



WARNING ON CRIME

Valeria Ferraris and Caterina Mazza

THE INFILTRATION OF CRIMINAL GROUPS INTO PUBLIC WORKS: STRATEGIES AND METHODS



UNIVERSITÀ
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DI TORINO



Maastricht University

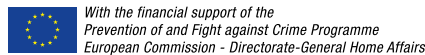


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1. Introduction¹

Academics adopted several approaches to define organised crime: the lexical, the essentialist and the formalistic approach

The main goal of this background analysis is to identify operational strategies used by organised crime (OC) to tamper with public procurement, in particular with transnational major works of construction. The allocation of public funds and the execution of public works are two of the legal sectors mainly engaged by OC and corruption. In order to develop effective counter-strategies to fight against these phenomena it is essential to understand how various criminal groups try to infiltrate public bidding and/or to control the execution of public works.

This background analysis also aims at giving the researchers, who will fill the questionnaire of the second part of WOC Project, useful and common tools of work. For a right implementation of the Work Stream 3, a common understanding among researchers on what characterises the phenomenon of criminal infiltration in public procurement and on the meaning of organised crime is very important.

To analyse such issues secondary resources have been used which are made up of the academic literature in these fields and other documents, such as reports by national and international institutions² and on-going projects³.

2. Organised Crime definition and research perspectives

Before analysing the main issue of this working paper, it is important to clarify the meaning of organised crime adopted for the present research. In fact, a common level of understanding among scholars on the meaning and constitution of organised crime is still missing. This is due to various reasons: (a) several disciplines (such as law and criminal justice, criminology, international relations, sociology) deal with OC and discuss its definition according to their specific interests and focus; (b) OC is conceptualised around the world in different ways, using various cultural points of reference; (c) OC

¹ Valeria Ferraris: paras. 3, 6; Caterina Mazza: paras. 1, 2, 4, 5, 7

² Institutions include EU Parliament; EU Commission; Transparency International; Greco; Europol; Italian Parliament; Direzione Nazionale

³ The on-going projects include www.ocportfolio.eu; www.arielpoint.eu; www.ebocs.eu; www.bownet.eu; EU survey to assess the level and the impact of crimes against business HOME/ 2010/ISEC/PR/042-A2; C.A.P.A.C.I. Project www.interno.gov.it.

is a label that identifies and includes a whole range of different crimes and groups; (d) the legal-illegal nexus as a characterising element of organised crime is still under-studied. In fact, a sizeable part of scholars focuses the attention on illegal activities carried out by OC groups, avoiding (or marginally considering) the issue of criminal infiltration in legal markets (Lavorogna and Sergi, 2013; Tenti, 2012; Fijnaut and Paoli, 2014).

The approaches used by academics to analyse and to define the phenomenon of organised crime are various too, van Dijck has identified three of such perspectives as the main significant elements to understand the points of view adopted by scholars. The author underlines that several existing definitions were thought of serving quite different purposes. The three main approaches are: the lexical approach, the essentialist approach and the formalist approach (van Dijck, 2007). The lexical approach focuses on the meaning of the single words: organised and crime. The analysis had followed the Aristotelian criterion for which the phenomena definitions are construed as having three parts: species, genus and distinctive criterion. According to this formula, the phenomena are divided in categories including various types of sub-groups with specific characteristics. This approach allows to identify OC as a crime that is organised. The academics who follow this approach focus their attention on the type and structural level of the criminal organisation. Among others, van Duyne and Maltz have defined OC in terms of the organisational degree of criminal conduct (van Dijck, 2007, p. 72). According to other authors (Armao, 2003, pp. 25-27) it is important to specify the substantial differences existing among various types of criminal organisations (such as street gangs, mafia, and so on), each one characterised by a specific level of criminal specialisation. This conceptual representation includes several kinds of criminal groups which can be laid out on a *continuum*, starting from **organised crime** thought of as a combination of individuals who commit a series of felonies; then proceeding on to **crime syndicates** as well-structured groups which aim to profit economically; and, at the end of this climax, mafia groups that are the most specialised criminal organisations which seek also political control of the territory. The essentialist approach has produced definitions containing components which together and exclusively are regarded as the necessary distinctive features of criminal organisations (van Dijck, 2007, p. 73). These components are considered as essential and all other aspects are considered as additional and not fundamental. This approach only produces descriptions of the observed phenomena. However, the essentialist approach is predominant in literature. It is adopted by scholars in order to get stipulative definitions with a function inherently limited to the scope of each individual research. Each author considers his/her own definition useful for the analysis and to avoid misunderstanding on the actual topic examined.

The formalist approach defines OC with the aim of clarifying and delimiting borders of issues and phenomena. They consist in several criteria, which determine whether a given phenomenon is part (or not) of a specific domain. This approach is usually used for empirical research or for operative needs. This perspective was adopted for identifying operational definitions, such as the Europol ones described in the next paragraph (§ 3).

