death, a term of imprisonment not exceeding eighteen years or a fine of the fifth category shall be imposed.</p>
Drug trafficking	<p>Opium Act 1928 [1976] amended</p> <p>Article 2</p> <p>It shall be illegal to:</p> <p>A. bring into or outside the territory of the Netherlands; B. prepare, treat, process, sell, supply, provide or transport; C. possess; or D. manufacture</p> <p>a drug as referred to in List I accompanying this Act or designated pursuant to Article 3a, fifth paragraph.</p> <p>Article 3</p> <p>It shall be illegal to:</p> <p>A. bring into or outside the territory of the Netherlands; B. grow, prepare, treat, process, sell, supply, provide or transport; C. possess; or D. manufacture</p> <p>a drug as referred to in List II accompanying this Act or designated pursuant to Article 3a, fifth paragraph.</p> <p>Article 3a</p> <p>1. Drugs shall be added to the List I or List II accompanying this Act by an order in council if they are brought within the scope of the Single Convention or the Convention on Psychotropic Substances or, pursuant to an obligation arising under the Joint Action, must be brought within the scope of this Act. Drugs may be deleted from List I or II by</p>

	<p>an order in council if they are removed from the scope of the Conventions referred to in the first sentence or if the obligation referred to in that sentence is extinguished on account of the Joint Action.</p> <p>2. Drugs may be added to List I or List II by an order in council if it is shown that they have an affect on the consciousness of a human being and that, if used by a human being, they are damaging to his health and detrimental to society.</p> <p>3. Drugs which have been added by an order in council pursuant to the second paragraph may be deleted from List I or List II if it is shown that they do not or no longer have the characteristics referred to in the second paragraph.</p> <p>4. An order in council as referred to in the first, second and third paragraph shall not be adopted until four weeks have passed since the draft of the order was presented to both Houses of the States General and, during that time period, a wish was not expressed by or on behalf of either of the Houses for the subject regulated in the draft of the order to be regulated by statute.</p> <p>5. If, in our Minister's judgment, acts as referred to in Article 2 or 3 in respect of a drug must immediately be prohibited and the formulation of an order in council as referred to in the first or second paragraph cannot be awaited, the drug may be designated by ministerial regulation. Our Minister shall ensure that, at the same time that this ministerial regulation is adopted, the draft of an order in council with the same content shall be presented to the Council of Ministers for evaluation. Unless withdrawn earlier, the ministerial regulation shall remain in effect until the order in council designating the drug concerned takes effect, but no later than up to a year after the regulation becomes effective.</p> <p>Article 3b</p>
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	<p>1. Any publication which is clearly intended to promote the sale, supply or provision of a drug as referred to in Article 2 or Article 3 shall be prohibited.</p> <p>2. The prohibition contained in the first paragraph shall not apply in respect of publication related to medical or scientific information.</p> <p>Article 3c</p> <p>1. An order in council may designate drugs and applications for which a prohibition described in Article 2 or 3 does not apply in whole or in part.</p> <p>2. With regard to drugs as referred to in List I or II, an order in council may lay down rules to ensure compliance with the provisions of the Single Convention or the Convention on Psychotropic Substances or to prevent abuse of those drugs.</p> <p>Article 11</p> <p>1. Anyone who violates a prohibition in Article 3 will be punished with imprisonment of up to one month or with a fine of the second category.</p> <p>2. Anyone who deliberately acts in violation of a prohibition given in Article 3 under B, C or D will be punished with imprisonment not exceeding two years or a fine of the fourth category.</p> <p>3. Anyone who, in the exercise of a profession or business, intentionally acts in violation of a prohibition given in Article 3, under B, will be punished with imprisonment not exceeding six years or a fine of the fifth category.</p> <p>4. Anyone who deliberately violates a prohibition given in Article 3 under A will be punished with imprisonment of up to four years or a fine of the fifth category.</p>
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	<p>5. If an offense as referred to in the second or fourth paragraph relates to a large quantity of a substance, imprisonment of up to six years or a fine of the fifth category will be imposed. A large quantity is understood to mean a quantity that is greater than the quantity of a substance established by order in council.</p> <p>6. The second paragraph does not apply if the fact relates to a quantity of hemp or hash not exceeding 30 grams.</p> <p>7. Subsections 2 and 4 do not apply if the offense relates to a small quantity, intended for personal use, of the substances listed in list II, with the exception of hemp and hashish.</p>
<p>Money laundering</p>	<p>Penal Code</p> <p>Article 420 bis</p> <p>As guilty of money laundering will be punished with imprisonment with a maximum duration of six years or a fine of the fifth category</p> <p>a. he who hides or conceals the real nature, the source, the location, the transfer or the moving of an object, or hides or conceals the identity of the person entitled to an object or has it in his possession, while he knows that the object derives - directly or indirectly - from any serious offence;</p> <p>b. he who acquires an object, possesses it, transfers or converts it, while being aware that the object derives - directly or indirectly - from a serious offence;</p> <p>All property rights and all other immaterial matters are meant to be objects.</p> <p>Article 420bis</p> <p>Money laundering that consists of no more than acquiring and or being in possession of an object that originates directly from a person's own criminal activity is punishable with a maximum term of imprisonment of six months or a fourth-category fine.</p>

Article 420ter

Anyone who makes a habit of committing money laundering will be punished with imprisonment not exceeding eight years or a fine of the fifth category.

The same penalty shall be imposed on anyone who is guilty of money laundering in the exercise of his profession or business.

Article 420quater

1. Any person who:

a. hides or conceals the real nature, the source, the location, the transfer or the moving of an object, or hides or conceals the identity of the person entitled to an object or has it in his possession, while he has reasonable cause to suspect that the object derives - directly or indirectly - from any serious offence;

b. obtains an object, has an object in his possession, transfers or converts an object or makes use of an object while he has reasonable cause to suspect that the object derives - directly or indirectly - from any serious offence; shall be guilty of negligent laundering and shall be liable to a term of imprisonment not exceeding one year or a fine of the fifth category.

2. Objects shall mean all property of any description, whether corporeal or incorporeal.

Article 420quater

Guilt money laundering consisting solely of the acquisition or possession of an object that comes directly from any crime of its own is punishable as simple guilt money laundering with a term of imprisonment not exceeding three months or a fine of the fourth category.

	<p>Article 420quinquies</p> <p>In the event of conviction for one of the crimes described in Articles 420bis to 420quater.1, disqualification from the rights referred to in Article 28, first paragraph, under 1 °, 2 ° and 4 °, may be pronounced and the guilty person may be released from the exercising the profession in which he committed the crime.</p> <p>See Money Laundering and Terrorism Financing (Prevention) Act (Wwft) 2008 for other provisions [https://www.fiu-nederland.nl/en/legislation/general-legislation/wwft]</p>
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BELGIUM

Mafia Map

Introduction

The geographical and political centrality of Belgium in Europe, the port of Antwerp, the logistics network, and the presence of a long-established Italian community on the territory are among the factors that have attracted Italian mafia groups to Belgium. As emerged from data, since the 1950s Belgium has seen an important migratory presence of Italians, moving mostly from the Southern regions of Calabria or Sicily to be employed in the Belgian mining sector, especially in the area of Mons.

In the early 1990s, members of Italian mafias were located in Mons, La Louvière, Namur, Liège, Brussels, in the Flanders and Limburg. The Flanders seem to be the most difficult place for clans to operate, probably due to the language barrier.

Today, data show that *cosa nostra* clans are mostly active in Liège and Mons, whilst 'ndrangheta is mostly operating in Limburg. There is very little evidence of camorra in Mons. No clear interest of Apulian mafia clan was detected.

According to Belgian sources, all mafia clans active in Belgium have strong family-ties and connections to the original clans in Calabria (for 'ndrangheta) and Sicily (for *cosa nostra*) that have the final power to decide on criminal businesses and other matters. Data show a third-generation of individuals mafia-linked who are operating in Belgium.

In Belgium, Italian regional mafia groups conduct a vast range of criminal activities: drug trafficking, money laundering (also at a high financial level), money counterfeiting in connection to drug trafficking (mostly committed by camorra individuals), tax evasion or tax fraud schemes in the alcohol trade (also involving other countries such as France and Romania), tax fraud and unemployment frauds (for example in order to illegally get social benefits or false pay checks), weapon trafficking, and meat frauds. As drug trafficking is one of the most relevant mafia-related activities, Belgium has been involved in several cross-border anti-drug

operations (for instance, Operation Pollino-European 'ndrangheta connection in 2019¹³⁷).

Several murders of individuals connected to mafia clans have taken place inside the Belgian borders and several mafia fugitives (usually not of a high-profile) have been caught hiding in Belgium (e.g. in the area of Limburg and Liège, both at the borders with the Netherlands and Germany).

The proximity of Belgium to Germany and the Netherlands is one of the various reasons that explains the Italian mafia expansion. Many mafia-affiliated individuals arrested in Germany, once out of prison, might tend to resettle in Belgium and work in the food service sector or for other types of companies. In a similar way, there have been cases of some people who, arrested and jailed in Italy, once released moved to Belgium, also to be close to the port of Antwerp (and Rotterdam in the Netherlands), which is useful when running drug trafficking business, for other employment opportunities, and for a presumed lower control from the police. To add, there have been cases of individuals who went to Belgium to get plastic surgery to change their facial features and then went back to Italy.

Like with the other countries, in Belgium there is higher level of collaboration among Italian mafia groups that are involved especially in drug trafficking and economic crimes (or illicit reinvestment of money in the legal economy). Moreover, in Belgium, mafia clans often cooperate with other foreign organised crime groups (e.g. Moroccans, Albanians, Black Axe groups, Chechens) for criminal activities such as extortion, document fraud schemes, and, most of all, drug trade.

Thanks to specialised local units, the Federal Police of the Reign of Belgium oversees the policing of organised crime groups such as mafia-type clans. Among these units, there are some that focus on specific crime-types (for instance, the unit in Antwerp looks at drug trafficking by focusing on detection, prevention and investigation). Belgium is part of the European Operational @ON Network and joined the ITOC Europol network in 2020.

Interestingly, already in the 1990s, the Belgian police had a special Antimafia Program to tackle Italian mafias. However, due to the reallocation of resources

¹³⁷ Operation Pollino-European 'ndrangheta connection, Tribunale di Reggio Calabria, pp. nr. 6089/2015 RGNR DDA, p.p. 2868/2016 RGNR DDA and 2109/2016 RG GIP

following a decrease of mafia-related investigations, this program was stopped. Recently, in the last three years or so, the number of investigations dealing with mafia has increased and institutions have developed new interest towards Italian mafia clans and, more broadly, towards mafia-style or mafia-working organised crime groups and networks.

Criminal actors

'Ndrangheta

According to the DIA, 'ndrangheta groups are highly infiltrated in Belgium, especially those from the areas of Reggio Calabria (mainly clans from the area of San Luca) and the Ionian Coast. They are mostly active in the areas of Limburg but, unlike in the past, also of Liège (the 'ndrangheta expansion for this area has not been confirmed by Belgian sources). A total of 30/35 'ndrangheta affiliated have been detected by the Belgian police authorities, all with strong ties with Calabria.

Being driven by opportunistic predatory behaviours, 'ndrangheta clans are very active in different ways. They seem to be interested in the real estate market in Brussels, however this information is controversial. In 2004, Operations Nasca and Timpano conducted by the Italian Guardia di Finanza seemed to have unveiled the interests of the clans Bellocco and Ascone from Rosarno (in this case allied to 'ndrine from San Luca, in particular to the Strangio) in reinvesting money (yet not high quantities) profited from the drug trade in the real estate sector in Brussels (DIA, 2017b). Moreover, a Belgian investigation was pointing at Calabrian perpetrators in Brussels and Maasmechelen (Limburg); the evidence showed they had dealt foreign exchange equivalent to 20 million euros business in Belgium. At the same time, Antimafia authorities in Calabria requested support in investigating 'ndrangheta investments (but not for millions) in the real estate sector in the country. The two investigations seemed to have merged in the way the story is told.

Limburg is characterised by a stable presence of the 'ndrangheta, which has facilitated the coverage of fugitives and the establishment of new activities with a view to the reinvestment of illegal capital across the region.

Due to the border proximity, 'ndrangheta individuals in Belgium are very close to the clans based in Germany.

Generally speaking, 'ndrangheta groups are very active in Belgium, yet it is not clear the extent to which they are physically structured in units spread across the territory. According to the Belgian police, the 'ndrangheta presence functions only as a sort of antenna of the clans based in Italy, like facilitators or front men active across Belgian territory. However, the police do not exclude that some "locali" (more settled in the local territory) might have been established as well.

The main activity of 'ndrangheta clans is drug trafficking, mainly cocaine. These are some of the most relevant operations: Operation Ape Green Drug¹³⁸ shed light on the cooperation in drug trade between clans Comisso (from Siderno) and Pesce-Bellocco (from Rosarno) in Belgium, Cote D'Ivoire and Venezuela; Operation Six Towns¹³⁹ on the activities of the clan Iona-Marrazzo (from Crotona); Operation Up & Down¹⁴⁰ that unveiled a drug trafficking network between Sicilian clans active in Favara and Porto Empedocle (Agrigento) and clans from Rosarno (Reggio Calabria) active in Belgium; Operation Ultimo Atto¹⁴¹, which highlighted a link between the Sicilian clan Trigila (from Noto, Siracusa) and the Calabrian 'ndrina Sergi (from Platì, Reggio Calabria). Interestingly, operation Edera¹⁴² provides a clear example of how cocaine coming from Colombia and Ecuador enters Europe: it usually travels hidden inside containers of wood and fruit through the port of Antwerp (or Rotterdam or Gioia Tauro) under the control of the 'ndrangheta clans. Operations Buslijnen¹⁴³, Balboa (clan Bellocco from Rosarno)¹⁴⁴ and Geenna (clan Nirta-Scalzone from San

¹³⁸ Operation Ape Green, Tribunale di Reggio Calabria, p.p. n. 3579/2011 RGNR DDA and n. 3420/2011 RG GIP DDA

¹³⁹ Operation Six Towns, Tribunale di Catanzaro, OCCC nr. 5707/10 RGNR and 4425/10 GIP

¹⁴⁰ Operation Up & Down, Tribunale di Palermo, n. 6564/2014 RGNR and n. 1661/2016 RG GIP

¹⁴¹ Operation Ultimo Atto, Tribunale di Catania, n.922/16 RGNR and n.5560/16 RGGIP

¹⁴² Operation Edera, Tribunale di Reggio Calabria, OCCC n. 1634/2016 RGNR DDA, 1621/2016 RGGIP DDA and 44/2016 ROCC

¹⁴³ Operation Buslijnen, Tribunale di Firenze, OCCC n. 8006/15 RGNR and 4778/16 RG GIP

¹⁴⁴ Operation Balboa, Tribunale di Reggio Calabria, OCCC n. 5299/13 RGNR DDA, 3376/14 RGGIP DDA and 32/15

Luca)¹⁴⁵ also evidence how the Belgian territory is an essential, international hub for drug trafficking. For instance, in Operation Buslijnen, cocaine arriving in Antwerp or Rotterdam was hidden inside the compartments of coaches travelling from Belgium (or the Netherlands) to Milan. In Milan, the drug was then collected by Albanian contacts and distributed across Lombardy and Tuscany. Moreover, in Operation Balboa, a criminal group linked to clan Bellocco (from Rosarno) was caught trafficking cocaine from South America to Gioia Tauro via Belgium with the help of international brokers linked to the drug producers. The cocaine was travelling in bags hidden inside the containers (so-called “rip-on-rip-off” technique) and collected by colluded port officers who were in charge of transporting the drug out of the port.

Belgian authorities have issued arrest warrants against ‘ndrangheta members, such as the Strangio clan (from San Luca) for both drug trafficking and money laundering¹⁴⁶. For example, when an affiliate of the clan Pelle-Vottari (also from San Luca) was arrested in a private hospital in Brussels, the investigation showed a connection between ‘ndrangheta clans in Calabria and South American drug networks (DIA, 2018a). In Operation Pollino-European ‘ndrangheta connection¹⁴⁷, in 2019, a member of the clan Strangio was extradited from Belgium to Italy for drug trafficking association.

Data show that ‘ndrangheta clans often cooperate with non-Italian organised crime groups: for instance, in 2018 Operation La Romana¹⁴⁸, an Italian-Albanian drug trafficking network was dismantled highlighting the role of an affiliate of the clan Alvaro (from Sinopoli, Reggio Calabria).

¹⁴⁵ Operation Geenna, Tribunale di Torino, OCCC n. 33607/14 RGNR and 50003/15 RGGIP

¹⁴⁶ As decided with the court decision n. 2469/07 released by the Court of Tongeren in Belgium.

¹⁴⁷ Operation Pollino-European ‘ndrangheta Connection, Tribunale di Reggio Calabria, p.p. n. 6089/2015 RGNR DDA

¹⁴⁸ Operation La Romana, Tribunale di Roma, p.p. n. 3233/17 RGNR

Interestingly, in Operation Grimilde¹⁴⁹, associates/affiliates of the clan Grande Aracri (from Cutro) were arrested in Emilia Romagna for membership in mafia-type association and for exploitation of workers in relation to the construction of 350 villas in the area of Brussels on behalf of a company owned by Albanian citizens.

Several murders and arrests of individuals with links to 'ndrangheta can be identified: in 2015, a Belgian citizen with Calabrian origins, Silvio Aquino, was found dead in Opglabbeek in Limburg (at the border with the Netherlands and Germany), just days before the start of one of the Belgium most important international drug trafficking trials¹⁵⁰. The trial later shed lights on the possible connections between a Belgian criminal organisation (linked to the Aquino brothers whose affiliation to the 'ndrangheta clan Aquino, from the area of Gioiosa Ionica, is unconfirmed) and representatives of a Colombian drug cartel. According to Italian sources, this might contribute to indicate that some 'ndrangheta fugitives who fled Calabria might have resettled in the Belgian regions to reinvest illicit assets in the local legal economy.

Last, there are minor traces of other activities linked to 'ndrangheta: infiltration in the legal economy (e.g. restaurants or trade in wine and other food products), extortion (also in the form of imposition of products), money laundering, and some small connections with local politicians with Italian roots.

Cosa nostra

Cosa nostra groups are mainly present in the provinces of Hainaut, Mons, Charleroi, and Liège, where they are involved in various illicit activities, but especially in drug trade. By groups, the Belgian police understands the different mafia families active in a region that make up a clan.

Traditionally very present across the Belgian territory, today the territory demarcation shifted in meaning and clans' activities expanded internationally through virtual connections on a global level. According to Belgian sources, physical

¹⁴⁹ Operation Grimilde, Tribunale di Bologna, OCCC n. 10311/15 RGNR and 15175/18 RGGIP

¹⁵⁰ See <https://irpimedia.irpi.eu/frutta-connection/>

meetings among cosa nostra individuals continue to take place mainly in small bistros and restaurants.

In Liège, cosa nostra groups' activities mainly relate to drug and car trade; additionally, cases of fraud practices in the construction sector are found in Hainaut and Mons.

Historically, cosa nostra clans from Agrigento have been highly active in Belgium. Between 2016 and 2018, in Grace-Hollogne and Liège, there have been several murders connected to Sicilian clans from the municipalities of Porto Empedocle and Favara (Agrigento), which might indicate feuds among clans taking place across Sicily and Belgium, mostly for drug trafficking matters. The recent Operation Mosaico has further confirmed the dynamics of these feuds taking place between Favara and Belgium¹⁵¹.

The link between clans from Agrigento and Belgium for the management of drug trade is further evidenced by the arrests conducted through European arrest warrants by Belgian authorities. For example, in May 2018, in Operation Montagna¹⁵², an individual belonging to the family of Santa Elisabetta (Agrigento) believed to be the counsellor of the boss of the newly-established clan ("mandamento") Montagna, was subject to European warrant, arrested by the Belgian Fedpol, and extradited to the Italian authorities. Furthermore, in March 2019, members of Cosa nostra from Agrigento were arrested in Belgium for drug trafficking as a result of the vast Operation Kerkent¹⁵³.

Cosa nostra clans seem to be very active in social benefits or unemployment benefits frauds. The fraudulent scheme works as follows: in Belgium, individuals coming from Sicily are asked to prove their income in order to be officially registered for

¹⁵¹ See <https://www.antimafiaduemila.com/home/mafie-news/228-cosa-nostra/80148-operazione-mosaico-7-arresti-tra-sicilia-e-belgio.html>

¹⁵² Operation Montagna, Tribunale di Palermo, OCC p.p. n. 23602/2012 RG NR and 10533/2015 RG GIP

¹⁵³ Tribunale di Agrigento, March 2019; See <https://www.antimafiaduemila.com/home/mafie-news/228-cosa-nostra/73613-operazione-kerkent-dia-accordo-tra-ndrangheta-e-mafia-di-agrigento-per-traffico-droga.html>

social benefits; they do so do by declaring a fake income coming from fake companies; afterwards, they ask for unemployment even if, in the meantime, they usually have already returned back to Sicily.

Last, there was evidence of links between cosa nostra and camorra representatives, especially in relation to a vehicle scam fraudulent scheme. There are also forms of cooperation between cosa nostra and 'ndrangheta members in drug trafficking matters: for example, costa nostra clans have used Italian bus companies, running between Sicily and La Louvière, especially during the festive seasons. These buses would carry various packages, and also drugs. In fact, the drug stocks are routinely handled by the 'ndrangheta clans. The bus would then arrive in Luxembourg and then in Liège, as it unloads from there for cosa nostra in Liège and stops in La Louvière to supply for the rest of the region.

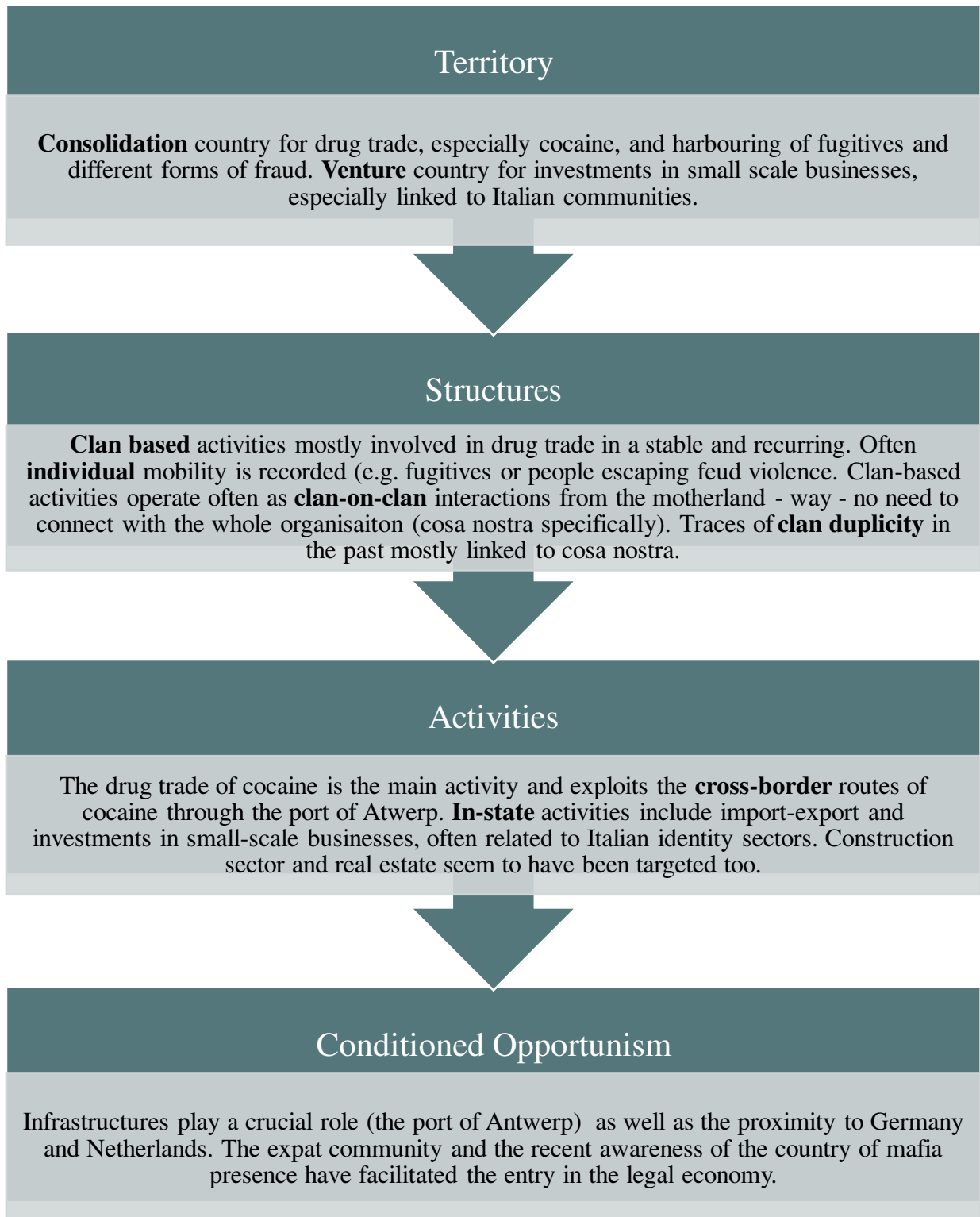
In the 2000s, some individuals connected to stidda were arrested in Liège and some other members linked to stidda were caught helping cosa nostra fugitives in Belgium. Today, there are still elements of stidda families from Gela and Caltanissetta, but they do not appear to be active.

Thinking Further

Unique case in the panorama of the countries of this report, Belgium is the only country where the policing model is gearing towards a structure or group-based approach as opposed to activity-based, commodity-oriented approach. In other words, Belgian police forces have started to look (again) at clans and families based in Belgium and their modus operandi and connections to Italy. It is also a country where behavioural aspects of criminal organisations (similar to the mafia method) are criminalised. Things to notice further:

- Statistics dated 2017 by Belgian Fedpol provided the following numbers in relation to the presence of mafia-affiliated or mafia-linked people being present in Belgium: cosa nostra (10), stidda (3), camorra (2), and 'ndrangheta (2). Since then, the focus has been revamped and these numbers have gone up.
- Italian sources stress that cosa nostra groups are less active than 'ndrangheta ones across Belgium. However, Belgian sources highlight a very strong, stable and spread presence of cosa nostra individuals (especially in the areas of Mons and Liège).
- According to DIA reports, there is clear evidence of 'ndrangheta in Wallonia, which is not entirely confirmed by Belgian authorities (except for the case of Liège where the presence of 'ndrangheta is relatively new and still considered minor). This partial divergence might be explained by different investigative approaches and data access.
- According to Belgian Fedpol, there are no specific crime-types characterising mafia groups active in Belgium (for instance, there is no evidence of territorial control or power or governance). However, data provide one example of a typically Italian-committed crime that is the unemployment fraud (mostly committed in Wallonia).
- Last, if Italy sees the activities of Italian mafias across Belgium as mostly related to drug trafficking, Belgium has a broader perspective that describes a high poly-crime tendency of Italian mafia clans, often falling between the realms of legality and illegality.

