Measuring organised crime infiltration in legal businesses

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Abstract This chapter discusses the methodological challenges in defining, operationalising and measuring organised crime infiltration in legal businesses. It first reviews existing definitions and measures of organised crime; it then focuses on infiltration, outlining the differences with respect to the concepts of organised crime investments and money laundering. It discusses the strengths and the weaknesses of existing measures and methodological approaches (e.g. analysis of statistics on confiscated assets, of personal holdings, of case studies), suggesting further directions to improve the collection of data and research in this field.

Measuring organised crime infiltration in legal businesses requires addressing several issues. Building on Black, Vander Beken and De Ruyver (2000) and von Lampe (2004), three methodological steps can be identified. First, key concepts – the notion of organised crime and that of infiltration – must be defined and specified through a set of inclusion rules. Second, key concepts must be operationalized into variables to be used for their measurement. Third, the variables must be linked to available empirical data. This chapter first discusses the challenges in defining, operationalising and measuring organised crime (hereafter OC); it then focuses on how to define and operationalise infiltration in legitimate businesses. It describes the strengths and weaknesses of existing measures and explores further directions in terms of research and data collection.

Defining and measuring organised crime

Defining organised crime

One of the main issues in organised crime research is the lack of a common definition, together with the complexity of the phenomenon to be described (von Lampe, 2004). Many definitions have been developed by international organisations, law enforcement agencies and scholars (Adamoli, Di Nicola, Savona & Zoffì, 1998; Albanese, 2000; Finckenauer, 2005; Hagan, 2006; Kenney & Finckenauer, 1995; van Dijk, 2007). However, there is no agreed-upon definition of what organised crime is (van Duyne & van Dijck, 2007).

The design of empirical or operational definitions requires determining what should be included in the measurement and what should be excluded: in other words, identifying the unit of measurement. Counting units include either activities or actors (van Duyne & van Dijck, 2007). The former approach focuses on certain types of criminal activities and illegal markets; the latter on the criminal groups active in those markets (Paoli, 2002; von Lampe, 2004). As a consequence, some studies measure groups, whereas others measure activities (Zoutendijk, 2010). Albanese (2008), for instance, proposed a model to assess the risk of organised crime in a given area, and he treated illicit markets as units of analysis.
He argued that, if illegal activities are properly assessed and ranked, targeting these activities will make it possible to tackle the high-risk organised crime groups involved.

The recent EU-funded OCP and ARIEL research projects (Savona & Riccardi, 2015; Savona & Berlusconi, 2015), which analysed organised crime investments and infiltration in the European economy, adopted a ‘mixed’ approach which considered both the actors and the illicit activities in which they were involved. Building on Europol SOCTA 2013 (Europol, 2013), the projects defined an organised crime group as:

any criminal actor – from large organisations to loose networks of collaborating criminals – that falls under the definition provided by the EU Framework Decision on the Fight against Organised Crime (2008/841/JHA) and/or is involved in serious crimes as identified by art. 83(1) of the Treaty on the Functioning of the European Union.

(Savona & Riccardi, 2015; Savona & Berlusconi, 2015)

Such broad definitions of organised crime have been criticised for their vagueness (Calderoni, 2008; Finckenauer, 2005; Hagan, 2006; Maltz, 1996; von Lampe, 2004; Zoutendijk, 2010). However, they make it possible to include a variety of criminal organisations and actors, not just crime syndicates, and to take account of the differences among European countries, also in terms of organised crime legislation (Savona & Riccardi, 2015; Savona & Berlusconi, 2015; von Lampe, 2004).

**Measuring organised crime**

Despite the challenges in defining and operationalising key concepts, in recent years numerous exercises have been conducted to measure organised crime at local, national and international level. Measuring organised crime has manifold benefits. It helps to understand the scope of the problem within and across territories, thus facilitating the allocation of resources and priorities for interventions. In the case of repeated measures over time, it also makes it possible to identify trends and to evaluate the effectiveness of countermeasures (von Lampe, 2004).

Most attempts to measure organised crime are made by governments and law enforcement agencies, rather than scholars (von Lampe, 2004). The first exercises were annual situation reports on organised crime, such as the one published by the German federal police agency Bundeskriminalamt (BKA) since 1992 (Zoutendijk, 2010). These reports are based on information on ongoing criminal investigations, and they provide details on organised crime cases, the types of offences, the offenders (e.g. their nationality), and the estimated profits (von Lampe, 2004).