The expression **organised crime** was probably first used in an 1896 annual report of the New York Society for the Prevention of Crime, which referred to it in relation to gambling and prostitution operations. In that period, Woodiwiss underlined that "organised crime had no fixed meaning and could be understood only in context" (Fijnaut and Paoli, 2014, p. 24). In fact, in Europe as in the USA, this concept has been used to refer to very different phenomena, which occur in diverse contexts. As a result, over the years a wide variety of different meanings have been attributed to the term **organised crime**. But scholars across the years agree that the expression **organised crime** incorporates two different notions: (a) a criminal organisation, primarily engaged in illegal activities; (b) the provision of illegal goods and services. As a matter of fact, all theoretical definitions contain both elements and they can be systematized according to them (Varese, 2010; Fijnaut and Paoli, 2014, p. 22). In 1983 Hagan carried out the first systematic analysis of OC existing definitions. According to it, a consensus does exist among all American definitions elaborated in the period between 1969-1981. All authors agreed that organised crime primarily involves a continuing enterprise, which pursues profit through illegal activities. Such organisations operate continually over time, following rational choices and using different means, mainly violence and corruption.

In 2010, Varese updated Hagan's review. The author worked on 115 definitions used in the period between 1915–2009 and analysed them by considering organisational structure and the criminal activities implemented.

Taking into account the type of organisational structure characterising various OC groups, over the years the authors have focused on a selected number of peculiarities, primarily specialisation, hierarchy, *La Cosa Nostra*, illegal enterprise, and more recently Networks and harm.

Between the mid-1850s and the 1950s, the term **organised crime** was mainly used in the USA to refer to highly specialised groups for attacks upon persons and property and for defence.

On the contrary, since the mid-1950s hierarchy attracted the attention of scholars who - in particular in the 1960s - identified it as the distinguishing feature of the organised crime structure.

Along with specialised and hierarchically structured, organised crime, during the 1950s and the 1960s in the USA, a phenomenon completely equivalent to *Mafia* came under consideration.

In that period, both academics and political advisors in great part adopted a mafia-centred view of OC. The latter considers that the organisation -variously called the *Mafia*, *La Cosa Nostra*, or the syndicate- constitutes the unique existing organisational structure of OC. Here then, the ethnic variable plays a key role in characterising the organised crime phenomenon. For instance, all criminal groups are formed by Italians and have the same organisational structure and methods used by the Italian mafia. The view that a foreign, an alien nationwide conspiracy was controlling all illegal activities in most US cities remained the US official standpoint for almost three decades.

Since the 1960s, an increasing number of social scientists have discarded the identification of organised crime with the mafia. The mafia-centred view was increasingly considered too ideological, serving political interests, and without empirical evidence. Most scholars disapproved the elements of conspiracy and ethnicity of this approach. As a result, organised crime has been considered a business activity (Varese, 2010, p. 5). One of the earliest thinkers of this approach was Smith (1975) who expressed the idea that criminals are not a class apart, but rather entrepreneurs who work under illegal conditions. Moreover, Smith recognised that a connection between production of goods and services and territorial entrenchment exists (Fijnaut and Paoli, 2014, p. 28).

As already underlined by Hagan in 1983, scholars agreed on the definition of organised crime as a continuing enterprise operating in a rational way to obtain profits through illegal activities.

The engagement in illegal markets is the fundamental element of any definition in academia and among policymakers, particularly in the USA. This aspect unites both the thinkers who endorse the mafia-centred view and its critics. Despite this common denominator, academics and politicians mainly disagree on how illegal goods and services are provided (Fijnaut and Paoli, 2014, p. 29).

In particular, the thought that the various organised crime groups are rational subjects which act in a rational way following codified and certain rules, has been increasingly criticised. In the mid-1980s some authors, including Reuter, have undercut the idea that criminal groups wholly control illegal business. In particular, Reuter has endorsed the view that criminal enterprises are in competition with each other and they are ephemeral. The conditions of illegal business in themselves prevent such OC enterprises from growing. The risk of being arrested drives organised crime groups to reduce the amount of information available to customers, thus reducing their opportunities to control sizeable sectors of illegal markets. Reuter's analysis was endorsed by Haller. He underlined the existence of cooperation among illegal entrepreneurs who remain independent operators, rather than joining a hierarchical or monolithic organisation. Partnerships lead an increase in opportunities and the sharing of risks and information (Varese, 2010, p. 6).

All definitions of OC contain two distinctive notions: organisational structure and criminal activities

A different approach in theorising the organisational structure

The illegal enterprise approach, although originating in the US, has acquired a dominant position in the European scientific debate (Fijnaut and Paoli, 2014, pp. 31–34). During the 1980s and early 1990s, several academics increasingly considered the economic dimension of OC. In this perspective, one of the most important European thinkers is Gambetta who, in the early 1990s, considered OC as "an industry which produces, promotes and sells private protection". His analytical work brings to light how entrepreneurial activities of OC are intertwined and combined with the traditional political dimension of such associations. Furthermore, other scholars, including Paoli, underline the fact that OC groups, and in particular the mafia associations of South Italy, were not only economic entrepreneurs aiming at maximising profits, but also groups with several functions which try to exercise political control of their territory.