Belgium – Quick Country’s Analysis



Belgium - Main Legal Framework

<p>Participation in an organised criminal group (founding, participation, recruitment, support)</p>	<p>Penal code</p> <p>Article 324bis</p> <p>A criminal organisation is the structured association of more than two persons, established over time, with a view to committing, in a concerted manner, crimes and offenses punishable by imprisonment for three years or a more serious penalty, to obtain, directly or indirectly, heritage benefits, (...).</p> <p>An organisation whose real object is exclusively political, trade union, philanthropic, philosophical or religious or which pursues exclusively any other legitimate aim cannot, as such, be considered as a criminal organization within the meaning of paragraph 1.</p> <p>Article 324ter</p> <p>§ 1. When the criminal organization uses intimidation, threat, violence, fraudulent practices or corruption or uses commercial or other structures to conceal or facilitate the carrying out of offenses, any person who knowingly and wilfully uses one of them , is punished by imprisonment for one year to three years and a fine of one hundred euros to five thousand euros or one of these penalties only, even if he does not intend to commit an offense in within the framework of this organization or to associate with it in one of the ways provided for in articles 66 to 69.</p> <p>§ 2. Any person who participates in the preparation or the realization of any lawful activity of this criminal organization, when he knows that his participation contributes to its objectives, as provided for in article 324bis, is punished by imprisonment from one year to three years and a fine of one hundred euros to five thousand euros or one of these penalties.</p>
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	<p>§ 3. Any person who participates in any decision-making within the framework of the activities of the criminal organization, when he knows that his participation contributes to its objectives, as provided for in article 324bis, is punished with imprisonment from five years to ten years and a fine of five hundred euros to one hundred thousand euros or one of these penalties only.</p> <p>§ 4. Any leader of the criminal organization is punished with imprisonment from ten years to fifteen years and a fine of one thousand euros to two hundred thousand euros or one of these penalties only.</p> <p>Article 325 The culprits sentenced, under Articles 323 (, 324 and 324ter), to the term of imprisonment, may, moreover, be sentenced to prohibition, in accordance with Article 33.</p> <p>[Art. 33. - The courts and tribunals may, in the cases provided for by law, prohibit, in whole or in part, to correctional convicts, the exercise of the rights enumerated in article 31, paragraph 1, for a term of five years at ten years.]</p> <p>Article 326</p> <p>Will be exempt from the penalties pronounced by this chapter, those guilty who, before any attempt of crimes or misdemeanours forming the object of the association and before any prosecutions started, will have revealed to the authority the existence of these bands and the names of their commanders-in-chief or sub-orders.</p>
Transnationality	<p>Adherence to Palermo convention: ratification in August 2004</p> <p>Presence of transnationality in the main domestic legislation: not found</p>
Money laundering	<p>Penal code</p> <p>Article 505</p>

	<p>Will be punished by imprisonment from fifteen days to five years and a fine of twenty-six [euros] to one hundred thousand [euros] or one of these penalties only: <L 2000-06-26 / 42, art. 2, Effective: 01-01-2002></p> <p>1° those who have concealed, in whole or in part, things removed, diverted or obtained with the aid of a crime or an offense;</p> <p>2° (those who have bought, received in exchange or free of charge, owned, kept or managed things referred to in article 42, 3 °, while they knew or should have known the origin of these things at the beginning of these operations;) <L 2007-05-10 / 63, art. 2,071; Effective: 01-09-2007></p> <p>3° those who have converted or transferred things referred to in article 42, 3 °, in order to conceal or disguise their illicit origin or to help any person who is involved in the commission of the offense from which these things originate, to escape the legal consequences of his actions;</p> <p>4° (those who have concealed or disguised the nature, origin, location, arrangement, movement or ownership of the things referred to in article 42, 3 °, while they knew or should have known the origin of these things at the start of these operations.) <L 2007-05-10 / 63, art. 2,071; Effective: 01-09-2007></p> <p>(The offenses referred to in paragraph 1, 3 ° and 4 °, exist even if their perpetrator is also the author, co-perpetrator or accomplice of the offense from which the things referred to in article 42, 3 ° originate. referred to in paragraph 1, 1 ° and 2 °; they exist even if their perpetrator is also the author, co-perpetrator or accomplice of the offense from which the things referred to in article 42, 3 ° originate, when this offense was committed abroad and cannot be prosecuted in Belgium.) <L 2007-05-10 / 63, art. 2,071; Effective: 01-09-2007></p> <p>(Except with the author, co-perpetrator or accomplice of the offense from which the things referred to in article 42, 3 °, the offenses referred to in paragraph 1, 2 ° and 4 ° originate, relate exclusively, in tax matters, to acts committed in the context of [1 serious tax fraud, whether or not organised] 1.</p>
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The organizations and persons referred to in Articles 2, 2bis and 2ter of the Law of 11 January 1993 on the prevention of the use of the financial system for the purposes of money laundering and terrorist financing, may avail themselves of paragraph precedent insofar as, with regarding the facts referred to therein, they have complied with the obligation provided for in [1article 28] 1 of the law of 11 January 1993 which regulates the modalities of the communication of information to the Financial Information Processing Unit.) <L 2007-05-10 / 63, art. 2,071; Effective: 01-09-2007>

The things referred to (in paragraph 1, 1 °) of this article constitute the object (of the offense covered by this provision), within the meaning of article 42, 1°, and will be confiscated, even if the property does not belong to the convicted person, without (this penalty) being able, however, to prejudice the rights of third parties to the property liable to be the subject of confiscation. <L 2007-05-10 / 63, art. 2,071; Effective: 01-09-2007>

(The things referred to in subparagraph 1, 3° and 4°, constitute the object of the offenses covered by these provisions, within the meaning of article 42, 1 °, and will be confiscated, on the part of each of the authors, co-authors or accomplices in these offenses, even if the property does not belong to the convicted person, without this penalty being able to prejudice the rights of third parties over the property liable to be the subject of confiscation., The judge will carry out the monetary valuation of the convicted person's assets and the confiscation will relate to a sum of money which will be equivalent. In this case, the judge may reduce this sum in order not to subject the convicted person to an unreasonably high penalty.

The things referred to in paragraph 1, 2 °, of this article constitute the object of the offense covered by this provision, within the meaning of article 42, 1 °, and will be confiscated, at the expense of each of the perpetrators, co-perpetrators or accomplices of these offenses, even if the property does not belong to the convicted person, without this penalty being able however to prejudice the rights of third parties on the property liable to be the subject of confiscation. If his things cannot be found in the convict's patrimony, the judge will proceed to their monetary

evaluation and the confiscation will relate to a sum of money which will be proportional to the convicted person's participation in the offense.) <L 2007-05- 10/63, art. 2,071; Effective: 01-09-2007>

The attempt of the offenses referred to in 2 °, 3 ° and 4 ° of this article will be punished by imprisonment of eight days to three years and a fine of twenty-six [euros] to fifty thousand [euros] or one of these penalties only. <L 2000-06-26 / 42, art. 2, Effective: 01-01-2002>

The persons punished with these provisions may, moreover, be condemned to further prohibition, in accordance with article 33.

Law of 11 January 1993 on Preventing Money Laundering and Terrorism Financing

Article 1

<L 2003-05-03 / 46, art. 3, 007; In force: 02-06-2003> [3 § 1.] 3 The King may [2 ...] 2 regulate and supervise, in the interest of hygiene and public health, importation, export, transit, manufacture, preservation, that is to say storage under the required conditions, labelling, transport, holding, brokerage, sale and offering for sale, [4 the prescription,] 4 the delivery and acquisition, against payment or free of charge, of poisonous, soporific, narcotic, disinfectant or antiseptic substances as well as the cultivation of plants from which these substances can be extracted.

The King [2 ...] 2 has the same powers with regard to psychotropic substances, other than narcotic and soporific substances, liable to cause dependence.

The King may also exercise the same powers with regard to substances which may be used for the illicit manufacture of narcotic and psychotropic substances.

(In addition, with a view to detecting drug-related problems, the King may, by decree deliberated in the Council of Ministers, set rules for the collection and processing of personal data relating

to the health of patients. Rules provide guarantees relating to patient consent, information to the patient, the limited transmission and the maximum retention period of this data in accordance with the law of 8 December 1992 on the protection of privacy with regard to processing of personal data.) <L 2008-12-22 / 33, art. 105, 013; Effective: 08-01-2009>

[1 The King may provide for more stringent monitoring measures than those required by the Convention on psychotropic substances and the annexes, made in Vienna on February 21, 1971 and confirmed by the law of June 25, 1992 assenting the Convention on substances psychotropic drugs and Annexes, made in Vienna on February 21, 1971, in application of article 23 of this convention.].

3 The King may, by decree deliberated in the Council of Ministers, determine the conditions and other measures under which anonymous information relating to the composition and use of the substances referred to in this law is communicated to the authorities he designates by laboratories and experts, even when they are acting in the context of information or criminal investigation.] 3

[3 § 2. the King may, by decree deliberated in the Council of Ministers, after having obtained the opinion [5 of Sciensano] 5, subject to the rules and control referred to in § 1, substances on the basis of a classification generic.

The generic classification referred to in the previous paragraph is decided by the King, inter alia on the basis of international knowledge, recommendations and directives of the European Monitoring Center for Drugs and Drug Addiction of the European Union and of the International Control Body. drugs from the United Nations.] 3

Article 1bis

(The King [1 ...] 1) is authorized to require that the packaging of the substances referred to in article 1 bear the particulars relating to the methods of their destruction, neutralization and

elimination. <L 2003-05-03 / 46, art. 4, 007; Effective: 02-06-2003>.

He is authorized to determine the conditions under which this destruction, neutralization and elimination must take place.

Article 1ter

<Inserted by L 1994-07-14 / 57, art. 2; In force: 10/31-1994> Breaches of the provisions which, in the royal decrees taken in execution of this law, concern labeling, as well as of the rules enacted in execution of article 1bis, are punishable by a fine of twenty-six to five cents (EUR). <L 2003-05-03 / 46, art. 5.007; Effective: 02-06-2003>.

Article 2

<L 1994-07-14 / 57, art. 3, 002; In force: 31-10-1994> Violations of the provisions which, in the royal decrees taken in execution of this law, concern toxic, disinfectant or antiseptic substances will be punished:

1 ° imprisonment of eight days to three months and a fine of one hundred to three thousand (EUR) or one of these penalties only when these offenses concern the conservation and delivery of these substances; <L 2003-05-03 / 46, art. 6, 007; Effective: 02-06-2003>

2 ° imprisonment from one month to five years and a fine of three thousand to one hundred thousand (EUR) or one of these penalties only when these offenses concern the import, export, manufacture, transport, possession, sale, offer for sale and acquisition for consideration or free of charge. <L 2003-05-03 / 46, art. 6, 007; Effective: 02-06-2003>

Article 2bis

<L 09-07-1975, art. 2> § 1. (Breaches of the provisions which, in the royal decrees taken in execution of this law, concern soporific, narcotic substances and other psychotropic substances liable to generate dependence and the list of which is drawn up by the King as well as the cultivation of plants from which these substances can be extracted, will be punished (according to the

distinctions referred to in paragraph 2 and the categories established by the King by decree deliberated in the Council of Ministers,) by imprisonment of three months to five years and a fine of one thousand to one hundred thousand (EUR) (...). <L 1994-07-14 / 57, art. 4, 002; In force: 31-10-1994> <L 2003-05-03 / 46, art. 7, 007; Effective: 02-06-2003>

(The King may, by decree deliberated in the Council of Ministers, establish distinctions between the substances listed in the list referred to in paragraph 1.) <L 2003-05-03 / 46, art. 7, 007; Effective: 02-06-2003>

§ 2. The offenses referred to in § 1 will be punished by imprisonment (imprisonment from five to ten years): <L 2003-01-23 / 42, art. 107, 006; Effective: 13-03-2003>

a) if they were committed against a minor over 16 years of age;
b) if the use of the substances specified in § 1, which has been made as a result of the offenses, has caused another person either an illness which appears to be incurable or a [2 personal incapacity for work of more than four months] 2, either loss of absolute use of an organ or severe mutilation.

§ 3. The offenses referred to in § 1 will be punished (imprisonment) from ten to fifteen years: <L 2003-01-23 / 42, art. 107, 006; Effective: 13-03-2003>

a) if they were committed against a child over 12 years of age and under 16 years of age;
b) if they constitute acts of participation in the main or ancillary activity of an association;
c) if the use which has been made of the substances specified in § 1 as a result of the offenses has caused death.

§ 4. The offenses referred to in § 1 will be punished (imprisonment) from fifteen to twenty years: <L 2003-01-23 / 42, art. 107, 006; Effective: 13-03-2003>

a) if they were committed against a child under 12 years of age;
b) if they constitute acts of participation as a manager in the main or ancillary activity of an association;

§ 5. [1 In the cases provided for in §§ 2, 3, 4 and 6] 1, a fine of 1,000 to 100,000 (EUR) may also be imposed. <L 2003-05-03 / 46, art. 7, 007; Effective: 02-06-2003>

<Note of article 9 of the law of 07-09-1975, states: "People who have consumed in groups substances specified in article 2bis, § 1, or have, with a view to their personal consumption, illegally manufactured , acquired or held such substances, can benefit from the provisions of the law of June 29, 1964 concerning the suspension, the deferment or the probation, even if they do not meet the conditions provided for in articles 3 and 8 of the aforementioned law relating to the convictions earlier than they would have incurred. ">

[1 § 6. Are punished by the penalties provided for in this article, and according to the distinctions made therein, those who, for consideration or free of charge, carry out preparatory acts with a view to the manufacture, sale, delivery or supply. illegality of a substance referred to in § 1, or for the cultivation of plants from which these substances can be extracted.] 1

(1) <L 2014-02-07 / 21, art. 3.016; Effective: 20-03-2014>

(2) <L 2016-02-05 / 11, art. 30, 018; Effective: 02-29-2016>

Article 2ter

<Inserted by L 2003-04-04 / 90, art. 2; In force: 02-06-2003> The King may, by decree deliberated in the Council of Ministers, depending on the distinctions and categories he establishes in accordance with article 2bis, § 1, first paragraph, define the offenses which, in derogation of the penalties provided for in article 2bis, the following will be punished:

1 ° a fine of 15 to 25 EUR for the first offense;

2 ° a fine of 26 to 50 EUR in the event of a repeat offense within the year since the first conviction;

3 ° imprisonment for eight days to one month and a fine of 50 to 100 EUR in the event of a new offense within the year since the second conviction;

	<p>4 ° imprisonment from three months to one year, and a fine of 1,000 to 100,000 EUR, or only one of these penalties.</p> <p>In addition to the offenses punishable by the penalties referred to in paragraph one, 4 °, and by way of derogation from article 137 of the Code of Criminal Procedure, the correctional courts deal with the offenses referred to in paragraph one, 1 ° to 3 °.</p> <p>Article 2quater</p> <p><inserted by L 2003-05-03 / 46, art. 8; In force: 02-06-2003> Breaches of the provisions of (Regulation (EC) n ° 273/2004 of the European Parliament and of the Council of February 11, 2004 on drug precursors and of Regulation (EC) n ° 111/2005 of the Council of 22 December 2004 laying down rules for the surveillance of the trade in drug precursors between the Community and third countries) and of the regulations implementing it as well as the infringements of the provisions of this law and of the decrees taken in execution of this law. - concerning substances that can be used for the illicit manufacture of narcotic and psychotropic substances, are punished: <L 2006-12-13 / 35, art. 88, 012; Effective: 01-01-2007></p> <p>1 ° in accordance with articles 231, 249 to 253 and 263 to 284 of the general law on customs and excise of July 18, 1977, when the offense or the attempted offense is committed during the placing of goods under a customs procedure or of their re-exportation out of the customs territory of the Community, within the meaning of Article 4, 15, of the Community Customs Code, established by Council Regulation (EEC) No 2913/92 of 12 October 1992. It is understood by attempt to commit an offense in the dispatch, transport or possession of substances with the obvious aim of placing them under customs procedure or of re-exporting them outside the customs territory of the Community;</p> <p>2 ° a fine of 26 to 500 EUR when these offenses concern labelling and the rules enacted pursuant to article 1a;</p> <p>3 ° imprisonment from eight days to three months and a fine of 1,000 to 5,000 EUR or one of these penalties only when the offense concerns failure to complete or keep documents or</p>
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registers, do incomplete or incorrectly, not keep them long enough and accept documents that are incomplete or incorrectly completed, other than customs documents;

4 ° imprisonment for two to five years and a fine of EUR 3,000 to 10,000 or one of these penalties only when the offense concerns:

- the performance of manufacturing, use, storage, brokerage, marketing, trade, import, export or transit activities without obtaining approval or the authorization or without having made any notification or having carried out these activities without being referred to in the authorization or approval or for which no notification was made, with the exception of the offenses referred to in 1 °;

- (sale or shipment without having adequately informed the Minister who has Public Health in his attributions, in the cases determined by the King. - The King fixes the way in which this warning must be given.) <L 2006 -12-13 / 35, art. 88, 012; Effective: 01-01-2007>

- making substances available to persons other than those to whom such making available is permitted.

[1. 5 ° of the imprisonment of 10 to 15 years if the offense referred to in 4 ° constitutes an act of participation in the main or ancillary activity of an association. A fine of 1,000 to 100,000 EUR may also be imposed;

6 ° imprisonment for 15 to 20 years if the offense referred to in 4 ° constitutes an act of participation as a manager in the main or ancillary activity of an association. A fine of 1,000 to 100,000 EUR may also be imposed.] 1

[1 Are punished by the penalties provided for in paragraph 1, 4 ° to 6 °, and according to the distinctions made therein, those who, for consideration or free of charge, carry out preparatory acts with a view to committing an offense referred to by the same provisions.] 1

(1) <L 2014-02-07 / 21, art. 4.016; Effective: 20-03-2014>

Article 3

	<p>§1. For the purpose of implementation of this Law, the laundering of money means:</p> <ul style="list-style-type: none"> - converting or transferring money or other assets for the purpose of concealing or disguising their illicit origin or assisting any individual involved in the offence from which this money or these assets derive to avoid the legal consequences of his actions; - concealing or disguising the nature, origin, location, use, movement or ownership of money or assets known to be of illicit origin; - acquiring, holding, or using money or assets known to be of illicit origin; - participating in any of the acts referred to in the foregoing three points, association for the purpose of committing said acts, attempting to commit said acts, assisting in their perpetration, inciting or advising someone to commit said acts or facilitating their commission; <p>§1bis. For the purpose of implementation of this Law, the financing of terrorism is understood in the meaning of Article 2, §2, b) of the framework decision of the Council of the European Union of 13 June 2002 on combating terrorism and of Article 2 of the International Convention for the suppression of the financing of terrorism approved in New York on 9 December 1999.</p> <p>§ 2. For purposes of implementation of this Law, the origin of money or assets is illicit when derived from:</p> <p>1° The commission of an offence linked to:</p> <ul style="list-style-type: none"> - terrorism or the financing of terrorism; - organised crime; - illicit trafficking in narcotics; - illicit trafficking in weapons, goods and merchandise; - trafficking in illegal labour; - trafficking in human beings; - exploitation of prostitution; - illicit use in animals of hormonal substances or illegal trade in such substances; - illicit trafficking in human organs and tissues; - fraud to the detriment of the financial interests of the European Communities;
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	<ul style="list-style-type: none"> - serious and organised fiscal fraud setting in motion complex mechanisms or procedures with an international dimension; - embezzlement by public officials and corruption; - serious environmental crime; - counterfeiting currency or bank notes; - counterfeiting products; - piracy. <p>2° stock market-related offences or an improper public appeal for savings or providing investment, foreign exchange or fund transfer services without licence;</p> <p>3° fraud, breach of trust, abuse of corporate assets, hostage-taking, theft or extortion using violence or threats, or an offence related to the state of bankruptcy.</p> <p>§ 3. The institutions and individuals referred to in Articles 2, 2bis and 2ter shall provide full assistance in enforcement of this Law by identifying all acts of money laundering and terrorism financing.</p> <p>Article 4</p> <p><L 09-07-1975, art. 4> § 1. Without prejudice to the application of articles 31 and 32 of the Penal Code in the event of a conviction to a criminal penalty, the perpetrators or accomplices of the offenses referred to in articles (2, 2 °, 2bis, 2quater and 3) may be condemned to prohibition in accordance with article 33 of this same Code. <L 2003-05-03 / 46, art. 10.007; Effective: 02-06-2003></p> <p>§ 2. If they exercise a branch of the art of healing, the veterinary art or a paramedical profession, the judge may prohibit them, temporarily or definitively, the exercise of this art or this profession.</p> <p>§ 3. By convicting for one of the offenses referred to in articles (2, 2 °, 2bis, 2quater and 3), the judge may order the temporary or definitive closure of drinking factories or any other factory where the offenses have occurred. been committed; he may also, temporarily or permanently, prohibit the convicted person from</p>
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operating, either by himself or by an intermediary, of such factories; he may also order, at the expense of the convicted person, the posting and publication of the decision. <L 1994-07-14 / 57, art. 5.002; In force: 31-10-1994>

§ 4. In the event of a conviction for a main penalty of fine, the duration of the prohibitions or the closure, pronounced under §§ 2 and 3, will take effect on the day when the contradictory or default sentence has acquired the force of law. judged.

In the event of a sentence involving deprivation of liberty, this period will begin on the day on which the convicted person has undergone or prescribed his sentence and if he is conditionally released, from the day of release, provided that it is not revoked.

In the case referred to in the previous paragraph, the prohibitions or the closure will also produce their effects from the day on which the contradictory or default conviction has acquired the force of res judicata.

(§ 4bis. When the convicted person is neither the owner nor the operator of the drinking factory or of the factory referred to in § 3, the closure may only be ordered if the seriousness of the concrete circumstances so require, and this, for a maximum period of two years from the day on which the contradictory or default conviction will have become irrevocable, after summons to intervene by the owner or operator mentioned above, at the request of the public prosecutor.) <L 1998-11-17 / 39, art. 3, 003; Effective: 23-12-1998>

(§ 4ter. The summons before the Criminal Court by virtue of § 4bis, is transcribed at the conservation of the mortgages of the situation of the goods, at the diligence of the bailiff author of the exploit.

The citation must contain the designation of the building, object of the offense and identify the owner in the form and under the sanction provided for in article 12 of the law of October 10, 1913.

Any decision rendered in the case is mentioned in the margin of the transcription of the summons according to the procedure provided for by article 84 of the mortgage law.) <L 1998-11-17 / 39, art. 3, 003; Effective: 23-12-1998>

§ 5. Any infringement of the prohibitions or the closure pronounced under (§§ 2, 3 and 4bis), will be punished by imprisonment of three months to one year and a fine of 1,000 to 5,000 (EUR). <L 1998-11-17 / 39, art. 3, 003; In force: 23-12-1998> <L 2003-05-03 / 46, art. 10.007; Effective: 02-06-2003>

§ 6. Without prejudice to the application of articles 42 and 43 of the Penal Code, the judge may order the confiscation of vehicles, devices, instruments or things which were used or were intended to commit the offenses provided for in articles (2, 2 °, 2bis, 2quater and 3) or which have been the subject of it, even if they are not the property of the convicted person. <L 1994-07-14 / 57, art. 5.002; In force: 31-10-1994> <L 2003-05-03 / 46, art. 10.007; Effective: 02-06-2003>

[1 § 7. Illegal substances, as well as raw materials and equipment used or intended for the illegal production of substances covered by this law, including the cultivation of plants from which these substances can be extracted, may immediately be destroyed or permanently put out of use following a decision of the Public Prosecutor's Office, despite the continuation of the investigation, insofar as their conservation is not necessary for the manifestation of the truth. In the context of a judicial investigation, this measure can only be ordered after the agreement of the competent investigating judge.

In any event, the things referred to in paragraph 1 must be destroyed when the decision of the competent court ordering their confiscation has become final.] 1

(1) <L 2014-02-07 / 21, art. 5.016; Effective: 20-03-2014>

Article 5

<L 09-07-1975, art. 5> In the event of a repeat offense within the period of five years after a conviction for an offense against this law or the decrees taken in execution of it, the correctional penalties may be doubled, and the criminal penalties increased in accordance with in article 54 of the Criminal Code.

<p>Drug trafficking</p>	<p>Law of 24 February 1921 [amended by Law of 9 July 1975 and Law of 14 July 1994] - Regarding Traffic In Poisonous, Soporific, Narcotic, Psychotropic, Disinfectant Or Antiseptic Substances And Substances That Can Be Used In The Illicit Manufacture Of Narcotic Substances And Psychotropic drugs</p> <p>Article 1</p> <p>The King may regulate and supervise, in the interest of hygiene and public health, importation, export, transit, manufacture, preservation, that is to say storage under the required conditions, labelling, transport, holding, brokerage, sale and offering for sale, the prescription, the delivery and acquisition, against payment or free of charge, of poisonous, soporific, narcotic, disinfectant or antiseptic substances as well as the cultivation of plants from which these substances can be extracted.</p> <p>The King has the same powers with regard to psychotropic substances, other than narcotic and soporific substances, liable to cause dependence.</p> <p>The King may also exercise the same powers with regard to substances which may be used for the illicit manufacture of narcotic and psychotropic substances.</p> <p>(In addition, with a view to detecting drug-related problems, the King may, by decree deliberated in the Council of Ministers, set rules for the collection and processing of personal data relating to the health of patients. rules provide for guarantees relating to patient consent, patient information, limited transmission and the maximum retention period of this data in accordance with the law of 8 December 1992 on the protection of privacy with regard to processing of personal data.)</p> <p>Article 2bis</p> <p>§ 1. Infringements of the provisions which, in the royal decrees taken in execution of this law, concern soporific, narcotic and other psychotropic substances liable to generate dependence and the list of which is drawn up by the King as well as the cultivation of plants from which these substances can be</p>
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extracted, will be punished (according to the distinctions referred to in paragraph 2 and the categories established by the King by decree deliberated in the Council of Ministers) by imprisonment from three months to five years and a fine of one thousand to one hundred thousand (EUR) (...).

(The King may, by decree deliberated in the Council of Ministers, establish distinctions between the substances listed in the list referred to in paragraph 1.)

§ 2. The offences referred to in § 1 will be punished by imprisonment (imprisonment from five to ten years):

- a) if they were committed against a minor over 16 years of age;
- b) if the use of the substances specified in § 1, which has been made as a result of the offences, has caused another person either an illness which appears to be incurable or a [2 personal incapacity for work of more than four months] 2, either loss of absolute use of an organ or severe mutilation.

§ 3 The offences referred to in § 1 will be punished with imprisonment from ten to fifteen years:

- a) if they were committed against a child over 12 years of age and under 16 years of age;
- b) if they constitute acts of participation in the main or accessory activity of an association;
- c) if the use which has been made of the substances specified in § 1 as a result of the offenses has caused death.

§ 4. The offences referred to in § 1 will be punished with imprisonment from fifteen to twenty years:

- a) if they were committed against a child under the age of 12;
- b) if they constitute acts of participation as a manager in the main or accessory activity of an association;

§ 5. [1 In the cases provided for in §§ 2, 3, 4 and 6] 1, a fine of 1,000 to 100,000 (EUR) may also be imposed.

§ 6. Are punished by the penalties provided for in this article, and according to the distinctions made therein, those who, for consideration or free of charge, carry out preparatory acts with a view to the manufacture, sale, delivery or supply illicit a

	substance referred to in § 1, or with a view to cultivating plants from which these substances can be extracted.]
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SPAIN

Mafia Map

Introduction

The presence of Italian mafia groups across Spain is multidimensional and reflects the socio-economic factors that make Spain attractive to Italian mafias. The lifestyle, similar climate, and language accessibility¹⁵⁴ are considered some of the reasons why Italian mafia members for their trade and Italian mafia members on the run have often chosen Spain as new country of activity and residence. Additionally, the period of economic growth from the 1990s till 2008 and the centrality of the ports of Barcelona and Valencia as international hubs (especially for drug trafficking for the routes from South America and North Africa), have contributed to a structured and consistent mafia expansion across Spain, triggering more structured antimafia efforts as well. The proximity with tax havens such as Andorra and Gibraltar¹⁵⁵ that can be reached without strict border controls possibly might play a further role in the choice of Spain as country where to establish business.

