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XXIV
CICLO DEL DOTTORATO DI RICERCA IN
“POLITICHE TRANFRONTALIERE PER LA VITA QUOTIDIANA”
TRANSBORDER POLICIES FOR DAILY LIFE

TITOLO DELLA TESI
“INVESTIGATING AND COMBATING ORGANIZED CRIME IN EU”
Settore scientifico-disciplinare: DIRITTO DELL’ UNIONE EUROPEA

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INTRODUCTION

The organized crime (OC) situation within the EU is developing rapidly. It is a growing problem within the EU and poses a threat to the EU objective to create a high level of safety within an area of freedom, security and justice.

On the one hand, the opening of the borders between EU – 27 member states have made the indigenous and non-indigenous OC groups within the EU aware of the possibilities of expanding their criminal activities. Furthermore, to achieve criminal successes, the OC groups exploit the absence of or delay in the political initiatives or the unforeseen, negatives consequences of these as well as judicial changes among different EU member states.

On the other hand, the growth of the European Union however does not just provide the organized crime with new opportunities in a common geographical and political space; it also provides the EU with an opportunity to streamline its political initiatives and activities, to become more efficient by overcoming national differences in the area of law enforcement. The EU has taken advantage of this new opportunity and from the recent years up to now has adopted a global strategy in the struggle against the organized crime both within the EU and in the international level. This strategy for the purpose of my research is divided into important parts: The investigation of organized crime and the combating of organized crime, within EU and beyond.

The primary aim of this work is just to analyse and to bring insights for the EU a logic line and method to investigate and combat the organized crime from EU. We should keep in mind that the EU is not “a state” and the difficulties to achieve this goal are enormous. And, a good example to frame laws and to introduce efficient investigative methods, in different member states and in its own EU legislation, is Italy.
As regards the methodology it is a mixing between analyze and descriptive one. The work will focus more on European perspective of the fight against the organized crime than on individual national actions against it. The two important moments of this strategy against organized crime are reflected as I mentioned above on the investigation of organized crime, and combating of organized crime. However, in the introductory chapters, this work discusses the introduction on definition of organized crime. And this definition (including working definition on organized crime) serves to investigator to know everything about organized crime. During the process of investigation hi/she or the team of investigators/prosecutors needs to know what an organized crime is, what about the characteristics of both activities and the organized crime groups.

Also, the public’s perception of organized crime, and how seriously they regard it, determines the degree of support for policies and resources to combat it. How organized crime is defined goes a long way toward determining how laws are framed, how investigations and prosecutions are conducted, how research is carried out, and increasingly, how mutual legal assistance across national borders is rendered.

But, more this introductory part of the research, explain that: for this purpose (in this part) has been introduced the Italian OC groups (Mafia) as the most widespread indigenous OC groups in the EU and the mafia-style criminal activities as the ‘highest model’ of the organized crime. But, in general have been analyzed the characteristics of organized crime. The work is based on books and papers published by scholars that take part in the debate as well as on organized crime-related official reports and documents issued by the EU.

As regards the structure this work is composed of five chapters. The primary aim of this work is just to analyse and to bring insights of the EU a logic line and method to investigate and combat the organized crime from EU. However, it is meaningful to outline first the definition of the organized crime, the main characteristics of both Mafia-
style organized crime and other OC groups, the relevant pushing factors of the expanding of the organized crime and the cooperation the EU cooperation in criminal.

**Chapter 1** discusses the different definitions of the organized crime which are necessary for the investigator and EU, the characteristics of the Mafia-style organized crime, the characteristics of the OC and the types of crimes committed by the OC groups. In this chapter is argued that the mafia-style OC represents the ‘highest level’ of organized crime. Italian mafia is present everywhere, and the member states need to harmonize and approximate their legislation, focusing on Italian legislation against such a phenomenon.

**Chapter 2 argues** that globalization, the fall of communism, the enlargement of the EU; the geographical positions of the EU member states and the diversity of the procedural systems are the pushing factors on expanding and strengthening of the OC in Europe.

**Chapter 3** is focusing on EU cooperation in criminal law. It discusses the following constituent elements of this cooperation, the judicial cooperation (mutual recognition a cornerstone of judicial cooperation, European Arrest Warrant) Police and the custom cooperation, next the importance of the harmonization of the EU law on organized crime, next the novelties brought from the Lisbon Treaty.

Chapter 4 is so important for the purpose of the research, because accomplish one of its main aim, the construction of a logic and method of the investigation of organized crime from EU. Two traditional organized crime activities are treated in this chapter and the correlation between organized crime activities and victims of organized crime, constitute a need for unique investigative method (in the same time) in EU and in each member states, referring members and victims of organized crime. This chapter discuss the way to tackling and dismantling the organized crime structure and activity (the role of the member-victim), next the aggravating and mitigating circumstances, participation in a criminal organization, exchange of information on movement of groups, of DNA analyses results, etc.
In addition, following this line is argued that there is a need to introduce the Italian legislation, and Italian investigative techniques to defeat the organized crime, and mostly the mafia type organized crime. And the reasons are found in “- Existence of Italian mafia and other groups like Mafia in the EU and beyond, - Model of anti mafia law regarding the “Pentiti” (Repenters), - Use of special methods of investigation”

Related to the issue of victims of organized crime that are found in traditional activities as Trafficking in human being and illegal immigration, The community method offers a chance for the EU to investigate and fight trafficking in human beings and illegal immigration, therefore the organized crime group. Before this issue was inserted in the first pillar, in the current situation the Lisbon treaty, gives the opportunity to member states to offer protection, in different way, to the victims of organized crime, so that, victims offer their testimony to Justice.

Chapter 5 is focusing on the fight against different activities of organized crime as - Drug phenomenon, - Fraud, - Corruption and Money Laundering. EU is fighting organized crime also, through collaboration with UN and other Regional Organizations or Pan-European Initiatives on fighting organized crime, as well as supporting the efforts of the third countries to deter the threat of the OC.

The results of the research are summarized in the final part of this work.
I. INVESTIGATION OF ORGANIZED CRIME.

1-a. Introduction on “definition of organized crime”.

- There is a need to define organized crime as part of the process of investigation.

…The investigator needs to know everything about organized crime. Hi or she/ or the team of investigators/prosecutors needs to know what an organized crime is…?

Why is it important for the criminal investigations to identify a target as organized crime, or mafia type organized crime? These questions should be answered before successful strategies, laws, and techniques can be developed for use in any successful investigation of a group of individuals engaged in criminal activity.

The definition of organized crime should be known by the investigator. Organized crime and the mafia type organized crime can be defined by the members\(^1\) and the activities of a group\(^2\). Although organized crime might potentially be involved in many crimes, what separates individual crime from crimes committed by group of peoples the term organized or organization\(^3\).

\(^1\) In my thesis I have analyze “Who is the Mafiosi”?
\(^2\) Especially members of the mafia and their activities shows the strength of the Mafia organized crime, and special methods of investigation are needed to be implemented (it could be seen in the next chapters).
\(^3\) Organization has been described as group of people who cooperate to accomplish objectives or goals. Max Weber examined the elements of an organization. Weber lists rules, specialization and specialized training, a division of labor, a hierarchy of authority, and continuity as the parts of a structure necessary for the efficient function of bureaucracies. Organized crime has incorporated many successful principles utilized by legitimate business organizations:
- A unit of command, a superior to whom one is directly responsible.
- The principle of definition: Clearly defining authority and responsibility
- The span of control: A limited number of people controlled by a supervisor.
- The principle of objective: Defining the purpose of the organization or the business that is undertaken.
- Insulation and the need-to-know principle: Personnel have contact only with their immediate boss and persons.
- **There is a need for “working definition on organized crime”**.
  This working definition must contain characteristics of both activities and the group. Many countries and states include the structure of a group in their definition\(^4\). The term working definition is useful to the investigator. Many police departments as well as states and agencies have dedicated resources to the investigation of organized crime. For the investigator these resources are essential to the success of an organized crime investigation.

- **Definitions of organized crime.**
  The definition of organized crime varies, from agency to agency, from state to state. Defining organized crime accurately also will help in determining solutions for unique problem arising from a long term and complex investigation. These cases often require information protection, **special prosecutors** (the structure and developing of this topic is reflecting in the chapter where we speak for “special methods of investigation”, and the Italian case is the best one - as an example), **extensive undercover operation**, and **extraordinary surveillance techniques**.
  It’s important for investigators to agree upon a definition of organized crime when distinguishing it from other criminal activity. A well defined problem can link an initial investigation to the current evolution of organized crime (*a criminal offence or many criminal offences can address one or more criminal activities of mafia and organized crime*).

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The group in question may be transnational or even international criminal organization that are both *mala in se* and *mala prohibita* and includes detailed information about how these activities became organized. An investigator must have an understanding of not only academic definitions of these issues, but also the legal definitions. Finding a comprehensive definition of organized crime is difficult and requires the investigator to synthesize definition from both academia and legal community. These are also differences in word perceptions of organized crime. If investigations are conducted outside of EU, knowing the other country’s legal and academic definitions of organized crime is essential for obtaining assistance from the foreign government.

Also, even if the investigation is carried out, within EU, the need for legal assistance is still needed and the process of harmonization and approximation of EU legislation in the sector of organized crime is needed. This is a strong point we stressed in this topic, just to argue that in the current situation **EU can be successful on combating and investigating organized crime.**

The advantages of synthesizing definitions of organized crime are as follows:

- Develop strategies and techniques for effective investigations.
- Gains appropriate resource allocation to complete a long term investigation.
- Obtains cooperation and assistance regionally, nationally and internationally.
- Increase the investigator understands of the particular criminal group.
- Prepares the investigator to address the sophistication activities, and structures of organized crime.

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5 According to article 3, paragraph 2 of the United Nation Convention on Transnational Organized crime, an offence is 'transnational in nature' if:
1- If it is committed in more than one state.
2- It is committed in one state but a substantial part of its preparation, planning, direction or control takes place in another state.
3- It is committed in one state but involves an organized criminal group that engages in criminal activities in more than one state, or
4- It is committed in one State but has substantial effects in another state.

6 In this context the investigator should know the legal definition (of the organized crime as a criminal offence) of the state where the investigation is carrying out.

7 The case of judicial cooperation in criminal matters.

- Increase the understanding of the motivation that drives those involved in both in case strategy and the judicial process.
- Copes with the ever present aspect of corruption.
- Develops proactive solutions to prevent organized crime from becoming involved or controlling legal enterprises.
- Predicts future organized crime trends and activities.

Definitions provide understanding and often lead to effective solutions to problems that arise during the investigation. The investigators who can synthesize numerous and diverse definitions becomes more effective because of the deep knowledge of the magnitude and complexity of the target, mafia organized crime or, organized crime.

- **Investigation definitions.**

The investigator can use a variety of terms to define organized crime. While these terms are similar in some aspects, each provides a different insight into what it means to the investigator. For the investigator the organized crime could be or results as Consortium, cartel, syndicate or a gang⁹.

Organized crime is defined differently depending on the perspectives of the legal professions, academia government, and writers. Although some definitions are similar, there is no consensus of what defines a group as an organized crime group. In fact, there is no agreement that organized crime can be fully defined at all.

- **Approaches to defining organized crime.**

When examining the numerous definitions of organized crime, it becomes apparent that some countries divide organized crime groups into old traditional organized crime¹⁰ (Italian mafia Yakuza etc.) drug specific organized crime (South American cartels), entrepreunal organized crime (Russian groups), other types of classifications include the

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⁹ The mexican mafia is known as the “Cartel of drugs”, because it is mostly involved in the drug trafficking activity.

¹⁰ For more information see the chapter “Characteristics of organized crime”, where are well developed the different kinds of organized crime.
terms “international and “transnational”, etc. Another approach to the classification of major criminal groups is to view them as organizing crime rather than organized crime. This concept, which was developed by Brouder\textsuperscript{11} 1996 these organizations as continuously changing or fluid rather than a single bureaucratic enterprise. Such groups are constantly evolving around a variety of activities and alliances.

- **Why is definition important?**

The public’s perception of organized crime, and how seriously they regard it, determines the degree of support for policies and resources to combat it. How organized crime is defined goes a long way toward determining how laws are framed, how investigations and prosecutions are conducted, how research is carried out, and increasingly, how mutual legal assistance across national borders is rendered.

Existing substantial differences in opinions and views of what exactly is organized crime, make these practices, from law enforcement to research, more complicated.

- **According to the Law.**

Since crime is defined by law, the legal definitions of organized crime maybe the most important issue. Definitions contained in criminal or civil statutes target specific acts as being legally proscribed and sharply and narrowly defined what behaviors is subject to criminal or civil remedy. In USA, criminals, whether organized or not, cannot be prosecuted and punished simply because they have certain characteristics or belong to certain groups. They can only be prosecuted and punished if they committed illegal acts\textsuperscript{12}. While it may be that in the words of the old adage “if it looks like a duck, walks like a duck, and hangs around with ducks, then it is a duck”, no one in USA can be prosecuted just for looking like, walking like, or hanging around with members of organized crime groups. (*This principle does not apply everywhere*)


\textsuperscript{12} It reflects the international principle of the law that “None can be punished or prosecuted, if his or her act is not foreseen as a criminal offence”.

In Italy, being a member of the mafia is in its self, a crime. Membership of a Mafia type association, defined as “one in which members systematically use intimidation, and conditions of subjection deriving therefore to commit crimes, to gain control over economic activities and to acquire unlawful advantages”, is a criminal offence.\(^\text{13}\)

1-b. Institutions, Organizations, Law Enforcement Agencies and Academics defining Organized Crime.

Although there were made up many meetings, still there is no any exact definition for the organized crime\(^\text{14}\). In its lecture of 7 may 1998 Paul Roger referring to Vincent Teresa, a former mafia member said:

“Organized crime…very simple. It is just a bunch of guys getting together to take all the money they can, from all the suckers they can… Basically it’s a large corporation, department heads all over the country… All over the word for the matter…And naturally you have to show loyalty to somebody…to a certain man, and when you don’t, that man gets a little angry with you and spansks you – in a hard way…

More recently Wan Kuok-koi, a 14 triad leader in Macau, described his organization: We are just like a state. If you disrespect the state you get hit.

If you disrespect the family you get hit too”\(^\text{15}\). But the study and the problem of definition of organized crime is more complex, than like this, because in its self organized crime is complex. The study of organized crime shows that there are many definitions as there are agencies and authors.

Howard ABADINSKY has defined the organized crime as:

“A non- ideological enterprise that involves a number of persons in close social interaction, organized on a hierarchical basis for the purpose of securing profit and power by engaging in illegal and legal activities. Positions in the hierarchy and positions involving functional specialization may be assigned on the basis of kinship or friendship,

\(^{13}\) As foreseen by the article 416 bis of Italian Penal Code.

\(^{14}\) In the sense that, not generally is accepted the definition made by “The UN Convention against Transnational Organized Crime”

\(^{15}\) Paul Roger, Lecture on organized crime, University of Queensland, 7 May 1998, pag.1.
or rationally assigned according to skill. The positions are not dependent on the individuals occupying them at any particular time. Permanency is assumed by the members who strive to keep the enterprise integral and active in pursuit of its goals. It eschews competition and strives for monopoly over particular activities on an industry or territorial basis. There is a willingness to use violence and/or bribery to achieve ends or to maintain discipline. Membership is restricted, although non members may be involved on a contingency basis”16.

The Council of Europe defined it as:
“Organized crime means: The illegal activities carried out by structured groups of three or more persons existing for a prolonged period of time and having the aim of committing serious crimes through concerted action by using intimidation, violence, corruption or other means in order to obtain, directly or indirectly, a financial or other material benefit”17.

But more the Interpol defined it:
“Any group having a corporate structure whose primary objective is to obtain money through illegal activities, often surviving on fear and corruption”18.

The UN:
“Organized crime”, is understood to be the large scale and complex criminal activity carried on by groups of persons, however loosely or tightly organized, for the enrichment of those participating and at the expense of the community and its members. It is frequently accomplished through ruthless disregard of any law, including offences against the person, and frequently in connection with political corruption.19 Although the

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16Paul Roger, *Lecture on organized crime*, University of Queensland, 7 may 1998
17Council of Europe, 2002, 6
19United Nations, 1975, 8
single definitions made by these institutions, organizations, law enforcement agencies authors, yet there is no generally accepted definition of organized crime yet. As regards the fight against organized crime, it’s essential to collect and analyze information about it.