Other authors, including Arlacchi, have underlined that, following the process of economic and cultural modernisation during 1960s, the mafia and organised crime groups have turned themselves into entrepreneurs focused on profit accumulation. One of the main consequences of such transformation has been the utilisation of mafia methods in the work organisation within the companies and for the management of external business. Further, the evidence revealed that OC and mafia groups have increasingly undertaken economic activities both in the illegal and in the legal world (Fijnaut and Paoli, 2014, p. 32).

Beside the peculiarities of each theoretical position, as in the US, the economic approach in Europe has remained unchallenged since the 1970s.

Rather recently, since the 1980s, the concept of networks has emerged for defining and understanding the organised crime phenomenon. Several scholars have underlined that various types of criminal groups can be thought of as systems based on relational networks (Armao, 2000; Allum and Gilmour, 2012; Dino, 2008; Gounev and Ruggiero, 2014, pp. 20-21).

The actors making up these relations are engaged in the process of social networking for the provision of illegal goods and services. Within these relational networks, they work in various ways and with different roles and tend to extend the social network in itself establishing relations with other subjects both criminal and part of the legal world.

The network view captures a flexible order, and structural and hierarchical changes within the relational networks. Moreover, "such a framework can account for organisational system ranging from simple co-offending partnerships to attempts at monopolising markets and territories, from one-time partnerships to membership in quasi-structured organisations, from ties based on family to those based on friendship, back group affinities, resource-sharing and so on" (Varese, 2010, p. 8). Finally, several authors define organised crime by the harm it causes. They think of OC starting from its harmful consequences rather than trying to characterise what it is.

Regarding the criminal activities which are an element of organised crime and which are identified by various definitions, authors have mainly used the following key words: monopoly, provision of illegal goods and services, illegal activities and predation.

Between the 1950s and 1960s, several scholars considered monopoly as one of the main aspects characterising organised crime. According to this approach, acting as any other business actor, organised crime aims at the exclusivity of each sector of its activities.

The provision of illegal goods and services, as said before, belongs to the economic approach of organised crime. Since the 1960s, some authors have considered the economic dimension of organised crime as exclusively linked to the activity sectors, and not to the organisational structure of such associations. Only a few of them have evaluated criminal activities as wholly predatory. Others have argued that they are like a service offered to a part of society.

During the 1970s, scholars have started to endorse the idea that illegal activities and predation were the main, almost exclusive, characterising actions of organised crime. In this perspective illegal activities are the main organised crime operative field for gaining profits as the key scope (Varese, 2010, pp. 8-10). All these activities can variously combine themselves with the different organisational structure-based approaches.

Finally, it is worth underlining that almost all theoretical definitions analysed were focused on illegal activities carried out by criminal groups, only partially taking into account the organised crime involvement in various sectors of the legal world. Maybe the lack of scholars' attention for criminal infiltration in legal sectors of society is due to difficulties in gaining information in this field. But, the legal-illegal nexus is an increasingly relevant aspect of organised criminality. Let's think of **white collar crimes** which involve both the criminal and official world and which give several opportunities to organised groups for having access to legitimate economy and to institutional spheres.

For capturing the legal-illegal nexus, organised crime groups have to be thought of as social associations each constituted by a network of relations which operate together with other networks of individuals and intertwine themselves with them. In this perspective, organised criminality is more and more able to infiltrate legal markets and the official world, thus creating alliances or partnerships (or maintaining collusive relations or connivances) with entrepreneurs, politicians, public administrators and so on. In this process, illegal activities are invested in the official economy, establishing a closer and closer link between the legal and criminal arena. In this scenario, criminals and institutional actors are variously engaged in exchanges of favours and entrepreneurial promotions.

This reality seems to be mainly constituted by criminal networks rather than organised crime, which involve various actors with different roles and aims (Gounev and Ruggiero, 2012, pp. 7-8).

3. EU legal definition of Organised Crime

There is not one agreed definition of organised crime in the EU legal or policy texts. The complexity of organised crime itself, its evolution across time has resulted in legal definitions, whose only common feature is to be too vague and broad.

The Joint Action 98/733/JHA defined 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, whether such offences are an end in themselves or a means of obtaining material benefits and, where appropriate, of improperly influencing the operation of public authorities”.

According to this definition, a criminal organisation registers the presence of at least three people in a group established over a period of time who act in concert in order to commit crimes, punishable with at least four years of maximum imprisonment. This definition is very broad and vague, especially if one considers how the levels of penalties vary among Member States.

The Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organized crime - which repeals the 1998 Joint Action with the aim to change EU legislation according to the Palermo Convention - defines criminal organisation as “a structured association, established over a period of time, of more than two persons acting in concert with a view of 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”. This clarifies the meaning of **structured association** as an association that is not randomly formed for the immediate commission of an offence, nor does it need to have formally defined roles for its members, continuity of its membership, or a developed structure.

The Framework Decision attempts to introduce a specific offence of participation in a criminal organisation, which is not limited to a criminal organisation with specific features (more old mafia style, highly hierarchical and structured). However, the definition provided does not represent a significant improvement compared to that of the Joint Action.

What is more, the definition of **structured association** provided is too broad.