Every mafia groups across Spain seems to engage in drug trafficking: mostly cocaine from South America, but also marijuana and hashish from Morocco and, to a lesser extent, MDMA, and heroin through the Balkan or Asian routes. Money laundering is frequent through illicit investments in sectors such as transport, wholesale, agri-food and fishing, entertainment, construction, and real estate (e.g. hotels, shopping centres); lastly, smuggling is another common activity.

¹⁵⁴ The fact that Spanish is the official language of South American countries where drugs (especially cocaine) are produced seems to be a contributing factor to using Spanish channels for drug trade.

¹⁵⁵ Gibraltar is part of the UK; border controls might be affected because of Brexit.

Apart from a stable manifestation of 'ndrangheta clans involved in cases of drug trafficking and money laundering, data converge in showing conspicuous presence of camorra clans (active in tobacco smuggling, money laundering with investments in the food sector, entertainment, tourism, estate sectors, and drug trafficking) and some minor traces of other groups such as cosa nostra (active in the estate, touristic, and food sectors) and Apulian mafia groups (drug trafficking).

Geographically, evidence of Italian mafias' operations can be found in: the region of Catalonia ('ndrangheta), Costa del Sol (camorra), Costa Brava (camorra), Canarias Islands (camorra), Andalucia, Balears Islands (camorra), and also in the cities of Madrid ('ndrangheta, camorra and cosa nostra), Barcelona (camorra), Murcia ('ndrangheta), Tarragona (camorra), Valencia (camorra), Gerona ('ndrangheta) and Málaga ('ndrangheta, camorra, cosa nostra, Apulian mafia clans).

All groups, 'ndrangheta, camorra and cosa nostra mainly, are believed to cooperate in drug trade in Spain. Moreover, they are believed to have forged links to local criminal organisations set up to support the physical presence of clans and affiliates from Italy in Spain and to facilitate the hiding of fugitives.

In terms of law enforcement, the Cuerpo Nacional de Policia and the Guardia Civil, together with the Centro de Inteligencia contra el Terrorismo y el Crimen Organizado, are the agencies in charge of investigating and policing organised crime (and Italian mafia groups), both members of the Antimafia @ON Network. Furthermore, the Unidad Droga y Crimen Organizado is the special unit active in tackling drug trafficking practices run by mafia groups and, more in general, organised crime.

Beyond EU cooperation, cooperation between the Spanish and Italian jurisdictions has been implemented through bilateral protocols and is generally believed to work quite well due to the proximity of the judicial system.

Criminal actors

'Ndrangheta

There are three main forms of presence of 'ndrangheta clans across the Spanish territory: 1) as evidenced by several examples of murders of well-known 'ndrangheta members or affiliates, and arrests of individuals inside the Spanish borders, Spain is used as refuge for mafia fugitives; 2) since Spain is one of the

central European hubs for drugs, more precisely, through the ports of Valencia and Barcelona for the South American route (for cocaine) and North African route (for hashish), 'ndrangheta groups engage in drug trafficking ventures; 3) in relation to the profits of drug trafficking, 'ndrangheta clans practice money laundering also in Spain.

In relation to 1), many police operations have discovered members of 'ndrangheta clans finding shelter in several Spanish regions: in 2019, a drug trafficker with links to the clan Barbaro-Papalia-Trimboli (from Platì, Reggio Calabria) was arrested in Valencia (DIA, 2019b); moreover, 'ndrangheta representatives have been killed in Spain, such as a member of the 'ndrina Nirta (from San Luca, Reggio Calabria) in 2017 (DIA, 2017a); very recently, in March 2021, Giuseppe Romeo from San Luca, involved in the drug trafficking network dismantled by Operation Pollino-European 'ndrangheta connection¹⁵⁶, was arrested in Barcelona¹⁵⁷.

In relation to point 2), many operations have unveiled the stable presence of 'ndrangheta groups in the drug trade, often in joint with other international criminal brokers. For instance, the Maesano-Pangallo clan (from Roccaforte del Greco, Reggio Calabria) was found to be settled in Mallorca and Madrid, with direct contacts with Colombian narco-traffickers (DIA, 2016a). While, the Piromalli-Molè clans (Gioia Tauro) and the Mancuso clan (from Limbadi, Vibo Valentia) were operating drug trafficking activities in Barcelona (DIA, 2016a). To add, Operation Bella Vita¹⁵⁸ unveiled the business conducted by affiliates of the clan Bonavota (from Sant'Onofrio, Vibo Valentia) and Operation Vindicta¹⁵⁹ shed light on involvements of individuals affiliated to the clan Barbaro (from Platì). As mentioned, Spain is the place of arrival of drugs that are later transported to Italy, as shown in the following

¹⁵⁶ Operation Pollino-European 'ndrangheta Connection, Tribunale di Reggio Calabria, p. n. 6089/2015 RGNR DDA, p.p. 2868/2016 RGNR DDA and 2109/2016 RG GIP

¹⁵⁷See

https://www.repubblica.it/cronaca/2021/03/12/news/ndrangheta_arrestato_in_spagna_il_latitante_giuseppe_romeo-291901600/

¹⁵⁸ Operation Bella Vita, Tribunale di Torino, p.p. 15046/13 RGNR and 17628/14 RG GIP

¹⁵⁹ Operation Vindicta, Tribunale di Milano, OCCC 05/01/18, p.p. 48039/2013 RGNR and 10692/2013 RG GIP

cases: Operation Buon Vento Genovese¹⁶⁰, one member of the clan Alvaro (from Sinopoli, Reggio Calabria) involved in drug trade in Spain, was arrested in Calabria in February 2020; Operation Six Towns¹⁶¹, clan Iona-Marrazzo (from Cosenza and Crotona); Operation Buena Ventura¹⁶², clan Morabito-Palamara-Bruzzaniti (from Africo, Reggio Calabria); Operation Stammer¹⁶³, clan Mancuso (from Limbadi, Vibo Valentia); Operation Gerry¹⁶⁴, affiliated of clans Bellocco (from Rosarno, Reggio Calabria), Molè-Piromalli (from Gioia Tauro, Reggio Calabria), Avignone (from Taurianova, Reggio Calabria) and Paviglianiti (from San Lorenzo, Reggio Calabria); Operation Area 51¹⁶⁵, clan Gallace (from Guardavalle, Catanzaro); Operation Ossessione¹⁶⁶ that disrupted a drug trafficking organisation established and run by clan Mancuso (from Limbadi, Vibo Valentia). Recently, a transnational organised crime network, for drug trafficking, was discovered in Operation Molo 13¹⁶⁷. The trade had been set up by representatives of the family Gallace from Guardavalle (Catanzaro) in order to import cocaine from Colombia and Brazil and sell it in Spain, but also Netherlands, the UK, Slovenia, while they aimed at Australia and New Zealand as well.

¹⁶⁰ Operation Buon Vento Genovese, Tribunale di Genova, p.p. 5954/2019 RGNR DDA

¹⁶¹ Operation Six Towns, Tribunale di Catanzaro, p.p. n. 5707/10 R.G.N.R. and n. 4425/10 GIP

¹⁶² Operation Buena Ventura, Tribunale di Reggio Calabria, p. p. n. 9351/11 RGNR DDA, 660/13 GIP and 20/15 ROCC

¹⁶³ Operation Stammer, Tribunale di Catanzaro, p. p. n. 9444/14 RGNR DDA

¹⁶⁴ Operation Gerry, Tribunale di Reggio Calabria, p. p. n. 4440/14 RGNR DDA

¹⁶⁵ Operation Area 51, Tribunale di Milano, OCC 02/05/17 n. 41946/15 RGNR and n. 13146/15 RGGIP

¹⁶⁶ Operation Ossessione, Tribunale di Catanzaro, p.p. n. 1732/2017 RGNR mod. 21 DDA Catanzaro and n. 1373/2017 RG GIP - n. 19/2019 RMC

¹⁶⁷ See <http://www.lametino.it/Cronaca/operazione-dda-catanzaro-contro-traffico-internazionale-di-droga-20-arresti-e-sequestro-beni-per-4-milioni.html>

In February 2020, in Operation Akhua¹⁶⁸, the Carabinieri and Guardia Civil jointly dismantled two organised crime groups active in drug trafficking and composed one by individuals in proximity to clans from Rosarno and Platì, and the other linked to the camorra clan Licciardi from Scampia (Naples). Both organisations were importing cocaine and hashish from Spain directed to the Italian drug market.

In June 2020, in Operation Freccia¹⁶⁹, representatives of the locale from Seregno (Monza and Brianza, in Lombardy) were caught running the importation of cocaine, hashish and marijuana from Spain directed to Lombardy.

Lastly, in relation to point 3), to launder dirty money, 'ndrangheta clans reinvest illicit profits in the private sector. For example, Operation Alchemia¹⁷⁰ unveiled the interests of the clans Raso-Gullace-Albanese (from Cittanova, Reggio Calabria) and Parrello-Pagliostro (from Palmi, Reggio Calabria) in the real estate sector in the Canarias Islands. Moreover, for money laundering purposes, 'ndrangheta clans seem also active in the gambling sector in Spain, as well as in other countries such as Malta (Operation Gambling¹⁷¹).

Camorra

Camorra clans are the most active groups of Italian mafias active in Spain. To provide evidence of this, Spain is one of the first countries to which Italy formulated requests for judicial cooperation and assistance between 2015 and 2016 and, interestingly, 61 % of such requests were formulated by the judiciary in Napoli (Direzione Nazionale Antimafia Report, 2017).

¹⁶⁸ Operation Akhua, Tribunale di Roma, OCCC n. 51627/2016 -34404/18 RG GIP

¹⁶⁹ Operation Freccia, Tribunale di Milano, OCC n. 21745/17 RGNR e n. 20856/19 RG GIP

¹⁷⁰ Operation Alchemia, Procura di Reggio Calabria, n. 5949/11 RGNR DDA and Procura di Genova n. 7324/09 RGNR DDA

¹⁷¹ Operation Gambling, Tribunale Di Reggio Calabria p.p. n. 7497/2014 RGNR, DDA Proc. n. 1690/2015 RGGIP – DDA n. 26/20115 OCC

Data show the presence of representatives of clans Amato-Pagano (from Secondigliano, Naples), Formicola (from San Giovanni a Teduccio, Napoli), Mazzearella (from San Giovanni a Teduccio, Napoli), Contini (from San Carlo all'Arena, Napoli), Frizziero (from Chiaia and Mergellina, Napoli), Mariano (from Quartieri Spagnoli, Napoli), Moccia (from Acerra and Afragola, Napoli), Nuvoletta (from Marano di Napoli, Napoli) and Gallo-Limelli-Vangone (from Boscotrecase, Napoli).

Since the 1980s, Spain has traditionally been destination of camorra fugitives fleeing from the Italian authorities or after succumbing in a camorra feud¹⁷². For example, in the context of Operation Pasha¹⁷³ in 2016, one member of the clan Zaza-Mazzearella (from San Giovanni a Teduccio, Napoli) was arrested in Palma de Mallorca; moreover, in 2018, one high representative of the clan Mariniello-Pignataro (from Nocera Inferiore) was arrested in Las Palmas¹⁷⁴; in 2019, an associate of the clan Vigilia (from Soccavo, Naples) was arrested in Ibiza¹⁷⁵; and, more recently, another member of the clan Mazzearella (from San Giovanni a Teduccio, Napoli) was arrested in Gran Canaria¹⁷⁶.

Second, like in the case of the 'ndrangheta, camorra clans are active in the trafficking of cocaine (through the South American route) and, mostly, hashish (through Morocco). For example, see Operation Snake¹⁷⁷; Operation Buc¹⁷⁸; or Operation

¹⁷² After the first feud of Scampia in 2004, members of the Amato and Pagano clans found shelter in Spain (also to run drug trafficking businesses) and started to be labelled as 'The Spanish'.

¹⁷³ Operation Pasha, Tribunale di Roma, OCCC n.798/13, p.p. n.7195/12

¹⁷⁴ Tribunale di Salerno, OCCC 12/03/2018, p.p. 10313/16 RGNR and 1181/17 RG GIP

¹⁷⁵ Tribunale di Napoli, OCC n. 528/18, p.p. n. 53016/2013/21

¹⁷⁶ Tribunale di Napoli, OCCC n. 30464/15 RGNR-231/18 OCC and OCC n. 53961/09 RGNR-477/15

¹⁷⁷ Operation Snake, Tribunale di Napoli, OCCC n. 537/18, p.p. 29956/2017 RGNR and 19302/18 RG GIP

¹⁷⁸ Operation Buc, Tribunale di Milano, OCCC n. 4725/17 RG PM-1061/18 RGGIP

Scugnizza 2¹⁷⁹, in the context of which one fugitive of clan De Micco (from Ponticelli, Napoli) was managing drug trafficking business in Ibiza and arrested in Barcelona. It must be also highlighted that, recently, members of the clan Nuvoletta (from Marano di Napoli) have ‘inherited’ the management of drug trafficking across Spain from the clan Polverino (from Marano di Napoli) (DIA, 2019b). To add, while investigating a drug trafficking network running between Italy and Dubai, Operation Blonde Arabs¹⁸⁰ unveiled the relations of the camorra clan Di Lauro (from Napoli) with intermediaries based in Spain. While running drug trafficking (hashish and marijuana) operations, camorra clans often cooperate with Moroccan organised crime groups and some low-level members ndrangheta-affiliated (mostly in Costa del Sol).

The profits made through drug trafficking are laundered through investments in several economic sectors: for instance, Operation Passion fruit¹⁸¹ revealed the economic interests of clan Moccia (from Acerra and Afragola, Napoli) in the business of the Barcelona’s fruit and vegetable market; furthermore; moreover, one member of the Nuvoletta clan was arrested in 2019 for a real estate speculation for the construction of a residence block in Tenerife (DIA, 2019b).

Cosa nostra

Cosa nostra families are active in Spain, mostly in relation to drug trafficking (for cocaine, see Operation Borasco¹⁸², Operation Narcos (DIA, 2017a), Operation Old

¹⁷⁹ Operation Scugnizza 2, Tribunale di Napoli, OCCC 12/02/2018, p.p. 22272/13 RGNR and 21/18

¹⁸⁰ Operation Blonde Arabs, Gip del Tribunale di Napoli, OCCC n. 13700/17 R.G.N.R. – 12263/17 RG. GIP – n. 420/19 R.M.C.

¹⁸¹ Operation Passion Fruit, Tribunale di Roma, OCCC 25/01/2016 n. 57568/12 RGNR, n. 25146/13 RG G LP

¹⁸² Operation Borasco, Tribunale di Palermo, OCCC 18/01/2017 n. 8124/16 RGNR and n. 12163/16

Bridge in 2009 (DIA, 2015b) and Operation Stop and Go¹⁸³; for marijuana, see Operation Affari di Famiglia¹⁸⁴). In relation to hashish trafficking, there have been traces of collaboration between cosa nostra and camorra clans between clans from Trapani and camorra clan Nuvoletta (Operation Eden III – Pequeno¹⁸⁵); between clan Fragalà (from Catania) and members of clans Casalesi; and business relations between cosa nostra clans, 'ndrangheta members based in Milan, and the camorra clan Gionta (Torre Annunziata) as per Operation Miracolo¹⁸⁶.

Cosa nostra groups operate in the areas of Andalucía, Galicia, Costa Brava, Costa del Sol and Catalonia where they also reinvest dirty profits into the production and sale of agri-food products such as oil, in real estate and in tourism.

Apulian mafia clans

Apulian clans are active in drug trafficking, mainly hashish coming from Morocco and transiting Spain, as evidenced, for example, in Operation Lupin¹⁸⁷, clan Dicosola and Parisi (from Bari); Operation Orione¹⁸⁸, mafia groups from Lecce; and Operation Carthago¹⁸⁹, on the links between members from the 'mafia foggiana' (from Foggia) and representatives of the (former) Nuova Camorra Organizzata.

¹⁸³ Operation Stop and Go, Tribunale di Catania, OCCC 06/05/2019 n. 57771/2016 RGNR and n. 555/2018 RG GIP

¹⁸⁴ Operation Affari di Famiglia, Tribunale di Pesaro-Urbino, p.p. 1262/17 RGNR

¹⁸⁵ Operation Eden III – Pequeno, Tribunale di Palermo, OCCC 04/11/2019 n. 15152/2013 RGNR and n. 4530/2019 RG GIP

¹⁸⁶ Operation Miracolo, Tribunale di Milano, OCC 26/09/2018 n. 44647/2017 RGNR and n. 27601/2017 RG GIP

¹⁸⁷ Operation Lupin, Tribunale di Bari, OCCC 23/10/2017 n. 4175/14 MOD. 21 DDA Bari and n.1160/16

¹⁸⁸ Operation Orione, Tribunale di Lecce, OCC 08/03/2018 n. 27/2018

¹⁸⁹ Operation Carthago, Tribunale di Trento, OCC GIP 08/06/2019 n. 2176/2016 RGNR and n. 1874/19 RG GIP

As it was the case for other Italian mafia groups, for Apulian clans, Spain is the ideal destination for fugitives as in the anti-drug Operation Neve di Marzo¹⁹⁰ that led to the arrest of an individual from Foggia with links to the clans Raduano and Romito (from the Gargano area) and resident in the Canarias Islands.

Banda della Magliana and Maranella

Even if it is not strictly regarding traditional mafia-type criminality, it is important to flag that in Operation Jackpot¹⁹¹ in February 2020, a member of the Banda della Magliana (from Roma) was investigated for the creation of a network, run between Italy and Spain, for the management of slot machines in the Northern areas of Roma.

Moreover, in March 2021, in the context of an antidrug trafficking police operation, the Direzione Distrettuale Antimafia in Roma dismantled an organised crime group active in drug trafficking and arrested in Spain its presumed leader, Giuseppe Refrigeri from Banda della Maranella¹⁹².

¹⁹⁰ Operation Neve di Marzo, Tribunale di Bari, n. 7245/17 RGNR, n. 6139/18 RG GIP and n. 157/19 Reg. Mis. Caut. 16/10/2019

¹⁹¹ Operation Jackpot, Tribunale di Roma, nr. 980/14 RGNR and nr. 30208/14RGGIP

¹⁹² See <https://www.independent.co.uk/news/world/europe/mafia-boss-arrested-spain-drug-trade-b1813143.html> and <https://roma.repubblica.it/cronaca/2021/03/01/news/roma-traffico-droga-arrestato-giuseppe-refrigeri-boss-latitante-banda-della-marranella-289725075/>

Thinking Further

Data highlight that, like other countries (such as Netherlands or Romania), when it comes to Spain, Italian mafias are not settled, nor are they replicating structures or organisation abroad. Important to notice:

- There are individuals who are occasionally or systematically linked to one or more mafia groups, but also free-riders or freelancers that work with other groups too, especially in the drug trade.
- This scenario applies particularly to the case of drug trafficking run by 'ndrangheta that, depending on practical convenience, have showed that they prefer to use the ports of Rotterdam or Antwerp rather than Barcelona.
- Even if directly or undirectedly related to mafia groups, these free-riders or brokers usually do not employ the so-called mafia-method based on intimidation, control of the territory and 'omertà' (silence). In the only known case in which a 'ndrangheta group tried to get close to a local politician, things did not seem to progress further.
- In order to have stable drug markets, it is necessary to establish cartels through cooperation amongst the mafia and non-mafia criminal groups (like Galician groups who tend to run and be trusted for support with logistics). This is also one of the reasons many drug brokers work for various groups, Italian mafias among them.
- The differentiation across mafia groups like the one adopted in Italy is not really applicable to the Spanish context where mafia groups tend to cooperate for illicit trade. Also, even if proceeds of drug trade have remained in Spain, money is laundered also outside of Spain (including operations that saw money going to Australia, rest of Europe, Italy)

Spain – Quick Country’s Analysis



Spain - Main Legal Framework

Participation in a criminal organisation	Penal Code Article 570bis 1. Whoever promotes, constitutes, organises, co-ordinates or directs a criminal organisation shall be punished with a prison sentence of four to eight years, if it has the purpose or object of committing serious criminal offences, and with a prison sentence of three to six years in other cases; and whoever actively participates in the organisation, forms part thereof or co-operates financially or in any other way therein, shall be punished with a prison sentence of two to five years if its purpose is to commit serious criminal offences, and with a prison sentence of one to three years in other cases. For the purposes of this Code, a criminal organisation is construed to be a group formed by more than two persons, on a stable basis or for an indefinite term, in collusion and co-ordination to distribute diverse tasks or duties in order to commit criminal offences. 2. The penalties foreseen in the preceding Section shall be imposed in the upper half if the organisation: a) is formed by a large number of persons; b) possesses weapons or dangerous instruments; c) has advanced technological resources for communication or transport that, due to the characteristics thereof, are especially fit to facilitate commission of the criminal offences or the impunity of the offenders. Should two or more of those circumstances concur, the higher degree penalties shall be imposed. 3. The upper half of the penalties respectively foreseen in this Article shall be imposed if the criminal offences are against the life or integrity of persons, liberty, sexual freedom and indemnity, or involve trafficking in human beings.
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	<p>Article 570ter</p> <p>1. Whoever constitutes, finances or forms a criminal group shall be punished:</p> <p>a) If the purpose of the group is to commit the criminal offences mentioned in Section 3 of the preceding Article, with a prison sentence of two to four years for one or more serious criminal offences and with a prison sentence of one to three years for less serious criminal offences;</p> <p>b) With a prison sentence of six months to two years if the purpose of the group is to commit any other serious criminal offence;</p> <p>c) With a prison sentence of three months to one year when the aim is to commit one or several less serious criminal offences not included in Section a) or reiterated commission of petty criminal offences.</p> <p>For the purposes of this Code, a criminal group shall be construed as the collusion of more than two persons who, without fulfilling any or a number of the characteristics of a criminal organisation defined in the preceding Section, has the purpose or object of perpetrating criminal offences in collusion.</p> <p>2. The penalties foreseen in the preceding Section shall be imposed in the upper half if the group:</p> <p>a) is formed by a large number of persons;</p> <p>b) has weapons or dangerous instruments;</p> <p>c) has advanced technological resources for communication or transport that, due to the characteristics thereof, are especially fit to facilitate commission of the criminal offences or the impunity of the offenders. If two or more of those circumstances concur, the higher degree penalties shall be imposed.</p>
<p>Transnationality</p>	<p>Adherence to Palermo convention: ratification in March 2002</p> <p>Presence of transnationality in the main domestic legislation: yes</p>

	<p>Article 570quater</p> <p>1. In the cases foreseen in this Chapter and the following one, the Judges and Courts of Law shall order dissolution of the organization or group and, if appropriate, any other of the consequences of Articles 33.7 and 129 of this Code.</p> <p>2. Those responsible for the conduct described in the preceding two Articles, in addition to the penalties foreseen therein, shall be subject to that of special barring from all economic activities or legal transactions related to the activity of the criminal organisation or group, or to their deed within these, for a time exceeding that of the term of the custodial sentence imposed by six to twenty years, as appropriate, proportionally to the seriousness of the criminal offence, the number of those committed and the circumstances of the offender. In all cases, when the conduct foreseen in those Articles is included under another provision of this Code, the terms set forth in rule 4 of Article 8 shall apply.</p> <p>3. The provisions of this Chapter shall be applicable to all criminal organisations or groups that perpetrate any criminally relevant deed in Spain, even if they have been formed, are based or perpetrate the activity thereof abroad.</p> <p>4. The Judges or Courts of Law, giving the reasons in their judgement, may impose a lower punishment by one or two degrees on the person responsible for any of the criminal offences foreseen in this Chapter, as long as the subject has voluntarily quit his criminal activities and has actively collaborated with the authorities or the agents thereof either to obtain decisive evidence for the identification or capture of others who are responsible or to prevent the activities or furtherance of the organisations or groups to which they have belonged or to prevent a criminal offence being committed within or through those organisations or groups.</p>
Drug trafficking	<p>Penal code (articles 368-378)</p> <p>Article368</p>

	<p>Those who carry out acts of cultivation, preparation or trafficking, or who otherwise favour or facilitate the unlawful consumption of toxic drugs, narcotics or psychotropic substances, or who possess them for those purposes, shall be punished with imprisonment from three to six years and a fine of one to three times the value of the drug the criminal offence concerns, if they are substances or products that cause serious damage to health, and of imprisonment from one to three years and a fine from one to two times the amount in the remaining cases.</p> <p>Notwithstanding what is set forth in the preceding Paragraph, the Courts of Law may impose a lower degree punishment to those stated in view of the scarce importance of the facts and the offender's personal circumstances. This power may not be made use of if any of the circumstances referred to in Articles 369 bis and 370 concurs.</p> <p>Article 369</p> <p>1. The penalties shall be imposed in one degree higher to those stated in the preceding Article, and a fine of one to four times the amount when any of the following circumstances concurs:</p> <ol style="list-style-type: none">1. The offender is an authority, civil servant, medical practitioner, social worker, teacher or educator and acts while carrying out the duties of his office, profession or trade;2. The offender participates in other organised activities, or those whose carrying out is facilitated by committing the criminal offence;3. The deeds are perpetrated in establishments open to the public by those in charge or the employees thereof;4. The substances to which the preceding Article refers are provided to persons under the age of eighteen years, to the mentally disabled persons requiring special protection or to individuals subject to detoxification or addiction treatment;
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5. The quantity of the substances the deeds to which the preceding Article refers is notoriously large;

6. Such substances are adulterated, manipulated or mixed together or with others, increasing possible damage to health;

7. The deeds described in the preceding Article take place at teaching centres, at military centres, establishments or units, within prisons or at detoxification or addiction treatment centres, or in the surrounding areas thereof;

8. The offender uses violence or displays or uses weapons to commit the criminal offence

2. (Repealed)

Article 369bis

When the deeds described in Article 368 have been carried out by those pertaining to a criminal organisation, prison sentences of nine to twelve years and a fine of one to four times the value of the drugs concerned shall be imposed, if they are substances and products that cause serious damage to health and of imprisonment for four years and six months to ten years and the same fine in the other cases.

The bosses, managers or directors of the organisation shall have the penalties higher by one degree to those stated in Section one imposed on them.

When, pursuant to the terms established in Article 31 bis, a legal person is responsible for the criminal offences defined in the preceding two Articles, it shall have the following penalties imposed thereon:

a) Fine from two to five years, or from three to five times the value of the drugs, when the resulting amount is higher, if the criminal offence committed by a natural person has a punishment of imprisonment foreseen exceeding five years;

b) Fine from one to three years, or of two to four times the value of the drugs, when the resulting amount is higher, if the criminal offence committed by a natural person has a punishment of

imprisonment foreseen exceeding two years not included in the preceding Sub-Section.

Pursuant to the rules established in Article 66 bis, the Judges and Courts of Law may also impose the penalties established in Sub-Paragraphs b) to g) of Section 7 of Article 33.

Article 370

The punishment imposed shall be higher by one or two degrees to that stated in Article 368 when:

1. Persons under the age of eighteen years or the mentally disabled are used to commit those criminal offences;
2. They are the bosses, directors or managers of the organisations to whom circumstance 2 of Section 1 of Article 369 refers.
3. The deeds described in Article 368 are extremely serious. Extreme seriousness is understood to concur in cases in which the quantity of the substances to which Article 368 refers notably exceeds that deemed a notorious amount, or when using ships, vessels or aircraft as the specific means of transport, or when perpetrating the conduct stated simulating international trading operations between companies, or in the case of international networks dedicated to such activities, or when three or more of the circumstances foreseen in Article 369.1 concur simultaneously.

In the cases of the preceding Sub-Section 2 and 3 the offenders shall also have a fine of one to three times the value of the drugs the criminal offence concerns imposed on them.