1-c. THE CONCEPT OF ORGANIZED CRIME.

The EU definition of 1998 of a criminal organization:
“Criminal organization means a criminal structured association, established over a period of time of two or more persons, acting in a concerted manner with a view to committing offences which are punishable by deprivation of liberty or 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 when appropriate of improperly influencing the operation public authorities.”

EU Framework decision (2008) on the fight against organized crime:
“Criminal organization” means 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;
“Structured association” means an association that is not randomly formed 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 UNTOC applies to serious crime, corruption, money laundering and obstruction of justice provided that the offence is transnational in nature and involves an organized crime groups as defined in the convention. According to article 2:

20 Article 1, joint action 98/733 JHA of December 1998 adopted by the council on the basis of article K.3 of the treaty on the EU, on making it a criminal offence to participate in a criminal organization in the member states of the EU.
21 For the purposes of this Framework Decision, article 1 defined it.
(a) “Organized criminal group” shall mean a structured group of three or more persons existing for a period of time and acting in concert with the aim of committing one or more crimes or offences established in accordance with this convention, in order to obtain, directly or indirectly, a financial or other material benefit.

(b) “Serious crime” shall mean conduct constituting an offence punishable by maximum deprivation of liberty of at least four years or a more serious penalty.

(c) “Structured group” shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its members or a developed structure.
2. THE CHARACTERISTICS OF THE MAFIA STYLE ORGANIZED CRIME.

- MAFIA STYLE ORGANIZED CRIME AS THE “HIGHEST LEVEL” OF ORGANIZED CRIME

- Introduction.

The mafia style organized crime has acquired tight territorial control, and directly manages the main illicit activities. By dividing the territory and the types of activities on the bases of an evil pact, Italian organized crime has evolved and now runs other much more lucrative illegal activities. In other words, it has modified its original activities and now focuses on the economic financial sectors, realizing that through the institutionalization of its culture of violence, sometimes ‘contrasting’ institutions and killing servitors of the states, sometimes to cohabit with the state during the years, finding its consent too, with its ‘Long standing role in society’.

2.1. MAFIA AS A WELL STRUCTURED CRIMINAL ORGANIZATION

The study of mafia style organized crime began:

**What is the mafia?** From 1895 the Prefect of Palermo Gualtiero defined for the first time in an official document the mafia as a ‘ malicious association ‘, during a report to the Department of the Interior. À certain term was used as soon as two years before in a comedy, titled “the mafiusis of the Vicaria of Palermo”\(^{(22)}\).

**Why the Mafia is born?** “*In the meantime the Italian state showed a deficit in its capacity to practice the monopoly of the legitimate violence. In this void were introduced those people who in precedence managed the violence on behalf of the*

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barons and that now start to manage it on their own; in that way rises a real 'industry of the violence' that offers protection in exchange for monetary performances”

After the assassination of the general-prefect Della Chiesa, in September 1, 1982 and for the first time defined mafia as a specific type of organized crime. The article 416 bis of Italian Penal Code introduce:

“The organization is of the mafia type when its components use intimidation, subjection, and consequentially, silence (omerta), to commit directly or indirectly acquire the management or the control of the business, concessions, authorization public contracts and public services to obtain either unjust profits or advantages for themselves or others”.

What makes clear the notion and the structure of the mafia?

2.1. a. The members of the mafia -" The Mafioso" The Mafioso is the man who has the status “Man of honour” and the man of honour is “The man respected by the others because he knows how to practice violence”

There are men’s of honour who born, because they come from the ‘old’ and ‘traditional families’ and there are the requisites to acquire this status: “The assassination is the honorary tool for excellence that allows his author to candidate as a Mafioso and to manage the control of the resources and on the people”.

But in the same time who are clever, energetic and ambitious can only find a way to improve their social position by dedicating themselves to the “industria della violenza” (industry of violence). Being with a certain status the Mafioso did seek that the man of honour should be able to develop governmental activities, if he wants to die in his bed, honoured and revered, as gentleman. He must assume now the superior authority, as to father, as the friend of all, the protector and the mediator.

24 Barbagli Marzio e Gatti Umberto(2002), La criminalità in Italia, p 21, Società editrice il mulino Bologna
25 Arlacchi, Pino (1983), La Mafia imprenditrice,Contemporanea 2 ,p,22, Società editrice di mulino Bologna
The very powerful position gained from the Man of Honour is the process of **Institutionalisation** of honorary and its transformation into power recognized as legitimate.

### 2.1. b. Mafia structural organization.

#### 2.1. b.1. The hierarchy of the organization.

The organization is unified and pyramid in form. At the bottom there are the families that take the name of the territory, a quarter or a village. Everyone has a role inside the organization, and the hierarchy is respected.

“...the lowest degrees, <<l'uomo d'onore>> (the man of honour), to go further at the <<segretario della Cupola >> (secretary of the Dome), a sort of council of ministers - passing through the degrees of, <<capodecina >> (head about ten), <<vicerappresentante>> (representative deputy), <<rappresentante>> (representative), <<sottocapo>> (head assistant), <<consigliere>> (adviser), <<capofamiglia>> (head of the family), <<reggente>> (regent), <<capomandamento>> (head district). These are the men that hold the contacts with the villages, with the districts, with the common people. They intervene in the social life and in the controversies of every day. They administer the justice whereas it has abdicated. The district manages the administration and the management of more families. A “centralized” government formed by the ‘capifamiglia’ (head of families) and forehanded by the <<capomandamento>> head of the district”\(^{26}\).

#### 2.1. b. 2. The system of an absolute rule of obedience and law of silence.

The associative bond has such an intimidating capacity to cause subjection and omerta (conspiracy of silence). This can be defined as the ‘law of silence’, and it consists in the duty of associates to keep silent about the secret. However this applies to everyone else, because the Mafia rules over an extensive area and many citizens either by habit or out of fear, even if they know where the Mafioso are to be found or even if they have witnessed a mafia crime, don't collaborated with the forces of law and order.

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\(^{26}\) *Mafia,Politica,Affari,rapporto 1992,edizioni La Zisa, p 21*
“Cosa Nostra moves close to the State its internal organization as a political and mutual subject said Marino Mannioa, explaining the relationship between various families and different ‘institutional’ positions. We need to take account that the inside dynamisms of Cosa Nostra resemble to the political institutions with the difference that we shoot for reaffirming the respect of the rules. Mafia’s code, in substance foresees the death penalty and the trial process is practically without appeal. The dialectics therefore has to be violent”\textsuperscript{27}.

The syndicate is always seeking to gain control, and once the control is gained, as is already said, it is maintained through fear or threat or further violence.

And this serves as to virtual immunity from prosecution for those at to higher level, in other words it means:

1-\textit{Protection from infiltration by law enforcement}
2-\textit{The impossibility to take action against leaders}
3-\textit{Providing good degree of safety}

2.1. b.3. \textit{The use of violence}

The ability to use violence whether direct or in a form of a credible threat is generalized ingredient of Mafioso behaviour.

“The use of violence is considered in terms of three directions in which it may be directed

1-Intra group violence is directed at the members within the group in order to maintain disciplines and the submission of the members to the group or organization.

2-Inter group violence directed by a group at another group, typically, arising from territorial or cultural rivalry.

3-Extra group violence is directed at the victims outside the criminal fraternity and is therefore typical of criminal activity directed at persons or property\textsuperscript{28,}.”

\textsuperscript{27} Ibidem, p 25-26
\textsuperscript{28} Toon van der Heijden, “\textit{Crimine organizzato di misurazione in Europa occidentale}”, Sorvegliando in Europa Centrale ed Orientale: Paragonando conoscenza di prima mano all’esperienza dall’ovest, università 1996 del C della polizia e degli studi di sicurezza, Slovenia.page7
The first can be considered as to inside violence and it serves:

To punish defectors, discourage internal competitors for leading positions, or conversely to challenge the leaders. In fact many Mafiosi have begun their career with violent acts.

The second and third can be considered as an outside violence.
2.2 THE COMPLEXITY OF THE MAFIOSO PHENOMENON.

- The paradigm of the complexity

The mafia is a form of totalitarian and its peculiarity is the territorial control, from
economy to politics, to private life.
The mafia is considered as a complex and polymorphism phenomenon, a prism to a lot
of faces introducing its institutional, economical, political and cultural aspects.
The resultant of the interactive relationship among all these aspects shapes the Mafioso
phenomenon and its complexity.

2.2. a- The institutional dimensions.

- The non recognition of the state monopoly.

The mafia is organized and always has had the military power. First of all mafia
exercises its power within a fixed territory through its military power, and the use of ‘its
private violence’ is one of the most important institutional dimensions, it means that
mafia has the capacity to administrate its territory and in a certain way the life within a
territory. “The specialized groups in the control of the territory are required to create a
proper apparatus of the military type, who corresponds to the centralization of the
command, therefore a strong and centralized organized structure, whose influence is
defined by the confines of the territory... They therefore have to build up a proper
apparatus of physical coercion, and should posses the monopoly of the violence on to
determined territory”29.

But the non-recognition of the state monopoly exists in its capacity to offer to the
population its protection and in exchange of this; the extortion was the most profitable
practise.

24,26
“The Mafiosi will make sure that violence is always present on their ‘market’, that the question of protection shouldn’t be less.... the private entrepreneurs of the protection should be therefore, at the meantime the entrepreneurs of the violence... violence is used for establishing a relationship of protection, that shape also as a relationship of extortion”\textsuperscript{30}.

More than this the non- recognition of the state monopoly consists:

1. The mafia operates inside political institutions, and it means that:

   - Control of voters
   - The relation with the local government
   - The intermediation for the state, because the mafia except the fact of using the violence, it's capable to gain the consent of the state.

2. But the mafia is being anti-State when opposed institutional and political representatives, for example the assassination of the Prefect Della-Chiesa, the magistrates Giovanni Falcone and Paolo Borsellino.

“The conceives of the mafia being anti state comes from a analysis of the Mafioso crimes that have struck representatives of the political institutions as, <<attack to the State>>, the men, target of the Mafiosi's violence were certainly <<servants of the state>> but they were not the state, mostly, part of their anti-Mafiosi actions were isolated, if not opposed, inside of the political institutions”\textsuperscript{31}.

\section*{2.2. b- The political dimension.}

Also the political dimension is constitutive in the complexity of the Mafioso phenomenon.

The political dimension intends: The mafia as a political subject.

“The mafia has also the tendency to show itself as a <<protagonist>> in the politics, mafia needs" its" mayors," its" aldermen”, to distribute contracts and public money on

\textsuperscript{30} Barbagli Marzio e Gatti Umberto(2002), \textit{La criminalità in Italia}, Società editrice il mulino Bologna,p24

\textsuperscript{31} Mafia –Politica –Affari,rapporto 1992,edizioni La zisa ,page 113
the behalf of the <<invented>> entrepreneurs according to the logic of the Mafia powers”32.

Mafia is a political subject in a double sense:
1-As a criminal association, mafia is a gathering of norms and arrangements, a territorial dimension, a physical coercion, an administrative apparatus able to assure the observance of the norms and to put the physical coercion into effect.
2-As a criminal association, mafia together with the social block in which it makes part, constitutes a powerful system and is a source of production in the general sense, it determines and contributes to determine the decision and to select the management of the power and distribution of the resources.

In the first case, is expressed a real fundamental attribute of the Mafioso groups, which constitutes only an aspect of their political subjectivity. The relationship of the politics with the mafia is configured in the:
1 - Mafioso’s productions in the politics.
2 - Political production of the mafia

*Mafioso’s productions in the politics* is configured with
1 - The use of violence toward political ones, who in this case supervise the so-called political - Mafioso crimes, the slaughters, etc.
2 - The contribution to the formation of the institutional representations, that would be gathering and control of the votes, through mediate or direct participation to the electoral competitions, with the control on the institutions

*Political production of the mafia* means the contribution of its production in its development: “The members of government, the administrator, the executive, who have made use of the votes, of the favours, of the benefits of <<this power>>, are ready to reciprocate, lending their services, perpetuating a perverse system of dominion”33.

1 - Assuring to be unpunished.
2-consenting activities in association with the institutions and with the disbursement of public money. 3-throughout the institutionalisation of Mafioso methods.

32 *Mafia – Politica – Affari, rapporto 1992, edizioni La zisa, page 19*
33 *Ibidem, page 64.*
2.2. c- The economic dimension.

One of the mafia’s characteristics is its multidimensional economic activity, defined as an economic activity of the Mafioso enterprise (mafia entrepreneur). Its economic activity is a long process through the accumulation of the capital and the process of transaction of this capital in the legal economic world.

What we have said before is verified and it consists in:

1 - The illegal accumulation of its activities.

2 - Financing of the economy, this defined as the centralizing of the industrial financial complex.

3 - in the process of transaction of dirty money in the legal economic world

In the edition Mafia- Politica- Affari (Mafia-Politics-Affairs), 1992, Umberto Santino explains and interprets the notion of the mafia entrepreneur where (as he says) cohabit, more or less, consciously, two concepts:

1 - Mafia entrepreneur

2 – Mafioso’s enterprise

The first one interprets the criminal activity as an entrepreneurial activity, in the sense that it is expounded as a rational combination of violent and illegal instruments (illegitimate entrepreneur)

The second one, intends an economic activity of production and marketing of goods or services, permissible, but however managed by criminal subjects or by the employment of illegitimate origin capitals, or with illegitimate formality of carrying out in the competitive the struggle.

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34 Umberto Santino is The President of Sicilian center of documentation << G. Impastato>>, Palermo
2.2. **The social dimension.**

The social dimension of the mafia consists in its social context inside a social block.
- The social context of the Mafioso’s phenomenon is tied up to the fraternity relationships, of friendship, interest sharing, contiguity and complicity. The Mafioso’s phenomenon goes through the society and gives life to a social block.
- The social block

The nature and composition is inter-classist. In other words, there are included both, the most disadvantaged layers of the population, the intermediary and higher ones as well. This kind of its interclass composition, where in the lowest rank we find (the so called) marginal layers, proletarian, which are involved both in illegitimate and legitimate activities.
- The illegitimate activities:
  1. Cigarettes smuggling
  2. Drugs delivery
- In the legitimate activities we find personnel or hand of work employees in the entrepreneurial and commercial activities, as professionals, assistants or facilitators which lend their work to service of the Mafioso.
- While in the higher layers of the society we find political and involved administrators in to the Mafioso world, with relationships of different interest.

2.2. **The cultural dimension.**

The existence of a Mafiosi culture is related more than anything else to the mentality and the style of Mafiosi’s life in all the ranks of the society or of the social block. The way in which it works and organizes its daily life is an important paradigm of its complexity. The cultural dimension includes its internal organization, as a criminal association (the initiators ritual, the language they use, the conspiracy of silence). The hierarchical vision of the organization and of the society is the process of **institutionalisation** of this culture inside the organization and it is an integral part of this culture. The mafia as other social subjects has a behavioural code of it own and this is considered as a culture on it own. “To behave as a Mafioso means to behave in an honourable way... the honourable
word denotes nothing but the superior affirmation. Honourable means "exceptional",
"worthy", means "bossy"."\(^{35}\)

Also the use of the violence is defined in the Mafioso world, as a culture, for which the
homicide is not a crime; a penalty is foreseen by the same formula of the oath.
This culture is the pillar on which the doubleness of the mafia founds itself towards the
state.
The mafia from a verse is out and against the state, it has its own penal code and its
forms of justice, and therefore it doesn't recognize the repressive and jurisdictional
function of the state.

2.2. f- The social consent.

“They are thousand, among simple soldiers, commandants and leaders, the men that
compose the army of Cosa Nostra of Palermo... If these are the exact numbers of the
official accountability, how many are the supporters? And how much and great is "the
grey zone", these are the persons from whom the mafia can pretend, if not full
complicity, at least "collaboration", complaisant silences and logistic support.
There are about ten thousand of people.... that’s why, when we’re speaking of mafia we
cannot ignore the most worrisome aspect of the phenomenon; the massive "involvement"
of the people. Cosa Nostra receives consent because it creates and offers
comfort”\(^{36}\).