In a 2001 policy document of the European Commission with Europol Towards a European Strategy to Prevent Organised Crime, organised crime is defined by the presence of at least six characteristics out of the eleven listed. Four of them are mandatory and include:

1. Collaboration between more than two people;
2. A prolonged or indefinite period of collaboration;
3. Suspected commission of serious criminal offences, punishable by imprisonment for at least four years or a more serious penalty;
4. The goal of profit and/or power.

The remaining two must be drawn from the last seven additional criteria:

5. Specialised division of labour among participants;
6. Use of discipline and control;
7. Employment of violence or other means of intimidation;
8. Use of commercial or business-like structures;
9. Use of money laundering;
10. Operations across national borders;
11. Exercise of influence over legitimate social institutions (public figures, political parties, companies).

Compared to the Framework Decision, this definition attempts to identify distinguished features, in line with the scholarly definition.

A common definition of OC in EU legal and policy texts does not exist

Finally, the new Decisions on Europol and Eurojust competencies (Decision 2009/371/JHA and Decision 2009/426/JHA) enlarge their competencies from organised crime to “organised crime, terrorism and other forms of serious crime (...) affecting two or more Member States”. This leads to affirming (Dorn N., 2009) that, in the longer term, Europol priorities could be defined in terms of the seriousness of the harm to EU citizens, avoiding discussions on the boundaries of organised crime (how many people? Over what time period? With or without threats of violence? etc.) and giving more relevance to elite and corporate crime.

It is worth mentioning this evolution considering the focus of the WOC project on criminal infiltration in public procurement, where relationship with political elite, entrepreneurs is a distinguishable feature.

4. An overview on criminal infiltration in legal economy

Criminal infiltration in legal business is a complex phenomenon and just one aspect of economic criminality

To introduce the phenomenon of criminal infiltration in public procurement it is important to give an overview of the economical and financial investments of organised crime groups in legal business. The proceeds of illegal activities (including sexual exploitation, trafficking of weapons or drugs, forgery, trafficking of garbage, extortion, usury, and so on) are usually reinvested in various sectors of legal economy. To understand the size of this phenomenon, Italy is a paradigmatic example: illegal proceeds amount to about € 25.7 billion - equivalent to 1.7% of the Italian GDP (Transcrime and Università Cattolica di Milano, 2013, p. 2). However only between 32% and 51% of this amount of money (i.e. from a minimum of 8,3 to a maximum of € 13 billion) come from OC and mafia group activities (Transcrime and Università Cattolica di Milano, 2013, p. 2).

As a matter of fact, OC infiltration in legal economy is only one aspect of economic criminality.

Various modalities and reasons why several criminal groups infiltrate into legal economy are intertwined with other organisational prerogatives of modern economic crimes: 1. the so-called white-collar criminals who take advantage of business opportunities for money or power. They associate with each other for committing economic crimes or for providing illegal services to OC; 2. legal companies that illegally operate for achieving legal objectives.

1. Often businessmen join with other professionals for establishing criminal organisations which, unlike traditional criminal groups, rarely use violence and intimidation. Such new organisations usually tend to use corrupt methods, abuse of power and clientelism. Moreover, such organisations considerably and strategically use new technologies for carrying out illegal activities. Frequently, white-collar criminals groups delegate their illegal activities to traditional OC and mafia associations. In this way, they intertwine different interests and skills (Di Nicola, 2006, p. 88; Becchi and Rey, 1994, p. 75).
2. Several national and international legal cases have highlighted that often legal companies utilise illicit tools and illegal associative forms in order to increase business competition and profits. False invoicing, trust companies or even false accounting are used to accumulate capital out of the institutional control useful, for example, to corrupt and gain economic benefits.

The mix among criminal infiltration in legal economy and other actualisation of economical criminality is present in all European countries (Di Nicola, 2006, p. 87-89; van Duyne, van Lampe, van Dijk and Newell, 2005, pp. 7-9).

The mingling of different worlds (entrepreneurial, business, political and institutional, criminal, ...) and various interests raise an important question: what are the factors favouring economic crimes, in general, and specially implementing criminal infiltration into legal business, in particular?

A key role is played by professionals specialised in economical and financial sectors who provide consulting services to organised crime. As well as technical skills, these experts provide criminals their experience in cross-border money transactions and in diversifying investments (Nelen and Lankhorst, 2008, p. 127). The skills required of various types of professionals differ depending on the illegal activities to be pursued.

Sometimes skills in the use of computer technology are needed. In other situations, knowing legislations (administrative, European, of taxation, or of banking,...) and tampering with the rules are a must. In still other cases, a deep knowledge in financial sectors is crucial.

The relational nexus among various professions and different types of organisations (including traditional criminal groups, white collars, and other legitimate economical actors) can be implemented in the form of complicity, cooperation or real conspiracy. These links, usually based on short, medium and long term agreements, can result in complex and composed scenarios.

The intensification of relational networks between several economic subjects and criminals lead to the establishment of a context favourable for committing economic crimes (Di Nicola, pp. 89-91; Becchi and Rey, p. 94).