Over the years, there has been a shift from the measurement of organised crime to the assessment of its threat. In threat assessments, the nature and the extent (seriousness) of a phenomenon, not just its presence, must be evaluated (van Duyne & van Dijck, 2007; van Duyne, 2006). Organised crime threat assessments (OCTA) have been released by several agencies including Europol (Europol, 2013, 2011, 2009), the Dutch National Police Intelligence Service (IPOL, 2014), and the UK Serious and Organised Crime Agency (National Crime Agency, 2014). However, these studies have been criticised by some scholars because they lack common definitions (von Lampe, 2004) or because they do not meet the requirements of reliability and validity (Zoutendijk, 2010). This also applies to the limited number of academic studies in this field (e.g. Albanese, 2001; Vander Beken, 2004) because also in this case definitions of key concepts are missing or operational definitions are too vague (Zoutendijk, 2010).

In order to take full account of the complexity of the phenomenon, some authors (Savona, Dugato & Garofalo, 2012; Dugato, De Simoni & Savona, 2014) have proposed measures of organised crime which consider not only dimensions related to its activity (e.g. groups and illegal activities) but also the
enablers that facilitate or impede such activity, and the responses by the state and civil society. For each dimension, several variables have been identified to create composite indicators of the presence of organised crime groups in a given territory (Dugato et al., 2014). Yet these scholars, rather than measuring organised crime, have assessed its risk. Adopting the taxonomy proposed by the Financial Action Task Force for money laundering risk assessment (FATF, 2013), they have focused not only on the threat (organised crime itself) but also on the contextual vulnerabilities and, to a lesser extent, on their consequences (or impact) on society and the economy. Another example in this regard is the risk-based methodology developed by the Ghent University Crime Research Group, which was conceived as an improvement of the Belgian Annual Report on Organised Crime (Black et al., 2000). This method also considers the environmental factors related to organised crime (e.g. socio-economic and political factors), and identifies their impact on the likelihood of threat and potential harm.

Composite indicators, such as the one developed by Dugato et al. (2014), are increasingly used by scholars and law enforcement agencies to measure organised crime. In 2013 Transcrime developed the ‘Mafia Presence Index’ (now under update) to assess, through proxies like mafia homicides and confiscated assets, the presence of mafia groups across Italian provinces (Calderoni, 2014; Transcrime, 2013). Similarly, van Dijk (2007) measured the level of organised crime across countries through the so-called ‘Composite Organized Crime Index’, which combined data on the perceived prevalence of organised crime in the country, instrumental violence, grand corruption, money laundering, and black economy.

**Defining and measuring infiltration in legal businesses**

**Defining and operationalising infiltration**

After defining and operationalising the concept of organised crime, it is necessary to specify the notion of infiltration. In most European countries criminal infiltration of legal businesses is not criminalised per se. Therefore, neither legal definitions of the phenomenon nor police or judicial data are available. Infiltration is not an individual offence, but rather a process encompassing a range of offences: for example, corruption of public officials, money laundering, intimidation and extortion of entrepreneurs or market abuse infractions. These sentinel crimes are not always present at the same time; they may occur at different stages of the infiltration process and may vary across time and places. Police or judicial data are usually available on sentinel crimes, but recombining them into single cases of infiltration is very difficult – and meaningless without a script of the infiltration mechanism.

One of the first attempts to define and schematise the process of organised crime infiltration in legitimate businesses was made by Savona and Berlusconi (2015) for the ARIEL project. They defined it as ‘any case in which a natural person belonging to a criminal organisation or acting on its behalf, or an already infiltrated legal person, invests financial and/or human resources to participate in the decision-making process of a legitimate business’ (Savona & Berlusconi, 2015, p. 19). The definition comprises four elements: a criminal organisation; a natural person belonging to a criminal organisation or acting on its behalf, or an already infiltrated legal person; the investment of financial and/or human resources; participation in the decision-making process of a legitimate business.