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\(^{35}\)Arlacchi, Pino (1983), *La Mafia imprenditrice*, *Contemporanea* 2, Società editrice di mulino Bologna ,
p 21, 22.

\(^{36}\) *Mafia – Politica – Affari*, rapporto 1992, edizioni La zisa, page 17
2.3. THE CONTINUITY AND TRANSFORMATION.

The mafia introduces itself as an expanding phenomenon and one of its strongest point is the capability to gather and combine preservation, that perpetuate the predicament and innovation in the old fortresses which allows the exploitation of the occasions offered by the contemporary society according to an evolutionary line. The evolution of the Mafioso phenomenon, as it is a durative phenomenon, has a strong capability to adjust the mutations of the environmental conditions, introducing itself as an interlacement of continuity and transformation. The historical evolution makes known names and distinctions between old mafia and the new mafia, or the traditional mafia. In this evolutionary process of the mafia Umberto Santino, introduces a depiction of periods, composed by four phases:

1- The phase of the ‘world unique system’ and the ‘pre Mafioso phenomenon’
2- The agrarian phase
3- The urban entrepreneurial phase
4- The financial phase

In the first phase are introduced the pre Mafiosi phenomenon characteristics:

a- Cases and forms of the private exercising of the violence, which is extra statuary and doesn't achieve the sanction of the official justice.
b- Demonstrations of violence or of non sporadic illegality, introduced as recurrent behaviours and professional activity
c - Violent behaviours - illegal functions to the enrichment and the acquisition of real power, not necessarily in opposition to the official one.

In the second phase the agrarian mafia is seen as an intermediary, among the local community and the central state, such function dual it with others, to assure the exploitation of the farmer’s job, the social control and the local government.

In the third phase is seen the most important aspect of the mafia, the entrance of the Mafioso’s in entrepreneurial activity in first person or in relationship with other entrepreneurs.
In the fourth phase “The mafia has not changed nature but has started a new phase in its history that already is defined as the financial mafia. Its insertion in the traffic of drugs cannot be considered as an<< accident >>but a natural evolution that is a choice forced by the nature of the Mafioso organization which experiments itself in the exploitation of all the occasions, offered by the criminal market”37.

In the financial mafia, we find these characteristics:
a-The increase of the illegal accumulation through the internationalisation in planetary dimension of its activities.
b-The mixing of the illegal and legal activities
c- The recycling of "dirty" money, reaction to the repression, relationship with the social and institutional context through local, national and international circles.

An important point in the interlacement of continuity and transformation we find also the continuity and modernization binomial, in the world of the mafias culture, which is faithful to the roots, but becomes elastic in its capacity of adaptation.

For example, they maintained the same parental base for managing the traffics in a narrow territorial horizon, but to manage traffics on a vast territory are inserted interfamilial organizational forms. The most important role of the Sicilian mafia is explained through its financial capacity of various families, unified through the interfamilial organization. They have already experimented it by smuggling tobaccos and by the articulation on the international plan. These organization are strong also of old parental bonds, which establishes a stable and fruitful connection, the bonds between Sicily and United states succeeded in building a system of recycling, that exploits all the possibilities offered by the existing financial circuits, and if it’s required it creates new ones (on tax haven, the financial innovations and other aspects.)

2.3.1. From traditional activities to the most profitable activities.

2.3.1. a Dividing and control of the territory.

A strong point for the mafia is the fact it always had the capacity to combine continuity with the innovation. It means that it has never abandoned the traditional activities, but knew how to choose the most profitable activities and became a part of them.

“Organized crime groups in EU are involved in all types of crime, especially drug trafficking, illegal immigration, trafficking of human beings, all sort of commodity smuggling, fraud and other forms of financial crime. In 1977 it was first noted that organised crime groups became involved in low risk/ higher profit enterprises”

As we already know, one of the valid indicators which really meet the characteristics of the mafia is illegal activity. Among these activities the mafia organised crime tend to achieve positions of economic power. But how the mafia organised crime does could reach this objective:

- Control and dividing of the territory, or in other words ‘The entrenchment method’, which consists in the conquest of a territory, which can be achieved by using armed force or diplomacy, both against other criminal groups and against state representatives.

“Mafia founds its power, not only on money power, but also fundamentally, on the unmolested and capillary control of the territory, and on it capacity to address and govern the real facts... Control of the territory means, in this sense, control of the economic activities, and still means capacity to admit consent, to direct electoral patrimonies, to infiltrate in the public powers, practicing inside of them a real action of << concealed government >>”

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38 W. Bruggeman, 5 December 2002, Security and combating international crime and terrorism, page 7
39 Mafia – Politica – Affari, rapporto 1992, edizioni La Zisa, page 63
2.3.1.b Following the routes of trafficking in local and international level.

-Expansion, which refers to the capacity of a criminal group to embark on the colonization of new regions, in the same city, in bordering regions or in new states, because the mafia’s strength lies in its capacity to be both local and international level, and the effects are:

1- “External expansion, with intensification on demanding violence to demolish the obstacles in the process of expansion...”

2 - Invasion of the market, formally profile rating some legal economic activities, often with mere function of recycling and of coverage.”

The expansion first of all could be reach:

Following the routes of trafficking in local and international level, “Mafia goes out of its confinements in succession to drugs, which are the required necessities on drugs trafficking conducting in territorial expansion... numerous episodes, submitted to the examination of the commission, have shown how the mafia, moving from its traditional base, is installed in other zones and particularly in the big urban centres as Milan, Rome, Genoa, Naples, and in the neighbouring zones”.

But more than this, the mafia could be found: “In the illustration during the summit developed to Palermo, at Hotel of the Palms in October, 1957. It assumes the proportions of a Yalta in the international relationship on drug trafficking: from there is born the new planetary traffic assets and starts the scaling of the mafia to the monochratic power. This power previously is subsequently confirmed by the << exclusive pact >> recently initiated between Sicilians and Colombians for the entry in great style of the cocaine in Europe.”

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42 Mafia –Politica –Affari,rapporto 1992,edizioni La zisa ,page 111
2.4. THE WORLD PRODUCING MORE GROUPS AND ORGANIZATION OF THE MAFIA TYPE.

Different groups and organizations of Mafia style in the world.

2.4.1. The Mafiosi Organizations in Italy

Introduction

Italian organized crime is, even today, for a large part still associated with the four traditional mafia-type structures, namely Cosa Nostra, Ndrangheta, Camorra and the Apulian Organized Crime Groups. These associations are spread over Sicily, Calabria, Campania and Puglia, but have also expanded their territory to the centre and north of Italy and to the rest of the world.\footnote{Ministero dell'Interno. (2003). Relazione del Ministro dell'Interno al Parlamento sull'attività svolta e sui risultati conseguiti dalla Direzione Investigativa Antimafia nel secondo semestre del 2003. Rome.}

The Italy of the Mafia

Italian mafia has long been regarded as the prototype of organized crime.\footnote{The reason why the legislative and investigative measures and methods should be introduced in EU Law organized crime issues.} However, even the existence of the mafia as such has long been denied, even up to the mid-1980s.\footnote{Paoli, L. (2004a). Italian Organised Crime: Mafia Associations and Criminal Enterprise. Global Crime, page 13.} Pino Arlacchi states in his book “Mafia et Cies” that: “It is fair to say that mafia, as the term is commonly understood, does not exist.”\footnote{Pino Arlacchi (1986, p. 15)} Nowadays, the existence of mafia-type associations is no longer denied. Many believe that the origins of the term Mafia lay in the 19th century, while others place it much further back in the history of Italy. It is a term that, depending on the context, can refer to many distinct facts.\footnote{Lupo, S. (1999). Historie de la mafia des origines à nos jours.} Today, the word is commonly used to describe secret criminal organizations consisting of men - or women - equipped with a private army, weapons and money.\footnote{Pino Arlacchi (1986, p. 15)}
Although the original mafia is considered to be the Sicilian Cosa Nostra, there are many more mafia-type organizations. The denotation ‘Italian mafia’ is in fact a collective term for all the different mafia-type organizations in the country. This is also signified in article 416-bis of the Italian Penal Code, which refers to associazione di tipo mafioso (mafia-type associations). The history shows the territory of the four best-known mafias in Italy: Cosa Nostra in Sicily, Ndrangheta in Calabria, Camorra in Campania and Sacra Corona Unita in Puglia.

2.4.1.a-Cosa Nostra
2.4.1.b- La Camorra
2.4.1.c-Ndrangheta
2.4.1.d-La Sacra Corona Unita (the Sacred United Crown)

2.4.1.a-Cosa Nostra

When the term Mafia is used, it intends more the Mafioso organization of Cosa Nostra, with the base and its control in the territory of Sicily. A Mafiosi organization of agriculture roots, which had evolved in time and has been able to change itself and to conform. Today the Cosa Nostra is called the ‘invisible mafia’, because it has abdicated the armed clash as in ‘92 (Giovanni Falcone’s assassination), devoting itself to the business. Its territorial profile is composed by an articulation of districts on the nine province of Sicily. In the nineties the dates reported the presence of 142 families; this is cell of base of the Mafioso organization. This number of families operated in Sicily where each family had a specific territory of affiliation...

According to the CPM, the structure of the Cosa Nostra is pyramidal and vertical, with at its base the family. Their family-structure is straightforward with elected appointments and controls over a specified territory.

49 For further informations you can see the ‘Rivista Limes’, 2-2005, “Come mafia comanda”.
50 CPM, 2008a
According to Paoli “the selection procedures and the competencies of the Cosa Nostra ruling bodies are inspired prescriptively, but not always factually, by the principle of direct democracy”\textsuperscript{51}. However, she adds that the principle of direct democracy has been violated numerous times. Instead of choosing the rappresentante (representatives) and consigliere (counsellors) by lot, they are “chosen from among the most experienced and skilful of the associates”\textsuperscript{52}.

This results in the fact that the most important roles are assigned to the same people for very long periods. Furthermore, the principle of direct democracy is often violated in cases where a man of honour takes power through violence. Palermo has always been the centre of activities and decision-making of the Cosa Nostra. Starting from the late-1950, following the example of the American La Cosa Nostra, the Sicilian original also formed an advanced hierarchical structure called a “Cupola” (Commission) consisting of the different capi \textsuperscript{53}.

The Commission originally had two main tasks, namely:

1- Settling conflicts among families and single members and prosecuting the most serious violations of the mafia normative code and,

2- They were assigned with the regulation of the use of violence\textsuperscript{54}. During the 1990s, in order to avoid further defectors and prosecution from law enforcement, Cosa Nostra has partially revised its structure following the Ndrangheta’s logic of compartmentalising. The members of certain group now know only their head and the other members of a single mafia family. In this new structure, they know part of the organisation, but not all of it\textsuperscript{55}. Cosa Nostra employs strict norms of behaviour and holds on firmly to traditions. Becoming a member of Cosa Nostra only happens on call and before one can go through the initiation, a period of observation must pass in which it is determined whether someone is good enough to join\textsuperscript{56}. After going through the initiation ceremony and thus becoming a member of the family, they must follow the strict code of conduct. From its

\textsuperscript{51} Paoli, L. (2003). Mafia Brotherhoods, page 41
\textsuperscript{52} Paoli, 2003, p. 43
\textsuperscript{53} CPM, 2008a
\textsuperscript{54} Paoli, 2003
\textsuperscript{55} CPM, 2008a
\textsuperscript{56} CPM, 2008a
formation in the 19th century until today, a long period has gone by. During this time, the mafia evolved with society and it has overcome crises and internal wars. The first Sicilian mafia was a more rural mafia, but after 1975 the Men of Honour reformed themselves towards a more urban mafia. In recent years, Cosa Nostra has left the path of violence. Nowadays, they engage actively in money laundering and penetration into the political world. Cosa Nostra does not behave as an anti-state association, but as a political and economical player. Next to money laundering, racketeering is still a vital part of the association. The Mafiosi collect pizzù, i.e. protection money, to control their territory. They also engage in drug trafficking, in cooperation with the other Italian mafias and foreign organised crime groups, and they have infiltrated into the system of public contracts.

Cosa Nostra has suffered more than any other mafia-type association from the increased law enforcement efforts, many members and bosses have been arrested, and it is said that they are in crisis. That said, this does not imply that they cannot survive this crisis. Although Cosa Nostra has lost some of its vivacity of the past, it still maintains a persistent vitality. Cosa Nostra is currently in a phase of reorganisation; attempting to restore the old rift and relations between the moderate part and the more irreconcilable group of the Corleonesi that wants to maintain the path of violence. Cosa Nostra, at the moment, is doing its business silently and is keeping a low profile. The members of Cosa Nostra try not to be exposed in order to ensure that their capability to influence the socio-economic sectors in their territory remains intact. The Sicilian mafia seems to have understood that destructions, vile crimes and assassinations provoke an inevitable response from the institutions.

The central nucleus is represented by <<coscia>> (<<thigh>>), around whom is built a system of relative relationships, friendship, instrumental friendship or simple clientele. The Mafiosi network of Cosa Nostra is expanding more and more, and today there are

58 CPM, 2008a
59 Ministero dell’Interno, 2007a
more than five thousand the presumed affiliate. The Cosa Nostra is recognized for its rigorous internal organization, for its relationship with the politics and for its economic dimension\textsuperscript{60}… The Cosa Nostra is expanded in other regions of Italy, in Europe, and in the world. (For a clear vision see pages 51-53-55 of the Limes 2- 2005, “The Mafia Sicula in North America, in Europe” “La Mafia Sicula in Nord America, in Europa”)

\textbf{2.4.1.b- La Ndrangheta}

“Up to a few decades ago, the majority of the population of the province of Reggio Calabria used the Greek word ‘ndrangheta’ to point out an elevated order of heroism and virtues, incarnated in an elite of superior men, ‘the ndraghetistis’ To enter to the ndrangheta is needed to give a test of value, committing a theft, a robbery, and the entry happened according to an upright, and the affiliates were in so many. ‘Ndraghetist’ means << member of the honourable society >>... The ideology of the ndranghetista consists in the conspiracy of silence (omerta) that means the capacity to be a man”\textsuperscript{61}.

The criminal phenomenon named Ndrangheta is understood as an aggregate of mafia families whose base is in Reggio Calabria province and in its environs and their ramifications in Italy and abroad. The Ndrangheta or Onorata Societa (Honoured Society) originated in the late-19\textsuperscript{th} century. Starting in the 1880s, the existence of a Calabrian mafia-type association was proven by numerous police reports and court sentences\textsuperscript{62}. At the beginning the ndrangheta was the less known organization; its presence had already been signalled from the time of the United Italy (Unita’d’Italia). The ndrangheta appears very expansive in some zones of Calabria, abroad and exactly in Canada (years 1800-1900). From the sixties the ndragheta expands in all the provinces of Calabria, in the centre and north Italy. The structure of the ndrangheta is based on the natural family of the “head baton”, “Two principal features characterise the Calabrian ’Ndrangheta: the faida

\textsuperscript{60} See pages 38-42, Limes, 2-2005, Come mafia comanda.
\textsuperscript{61} Arlacchi, Pino (1983), La Mafia imprenditrice Contemporanea 2, page 22, Società editrice di mulino Bologna.
or blood feud, and the fact that its criminal groups are based on family ties” 63. Their basic structure is an „ndrina, an extended family or clan that controls a certain territory. Typically, the core of such an „ndrina is made up of a blood family 64. In the case where more than one ndrina operates in the same area, they will form a bigger unit named a locali. Many of these 'ndrine are also linked by marriage. The second principal feature of 65 the Ndrangheta are blood feuds. Faida is a term for power struggles, characterised by extreme aggressiveness and destructivity, between the clans. The feuds originate from banal motives and the principle of retaliation, a still active part of their folkloric culture. In order to overcome such conflicts, in 1991 they set up a unitary structure of coordination, comparable to that of Cosa Nostra 66.

The aforementioned folkloristic aspect of the Ndrangheta is for example also found in the active use of rituals and symbols, such as for instance the use of their own vocabulary made up of local slang. As with in other mafia-type associations, upon initiating, the new member has to go through a ceremony of baptism, where blood and culture play an important role 67.

