Organised criminals and the legal economy

Giulia Berlusconi

Abstract   Economic activities are distributed along a continuum whose extremes are criminal activities and completely legal ones. Between these two extremes lie several other possible ways in which organised criminals engage in activities that are formally legal yet organised and managed illegally. Attention has been recently paid to legal businesses and their exploitation by criminal organisations, and to the drivers of criminal infiltration in legal businesses, including concealment of illegal activities, profit through fraud, and control of the territory.

The relationship between organised crime and the legal economy

The complex relationship between organised crime groups and the legal economy has been discussed by several authors (Anderson, 1979; Arlacchi, 1983, 2007; Catanzaro, 1986, 1988; Cressey, 1969; Fiorentini & Peltzman, 1995; Ianni & Reuss-Ianni, 1972).

Some authors argue that criminal organisations need to engage in legal activities because investment opportunities in the illegal markets are insufficient to reinvest the money accumulated with illicit activities. After a portion of the profits has been allocated to the organisation’s management costs, investment in other illegal activities is usually the first option for criminals (Barresi, 1999; Ruggiero, 1996, 2010). However, investment opportunities in illegal markets may be insufficient. Criminal organisations thus need to diversify their investments by engaging in legal activities, and the proceeds of illegal activities are laundered through investments in the legal economy (Catanzaro, 1988; Centorrino & Signorino, 1997).

Other authors suggest that infiltration of the legal economy is a constant feature of criminal organisations that diversify their investments between legal and illegal markets. Therefore, infiltration in the legal economy is not conditional upon a sufficient accumulation of profits from illegal activities; rather, it is a typical feature of organised crime (Fantò, 1999; Santino, 2006). Criminal organisations launder money of illicit origin, and they also reinvest money which has already been laundered. Once the money has been invested in the legal economy, organised crime groups act like other entrepreneurs by complying with the normal market rules (Edelhertz & Overcast, 1994).

The first interpretation is in favour of a chronological nexus between the presence of criminal organisations in illegal and legal markets, whereas the second interpretation envisages a two-way process. The literature suggests that the legal and illegal economy cannot be clearly separated. In fact, economic activities are distributed along a continuum whose extremes are criminal activities and completely legal ones (Ruggiero, 2008; Smith, 1975, 1980). Between these two extremes lie several other possible ways in which organised criminals engage in activities that are formally legal yet organised and managed illegally. The legal sectors in which criminal entrepreneurs operate, together with illegal activities, define the criminal economy as a whole (Becchi & Rey, 1994).

The organised crime and money laundering literature provides insights into the relationship between criminal organisations and the legal economy (e.g. Savona & Riccardi, 2015; van Duyne, von Lampe,
These studies concern the complex relationship between legal and illegal markets, and the investments by criminal organisations in the legitimate economy. Attention has recently also been paid to infiltration by organised crime groups of legal businesses. Some scholars have focused on legal businesses and their exploitation by criminal organisations. This entails examining the drivers of – or the reasons for – infiltration, the locations and business sectors of the businesses targeted, the process of infiltration, and the strategies used to control and manage infiltrated businesses (Savona & Berlusconi, 2015).

Organised crime and legal businesses

The relationship between organised crime groups and legal businesses is a complex one. The involvement of organised criminals in the management of a legal company may vary; and the same applies to the level of direct control exercised over the business. On the one hand, legal businesses may be owned and directly managed by criminal entrepreneurs. On the other hand, organised criminals may create a partnership with the legal entrepreneur; and illegal and legal capital may coexist in financing the business activities (Di Bono, Cincimino, Riccardi & Berlusconi, 2015; Fantò, 1999; Sarno, 2015).

Legal entrepreneurs may be motivated to cooperate with the criminal organization by the fear of retaliation; or they may actively decide to take part in illicit activities to obtain economic benefits. The members of the criminal organization benefit from the relationship with legal entrepreneurs as well. This is particularly the case when the business activity of the criminal group is linked to the activities of the legal company, e.g. in the case of a licensed pharmacy used to sell illegal drugs (Bruinsma, Denkers & Alberts, 2015; Riccardi, Dugato, Polizzotti & Pecile, 2015; Sciarrone, 2009).