The first element is a criminal organisation. As mentioned, the authors built on the definition of organised crime adopted by Europol (2013) and also used by Savona and Riccardi (2015) in their study of the economics of OC in Europe (project OCP). The second element is the presence of a natural person belonging to a criminal organisation or acting on its behalf, or an already infiltrated legal person. The
literature usually considers criminal organisations as collective bodies which take decisions (including investment choices) as a whole. Nevertheless, infiltration of legitimate businesses is carried out by individuals (or groups) who are members of the organisation or act as figureheads (e.g. relatives, lawyers, professionals) (Berlusconi, 2015; Levi, 2015; Sarno, 2015; Transcrime, 2013). It is not always possible to distinguish between cases of infiltration driven by personal motives and those dictated by the criminal group’s strategy (Savona & Riccardi, 2015), although it is proven that the selection of sectors, territories and legal forms of investment may vary widely across different groups within the same organisation (Riccardi, 2014b; Transcrime, 2013). In some cases, infiltration is committed by another legal person (e.g. company, cooperative, foundation) already controlled by the criminal organisation or some of its members, and often employed as an additional layer to conceal the criminal beneficial ownership (Berlusconi, 2015; Sarno, 2015; Riccardi, Soriani & Standridge, 2015).

The third element concerns the technique of infiltration. Financial investment (such as acquisition of a share of the equity) is not an essential requirement because legitimate businesses can be infiltrated also by employing human resources, for example by appointing a member of the criminal organisation as company director or administrator in order to participate in (and eventually acquire control of) the business management. Criminals may rely on even more indirect strategies to influence legal entrepreneurs or managers and supervisors employed by a legal business: for example, violence and intimidation, extortion racketeering, or even usury. In this last case, the entrepreneurs resorting to criminal loans often abandon control of the business to their criminal financiers.

The fourth element that identifies criminal infiltration is participation in the decision-making process of the legitimate business. Organised crime, through a member, a straw man, or another legal person, is able to influence decisions on business strategies and future investments, as well as hiring, promotions and salary increases, subcontracting and supply contracts, security and controls. The influence over the decision-making process can be exerted through ownership of (a percentage of) the shares and/or control over the management. The control can be exercised by a member of the criminal organisation (internal direct control), a straw man acting on behalf of the organisation or an already infiltrated legal business (internal indirect control), or through intimidation, violence, or corruption of a manager or a supervisor employed by the business (external control). Cases of internal and external control over the management can be extended to include low-level employees, provided that the employee takes decisions on hiring and promotions, subcontracting and supply contracts, or security and controls, even at the local unit level.

**Infiltration vs. investment vs. money laundering**

The concept of organised crime infiltration in part overlaps with the concept of organised crime investment, which is in turn related to the notion of money laundering. However, some differences can be identified, and they are now discussed.

In recent years, numerous studies (some gathered in this book) have analysed the so-called portfolio of investments of organised crime in various countries (see Levi, 2015 for a review): in Italy (Dugato, Giommoni & Favarin, 2015; Riccardi, 2014b; Transcrime, 2013), in the Netherlands (Ferwerda & Unger, 2015; Kruisbergen, Kleemans & Kouwenberg, 2015), in Spain (Palomo, Márquez & Ruiz, 2015; Steinko, 2012), in France (Riccardi & Salha, 2015), in Ireland (Soriani, 2015), in Finland (Petrrell & Houtsonen, 2015), in Bulgaria (CSD, 2012) and at European level (Savona & Riccardi, 2015). The definition of ‘investment’ adopted by most of these studies is sufficiently broad to encompass
any possession and/or acquisition of any type of asset in the legal economy (e.g. movable goods, registered assets, real estate properties, companies or their shares) by individuals belonging to a criminal group, acting on its behalf and/or involved in one of the criminal activities previously identified.  

(Savona & Riccardi, 2015, p. 26)

The first difference refers to the nature of the ‘target’: while organised crime investments may concern assets of any kind (e.g. real estate properties, cars, vehicles, jewels, bonds, and other movable assets), infiltration concerns only businesses of any type (from individual enterprises to limited companies, also including those listed on the stock exchange) operating in any type of business sector. The second difference regards the modus operandi, i.e. the type of resource employed: while, as said, infiltration can exploit both financial and/or human resources, and does not necessarily lead to ownership of a (share of) the company, investments usually rely on the employment of monetary resources and imply the acquisition/possession of the asset (Savona & Riccardi, 2015).

It should be noted that in the cases of both organised crime investment and infiltration, when financial resources are employed, it is not always possible to identify the origin of the capital: it may be ‘dirty’ money (i.e. proceeds of illicit activities carried out by the criminal organisation or some of its members), laundered money (i.e. the proceeds of illicit activities carried out by the criminal organisation that have already been laundered before the investment) or ‘clean’ money (i.e. the proceeds of, at least formally, licit activities carried out by the criminal organisation or by some of its members, e.g. profits from other legal businesses or the gain from the sale of an inherited property).