Vincenzo Macrì, a prosecutor at the DNA, claims it is more difficult to bring down the Ndrangheta than Cosa Nostra. One of the reasons he proposes is the Ndrangheta’s organisational structure. Unlike the vertical structure of the Cosa Nostra, the Ndrangheta is more like a federation. Taking away the top is thus virtually impossible. Furthermore, during the 1980s and 1990s, the Italian justice department has been able to obtain the cooperation of former members of the Cosa Nostra, Camorra and the Apulian Organised Crime Groups.

The Ndrangheta, on the other hand, has known very few defectors. There have been Ndrangheta-defectors, but fewer than for the other mafia-type association; and they have always been low or medium-ranked members. The reason thereof is the typical structure

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64 CPM, 2008b
67 Paoli, 1994
of an ndrina. The fact that the ndrina is largely composed of blood family-members means that to become a defector, one must accuse one’s own father, brothers, sons, etc. The family ties of the clans make the association virtually impenetrable to investigators.\textsuperscript{68}

The clans have set out an elaborate system that enables them to commit crimes dynamically, both inside and outside their territory. Over the years, they have run rackets, corrupted officials and infiltrated political life.\textsuperscript{69} Nowadays, they are most active in international drug trafficking, racketeering and money laundering. Their system of infiltrating the business of public contracts proves to be becoming stronger, mainly due to their infiltration into the local political arenas. Over the past decade, many politicians have been threatened, injured and murdered. Women also play an important role in the Ndrangheta. Firstly because marrying a Mafiosi enforces the original structure of the family, and secondly because they transmit the mafia-culture to their sons and they manage the illegal affairs during times when their husband is a fugitive or in custody.\textsuperscript{70}

The territorial expansion of the ndrangheta is connected to its entry in the world of the illegal traffics. If in Australia and Germany the presence of the ndrangheta was so visible, in other countries it was more discreet and effective because finalized to retrieving drug to commercialise in Italy or around the world, and to open the channels of connection for the recycling of the dirty money." (For further information on the expansion of the ndrangheta in Italy and in the world, and for the families of the ndrangheta, see pages 145, 147, 149,153, -158 of the Rivista ‘Limes’ Come Mafia Comanda, 2-2005)

\textsuperscript{68} CPM, 2008b


\textsuperscript{70} CPM, 2008b
2.4.1.c- La Camorra

La Camorra is the mafia-type organisation located in Campania, and more specifically in Naples. The Neapolitan Camorra used to be seen as the second most important Italian mafia-organisation (after the Cosa Nostra). It’s presumed that the foundation of Camorra is dedicated to a Spanish emigrant. “The Captain Fabbron had fixed 1654 as the date of foundation of Camorra and speaks about Raymond Gamur, a Spanish guy who run away by his native place Saragossa and immigrated to Naples”71.

Due to this version Gamur had explained to his Neapolitan friends how gangsterism was organized in Spain and so on... They founded the Reformed Bella Società, but everybody however ended up calling it << camorra >>, the dialectism of the surname Gamur. Camorra was constituted by whole gangs which composed and decomposed with great facility. However its organizational structure has known the hierarchy in the second half of the seventies, from the ‘La nuova Camorra Organizzata’ “The new Organized Camorra” of Raffaele Cutolo and then during the end of the seventies from the new Family of Bardellino-Nuvoletta – Alfieri. In the 1992 Alfieri tried to build an unitary organization according to the Sicilian scheme which was called the New Mafia Campana. There are two important differences between the Camorra and the Cosa Nostra. First, the alliances within the Camorra are much looser and flimsier than those of the Sicilian Mafia, leading to a higher level of inter-clan conflict. The Camorra is subdivided into criminal groups and gangs. Some of these are well-established family businesses that exercise dominion over their territory and have been able to infiltrate local government institutions. Others are less stable groups that develop around a chief, split, descend into feuds and re-emerge in new alliances72.

A second difference is that in the Camorra, each clan is an extended kinship group, comparable to ndrina of the Ndrangheta. Women in the Camorra play an important role.

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71 Vittorio Paliotti, ‘Storia della Camorra’, stampato nel settembre 2002 preso la Legatoria del Sud s.r.l., Aricia (Roma),page 22.
They are fully integrated into the command structure and are ruthless killers. The heterogeneity of the Neapolitan groups is characterised by the variety of activities they engage in. The main activities of Camorra-groups are drug trafficking, trafficking of toxic waste, extortion, usury, tobacco smuggling, clandestine wrestling and football pools, and counterfeit currency. The Camorristas are also known for their high level of infiltration in the public administration sector and the economy. Furthermore, they are also increasingly engaging in environmental crimes, more specifically, the dumping of waste materials and in illegal drug trade. La Camorra always is characterized for its mobilizes and flexibility, and has always had characteristics of mass. “Currently in Campania operate, altogether around 111 families and over 6 700 affiliate... In 1983 were taken the census around 12 groups, in 1992, 108, with around 5 000 adherent”. La Camorra has always had tightened relationships with the political-institutional world, has been an entrepreneur and has tried to insert itself in the economic process to take advantages itself.

2.4.1.d-La Sacra Corona Unita

La Sacra Corona Unita (The Sacred United Crown) is a smaller organization in comparison to the other mafias, that’s for its presence in the territory and of the business turnover. The first one to give life to a new Camorra of Puglia (the region) is the head of the organized New Camorra, Raffaello Cutolo, who submitted to Pino Ianello and Alessandro Fusco the charge to form this organization.

After so many attempts, and with the releasing of the Camorra was founded the La Sacra Corona Unita (Sacred United Crown) in 1983, from the Rogoli di Mesagne. The structure of the La Sacra Corona Unita (sacred united crown) is horizontally organized, with a series of clan. The rites of the organization are similar to those of the ndrangheta. The reformed Cosimo Capodieci explains the reason of that mystical Religious denomination that evokes the Rosary of the Catholic liturgy, whose stones are tied up one to the other as the members of the association: The organization is Sacred (Sacra),

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because if its statutes are read, when the organization gathers or it affiliates someone, it consecrates and baptizes. The Crown (Corona) because it is as a Crown, that is the Rosary, used in the church for making the Cruces one close to the other. United (Unita) because it had to be united as, the rings of a chain. Notwithstanding their imitation of the Ndrangheta structure and rituals, their cohesion and stability have always been much lower. The Apulian organised crime groups do not present themselves in a homogenous manner. They are characterised by their ability to interact with other organised crime-groups and by the specific nature of some of the criminal offences that they commit in their region, mostly large-scale smuggling of cigarettes, weapons, large vehicles, migrants and drugs - mainly using the Balkan-route. They are also active in prostitution, moonlighting, environmental crimes and public tenders\textsuperscript{75}.

The Sacra Corona Unità’s successor groups have never been able to control all of Apulia’s organised crime\textsuperscript{76}.

However, the presence of those new organised crime groups in Apulia still constitutes a risk-factor for the disruption of the Apulian illegal market. Furthermore, the new Apulian organised crime groups have shown a significant ability to infiltrate institutions. They have benefited from the Adriatic Sea route to establish relationships with criminal associations from Albania and Montenegro and to perform illegal trades in cigarettes, drugs, weapons and illegal immigration. As to their organisation, it is formed in a more horizontal structure, and women take part in the criminal activities\textsuperscript{77}.

Recent law enforcement inquiries have disrupted the criminal structures of the Apulian organised crime groups and they have become more vulnerable to the phenomenon of defectors. In spite of some law enforcement successes, they have shown their ability to recover and regenerate\textsuperscript{78}.

\textsuperscript{75} Ministero dell'Interno. (2003). \textit{Relazione del Ministro dell'Interno al Parlamento sull'attività svolta e sui risultati conseguiti dalla Direzione Investigativa Antimafia nel secondo semestre del 2003.}\textsuperscript{76} Paoli, 2007\textsuperscript{77} Ministero dell'Interno, 2003a\textsuperscript{78} Ministero dell'Interno, 2005a
2.4.2. Some Mafioso organizations in the world.

2.4.2. a-The Chinese mafia (The Triads)

“The Triads are historically born based in an insurrectionary motto or protection of the community against the imperial power or against the ethnic majority of the place of the immigration”79. The purpose of the triads is the protection of the members and the development of the business. The researchers think that the first triad has been founded on the XVII century from a group of Buddhist monks of the monastery of Funkien, in the southeast China, with the purpose to destroy the dynasty of that time, Manchu.

With the arrival in the power of the Maoism, the triads are moved to Hong Kong and then to USA, after the approval of the law on the immigration and the naturalization of the Chinese. They are four the principal Chinese groups: Chiu Chao, Wo, 14 Bs and Big Four. The symbol of the silk is a triangle and equilateral, where the sides symbolize three base concepts of the Chinese: Sky and Earth, Man, Symbols. The structure of the organization is pyramidal. To the vertex there is "Shan Shu", the head of the dragon. The ritual of the triad is very similar to that of the Sicilian mafia. In the 90’, the authorities recognized three levels of criminal and Mafioso organization in which the Mafioso organization enjoyed political protection. Yet in December 2000’ the Chinese authorities arrested half of the government in the city of Sheyang for the relationships that existed between criminal organizations and the authorities in the city. The control of the territory is not so rigid as in the Italian mafias, because of the contrasts of the Chinese central government. The strong point of the Chinese criminal organizations is related with the immigration in Europe, in Australia, and in USA. This strong point consists in the permanent use of the violence (toward their fellow countrymen), and in the economic affairs with this phenomenon.

2.4.2. b-The Yakuza.

The Yakuza is born more or less as a criminal organization, organized in gangs, around 1612 to oppose the arrogance of the Samurais, who sowed death and fear, in those years. Among them are mainly distinguished the Tekiys and the Bakutos. The role of the Bakutos at the time is owed to gambling, and exactly to a card game called the Hanafuga (the game of the flowers), and more precisely to the lost combination of three cards (8-9-3 Ya-Ku-Za), which name is used for identifying the Japanese mafia. In the second half of the 1800 Yakuza starts to benefit more and more of a vast protection, boasting of solid bonds with the economic apparatus. Also tolerated by the Americans during their occupation in the Second World War, the Yakuza acquired the necessary strength, to expand itself.

The structure of the Yakuza is vertically developed and reflects the characteristic of the Japanese society. The head of the family (ikka) is oyabun, the father, and the cobuns (sons) owe him obedience, fidelity and respect. The Yakuza, as mafia, has a ritual of its own: Rice, Salt, Fish and Sake are post in the niche of an altar when it begins the ceremony. The affiliate has to be loyal to the ikka and serve to its oyabun with filial clemency, and he has to live with this family for the whole life. The Oyabun has to be considered as the eternal father. Among the activities that recognize the Yakuza are drug trafficking, gambling and recycling of the dirty money, but also prostitution, weapons trafficking, the usury, and the extortion.

2.4.2.c-The Mexican mafia.

The Mexican mafia is the most representative organization, a sort of labour union, the so-called Federation. The most powerful organizations are:

1- The clan in Tijuana where commands Arrellano-Felix, Banjamin, Francisco and Ramon bros. This organization operates in the bay of the California Norte and is the most violent organization.

2 - The Sonorous’s placard is checked by Miguel Quinterno, who operates in an inclusive territory among Hermosillo, Agua Prieta, Guadalajara and Culiacan.
3-Juarez’s placard is controlled by Amando Funtes the Mexican most powerful drugs trafficker
4-The gulf group, based in Matamorors, in the state of Tamualipas is checked by Juan Garcia Abrego.

2.4.2.d-The Russian mafia.
The Russian mafia is considered a true mafia after the collapse of the ex Soviet Union. The most known organization is the Solncevo, whose name derives from a district in Moscow. The Solncevo is composed of around 9 000 individuals, organized in ten united semiautonomous units. The principal leaders are (were) Sergej Mikhajlov e Viktor Averin, while the founder of the group was Sergej Timofev who was killed in 1994. The organization is governed by a council of twelve individuals that regularly meet in different parts of the world and maintains a common fund (<< obscak >>, this word derives from the slang in the Soviet jails in which many leaders have been held for a long time) that are reinvested in the legal economy both in Russia or to the foreign countries. In Russia, soldiers and officials demobilized from the Red Army, veterans of the war in Afghanistan and professional athletes, who suddenly quitteed because of the collapse of the Soviet sporting system, overflowed the post Soviet mafia. The Russian mafia has been expanded in so many countries of the world and its principal activities are the traffic of weapons, drug, prostitution and recycling of the dirty money.
Concluding on the study of the mafia as part of the organized crime, we succeed in defining the mafia as:

**Mafia is a complex phenomenon and a whole criminal organizations that reproduces itself by expanding in the world (from Europe, in USA, in Canada and even in Australia), it acts inside a vast and branched relatively context, shaping a system of violence and illegality, finalized to the accumulation of the capital, the acquisition and management of power positions, at the usage of a cultural code and it benefits a certain social consent with its "Long standing role in society".**

"So who sustains that the mafia is a method and a mentality ignores or underestimates that it is also a structured system and not uniform: who underlines the organizational-criminal aspects ignores its behavioural and social aspects: who privileges the cultural aspect reduces it as a subculture, produced by an incomplete process of modernization, don’t consider that in the Mafioso phenomenon are present as well, archaic and modern aspects, for which the barbaric code of the revenge and of homicide goes alongside with the more sophisticated financial inventions: who evidence the economic entrepreneurial value underestimates the politic one".80.

3. THE CHARACTERISTICS OF ORGANIZED CRIME.

3.1. The characteristics for the identification of organized crime:

So to **define** the organized crime, first is needed to **identify** it: The identification\(^8\) of organized crime is passing through the characteristics of organized crime. The council of European Union asked member states to apply the following criteria when defining crime or criminal groups as ‘organized crime’. A certain definition is used by the EU (doc 6204/2/97 Enfopol 35 review 2) for its annual organized crime report.

And there are:

3.1. a- Mandatory criteria
3.1. b- Optional criteria

3.1. a- **Mandatory criteria.**
1. Collaboration of three or more people
2. For a prolonged or indefinite of time
3. Suspected or convicted of committing serious criminal offences
4. With the objective of pursuing profit/or power

3.1. b- **Optional criteria.**
5. Having a specific task or role for each participant
6. Using some form of internal discipline and control
7. Using violence or other means suitable for intimidation
8. Exerting influence on politics, the media, public administration, law enforcement, the administration of justice or the economy by corruption or any other means
9. Using commercial or business-like structures
10. Engaged in money laundering
11. Operating on an international level.

\(^8\) The “pentiti-collaborators of justice) were those who identifies the characteristics of organized crime: their 1- structure (internal organization) 2- activities, and 3- their modus operandi.
Referring to Paul Roger on its lecture in 7 May 1998, he points out the majority key elements:

These are:

2. Ultimate aim – to make huge sums of money.
3. Multiply criminal enterprises.
4. Involvement in legitimate business.
5. Violence and discipline.
7. Virtual immunity from prosecution for those at higher levels.

Although there is no general agreement on a common definition of organized crime, several studies in the field have identified the following elements:

Continuity. The group must have a stable structure suited to the continuous and indefinite commission of crimes, independently of its membership.

Violence. The group exploits its force to use or to threaten to use violence or intimidation. This may be addressed to other criminal groups, minor criminals, legal/illegal competitors and victims.

Enterprise. The group’s main goals are profit and power. These are usually pursued through the production and/or exchange of illegal goods and/or services in illegal markets.

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85 Finckenauer 2005, 66 – 67; Hagan 2006, 134; Spinellis 1997, 813
Immunity. The group can corrupt or exert influence on other subjects (politicians, media, judicial authorities, and administrators, enterprises) in order to shield its activities from any form of sanctions. None of these elements is clearly present in the legal definitions of criminal organization of the international legal instruments. The EU’s notion of organized crime is thus far from the results of scientific research in the field.

3.2. Organized crime structure.

The characteristics of organized crime can be found or identified in their internal structure, and in this case there are:

3.2. a- Well structured criminal organizations.
3.2. b- Semi – structured criminal organization.
3.2. c- Networks of criminal entrepreneurs.