Besides passive cooperation motivated by the fear of retaliation, a form of active cooperation may result from an agreement between the legal entrepreneur and the members of a criminal organisation. Organised criminals generally approach collusive entrepreneurs whose businesses are of interest to them, and they offer them an opportunity to expand their businesses and increase the financial rewards. If the business owners consider cooperation with the criminal groups to be convenient, they are likely to facilitate the process of infiltration of their own companies (Berlusconi, 2015; Sciarrone, 2009).

Especially in the case of passive cooperation by the legal entrepreneur, extortion and coercion are typical methods of infiltration in legal markets. However, an analysis of case studies on criminal infiltration in legal businesses has revealed that the use of violence and threats, as well as corruption, is not common and generally involves Italian mafia groups (Savona & Berlusconi, 2015). In most case studies in which legal entrepreneurs are involved, the evidence suggests that they have been either collusive or unaware of the illicit activities conducted by the members of the criminal organisation (Berlusconi, 2015). For instance, Rönnblom, Skinnari and Korsell (2015) report a case in which the organised criminals pretended to acquire a business by signing the documents to change the board members, but never submitted them to the Companies Registration Office. As a consequence, the legal entrepreneur, who was unaware that the property had not been transferred, became a straw man for the criminal organisation in his own company (Berlusconi, 2015; Rönnblom et al., 2015).

An analysis of case studies on infiltrated businesses in Europe has shown that targeting businesses in economic difficulties facilitates the infiltration process, since the owners of the companies are eager to sell their shares before leading their business to bankruptcy (Berlusconi, 2015). Usury also multiplies the opportunities to infiltrate the private sector (Bertoni & Rossi, 1997). The lack of regulation of the financial system that provides an early warning system, low capitalisation of family-run companies, and
the segmentation of the credit market are factors that make businesses with certain characteristics more vulnerable to financial crises and, therefore, vulnerable to organised crime. These companies are mainly small traders and service companies, craftsmen and small family firms (Bertoni & Rossi, 1997).

When these businesses are unable to obtain bank loans and are therefore in financial difficulties, criminal organisations may take the place of banks and offer their usurious loans. These loans enable the criminal groups to infiltrate the companies in difficulties until they can take them over (Ciconte, 2008). Despite evidence of the use of violence, threats, extortion or usury, in many cases the infiltration process seems to be quite straightforward in that it involves one member of the criminal group regularly starting a new business or acquiring an already-existing one from a legal entrepreneur. This process can be facilitated in some countries by the scant requirements needed to set up a company or the lack of regulation on the process of acquiring a business (Berlusconi, 2015).

Once infiltrated, businesses can be subject to different types of control and management. Shell companies, whose main purpose is the concealment of illegal activities, often do not perform any kind of productive activity, since the creation of wealth through the production and sale of goods or services is not one of the objectives for which they have been created (Catanzaro, 1988). As a consequence, they are characterised by no or minimum productive activities, which may result in low revenues (Transcrime, 2013). Low profits may also be due to the fact that infiltrated businesses often face economic difficulties, either because of a specific choice by organised criminals to target companies close to bankruptcy or as a consequence of bad management by the members of the criminal group (Di Bono et al., 2015).

Businesses infiltrated in order to commit frauds tend to present low levels of fixed assets, indicating that they are unlikely to invest the capital in buildings, machinery and other means of production (Di Bono et al., 2015; Schneider, 2004; Transcrime, 2013). By contrast, organised criminals prefer high levels of current assets and cash because they help them liquidate the business in the event of a law enforcement investigation and avoid the risk of asset confiscation. Should the criminals be aware of a financial investigation (e.g. thanks to a tip-off or some other disclosure), they may try to sell the company assets before these are seized by the judicial authority, and move the resulting liquidity to safer places (e.g. offshore bank accounts) (Catanzaro, 1988; Di Bono et al., 2015).

Finally, infiltrated companies – and particularly those used to launder the profits of illicit activities – generally show low levels of financial debts, indicating that they do not resort to banks and other financial institutions for loans to finance their activities (Di Bono et al., 2015; Transcrime, 2013). At the same time, criminal groups need to conceal the origin of the money used to finance the infiltrated businesses. Possible options include the creation of complex corporate schemes to account loans as debts towards companies of the same group, or towards subsidiaries, shareholders and parent companies. Debts to suppliers and other debts, in fact, may be used to conceal the injection of illicit proceeds into businesses controlled by criminal groups (Di Bono et al., 2015; Transcrime, 2013).