It is worthwhile introducing the meaning of criminal enterprise and identifying the aspects which distinguish and favour such enterprises in respect of legal companies. Criminal organisations often use techniques in company management and operate entrepreneurial activities.

Since the 1970s and 1980s, organisational criminals have increasingly become businessmen establishing relationships of collusion and connivance with legal companies (Fantò, 1999, pp. 43-48; Arlacchi, 1983, p. 109; Bini, 1997, p. 3).

Three specific profitable elements distinguish criminal enterprises from legal ones: the discouragement of competition using intimidation (which sometimes leads to criminal monopoly of particular economical sectors); the wage compression usually implemented by way of tax evasion for social security and the no payment of overtime; the sizeable financial liquidity originating from illegal activities (Arlacchi, 1983, pp. 109-125).

However, it is important to underline that illegal activities are only one of many funding sources for criminal groups. In fact, they can have special access to the legal banking system (constituted by local and national lending institutions) compared to those of legal entrepreneurs (Arlacchi, 1983, p. 124).

Such advantages are useful indicators to identify the essential aspects of criminal enterprises.

Nevertheless, it is almost impossible to characterise a typology of illegal companies.

Each illicit enterprise works and operates in a particular way for facing the specific market conditions created by illegality. As a result, all illegal businesses differ from each other (Bini, 1997, p. 4; Fantò, 1999, p. 78). They have variable structures and establish unstable relations with each other based on short-term objectives.

The development of criminal business has not followed the licit economic growth, but it has taken place when illegal enterprises have begun to replace legal companies in some economic sectors (Arlacchi, 1983, p. 131). This process of growth is accompanied by another important aspect: the *de facto* acquisition of legal companies (or parts of them) by criminal enterprises. Some studies have shown that criminal groups can gradually become the owners of legal companies or control their activities, forcing them to accept their protection in exchange of money. The methods used to get control of legal companies are various (including extortion, usury, recapitalisation of firms, liquidation of business, ...). The main forms of control are two: participation (when criminal groups control, for a short time, legal company operations in reference to a unique and specific economical sector); sharing (when criminals directly acquire the ownership of legal firm and manage its corporation stocks). This form of control is a long-lasting relation and concerns all business activities of the company. In the first case, the legal business remains relatively autonomous while committing illegal activities. On the contrary, in the second case the company changes its nature and becomes property of the OC (Fantò, 1999, pp. 130-150).

Investment sectors of criminal organisations. The investment sector, ranging from the real estate business to various types of goods and services, is chosen according to the objectives and cultural motivations of each criminal group, as well as to the opportunities offered by the market and by the circumstantial context.

According to several authors, criminal infiltration into legal economy is such a widespread phenomenon that it is very difficult to identify **where** criminal investments occur (Fantò, 1999, p. 64). Nevertheless, some scholars have highlighted that criminals' investments in companies may be explained by five aims:

- concealment of criminal activities (mainly money laundering);
- control of the territory;

The choice of investment sectors can be explained by five aims of criminal organizations

- social consensus;
- profit (and/or income) maximisation;
- cultural/personal reasons (i.e. criminals invest in certain business because it is close to their culture, education background, family tradition, *status* and prestige) (Riccardi, 2013; Transcrime and Università Cattolica di Milano, 2013, p. 89).

Criminal groups focus their activities in business which let them issue false invoices and/or falsify accounting, hide their proceeds and conceal incoming and outgoing illicit flows. Concealment of criminal activities can take different forms. As well as money laundering, it can include transport and trade of illegal goods hidden among legal products. Such illicit operations need cooperation and involvement of legal enterprises. Another channel in concealing illegal profits is represented by cross-border money transactions which require a high level of competencies (Bini, 1997, p. 4; Becchi and Rey, 1994, p. 93).

Control of territory and social consensus are very close aims pursued by organised criminal groups. They endorse organised criminals to be socially accepted in a specific territory. Criminal groups are thus able to control particular sectors of the local economy and/or manage the subcontracts of local public works, maintaining relations with suppliers, contractors, public administrators and/or politicians. Criminal infiltration into legal economy also allows criminals to be accepted by the lower citizenship groups. In fact, operating as economic actors mafia and criminal associations create jobs and new opportunities of life. In doing so, criminals may recruit partners from among various groups of society that are not fully integrated, such as ethnic minorities (Fantò, 1999; Becchi and Rey, 1994; Arlacchi, 1983; Allum and Gilmour, 2012, p. 93).

Furthermore, scholars have different theories concerning the economic objectives pursued by OC, which are mainly profit (and/or income) maximisation.

Profit maximisation is just one of the OC aims

On one hand, some authors affirm that, although important, profit does not play a key role for decision-making in criminal and mafia groups. It is simply one aspect of the criminal groups interests, but not the most essential. They argue that criminal groups are aimed more at a long term revenue and not to a mere short-term profit (Bini, 1997).