3.2. a- Regarding the well – structured criminal organizations, we could say that this concerns to the organizations like Italian mafia, and exactly the “Cosa Nostra” and “Ndrangheta”. Their internal organization is hierarchical and pyramid in form, where everyone has a role. The main characteristic of the certain criminal organizations is the “total control of the territory”, or in other words the total control of the politic, private and economic life within a territory. The organizations like these are called “La signoria territoriale”. Characteristic for these types of organizations is the use of violence (three direction of the violence and intimidation, corruption and influence in political and economic power. They are engaged in all kind of activities, from the traditional, like the different trafficking to the most profitable and less risk.

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86 Finckenauer 2005, 66; 2006, 36; Spinellis 1997, 813
88 There are evidences that they have transformed the influence into corruption and they tend and have had relation with the political world.
3.2. b- *The Semi – Structured criminal organizations* are those organizations hierarchically and horizontally organized. These are organizations where everyone has a role and they use the violence, intimidation, corruption and their influence. Their main characteristic is the maintaining of the internal structure for the purpose of their illegal activities. They are not interested for the total control of the territory like the Italian Mafia. Their main activities in which they are engaged are most the traditional activities such as the trafficking in human beings, drugs, and illegal immigration, but the activity on money laundering is not absent. In this group of criminal organizations are the Balkan criminal organizations, Russian and Nigerian criminal organizations.

3.2. c- *The network of criminal entrepreneurs* is composed from the organization that are
1- *structured or stable* for a period of time and this is related to the activity they are engaged.
2- *Fluid* with very loose membership and chains of command. These networks of criminal entrepreneurs consisting of individuals or small cells of criminals, as well as legal structures. (Legal commercial structures and professionals).

### 3.3. The Modus Operandi.

The characteristics that consist in their modus operandi:

3.3. a- **Use of Violence and intimidation**
This is the very characteristic for the groups such the Italian, Russian and Balkans . They use violence against victims, against members of groups inside of the same organization or against members of the other organizations, and against “the state servitors”. In Italy, intimidation and violence against state bodies are used by the Camorra, the Ndrangheta, the sacra Corona Unita and now less by the Cosa Nostra.
In Albania, the use of violence by organized crime against the state representatives is reflected in the large number of law enforcement officials killed in recent years, and most in the year 1997.

3.3. b-The use of influence and the corruption.
The use of influence in politicians, the public administration, the criminal justice system, media and private sector representatives is seen as a tool of the organized crime that facilitates their operation, but this is taking the form of corruption:

The case of corruption.
The corruption is a mediator that intervenes in the market of the illegality. Its role consists of favouring and promoting the exchanges that are considered corruptive.

The corruption as a system.
The definition of the corruption as a system, consists in the fact that it is a complex phenomenon including, the attacked sectors, the subjects that act and its methods, tools and mechanisms that are used. The phenomenon of the corruption is complex and can be defined as a pyramid where in the highest part corresponds the political corruption that buys political decisions and involves more than one subject from both the parts. In the lowest part is the simple corruption, that buys administrative decisions and it often follows the model of the accord between two subjects. The political corruption has its beginning in the bond with the organized crime.
The organized crime checks the votes and is represented as an organized mediator and beneficiary. The method of corruption in reality represents an elevated accord among the organized crime that controls the territory(control the packets), through its wide family and the political party, sustained by the organized crime ,who pretends to have the privileges of different types and forms. A related sector to the political corruption is the sector of the public contracts, where the corruption has found greater space, and is becoming a complex phenomenon.
It consists in its need for a continuous complicity, but also from the fact that the corruption introduces itself as an anti-nomico system in comparison to a transparent management of the system. The corruption is defined a bad coin that sends away the good one, it is a very effective system for the control of the competition.

-The process of privatisation (another sector in risk of the corruption).
The process of privatisation is characterized by common elements:
1-the great dimensions
2–the multiform of the affair fines.
This process is a transaction of high-level because there are in game great sums of money, careers and standard of life of the people.
The corruption also infiltrates in the sector of the concessions and licenses. The typical character of this sector is the delegation of functions to low hierarchical level of the power deciding regarding the applications. The states submit three types of concessions and license behaviours:
1 - The using of goods of public ownership
2 - The carrying out of an activity (economic)
3 - The attainment of a status
Another field of corruption are the judicial activities, those of the police and of the customs. The organized crime corrupts the judge in order to be unpunished, but also the policeman or also the customs officer to have in change favours in its activity. (the case of the Balkan countries where a strong tendency is seen toward the "Collusion Agreements"). In the corruption process and in its system, exactly in the exchange corruption, is very meaningful the presence of the subjects of corruption, that can be passive subjects, those people that could be corrupted, which can be separated according the political and administrative corruption line. In the other side there are active subjects, those people that corrupt. This is an active corruption and practised by subjects of different type. On one side the entrepreneurs use the corruption as a method to have privileged access in determined markets and therefore as an alternative system to the correct competition.
The entrepreneurs can act both with the political corruption, and with administrative one. The reasons that motivate the active corruption are always brought back to one, to get a non-due advantage. Another subject whose functions are defined in the market of the corruption is the mediator. This can be defined as a bivalent subject in the market of the corruption. The mediators operate in the shade, loading themselves to some of the riskiest operations that allow to happily bring the illegitimate exchanges to conclusion, to make come into contact political and entrepreneurs, propose formulas and to communicate information that make him believable, to negotiate the share, to receive and to transmit to the last recipients. The mediators can be professionals, but also political. As a true market, the corruption needs a financial system that uses its tools of payment in the corruptive exchanges. The first mean of payment is the use of the liquid money. They can be also gifts done in many ways.

3.3. c. **From trafficking to money Laundering.**

3.3. c.1. *The combining of different activities.*

The organized crime groups are engaged in different activities. They often combined two different activities, for example the combining of drug trafficking with illegal immigration. In this case the people and the drugs are transported from the same group in the same route. But in the same time these two trafficking could be combined with the trafficking in human beings, and this way of combining two or more illegal activities was introduced from the Albanian organized groups that had operating among the “Adriatic Route”. But the same is true when the organized crime groups are engaged in different types of drugs, or better say “In synthetic drugs there are two trends: the appearance of Kosovo Albanians (formerly active along the ‘Balkan route’) as coordinators and the growing role of Dutch citizens resident in Hungary and associated with the drug producers and distributors in other European Countries”\(^89\).

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3.3. c.2 *The hiding of the illegal activities.*

The activities of the organized crime groups are made always in the “clandestine way” and this could be seen in all types of the illegal activities. For the activity of drug trafficking, illegal immigration, and the trafficking in human beings are used only the clandestine canals or routes for the successful of the operations. Also the trafficking of the girls for the purpose of “the exercising the prostitution” can be hidden using a cover activity like babysitter, models, hairdressers, or dancers in the club nights, but in reality the girls are transported for the purpose of the prostitution (to the girls in this case are procured the legal documents or forged documents).

3.3. c.3 *The use of facilitators.*

The organized crime within their activity, are operating among their facilitators. The role of facilitators consists in the fact that they conduct to a certain complex or difficult elements of criminal enterprises. They are professionals with specific skills, legal or financial experts such as lawyers and accountants.

3.3. c.4 *The use of commercial structures.*

In their activities the organized crime groups or networks are operating among the use of commercial structures:

The use of commercial structures serves:

1- As a cover or shield for an illegal activity.
2- To provide logistical support and other services for criminal activity.
3- To interface with public activities and other legal structures of society.
4- To participate in public procurement.
5- To diversify business interests.
6- To control or monopolizes markets.

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90 They are called also the ‘White Collars’, and are the very specialist on recycling and reinvestments of the dirty money.
The use of commercial structures is characterized by the joint use of existing primarily legal companies or companies especially founded for criminal purposes. Organized crime groups are increasingly taking advantage of the benefits of legitimate company structures to conduct or hide their criminal activities. These legal structures are often abused to launder or reinvest profits.

3.3. d. transnational operations

The organized crime groups operate in a vaster arena around the world collaborating to each other. The complexity of activities in which they operate and the global exploitation of the opportunities offered, has emerged the necessity to stress the collaboration between organized crime groups, and that makes their activities transnational in nature. According to article 3, paragraph 2 of the United Nation Convention on Transnational Organized crime, an offence is ‘transnational in nature’ if:

1- If it is committed in more than one state.
2- It is committed in one state but a substantial part of its preparation, planning, direction or control takes place in another state.
3- It is committed in one state but involves an organized criminal group that engages in criminal activities in more than one state, or
4- It is committed in one State but has substantial effects in another state.
4. TYPES OF CRIME

Among their activities organized crime groups committed different types of crime, which are accepted from the European Union and adopted in reality from the United Nation Convention on organized crime. This list of types of crimes is reflected in the annual reports of the Europol.

4.1-Crimes against persons:
Defining crimes against persons, it is important to distinguish trafficking in human beings (THB) from facilitated illegal immigration (people smuggling). 91

4.1. a. Illegal immigration or smuggling of persons. The problem of illegal immigration is being a growing problem within the EU. Large number of people across the borders of the EU for the purpose of the work and this is exploited by the organized crime groups that are operating in this field. The facilitation of the illegal entry is seen as a lucrative activity from the organized crime groups92. Another important type of crime which is linked to the illegal immigration is the:

4.1. b. Trafficking in human beings. According to article 3(a) of the protocol of the UNTOC:

“Trafficking in persons shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of person having control over another person, for the purpose of exploitation. Exploitation shall include, as a minimum the exploitation of the prostitution of others or others forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”93.

91 OCTA 2009 “EU organized crime threat assessment” Europol Report, page 21
93 Martti Lehti and Kauko Aromaa, Trafficking in Women and Children in Europe, National Research Institute of Legal Policy, and European Institute for crime prevention and control affiliated with the United Nations, Finland, page 115.
This article defines the smuggling of persons as:

…the procurement, in order to obtain directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a state party of which the person is not a national or permanent resident. If there are similarities between these two types of crime the very difference consist in that, the trafficking in human beings is not limited to illegal border crossing or entry (illegal immigration or smuggled persons) but involves continued exploitation (and this is the case of exploitation of the women and children for the purpose of the prostitution) and the trafficked persons are the victims that requiring protection because the trafficking of persons include the threat or use of force, coercion, fraud, deception against the victims.

The Eastern Europe (Ukraine, Bulgaria, Romania, Albania) are known as source countries. More, explaining the differences Trafficking differs greatly from smuggling, as international bodies and non-governmental organizations are taking pains to point out. Whereas migration through smuggling rings is primarily voluntary and initiated by the potential migrant, trafficking is generally involuntary in nature; victims of trafficking are coerced, sold or at the most rare and extreme, kidnapped into their work. Coercion can take place through deceit, sexual abuse, torture, starvation, imprisonment, and threats of violence against family members, among some tactics used by traffickers. Although many of the women trafficked are aware that they will be migrating, they are deceived about the nature of the work they will be forced to perform, as well as their future working conditions. ‘Traffickers (in Moldova) turn up in a rural community during a drought or before a harvest, when food is scarce, and persuade poor couples to sell their daughters for a small amount of money…Other girls are kidnapped from their homes and orphanages, while many destitute women are lured to foreign lands by assurances of work, income, and visas, only to find themselves forced into prostitution and slave labor.’ An additional difference between smuggled and trafficked migrants lies in entry to the country of destination. Women who are trafficked to be prostituted enter the countries of transit and destination both through legal and illegal avenues.

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Through the issuance of tourist and student visas, as well as forged documents, many of the women who will later be exploited pass borders through regular means, while accompanied by their exploiters. This differs greatly from the increasingly common picture of smuggling seen in Europe, with hundreds of immigrants being smuggled past borders by boat or truck. One of the most striking differences between smuggling and trafficking is that, in the vast majority of cases, smuggled adult migrants are male, while trafficked adult migrants are female. Further, the nature of the action is fundamentally different. Whereas smuggling is an action with the intention to assist in the border crossing (albeit in a sometimes oppressive or life-threatening way, for exorbitant fees) the intention of trafficking is oppression of the victim and the ensuing financial gain following migration. Therefore, the focus of smuggling is entry into the destination country, while the focus of trafficking is the exploitation of the migrant upon arrival.

“The most active OC groups involved in trafficking human beings in the EU are Bulgarian, Nigerian and Romanian. Groups from other Balkan countries, China, Moldova, Russia, Turkey, Ukraine and Vietnam are also frequently reported. Albanian OC groups tend to exploit victims trafficked by other groups. Trafficking of women for sexual exploitation is stabilizing, while trafficking for forced labor is increasing, mainly in the sectors of construction, drug production and begging. Intelligence indicates increasing trafficking in children destined for illegal labor – including domestic slavery – or sexual exploitation.

Romanian OC groups of Roma ethnicity dominate trafficking in children. Where child victims have been identified it has been observed that their willingness to cooperate with the authorities is almost nonexistent. Reports of child victims exhibiting non-cooperative behavior and taking every opportunity to escape from ‘protective custody’ indicates the level of control exercised by their traffickers. It is also suspected that the use of children has been determined as a strategy by the traffickers to the law enforcement response.

Possible future sources of trafficked human beings include Black Sea, Caucasus and Central Asian countries (e.g. Georgia and Kyrgyzstan), whose present threat is not clear. Africa, Asia (China, Indian sub-continent and Vietnam), Eastern Europe (including FSU
countries), Latin America, the Middle East and the Western Balkans are sources of illegal immigrants toward the EU.

Profiling smugglers, many countries suggest that their nationality often approximates to that of those smuggled, although criminal partnership involving a wider range of OC groups cannot be excluded. Certain transit countries are evolving into final destinations. Inconsistent immigration laws and national anomalies in the Schengen visa policy facilitate this criminal activity. In relation to THB and people smuggling, the abuse of legal migration systems is likely to increase in the future, especially in the area of visa and residence permits. Also, intra-EU freedom of movement can be abused by OC groups, as in the case of Eastern European EU citizens exploited as prostitutes in Western Europe. Criminals can legally move, and other migrants flowing in significant numbers to MS can be exploited or enlisted by OC groups.\(^9\)

4.1. c Drug Trafficking

The drug trafficking is considered one of the most important activities of organized crime groups and networks in Europe, and this activity is considered an international activity of organized crime because requires the collaboration of different organized crime groups from the source to the destined countries. The member states of the European Union remain a major consumer market for all types of illicit drugs.\(^{96}\) The cocaine supply is still dominated by Colombian OC groups who have their networks in Europe. Cocaine is produced in the Andean region in South America. The importance of West Africa with regard to cocaine transit, storage and redistribution is increasing. Its geographical position between Andean cocaine suppliers and EU buyers, combined with economic vulnerabilities, established criminal networks and widespread corruption are decisive facilitating factors for international drug traffickers.

\(^{95}\) OCTA 2009 “EU organized crime threat assessment” Europol Report, page 21  
\(^{96}\) European Monitoring Centre Drugs Addiction.
South American OC groups dominate wholesale international trafficking. West African and domestic OC groups manage secondary distribution within EU. Cocaine enters the European market also through Turkey. Middle East consumers and domestic demand can explain this detour.

The heroine product is destined for the EU. Heroin trafficking continues to be fed by large scale opium cultivation in Afghanistan. Opiates reach Europe through the Balkan routes and the Northern Black Sea route across Central Asia and Russia. Alternative routes, established trading infrastructures, and geographical proximity to source or destination countries are among the main influencing factors of heroin trafficking. The relevant role of Turkish, Kurdish, and Pakistani and Iranian OC groups is due to their geographical and historical proximity to the main source country.

“Extensive commercial trade between Asia and Europe and a good infrastructure of land, sea and air connections provide ample opportunity for the trafficking of heroin to Europe”

Also the synthetic drugs production sites where located in the Netherlands and Belgium, and Inexpensive production, high profits and low levels of specialization characterize synthetic drugs trafficking. Production and consumption areas seem to coincide or be adjacent, contributing to abating costs and transportation risks. Production in Eastern European countries is increasing, although Dutch and Belgian OC groups are still dominant. The production and diversion of precursor chemicals is vital for the trade. Chinese OC groups, dominant in the trade, have ceased to use traditional routes: there has, however, been no decline in the amount of chemicals seized, suggesting that these OCGs have found new routes as yet unidentified by the authorities. Amphetamine production is significantly increasing in Bulgaria and Turkey, also destined towards the Middle East market. Methamphetamine production is increasing, as well as that of designer drugs produced by Dutch and Belgian OC groups expanding their markets. The growing industrial productivity and penetration into the global market by China and India, combined with

licit access to precursor chemicals, is reflected in a noticeable increase in the production of synthetic drugs in these countries.