The latter represents the main difference between investments and infiltration, on the one hand, and money laundering on the other. Criminals laundering money employ, by definition, ‘dirty’ capital. It is the result of a predicate offence, and it passes through a not necessarily sophisticated process – the placement, layering and integration scheme as defined by Reuter and Truman (2004) – in order to be enjoyed by the criminal while cleansing it and concealing its illicit origin. Organised crime infiltration in legitimate businesses may be driven by money laundering purposes, but not necessarily so (see Chapter 1 for a review of the drivers of infiltration). As a result, it does not ‘represent full integration in the sense that the classic model of legitimation conceives it’ (Levi, 2015, p. 290).

Measuring infiltration

Because of all these overlaps, to date the measurement of criminal infiltration of legitimate businesses has inevitably intersected with the analysis of criminals’ investments and money laundering activities. But even when these are grouped together, the amount of empirical knowledge on the issue remains small. This section does not aim to review the findings of the empirical research on organised crime infiltration/investments/money laundering (see Levi, 2015); but rather to discuss the strengths and weaknesses of the methodological approaches and of the measures adopted by scholars in these studies.

Seized and confiscated assets

The first attempts to conduct empirical analysis of criminal infiltration were made in Italy (Riccardi, 2014b; Transcrime, 2013), and they used companies confiscated from mafia groups as proxies for infiltrated businesses (see Chapter 8). By using these data, researchers were able to study the geographical and sectorial distribution of businesses infiltrated by mafias, also measuring their correlation with contextual variables (e.g. industry profitability, level of tax evasion in the territory) (Riccardi, 2014b), their accounting and management strategies (Di Bono, Cincimino, Riccardi &
Berlusconi, 2015; Donato, Saporito & Scognamiglio, 2013; Transcrime, 2013), their ownership structures (Riccardi et al., 2015; Sarno, 2015), and their interactions with competitors and suppliers (Gurciullo, 2014).

Seized and confiscated assets have been used as proxies for the portfolios of criminal groups in many countries. But the analyses have not been restricted to confiscated companies in that other types of goods have been considered as well: real estate properties, registered assets (e.g. cars, boats), movable goods (e.g. jewels, watches). Generally speaking, rather than analyses of the infiltration of businesses, they can be interpreted as studies on investments by criminal groups in the legal economy. Research analysing organised crime investments using data on confiscated assets has been conducted, for example, in Finland (Petrell & Houtsonen, 2015, see Chapter 10), France (Riccardi & Salha, 2015, see Chapter 9), Ireland (Soriani, 2015), Spain (Palomo et al., 2015), Netherlands (Ferwerda & Unger, 2015; van Duyne & Soudijn, 2009) and, again, Italy with respect to both businesses (Riccardi, 2014b; Transcrime, 2013) and real estate (Dugato et al., 2015).

Use of these data has made innovative contributions to study of the financial aspects of criminal organisations, but it has some limitations. First, it may lead to underestimations or overestimations of certain types of goods depending on the focus of law enforcement on certain crimes, the ease of taking certain types of assets into custody, and the legal instruments at the disposal of prosecutors (Transcrime, 2013, p. 95). Second, it does not allow comparisons to be made, since asset recovery regulation varies widely across regions and countries (Savona & Riccardi, 2015, p. 224). Third, it may furnish an outdated picture of criminal investments, because very long periods often elapse between the financial investigation and final forfeiture of the asset (Transcrime, 2013, p. 95). Fourth, it may not cover those types of criminal infiltration which do not require ownership of the asset. Moreover, good data are lacking: only a few countries, at least in the EU, produce systematic statistics on the asset recovery process, and only a few provide disaggregated information for each confiscated asset – the only information which allows in-depth statistical analysis (Europol Criminal Asset Bureau, 2015; Savona & Riccardi, 2015).

As a result, rather than providing a picture of the actual OC portfolio, confiscated goods may be a measure of how good prosecutors and police are in tracing and recovering criminal assets. For example, in most EU member states the majority of seized goods are cash and bank accounts, while confiscation of businesses is very rare. The reason for this, as suggested by some authors, is not a lack of interest among criminals in investing in companies, but the difficulties (and the lack of interest) of law enforcement in tracing them (Savona & Riccardi, 2015).