On the other hand, other thinkers assert that organised criminals focus their attention primarily on sectors with a high and immediate return on investments and with a risk minimisation (Sciarrone, 2009, p. 102). As such, the economic field where organised crime operates is not so important compared to the opportunities for money laundering and profits that a certain business is allowed to realise. It is not by chance that criminal and mafia groups have increasingly diversified areas of investments and overtaken the entrepreneurial monoculture typical of criminal organisations. The latter, until the 1960s and 1970s, were almost exclusively concentrated in real estate and public works. These areas, although still preferred by criminal groups, were gradually joined with other economic fields, especially in public services (mainly healthcare, private clinics, the treatment of urban and toxic waste). As such, various criminal groups gradually inserted themselves in each field of economical and financial activity (Fantò, 1999, pp. 63-66).

Organised criminals select economical sectors for their activities on the basis of both their specific aims and the attractive opportunities offered.

Independently of the investment sector, criminal infiltration into legal economy produces significant economic and social costs due to the alteration of the competitive rules of the market and placement of illegal proceeds into legal business (for an in-depth analysis, see EU Parliament (a) 2013; UNODC, 2011, cap 3; Bertoni and Rossi, 1997, p. 36).

5. OC modus operandi to infiltrate public procurement

Criminal groups are involved to some degree in different types of illegal activities, among which the exploitation of legal economy opportunities is growing in importance. In particular, the opportunities given by the public works sector represent a new area of investment for criminal groups. Although systematic analyses on this specific area do not exist, the reasons for choosing this sector, the strategies and methods used by criminal groups can be figured out by the analysis of the literature and reports of national and international institutions.

Why criminal groups
choose public
procurement and how

Reasons of public procurements choice. Various reasons exist why criminal groups and the mafia choose the public works sector, in particular public procurements. The first reason is economic: the expense for public contracts is a great part of territorial economy especially where the private sector is underdeveloped. The second is linked to the investigative judicial penal sector: investigations of criminal activity within public contracts are difficult to carry out and very costly in terms of procedure and personnel. Crimes committed in the public sector are harder to detect and to prove compared to other ones like, for example, trafficking, etc. The third reason is linked to the weaknesses and inefficiencies of public administration. Especially in certain countries, like Italy, during the years the public contract sector has revealed its vulnerability to corruption and collusion episodes (Calderoni and Caneppele, 2009, pp. 7-8; CNEL, 2008, p. 11). And finally, criminal infiltration has strategic importance as a means of territorial control in the penetration of social, economic and institutional structures of the territory. In fact, certain businesses and sectors (such as restaurants, supplies, construction) can be used both for maximising physical control on the territory and for strengthening the relationships with politicians and public administrators (Riccardi, 2013, pp. 198-199).

Channels for exercising influence and for infiltrating public contracts. Analysing the literature and various institutional reports, it is possible to hypothesise that OC groups mainly use two channels for infiltrating public works and public contracts: (a) **direct infiltration** in the public process of bidding through the direct control of private companies i.e. through the use of name and/or members of criminal family; (b) **indirect actions** where the OC acts as a mediator among companies, politicians and public administration using relational networking, persuasion, or even intimidation. This is the case of the agreements between the criminal exponents and the entrepreneurs, political, institutional and public representatives in order to assure their desired motive. These channels are context-specific. OC groups' behaviour changes according to the characteristics of their own structure and abilities, the features of the market and the opportunity of the moment. The choice of such channels depend not only on the objectives of criminal groups and on the context, but also on the **phase of the public procurement process** in which criminals want to infiltrate. A public procurement process can be divided into three main phases summarised in the following table.

Phases of public procurement and work execution	Steps of the public procurement process	Activities of the companies
1. Pre-tender stage	Allocation of public funds	Lobbying
	Choice of the tender procedure	--
	Writing of public bidding and tender specifications	--
	Publication of the tender documents	--
2. Tender stage	Designation of the evaluation board	--
	Selection procedure	Submission of application
	Provisional award	
	Final award	
	Signature of the contract	
3. Post-award stage	Starting work	Employment of manpower; acquisition of everything needed to carry out work (materials, services, etc.); awarding subcontracts
	Control and work-in-progress inspection; audit	
	Public work conclusion	
	Testing	
	End of the administrative Procedure	

* The table is the result of a joint work between Valeria Ferraris and Caterina Mazza.

Three are the main methods used by criminal groups: collusion, corruption and coercion

The first two stages are part of the procedures aimed at the definition of public funds available and the selection of firms. These phases give opportunities to criminals for influencing the allocation of public money process.

The third stage is linked to the **post-bidding** moment when the public work has already been awarded. This phase is particularly attractive for criminal groups in so far it allows to control the building site for gaining several advantages. The **post-bidding protection on site** can be agreed upon by both sides or forcefully reckoned where payment is based on a percentage of the total public work fee (Calderoni and Caneppele, 2009, p. 8 e pp. 63-65; DNA, 2007; EU Parliament, 2012, p. 15, AA.VV., 2012). South Italy is a good example where infiltration frequently occurs in the post-bidding phase. The mafia clans/families oblige entrepreneurs through intimidation and/or agreement to pay bribes in exchange for protection of building site, they force sub-contract and/or control material acquisition and human resources. The major sectors in the post-bidding phase infiltration are linked to infrastructures in the sector of - Viability, Transport, Waste, Environmental Defense - (CNEL, 2008, p. 40).