The Marihuana is supplied to the member states from Colombia, Jamaica, and Nigeria. Morocco, Albania, Pakistan and Afghanistan are the most important source countries of the hashish and the EU remains the most commonly used of this type of drug.

Morocco is still the main EU supplier of cannabis resin. Cooperation of Moroccan OC groups with domestic criminals assures knowledge of legislation gaps and provides local contacts.

The increasing trend of indoor cannabis plantations in MS can be due to geographical proximity to the destination or distribution markets. Victims of THB or illegal immigrants repaying the costs of their journey are often exploited in cannabis plantations. Vietnamese growers are widely reported. In countries with large numbers of cannabis users domestic production is increasing to meet the demand and optimize the profits. In the UK 80 per cent of cannabis is thought to be produced domestically.\(^{(98)}\)

4.2. **Financial crime and other crimes against property:**

4.2. a. **Money laundering.**

In order to permit the investment of the capital accumulated from the illegal activity, in other business, crime proceeds need to be laundered in a way they become indistinguishable from legitimate money\(^{(99)}\). The process of the money laundering is described using a three-stage model:

**Placement** - The ways in which direct proceeds from crime are channeled into the financial systems, typically in the form of cash payments.

**Layering** - The circulation of found through a succession of financial transactions to erase any connection of the placed capital to its criminal origin, typically through money transfers or cheques.

\(^{(98)}\) OCTA 2009 “EU organized crime threat assessment” Europol Report, page 19-20

Integration - The investment of originally criminal proceeds into legal and economics flows, typically into real estate, business capital, valuable objects. Laundering methods include the acquisition of property and assets, the use of legitimate and quasi legitimate businesses with a higher turnover of cash (including restaurants, night clubs, car sales and repair companies), bureau de exchange etc. Another activity is the payment using the category of payment card fraud.

“…Payment card fraud depends on the theft of personal financial data through a wide range of techniques, including wire tapping, hacking into electronic databases, phishing, and pharming and skimming. It is not always necessary to copy card data to a counterfeit card or white plastic as illegal use of payment cards includes card-not-present purchases. While carding is controlled predominantly by Russian OC groups, Romanian and Bulgarian OC groups prefer traditional skimming activities. The Modus Operandi has changed slightly in 2008, as criminals are moving from automated-teller machines (ATM) to points of sale (POS) in hypermarkets and shops to obtain payment card data…”

“…The quality of counterfeiting euro banknotes is continuously improving because of the sophisticated printing facilitated and the recruitment of professionals with considerable printing skills. The vast majority of counterfeit euro banknotes are produced in Bulgaria, Lithuania, Poland, Albania, Turkey and Kosovo.”

“…Counterfeited documents are a horizontal facilitator touching upon all criminal markets. Identity documents, passports, birth certificates, and residence permits are among the most commonly targeted documents ensuring smooth perpetration of cross border organized crime. Counterfeit customs declarations and quality certificates are presented to custom offices while declaring contents of shipments. Counterfeit breeding documents are submitted to MS consulates to obtain visas.”

During the year 2004 was seen an increasing of counterfeiting of euro.

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100 European Union Organized crime Report, December 2004, page 22
102 OCTA 2009 “EU organized crime threat assessment” Europol Report, page 23
4.3 - **Organized robberies, burglaries and theft.**
In the reports of the Europol is stressing the increased phenomenon of these types of crime. Most of these activities are carried out by a number of different organized crime groups from the Eastern Europe and former Yugoslavia.

4.4 - **Other commodity trafficking.**
4.4. a. **The stolen Vehicles**
“Spain reports the growing number of vehicles stolen in car-jacking cases (obtaining the keys to the vehicle by threatening with violence) and home-jacking cases (obtaining the key to the vehicle by breaking into a house…Especially Bulgarian, Russian and Romanian OC groups are mentioned in this respect. Germany and Austria remain important transit countries for stolen vehicles being transported towards Eastern Europe while Greece is the route for stolen vehicles destined for Eastern Europe, Middle East and Asia”\(^{104}\).

4.4. b. **Smuggling of Tobacco and other commodities.**
Smuggling of commodities involves the illegal transport of such commodities across borders in order to evade taxes on these goods. Organized crime exploits the differential taxes of highly taxed goods such as cigarettes, alcohol etc. The most reported in the EU is the tobacco smuggling. Organized crime groups and networks exploit opportunities and weak control structures and use fraud, corruption and sometimes violence to smuggle legally produced as well as counterfeit cigarettes. “…Italy remains an important crossroads for the illegal tobacco trade because of the price of its geographical position in the heart of the Mediterranean”\(^{105}\).

More, “…Italian OC co-operates with foreign criminal groups to smuggle both genuine and counterfeit cigarettes to the EU and Italy, and the latter’s overall position as one of the gateways of smuggled cigarettes into the EU seems to be strengthening. Currently around half of all cigarettes seized in Italy are counterfeits and there are indications that

\(^{105}\) Ibidem, page 14.
Chinese counterfeit goods, and especially counterfeit cigarettes, are currently being introduced relatively aggressively into the EU markets. The routing of cigarettes is often a complex process which abuses the free movement of goods in the EU and changes constantly. In any case, Greece, Dubai, China and Poland/East Europe play important roles in supplying cigarettes either for the Italian market or through Italy to the other EU countries. These countries do not necessarily produce the cigarettes but are rather used as transit points towards the north of Europe. Community customs procedures can be extensively abused for criminal ends: cigarettes may be imported into the EU and placed in Community transit (VAT to be paid only in the destination country); after this the transit procedure may be changed into export procedure so that the cover load (often consisting of low-value goods such as counterfeit products) is exported but the counterfeit cigarettes stay in the EU; alternatively the cigarettes may be legally exported and then smuggled back into the EU and re-directed to the relevant black markets…

The tobacco smuggling undermines public health policies.

4.4. c. Trafficking of illicit fire-arms.

“Cases of illicit fire-arms trafficking investigated in the EU continue to show the involvement of former Yugoslavian OC groups. The Netherlands also reported the involvement of suspects originating from the UK, the USA and Turkey as key players within OC groups. Fire-arms originating from Croatia are made in legal and illegal armory workshops and fire-arms trafficked from the Balkan region are often stolen from military warehouses”.

The OSCE in 2000 adopted an approach by focusing on small arms and light Weapons (SALW), which were defined as follows:

Small arms and light weapons are man-portable weapons made or modified to military specifications for use as lethal instruments of war. Small arms are broadly categorized as those weapons intended for use by

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individual members of armed or security forces. They include revolvers and self-loading pistols; rifles and carbines; sub-machine guns; assault rifles; and light machine guns. Light weapons are broadly categorized as those weapons intended for use by several members of armed or security forces serving as crew. They include heavy machine guns; hand-held under-barrel and mounted grenade launchers; Portable anti-aircraft guns; portable anti-tank guns; recoilless rifles; portable launchers of anti-tank missile and rocket systems; portable launchers of anti-aircraft missile systems; and mortars of calibers less 100 mm.

In Belgium (for example), the Italian mafias have always been purchasing illegal arms though in interviews, respondents were divided as to the amount of weapons. One person mentioned that Belgium was especially important in reference to arms trafficking, before the new legislation was introduced. Italian organized criminals bought their weapons in Belgium, because there was not much control in this country. Another person mentioned that at one point, several clans had pooled their money to buy a large number of weapons. The other respondents claimed that, though the Italian mafia is certainly active in arms trafficking, these are not the large weapons traffics that you sometimes see or hear about. It is more in the range of buying 20 to 30 weapons, which are needed for carrying out other criminal offences. When the Italian prosecutors Vincenzo Macri and Francesco Mollace were interviewed about the whereabouts of the Italian mafia groups in Belgium, and they also stated that Belgium is frequently used to provide arms and for drug trafficking.
II. PUSHING FACTORS ON EXPANDING AND STRENGTHENING OF ORGANIZED CRIME.

1- **Globalization**

The process of economic globalization increases the possibility not only for the legal, but also for illegal activities. Now transnational organized crime is able to exploit business opportunities worldwide, to increase profits, caused by weak controls at reduced risks. The process of globalization offers new opportunities in term of fraud, financial crime and other form of economic crime, which are believed to be many times more profitable and the same time less risky. For example, for many eastern European countries tax fraud, capital flight\(^{108}\) and crimes committed in the process of privatization appear to be of greater relevance.

Another important point regarding the globalization is that it facilitates the expansion of international trade in almost any sector, so it facilitates transnational operation of criminal organizations, on the classical and traditional crime markets such as trafficking in drugs, trafficking in human beings, trafficking in arms, vehicles, cigarettes. In a globalized world, where borders and barriers among different legal systems increasingly fade out, organized crime may take advantage of the new opportunities that these changes provide also for criminals. The globalization process helps creation of “safe havens” for criminal organizations, where their criminal activities are lightly countered or do not even constitute offences at all.

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\(^{108}\) Capital flight includes money made available by developed to developing countries in the form of financial aid, which is not spent or invested locally but returns to the developing countries as illegally exported capital. This money is often deposited with the very bank that gave the credits in the first place.
2- The fall of Communism

The fall of the communism caused the opening of the ancienne borders of the states under that regime, with the EU. This process allowed not only the movement of the citizens, but the movement of the criminals and both their activities throughout the EU.

As a result, two trends emerged in early 1990:

2.1. Firstly, transnational organized crime expanded in both geographical spread and crime type attention- both in quantitative and in qualitative terms.
2.2. Secondly, international cooperation between organized crime groups increased with the presence of groups from eastern European Countries.

Over the years the activity of the organized crime groups has been reinforced, and the area of the European Community is dominated from a growing number of foreign criminal groups.

3- The enlargement of EU.

The process of the enlargement of the EU has given many opportunities to the criminal organization to expand their criminal activities. The entrance of the 10 member states on the first may of year 2004 increases the possibility for the organized crime to strengthen their role throughout the European Union. With the enlargement of the EU, the external borders of the European Community have moved to Russian, Moldova, and to the Balkan countries. These countries are known to be important source and transit countries of both goods and people.

Organized crime groups are using countries we mentioned to develop their activities in particular to reinvest their capital accumulated from their illegal activities.
“...Enlargement has been good for a lot of Eastern countries because it has reinforced the rule of law. But I also believe that it has created a number of problems: as it stands, criminals have no trouble moving money in several Eastern countries, because there are no more border posts and there is no common anti-Mafia legislation.

For years, criminal networks have been seeking to take advantage of new opportunities offered by Eastern Europe. They have "bought" huge chunks of what were East Germany, Romania, and the former Yugoslavia in Albania and Kosovo. And while Italian criminal networks were buying up everything they could in the new free Europe, other western businesses were much more prudent. I remember reading a transcript of a Sicilian police wire-tap dating from just a few days before the fall of the Berlin Wall in 1989, which in substance indicated that the Cosa Nostra – the Sicilian Mafia – had plans to travel there with suitcases full of money within 48 hours...

The challenge for the European Union is the managing of flow of trafficked people in that come from (new) member States, the Czech Republic, Slovakia, Slovenia, Hungary, Poland, Cyprus, Malta, Estonia, Lithuania, Latvia, Romania and Bulgaria. Countries that have had the role of areas of origin or transit may find themselves at the receiving end of human trafficking following European Union expansion. A further challenge is the emerging phenomenon of trafficking through the Internet, with traffickers buying and selling their victims on-line. Both European Union expansion and the use of the Internet for the sex business are set to assist the growth of trafficking and affect trafficking routes in coming years.

Although trafficking routes frequently change, the general direction of trafficking remains the same.

109 Interview Saviano: “Mafia has conquered Balkans”
As movements of raw materials flow from poorer countries to richer countries, so do movements of migrants, both legal and illegal. As stated at the UN World Conference against Racism in Durban, South Africa, “[Trafficking victims] are the commodities in a multi-billion dollar global industry, dominated by highly organized criminal groups operating with impunity.” Mary Robinson, the UN High Commissioner for Human Rights continued by commenting, “Trafficking is... inherently discriminatory. In the case of trafficking into the global sex industry, we are talking about men from relatively prosperous countries paying for the sexual services of women and girls – and sometimes men and boys – from less wealthy countries. This is more than a labor rights issue or an issue of unequal development. It is a basic human rights issue because it involves such a massive and harmful form of discrimination.”

4- **New technologies.**

The introducing of the new technologies and the developing of existing technologies in the formation and communication system and the expansion of the internet, has provided and created new opportunities for organized crime. These opportunities consist in the new tools for organized crime that provide the committing of old types of crime as well as for the new types of crime. New technologies have transformed the ways in which people communicate, and this has had a very strong influence on, among others, financial transactions.

Organized crimes have been the main beneficiaries of the technological process. Advances in such areas such as telecommunications, transport and the development of cyberspace, have provided huge opportunities and a vast arena for organized crime groups in which to operate. The creation of the so-called << virtual identities>>, played a crucial role in facilitating and covering up criminal activities.
Also the development in the area of computer and printing technologies system has provided new opportunities and has increased the capacity to produce counterfeit documentations of various types.

The spread of mobile phones and their use has provided the using of pirated or encrypted phones manner. New information and communication technologies facilitate the sexual exploitation of women and children because they enable people to easily buy, sell and exchange million of images and videos of sexual exploitation of women and children.

**Technology** is a key facilitating factor in drug trafficking. Special equipment for production, anonymous internet communication, electronic money transfers, online trade challenge both international and national anti-drug policies and control mechanisms. Industrial development allows for the production of new, as yet uncontrolled substances or for the camouflage of more traditional substances. The **prison system** provides an opportunity to meet associates, to exchange information, to delegate tasks or to set up new criminal connections. **Social tolerance** and alluring media coverage contribute to mitigate inhibitions and increase consumption\(^\text{110}\).

“… **Technology** developments allow manufacturing counterfeit products of higher quality, which makes their detection and seizure more difficult and leads to a larger profit for OC groups. The internet, with its virtual stores selling all kinds of goods is one of the man distribution channels for counterfeits”\(^\text{111}\).

\(^\text{110}\) OCTA 2009 “EU organized crime threat assessment” Europol Report, page 20
\(^\text{111}\) OCTA 2009 “EU organized crime threat assessment” Europol Report, page 23
4- The geographical position of the states.

- The geographical position\textsuperscript{112} of the countries consists in their important and strategic location and the possibility of the organized crime groups to exploit these positions.

The various trafficking in South Eastern Europe for example is facilitated by its geographical location between source countries such as Moldova, Rumania and Ukraine, and first destination countries (in particular Greece and Italy), for trafficking to the EU, by close cooperation between Albanian, Kosovo, Serbian – Montenegro and Macedonian criminal networks and corruption of local officials. The key position of Albania and Italy gave the possibility to organized crime groups from Albania, Italy and other Balkan countries, to develop their traditional activities such as illegal immigration, trafficking in human being, drugs and trafficking of goods etc.

“…The importance of West Africa with regard to cocaine transit, storage and redistribution is increasing. Its geographical position between Andean cocaine suppliers and EU buyers, combined with economic vulnerabilities, established criminal networks and widespread corruption are decisive facilitating factors for international drug traffickers …

…The increasing trend of indoor cannabis plantations in MS can be due to geographical proximity to the destination or distribution markets…”\textsuperscript{113}

“…The Southern criminal hub is established around the geographical position of Italy as one of the gateways into the EU and the central role of Italian OC groups with contacts in many countries and regions all over the world…”\textsuperscript{114}

“… The increasing trend of indoor cannabis plantations in MS can be due to geographical proximity to the destination or distribution markets…”\textsuperscript{115}

\textsuperscript{112} A kind of definition about the meaning of the “The geographical position”, used for the purpose of the research.