Article 371

1. Whoever manufactures, transports, distributes, trades or possesses equipment, materials or substances listed in Table I and Table II of the United Nations Convention, done at Vienna on 20th December 1988, against illegal traffic in narcotic drugs and psychotropic substances, and any other products added to

the aforesaid Convention or that may be included in future Conventions ratified by Spain being aware that they shall be used for the unlawful cultivation, production or manufacture of toxic drugs, narcotics or psychotropic substances, or for those purposes, shall be punished with a sentence of imprisonment from three to six years and a fine of one to three times the value of the goods or items concerned.

2. The punishment stated shall be imposed in the upper half if the persons perpetrated the deeds described in preceding Section while belonging to an organisation dedicated to the ends stated therein, and the higher degree punishment in the case of bosses, directors or managers of those organisations or partnerships. In such cases, the Judges or Courts of Law shall impose, in addition to the relevant penalties, that of special barring of the convict from practising his profession or industry for a term of three to six years, and the other measures foreseen in Article 369.2.

Article 372

Should the deeds foreseen in this Chapter be perpetrated by an entrepreneur, broker in the financial sector, medical practitioner, civil servant, social worker, teacher or educator, in the exercise of his office, profession or trade, in addition to the relevant punishment, he shall be handed down that of special barring from public employment and office, profession or trade, industry or commerce, of three to ten years. The punishment shall be imposed of absolute barring from ten to twenty years when such deeds are perpetrated by an authority or agent thereof, while carrying out the duties of his office. For these purposes, medical practitioners are construed to be doctors, psychologists, persons who hold higher educational health and veterinary qualifications, pharmacists and the employees thereof.

Article 373

Provocation, conspiracy and solicitation to commit the criminal offences foreseen in Articles 368 to 372 shall be punished with

the penalty lower by one or two degrees to the relevant one, respectively, for the deeds foreseen in the preceding provisions.

Article 374

The criminal offences foreseen in the second Paragraph of Section 1 of Article 301 and in Articles 368 to 372, in addition to the relevant penalties to be imposed for the criminal offence committed, shall give rise to the confiscation of the toxic drugs, narcotics or psychotropic substances, the equipment, materials and substances mentioned in Article 371, as well the goods, means, instruments and gains therefrom, subject to what is set forth in Article 127 to 128 and the following special rules:

1. Once the judgement is final, destruction of the samples provided shall be carried out, or destruction of all the substances confiscated, should the competent judicial body have ordered their conservation;
2. The assets, means, instruments and gains definitively confiscated as the result of a court ruling and which cannot be utilised in meeting the civil liabilities resulting from the criminal offence or the court costs shall be wholly assigned to the State.

Article 375

Convictions by foreign Judges or Courts of Law for criminal offences of the same kind as foreseen in Articles 361 to 372 of this Chapter shall have the effects of recidivism, except if the criminal record has been cancelled, or might be cancelled under Spanish Law.

Article 376

In the cases foreseen in Articles 361 to 372, the Judges or Courts of Law, giving the reasons in their sentencing, may impose a lower punishment by one or two degrees to that stated by the law for the criminal offence concerned, as long as the subject has voluntarily abandoned his criminal activities and has actively collaborated with the authorities or their agents either

	<p>to prevent the criminal offence from taking place, or to obtain decisive proof for identification of capture of others who are responsible or to prevent actions or the furtherance of the organisations or associations to which they have belonged or with which they may have collaborated. Likewise, in the cases foreseen in Articles 368 to 372, the Judges or Courts of Law may impose the punishment lower by one or two degrees upon the convict who, being addicted to drugs at the moment of committing the deeds, sufficiently accredits that he has successfully completed detoxification treatment, as long as the quantity of toxic drugs, narcotics or psychotropic substances was not of notorious importance or extreme seriousness.</p> <p>Article 377</p> <p>In order to determine the amount of the fines imposed pursuant to Articles 368 to 372, the value of the drugs the criminal offence involves, or the goods or items confiscated shall be the end price of the product or, as appropriate, the profit or gains obtained by the convict, or that he might have obtained.</p> <p>Article 378</p> <p>The payments made by the convict in relation to one or several of the criminal offences to which Articles 361 to 372 refer shall be applied in the following order:</p> <ol style="list-style-type: none"> 1. To repairing the damage caused and compensation of damage; 2. To compensating the State for the amount of expenses it has incurred on account of the case; 3. To the fine; 4. To the costs of the specific or private prosecutor, if the judgement orders their payment; 5. To the other procedural costs, even those of defending the accused, without preference among the parties concerned.
Money laundering	Law 10/2010, of 28 April, on the prevention of money laundering and terrorism financing for the purpose of

implementing Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 (IN PROCESS OF AMENDMENT in 2020)

Article 2

For the effects of this law, shall be considered money-laundering activities:

a) the conversion or transfer of property, knowing that such property come from criminal activity or involvement in criminal activity, for the purpose of concealing or disguising the illicit origin of the property or of helping people who are involved to evade the legal consequences of their acts.

(b) the concealment or cover-up of the nature, origin, location, layout, movement or real ownership of property or rights over property, knowing that such goods come from criminal activity or from participation in criminal activity.

(c) the acquisition, possession or use of property, knowing, at the time of receipt of the same, which come from a criminal activity or involvement in criminal activity.

(d) participation in any of the activities mentioned in previous letters, the Association to commit such acts, attempts to perpetrate them and the fact help, instigating or advising someone to make them or facilitate its execution.

There will be money laundering even when the acts described in the preceding letters are made by the person or persons who committed criminal activity that produced the goods.

For the purposes of this Act shall mean goods from criminal activity all kinds of assets whose acquisition or possession may have its origin in a crime, both material and immaterial, movable or immovable, tangible or intangible, as well as documents or legal instruments regardless of its form, including electronic or digital, evidencing ownership of such assets or a right over them including the share disappointed in the case of offences against the public Treasury.

It shall be deemed that there is money laundering even though activities that have generated the assets had been developed in the territory of another State.

Penal Code

Article 301

1. Whoever acquires, possesses, uses, converts, or conveys assets, knowing they originate from a criminal activity, committed by himself or by any third party, or who perpetrates any other deed to hide or conceal their unlawful origin, or to aid the person who participated in the criminal offence or criminal offences to avoid the legal consequences of his deeds, shall be punished with a sentence of imprisonment of six months to six years and a fine from one to three times the value of the goods. In these cases, the Judges or Courts of Law, in view of the severity of the deed and the personal circumstances of the offender, may also sentence him to the punishment of special barring from exercise of his profession or industry for a term from one to three years, and order the measure of temporary or definitive closing of the establishment or premises. If the closing is temporary, its duration may not exceed five years. The punishment shall be imposed in its upper half when the assets have their origin in any of the criminal offences related to trafficking toxic drugs, narcotics or psychotropic substances described in Articles 368 to 372 of this Code. In these cases, the provisions set forth in Article 374 of this Code shall be applied. The punishment shall also be imposed in its upper half when the assets originate from any of the criminal offences included in Chapters V, VI, VII, VIII, IX and X of Title XIX or in any of the criminal offences of Chapter I of Title XVI.

2. The same penalties shall be used to punish, as appropriate, hiding or concealment of the true nature, origin, location, destination, movement or rights to the assets, or their ownership, knowing that they originate from any of the criminal offences described in the preceding Section or a deed of participation therein.

3. Should the deeds be perpetrated due to gross negligence, the punishment shall be imprisonment from six months to two years and a fine of one to three times thereof.

4. The offender shall also be punished even though the criminal offence from which the assets, or the deeds punishable pursuant to the preceding Sections may have been committed, full or partially, abroad.

5. Should the offender have obtained gains, these shall be confiscated pursuant to the rules of Article 127 of this Code.

Article 302

1. In the cases foreseen in the preceding Article the custodial sentences shall be imposed in the upper half on those pertaining to an organisation dedicated to the purposes stated therein, and the higher degree punishment on the bosses, managers or persons in charge of those organisations.

2. In such cases, when pursuant to the terms established in Article 31 bis, a legal person is responsible, it shall have the following penalties imposed thereon:

a) Fine from two to five years, if the criminal offence committed by a natural person has a punishment of imprisonment foreseen exceeding five years;

b) Fine of six months to two years, in the rest of the cases.

Pursuant to the rules established in Article 66 bis, the Judges and Courts of Law may also impose the penalties established in Sub-Paragraphs b) to g) of Section 7 of Article 33.

Article 303

Should the deeds foreseen in the preceding Articles be perpetrated by an entrepreneur, intermediary in the financial sector, a medical practitioner, civil servant, social worker, teacher or educator, when carrying out the duties of his office, profession or trade, in addition to the relevant punishment, he shall also be sentenced to special barring from public employment and office, profession or trade, industry or

	<p>commerce, for three to ten years. The punishment of absolute barring shall be imposed from ten to twenty years when such deeds are carried out by an authority or agent thereof. To that end, medical practitioners are construed to be doctors, psychologists, persons who hold higher education health and veterinary qualifications, pharmacists and their employees.</p> <p>Article 304</p> <p>Provocation, conspiracy and solicitation to commit the criminal offences foreseen in Articles 301 to 303 shall be punished, respectively, with the punishment lower by one or two degrees.</p>
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ROMANIA

Mafia Map

Introduction

Since before the end of the Romanian dictatorial regime in 1989, Italian mafia groups have shown interest in Romania. This interest increased after the collapse of the Soviet Union. One of the first investigations conducted by the Italian police in the country goes back to the 1990s and refers to the involvements of *cosa nostra* affiliates in predatory activities of illegal waste in Romania. Probably, mafia groups have been attracted by the shift from a system of planned economy towards a liberal market that offered many opportunities for investments. Moreover, systemic corruption and political instability that characterised the Romanian state after 1989 until the entrance of Romania in the European Union in 2007 – and the subsequent arrival of funding and economic opportunities – contributed to trigger the attentions of Italian mafias to infiltrate and expand across the country.

The presence of Italian mafia groups is well-established in the socio-economic contexts, yet not physically structured in the Romanian territory. In last 20 years, Italian mafia clans (*cosa nostra* and *camorra*) entered in Romania through dozens of companies from different areas, from real estate and agriculture to garbage recycling. These clans developed business through many intermediaries.

There are many factors that make Romania attractive to mafia groups. From a geographical point of view, Romania is located in a strategic position that connects the European West and the Asian East. In addition, the port of Constanța on the Black Sea seems to be a relevant point of entry of drugs (especially those coming from the Balkan route such as heroine from Turkey or Afghanistan). The Eastern borders allow mafia groups to connect with international criminal networks involved in illegal trafficking. Moreover, the attention of law enforcement towards threats coming from the Eastern borders facilitates the perpetration of illicit activities committed by criminal groups, such as mafia clans, coming from the West. Furthermore, Romania is well-connected through flights and bus services to Italy.

To add, there are relatively low language barriers, as many Romanians are able to speak Italian thanks to TV broadcast and to the connections with the conspicuous Romanian community based in Italy. There appear to be many Italians – often well-educated and active in consulting activities – who have moved and live between Italy and Romania, who seem to conduct shady business in Romania, also with the help of Romanian partners and other local intermediaries.

As before 2007 it was complicated to request extradition from Romania to Italy (or to other countries), many mafia fugitives have long been on the run in Romania (e.g. Vincenzo Spoto from the cosa nostra clans in Agrigento or Orlandino Riccardi from the Casalesi clans). Even after 2007, the country has been chosen by mafia fugitives going into hiding. These are some of the many representatives of mafia clans who were found in Romania since 2012: individuals from the camorra clans Cesarano (from Ponte Persica, Naples), Schiavone (from Casal di Principe, Caserta), Puca (from Sant'Antimo and Casadrino, Naples) and Manzo (from Ercolano); Cosimo Scaglione, presumably affiliated to a 'ndrangheta clan and arrested in Oradea; and Orazio Magrì affiliated to the cosa nostra clan Ercolano-Santapaola (from Riposto, Catania).

In Romania, there are traces of expansion of 'ndrangheta, camorra, cosa nostra, and Apulian mafia groups, which mostly engage in the following activities: illegal trafficking of drugs and humans (especially for exploitation of labour in the agri-food supply chain); illegal gambling and gaming, mostly online; environmental crimes such as illegal waste disposal; cybercrime in the form of IT frauds and tax evasion; money laundering and illegal investments in private sectors such as real estate, logistics, food catering, and nightlife; use of shell companies virtually established in Romania in order to get public tenders in Italy or for other illegal purposes; and not yet fully evidenced cases of EU subsidy frauds, as the Romanian legislation (bank and commercial law) allows to easily open front companies. Despite this strong presence in different sectors of the economy, there is no clear evidence of territorial governance of mafia groups in Romania.

Often, Italian mafia representatives in Romania cooperate with local organised crime groups, e.g. in cybercrime practices aimed at committing fiscal frauds in Italy.

The law enforcement force in charge of investigating and policing Italian mafia groups in Romania is the National Police in its special unit for tackling organised crime. In 2018, Romania joined the Europol Antimafia Network, led by the Italian Direzione Investigativa Antimafia, Project @ON.

Criminal networks

'Ndrangheta

'Ndrangheta is the mafia organisation with the highest evidenced presence. 'Ndrangheta fugitives have often moved to Romania as shown in several operations such as the arrest of Pasqualino Ariganello, affiliate to clan Pesce (from Rosarno) by the Romanian police, in cooperation with Carabinieri and Police S.i.Re.n.e.¹⁹³, in Alba Iulia (Transilvania) in 2018 (DIA, 2018a).

'Ndrangheta groups are involved in drug trafficking, as seen in 2016 with Operation Crociata¹⁹⁴ that unveiled how the locale of Mariano Comense, in the Italian Northern region of Lombardy, was managing the trafficking of cocaine arriving from South America to the port of Constanța in Romania in order to then move the drugs overland towards the Italian markets in Lombardy, Calabria, and Puglia.

To hinder the traces of suspicious financial operations, to reinvest proceeds of crime and to escape bankruptcy, clans move money from Italy towards dummy or shell Romanian companies: for example, Operation Martingala¹⁹⁵ unveiled the financial crimes committed by individuals affiliated to clans Nirta-Barbaro (from Platì, Reggio Calabria) through the use of companies based in Romania; and Operation Grecale Ligure¹⁹⁶ showed the interests of subjects linked to the clan Grande Aracri (from Cutro, Crotona) that were transferring money to newly established Romanian companies. The clan Grande Aracri currently seems to be the most active

¹⁹³ Supplementary Information Request at the National Entries.

¹⁹⁴ Operation Crociata, Tribunale di Milano, OCCC 05/02/2016, n. 8139/13 RGNR – nr. 1654/13

¹⁹⁵ Operation Martingala, DDA di Reggio Calabria, Fermo di indiziato di reato p.p. 5644/2013 RGNR

¹⁹⁶ Operation Grecale Ligure, Tribunale di Piacenza, OCC 19/11/2019, n.2840/15 and 2233/16 RG GIP

'ndrangheta clan in Romania. Similarly, as seen in Operations Saggezza¹⁹⁷ and Ceralacca¹⁹⁸, where a member of the clan Romano (from Ardore, Antonimina, Canolo, Ciminà, and Cirella di Platì, Reggio Calabria) was caught moving funds in Romania. Moreover, in May 2020, in Operation Work in progress¹⁹⁹, an entrepreneur from Emilia-Romagna but with Calabrian origins was arrested for the creation of a tax evasion system committed through triangulation with Romanian companies. Lastly, in June 2020, 'ndrangheta members involved in Operation Aemilia²⁰⁰ were confiscated companies and bank accounts set up in Romania (and nearby in Bulgaria).

'Ndrangheta clans have also invested in the real estate, food service, waste disposal, and tourist industries. Regarding the latter, for example, Operation Rent²⁰¹ discovered the investments into a holiday resort in the area of Pitești (Central South Romania) by both clan Coluccio-Aquino (from Marina di Gioiosa Ionica) and clan Piromalli-Bellocco (from Gioia Tauro-Rosarno).

Lastly, data show a strong interest of 'ndrangheta clans in online gambling, as seen in Operation Blank Monkey²⁰², targeting the 'ndrina Mazzaferro (from Gioiosa Ionica) and in Operation Galassia²⁰³, concerning clans Tegano and De Stefano (from Reggio Calabria), Piromalli (from Gioia Tauro) and Pesce and Bellocco (from Rosarno).

¹⁹⁷ Operation Saggezza, Tribunale di Reggio Calabria, OCCC 31/10/2012, n.4818/06 R.G.N.R. DDA - nr. 4055/07 RG GIP DDA

¹⁹⁸ Operation Ceralacca, Tribunale di Reggio Calabria, OCCC 09/01/2014, n. 6776/11 RGNR and n. 1115/12 RG GIP

¹⁹⁹ Operation Work in progress, Tribunale di Parma, p.p. n. 102/2018 RGNR

²⁰⁰ Operation Aemilia, Tribunale di Bologna, p.p. n. 18337/11 RGNR DDA

²⁰¹ Operation Rent, Tribunale di Reggio Calabria, pp. n. 3599/14 RGNR DDA

²⁰² Operation Black Monkey, Tribunale di Bologna, n. 1203/14 RG

²⁰³ Operation Galassia, DDA di Reggio Calabria, p.p. 5585/2015 RGNR DDA

The interest of 'ndrangheta in cybercrime is also shown by Operation Bruno²⁰⁴ conducted in March 2018, when 21 people – also connected to 'ndrangheta – were arrested between Italy and Romania for transnational organised crime, IT fraud and money laundering committed through phishing schemes.

Camorra

The arrest of Gaetano Manzo, an individual linked to the camorra clan Sacco-Bocchetti (close to clan Licciardi, both from Naples), by Carabinieri in Fizeșu Gherlii (in the areas of Cluj, Transilvania) in 2017, shows that camorra fugitives often hide in the Romanian territory. Furthermore, in 2019, a top representative of the clan Zagaria was arrested in Naples while coming back from Romania where he was managing investments in the real estate sector. Due to the presence of these fugitives, camorra clans (such as the notorious Casalesi clan from Casal di Principe, near Caserta, very active in the real estate in Romania) have established connections with local organised crime groups in order to infiltrate the legal economy, launder money, and manage illegal trafficking across Eastern Europe.

Thanks to the opportunities offered by the Romanian economy, especially after the entry of Romania in the European Union, camorra groups have invested in various sectors: for example, in Operation Nuova Transilvania²⁰⁵, construction companies, wellness centres, and flats and villas owned by members close to the group Zagaria (affiliated to clan Casalesi) were confiscated in Pitești by the DDA in Naples in 2018.

Camorra clans have also invested in online gambling through companies established in the country (e.g. Operation Imitation Game²⁰⁶). Lastly, they were also involved in cigarette smuggling and money counterfeiting (the latter committed through Romanian printing house companies).

²⁰⁴ Operation Bruno, Tribunale di Milano, OCCC n. 40703/16 RGNR-17786/18 RG GIP

²⁰⁵ Operation Nuova Transilvania, Tribunale di Napoli, OCCC GIP 26/03/2018 n. 143/18, p.p. 13200/14 RGNR and 9748/15 RG GIP

²⁰⁶ Operation Imitation Game, Tribunale di Roma, OCCC n. 58398/11 RGNR and 16133/15 RGGIP

Just to give a further example, in Romania, a family associated to camorra groups in Naples is believed to have 20 companies and a capital of 245 million lei (60 million Euro) and assets over 2 billion lei (450 million Euro) declared, but with a very low profit of 280,000 lei (63,000 Euro). These companies own more than 30,000 sqm of land in Bucharest top real estate area. Some of the shareholders in these companies are financial entities from Luxembourg. Among these companies are also ventures connected to individuals investigated in San Marino for money laundering and tax evasion.

Cosa nostra

Romania has long attracted the interests of cosa nostra groups, as shown with the scandal of the landfill of Glina (at the outskirts of Bucharest) whose managers (arrested at the request of Italian authorities in 2014 and convicted in 2019) attempted to hide and launder the assets of Vito Ciancimino through reinvestments in businesses related to the waste cycle, the management of the landfill, and possible exploitation of EU funding²⁰⁷. A group linked to Massimo Ciancimino, son of Vito Ciancimino, is present in Romania through many associates. Ciancimino's associates in Romania have been and still are involved in many companies, a network of business active in many sectors, from waste management and real estate to private detectives' agencies. Another group with deep roots in Romania is linked with Bernardo Provenzano, (former) boss of cosa nostra, whose interest in Romania through various companies have been documented since the 1990s and throughout the 2000s.

More recently, cosa nostra fugitives have often found shelter in Romania: e.g. in Operation Lazarus²⁰⁸ an affiliate of the clan Santapaola-Ercolano from Catania was arrested in Oradea in 2018.

²⁰⁷ Tribunale di Roma, Decreto di Sequestro Preventivo n. 29605/2013 R.G. GIP, n. 28450/2012 R.G.N.R., n. 76/2012 R.G. DDA

²⁰⁸ Operation Lazarus, Tribunale di Catania, OCCC 05/01/2017, n. 1497/15 R.G.N.R. and n. 659/16 RG GIP

Clans active in Romania might also be increasingly involved in human trafficking, mostly for the purposes of labour exploitation in the agri-food sector (e.g. Operation Slave²⁰⁹) and in online gambling (e.g. Operation Revolution Bet²¹⁰).

Apulian mafia clans

Recent investigations have unveiled the involvements of several representatives of Apulian mafia clans mostly in the gambling sector for money laundering activities via companies and servers established in Romania (DIA, 2019a and 2019b).

²⁰⁹ Operation Slave, Tribunale di Catania, Decreto di sequestro n. 5/17 R. Seq. - n. 65/17 R.S.S.

²¹⁰ Operation Revolution Bet, Tribunale di Catania, p.p. 5227/2016 RGNR - 9913/2018 RG GIP, and p.p. 11982/2017 RGNR - 9892/2018 RG GIP

Thinking Further

Italian and Romanian data mostly coincide regarding the expansion of Italian mafias across Romania both in relation to the nature of the groups involved and the type of crimes committed. A few things need to be pointed out.

- Romania is the only country among those analysed in this report where interests of mafia clans have emerged clearly beyond drug trafficking, specifically in the environment sector and especially in waste disposal.
- Already since the end of the 1990s, and way before Romania joined the EU, police cooperation between the Italy and Romania was well functioning. Apart from the bilateral cooperation, it can be mentioned the work of SECI-SouthEast Cooperative Initiative (now SELEC – SouthEast European Law Enforcement Centre) that enhanced cooperation in the fight against organised crime, terrorism and other cross border security threats by linking police and custom forces from eleven countries in Eastern Europe (Republic of Albania, Bosnia and Herzegovina, Republic of Bulgaria, Republic of North Macedonia, Hellenic Republic, Hungary, Republic of Moldova, Montenegro, Romania, Republic of Serbia) and Turkey.
- Romania is the first country that saw the application of the EU Regulation 2018/1805 on the mutual recognition of freezing orders and confiscation orders as, in November 2020, real estate owned in Romania by an entrepreneur close to camorra clans was confiscated by Italian authorities.
- In Romania, Italian mafias are not perceived as a criminal threat. Their presence is mostly at the level of economic criminality, specifically through a very long list of companies that have been set up since the 1990s/2000s by Italian consultants, financial brokers and professionals, who used the Romanian economy to launder proceeds of crime from mafia groups, among other criminal groups, and to act as ‘reputable’ entrepreneurs in the country.

Romania – Quick Country's Analysis



Romania - Main Legal Framework

<p>Participation in an organised criminal group</p>	<p>Penal code (the Law 187/2012 of Application of the New Criminal Code)</p> <p>Article 367 Creation of an organised crime group</p> <p>(1) The act of initiating or creating an organised crime group or of joining or supporting such a group in any way shall be punishable by no less than 1 and no more than 5 years of imprisonment and a ban on the exercise of certain rights.</p> <p>(2) When the offenses included in the purpose of an organised crime group are punished by life imprisonment or by a term of imprisonment exceeding 10 years, it shall be punishable by no less than 3 and no more than 10 years of imprisonment and a ban on the exercise of certain rights.</p> <p>(3) If the acts set out in par. (1) and par. (2) were followed by the commission of an offense, the rules on multiple offenses shall apply.</p> <p>(4) No penalty shall apply to the individuals who committed the acts set out in par. (1) and par. (2) if they report the organised crime group to the authorities before it was discovered and before the commission of any of the offenses included in the purpose of the group.</p> <p>(5) If the perpetrator of one of the acts referred to in par. (1) - (3) facilitates, during the criminal investigation, discovery of the truth and the prosecution of one of more members of the organised crime group, the special limits of the penalty are reduced by one- half.</p> <p>(6) An “organised crime group” means a structured group, made up of three or more persons, which exists for</p>
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	<p>a certain period of time and acts in a coordinated manner for the purpose of perpetrating one or more offences.</p>
<p>Transnationality</p>	<p>Adherence to Palermo convention: ratification in December 2002</p> <p>1. In accordance with Article 16 paragraph 5 (a) of the Convention, Romania considers this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention;</p> <p>2. In accordance with Article 18 paragraph 13 of the Convention, the central authorities designated to receive the requests for mutual legal assistance are: a) The Prosecutor's Office attached to the Supreme Court of Justice, for the requests for mutual legal assistance formulated in pre-trial investigation (Blvd. Libertatii nr.14, sector 5 Bucuresti, tel. 410 54 35/fax.337 47 54); b) The Ministry of Justice, for the requests for mutual legal assistance formulated during the trial or execution of punishment, as well as for the requests of extradition (Str. Apollodor nr.17, sector 5 Bucuresti, tel. 3141514/fax. 310 16 62);</p> <p>3. In accordance with Article 18 paragraph 14 of the Convention, the requests for mutual legal assistance and the enclosed documents submitted to the Romanian authorities shall be accompanied by translations in the Romanian language or in the French or English languages.”</p> <p>Presence of transnationality in the main domestic legislation: Law No. 39/2003 On Preventing and Combating Organized Crime</p> <p>Article 1.</p> <p>The present law regulates specific measures for the prevention and the combating of organized crime at a national and international level.</p> <p>Article 2</p>

	<p>In the present law, the terms and expressions below have the following meaning:</p> <p>a) organized criminal group- (6) An “organized crime group” means a structured group, made up of three or more persons, which exists for a certain period of time and acts in a coordinated manner for the purpose of perpetrating one or more offences.</p> <p>b) serious crime - the crime for which the law provides for life imprisonment or imprisonment with a special maximum of at least 4 years, as well as the following offenses:</p> <ol style="list-style-type: none">1. submission to forced or compulsory labour, provided in art. 212 of the Criminal Code;2. disclosure of secret service or non-public information, provided in art. 304 of the Criminal Code;3. deleting or modifying the markings on lethal weapons, provided in art. 344 of the Criminal Code;4. offenses relating to unfair competition;5. corruption offenses, offenses assimilated to them, as well as offenses against the financial interests of the European Union;6. drug trafficking offenses;7. offenses concerning the legal regime of drug precursors; offenses concerning non-compliance with the provisions on the introduction of waste and residues into the country; offenses relating to the organization and operation of gambling; <p>c) offense of transnational character is any offense, which, as the case presents itself:</p> <ol style="list-style-type: none">1. is committed on the territory of a state, as well as outside its territory;
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	<p>2. is committed on the territory of a state, but its preparation, its planning, its charge or control take place, completely or partly, on the territory of another state;</p> <p>3. is committed on the territory of a state, by an organized criminal group that operates criminally in two or more states;</p> <p>4. is committed on the territory of a state, but its results are produced on the territory of another state;</p> <p>d) informer- the person who has knowledge about an organized criminal group and provides the judicial organs with information or data relevant to the prevention, discovery and sanctioning of the committing of grave offenses by one or more members of this group.</p>
Drug trafficking	<p>Law No. 143 on combatting Illicit Drugs Trafficking and Consumption</p> <p>Article 2</p> <p>(1) Unlawful cultivation, production, manufacturing, experimentation, processing, transformation, offering, setting to sale, sale, distribution, delivery under any title, shipment, transportation, procurement, purchasing, possession or any operation related to risk drugs, shall be punished with imprisonment from 2 to 7 years and prohibition of certain rights;</p> <p>(2) If the acts provided by paragraph I relate to high /risk drugs, the punishment shall be imprisonment for a term of 5 to 12 years and prohibition of certain rights.</p> <p>Article 3</p> <p>(1)Bringing risk drugs in or taking them out of the country as well as importing or exporting them, without a lawful authorization shall be punished with imprisonment for a term of 3 to 10 years and prohibition of certain rights;</p>

(2) If the acts provided by Art. 1 refer to high risk drugs, the punishment shall be imprisonment for a term of 7 to 15 years and prohibition of certain rights.