The drivers of criminal infiltration in legitimate businesses

Organised crime groups are induced to infiltrate legitimate businesses by several drivers. The maximisation of profit can coexist with other drivers, such as political, social and cultural motivations. The objective of organised criminals in the legal economy is, in fact, to maximise the benefits, which include benefits other than economic (Becker, 1968). A recent analysis of case studies on criminal infiltration of legal businesses in five European countries has helped identify several drivers of
infiltration, including money laundering, profit through formally legal activities, profit through frauds, and concealment of illegal activities (Savona & Berlusconi, 2015).

Criminal groups may infiltrate legal businesses for more than one reason at a time; and different drivers of infiltration may intersect. For instance, the use of legal businesses to conceal illegal activities may lead criminals to use the same businesses to legitimise illicit profits (Riccardi, 2014; Transcrime, 2013; Wall & Bonino, 2015). A similar variety in the drivers of organised crime infiltration of legal businesses can also be found in the chapters of this book. At the same time, drivers of criminal infiltration are not necessarily all present at the same time; and depending on the specific situation, one may prevail over the others.

Organised crime groups active in the Netherlands, Sweden, and the United Kingdom have been found to infiltrate businesses mainly in order to commit frauds (Bruinsma et al., 2015; Rönnblom et al., 2015; Wall & Bonino, 2015). For instance, Swedish organised criminals use businesses to provide restaurants and small shops with untaxed alcohol and cigarettes. The fact that alcohol and tobacco are subject to excise tax enables large-scale tax fraud when the goods are imported legally and then resold to restaurants and kiosks without paying taxes. Having control over or running a business with a licence to import alcohol or tobacco is thus an opportunity to carry out excise tax fraud (CSD, 2015; Rönnblom et al., 2015).

Most of the Slovenian case studies have concerned legal businesses infiltrated to conceal illegal activities, mainly prostitution. These cases confirm the criminals’ interest in bars and night clubs with the purpose to perpetrate forced prostitution. The bars give the outward impression of legitimate businesses providing dance routines for their customers; meanwhile, forced prostitution occurs in the background. Evidence of human trafficking has also been found in connection with the provision of women to be employed in such bars (Meško et al., 2015; see also Chapter 4 in this book). On the contrary, evidence of infiltration to gain social consensus or to control the territory has not been found in Slovenia.

In Italy, some case studies have considered organised crime groups investing in legal business entities in order to maximise their social consensus and to control a particular market of the local economy. Organised criminals may decide to infiltrate businesses operating in sectors that provide goods and services to the population (e.g. education, health care) and create new jobs to promote a respectable image of themselves in contrast with that of mere criminals (Fantò, 1999; Ravenda, Argilés-Bosch & Valencia-Silva, 2015; Sciarrone, 2009). Italian mafias also infiltrate sectors with high territorial specificity (e.g. hotels and restaurants, gas and water supply, construction) to control an area physically and to create strategic collusive relationships with politicians and local entrepreneurs (Giampietri & Sarno, 2015; Riccardi, 2014; see also Chapter 8 in this book).

Organised crime groups may invest money in legal businesses to launder the profits from criminal activities, especially through money service and cash-intensive businesses such as bars and restaurants, and retail trade (Dvoršek, 1995; Meško et al., 2015; Organised Crime Task Force, 2013; Rönnblom et al., 2015; Wall & Bonino, 2015). However, in some countries, such as Slovenia, most organised criminals seem to be minimally involved in money laundering through legal businesses (Meško et al., 2015), confirming that many criminals simply use the profits from illicit activities to fund a lavish lifestyle (van Duyne, 1996).

Criminal groups may have direct or indirect control of the businesses used to launder money (RKP, 2012a). Such businesses may be used by criminals as layers to hide the proceeds of crime and conceal incoming and outgoing illicit flows (Riccardi, 2014). In the case of commercial activities, inflated bills
and accounting manipulation may enable criminals to justify the money earned from illicit activities (Becchi & Rey, 1994; Bini, 1997; Gratteri, 2011).

Banks and other financial institutions are required to report suspicious transactions to their country’s Fiscal Intelligence Unit (EU Parliament and the Council, 2015). In some countries, the probability of such transactions being reported has increased over the years (Brå, 2011a). As a consequence, the interest of criminal groups has shifted, and currency exchange offices have started to be targeted either by recruiting their employees or by starting new businesses in this sector (Brå, 2008, 2011a, 2011b; EBM, 2013; Noroozi & Lind, 2013; RKP, 2013).