The public procurement process

Methods used by organised criminal groups. The practices used to tamper with the procedures for the execution of public contracts are various:

a. Collusion/Partnership relations. These practices move from relatively simple agreement between two or more participants in the public bidding to more complex methods (e.g. the creation of networks to control the allocation of public funds which involve politicians and high-level public officers who return favours to the OC in exchanges for votes, protection, etc.)

One of the most sophisticated methods is the partnership between criminals and legal market entrepreneurs. It is called *metodo del tavolino*, where companies linked to criminal and mafia groups participate in the bidding process for allocating public procurements using falsifications. This method is most frequently used when the public procurement procedure considers the **lowest bid auction system** as a selection criterion. In this case the contracting authority and/or commissioning body are usually accomplices.

Another kind of scheme to infiltrate bidding procedures is the Cartel agreement. It consists in the networking of companies which take part together in the same bidding process, harmonising illegally their bids, in order to allocate the public contract to one of them. These more complex agreements can be made with the mediation and coordination of OC groups. These kinds of pacts work where mafia and criminal groups are more entrenched and infiltrated in various sectors of society. They are typical of South Italy during the nineties and during the following years, with particular reference to infrastructure biddings (Vannucci, 2006; Calderoni and Caneppele, 2009, pp. 82-84; EU Parliament (b), 2013; Varese, 2011; DNA, 2007; DNA, 2014).

The mentioned cases are based on collusive relations which can take place among bidders (as in the case of Cartel agreement), not necessarily linked to criminal groups, or among bidders and politicians and/or public officials (who can include criminals), or among all subjects involved in a public procurement (including the contracting authority).

b. Corruption. Corruption is used in public procurement in order to obtain the award of a contract in each kind of bidding procedure (from the close procedure to the competitive dialogue) and of its phase (starting from the allocation of funds and the preparation of the tender to the final award). Bribes are mainly used to influence the **discretionary decisions**; to obtain **classified information** and acquire **political and institutional protection** (Vannucci, 2005, p. 82; EU Parliament, 2012, pp. 7-9). Influencing the allocation of funds or posting a public work increase the chance of a specific company to obtain the work, because the corrupt public official will use his/her power to help the bidder in exchange for a bribe. Then, too, private corrupt entrepreneurs can increase their own chances of success simply through the foreknowledge of administrative practices and timing or of institutional decisions or the bids by other competitors. The trading of technical or commercial information on bids can take place directly between a private entrepreneur and a public official, or with the mediation of intermediaries (Andvig, 2012, p. 77.; Vannucci, 2005, p. 87).

The third means or resource (i.e. political and institutional protection) is a complex kind of corruption. The uncertainty of the outcome of biddings or of the corruptive relationships with public administrators can be diminished by the protection of politicians or public administrators or powerful persons. These power figures can have long-term control on the decisional centres or can have long-lasting influence on individual administrative agents (Vannucci, 2005, p.92; Della Porta and Vannucci, 1994; Nelen, 2013).

Between the third type of corrupt methods and the collusive practices there is a thin difference. The two are very similar, but corruption aimed at political and institutional protection takes place in a discontinuing way, and only when advantageous. In this case the exchange of bribes and favours is simultaneous. So, all subjects involved in this relation are satisfied at the same time. Instead, collusion among criminals and public servants is usually part of long-term and continuative relations. The advantages are received differently by each actor over time.

Along with corruption are **fraudulent practices**, such as misrepresentation or omission of facts or documents aimed at influencing a selection process or the execution of a contract. It is important to say that corrupt forms are not used exclusively by criminal groups, but they can be used by entrepreneurs without links with OC.

c. Coercion. It includes practices such as extortions, intimidations, threats, blackmails. OC uses such methods when it is necessary to force entrepreneurs, businessmen, public administrators to be compliant or collaborative in achieving the goals of the criminal group within itself, influencing their participation in the procurement process, or affecting the execution of a contract (EU Parliament (b), 2013, pp. 2-3).

The various methods pointed out are usually implemented together in a combined and/or simultaneous way. The crimes are often melded and used to affect one another (e.g. public bidding infiltration is used not only for obtaining power or money, but also for money laundering). The operational methods, like the channels for infiltrating public procurement, are chosen considering two important elements:

- (a) the **reasons** why a criminal group determines to illegally compete in a public bidding (e.g. if an OC group aims for territorial control and/or to infiltrate the socio-political context, the methods more often used are **collusive practices** and/or the **creation -or exploitation- of relational networks** among politicians, entrepreneurs, public officials, and so on. In such cases, the infiltration channel is on the level of **indirect actions of mediation**);
- (b) the **context** where OC acts. Criminal groups always interact with their environment and use local opportunities. Where a criminal organisation is well-entrenched, the methods frequently used are collusive practices. On the contrary, where an OC organisation is less entrenched, coercive methods, such as extortion and intimidation, are more frequent (Sciarrone, 2014; Armao, 2014; Allum and Sands, 2004). The mixture of various elements bring different levels of criminal infiltration into the public sector by OC. According to Buscaglia e van Dijk, five infiltrating levels can be identified: corruption and abuse of authority; gradual control of the public contracting agencies management; affecting State's policies (Buscaglia e van Dijk, 2005).