Article 4

Unlawful cultivation, production, fabrication, experimentation, extraction, processing, transformation, purchasing or possession of drugs for personal use shall be punished with imprisonment for a term of 3 months to 2 years or a criminal fine.

Article 5

Internationally making available, under any title, premises, dwellings or any other location where the public has access, for illicit drug consumption, or toleration of drug consumption in such places shall be punished with imprisonment for a term of 2 to 7 years and prohibition of certain rights.

Article 6

(1) Intentional prescription of risk drugs, by a doctor, when such prescription is not necessary from the medical point of view, shall be punished with imprisonment for a term of 1 to 5 years and prohibition of certain civil rights;

(2) The same punishment shall be inflicted for deliberate issuing or acquiring of high risk drugs on the basis of a medical prescription drawn up under the conditions provided by paragraph (1) or of a forged medical prescription.

(3) Obtaining high-risk drugs by using a prescription prescribed under the conditions provided in para. (1) or a falsified medical prescription shall be punished by imprisonment from one to three years.

Article 7

	<p>Administration of high-risk drugs to a person in violation of law shall be punished with imprisonment for a term of 1 to 5 years.</p> <p>Article 8</p> <p>Providing a minor with toxic chemical inhalation agents for consumption shall be punished with imprisonment for a term of 6 months to 2 years.</p> <p>Article 9</p> <p>Financing the commission of the deeds provided in art. 2-5 shall be sanctioned with the penalties provided by law for these deeds, their special limits being increased by one third.</p> <p>Article 10</p> <p>Incitement to illicit use of high-risk drugs, by any means, is punishable by imprisonment from 6 months to 3 years.</p> <p>Article 11</p> <p>(If the facts provided in art. 2, 6-8 and 10 resulted in the death of the victim, the punishment is imprisonment from 10 to 20 years and the prohibition of certain rights.</p> <p>Article 12</p> <p>(1) The attempt to the offenses provided in art. 2, 3, art. 4 para. (2), art. 6 para. (2) - (3), art. (2) The production or procurement of means or instruments, as well as the taking of measures in order to commit the offenses provided in par. (1).</p> <p>Article 13</p> <p>(1) With regard to the offenses contained in this chapter, in addition to the situations provided in the Criminal Code, the following situations are aggravating circumstances:</p>
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	<p>a) the person who committed the offense performed a function involving the exercise of public authority, and the act was committed in the exercise of this</p> <p>b) the act was committed by a medical professional or by a person who has, according to the law, attributions in the fight against drugs</p> <p>c) the drugs were sent or delivered, distributed or offered to a minor, a mentally ill person, a person in a therapeutic program or other such activities prohibited by law have been performed on one of these persons or if the act was committed in a medical or educational institution or unit, military, place of detention, social assistance centres, re-education or medical-educational institution, places where pupils, students and young people carry out educational, sports, social activities or in the vicinity of this</p> <p>d) the use of minors in committing the deeds provided in art.</p> <p>e) the drugs have been mixed with other substances that have increased their danger to life and the integrity of persons.</p> <p>(2) In the case of the aggravating circumstance provided in par. (1) lit. c), regarding the commission of acts in an educational institution or in places where pupils, students and young people carry out educational, sports, social activities or in their vicinity, to the special maximum provided by law may be added an increase that may not exceed 5 years in the case of imprisonment, or the general maximum in the case of a fine.</p> <p>Article 14</p> <p>The person who committed one of the offenses provided in art. 2-9 and who, before the criminal investigation is initiated, denounces to the authorities his participation in the commission of the crime, thus contributing to the</p>
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identification and prosecution of the perpetrator or the other participants, shall not be punished.

Article 15

The person who committed one of the offenses provided in art. 2-9, and during the criminal investigation denounces and facilitates the identification and prosecution of other persons who have committed drug-related offenses benefit from halving the limits of the punishment provided by law.

Article 16

(1) Drugs and other goods that have been the object of the offenses provided in art. 2-9 shall be confiscated, and if these are not found, the convicted person shall be obliged to pay their cash equivalent.

(1)(3) The amounts resulting from the capitalization of the confiscated goods and the confiscated money, according to par. (1) and (2), constitute revenues of the state budget and are highlighted in a separate account in the state budget.

Article 17

(1) The drugs seized for confiscation shall be destroyed according to art. 574 lit. d) of the Code of Criminal Procedure.

(2) The following are exempted from destruction:

a) usable medicines, which have been handed over to pharmacies or hospital units, after the prior approval of the Pharmaceutical and Medical Devices Directorate within the Ministry of Health;

b) the pharmaceutical industry or in another industry, depending on their nature, which have been handed over to a public or private economic operator authorized to use or export them;

	<p>c) some appropriate quantities, which will be kept for teaching and scientific research purposes or have been handed over to institutions holding dogs and other drug detection animals, for the preparation and maintenance of their training, in accordance with legal provisions.</p> <p>(3) Drug destruction shall be carried out periodically, by incineration or other appropriate means, by a regulated company. of Law no. 31/1990, republished, with subsequent amendments and completions, authorized, in the presence of a commission composed of the judge delegated with execution, a representative of the National Anti-Drug Agency, of the Ministry of Environment and Climate Change, a specialist from the central party specialized in prevention and combating the illicit drug trafficking and consumption of the General Inspectorate of the Romanian Police and the manager of the crime corps room of the same unit. If the destruction does not take place in the district of the court of enforcement, the commission shall be the judge delegated with the execution from the appropriate court in the district in whose district the destruction takes place. A copy of the minutes shall be sent to the executing court.</p> <p>Article 18</p> <p>If a consumer is sentenced to imprisonment for committing another crime than those provided in art. 4, the court may order its inclusion in a therapeutic program carried out in the penitentiary system.</p>
Money laundering	<p>Article 49 Law no. 129/2019 repealing Law 656/2002</p> <p>(1) It constitutes the crime of money laundering and is punishable by imprisonment from 3 to 10 years:</p> <p>a) the exchange or transfer of goods, knowing that they come from the commission of crimes, in order to hide or conceal the illicit origin of these goods or in the purpose of helping the person who committed the offense from</p>

	<p>which the property originates to evade prosecution, trial or execution of the sentence,</p> <p>b) concealment or concealment of the true nature, origin, location, disposition, movement or ownership of the property or</p> <p>c) the acquisition, possession or use of goods by a person other than the active subject of the crime from which the goods originate, knowing that they come from the commission of crimes.</p> <p>(3) If the act was committed by a legal person, in addition to the penalty of the fine, the court shall apply, as the case may be, one or more of the complementary penalties provided in art. 136 para. (3) lit. a)</p> <p>(4) The knowledge of the origin of the goods or the aim pursued must be established from the objective factual circumstances.</p> <p>(5) The provisions of par. (1) - (4) shall apply regardless of whether the crime from which the property originates was committed on the territory of Romania or in other Member States or third countries.</p>
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UNITED KINGDOM

Mafia Map

Introduction

The UK's financial and banking system in the City of London, the tax havens based in the Channel Islands and the overseas territories such as the Cayman Islands, seem to be particularly attractive for money laundering. Thanks to a regulation that allows to easily establish companies and to privacy rules on financial transactions, Italian mafias have laundered their dirty assets (mostly coming from drug trafficking) through corporations and trusts often used as shell companies (e.g. betting or bureau de change companies). For this reason, in 2017, the UK Criminal Finances Act has been passed to fight against different schemes of money laundering by tackling tax evasion, enabling the seizure and confiscation, and boosting police forces' powers in anti-money laundering policies. This act has also introduced the Unexplained Wealth Order that allows judicial authorities to ask the person indicted for serious crimes to justify the origin of their assets.

As confirmed by data, Italian organised crime groups, also of mafia-type, have infiltrated the legal economy through shares and financial stocks within/through financial intermediaries and business companies. In July 2020, as a result of a two-year long investigation into suspicion of money laundering, the City of London Police seized £2 million pounds of criminal funds linked to members of an organised crime network based in Italy (without an official specification of a mafia group), after the discovery made by the Financial Investigation Unit that one of the two bank accounts involved and held in the UK was receiving funds from several Italy-based companies. Under a so-called "layering" money laundering scheme, these funds were sent to a second UK bank account held by a limited company, set up using a

false address²¹¹. Most of the money laundering in the UK, in connection to the few cases where mafia activities were detected, seems to relate to either placement or layering of proceeds of crime²¹². This does not mean that laundered money is not integrated in the UK, but the data is lacking, probably due to different use of investigative tools.

Italian mafia groups, especially of 'ndrangheta type, are active in the UK financial market, for which they require connections and personal relations with brokers and financial professionals. Mafia groups are not physically visible or structured in the territory. In other words, it can be argued that, across the UK, they act as economic syndicates without any attempt to develop territorial control. Specifically relevant for the UK, when compared to other country, is that Italian mafias in the country do not seem to be involved in the drug trade at the same scale as elsewhere.

Moreover, mafia fugitives, especially from camorra clans, have often hidden in the UK, as proved by the many operations mentioned below.

Criminal Networks

'Ndrangheta

The main activity conducted by 'ndrangheta clans in the UK is money laundering perpetrated through different forms of reinvestment schemes. With the help of intermediaries and other financial professionals, 'ndrangheta groups often establish shell companies in countries like the UK to move their assets (often reinvested in

²¹¹ See <https://www.cityoflondon.police.uk/news/city-of-london/news/2020/template3/two-year-investigation-results-in-2m-forfeiture/>

²¹² The process of laundering money typically involves three steps: placement, layering, and integration. Placement puts the proceeds of crime into the legitimate financial system. Layering conceals the source of the money through a series of transactions and bookkeeping tricks. Integration is when the laundered money is withdrawn from the legitimate account to be used for other investments.

estate and online gaming) and make them less trackable²¹³. A recent investigation exposed by the Financial Times in 2020 found how, between 2015 and 2019, international investors from one of the largest private banks in Europe bought bonds, partly linked to 'ndrangheta front companies and backed by 'ndrangheta criminal proceeds²¹⁴.

This form of financial infiltration, often in cooperation with colluded financial brokers or other individuals, has happened for years. In 2013, in Operation Metropolis (started in 2009), the Antimafia Prosecutors of Reggio Calabria found that several tourist developments along the Calabrian coast were money-laundering ventures facilitated by a 'ndrangheta clan. The clan was linked to a London-based property salesman (and mafia associate) whose wealth was linked to funds deriving from criminal activities²¹⁵. Following this operation, a civil suit was brought forward in the UK against a law firm, practicing in London, Calabria and Sicily, and involved in the sale of the luxury tourist apartments on behalf of the above-mentioned salesman. In 2013, the law firm was withdrawn from the Solicitor Registration Authority's Register of European Lawyers over accounting irregularities related to the case. In 2015²¹⁶, the High Court dug deeper into the whole scheme and especially dealt with the 'ndrangheta involvement in the development known as 'Jewel of the Sea' in Brancaleone (Reggio Calabria) and what this meant for the UK's brokers who sold units there. In 2017, the UK Court of Appeal declared the firm liable for failing to advise clients of the risks, including the risk of mafia involvement and, in March

²¹³See <https://www.theguardian.com/world/2021/apr/27/uk-to-come-under-scrutiny-in-italys-largest-mafia-trial-in-decades>

²¹⁴ See <https://www.ft.com/content/bcebd77c-057b-4fd0-bd99-b97e0e559455> ; https://www.repubblica.it/economia/2020/07/07/news/financial_times_bond_legati_all_e_cosche_della_ndrangheta_venduti_su_mercati_internazionali-261248664/

²¹⁵ See <https://www.the-fence.com/issues/issue-4/on-the-trail-of-the-ndragheta>

²¹⁶ Various Claimants - and - Giambrone & Law (A Firm) Giambrone Law LLP (In Liquidation), Alessandra Bellanca, Anna Cinzia D'arpa, Gabrielle Giambrone, Cristina Poncibo [2015] EWCH 1946 (QB)

2020, the High Court ruled that the firm had to pay 3.5 million euros to 41 separate investors who had bought the luxury flats²¹⁷.

Other older operations in the UK also developed intelligence on the interests of 'ndrangheta clans in the UK, mostly related to the economic and financial sectors. In 2012, a financial expert was arrested in London for laundering money through companies established on behalf of clan Bellocco from Rosarno²¹⁸. In 2014, in Operation Buongustaio²¹⁹, a Brazilian woman resident in the London outskirts was arrested. The context was an investigation into a network run by the 'ndrina Ietto-Cua-Pipicella from Natile di Careri (Reggio Calabria): the woman was in charge of collecting the money from the clans in order to pay drug suppliers through a network of UK-based companies (DIA, 2014b). Moreover, in February 2015, the Antimafia Prosecutors in Reggio Calabria found that an individual linked to the clan Nirta-Strangio (from San Luca, Reggio Calabria) had set up a shell company in the UK at the address of a Calabrian individual linked to the 'ndrina Iamonte from Melito Porto Salvo (Reggio Calabria) and who had already been arrested for mafia in 2012. Similarly, Operations Vello d'Oro²²⁰ and Martingala²²¹ unveiled how a financial intermediary was laundering money and reinvesting illicit funds on behalf of a 'ndrangheta clan through shell companies based in several EU countries and used for fake commercial transactions. These companies were then systematically transferred in the UK and, afterwards, extinguished.

In 2018, an investigation revealed that a 'ndrangheta group ultimately referring to the 'ndrina Grande Aracri, from Cutro (Crotone) had connections with an Italian restaurant in London: an Italian entrepreneur, owner of the restaurant and of a bureau de change also used for illegal purposes, was in fact laundering dirty money

²¹⁷ High Court of Justice, [2020] EWHC 724 (QB), accessible at [https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/QB/2020/724.html&query=\(giambrone\)](https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/QB/2020/724.html&query=(giambrone))

²¹⁸See <https://www.corrieredellacalabria.it/2017/04/04/gratteri-la-brexite-un-assist-alla-ndrangheta/>

²¹⁹ Operation Buongustaio, Tribunale di Reggio Calabria, No. 8354/2010 R.G.N.R. DDA + N. 5084/2011 R.G. GIP + No. 11/2014 R.G.N.R. DDA.

²²⁰ Operation Vello d'Oro, Tribunale di Firenze, p.p. 5286/14 RGNR and 3725/15 RG GIP

²²¹ Operation Martingala, Tribunale di Reggio Calabria, p.p. 5644/13 RGNR DDA

on behalf of the clan. After being laundered, the money was directed to winery warehouses based in Italy, France and Germany²²². Furthermore, in Operation Affare Oppido²²³, again the clan Grande Aracri was caught hiding money, financial stocks and estate properties through shell companies based in the UK and in Cote D'Ivoire (DIA, 2019b).

More recently, Operation Rinascita Scott²²⁴ highlighted how the Mancuso clan from the Vibo Valentia province was committing several money laundering transactions through UK-based shell companies and with the help of colluded professionals and financial experts.

Moreover, often money laundering and online illegal betting activities intertwine, as proved in Operation Black Monkey²²⁵ in relation to family Mazzaferro from Gioiosa Ionica (Reggio Calabria).

Camorra

Similarly to 'ndrangheta, in the UK camorra clans mostly practice money laundering through companies UK based, often in the gambling sector. For example, Operation Jamm Jamm²²⁶ found that clan Contaldo (from Salerno) was running illegal online bet activities through websites registered in the UK.

Camorra groups often choose the UK for finding shelters to fugitives on the run: in 2007, one member of the Rossi clan from Secondigliano was arrested in the north of England where he was fleeing the judiciary in Naples and managed to operate with

²²² See <https://www.thetimes.co.uk/article/rise-of-the-ndrangheta-how-the-feared-calabrian-mafia-has-reached-the-uk-xkxzbfkg>

²²³ Operation Affare Oppido, DDA di Bologna, 2019

²²⁴ Operation Rinascita Scott, Gip del Tribunale di Catanzaro, OCCC n. 2239/2014 RGNR mod. 21 DDA-1359/14 RGGIP-148/2018 RMC

²²⁵ Operation Black Monkey, Tribunale di Bologna, OCCC n. 482/11 RGGIP- 599/10 RGNR DDA-1203/14

²²⁶ Operation Jamm Jamm, Tribunale di Salerno, p.p.nr. 3266/13/21 p.m., nr. 1689/14 GIP

local white-collar criminals. Moreover, in the same year, a fugitive from clan Piccirillo from Napoli was arrested in Lancashire. More recently, in February 2019, two members of a camorra clan active in drug trafficking and connected to the Strangio 'ndrangheta clan from San Luca, were arrested in London. Back in 2006, the camorra boss Raffaele Caldarelli was arrested by Scotland Yard in London where he was found running a network of street selling of counterfeit 'made in Italy' products (mostly fashion items and electronic devices)²²⁷. Furthermore, the clan La Torre from Caserta, whose leader was arrested in Scotland, was managing licit companies across different economic sectors such as food catering in order to launder dirty money and reinvest in legal economy²²⁸.

In addition, camorra clans often cooperate with brokers and financial experts: for example, a broker close to the clans was arrested for investing illegal assets coming from drug trafficking into the financial circuits in the UK Isle of Man, on behalf of individuals linked to clans Amato-Pagano and Imperiale-Cerrone (DIA, 2016a). Moreover, in Operation Black bet²²⁹, the Direzione Investigativa Antimafia in Naples investigated over the business conducted by three brothers operating on behalf of clan Contini (from San Carlo all'Arena, Naples) through several business enterprises, among which a toy company linked to other companies based in the UK. To add, Operation Piano B²³⁰ unveiled how the Casalesi clan was investing 12 million euros through a financial intermediary operating in different companies based in the UK, Croatia and Slovenia. In September 2019, the Antimafia Prosecutors of Napoli unveiled how the group called "Nuova Gerarchia dei Clan Casalesi" linked to the Bidognetti side of the clan Casalesi was running an illicit meds market trade in the UK through a UK-based company (DIA, 2020a). Last, in December 2019, the DIA seized 7,8 million euros linked to a famous Neapolitan tobacco smuggler (already

²²⁷ See <https://ricerca.repubblica.it/repubblica/archivio/repubblica/2017/12/04/case-nuove-esplode-ordigno-sotto-la-casa-del-padre-del-bossNapoli02.html>

²²⁸ See <https://ricerca.repubblica.it/repubblica/archivio/repubblica/2003/01/21/scozia-cassaforte-del-racket.html>

²²⁹ Operation Black bet, Tribunale di Napoli, OCCC n. 51263/12 RGNR-207/18 OCC

²³⁰ Operation Piano B, Tribunale di Pordenone, OCCC n. 924/2016 RGNR and 2637/2016 GIP

known in the 1999 in Operation Crna Gora) and holder of multiple bank accounts in Jersey (DIA, 2020a).

Cosa Nostra

Cosa nostra clans and affiliated also have chosen the UK to open companies for money laundering and illicit reinvestments schemes (DIA, 2016a). Moreover, cosa nostra members or affiliated were captured in the UK: for example, the boss Roncadore from Trabia (Palermo) was captured in London in 2014²³¹.

Interestingly, for cosa nostra, the UK has been country of destination of smuggled oil: in Operation Matrioska²³², an association of twelve individuals, including a member of clan Laudani (from Catania), was smuggling oil illicitly acquired in oil refineries in Germany, Poland and Austria, transported inside Romanian and Bulgarian tracks under fake fiscal documents and finally sold in England, Cyprus, Malta, and Greece.

Like the other Italian regional mafias, cosa nostra groups make the most of the opportunities offered by the UK financial market. For instance, in October 2016, the Court of Trapani confiscated the estate properties belonging to an entrepreneur front-man of the capo mandamento of Mazzara del Vallo and connected to a UK-based holding (in the context of a triangular transaction with another San Marino-based company) (DIA, 2016b).

Apulian mafia clans

Apulian clans seldom have been caught operating through UK-based companies (also dummy corporations). For example, in connection to 'ndrangheta and cosa

²³¹See

https://www.repubblica.it/esteri/2014/04/05/news/mafia_boss_rancadore_arrestato_di_nuovo_a_londra-82791076/

²³² Operation Matrioska, Tribunale di Catania, 4463/14 RGNR en.11419/15 RGGIP

nostra clans, following Operations Galassia²³³ and Revolution Bet, the family Martiradonna (linked to the clan Capriati and Parisi from Bari) has been under investigation for the illegal online gambling activities committed through companies and IT platforms in several countries among which the UK (DIA, 2018b).

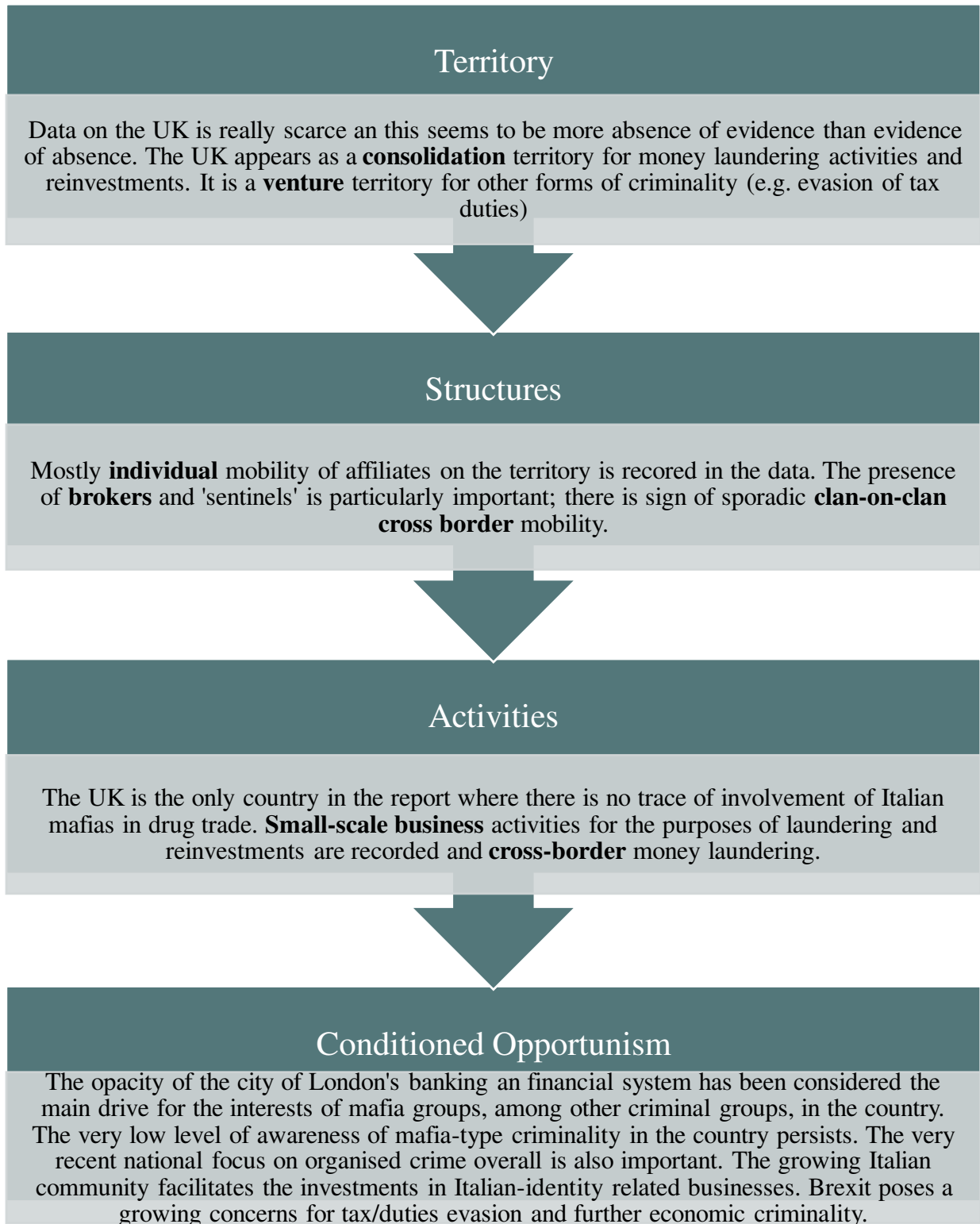
²³³ Operation Galassia, Tribunale di Reggio Calabria, p.p. 5585/2015 RGNR DDA

Thinking Further

The extent to which Italian mafia groups have expanded across the UK is not clear and data is in fact mostly incomplete. It is unclear whether this is a scenario of absence of evidence or evidence of absence. A few things need to be noticed:

- The available data refers more to anecdotal sources rather than fully completed investigative operations and judicial documents.
- The UK is the only country in analysis where no univocal data on drug trafficking activity perpetrated or connected to Italian mafia groups has been found. This is probably due to the fact that the routes of drugs into the country are managed by other groups and follow different paths.
- It seems that most of the (even only presumed) money laundering operations are conducted through brokers and experts affiliated or colluded to mafia groups, often on the basis of personal relationships. Mafia members, let alone mafia members with a certain status and ranking, do not seem to be involved in any business in the UK nor with the actual integration of laundered money. There is distance between mafias and their money in the UK, probably more than elsewhere (according to available data).
- There is further risk that the attractiveness of the UK financial market might increase with Brexit, especially if the police and judicial cooperation between the EU and UK proves to be less effective. Even when the post Brexit scenario is going to be clearer, the vulnerability of this transition period should not be underestimated.
- The lack of awareness about mafia-type organised crime in the UK has been flagged as a risk, especially with regards to economic crime, to the easiness of setting up companies and to the risks that information provided to Company House registers about company ownership is often unchecked and therefore could be easily manipulated.

UK - Quick Country's Analysis



UK - Main Legal Framework

<p>Participation in a criminal association</p>	<p>England & Wales Serious Crime Act 2015</p> <p>Section 45 Offence of participating in activities of organised crime group</p> <p>(1) A person who participates in the criminal activities of an organised crime group commits an offence.</p> <p>(2) For this purpose, a person participates in the criminal activities of an organised crime group if the person takes part in any activities that the person knows or reasonably suspects—</p> <ul style="list-style-type: none">(a) are criminal activities of an organised crime group, or(b) will help an organised crime group to carry on criminal activities. <p>(3) “Criminal activities” are activities within subsection (4) or (5) that are carried on with a view to obtaining (directly or indirectly) any gain or benefit.</p> <p>(4) Activities are within this subsection if—</p> <ul style="list-style-type: none">(a) they are carried on in England or Wales, and(b) they constitute an offence in England and Wales punishable on conviction on indictment with imprisonment for a term of 7 years or more. <p>(5) Activities are within this subsection if—</p> <ul style="list-style-type: none">(a) they are carried on outside England and Wales,(b) they constitute an offence under the law in force of the country where they are carried on, and(c) they would constitute an offence in England and Wales of the kind mentioned in subsection (4)(b) if the activities were carried on in England and Wales. <p>(6) “Organised crime group” means a group that—</p>
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(a) has as its purpose, or as one of its purposes, the carrying on of criminal activities, and
(b) consists of three or more persons who act, or agree to act, together to further that purpose.