**Personal holdings and expenditure patterns**

An alternative, but less frequent, approach is to consider the personal holdings of offenders, or their expenditure patterns. Meloen et al. (2003) mixed police and financial records and conducted a detailed study on the composition of the holdings of 52 criminals in the Netherlands, distinguishing among hoardings (e.g. cash), consumption (e.g. vehicles), and investment goods (e.g. immovable properties, securities). This approach has yielded valuable insights into where offenders employ their illegal earnings, but it has not focused on how the ownership of these assets (including companies) was acquired.

In the UK, 222 prisoners convicted for drug crimes were interviewed to explore their patterns of consumption and laundering (Matrix Research & Consultancy, 2007). According to the responses, cases of laundering through legitimate businesses are very rare, while dirtiest cash is spent on lifestyle or to pay mortgages, or is reinvested in drug trafficking. A similar approach was adopted by Webb and
Burrows (2009), who interviewed imprisoned human traffickers in the UK. Despite some evidence of criminal investments in shops, hotels and restaurants, the study did not provide information on how these businesses had been infiltrated. Petrunov (2011) also studied the strategy of managing and laundering money acquired from human trafficking through interviewing 152 sex traffickers, sex workers, police officers and prosecutors in Bulgaria. But a focus on the infiltration process was lacking.

Figures on personal holdings and expenditure patterns have a strong potential, and they are less biased by regulatory asymmetries than are data on seizures and confiscations. However, they have drawbacks too. First, due to privacy reasons, it is very difficult to access the personal records of offenders (e.g. bank accounts, tax declarations, income statements). On the other hand, self-reported figures may be affected by survey bias and a lack of transparency by respondents. Second, this approach almost exclusively focuses on individual holdings and individual expenditures, while it does not take account of those which can be attributed to the criminal organisation as a whole. Third, personal holdings by definition concern only owned assets, so that consideration is not made of cases in which control is acquired and exercised through other means (e.g. straw men, managers, shell companies) which do not require a direct asset ownership.

Case studies

Overall, the two approaches discussed above have a major shortcoming: they make it possible to understand where (which type of asset, which business sector, which region) criminals employ their proceeds, but they do not explain why and how. For example, data on confiscated companies can reveal that a certain sector registers more cases of infiltration than others, but they do not provide information on either the purpose or the modus operandi followed by criminals to infiltrate them.

In order to address this gap, and the other issues presented above, researchers have often resorted to the analysis of case studies. This approach makes it possible to gather information not only on the type of asset or business sector involved but also on the nature of the criminal actor, on the technique used to infiltrate/launder money, on the purpose of the investment – in other words, on the entire infiltration/investment/money laundering process. Inevitably, the quantitative approach is sacrificed in favour of a more qualitative and narrative one, e.g. in the form of script analysis.

Case studies have been used to analyse a variety of money laundering and investment activities: for example, organised crime investments in the Netherlands (Kruisbergen et al., 2015, on 150 cases from the Dutch Organised Crime Monitor, equivalent to 1,196 assets); money laundering in Spain (Steinko, 2012, on cases taken from 363 court sentences) and in Germany (Suendorf, 2001, on 40 cases); the relationship among organised crime, money laundering and the real estate market in Canada (Schneider, 2004, on 150 cases); the ownership and management strategies of mafia-owned companies in Italy (Transcrime, 2013, on around 100 cases of infiltrated businesses); infiltration by organised crime of the wind power sector in Italy (Caneppele, Riccardi & Standridge, 2013, on about 15 cases) and by mafias in Northern Italy (Alessandri, Montani & Miedico, 2014). Moreover, case studies are quite successfully used by FATF in its reports on the types and trends of money laundering, and they are also often included by most European FIUs in their annual reports.

Information on cases is usually gathered from judicial files and court documents (as in Steinko, 2012), police investigation files (as in Schneider, 2004, or in Kruisbergen et al., 2015), and institutional reports, but also from academic literature, media and newspaper articles. Some studies rely on all these sources together (e.g. Savona & Berlusconi, 2015; Savona & Riccardi, 2015; Transcrime, 2013). Cases can be selected according to whether they include specific offences (e.g. ‘money laundering’, ‘participation in a criminal association’, ‘possession of the proceeds of crime’, depending on the focus of the study and
on the relevant legislation), to the type of criminal actor involved, to the type of asset (e.g. real estate properties, companies), to a selected time range, or to specific monetary values.