The specificity of transnational public procurement

Difference between national and transnational public procurements exists. As evidence has shown, the domestic and cross-border public procurement are basically different only for the jurisdictional conflicts which characterise the second ones and which give numerous opportunities to organised criminals. The dissimilarities among national legislations, as well as the problematic investigative and judicial cooperation among States, give considerable advantages to criminals for minimising risks of their identification, arrest and conviction. The elements potentially increasing risks of criminal infiltration into transnational public works are: problems of international collaboration among police and judicial authorities; lack of information exchanges; incrimination procedures too long and slow; training courses for police agents too expansive (see, Di Nicola, 2006, p. 100). In this perspective, several criminal and mafia organisations have a transnational nature. They operate in various countries acquiring the ability to adapt in new contexts and to tamper with laws.

6. OC and corruption

Organised crime and corruption are interrelated and intertwined

The OC *modus operandi* in exploiting public procurement suggests adding some consideration to the links between organised crime and corruption.

This connection is very little explored by scholars and political advisers, even though the understanding of these links seem relevant to identify an effective counter-strategy.

The lack of attention is due to several reasons: lack of appropriate awareness of the relationships between the two, disciplinary segmentation of scholars and policy makers, difficulties in defining organized crime.

Despite that, some academics and EU institutions highlight the importance of the link between corruption and OC, often co-existing and interacting when advantageous (Buscaglia and van Dijk, 2005; Gounev and Ruggiero, 2014; Europol, 2009).

Although these two distinctive crimes are not necessarily interrelated, in case of criminal infiltration in public procurements they could be interconnected. In general terms, corruption (both in the public and in the private sector) represents an opportunity for the international criminal networks because it eases criminal activities, both in the legal and illegal markets. Some countries have structural conditions that favour the use of corruptive practices from criminal organisations.

Feeble judicial and police systems, lack of governance of the private sector, including the financial one, represent factors that favour the links between corruption and organised crime. Moreover where greater is the underground economy, more are the opportunities to use money for corruption.

In public procurement corruption in private and public sectors are both used

In the private sector, corruption is used by criminal organisations to distort markets or increase profits. For example, corruption of employees in the pharmaceutical, tobacco, and fashion industries allow the production of goods for illegal markets. Similarly, in ports and airports corruption of security officers can facilitate the transportation of illegal goods. In the finance and banking sector, corruption of employees is aimed at money laundering and avoiding reporting suspect transactions as they should.

The corruption of public servants is aimed at obtaining favours: the access to certain markets, the illegitimate appropriation of public funds or other resources, the allocation of public biddings or the lessening of the risk of being prosecuted. When the corruption is systemic, it is incorporated within the socio-political system and its aims are far beyond obtaining specific concrete results.

In order to influence the public procurement sector, the use of corruptive practices in the public sector is frequent as well as corruption in the private one. To give some examples:

1. Corruption of employees of other companies is aimed at reducing competition, supplying goods at better price, etc.;
2. Collusion or cartel agreements are aimed at excluding other companies from the competition;
3. Corruption of politicians or administrative staff is aimed at obtaining new contracts

7. Conclusions

It is beyond the purpose of this study to resolve the academic dispute on the definition of organised crime (see Vander Beken, 2012 on the many faces of organised crime and Dorn, 2009 who claims for the end of organised crime), but we need to reach a common understanding on this issue for implementing the analysis on **criminal infiltration in public procurement** and the forthcoming comparative research.

No matter which definition has been used by scholars, the organisational structure and the criminal activities are always described as fundamental elements of organised crime. These two aspects, included in all theoretical OC definitions, change over time in relation to the specific focus of different academics and to the context. So, we have taken into account these two elements, variously considered, as part of our research issue.

Examining the phenomenon of criminal infiltration in legal economy and specifically in public procurement, other two essential aspects came to light. The former is that these crimes cause serious damages. In fact, such crimes threaten fair competition among companies, increase the costs of public works, affect national GDP and jeopardise economic investments in the country. Among the factors that favour economic crimes, the involvement of professionals in economic and financial sectors who provide consulting services to criminals plays a key role. Moreover, alliances and/or collusive relations or connivances with entrepreneurs, politicians, public administrators, make criminals more and more able to infiltrate the public sector. As a result, the relational networks among different actors part of both the legal and illegal world are an essential basis of the phenomenon.

The two aspects just mentioned are recurring elements which characterise the criminal infiltration in public procurement issue everywhere it takes place.

Then, too, the channels (direct and/or indirect) and the methods (collusive practices/Partnership relations; corruption and fraudulent practices; coercive practices) for allocating public funds are chosen by various organised crime groups in relations to their specific aims and abilities, and to the opportunities of the moment and of the context.

In conclusion, all the features identified have to be considered as common points of reference for the present study instead of a specific definition, which would too rigid and misleading.

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Valeria Ferraris (University of Turin) / valeria.ferraris@unito.it
Caterina Mazza (University of Turin) / caterina.mazza@unito.it

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