(7) For a person to be guilty of an offence under this section it is not necessary—

(a) for the person to know any of the persons who are members of the organised crime group,

(b) for all of the acts or omissions comprising participation in the group's criminal activities to take place in England and Wales (so long as at least one of them does), or

(c) for the gain or benefit referred to in subsection (3) to be financial in nature.

(8) It is a defence for a person charged with an offence under this section to prove that the person's participation was necessary for a purpose related to the prevention or detection of crime.

(9) A person guilty of an offence under this section is liable on conviction on indictment to imprisonment for a term not exceeding 5 years.

Scotland

Criminal Justice and Licensing (Scotland) Act 2010

Section 28 Involvement in serious organised crime

(1) A person who agrees with at least one other person to become involved in serious organised crime commits an offence.

(2) Without limiting the generality of subsection (1), a person agrees to become involved in serious organised crime if the person—

(a) agrees to do something (whether or not the doing of that thing would itself constitute an offence), and

(b) knows or suspects, or ought reasonably to have known or suspected, that the doing of that thing will enable or further the commission of serious organised crime.

(3) For the purposes of this section and sections 29 to 31—
“serious organised crime” means crime involving two or more persons acting together for the principal purpose of committing or conspiring to commit a serious offence or a series of serious offences,

“serious offence” means an indictable offence—

(a) committed with the intention of obtaining a material benefit for any person, or

(b) which is an act of violence committed or a threat made with the intention of obtaining such a benefit in the future, and “material benefit” means a right or interest of any description in any property, whether heritable or moveable and whether corporeal or incorporeal.

(4) A person guilty of an offence under subsection (1) is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine or to both,

(b) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both.

Section 29 Offences aggravated by connection with serious organised crime

(1) This subsection applies where it is—

(a) libelled in an indictment or specified in a complaint that an offence is aggravated by a connection with serious organised crime, and

(b) proved that the offence is so aggravated.

(2) An offence is aggravated by a connection with serious organised crime if the person committing the offence is motivated (wholly or partly) by the objective of committing or conspiring to commit serious organised crime.

(3) It is immaterial whether or not in committing the offence the person in fact enables the person or another person to commit serious organised crime.

(4) Evidence from a single source is sufficient to prove that an offence is aggravated by a connection with serious organised crime.

(5) Where subsection (1) applies, the court must—

(a) state on conviction that the offence is aggravated by a connection with serious organised crime,

(b) record the conviction in a way that shows that the offence was so aggravated,

(c) take the aggravation into account in determining the appropriate sentence, and

(d) state—

(i) where the sentence in respect of the offence is different from that which the court would have imposed if the offence were not so aggravated, the extent of and the reasons for that difference, or

(ii) otherwise, the reasons for there being no such difference.

Section 30 Directing serious organised crime

(1) A person commits an offence by directing another person—

(a) to commit a serious offence,

(b) to commit an offence aggravated by a connection with serious organised crime under section 29.

(2) A person commits an offence by directing another person to direct a further person to commit an offence mentioned in subsection (1).

(3) For the purposes of subsections (1) and (2), a person directs another person to commit an offence if the person—

(a) does something, or a series of things, to direct the person to commit the offence,

(b) intends that the thing or things done will persuade the person to commit the offence, and

	<p>(c)intends that the thing or things done will—</p> <p>(i) result in a person committing serious organised crime, or</p> <p>(ii) enable a person to commit serious organised crime.</p> <p>(4) The person directing the other person commits an offence under subsection (1) whether or not the other person in fact commits—</p> <p>(a) a serious offence, or</p> <p>(b) an offence aggravated by a connection with serious organised crime under section 29.</p> <p>(5) In this section “directing” a person to commit an offence includes inciting the person to commit the offence.</p> <p>(6)A person guilty of an offence under subsection (1) or (2) is liable—</p> <p>(a)on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine or to both,</p> <p>(b)on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both.</p> <p>Northern Ireland</p> <p>The Department of Justice has carried out a review of the current law relating to serious organised crime in Northern Ireland²³⁴. Consultation has ended in October 2020. These include proposals on including a statutory definition of serious organised crime and new offences of ‘directing’ organised crime; ‘participating’ in organised crime and provision for relevant offences to be ‘aggravated’ by a connection with organised crime.</p>
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²³⁴ <https://consultations.nidirect.gov.uk/doj-corporate-secretariat/organised-crime-offences/>

Proceeds of Crime Act 2002

Section 75 -Criminal lifestyle + Schedule 2 POCA

(1) A defendant has a criminal lifestyle if (and only if) the following condition is satisfied.

(2) The condition is that the offence (or any of the offences) concerned satisfies any of these tests—

- (a) it is specified in Schedule 2;
- (b) it constitutes conduct forming part of a course of criminal activity;
- (c) it is an offence committed over a period of at least six months and the defendant has benefited from the conduct which constitutes the offence.

(3) Conduct forms part of a course of criminal activity if the defendant has benefited from the conduct and—

- (a) in the proceedings in which he was convicted he was convicted of three or more other offences, each of three or more of them constituting conduct from which he has benefited, or
- (b) in the period of six years ending with the day when those proceedings were started (or, if there is more than one such day, the earliest day) he was convicted on at least two separate occasions of an offence constituting conduct from which he has benefited.

(4) But an offence does not satisfy the test in subsection (2)(b) or (c) unless the defendant obtains relevant benefit of not less than £5000.

(5) Relevant benefit for the purposes of subsection (2)(b) is—

- (a) benefit from conduct which constitutes the offence;
- (b) benefit from any other conduct which forms part of the course of criminal activity and which constitutes an offence of which the defendant has been convicted;
- (c) benefit from conduct which constitutes an offence which has been or will be taken into consideration by the court in

<p>Transnationality</p>	<p>sentencing the defendant for an offence mentioned in paragraph (a) or (b).</p> <p>(6) Relevant benefit for the purposes of subsection (2)(c) is—</p> <p>(a) benefit from conduct which constitutes the offence;</p> <p>(b) benefit from conduct which constitutes an offence which has been or will be taken into consideration by the court in sentencing the defendant for the offence mentioned in paragraph (a).</p> <p>(7) The Secretary of State may by order amend Schedule 2.</p> <p>(8) The Secretary of State may by order vary the amount for the time being specified in subsection (4).</p> <hr/> <p>Ratification of the UN Palermo Convention 2000: yes, on 9th February 2006</p>
<p>Money Laundering</p>	<p>Proceeds of Crime Act 2002 Part 7 Money Laundering Offences</p> <p>Section 327 Concealing criminal property</p> <p>(1) A person commits an offence if he—</p> <p>(a) conceals criminal property;</p> <p>(b) disguises criminal property;</p> <p>(c) converts criminal property;</p> <p>(d) transfers criminal property;</p> <p>(e) removes criminal property from England and Wales or from Scotland or from Northern Ireland.</p> <p>(2) But a person does not commit such an offence if—</p> <p>(a) he makes an authorised disclosure under section 338 and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent;</p> <p>(b) he intended to make such a disclosure but had a reasonable excuse for not doing so;</p> <p>(c) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of</p>

any other enactment relating to criminal conduct or benefit from criminal conduct.

(2A) Nor does a person commit an offence under subsection (1) if—

(a) he knows, or believes on reasonable grounds, that the relevant criminal conduct occurred in a particular country or territory outside the United Kingdom, and

(b) the relevant criminal conduct—

(i) was not, at the time it occurred, unlawful under the criminal law then applying in that country or territory, and

(ii) is not of a description prescribed by an order made by the Secretary of State.

(2B) In subsection (2A) “ the relevant criminal conduct ” is the criminal conduct by reference to which the property concerned is criminal property.

(2C) A deposit-taking body that does an act mentioned in paragraph (c) or (d) of subsection (1) does not commit an offence under that subsection if—

(a) it does the act in operating an account maintained with it, and

(b) the value of the criminal property concerned is less than the threshold amount determined under section 339A for the act.

(3) Concealing or disguising criminal property includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

Section 328 Arrangements

(1) A person commits an offence if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person.

(2) But a person does not commit such an offence if—

(a) he makes an authorised disclosure under section 338 and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent;

(b) he intended to make such a disclosure but had a reasonable excuse for not doing so;

(c) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.

(3) Nor does a person commit an offence under subsection (1) if—

(a) he knows, or believes on reasonable grounds, that the relevant criminal conduct occurred in a particular country or territory outside the United Kingdom, and

(b) the relevant criminal conduct—

(i) was not, at the time it occurred, unlawful under the criminal law then applying in that country or territory, and

(ii) is not of a description prescribed by an order made by the Secretary of State.

(4) In subsection (3) “the relevant criminal conduct” is the criminal conduct by reference to which the property concerned is criminal property.]

(5) A deposit-taking body that does an act mentioned in subsection (1) does not commit an offence under that subsection if—

(a) it does the act in operating an account maintained with it, and

(b) the arrangement facilitates the acquisition, retention, use or control of criminal property of a value that is less than the threshold amount determined under section 339A for the act.

Section 396 Unexplained wealth orders

(1) The Court of Session may, on an application made by the Scottish Ministers, make an unexplained wealth order in

respect of any property if the court is satisfied that each of the requirements for the making of the order is fulfilled.

(2) An application for an order must—

- (a) specify or describe the property in respect of which the order is sought, and
- (b) specify the person whom the Scottish Ministers think holds the property (“the respondent”) (and the person specified may include a person outside the United Kingdom).

(3) An unexplained wealth order is an order requiring the respondent to provide a statement—

- (a) setting out the nature and extent of the respondent's interest in the property in respect of which the order is made,
- (b) explaining how the respondent obtained the property (including, in particular, how any costs incurred in obtaining it were met),
- (c) where the property is held by the trustees of a settlement, setting out such details of the settlement as may be specified in the order, and
- (d) setting out such other information in connection with the property as may be so specified.

(4) The order must specify—

- (a) the form and manner in which the statement is to be given,
- (b) the person to whom it is to be given, and
- (c) the place at which it is to be given or, if it is to be given in writing, the address to which it is to be sent.

(5) The order may, in connection with requiring the respondent to provide the statement mentioned in subsection (3), also require the respondent to produce documents of a kind specified or described in the order.

(6) The respondent must comply with the requirements imposed by an unexplained wealth order within whatever period the court may specify (and different periods may be specified in relation to different requirements).

	<p>Section 415 Money laundering offences</p> <p>(1) An offence under section 327, 328 or 329 is a money laundering offence.</p> <p>(1A) Each of the following is a money laundering offence—</p> <p>(a) an offence under section 93A, 93B or 93C of the Criminal Justice Act 1988;</p> <p>(b) an offence under section 49, 50 or 51 of the Drug Trafficking Act 1994;</p> <p>an offence under section 37 or 38 of the Criminal Law (Consolidation) (Scotland) Act 1995;</p> <p>(d) an offence under article 45, 46 or 47 of the Proceeds of Crime (Northern Ireland) Order 1996.]</p> <p>(2) Each of the following is a money laundering offence—</p> <p>(a) an attempt, conspiracy or incitement to commit an offence specified in subsection (1);</p> <p>(b) aiding, abetting, counselling or procuring the commission of an offence specified in subsection (1).</p>
<p>Drug Trafficking</p>	<p>Misuse of Drugs Act 1971</p> <p>Section 3 Restriction of importation and exportation of controlled drugs</p> <p>(1) Subject to subsection (2)—</p> <p>(a) the importation of a controlled drug; and</p> <p>(b) the exportation of a controlled drug, are hereby prohibited.</p> <p>Section 4 Restriction of production and supply of controlled drugs</p> <p>(1) Subject to any regulations under section 7 of this Act, or any provision made in a temporary class drug order by virtue of section 7A, for the time being in force, it shall not be lawful for a person—</p> <p>(a) to produce a controlled drug; or</p> <p>(b) to supply or offer to supply a controlled drug to another.</p>

(2) Subject to section 28 of this Act, it is an offence for a person—

(a) to produce a controlled drug in contravention of subsection (1) above; or

(b) to be concerned in the production of such a drug in contravention of that subsection by another.

(3) Subject to section 28 of this Act, it is an offence for a person—

(a) to supply or offer to supply a controlled drug to another in contravention of subsection (1) above; or

(b) to be concerned in the supplying of such a drug to another in contravention of that subsection; or

(c) to be concerned in the making to another in contravention of that subsection of an offer to supply such a drug.

Custom and Excise Management Act 1979

Schedule 1 Controlled Drugs: Variation of Punishments for Certain Offences under this Act

1) Section 50(4), 68(3) and 170(3) of this Act shall have effect in a case where the goods in respect of which the offence referred to in that subsection was committed were a Class A drug, Class B drug or a temporary class drug as if for the words from shall be liable onwards there were substituted the following words, that is to say—

“shall be liable—

(a) on summary conviction, to a penalty of [F2the prescribed sum] £20,000 or of three times the value of the goods, whichever is the greater, or to imprisonment for a term not exceeding 6 months, or to both;

(b) on conviction on indictment—

(i) where the goods were a Class A drug, to a penalty of any amount, or to imprisonment for life, or to both; and

(ii) where they were a Class B drug or a temporary class drug, to a penalty of any amount, or to imprisonment for a term not exceeding 14 years, or to both.”.

Proceeds of Crime Act 2002, Schedule 2

Lifestyle offences: England and Wales

	<p>Drug trafficking</p> <p>(1) An offence under any of the following provisions of the Misuse of Drugs Act 1971 (c. 38)—</p> <ul style="list-style-type: none"> (a) section 4(2) or (3) (unlawful production or supply of controlled drugs); (b) section 5(3) (possession of controlled drug with intent to supply); (c) section 8 (permitting certain activities relating to controlled drugs); (d) section 20 (assisting in or inducing the commission outside the UK of an offence punishable under a corresponding law). <p>(2) An offence under any of the following provisions of the Customs and Excise Management Act 1979 (c. 2) if it is committed in connection with a prohibition or restriction on importation or exportation which has effect by virtue of section 3 of the Misuse of Drugs Act 1971—</p> <ul style="list-style-type: none"> (a) section 50(2) or (3) (improper importation of goods); (b) section 68(2) (exploration of prohibited or restricted goods); (c) section 170 (fraudulent evasion). <p>(3) An offence under either of the following provisions of the Criminal Justice (International Co-operation) Act 1990 (c. 5)—</p> <ul style="list-style-type: none"> (a) section 12 (manufacture or supply of a substance for the time being specified in Schedule 2 to that Act); (b) section 19 (using a ship for illicit traffic in controlled drugs). <p>An offence under any of the following provisions of the Psychoactive Substances Act 2016—</p> <ul style="list-style-type: none"> (a) section 4 (producing a psychoactive substance); (b) section 5 (supplying, or offering to supply, a psychoactive substance); (c) section 7 (possession of psychoactive substance with intent to supply); (d) section 8 (importing or exporting a psychoactive substance).
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CROSS-BORDER COOPERATION

At a glance

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Conceptual and structural challenges

The Mafia Concept

The concept of mafia in Italy evolves much quicker than anywhere else. Italian jurisprudence in fact constantly interprets the activities and the structures of mafia-type organisations in view of the changing nature of its manifestations. The lower courts as well as the Supreme Court of Cassation (Italy's Supreme Court) daily confirm, redefine, and challenge the concept of mafias in Italian law. Notwithstanding this exercise, **the mafia concept in Italy still appears wider than its legal definitions and interpretations**. This is, in fact, the main problem with the translation of the mafia word into European contexts. On one side, literal translation is insufficient. On the other side, conceptual translation is vague, not precise enough to be transferred into clear norms elsewhere.

The **literal translation** of mafia comes both from the **law in books** and from the **law in action**. First, it surely comes with the translation of **article 416-bis** of the Criminal code. While there is growing awareness of what this norm says and how it works, even beyond Italy and beyond Europe as well, any version of this norm would still be considered **inapplicable** in many European states, specifically because it criminalises methods/behaviours rather than just criminal status/criminal activities (more on this later under 'criminalisation' in this report). The knowledge of the Italian criminal code is not always paired with the most updated knowledge from jurisprudence. This is understandable, as jurisprudence remains often obscure for Italians as well. The rather slow evolution of mafia's **conceptual translation** and lack of updated nuances contribute to the perception of mafias as static phenomena rather than embracing the reality of its dynamism and the 'untidiness' of its manifestations in daily life. As static phenomenon, the concept of mafias is bound to be often considered obsolete, or simply not applicable, abroad.

There is agreement that the Italian experience with mafias, historically, has shaped the Italian antimafia system too (more on this later under Italian expectations) and that this is the reason why **the mafia concept is not a neutral concept** when it comes to the law in action. It can be argued that the word mafia, in its static meaning, resounds abroad as a **cultureme**. A cultureme, in translation studies, is a portion of cultural knowledge, whose content and meaning are recognisable by a group of people, but not easily translated to be comprehensible fully by others outside that group, as they are words that bear cultural value. In practice this means that – notwithstanding the steps forward in comprehending what mafias are and how they

are defined – it remains complicated for authorities outside of Italy to ‘attach’ these meanings to local phenomena.

Attempts to move away from the mafia concept are in fact seen as sometimes necessary to avoid stigmas and confusion related to the word mafia. This has been recently done through the use of both **near-synonyms** and **functional equivalence**. For example, the recent focus on **mafia-type organised crime** or **mafia-style groups** by European institutions (such as Europol, among others) is evidence of an attempt to operate with a translation with similar meaning to the cultureme without being identical. The use of **clan-based criminality**, investigated by the European Criminal Prevention Network (EUCPN) among others, could provide – according to many – for a successful functional equivalence to mafias: a translation of the mafia concept without the inclusion of its (Italian) cultural association.

Mafia-style groups, **mafia-type** organised crime, and (partially) **clan-based** criminality, share the following traits:

- They are based on family links, kinship and brotherhood.
- They maintain a certain degree of secrecy.
- They invest in legal, semi-legal as well as in illegal business ventures.
- They have diversified portfolios of activities.
- They are often involved with their ethnic groups of origin (i.e. local Italian communities) and they tend to exploit common language, culture and solidarity mechanisms.

Other traits that instead are not often part of such synonyms, but are nevertheless part of the mafia concept for Italy are:

- They are *permanent* organisations: this means that aside from investigations, their activities are usually ongoing.
- Some Italian clans are characterised by *entrepreneurship* in the legal sector (i.e. proactivity in construction contracts, in high level corporation fraud).
- The *power* element, either in the form of local territorial control (for example, through different forms of extortion) or political proximity (at the local or higher level).

There are different degrees to which the above is more or less accurate in the different states under scrutiny for this report. For example, Belgian authorities have known over two decades ago about the ability of some Italian individuals linked to *cosa nostra* or *stidda* clans to organise financial or social frauds and invest in

construction contracts; and Romanian authorities monitor some forms of economic crimes, including the creation of Italian companies in Romania to be exploited for money laundering and other illicit activities. Also, when at times the power element emerges (i.e. extortion to Italian restaurants by imposing certain food or alcohol products; proximity of 'mafia entrepreneurs' to local elected politicians), this does not go beyond the anecdotal. The focus on the **illicit side** of mafia presence (i.e. drugs and money laundering through food services for example), can be attributed to a) a more recent acknowledgement and local focus on these phenomena and b) recent Italian and supranational programs to fight the 'ndrangheta on a global level.

Italian Approaches & Expectations

While for many authorities of European countries, mafia groups are one *species* of a much broader phenomenon loosely indicated as organised crime, Italian authorities often see mafia as the whole of the phenomenon of organised crime, the *genus*. **This different focus results in different prioritisation.** Another result is a swing between **speciality** and **normality**, which is still predominant. Mafias are at the same time **"too Italian"** – that is Italy has the best knowledge of the phenomenon – and **"not-only-Italian"** – mafia as method and type of criminality can be found elsewhere. There are three main points related to this. These relate to the approaches/expectations from Italian authorities in Italy; the approaches/expectations on Italian authorities also in Italy; and the approaches of Italian law enforcement in secondment and/or duty outside of Italy.

The **expectations from Italian authorities** (in Italy) for antimafia efforts in other countries are high. Approaches and expectations of Italian authorities (in Italy) – both at police and at judicial level – are of the following nature:

- Same approach as Italy / expectation of increased level of seriousness of the 'mafia threat' abroad.
- Same approach as Italy / expectation of increased effort to build capacity abroad to counter mafia mobility and especially the financial side of mafia 'infiltration' abroad.
- Same approach as Italy / expectation of increased capacity abroad to recognise mafias as not-only-Italian phenomenon with a view to harmonise countering mechanisms cross-borders.
- Same approach as Italy/ expectation of increased capacity abroad to adopt (at least some) Italian successful methods and tools to both investigate, prosecute and affect mafia power and activities.

- Expectation of political attention to the issue of mafia infiltration into communities and economies.

The **expectations from European countries' authorities** towards Italian partners are also high. Approaches and expectations of European partners are of the following nature:

- Expectation of support from Italian authorities with investigations on Italian mafia and individuals of Italian nationality believed to be involved in organised crime.
- Expectation for Italy to support and lead investigations abroad with background information for intelligence purposes.
- Expectation for Italy to streamline police cooperation across Italy's three national police forces.
- Expectation for Italy to accept and handle returns to Italy of Italian citizens involved in mafia-related activities abroad.
- Expectation for Italian authorities to accept the different manifestations of mafia power in different countries and adapt the 'request' to these differences.

When it comes to the **approaches of Italian law enforcement in secondment and/or duty outside of Italy**, they can mirror both positions described above. In essence, liaison officers and Italian law enforcement staff outside of Italy act as **bridges on the borders**. Their roles, experiences and links with both Italian and other countries' law enforcement lead many in these positions to develop some of the following approaches and expectations:

- To act as bridges, sentinels, and facilitators for translating, literally and conceptually, antimafia law and procedures to foreign authorities.
- To act as bridges and facilitators for translating other countries' procedures and requirements to Italian law in antimafia investigations.
- To channel requests both ways and become the point of contact and the unit of reference for both authorities.

Visibility

Cause and effect of the different perceptions of the mafia concept between Italy and other countries in Europe is certainly the different degree of visibility of mafias. Visibility (and invisibility) pertains to **mafia organisations** and **mafia**

methods/behaviours more than to **mafia activities**. In fact, as seen throughout this project, the activities committed by affiliates of mafia clans – especially when they are fully illegal (e.g. drug trade) – are easiest to spot in foreign territories. Mafia organisations (such as structures of coordination) and mafia methods/behaviours (such as intimidation or political proximity) are often more difficult to investigate abroad (see later in this report under ‘Structures & Activities’).

Whether mafias are visible or not in a given country posits two main issues.

- a) Visibility is linked to the **perceived social dangerousness** of the phenomenon.

In certain cases, organised crime(s) committed by Italian mafias’ affiliates are linked to crimes, like those of the drug trade, notoriously considered ‘dangerous’ from a perspective of **public order** (thus relating also to high levels of violence and victimisation). This dangerousness, however, does not necessarily result in an **‘alarm’** being raised due to the different ways in which prioritisation works in policing and anti-crime strategies in different countries.

For example, the drug trade is often linked with patterns of **violence**: but the role of many Italian mafia affiliates in the drug trade is not necessarily one ‘on the streets’ or not necessarily even in the country where the trade happens (visibly). Other groups/gangs might represent a much more pressing policing and public order concern in this sense.

Still in relation to the drug trade, Italian mafia affiliates are always seen working with a variety of other actors in the criminal market: this essentially strips them of any ‘speciality’. Abroad, in fact, especially in relation to certain illicit activities and illicit commodities marketisation, affiliates of **Italian mafia groups tend to blend and ‘behave’ like any other organised criminal would**. When a country has a result-oriented focus on ‘criminal commodities’ (as opposed to having a focus on dismantling criminal groups with long-term strategies) the most likely scenario is that Italian mafia affiliates only become visible when working (with others) in illicit trades. This naturally leads to a different qualification of their ‘dangerousness’ in the foreign country from what Italian authorities might perceive in Italy. Moreover, with the distinct exception of the events in Duisburg in 2007, and some of the events related to murder in a clan in Favara (Sicily) spilled out into Belgium in recent years, the presence of mafia groups abroad remains largely non-violent.

Another scenario that could affect the perception of dangerousness of Italian mafia affiliates in different countries than Italy, has to do with the **submersion** of fugitives as well as capitals. The **apprehension of fugitives** features prominently across all

countries under scrutiny. This, however, often follows impulses to investigate from Italian authorities. It does not imply that an investigation on what apprehended fugitives were doing during their submersion will then follow. Again, this does also not often translate into an increased perception of dangerousness of the phenomenon abroad. For the **submersion of capitals**, the question of visibility is, on the one hand, related to the nature of harm associated to certain criminal conducts and, on the other hand, it has to do with technical procedures. For example, for some states it is not possible to start a money laundering investigation without knowledge of a predicate crime; thus, even when money laundering activities are suspected, and capitals are also suspected to be submerged, that does not always imply that any perceived dangerousness and therefore action will be paired to such visibility.

b) Visibility is also linked to the **nature of harm** associated to the phenomenon.

The harm Italian authorities associate to Italian mafias is diverse: mafia crimes are not only crimes against public order, but they harm economy, competition, democratic processes and even the enjoyment of human rights. The visibility of mafias abroad – whether involving reaction or pro-action by local authorities – is linked to different prioritisations at criminal policy and policing levels. Whereas, with certain degrees of **'social dangerousness'** most state would react the same – with a mix of repression, prevention, and disruption policies and tactics – when it comes to submerged and/or non immediately dangerous criminal phenomena, the expectations are different. Italian authorities demonstrate a perception and knowledge of the Italian mafia phenomenon that transcends only one dimension – the legal or the illegal. The Italian concept embraces the **overall composite nature of the phenomenon and the offending**, with the various middle grounds and grey areas.

As said above under 'the mafia concept' entry, the Italian understanding of mafias as succeeding in higher level entrepreneurship and aiming at power proximity, is *in addition to* them being criminal enterprises. The resulting harm spectrum is composite because the phenomenon is complex and composite. In many other states, these two aspects of the phenomenon – which we could call with academic literature, the **power** and the **enterprise syndicates** – do not only always appear together, but they do not raise the same type of alarm and/or affect priorities. For example, in areas where mafia groups are connected mostly to the **economic sphere** – for some (legal or semi-legal) business ventures or for infiltration/involvement in pre-existing companies – it is not a given that at the local

level this would immediately constitute a harm. Not only the economic harm might not be visible, but it also might not be a priority in terms of countering crime.

The link between the economic harm and the societal harm is oftentimes very difficult to establish. Arguably every country in **Europe** has made a **commitment** to fight the spread of illicit capitals and to counter forms of money laundering and financial corruption; these commitments are not always connected practically with organised crime countering strategies, which remain often anchored to the more visible and more criminal side instead.

Prioritisation of countering strategies in crime on the one hand, and the ability to abide to commitments in preserving the economic wellbeing of the country, might indeed not walk in the same direction when it comes to a phenomenon, that of mafia, that is composite. This, in turn, affects **the ways in which harm are perceived and counter-harm strategized**. A last important point in this discourse is the almost complete **lack of focus**, in the antimafia operations coded for this report, on **phenomenon of white-collar criminality** and higher-level corruption outside of Italy (with a few exceptions from Romania and UK). This might be more an **absence of evidence** than an evidence of absence. Indeed, the latest **Europol SOCTA (2021)** provides insights into the use of corruption and the abuse of legal business structures as one of the key features of organised crime groups in Europe, thus paving the way for more work in this direction.