Another driver of criminal infiltration of legal businesses is profit from legal – or formally legal – activities (Garofalo & Berlusconi, 2015; Savona & Berlusconi, 2015). Criminal groups may target legal businesses to acquire their assets, or they may invest in businesses to obtain considerable earnings and benefit from their profitability (Brå, 2012; Rönnblom et al., 2015). Sectors with low levels of technological innovation and professional skills are particularly attractive because of low research and development costs (Becchi & Rey, 1994). Companies active in business sectors characterised by public subsidies and public contracts, such as renewable energy and waste disposal, may also be vulnerable to infiltration by criminals aiming to maximise their profits through formally legal business activities. In fact, criminal groups may use legal businesses to gain public contracts and increase their profits (Fantò, 1999; Meško et al., 2015; Transcrime, 2013).

Unlike shell companies used as covers for illicit activities, these businesses engage in production activities and are profit oriented, although organised criminals often have unrealistic ideas about a company’s profitability and underestimate the costs (Becchi & Rey, 1994; Bini, 1997; Brå, 2007, 2012; Catanzaro, 1988; Costantino & Fiandaca, 1986). Legal activities are only formally legal when their profitability is linked to illicit activities such as the discouragement of competition or irregularities in the labour market, e.g. when a company is targeted because it is a business competitor of other infiltrated businesses (Arlacchi, 1983; Brå, 2012).

Legal businesses may also be used by criminal groups to gain profits from, and conceal, illicit activities such as fraud and the trafficking of illegal goods (Rönnblom et al., 2015; Wall & Bonino, 2015). Legal businesses may be facilitators or crucial in committing crimes such as insurance or VAT frauds. In Sweden, cases have been found of social welfare fraud through legitimate companies (Rönnblom et al., 2015; see also Chapter 6 in this book). Legal businesses in the United Kingdom have instead been found to be used mainly to organise and perpetrate crash-for-cash and VAT frauds involving a complex scheme of legal shell companies (Wall & Bonino, 2015; see also Chapter 7 in this book). Organised criminal groups, in fact, may control legal businesses and exploit them to commit various types of corporate fraud (e.g. insurance fraud, insolvency and bankruptcy-related fraud) and fiscal fraud (e.g. VAT and tax fraud, benefit fraud) (Bruinsma et al., 2015; Garofalo & Berlusconi, 2015; Rönnblom et al., 2015; Wall & Bonino, 2015).

Benefit fraud, for instance, is particularly common in countries with advanced social welfare systems that provide a variety of benefits such as sickness and unemployment benefits to employees (Brå, 2011b; ISF, 2011; RKP, 2012b; see also Chapter 6 in this book). In this framework, organised criminals may infiltrate legal businesses in order to receive subsidies from the state to create new job opportunities. Or they may hire employees from among their family members and friends, drive the business into bankruptcy, and have public institutions pay the employees’ benefits for the months following the bankruptcy (Rönnblom et al., 2015). Fake documentation such as medical certificates may also be produced by employees with the help of doctors so that they can qualify for sickness benefits and defraud the state (Brå, 2011b).
Furthermore, legal businesses may provide cover for criminal groups’ illegal activities (Mills, 2013; Silverstone, 2011; von Lampe, 2006). Organised criminals may use legal businesses to conceal illicit activities such as drug trafficking or prostitution. For instance, the members of a criminal organisation may use the vehicles and storehouses of their transport company to conceal and smuggle illegal goods (Palomo, Márquez & Ruiz, 2015). In particular, transportation companies have proved particularly suitable for hiding the illicit trafficking of drugs (Bruinsma et al., 2015; Ferwerda & Unger, 2015; Palomo et al., 2015; see also Chapters 3 to 5 in this book). Similarly, restaurants may facilitate the sale of untaxed alcohol, and bars and clubs may be used to cover prostitution rings (Brå, 2006; Dvoršek, 1995; Korsell, Skinnari, & Vesterhav, 2009; Meško et al., 2015; see also Chapter 4 in this book).

Bars and cafés, grocery stores, luxury companies, and hairdressing salons are also used as covers for heroin and cocaine dealing and trafficking. Bars can also be used as centres for illegal gambling, whereas clothing companies and shops can become covers for the production and retail of counterfeit goods (Hales & Hobbs, 2010; Meško et al., 2015). Infiltrated businesses may also be exploited to perform transactions which would otherwise be considered suspect and to conceal them as production costs (Anderson, 1979; Fiorentini, 2000).