Projects OCP (Savona & Riccardi, 2015) and ARIEL (Savona & Berlusconi, 2015), on which most of the chapters of this book are based, adopted a very similar methodological approach. The former applied it to the study of organised crime investments, and the latter to criminal infiltration of legitimate businesses. For example, Savona and Berlusconi (2015) collected evidence responding to the definition of infiltration presented in the previous section from a plurality of sources, including judicial files, institutional reports, LEA reports, academic studies, media and newspaper articles. The wide range of sources used was intended to address the gaps in terms of data availability across countries: for example, whereas cases can be easily found in LEA reports in Italy and Ireland, in Spain and the United Kingdom they cannot. The evidence gathered was coded in order to highlight aspects such as the geographic region of infiltration, the business sector, and the criminal organisation involved. It was then organised into a database structured so that each record represented a reference to one business sector or one region. As a result, the database included 2,380 references to OC infiltration (Savona & Berlusconi, 2015, p. 23).

The strategy used by Savona and Riccardi (2015) for the collection of evidence of OC investments was similar. A narrative approach based on the analysis of case studies makes it possible to go beyond numbers and to gain a more comprehensive understanding of the infiltration process. However, it can be questioned because individual cases are not necessarily representative of the phenomenon as a whole, as pointed out by Levi (2015, p. 280): ‘it is not clear how (un)representative known cases are of unknown cases’; and they are not very useful for sound quantitative analysis. Moreover, differences in terms of regulation, data availability, and nature of the sources make it very difficult to produce cross-country comparisons. But criminal infiltration, like organised crime and money laundering, is transnational by nature, and cross-country biases are unavoidable challenges to be faced with in these kinds of studies.

Other methodological issues in measuring infiltration of legal businesses

Other methodological issues arise, in particular if the intention is to carry out financial statement analysis of infiltrated businesses. First, the literature shows that accounting manipulations are very likely in the case of companies owned by criminals and used to commit illegal activities such as money laundering or fraud (Di Bono et al., 2015; Transcrime, 2013). Therefore, company accounts do not often provide a true picture of the economic and financial situation of the infiltrated business. In particular income statements are more easily and more often falsified than balance sheets to minimise the taxable income.

Second, infiltrated companies may change their management strategy over time, and this behaviour may be reflected in accounting terms. For example, criminals may start disinvesting and liquidating companies’ assets as soon as they suspect that they are under investigation (Di Bono et al., 2015; Donato et al., 2013; Riccardi, 2014a). When confiscated companies are analysed, researchers should pay attention also to the effects produced by judicial administration on a company’s accounts. For this reason, the study of infiltrated companies should not focus only on a certain point in time; ideally, it should cover a time range broad enough to span from the infiltration to the investigation, and then to seizure of the business. Unfortunately, historical records in business registers are not easy to find, nor are financial statements or ownership data, so that retrospective analysis of infiltrated companies is often very challenging (Savona & Berlusconi, 2015; Transcrime, 2013).
Future directions in research and data collection

Organised crime infiltration in companies is a complex phenomenon, and its study is still pioneering. It is more advanced in some regions (e.g. Italy) which have experienced mafia intrusion in the legal economy for decades; it is less developed in other countries which are still asking what infiltration is and whether it really constitutes a crime. And as for any other exploratory study, it would be wrong to focus on only one future direction of research. Instead, it is suggested that all the following areas should be improved in order to extend the ‘arsenal’ at the disposal of scholars and practitioners in this field.

Improving the identification of cases of infiltration

Cases of organised crime infiltration in legal businesses could be identified more precisely through better specification of the sentinel crimes involved in the infiltration process: money laundering, market manipulation, public or private corruption, etc. A script analysis of the already collected cases could help to identify these offences, also taking account of differences in terms of regulation and legal definitions across countries. Following the script, and adopting a bottom-up approach, those judicial cases including the sentinel crimes identified (or a combination of them) could be more easily recognised and thus collected; and then constitute the basis for gathering further information on the infiltration (e.g. ownership data on the infiltrated businesses, financial accounts).

Focusing on sentinel crimes, rather than cases themselves, would have two main advantages: first, it would shift the attention from actors to activities, thus circumventing the never-ending debate on what organised crime is while focusing on what criminals do. Second, it would be more useful for practitioners (prosecutors, investigators, lawyers, professionals) because it would offer them a legal basis to apply the research findings in their everyday activities.