\textsuperscript{113} OCTA 2009 “EU organized crime threat assessment” Europol Report, page 19

\textsuperscript{114} OCTA 2009 “EU organized crime threat assessment” Europol Report, page 32
5- **Socio – cultural factors.**

The organized crime is also facilitated by particular, culture factor and the existence of subcultures with little attachment to mainstream social groups. Organized crime can have a cultural bases in that criminal networks function as on alternative social system or that the bonding mechanism are based on trust, ethnicity or family ties. Historical and cultural factors influence the distribution of organized crime groups of foreign origin in each of the member states.

For example Spain and Portugal enjoy historic and cultural links with South American countries like Colombia and Argentina. The same sort of links between the Netherlands and its former colony of Surinam is without doubt one of the causal factors that explains the intensive smuggling of cocaine from South America to Western Europe via the Netherlands.

7- **The diversity of procedural systems.**

The organized crime groups are the main beneficiaries of differences that exist between criminal laws in member states of the European Union and the non – EU member state. The criminals come from a different country, commit an offence in another country, and live in another country. They benefit from the absent of law, or sanctions, or from the soft laws in same member states. For example the illegal immigration was not punished in Italy (in a hard way), and the organized crime groups from Albania ( at that time) in collaboration with Italian, Turks organized crime groups where engaged and exploited this opportunity and developed the illegal immigration facilitating these operations, and trafficking in human beings, by the Adriatic routes and by the lands.

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115 OCTA 2009 “EU organized crime threat assessment” Europol Report, page 19
The case of Switzerland allowed (‘till the 1992) the organized crime groups to launder the “dirty money” arrived from their criminal activities, because the existence of the law of the Bank secrecy. An important way to make huge sums of money is the exploiting of the third countries which are called fiscal paradises because of the lack of the law that regulates and fights money laundering.

- The need for harmonization of organized crime national laws within EU.

Important efforts of harmonization have targeted the sector of organized crime legislation. The driver for these efforts was the idea that in a globalized world, where borders and barriers among different legal systems increasingly fade out, organized crime may take advantage of the new opportunities that these changes provide also for criminals.\textsuperscript{116}

Therefore, a certain level of harmonization of criminal legislation may prevent the creation of “safe havens” for criminal organizations, where their criminal activities are lightly countered or do not even constitute offences at all. Even if this reasoning received criticisms, arguing that rarely organized groups would ever consider the differences among national criminal legislation when organizing their criminal activities the idea of providing every criminal justice system with commonly agreed definitions and tools for tackling organized crime seems reasonable.\textsuperscript{117}

\textit{The argument that many countries do not experience the presence of organized crime does not undermine the underlying rationale of harmonization of criminal legislation dealing with organized crime.}


\textsuperscript{117} Van der Wilt H (2002) Harmonisation and harmonising measures in criminal law. Royal Netherlands Academy of Science, Amsterdam, page 77–86
The lack of serious criminal groups within the borders of a country should not prevent it from approving some minimum legislation tackling criminal organizations applicable only in case of need\textsuperscript{118}.

So, harmonization and approximation of organized crime legislation among EU Member States is important to effectively counter organized crime and prevent its displacement toward countries where the criminal law system is less prepared to tackle it.

\textsuperscript{118} This is the example of Sweden, Denmark, etc., and you can find it in the chapter of \textit{Investigative Methods}
III. EUROPEAN UNION COOPERATION IN CRIMINAL LAW

Regarding its own internal functioning and organization of EU the cooperation in criminal law, can be translated as principal pillar on investigation and combating organized crime. In this context, has been discovered that Judicial, Police and Custom Cooperation in criminal matters is the best way to achieve the goal.

The EU cooperation in the criminal law started long time before its formalization by the III pillar of the Maastricht Treaty\textsuperscript{119}.

The legal framework of cooperation models.
The EU impact on the criminal law regimes of the member states is very heterogeneous and the EU cooperation in the criminal law can be structures as follows:

1. “\textit{Indirect}” impact caused by the obligation of the member states to implement and enforce the European law by sufficiently effective sanctions, including the sanction of the criminal character\textsuperscript{120}.

2. \textit{The establishment of the specialized agencies, institutions and structures} (Europol, Eurojust, CEPOL, FRONTEX, which focus primarily on the support of the national judicial and police authorities, training of their members, exchange of information and best practices or collection and evaluation of data gathered by national authorities\textsuperscript{121}.

3. \textit{The harmonization and approximation of national rules of criminal law}, which requires standardization of the substantive (terrorism, drug related offences, child pornography) and procedural (right of the victim of the crime) national law, i.e. the (minimal) EU standard is established.

However, the enforcement of the harmonized legislation is left to national authorities. This form of the cooperation is the criminal law is still rather limited, even if the recent

\textsuperscript{120} Comp. ECJ cases Drexel C-299/86 or Hansen C-326/88).
\textsuperscript{121} For more elaborate analysis of the problem see Peers 2006:524-550.
case-law of the ECJ has enlarged the capacity to harmonize the substantive criminal law even by the EC legislation.\textsuperscript{122}

4. \textit{The application of the mutual recognition principle}. The impact of the mutual recognition on national criminal law is less visible since the mutual recognition mechanism is perceived as the least invasive and form of the cooperation which requires “only” the adaptation of the procedural rules. However, the mutual recognition mechanism also require “opening” of the national system to the influence of the legal systems of other EU states, signing a blank cheque to foreign judiciary or as the opening of the domestic criminal law to the unknown legal spaces.

\textsuperscript{122} For more elaborate analysis of the problem see Peers 2006:400-422.
JUDICIAL, POLICE AND CUSTOM COOPERATION IN CRIMINAL MATTERS.

- The judicial cooperation and its instruments of the European Union in the fight against the organized crime. An evolutionary process, until the Maastricht treaty. The judicial instruments of the struggle against the organized crime where inserted both, in the first pillar and in the third pillar of the European Union. Such tools can be found in the evolutionary process of the judicial and police cooperation in the criminal matters from the treaty of Maastricht to that of Amsterdam and Nice. This evolutionary process is referred as an important step in the process of the European integration that is the configuration of the European Union within the first pillar of the community sector, with the second pillar, the cooperation in common foreign and security policy, and with the third pillar, justice and internal affairs. When the treaty of Amsterdam came into force (undertaken the 2-nd of October 1997), from the 1st of May 1999, some sectors of the third pillar (established with the treaty of Maastricht), the immigration’s policies, the policy of the visas, the judicial cooperation in civil matters, have been transferred inside the first pillar (within the course and scope of the free circulation of people), “generalizing” such subjects and therefore guaranteeing the effectiveness of these tools and forms of integration in the European level, which operate in the first pillar and constitute the figure of the community method, in contrast to what happened within the second and third pillars that operated with the intergovernmental methods. Instead the same treaties promoted also a greater effectiveness inside the third pillar, setting as an objective of the European Union the realization of a “real area of freedom, justice and security,”

123 The Lisbon treaty has abolished the pillars.
124 The importance of the community method, for some issues related to some activities of organized crime, you’ll find when I speak in the part of my thesis “The importance of community method on fighting trafficking in human beings and illegal immigration”
- The judicial tools adapted in the third pillar are (where):

2. Decisions and framework decisions.
3. Conventions.

1. The common positions, had an eminent political value, they were not legally bound, having a relief especially in the external relationships of the member countries and in the head offices of other international organizations.

2. The decisions and framework decisions, adoptable to re approach the legislative dispositions and rules of the member states, these are\textsuperscript{125} (where) bound to the member states only when the result to get, is rational to the means used to reach such a result.

3. The conventions are typical tools of the international law, on which the approval from the Council is reached often with great difficulties. To come into effect it is required the ratification by the part of the member countries, according to the respective constitutional forecasts, however this ratification required quite a lot of years.

The cooperation in the criminal matters can be helpful, for instance, to introduce:

1. Common definitions of some serious crimes.
2. Harmonization of different national legislations and the fixation of the least punishments, proportional and dissuasive.

The Amsterdam Treaty inserted the penal judicial cooperation in the third pillar (articles 29–42 of the treaty on UE), specifying the objectives and particularly of the fight against the organized crime.

The first actions of judicial cooperation in criminal matters have been elaborated close to the Council of Europe.

These are the conventions of 1957 on the extradition and of 1959 on the mutual assistance in the penal subject. After the introduction of this sector in Maastricht treaty, such instruments (conventions) have been completed with the conventions of the European Union: Convention related to the simplified procedure of extradition (of

\textsuperscript{125} The states are still using some framework decision in force, for example “EU Framework decision (2008) on the fight against organized crime”
1995), based on the conventions of 1957 and 1996, relative extradition among the states members of the Union. That integrates the conventions of 1957 on the extradition, and the convention of 1997 on the repression of terrorism. The European Council of Tamper has sustained that the principle of reciprocal recognition has to become the angular stone of an authentic and safe place. In the European Council of Laeken in December 2001 is discussed on the European Arrest Warrant. In November 1995 the Council has adopted a resolution related to the protection of the witnesses in the struggle against the organized crime and in December 1996 a resolution related to the collaborators in actions of the justice. In April 1996 a common action has allowed the exchange of Liaison Magistrates, to improve the judicial cooperation among the member states of the European Union. On May 29-th, 2000, the Council has adopted an action that establishes accordingly to the article 34 of the treaty on the European Union, the convention related to the judicial legal assistance in criminal matters, among the member states, to integrate the convention of the 1959 of the Council of Europe, to extend the mutual assistance among the judicial authorities and to modernize the existing methods. Besides these juridical tools, in June 1997 the European Council of Amsterdam has adopted a list of actions on the struggle against the organized crime, that understands thirty recommendations to promote a practical cooperation and a possible approach of some national legislations, for the penal infringements and sanctions in the sectors of the organized crime and the drug trafficking. In this plan of action have been adopted some relative provisions as:

1. The incrimination of the corruption in the private sector.
2. The cases of involvement to a criminal organization.

In the plan of action of the Council and Commission on December 1998 is anticipated the strengthening of the penal judicial cooperation, the approximation of penal law norms and the formalities to face some horizontal problems (safeguard of the data, taxes, prevention of the crime, assistance to the victims, the pact of pre adhesion to fight the organized crime in the countries of Central and East Europe).

126 http://europa.eu.int/scadplus/glossary/arrest_warrant_it.htm
127 The ‘liaison magistrates’ could be considered as a structure for the judicial cooperation
On February 28-th, 2002 the Council has adopted a decision that constitutes EUROJUST that will operate in a close collaboration with ‘European Judicial Network’. The recognition of the ordinances of the judicial authorities is considered the basic principle of the judicial cooperation. The indicting elements of a member state have to be approved from the jurisdictions of all the member states.

Another important and effective turning point in the field of judicial cooperation in criminal matters is the creation of ‘Joint investigation teams’. These teams, which are established by the European council of Tamper in October 1999, and by the May 2000 EU Convention on mutual legal assistance, have been the object of e recent Framework Decision of the EU Council, which “in order to fight organized crime in the most effective way possible” considered it appropriate to adopt a legally binding tool “the joint investigation teams”, to carry out investigations into drugs trafficking, trafficking in human beings etc.

A joint investigation team may be set up:
1- When the criminal investigations by a member state involve difficult and important investigations that are linked with other member states.
2- When several member states carry out investigations into crimes which, due to the circumstances, require coordinated and concerted action in the interested member states.

Another important tool in the process of judicial cooperation in criminal matters is council framework decision 2002/584/JHA of 13 June 2002 that creates the ‘European Arrest Warrant’. The European Arrest Warrant was proposed by the commission and from 1 July 2004 is designed to replace the current extraditions that we have mentioned above. The framework decision defines “European Arrest Warrant” as any judicial decision issued by a member state with a view to the arrest or surrender by another member state of a requested person for the purpose of:

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128 Scadplus: Cooperazione giudiziaria in materia penale: rete giudiziaria europea.
129 Bruggeman, W., (5 December 2002), Security and combating international organized crime and Terrorism, page 28.
130 Bruggeman, W., (5 December 2002), Security and combating international organized crime and Terrorism, page 40.
1- Conducting a criminal prosecution.
2- Executing a custodial sentence.
3- Executing a detention order.

The “European Arrest Warrant”, could be applied in the cases:
1- Where a final sentence of imprisonment or a detention order has been imposed for a period of at least four months.
2- For offences punishable by imprisonment or a detention order for a maximum period of at least one year. If they are punishable in the issuing member states by a custodial sentence of at least three years, the following offences, among others, may give rise to surrender without verification of the double criminality of the act: terrorism, trafficking in human beings, corruption, participation in a criminal organization, counterfeiting currency, murder, racism and xenophobia, rape, trafficking in stolen vehicles, fraud that affecting the financial interest of the communities.

- The structures in the Judicial Cooperation in criminal matters.

1- The liaison Magistrates.
2- The European Judicial Network.
3- Eurojust

1- The liaison magistrates. In the 1996 a common action established the so-called network of “liaison magistrates” to be exchanged among the various EU states. The idea was to facilitate and speed up all forms of judicial cooperation, in particular by establishing direct contacts with the competent services and judicial authorities of the state of destination. The tasks of liaison magistrates shall normally include any activity designed to encourage and accelerate all forms of judicial cooperation in criminal and civil matters, in particular by establishing direct links with the relevant departments and judicial authorities in the host states. Under arrangements agreed between the home member states and the host member states, liaison magistrates’ tasks may also include any activity connected with handling the exchange of information and statistics designed to promote mutual understanding of the legal systems and legal data bases of the states concerned and to further relations between the legal professions in each of those states.
2- The European judicial Network was created by the joint action 98/428/JHA of 29 June 1998, adopted by the council and has for the objective to improve the judicial cooperation between member states of the EU, in order to combat, in particular, serious crime (organized crime, corruption, drug trafficking, terrorism).

Among others the European Judicial Network:

1- Will facilitate the establishment of appropriate contacts between the contact points in the various member states.
2- Will organize periodic meetings of the members states’ representatives.
3- Will constantly provide a certain amount of up-to-date background information, notably by means of an appropriate telecommunications network

3. Euro just\(^{131}\). With the council decision of 28 February 2002 is setting up the Euro just with a view to reinforcing the fight against serious crime. The objectives of the Euro just are:

1- To stimulate and improve coordination among the national authorities of the member states during the conduct of investigation and prosecution.
2- To improve cooperation among the national authorities of the members states, especially in the field of the mutual legal assistance and extradition.

In fact the Eurojust competences are partly derived from those of Europol, and mainly comprise computer crime, fraud, corruption and other crime against the financial interests of the European Community, money laundering, environmental crime, participation in organized crime, other crimes committed alongside those indicated above. Regarding the achieving of these objectives, Eurojust carries out its tasks through either one or more of the national members, or as a college. When it operates as college, Euro just can among other things, ask the competent authorities of the member states concerned to undertake the investigation or prosecution of specific acts. If the National authorities decide not to comply with such request, they shall inform Euro just of their decision and of the reasons for it.

\(^{131}\) http://europa.eu.int/scadplus/leg/it/lvb/133188.htm
Strengthening Eurojust – the New Eurojust Decision

The new legal framework of Eurojust entered into force on 4 June 2009 to further enhance its operational effectiveness. Council Decision 2009/426/JHA on the strengthening of Eurojust has the main objectives to:

- Improve the transmission of information to Eurojust.
- Create a common minimum basis of National Members’ powers.
- Establish an emergency On-Call Coordination\textsuperscript{132}.
- Strengthen Eurojust’s ties with national authorities and co-operation with the European Judicial Network.
- Enhance relations with partners such as Europol, OLAF, Frontex, and third States.

A timely and efficient implementation of the revised Eurojust Decision both at Eurojust and in the Member States is essential in helping to provide an area of Freedom, Security and Justice for the citizens of the European Union.

- Principle of mutual recognition in EU law.

Mutual recognition: Cornerstone of judicial co-operation in criminal matters within the Union.

The principle of mutual recognition occupies very prominent position in the legal documents establishing the framework of the EU cooperation in criminal law and was described as “the motor of the European integration in criminal law in recent years.”\textsuperscript{133}

\textsuperscript{132} Eurojust launched On-Call Coordination on 04 June 2011. In order to fulfil its tasks in urgent cases, Eurojust has set up an On-Call Coordination (OCC). The OCC enables judicial authorities and law enforcement officials to request Eurojust’s assistance on a 24 hour/7 day basis. Notification of the OCC telephone numbers is restricted to judges, prosecutors and law enforcement officials. Please contact your National Desk at Eurojust for advice.