Pre-knowledge & Memory

One of the most significant differences between the Italian approach and the approach of other countries in antimafia efforts is the difficulty to **validate previous knowledge**. Italian authorities constantly rely on accrued knowledge on how mafia groups operate in different areas and they are able to factor in pre-knowledge and history – even beyond juridical history – into their operations. In other countries this is usually not the case, and actually it is at times utterly unmanageable. For example, in most countries in Europe there is not a comparable amount of historical knowledge to the Italian one when it comes to mafia organisations. This is also because mafia organisations have been perceived for long times as ‘Italian’, thus ‘foreign’ and therefore treated as such. Italy has a very advanced system of **shared databases** whereby different authorities in Italy can access information (including dated information, since the early 1990s) about individuals, operations, investigations in various parts of Italy. This increases the **reliance on Italian sources**, archives and knowledge to enhance antimafia efforts.

In many cases, the relationships established when it comes to antimafia efforts always see Italy as the main counterpart of another country. Programs like @ON, the Europol network to tackle mafia-structured criminal activity – which is still led by the Italian Anti-mafia Investigation Department/Direzione Investigativa Antimafia (DIA) – aims at overcoming this bilateralism by involving Europol and national authorities (initially just Belgium, France, Germany, the Netherlands and Spain, but others, like Romania have joined) together in the network. The Europol project is a spin-off of an Italian initiative, ONNET, officially approved by the EU Council in 2014. To support the @ON Network activity, in 2018 the DIA undersigned the Grant Agreement with EU Commission for a direct grant of 2 years, extended until the end of 2021 because of the health emergency²³⁵. In a communication on the EU Strategy against Organised Crime 2021-2025, the EU Commission urges members states to “*join and strengthen the @ON Network on mafia-type organised crime groups and explore a more structured integration of a targeted approach against criminal networks*”²³⁶. The @ON Network with Europol’s involvement makes it possible to deploy on-site specialised investigators, from police forces already members the Network, to fight mafia-style organised crime groups operating inside and outside the European Union. In this case, notably, mafia-style groups are not just Italian, but also “*ethnic Albanian, Eurasians, motorcycle gangs and the emerging organisations (Nigerian, Turkish, Chinese mafia, etc.) posing a serious threat for EU security and economy*”. It is important to flag here what academic literature has already discussed, that is the link between a ‘mafia’ connotation and that of ‘ethnicity’ (see below under ‘crime types’).

One of the main issues with databases at European level remains the **retention of data**. Europol should not store personal data for longer than is necessary for the performance of its tasks (investigating a crime towards prosecution). The need for

²³⁵ See @ON Operational Network to Counter Mafia-Style Serious and Organised Crime Groups at [https://direzioneinvestigativaantimafia.interno.gov.it/Materiale_ETON/Abstract/ABSTRACT%20@ON%20ENG%20\(17%20DEC%2020\).pdf](https://direzioneinvestigativaantimafia.interno.gov.it/Materiale_ETON/Abstract/ABSTRACT%20@ON%20ENG%20(17%20DEC%2020).pdf)

²³⁶ European Commission - Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Strategy to tackle Organised Crime 2021-2025 - Brussels, 14.4.2021 COM(2021) 170 final - https://ec.europa.eu/home-affairs/sites/default/files/pdf/14042021_eu_strategy_to_tackle_organised_crime_2021-2025_com-2021-170-1_en.pdf

continued storage of such data should be reviewed no later than **three years** after the start of its initial processing²³⁷. While this is of course justified from a civil rights perspective, it has been flagged as it makes it difficult to build institutional knowledge to offer to other member states for investigative purposes later on. Additionally, following **Brexit**, the UK will not have direct access, nor contribution, to the Europol databases such as SIENA, leaving a particularly vulnerable state of affairs there.

Like @ON, also the project **I-CAN**²³⁸ (Interpol Cooperation Against the 'Ndrangheta) - which includes 11 states (in Europe and outside Europe) in addition to Italy - has an impact on European knowledge, specifically in relation to the clans of the Calabrian mafia. One of the main objectives of these programs is to unlock and share the knowledge – especially historical knowledge – that Italy has been developing for years on these phenomena. There are two main reasons why it is important to unlock and share this knowledge.

- a) As a form of 're-usable' **collective memory**: it is often the case that Italian authorities make judgements over the importance of relationships, behaviours, and modus operandi of criminal actors and activities, on the basis of accrued knowledge of the groups, or the area of origin. Indeed, mafias are long-term – *permanent* – criminal phenomena. For example, it is often quite difficult to understand the importance of family relationships of the different members of a mafia-type criminal organisation, in particular the 'ndrangheta. Collective memory of Italian antimafia offices allow for intelligence to be classified in certain way, on a history continuum. By sharing the mechanisms of these judgements – including language **translation** of some of the accrued knowledge – it might become easier for others outside of Italy to comprehend Italian approaches to antimafia operations.
- b) To fill some of the knowledge gaps in various countries where **data collection** and/or **data retention** does not always allow to store intelligence

²³⁷ See Regulation (Eu) 2016/794 of the European Parliament and of The Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA - See <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016R0794&rid=1>

²³⁸ See <https://www.interpol.int/en/Crimes/Organized-crime/INTERPOL-Cooperation-Against-Ndrangheta-I-CAN>

for long(er) periods. Various of the following situations have been found in the countries under scrutiny for this report:

- i. **Data** from intelligence operations – when not relevant for immediate proceedings – is only stored for a limited period of time (usually 3 or 5 years) after which it gets **destroyed**.
- ii. Law enforcement agents and/or officers in anti-organised crime units or specialist antimafia authorities operate in their roles for limited amounts of time, usually 3 to 5 years, to allow for a healthy **rotation** of skills and expertise in institutions. This rarely allows to build up a long-lasting intelligence picture.
- iii. Different policy cycles imply different prioritisations for policing forces and judicial authorities; there might be **breaks** in the antimafia focus in certain countries. As the ‘visibility’ of mafia groups is amplified by certain factors (murders, violence, high frequency/high level/high impact activities), when these factors disappear or their manifestations decrease so will the antimafia focus. In some states the declared focus on criminal commodities and the result-oriented policy and policing attitude does not always allow to build long-lasting comprehensive pictures of mafias. In some states, there are important gaps of up to 15 years in a ‘national’ picture of mafia presence in the country. The different impact on society, and the importance and relevance of the mafia phenomenon also affect the building and retention of data and knowledge throughout different decades.

Structures & Activities

We can differentiate between mafia-led and mafia-type activities across Europe. **Mafia-led** activities are activities of Italian mafia groups’ affiliates or associates committed in different countries but still linked to Italy. **Mafia-style/mafia-type** activities are activities of individuals, not necessarily Italians, that adopt one or various aspects of the mafia method (family or close-nit organisation, intimidation tactics, semi-legal investments) and might or might not have relationships with clans in Italy.

When we consider **mafia-led activities**, Italian mafias in Europe are often described as **hypermobile**, with a perception of mobile clan activities and structures. However, to a closer look, this hypermobility is the result of the **high frequency** of clans' activities rather than an elevated incidence of a mobility strategy. In practice this means that what we observe abroad are activities of mafia clans while we often do not see the structures behind those activities. In other words, with a few exceptions (for example Germany and Switzerland), investigations from Italy into other countries relate to crimes and/or portions of crimes (e.g. some steps of the drug trade). **It is often the case that the criminal organisation behind the crimes committed in other countries remains in Italy.** And it is also often the case that the transnationality of the aim of the organisation is not recognised (see more below under 'Transnationality'). This leads to a series of considerations that could be summarised as follows:

- If Italian authorities suspect mafia activities abroad, they are more likely to **flag** them as a **higher risk** than they normally would be without the 'mafia' label.
- If the **visibility** of the mafia organisation is not the same in the other country, the risk perception of the overall activity might change.
- If another country does not see or experiences manifestations of the mafia organisation – or at least not perceive the organisational side of the criminal activities as an autonomous structure – **further investigations** in that country are **unlikely** to follow. The **mafia method** is not widely identified or investigated in other countries in the same way as Italian authorities would expect.
- The split between criminal activities (in different countries) and mafia structures (in Italy) is likely to make other countries more dependent on Italy for investigative purposes and, as a result, Italy is expected to **bear the costs** and take the responsibility of '**bringing home**' mafiosi (or alleged mafiosi) who conduct their businesses abroad, based on a nationality criterion. This will be also further explored below in this report under 'Transnationality'.
- The **high frequency** – rather than the hypermobility – of certain mafia activities abroad (such as the drug trade or money laundering through traditional sectors) risks obfuscating other activities that some affiliates might be engaging in while abroad. For example, while the focus on drugs or money laundering might be easier to maintain and justify, the focus on mafia power-seeking activities – from corruption to political proximity – or the possibility to invest in non-traditional sectors might be overlooked. Again, the **mafia method** is not widely identified or investigated in other countries.
- Certain mafia-style or mafia-led activities do cross borders in various countries, beyond Italy. The organisation of such activities remains

dislocated – disassociated – from the actual activities (the clan is based in Calabria, might be rooted in Germany, but their activities might end up in Belgium and the Netherlands). The result is a complex investigation where different states' authorities try to identify and counter both structures and activities, but in different locations and to different degrees. Indeed, the more mafia-led (or even mafia-style) activities do across borders, the more difficult it becomes to identify any mafia structure.

When it comes to **mafia-style/mafia-type** activities, many countries today recognise the importance to investigate and monitor the evolution of mafia-type or mafia-style (organised crime) groups – even *beyond Italian ones*. As identified by the European Commission in their communication on the EU Strategy to tackle Organised Crime 2021-2025²³⁹ it is “*crucial to scale up the dismantling of organised crime structures, targeting those groups that are a higher risk to Europe’s security*”. Additionally, the EU Commission notes that “*some Member States have established structures at national level or specialised bodies in law enforcement and the judiciary against mafia-style organisations*”.

This is particularly relevant also for Italy because in many cases states authorities in different countries observe Italian-descent, second generation migrants naturalised in the country, being involved in organised crimes in their own areas, with the mafia method or the mafia-style. These individuals or groups of individuals – even when they flag as Italian Organised Crime – might not be associated with a mafia clan in Italy, let alone be members of any clan. At times, these groups work with Italian mafia members or associates for convenience, as they would with others of different ethnicities. This **generational issue** – which is very well known outside of Italy, in countries like USA, Canada and Australia – poses even more problems to authorities both in Italy and in other countries. On the one hand – even if the links with Italy are often very feeble – the nationality of some of these individuals might involve Italian antimafia authorities anyway, but when there is no Italian nationality

²³⁹ European Commission - Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Strategy to tackle Organised Crime 2021-2025 - Brussels, 14.4.2021 COM(2021) 170 final - https://ec.europa.eu/home-affairs/sites/default/files/pdf/14042021_eu_strategy_to_tackle_organised_crime_2021-2025_com-2021-170-1_en.pdf

things are more complicated of course. On the other hand, the mafia-style method and organisation of these groups might be **amplified** when and if they cooperate with other Italian mafia members and associates abroad.

Procedural and technical challenges

Crime types

The law in action influences the law in books and vice versa. Thus, the evolution and declination of the mafia concept influences and is influenced by the law in books in different countries and by judicial practice as well. There are two areas that clearly affect cross-border policing and judicial cooperation when it comes to the crime types investigated in this report.

A. First, **the ethnicity dilemma.**

Italians abroad are perceived as 'ethnic' groups and thus qualified as ethnic organised crime when states apply a group-based classification of the criminal actors involved in organised criminality. There is a very well established – and widely criticised – tendency to associate mafias to ethnicity and ethnicity to nationality (Albanian mafia, Chinese mafia, Japanese mafia, Italian mafia). Ethnicity is at times the most visible character of an actor involved in certain criminality and can indeed say a lot about individuals' and groups' networks and, at times, also say something about their likely criminal association. Ethnicity is however often a conceptual trap: **Italian individuals committing (or suspected of) organised crimes abroad might be presumed to belong to Italian mafias just because of their ethnicity and Italian nationality.** This tends to happen when the mafia-style concept is anchored to an idea of membership to a sort of 'proscribed' association – the 'mafia'. This is not only wrong – as the mafia concept in Italy goes beyond the formal affiliation/association as seen – but also likely to create disparities and asymmetries in the application of a more nuanced mafia-style concept (see below in this section).

The ethnicity conceptual trap also has another effect that is particularly visible across different states: the tendency to rely on **administrative measures** such as **entry bans, working bans, removal orders or expulsions** as effective antimafia tools – which are issued on the basis of nationality and on the requirements of **good citizenship by foreigners**. The effect of such tools is twofold: on the one hand, they create a need for Italy to handle these individuals once banned/expelled – notwithstanding where their criminal activities took place. This could result in an

extra **burden** on the Italian criminal justice system to set up proceedings. However, this **expectation** that Italy takes over some cases and bring them home, is not necessarily considered to be a negative result among practitioners. This expectation is also driven by the consideration that the Italian antimafia system is indeed more prone, motivated, and eventually more capable, of securing convictions for alleged mafia members, irrespective of where the criminal activities take place. In fact, intelligence considered sufficient to proceed to prosecution in one country might not be sufficient as intelligence elsewhere, or does not correspond to what is necessary to eventually prove the offence elsewhere. In order to **secure convictions**, the return to Italy is at time the **best option**.

On the other hand, such administrative tools risk **not capturing the overall criminality** in which some mafia groups are involved in. Indeed, not only do some alleged mafia members hold different citizenship status, but also mafia activities, even when starting in Italy, increasingly involve associates, brokers, financial assistance from local professionals. This will be also further assessed below under 'transnationality'.

B. Second, comes a reflection on the nature of **the offence of organised crime, and/or mafia-style organised crime**.

Usually, criminal law targets unlawful associations aimed at the commission of various serious and organised criminality, or proscribed associations (like in the case of some outlaw motorcycle gangs), and/or other conspiracies by introducing criminalisation of 'participation in organised crime activity'. It is not always the case that – beyond Italy – the focus is maintained on the criminalisation of mafia-style **behaviours and methods**. Even when criminal law in a state provides for a reference to the use of intimidation and or other elements of criminal behaviour (like in Belgium), these are, in practice, still residual to a commodity-based, activity-based approach to the policing of organised crime: the criminal activities and/or the criminal commodities come almost always before a focus on criminal actors.

There is a **discrepancy** between the growing sophistication of a concept of mafia-style groups and the lack of norms to tackle those groups at state level. A European

Parliament Resolution of 20 January 2021²⁴⁰ monitoring the application of EU law 2017, 2018, and 2019, noticed *“the inconsistencies and shortcomings in European legislation designed to combat cross-border organised crime”*. In particular, the resolution calls on the Commission to present a legislative proposal to revise the Council Framework Decision 2008/841/JHA on the fight against organised crime. The emphasis is on providing an *“update of the definitions of criminal offences to emphasise the cross-border nature of criminal organisations (...) and adding offence of criminal association, which in the **mafia model** is characterised by intimidation tactics, association with deliberate intent to engage in criminal activity, and the ability to influence public bodies”*.

Since 2022, the **European Arrest Warrant**²⁴¹ (EAW) has facilitated the mutual recognition of criminal law across EU member states for the purposes of arrests and prosecution. In particular the Framework Decision²⁴² that introduced the EAW has clarified that the offence of ‘participation in a criminal organisation’ does not need the verification of the double criminality in the act between the issuing state and other states where the individual might be apprehended. This is also the case for 31 other offences, some of which qualified as ‘organised crime’, including for example trafficking in human beings, corruption, drug trafficking, arm trafficking, fraud, racketeering and extortion, and so on. A Handbook on how to issue and execute a European Arrest Warrant²⁴³ has been published in 2017 to facilitate and simplify the daily work of judicial authorities; it provides guidance on the procedural steps (how to fill in a EAW form) and a flowchart for issuing and executing an EAW. Behind the EAW there is clearly an affirmation of **mutual trust and recognition** at the EU level, and it is also what should govern the relationship with Switzerland and with the United Kingdom after Brexit.

²⁴⁰ See https://www.europarl.europa.eu/doceo/document/TA-9-2021-0011_EN.html

²⁴¹ See https://ec.europa.eu/info/law/cross-border-cases/judicial-cooperation/types-judicial-cooperation/european-arrest-warrant_en

²⁴² Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA) - See <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32002F0584>

²⁴³ See [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52017XC1006\(02\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52017XC1006(02))

In Switzerland, the Federal Act on Mutual Legal Assistance (1981)²⁴⁴, among other legislative tools specific to bilateral cooperation, regulates MLA between Italy and Switzerland; the MLA guide²⁴⁵ highlights what is applicable into different countries.

After **Brexit**, the UK will work through ‘surrender arrangements’ between the UK and the EU. The effect of these provisions is to closely replicate the arrangements under the Framework Decision on the European Arrest Warrant. With Brexit, the UK did not maintain access to the Second **Schengen** Information System (SIS II): this is not only the most widely used ‘real time alert’ information-sharing system for security and border management in Europe, but it is also used to alert agencies that an EAW has been issued. Relying on Interpol database instead, will not mean the UK will have the same type of timely alerts²⁴⁶. Following Brexit, a new power of arrest in relation to **red notices** has been agreed. The Extradition (Provisional Arrest) Act 2020²⁴⁷ opens the possibility for individuals to be arrested in the UK purely based on the existence of an Interpol Red Notice and without any involvement of a judge; it is therefore reliant on all other EU partners circulating their notices on Interpol in addition to doing so on SIS II. An International Law Enforcement Alert Platform has been announced as a new system that will allow the UK to share information with all countries, including EU member states, in a way similar to SIS II. It is very early on in its design by Home Office led delivered to police forces; it would need appropriate bilateral agreements in place.

Criminal finances

All states recognise the importance of successfully targeting **criminal proceeds abroad**, thus tackling the **finances** of mafia groups. A cornerstone in the fight

²⁴⁴ RS 351.1 - Legge federale del 20 marzo 1981 sull'assistenza internazionale in materia penale (Assistenza in materia penale, AIMP) (admin.ch) – See https://www.fedlex.admin.ch/eli/cc/1982/846_846_846/it

²⁴⁵ Swiss “MLA Guide” that is accessible online and indicates State by State the applicable legal bases between the State in question and Switzerland- [List of Countries for MLA](#)

²⁴⁶ See <https://ukandeu.ac.uk/law-and-judicial-cooperation-in-the-brexit-deal/>

²⁴⁷ See <https://www.legislation.gov.uk/ukpga/2020/18/enacted/data.htm>

against Italian mafias has certainly been the possibility to confiscate assets. In Europe this has become a reality only recently as the **EU Regulation 2018/1805**²⁴⁸ on mutual recognition of freezing and confiscation orders also entered into force at the end of 2020. While it is still too early to evaluate the strength and potential practical hiccups of this instruments, it has already been used in a couple of occasions²⁴⁹ for antimafia operations. On the one hand, this instrument comes after years of pressures at European level to enable law enforcement authorities to effectively attack illicitly obtained assets cross borders. However, despite the forthcoming entry into force of Regulation 2018/1805/EU, European legislation is still incomplete, as noticed in the EU Parliament Resolution of 20 January 2021²⁵⁰. The EU parliament has noted the *“Commission’s commitment to review all relevant legislation on freezing and confiscation of criminal assets and proceeds of crime in the EU, and to examine the possible need for further common rules, in particular on the aspects of seizure and confiscation of criminal assets even in the absence of a final conviction, and of the management of such assets”*.

Especially with regards to confiscation one of the issues that has been for a long time a thorny issue for Italian authorities is the possibility to execute **non-conviction-based confiscation**; these are proceedings that have a preventative nature but are independent from criminal sentencing. These preventative confiscation orders, which still are proceedings related to criminal matters, should be included in the new Regulation 2018/1805/EU which expands the remit to oblige Member States *“to recognise, without further formalities, the freezing orders and confiscation orders issued by another Member State within the framework of proceedings in criminal matters and to execute those orders within its territory”*. This inclusion would reinforce several favourable judgements of the **European Court of Human**

²⁴⁸ Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders - <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32018R1805>

²⁴⁹ See a recent example in Operation PetrolMafia S.p.A. coordinated by Eurojust <https://www.eurojust.europa.eu/action-counter-italian-fuel-tax-fraud-worth-almost-eur-1-billion>

²⁵⁰ See https://www.europarl.europa.eu/doceo/document/TA-9-2021-0011_EN.html

Rights²⁵¹ also in Italian cases, where the Court affirmed that preventative confiscation is not in breach of defendants' right to a fair trial and right not to be punished without a law (articles 6 and 7 of the European Convention of Human Rights). These judgements have been however reversed in different occasions, leaving the matter particularly uncertain. In a 2019, the ECtHR has established that the aim of the non-conviction-based confiscation was to eliminate funds from circulating further into the economy, in line with anti-money laundering regulations: on this basis the confiscation was not to be considered a sanction²⁵². Additionally, on 19 March 2020, the **European Court of Justice** rendered its judgment in the case «AGRO IN 2001» (C-234/18) by interpreting Directive 2014/42 on the freezing and confiscation of instrumentalities and proceeds of crime in the EU. The ECJ concluded that EU law does not preclude national legislation (in that case Bulgaria) to provide for civil law proceedings on confiscation, which are not subject to the determination of a criminal offence or to a previous conviction. The issue with non-conviction-based confiscation is part of a series of particularly problematic preventative antimafia tools that Italy has that is difficult to understand in certain systems in Europe. In Switzerland, for example, recognition of confiscation orders was already applicable, but antimafia preventative measures are still difficult to accept in the system.

While of course all states are committed to the fight against criminal assets – and all states have money laundering regulations – the reality of **money laundering operations** is not the same across the states under scrutiny in this report. It is particularly complex to harmonise this set of norms. It is important to highlight the following concerns:

- i. **Cash laundering schemes** are still particularly active in many areas of Europe. In some countries (like in Germany, Malta, UK, Austria, among others) there is still **no limit to cash** payments, and this creates criminogenic asymmetries both from the criminal side and from the countering side.

²⁵¹ See for example *Arcuri and others v. Italy* (dec.), no. 52024/99, 5.7.2001; *Licata v. Italy* (dec.), no. 32221/02, 27.5.2004; *Riela and others* (dec.), no. 52439/99, 4.9.2001.

²⁵² *Balsamo c. San Marino* no. 20319/17 and 21414/17 - [https://hudoc.echr.coe.int/eng#{"itemid":\["001-196421"\]}](https://hudoc.echr.coe.int/eng#{)

- ii. Setting up money laundering schemes through **shell (usually small) companies** across Europe, including of course Switzerland and the UK, is frequent and very difficult to investigate. Setting up empty companies is **not necessarily a crime in itself** and usually often only requires self-certification and a representative who declares to be a resident in the country.
- iii. In addition to the use of financial services and intermediaries (especially in relation to Switzerland for example), **money laundering through restaurants and investments in real estates** (at times laundered in another country from the one where the investment is eventually made) is as significant for mafias.
- iv. Some money laundering schemes can be aimed at cleaning money and reinvest the money elsewhere (legally or not). Some other are aimed at both **cleaning the proceeds of crime** and **generating more money from the same activity** (e.g. acquiring a company or an economic activity that is still generating some income). It is necessary to recognise that different schemes will require mafia and organised crime groups to use frontmen, brokers and professionals; these schemes are also detrimental for fair competition. National legislations to investigate such money flows is often asymmetric with different focuses across jurisdictions. Most states, for example the UK, focus on **placement** and **layering** of proceeds of crime, while the final phase of **integration** of laundered funds is often not at the core of investigations.
- v. The registers of **beneficial ownerships** are often based on the same self-certification required to set up companies, thus they might carry inaccurate information and become only a formal exercise in some occasions. After **Brexit** there is a risk for such registers to become particularly vulnerable, fed with false information, that go unchecked, in the UK.
- vi. Mafia groups can exploit **work and welfare regulations** (seeking employment also to access benefits abroad) in order to establish a presence in a given country. Checks in these sectors are difficult to harmonise. Once employed in a country, some individuals can act as **sentinels - sponsors** to facilitate further penetration of capitals in the country or even use the firm or entrepreneur they work for to launder

- cash. They can resort to intimidation of the company staff/directorate if needed, as **residual reserve of violence**.
- vii. Different countries have different sensibilities when it comes to complying to the '**invasiveness**' of money laundering investigations, especially for company ownerships. An attempt to balance **guarantees** of privacy and 'peaceful enjoyment of rights', and avoid 'invasiveness', might clash with the need **to keep investigations secrets**. For example, if checking the ownership of a bank account requires the authority to communicate to the bank account holder about the ongoing checks (like in Switzerland and in the UK) this might prejudice further investigations.
 - viii. The duty to control and to carry out checks (e.g. on labour practices, bank information, criminal records and activities) is often entangled in a **complex web of governance capabilities** across different institutions in all countries. There might be a tendency to rely on **due diligence and compliance, formal exercises** rather than active investigation. It is often the case that the remit of various institutions that should carry out the check is *not* to uncover criminal phenomena, but to ensure that specific protocols of compliance are respected.

Another big issue registered in practice – as opposed as in the books – is the need for some states to investigate money laundering after a **predicate offence** has been identified. The **EU's Sixth Money Laundering Directive**²⁵³, which should be implemented by Member States by June 2021 (as of December 2020, it is in effect for all member states), is set to close certain loopholes in member-states' domestic legislation by harmonising the definition of money laundering. A particular focus is on 'predicate offences'; the Sixth Directive in fact expands the list of money laundering predicate offences, and self-laundering, by defining 22 predicate offences and offers standards across EU states. As said above, the complication with

²⁵³ Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law - <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L .2018.284.01.0022.01.ENG>

money laundering investigations cross-borders is considered to be the lack of prevention and the lack of regulatory systems in place at destination. While many money laundering schemes are often **short lived** (until eventually law enforcement arrives), the easiness to penetrate certain **industries** and **sectors** (construction, waste, financial brokerage etc) – through ad hoc companies and intermediaries with an aim to defraud and/or launder money– is quite common to all states, with due differences in the sectors considered more vulnerable.

State-centred Transnationality

As said above in ‘Structure & Activity’ as well as in ‘Visibility’, the characteristic of modern mafia crimes – as a characteristic of organised crime more generally – is that often the group resides in a country while the activities are carried out elsewhere. The **transnationality** of mafias – and of many other organised crime groups – is not in doubt. However, the awareness of transnationality does not always mirror in the instruments available to judicial authorities at national level. It is often the case with Italian mafias abroad, that the investigations start in Italy and touch another state, or that the investigations started in one EU state will need Italian support at some point. **The split nature of the criminal group leads to asymmetries in the criminalisation of conducts and of groups.**

The following two points need to be flagged up:

- a. Even if transnationality is particularly relevant to the UN Palermo Convention 2000, as ratified by all states, it remains difficult to recognise transnationality of mafia groups in practice. For example, in Italy, the Supreme Court of Cassation²⁵⁴ has clarified that **transnationality as an aggravating factor to organised crime**, can be contested when an unlawful association is working abroad with *another – different –* criminal group, that is when it is not just the same association from home that also works abroad. This essentially limits the applicability of ‘transnationality’ to illicit trades only, when groups are more hybrid.

²⁵⁴ Corte di Cassazione Penale, Sez. Un., 23 aprile 2013 (c.c. 31 gennaio 2013), n. 18374 - Pres. Lupo - Est. Bruno - Ric. A.M.

- b. In most countries, transnationality can be contested through the criminalisation of **membership in a foreign criminal organisation**. In this sense, individuals in a European country can be found guilty of transnational (organised) crime if they belong to a mafia clan in Italy. In this case, transnationality might be both an aggravating factor if there is a crime committed in the host country and the authorities there want to proceed, or it can be a reason for expulsion (good citizenship administrative tool).

The difficulty to address the transnationality of aims of criminal organisations for now requires a normative shift at European level. Consider the following scenario: criminal group that is formed and/or is based in country A, moves capitals in country B, has an activity in country C, brings back capitals in country A to transit them in country D. In cases like this, a transnationality aggravating factor from country A could identify and cover **the split aims of the criminal group in different countries** without splitting the investigations of different criminal activities across many states.