Improving the availability of judicial files and of data on confiscated assets

This approach would be effective only if access to judicial files is improved. In most European countries, court sentences and other judicial documents can be obtained from individual prosecutors, but this does not guarantee a systematic and comprehensive collection of all the relevant cases. Instead, access to centralised databases of judicial files should be improved and opened to researchers; and the tools for searching across these datasets should be strengthened, for example by enabling multiple queries per type of criminal offence, nationality of the offender, type of asset involved, and monetary value.

EU agencies should foster also the collection of better statistics on seized and confiscated assets (in line with Art. 11 of Directive 2014/42/EU) and guarantee access to researchers. Previous reports have highlighted that these data across EU member states are lacking and of a poor quality (Savona & Riccardi, 2015; Europol Criminal Asset Bureau, 2015). In particular, microdata (i.e. per each individual asset) should be made available to researchers so that sounder statistical analysis is possible.

Exploring new methodological approaches and new sources of information

As said, quantitative analysis of hard data (e.g. statistics on confiscated companies, personal holdings of offenders) is not sufficient to gain full understanding of the drivers and the modi operandi of criminal infiltration in legitimate companies. It is necessary to mix such analysis with a more narrative approach that looks at the story of the infiltration, the actors involved, and the contextual factors.

To this end, ‘softer’ information on the cases identified should be collected: for example, by expanding the interviews to include offenders, prosecutors, investigators, entrepreneurs (both victims and facilitators of infiltration), professionals, and other intermediaries. Individual interviews, focus
groups or surveys could be set up for this purpose; or existing ones (e.g. surveys on offenders’ illegal earnings) could be adapted for this scope.

In order to improve the financial analysis of infiltrated businesses, approaches typical of business studies – primarily forensic accounting and corporate governance – could be adopted. In parallel, the analysis of company accounts could be enriched by means of interviews with managers, judicial administrators and suppliers so as to circumvent accounting manipulations and obtain a more accurate picture of the economic performance and the management strategy of infiltrated companies (Di Bono et al., 2015).

Moving from analysis of past cases to assessment of the risk of infiltration

Finally, a risk assessment approach could be adopted also in the study of criminal infiltration in legal businesses, in the same way as it has been successfully applied to other fields such as money laundering or corruption (see Chapter 12). Adopting the FATF taxonomy used in money laundering risk assessment (see Dawe, 2013; FATF, 2013) to evaluate the risk of criminal infiltration would require identifying and measuring the threats of infiltration, the vulnerabilities which facilitate it (e.g. loopholes in the regulation, weaknesses in the business structure of a company or of a sector), and the impact (consequences) that infiltration would have on the market, the economy, and the society as a whole.

The risk could be assessed by considering risk factors on various dimensions: territory, business sector, management strategy, ownership structure (see Chapter 12). And it could be customised according to the nature of the end-user. This approach would make it possible to transfer the results of the research on criminal infiltration into tools useful for the everyday activities of practitioners: for example, intermediaries (banks, notaries, lawyers) subject to AML obligations to conduct customer due diligence; or public bodies (e.g. municipalities, regional governments) to assess the risk of infiltration in (and manipulation of) public procurements; or LEA and ARO agencies to identify the companies on which to focus investigation and monitoring.

Notes


2 Art. 1 of the EU Framework Decision on the Fight against Organised Crime defines a criminal organisation as:

   a structured association, established over a period of time, of more than two persons acting in concert with a view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty, to obtain, directly or indirectly, a financial or other material benefit.

   (Council of the European Union, 2008)

3 Art. 83(1) of the Treaty on the Functioning of the European Union (TFEU) identifies ‘serious crimes’ as: ‘terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime’ (European Union, 2012). In addition to these, Savona & Riccardi (2015) covered further criminal
activities (namely illicit trade in tobacco products, counterfeiting, illegal gambling and match fixing, extortion racketeering, usury, fraud and organised property crime) which are not listed in the TFEU but were considered by the authors relevant to the study of the economics of organised crime groups in Europe (Savona & Riccardi, 2015, p. 26).

4 In truth, infiltration can also target other types of legal entities and organisations, such as public administration agencies, city councils or regional governments. In Italy, for example, city councils may be dissolved and put under the administration of the Interior Ministry as a result of a decree proving their infiltration by mafia groups (on the basis of Art. 143 D.Lgs 267/2000).

References