Cultural and personal reasons may also induce criminal groups to infiltrate legal businesses, and they may influence the choice of the business sector (Garofalo & Berlusconi, 2015; Savona & Riccardi, 2015; Transcrime, 2013). Criminals may invest in certain businesses because they are close to their culture, education background or family tradition. This may explain, for instance, the infiltration of vehicle repair garages, sex shops and tattoo parlours by some Nordic motorcycle gangs (Petrell & Houtsonen, 2015a; see also Chapter 10 in this book) or the acquisition of companies engaged in the wholesale of typical local food products by Camorra groups (Riccardi, 2014).

Criminal groups may infiltrate legal companies to create new jobs and to assign subcontracts to other enterprises, thus maximising their social consensus (Arlacchi, 2007; Becchi & Rey, 1994; Bini, 1997; Fantò, 1999). Mafia organisations are particularly interested in obtaining social consensus from the local population. They consequently seek to infiltrate strategic sectors such as education and health care. For the same reason, these groups may also target labour-intensive and territorial-specific business sectors to create new jobs (Fantò, 1999; Ravenda et al., 2015; Sciarrone, 2009). The improper use of legal businesses to create employment for friends or relatives, however, is not restricted to Italian mafias. A Swedish study found cases of criminals being hired by a business and receiving a salary after threatening the owner (Brå, 2012).

The use of legal businesses to maximise social consensus may also help criminals gain status within both the legal and the criminal spheres. Indeed, running or controlling a legal company may legitimise a person as a legal entrepreneur rather than a criminal, thus strengthening his influence over the community (Brå, 2007, 2012). Running a legal company in certain business sectors may also be positively regarded by criminals. This is the case, for instance, of restaurants, which can be used by organised criminals to meet co-offenders to plan future operations and to cover illicit activities (Brå, 2007; Korsell et al., 2009; Rönnblom et al., 2015; Transcrime, 2013).

There is also evidence of organised crime infiltration of legal businesses to control the territory and exert influence over policymakers. This is particularly the case in Italy (Giampietri & Sarno, 2015; see also Chapter 8 in this book), whereas other countries seem to be characterised by a variety of criminal actors targeting diverse sectors to meet varying needs (Petrell & Houtsonen, 2015b; Riccardi & Salha, 2015; see also Chapters 9 and 10 in this book). Criminal organisations may aim to achieve control over a particular sector of the local economy through participation in legal market activities, e.g. by infiltrating the public construction industry and manipulating subcontracts (Fantò, 1999; Savona, 2010).
Mafia organisations typically aim to control a portion of the territory, especially when they operate in regions with a traditional mafia presence. The control of the territory can be achieved by infiltrating the legal economy in sectors with a high territorial specificity – e.g. construction, hotels and restaurants – and fostering collusive relationships with local administrators and politicians (Berlusconi, 2014; Riccardi, 2014).

A recent study on criminal infiltration of legal businesses in Sweden (Rönnblom et al., 2015) has found that the drivers of infiltration also include acquiring status within the criminal or legal sphere, and gaining access to stolen or illicit goods markets. The former is linked with social consensus.

The distinction among different drivers of criminal infiltration of legal businesses is useful for analytical purposes. However, it does not imply that criminal organisations infiltrate legal businesses to fulfil one driver at a time. For instance, the same infiltrated business may be used to launder the profits from illicit activities and earn revenues from legal activities (Anderson, 1979; Fantò, 1999; Fiorentini, 2000). Furthermore, these drivers constitute the reasons why organised crime groups may infiltrate legal businesses. The choice of a particular territory and business sector, as well as the business to be targeted, are influenced by both their characteristics and the drivers of infiltration (Garofalo & Berlusconi, 2015).

This book collects current knowledge on organised crime infiltration of legitimate businesses in eight European countries: Finland, France, Italy, the Netherlands, Slovenia, Spain, Sweden, and the United Kingdom. For each country, it focuses on specific drivers of infiltration, identifying the territories and business sectors targeted by criminal groups, and their vulnerabilities to infiltration. The structure of the book reflects the variety of drivers of infiltration. The book is in fact divided into four parts, three of which present current knowledge on criminal infiltration of the legal economy in eight European countries. On the basis of the information collected for each country, Chapters 11 and 12 discuss the development of a methodology to measure the impact of infiltration on the European legitimate economy and to assess the risk of infiltration across territories and business sectors, respectively.

References