Formality vs Informality

It is widely accepted that cooperation does work much better now than it used to just a few years ago, at both police and judicial authority levels. Not only more **instruments** are available to facilitate cooperation, but also the **awareness** on the phenomenon of Italian mafia and generally speaking mafia-style penetration into the legal and illegal economies has grown worldwide. There are two main issues that need to be considered in the practices of cooperation, at both policing and judicial levels: formality/informality and speed, which are inevitably linked to one another.

Police cooperation cross-border, in line with previous knowledge and academic literature on the subject, is heavily reliant on **personal and direct contacts and informality**. Both police liaison officers deployed in different countries and law enforcement agents that have been working on certain subjects in different countries, seem to prefer an informal approach when working towards certain goals. The bureaucracy attached to certain international instruments, including police and investigation requests from one country to the other, are often perceived to be unnecessarily burdensome. On the one hand, there is a clear preference to

transform – and/or use – the role of **police liaison officers** as **cultural facilitators and translators** between two countries to smooth bilateral discussions and requests. On the other hand, however, the importance of an institution like **Europol** has been growing in terms of data collection and centralisation of resources for law enforcement cooperation and that pushes towards formalisation of certain procedures. After **Brexit**, the UK's cooperation with both Europol and Eurojust is provided for but has of course changed; the role of liaison officers and prosecutors operate with limitations on the exchange of data (so far). This might have an undesirable effect on the capacity of Europol and Eurojust to operate with the UK as well. An important step for the UK has been the establishment of the UK International Crime Co-ordinating Centre, a newly established unit, dedicated to supporting UK Law Enforcement tackling international criminality²⁵⁵.

Informality – going to meetings face to face, or picking up the phone to call someone who, in an agency of another country, will be able to help with a specific request – is considered to be the most effective way to **speed up procedures and secure their success**. Informality helps to **pre-arrange preferential relationships** among different teams, agents, and officers: this, in turn, helps to screen out those who lack the '**sensibility**', the '**professionalism**', and the '**practicality**' to carry out the work needed in an efficient way. It is widely sustained that the **direct engagement with trusted contacts** not only facilitates the successful use of instruments and tools already available for cooperation, but it also builds **commitment** on both sides to achieving the same goals. This is considered more valuable than the correct application of formal requests.

At the **judicial cooperation level**, the situation is more nuanced. Judicial authorities often only interact at the execution of certain proceedings: arrests, confiscation, seizures. In certain countries, like in Italy, the judicial authority is responsible also for investigations and therefore might be involved at an earlier stage too. The swing between informality and formality is also clearly visible at this level. On the one hand, cooperation instruments, like **the European Investigation Order** (EIO, see below in this report), have streamlined procedures, facilitating, through formalisation, requests across different judicial authorities. This increases the degrees of **mutual recognition** and speeds up processes by providing clear

²⁵⁵ See dedicated page

<https://www.npcc.police.uk/NationalPolicing/InternationalCrimeCoordinationCentre.aspx>

guidelines on timings and expectations for responses. Formalisation is needed to use anything acquired through cooperation at trial. Together with this formalisation, however, informality still exists and still produces at times speedier effects. Especially after **Brexit**, the UK relies on overseas networks with liaison prosecutors, especially for judicial assistance bilaterally. To engage directly and personally with recipients of the sent requests (for example, with phone calls or texts to precede and/or follow up the request) is a common way to build trust, to clarify the request, and to make sure that it is handled promptly. **Cultivating relationships**, especially among Italian judicial authorities, is a necessary step **alongside formal instruments**, to make sure that professionalism and sensibility to antimafia issues is secured and maintained. Without personal and direct relationships, formal instruments are believed to be not always sufficient.

The cultivation of direct/professional relationships at judicial level is also useful to overcome two other issues:

- i. The need to **act quickly** when there are pressing needs of investigations **cross borders** (interceptions, surveillance of vehicles and/or individuals moving cross borders).
- ii. The need to identify **local authorities** (as opposed to national/federal ones) that have the actual jurisdiction in a given area. In some cases, formal requests might in fact be centralised and that could cause further delay.

Technical Investigations

For the sake of speed and efficiency, it is necessary to activate border cooperation as early as possible and that includes of course investigations. Technical investigations – such as carrying out tails, interceptions, surveillance, covert investigation – can prove to be particularly complex to harmonise in different legal and social contexts. At the same time, it is very difficult to imagine an investigation on Italian mafia today that starts and ends in the same place and often the same country, making it particularly important to harmonise technical investigations.

A. Instruments

The need to create bonds and relationships that allow investigators – both at law enforcement and at judicial level – to work better and quicker also for investigative purposes, flows into the creation of joint investigative teams. **Joint Investigative Teams (JIT)** are described by Eurojust²⁵⁶ as *“the most advanced tools used in international cooperation in criminal matters, comprising a legal agreement between competent authorities of two or more States for the purpose of carrying out criminal investigations. Made up of prosecutors and law enforcement authorities as well as judges, JITs are established for a fixed period, typically between 12 and 24 months, such as is necessary to reach successful conclusions to investigations”*. In 2020 alone, Eurojust offered support to 262 JITs²⁵⁷. The Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union [2000] and the Council Framework Decision on joint investigation teams [2002/465/JHA] together provide the legal bases in EU law on which competent authorities of two or more Member States may set up a JIT. Following **Brexit**, the legal basis for JITs of the UK with EU member states will be provided by the Second Protocol to the Council of Europe Convention on Mutual Assistance in Criminal Matters 1959 and, as in the case of Switzerland, it is particularly important to clarify the remit of such instruments beyond the immediacy of EU member states (only a few states have not ratified the Second Protocol but, in those cases, the UK can use the UN Palermo Convention as well). Additionally, the UK can participate in Joint Investigation Teams run through Eurojust as well, but their operation will be subject to EU law (as well as EU funding).

The use of JITs is particularly appreciated by investigators (both law enforcement and prosecutors) as they allow **the immediacy and the frequency** of contacts across different states and therefore the immediacy in applying instruments already

²⁵⁶ Joint Investigations Teams – Eurojust - <https://www.eurojust.europa.eu/judicial-cooperation/eurojust-role-facilitating-judicial-cooperation-instruments/joint-investigation-teams> and Europol - <https://www.europol.europa.eu/activities-services/joint-investigation-teams>

²⁵⁷ See Eurojust Annual Report 2020, https://www.eurojust.europa.eu/sites/default/files/Documents/pdf/eurojust_annual_report_2020.pdf

within each state's legislative frameworks. The JITs Network Secretariat²⁵⁸, established in 2005 in accordance with Council Document 11037/2005²⁵⁹, supports the national JIT experts and is based at Eurojust. Both Europol and Eurojust provide access to the Model Agreement for setting up a JIT – drafted in 2017²⁶⁰; they also provide guidelines and a practical guide for setting up and running a JIT, also in a 2017 document²⁶¹. By creating a circle of **trusted investigators** from different countries, JITs also allow to **build networks** for future collaboration, thus feeding into the abovementioned informality. Some further things to consider about JITs:

- In some countries the **approval process** for creating a JIT is handled centrally, through the Ministry of Justice or other Ministerial Department; in other countries, such as Italy, individual authorities – like the Direzioni Distrettuali Antimafia (Antimafia District Prosecutors) – can stipulate the agreement autonomously. This might create delays and further complications.
- In some cases, entering a JIT might mean that one country has to slow down or accelerate their (ideal) workflow to adapt to the rest of the team, but as the results are shared it also means that any evidence admitted in proceedings stemming from a JIT investigation can be acquired at trial in another country.
- Overall, JITs seem to bring more advantages than using only EIOs, when it comes to judicial cooperation, even if course the two tools can be combined.

²⁵⁸ JITs Network - <https://www.eurojust.europa.eu/judicial-cooperation/practitioner-networks/jits-network>

²⁵⁹ Council Document 11037/05 Brussels 8 July 2005 - Joint Investigation Teams - Proposal for designation of national experts - <https://www.eurojust.europa.eu/sites/default/files/Partners/JITs/JITs-Council-document-11037-05-EN.pdf>

²⁶⁰ Model Agreement for setting up a Joint Investigation Team – Eurojust - <https://www.eurojust.europa.eu/model-agreement-setting-joint-investigation-team-ms-word-version> - and Europol - <https://www.europol.europa.eu/publications-documents/model-agreement-for-setting-joint-investigation-team>

²⁶¹ JITs Practical Guide - Eurojust <https://www.eurojust.europa.eu/jits-practical-guide> and Europol <https://www.europol.europa.eu/publications-documents/model-agreement-for-setting-joint-investigation-team>

- In the specific case of **Switzerland**, when using the international rogatory system (RHV), the information is not directly usable in the other country and the parties can oppose the transmission, which slows down the procedures. JITs can be established to open a "**mirror**" **criminal investigation** in both countries (although not necessarily useful) can offer major advantages in terms of immediate exchange of information.

As already mentioned, for EU member states the **European Investigation Order (EIO)**, introduced by a 2014 directive of the EU Parliament and EU Council²⁶², can be used for obtaining evidence (for criminal proceedings or administrative proceedings for acts punishable by law) from another Member State and to request another Member State to carry out investigative measures on the basis of mutual recognition. As the goal is to make judicial cooperation on investigations faster and more efficient, the EIOs work with clearer forms and quick deadlines.

Annex A, which is the main form of the EIO, includes consideration of the urgency of the order due to evidence being destroyed, imminent trial date or other reasons. Annex A applies to a long list of (serious) offences, including of course participation in a criminal organisation, trafficking, money laundering, corruption, etc. A list of "**traditional investigative measures**" is provided, from covert investigation to information on bank and financial accounts, from seizure of documents to temporary transfer of a person held in custody to the issuing or executing state and so on. It is particularly important to highlight that states receive these requests and implement them within their own national procedures. Discrepancies and inhomogeneity across countries here are particularly visible: in certain countries seizures after arrests are not automatic, in others they can be; in certain countries interceptions are means to find evidence, in others they can only be authorised with existing evidence; in certain countries a bugged vehicle falls under interception, in other cases it falls under surveillance; many countries interpret interception of telecommunication as telephonic communication only. These **discrepancies** create more delays and usually need to be resolved thanks to **good will** and good practices of individual investigators. For example, one of the discrepancies that create most

²⁶² Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters - <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L.2014.130.01.0001.01.ENG&toc=OJ%3AL%3A2014%3A130%3ATOC>

problems is the one related to the **bugging of vehicles**, that is to the recording of conversations taking place inside a vehicle, due to the different thresholds in the Member States for granting this specific measure. Different views prevail in Member States concerning whether or not bugging of a vehicle falls under interception of communication and whether article 31 EIO RID (interception of communication) could be applied to a request to install a covert listening device; indeed, some member states don't think this applies as this tool is indeed about surveillance. Additionally, there is a problem with **bugged cars travelling abroad**, as seen below, in relation to Annex C.

Annex B is the form for confirmation of the receipt of an EIO by the authority of the executing State which received an Annex A. As clarified in the joint Note of Eurojust and the European Judicial Network on the practical application of the EIO²⁶³, *“the decision on the recognition or execution of the EIO shall be taken and the execution of the measure shall be carried out ‘with the same celerity and priority as for a national case’”*. There are mandatory deadlines: 30 days plus 30 days for taking the decision on recognition or execution; 90 days for taking the measure (after the decision on recognition or execution). And for provisional measures for very urgent situations, a decision is expected within 24 hours of receipt of the EIO, if practical.

Additionally, **Annex C**²⁶⁴ is the form used in order to *“notify a Member State about the **interception of telecommunication** that will be, is or has been carried out on its territory without its technical assistance”*. In order to speed up the process the Annex can be sent before, during and even after the interception and the annex notes that *“any objection to the interception or the use of already intercepted material must be made no later than 96 hours after the reception of this notification”*. A **lack of notification and/or a lack of approval** could lead to concerns about the admissibility of the evidence. In some Member States, the central authority is held as competent to receive Annex C, while in other Member States, the recipient is the local authority. In Italy, prior to Annex C, the practice vouched by the Supreme Court of Cassation had been that if an interception was already granted and it happened

²⁶³ Joint Note of Eurojust and the European Judicial Network on the practical application of the European Investigation Order - <https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties/EN/2131>

²⁶⁴ See the different forms for EIO <https://www.ejn-crimjust.europa.eu/ejn/libcategories.aspx?Id=120>

to pick up conversations in another country that evidence was admissible – without any need to inform the other country – as long as the interests linked to the interceptions remained in Italy. In this case, for example, Annex C adds an extra layer of bureaucracy to the practice already in place. This notification should not constitute an order to recognise an investigative measure, but it is a mere reflection of respect for the sovereignty of the other country. However, in practice, it has not always been clear whether the receiving states had any room to **question the notification** and on what grounds. For example, again on the cases of **bugged vehicles**, there are issues with notifying one state that a bugged vehicle from another state has entered their boundaries. If the bugging starts in one country - for example Italy - before the advent of EIOs, this bugging could have been considered admissible in evidence under national law also when the vehicle went in another state. Now, the procedure requires an application through EIO Annex C. As noticed by Eurojust, *“the case of bugged cars travelling abroad is not regulated by Article 31 EIO DIR or is not recognised on the grounds that prior authorisation was needed according to the domestic rules”*²⁶⁵. Essentially, it is often the case that when the Annex C form is sent to the relevant authority after the communication in the car had taken place, the authority is not able not permit the use of the evidence, which is an enormous problem for the issuing country. There are still cases where Annex C is not satisfying for the receiving country that will require an Annex A instead.

There does not seem to be any other major concern with EIO and there is agreement on the fact that EIOs are a step in the right direction. When different practices of different countries in filling the forms with the right amount of information has been flagged as a potential issue, the role of Eurojust has been recognised as particularly proactive.

Following **Brexit**, the UK will rely on mutual legal assistance provisions that supplement the application of the 1959 European Convention on Mutual Assistance in Criminal Matters, the Council of Europe mutual legal assistance treaty, the Additional Protocol to that Convention agreed in 1978 and the Second Additional Protocol to that convention agreed in 2001. In most cases, time limits are provided when exchanging information to standardise the exchange (such as the time of 90

²⁶⁵ See Report on Eurojust’s casework in the field of the European Investigation Order, Full Report, <https://www.eurojust.europa.eu/report-eurojusts-casework-field-european-investigation-order-0>

days to execute requests). A separate agreement covering the exchange of classified information has also been reached between UK and EU²⁶⁶. The UK Central Unit of the Home Office (UKCA) for Mutual Legal Assistance and the newly established International Crime Coordination Centre can handle incoming requests. The UK Crown Prosecution Service, instead, does not have a centralised unit to request 'Letters of Request' seeking assistance and evidence from other countries, so police-to-police request are considered more efficient.

Last but not least, it is important to mention the different capacities for certain **financial investigations**, in addition to what said above under 'Crime Types'. There are a number of further emerging considerations here:

- a. The difference in **roles and responsibilities** of the police and the prosecutors – which is quite uneven across Europe – poses an extra problem in financial investigations: in certain states financial investigators have special prosecutors and are centralised, in other cases they are decentralised and under the remit of local authorities.
- b. **Centralisation** (for example **federalism**) often creates difficulties in collecting certain types of information, which must necessarily be requested in the different regional and local areas.
- c. At the European level, many countries – including Italy – have more extensive possibilities than **Switzerland** in sharing financial information aimed at money laundering and financial investigations. Whereas EU states can now use EIOs to request bank account information for example, a similar request encounters problem in Switzerland when object of international mutual assistance requests. In fact, in Switzerland, the law requires that the person affected by the measure **must** be informed before evidence is transmitted to the requesting state and that he or she can appeal against the transmission. This point is difficult to understand as it clashes with the need for **secrecy** in investigations that is deemed necessary in antimafia investigations. On Tax Legislation, the **Automatic**

²⁶⁶ See:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948107/EU UK Security of Information Agreement 24.12.2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948107/EU_UK_Security_of_Information_Agreement_24.12.2020.pdf)

Exchange of Information in Tax Matters (AiA)²⁶⁷, i.e. the reporting of bank data of foreign clients at domestic banks to foreign states, as well as an improvement in the possibilities for obtaining and exchanging **financial information** (e.g. bank data) are often limited due to the legal framework in Switzerland²⁶⁸.

B. Capacity and Proactivity

Aside from cooperation with available instruments, there are different degrees of **proactivity** in carrying out investigations on 'Italian mafias' in different states. The following needs to be considered:

- Even if there is a growing tendency to focus on organised crime structures and networks, a lot of investigations are still **commodity** and **results** oriented.
- One of the biggest issues is the **length of investigations**: while Italian investigations into mafia groups can last for 24 months, in other countries the rules of procedures are different and the strategies behind investigations might be different. In some countries investigating a cocaine importation might be the overall strategy and aim behind initiating and concluding an investigation, while in an Italian investigation that same cocaine importation might be just one segment of a bigger work on the activities of the same mafia group more broadly.
- Probably one of the most important elements of divergence across states is the different roles of investigators and especially police. The existence of a **judiciary police** – that seeks evidence and builds cases under the guidance and direction of the judicial authority (public prosecutor) – sets a very different standard in capacity. When investigations are carried out by police forces detached from the judicial authority, the nature of **intelligence** gathering might or might not be linked to evidentiary needs. This is also

²⁶⁷ See OECD - Automatic Exchange of Information at <https://www.oecd.org/tax/exchange-of-tax-information/automaticexchange.htm>

²⁶⁸ See Federal Act on the International Automatic Exchange of Information in Tax Matters (AEOIA) of 18 December 2015 (Status as of 1 January 2021)

linked to the different regimes – usually by constitution – of **mandatory prosecution** (like in Italy) versus prosecution in the interest of the public and/or within other standards.

- The **decentralisation** of tasks in certain countries – with different prosecution offices and police departments working in different areas – is not always easily comprehended by countries who have a centralised authority instead. Cooperation runs smoother where there is **centralisation** in the first instance especially where Europol and Eurojust are involved; but decentralisation might also mean that there is a detachment between the approving authority (in the centralised unit) and the executing one in the same country. It is the view of some participants that things might run quicker with decentralised executing authorities through more informal contacts as well.

C. Digitalisation

Another important element of cross-border investigations today is in the digitalisation of communication and the increasing sophistication of certain tools of interaction among people, including criminal networks. For example, the use of devices (starting from BlackBerry and moving to others) with (expensive) **PGP encryption systems** is a diffused method of interaction, especially in drug trafficking. The examination of encrypted data is key to results in countering drug trade, but it is not always easily obtained.

This is not only related to cybercrime and/or criminal activities committed via the internet. It is related mostly to existing legal asymmetries in the recognition of some investigative tools across Europe. For example, the use of **Trojans**, malwares installed into phones and other devices to ‘hack’ into otherwise inaccessible or encrypted communications, is not used evenly across states: some use trojans partially, some use them lightly, some consider them too invasive and do not use them at all. As in many countries it is not a viable tool for investigations, it cannot be requested through an EIO as well. The involvement of cybercrime policing units, including the Europol centre, can facilitate bilateral investigations in this sense. However, the **legal asymmetries** in the realm of **digital interceptions** are still a concern as they impact on the capability of authorities in their investigative capacities.

Final Points and Recommendations

- I. It is important to **demystify** the meaning of the **mafia concept** as it develops in Italy and beyond and to make it more intelligible elsewhere. It would be helpful if an Italian unit – perhaps sitting in the Direzione Nazionale Antimafia – could take on a permanent role in **translating** (in different languages) the most relevant judgements of the Supreme Court of Cassation and other relevant jurisprudence and judicial orders to be then distributed to the main authorities abroad. A permanent duty of such a unit could be to **collate/collect/synthesise data** from active investigations to be shared with relevant foreign authorities when they touch upon activities of interests in those countries. This last proposal, however, does need to overcome the procedural requirement for **secrecy** in investigations and might only be done after discovery has occurred. Specific ad-hoc agreements among states also need to be explored; this would also support reducing the expenses related to translating documents from Italy, which are reportedly very high. The DIA reports, which, as said, have a somewhat obsolete group-based structure, could contain an English summary as well.
- II. An important step forward would be the possibility to recognise – and accept – abroad the **sentences for article 416-bis in Italy** (unlawful association using the mafia method). This recognition would allow for speedier initiatives also in other countries when it comes to initiating investigations. It would also allow to understand how article 416-bis works in practice and how it might at times include other crimes which, abroad, might be perceived as minor (without the umbrella crime of mafia-style association).
- III. In recognition of the role of memory and historical knowledge that Italy has in the fight against some permanent mafia-type groups, **access** to Italian antimafia **databases** from the 26 District Antimafia Prosecutor Offices (DDA) could become part of a request within Annex A of EIO.
- IV. In view of modern states' needs to trust processes even more than people's goodwill, there should be a way to strengthen formal processes while reinforcing informal ones. For example, the role of **cultural facilitators** in cross-border policing, including units where liaison officers sit in different countries, could be strengthened to include some of the tasks mentioned above (translation and data synthesis) in their respective countries of expertise. These units should and could also be used for bilateral cooperation

and should keep updated contact lists to facilitate cross-borders formal requests as well as informal ones.

V. Projects like **@ON and I-CAN**, in their respective capacities, should be strengthened and funded at European level. Within these projects further capacity could be developed. These should also work closely with representatives in the Council of Europe, the EU commission and the EU Parliament:

- a. To build and maintain a database with different **language translations** of relevant and **applicable norms**, laws, even jurisprudence of different countries in countering organised crime. This could be similar to the UNODC Sherloc²⁶⁹ database, but within Europe and with a wider selection of regulations.
- b. To build **shared databases** not subjected to swings of **data retention** regulations, but with clear, ad hoc, guidelines for data retention and data sharing. This database could be also linked to a permanent unit with translating and collating duties as said above, within the limits of procedural secrecy. The size of the data gap with the UK after **Brexit** is currently unknown and will need close monitoring by UK authorities.
- c. To **train professionals** in different countries with an aim to develop informal networks within a formal environment. These trainings need to embed both operational knowledge, but also critical thinking (from academia and other sources).
- d. To build archives and data also on infiltration in the legal economy and on **white-collar** criminality associated to mafia money and/or activities. This could facilitate the application of preventative measures, for example in targeting enablers and professionals of mafia business (lawyers, accountants, notaries, etc).
- e. Together with Europol and Eurojust, build **networks** of professionals that are best placed to join in JITs and that are

²⁶⁹ See SHERLOC – Sharing Electronic Resources and Laws on Crime
<https://sherloc.unodc.org/cld/v3/sherloc/>

developing specific skills in transnational cases (e.g. specialist prosecutors in mafia-type organised crime).

- VI. Countries in Europe, including Switzerland and the UK, should be required to use systemic sharing of information on national situation analyses, by using a variety of knowledge transfer methods, such as those of Intelligence-led Policing (ILP). At police level, this should be facilitated, but not necessarily centralised by Europol. **Europol** needs to have a proactive – not a reactive – role, by collecting what already available and produced at country level. The shared database from the various countries needs to have clearer guidelines for contributions by different states. Also, an updated yearly or bi-yearly **situation analysis** with data compiled by different countries should be stored and made available through Europol and the networks mentioned above. Europol and the Italian DNA (or DIA through @ON) could also take the lead on producing updated reports and analyses of **mafia structures** across Europe, in addition to mafia activities. It is crucial to identify whether the well-known cooperation among clans across more than one country is leading to the formation of cross border mafia structures and organisations for example.

- VII. **Joint Investigative Teams** work well, and they should be encouraged wherever possible, even more than EIOs. Eurojust has already taken a lead on this and is of course expected to continue to do so.
 - a. Intra-state cooperation (with other local authorities in the country) should be made easier when a JIT is established.
 - b. JITs should have easier and direct access to databases and shared archives through @ON and I-CAN as outlined above.
 - c. When Italy leads the JITs, bringing home foreign evidence and setting up trials of individuals also committing crimes elsewhere can be seen as a necessary burden.

- VIII. Foster the **political will**, at European and country levels, to identify **normative priorities** at European level:
 - a. **Transnationality** of the aims of a criminal organisation as an aggravating factor needs to be homologated throughout the law in the Union. The fact that a member of an Italian mafia group launders money in a European country could receive a harsher punishment due to the fact that they belong to a criminal association in Italy.

Criminalising the transnational aims of an Italian unlawful organisation would be a step forward for Italian authorities.

- b. **Methods** and behaviours of mafia-type groups – relevant for a criminal organisation charge – need to be harmonised in criminal law throughout the Union. This needs to include the use of **corruption and trafficking in favours** to access privileges and networks in economic and political circles.
- c. Limits to **cash use**, for anti-money laundering purposes, needs to be homologated throughout the Union.
- d. **Eurojust** should be given the power to issue binding notes and give directions on how to **interpret** technical investigations and requirements of EIOs.
- e. Tools – and limits to these tools – to conduct investigations on encrypted applications and devices (e.g. **Trojan**) should be homologated, or at the very least harmonised throughout the Union. Currently, even in countries where it is possible to install a very advanced no-click Trojan on a device (without alluring the ‘target’ to click on an infecting link, like in Switzerland) that might not be usable for surveillance of the ‘room’, but only to acquire data from the device. Again, these create asymmetries.
- f. Clarify the probatory use and collection standards for evidentiary thresholds of **informatic** data once shared (e.g. Encrochat/SkyCC).
- g. **Protection of witnesses** in antimafia operations could become an EU-wide effort, first in terms of facilitating the relocation of witnesses from one country to the other and eventually in more substantial ways.
- h. Harmonisation of these EU norms with extra-EU partners, especially Switzerland and the United Kingdom.

IX. Access to intelligence and **data** for the purposes of **financial investigations** needs to be strengthened procedurally and conceptually.

- a. Obtaining and exchanging financial information (e.g. bank data) at the criminal police level should be made easier also for extra European countries.
- b. Quality checks on the data stored by registers of beneficial ownerships should be implemented at country level.
- c. With respect of countries’ legislative limits, strengthen data sharing on work and welfare regulations across countries in the Union (and also in extra-EU countries in Europe) for the purposes of financial investigations.

- X. The **European Public Prosecutor Office (EPPO)**, which is due to start in full force soon, might centralise some investigations that relate to EU frauds and funding. It is expected that an EPPO investigation will cover all aspects of an investigation where EU frauds is suspected. Investigations on mafias, especially in Italy, do eventually highlight interests in EU frauds together with other activities of the groups. If EPPO were to attract everything that pertains an EU fraud investigation there is the risk that the new prosecutor will have to handle majorly complex antimafia cases, in which only a portion of activities relates to EU fraud. It is necessary to clarify the remits of intervention of EPPO in these cases, especially in Italy. It is also necessary to strengthen the role of the European Prosecutors within their national territories and to clarify cooperation with the antimafia prosecutors. This is an opportunity to bring some of the antimafia practices in Europe, for EU complex investigations. Prior to the work of EPPO starting, a memorandum of understanding with the Italian Direzione Nazionale Antimafia and the Direzione Investigativa Antimafia, should be agreed, in line with the Eurojust and Europol's existing memos with EPPO.
- XI. Overall, it is necessary to **avoid the duplication of efforts** across the Union in antimafia strategies. Centralisation efforts by European agencies needs to happen as auxiliary to already existing bilateral cooperation channels. Liaison officers need to be embedded in the formal circles of communication within Europol and Eurojust. Formalisation should accompany and streamline already existing informal networks. Informal networks are where limited resources of police and judicial authorities seem to be spent the most, and this needs to be taken into account. Redundancy of initiative and structure might end up reduce the effectiveness of the fight against mafia-type crime.

Read further

*this is just a selection of titles in a very vast literature on the subject

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