In the Tampere Program of 1999\(^{134}\), the European Council endorsed the principle of mutual cooperation as future “cornerstone of judicial co-operation in criminal matters within the Union.” The Hague program of 2004\(^{135}\), called for the of completion of the comprehensive program of judicial decisions covering “judicial decisions in all phases of criminal procedures or otherwise relevant to such procedures, such as the gathering and admissibility of evidence, conflicts of jurisdiction and the ne bis in idem principle and the execution of final sentences of imprisonment or other (alternative) sanctions” and stressed the interconnection between the development of the mutual recognition implies partial harmonization of the procedural standards and rights within the EU. At the primary law level, the Treaty of Nice (negotiated in 2000, entered in force in 2003) was less ambitious and did not included an explicit reference to the mutual recognition principle when it simply refers to facilitation and acceleration of cooperation between competent national authorities proceedings and the enforcement of decisions, facilitating extradition between Member States and preventing conflicts of national rules and national jurisdiction (art. 31 TEU)\(^{136}\).

The Lisbon Treaty is far more ambitious and explicitly declares the principle of mutual recognition as the cornerstone of the judicial cooperation in criminal law\(^{137}\).

- **European Arrest Warrant as a model for EU cooperation.**

  “An EU legal instrument of the mutual recognition”

The framework decision on the European Arrest Warrant (Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender

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\(^{134}\) Conclusions of the European Council, October 5-6, 1999.

\(^{135}\) Conclusions of the European Council, November 4-5, 2004.

\(^{136}\) The article 31 TEU has been only partially amended by the Treaty of Nice, the section of the extradition and prevention of the jurisdictional conflicts is inherited from the previous versions of the TEU.

\(^{137}\) More for this issue you’ll find in the part when I speak for the changes made by the abovementioned treaty.
procedures between Member States/EAW FD) has been adopted as the *model* "flagship" EU legal instrument of the mutual recognition mechanism eliminating the obstacles reducing the efficiency of the traditional cooperation under the international law (e.g. the dual criminality requirement, absence of extradition of nationals, exclusion of political, military and tax offences from the extradition regime).

To compensate the "revolutionary" character of the EAW and to mitigate the opposition of (some) member states in the Council and the concerns of the European Parliament, the EAW framework decision contains also a catalogue of mandatory (e.g. amnesty, age limits) and optional (e.g. the territoriality clause) grounds for non-execution and the declaration that the EAW does not influence the obligations of member states to respect fundamental rights protected by the European Convention on Human Rights and the constitutional principles of member states.\(^{138}\)

The aftermath of the EAW is relatively well known and analyzed. Regardless the Commission's statement that *the arrest warrant is a success*, (Report on the EAW from 2007, COM (2007) 407), the transposition of the EAW FD was far from speedy, complete and uncontroversial (e.g. comp. example in Italy in Impalà 2005 and report by the Commission from 2005 - COM (2005)63 and COM (2005)267) Many member states did not transposed the EAW FD within the time-limit and several members states introduced additional procedural safeguard in the process of the transposition of the EAW FD.\(^{139}\)

The constitutionality of the transposition measures was challenged in several member states (Germany, Poland, Czech Republic, Greece, Cyprus, and Belgium) and the validity of the EAW framework decision has been reviewed even by the European Court of Justice.


\(^{139}\) Mitsilegas 2006, page 1277
- **Other EU instruments of mutual recognition.**

Other EU instruments of mutual recognition (FDs\textsuperscript{140} on the mutual recognition of orders freezing property and evidence\textsuperscript{141}, financial penalties\textsuperscript{142}, confiscation orders\textsuperscript{143}) adopted or negotiated since 2002, have not received the same attention by political and judicial authorities. This does not mean however, that they do not have the potential to trigger significant controversies in the future – in contrast (as mentioned above) since the European arrest warrant was considered as particularly sensitive, the EAW scheme contains several safeguards to prevent the potential constitutional conflicts. Those safeguards are not present or are less elaborated in the other EU mutual recognition instruments\textsuperscript{144}.)

\textsuperscript{140} It means “Framework decision”.

\textsuperscript{141} Council Framework Decision 2003/577/JHA of 22 July 2003, on the execution in the European Union of orders freezing property or evidence

\textsuperscript{142} Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties.

\textsuperscript{143} Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders.

\textsuperscript{144} Mitsilegas 2006:1277
- Harmonization of EU organized crime law.

What is the harmonization process?
Parallel to the term of mutual recognition the one of harmonization is often used. It can be said from the outset, that there is no objective and generally accepted meaning of this term.

To define harmonization, one could start from a general definition, according to which, “harmonization is a process in which diverse elements are adapted to each other so as to form a coherent whole, while retaining their individuality” The goal of harmonization of laws is a state of them which has been defined as “consistency” or “coherence”.

The term of harmonization can be considered as process of relations of different rules in different states and exactly as: making these rules similar, making them identical, or replacing them by a supranational rule.

Harmonization can be understood as adaption or approximation or, if necessary, even unification of norms and institutions concerning the criminal law and procedure, in order to achieve the best possible result in investigating and combating organized crime: “The elimination of disparities between the criminal justice systems of different States”\(^{145}\). The core of this common meaning is the elimination of disparities or differences.

Why the harmonization is important?

There are two autonomous functions of harmonization and approximation\(^ {146}\).

First, harmonization and approximation may have a role of support to the functioning of judicial cooperation in criminal matters\(^ {147}\).

\(^{145}\) Tadic FM (2002), How harmonious can harmonisation be? A theoretical approach towards harmonisation of (criminal) law, p 1–21 8; Joutsen 2002b, 410


\(^{147}\) Weyembergh 2005a, 1578–1580; Spencer 2002, 47–48; Joutsen 2006, 30
Second, harmonization and approximation are an important step for the effective functioning of European bodies (Europol, Eurojust, but eventually a European Public Prosecutor) in the field of criminal policy. Harmonization and approximation may also provide useful for effective fight against crime. Contrasting legal systems may create opportunities for criminals, so harmonization and approximation should remove obstacles to an effective action against cross-border forms of criminality.

- The importance of harmonization in the sector of organized crime.

Important efforts of harmonization have targeted the sector of organized crime legislation. The driver for these efforts was the idea that in a globalized world, where borders and barriers among different legal systems increasingly fade out, organized crime may take advantage of the new opportunities that these changes provide also for criminals.

Therefore, a certain level of harmonization of criminal legislation may prevent the creation of “safe havens” for criminal organizations, where their criminal activities are lightly countered or do not even constitute offences at all. Even if this reasoning received criticisms, arguing that rarely organized groups would ever consider the differences among national criminal legislation when organizing their criminal activities, the idea of providing every criminal justice system with commonly agreed definitions and tools for tackling organized crime seems reasonable.

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148 Weyembergh 2005a, 1577
150 Joutsen 2006, 30
151 Joutsen 2006, 7
The argument that many countries do not experience the presence of organized crime does not undermine the underlying rationale of harmonization of criminal legislation dealing with organized crime.

The lack of serious criminal groups within the borders of a country should not prevent it from approving some minimum legislation tackling criminal organizations applicable only in case of need. So, harmonization and approximation of organized crime legislation among EU Member States is important to effectively counter organized crime and prevent its displacement toward countries where the criminal law system is less prepared to tackle it.

International legal instruments aimed at the harmonization of organized crime legislation in EU.

Related to the importance of harmonization, several international institutions reacted to the claims for harmonization in the sector of organized crime with different measures. These include the Council of Europe, the United Nations and the European Union. These intensive efforts toward harmonization of criminal legislation dealing with organized crime produced a number of policy documents, recommendations and studies, including some important legal instruments provided with binding force. Three international legal instruments aiming at harmonization and approximation of national legislations exist in the sector of organized crime. These are, the Joint Action (98/733/JHA), on Making It a Criminal Offence to Participate in a Criminal Organization in the Member States of the European Union, the United Nations Convention against Transnational Organized Crime and, the Framework Decision (2008/841/JHA) on the Fight against Organized Crime.
POLICE AND CUSTOMS COOPERATION IN THE EUROPEAN UNION.

In the prospect of the safety of the confinements of the European Union, always threatened by the activities of the international organized crime, an important role beside the judicial cooperation also assumes the cooperation among the services of police and customs. These services are found in first line in the struggle against the organized crime. To help and to facilitate the cooperation of these services have been adopted numerous measures.

The police cooperation.

The first formal cooperation among representatives of police of the states members has set out in 1976, with the constitution of the working group of Trevi. This cooperation concerned particularly the terrorism and the problems of organization and formation of the services of police. Then in 1995 with the accords of Schengen, the presence is foreseen from the signatory states of "liaison officials", which the authorities were entrusted in law enforcement to exchange information concerning drugs, organized crime and on people suspected to illegally have entered within UE. Already in the Maastricht treaty have been indicated the matters of common interest for which is encouraged the cooperation against the drug traffic and some forms of organized crime. In June 1997 the vertex of the UE adopted a particular Action Plan in the prospect of a coherent strategy in the fight against the organized crime. The plan contained thirty concrete recommendations. Many of these recommendations have been applied from that very moment and in May 2000 a plan of control has been adopted (The strategy of the European Union for a new millennium). To impel the plans of actions, the European Union has launched a certain number of programs. The most particular programs are:

1 - OISIN intended to strengthen the cooperation among the authorities entrusted to the application of the law.

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152 http://europa.eu.int/scadplus/glossary/schengen_agreement_it.htm
153 Scadplus: Organized crime: Strategy for the prevention and control of organized crime
2 - STOP, to increase the contacts among the persons responsible of the action against the traffic of human beings and the sexual exploitation of children.

3 - FALCONE; a program of formation and cooperation destined to the persons responsible of the struggle against the organized crime, to impel a better and narrow cooperation in the struggle against the organized crime, among the services responsible in law enforcement within the European Union, particularly the police and the customs authorities.

Also in 1998 the European Union has adopted a Plan of Action to apply in the best way the parts of the Amsterdam treaty, tending to make the European Union “An area of freedom, security and justice.” Recently the Council of Tamper has continued in this direction, deciding on October 1999, a complete strategy destined to strengthen the struggle against the organized crime. Such strategy involved a number of initiatives directed to favour the cooperation of police. The vertex of Tamper foresaw the creation of a ‘European College of Police’\(^\text{154}\), to form the next generation of representatives of the police, allowing them to know their homologous in the other European countries and to work in a European context.

This Institute should work as a network of the national schools of police and to be open to the persons responsible of the services of police. The initiatives of Tamper included as well the creation of a structure of correlation to the persons responsible of the European services of police.

This structure of correlation of the services of police is reunited for the first time in Lisbon in April 2000 and has already contributed to create personal relations among the executives of such services in the states members.

The persons responsible of this structure should bring to more spontaneous contributions and a closer collaboration among the national and local polices of the states members. Later, the Hague Programme and the Stockholm Programme highlighted the need for coherence and consolidation in developing exchanges of information and criminal intelligence in the EU\(^\text{155}\).

\(^\text{154}\) Decision of Council of 22 December 2000

Over the past years, the processing and sharing of information and criminal intelligence have improved cross-border cooperation between national law enforcement authorities and enhanced the safety of EU citizens.

EIXM seeks to take stock of information exchanges for the purposes of criminal investigations and criminal intelligence operations within the EU and with the four EFTA states (Switzerland, Norway, Iceland and Liechtenstein).

Cross-border information exchange

Initially, EIXM\textsuperscript{156} was a mapping exercise that focused on the following four aspects of cross-border information exchange:

1. EU and national legislation regulating cross-border exchanges of information and criminal intelligence, yielding a map of legislation
2. communication channels through which information and criminal intelligence are exchanged, yielding a map of communication channels
3. the actual flow of information and criminal intelligence between the relevant actors, yielding a map of information flows
4. databases and IT solutions used to exchange information and criminal intelligence, yielding a map of technological solutions.

As called on the Commission by the Stockholm Programme, this assessment includes an evaluation of the current instruments, such as the Prüm Decision and the so-called Swedish Initiative. In this context, the Commission closely cooperates with EU States, Europol, Eurojust and the European Data Protection Supervisor (EDPS). Subsequently, EIXM will develop, on the basis of the mapping exercise, recommendations for achieving better coherence and consolidation in the area of information exchange.

\textsuperscript{156}European Information Exchange Model (EIXM), Exchange of information constitutes the central aspect of EU law enforcement cooperation. Timely access to accurate and up-to-date information and criminal intelligence is essential for national law enforcement authorities to successfully detect, prevent and investigate crime or criminal activity. Through EIXM, the EU ensures better security for all.
In 2012, this ongoing work will be presented in a Communication to the Council and the European Parliament.

**The custom cooperation.**

There are (where) two important moments of this collaboration. First in 1967 when the states members have signed “The convention in Naples” that consisted in the cooperation and mutual assistance among the customs administrations with the purpose to fight against Frauds. In the following years and exactly in 1995 the convention has been signed on the customs system SID that has allowed constituting a database regarding the traffic of drugs, fire-weapons and military material. A program of action, “customs 2000, 2002, and 2007” has been launched in the topic of the customs cooperation.

The first program “Customs 2000” has been launched with the Decision n. 210/97/CE of the Parliament and of the Council, on December 1996, and intended to fight against the lack of coherence and transparency of the community actions in this sector.

The second program “Customs 2002” has been adopted with the Decision n. 105/2000/CE of the Parliament and of the Council, on December 17-th, 2003 and consisted:

1 - to guarantee a uniform application of the community legislations and the common politics.
2 - to protect the affairs of the citizens and the transactions.
3 - to prevent frauds and illegitimate trafficking.
4 - to improve the cooperation among the customs administrations of the member states and between the member states and the commission.

The third program “Customs 2007” constituted with the Decision n. 253/2003/CE of the Parliament and Council of February 11-th, 2003 and it has as objectives:

1 - the reinforcement of the struggle against fraud.
2 - to improve the preparation of the enlargement of the European Union.
3 - initiatives in the informatics level to normalize the treatment and the exchanges of
the data between operators and states members.

4 - objectives and tools more structured.

This program assembles on the following elements:

1 - the use of the existing instruments of information.

2 - the normalization of the actual methods of operation and the practical assistance to the candidate countries.

3 - the improvement of the struggle against the frauds through a better management of the risks and a greater cooperation among the national customs.

4 - the creation of a competitive context for the enterprises, through the reduction of the costs.

5 - the organization of more suitable actions for the activities conducted in the representation of the program.

Such initiatives and the various programs are important, but a considerable progress in the collaboration among the forces of police and the customs, has been the creation of Europol, an organism of the European Union entrusted to implement the law and composed of officials of polices and customs. The aim of the Customs 2013 programme is to help customs administrations in participating countries to facilitate legitimate trade and to simplify and speed up customs procedures. The programme started in 2008 and end on 31 December 2013.

The main objectives of the Customs 2013 programme are:

- supporting the development of a pan-European electronic customs environment which ensures that customs activities match the needs of the internal market, guarantees the protection of the EC's financial interests and increases safety and security;
- contributing to the creation of a modernised customs code;
- increasing cooperation between customs administrations so that they carry out their tasks as effectively as if they were a single administration;

• increasing international customs cooperation between EU customs administrations and third countries customs authorities in the field of supply chain security;
• preparing for enlargement, including the sharing of experience and knowledge with the customs administrations of the countries concerned;
• developing cooperation and exchange of information and best practices with the customs administrations of third countries, in particular candidate countries, potential candidate countries and partner countries of the European Neighbourhood Policy;
• standardising and simplifying customs systems and controls to reduce the administrative burden and the cost of compliance for economic operators;
• identifying, developing and applying best working practices.

EUROPOL.
The structure of Europol starts its activities in January 1994, with the Europol Drugs Unit (EDU)\textsuperscript{158}, whose mission is to coordinate the efforts of the national forces of police in the struggle against the drug trafficking. Then with the act of the Council, of July 26-th, 1995 is established ‘The Europol Convention’, that found a European Office of Police (Europol). The activities were initiated on January 1-st, 1999, following the ratification from all the member states of the UE of the Europol convention that has notably widened its responsibilities.
The objective of Europol\textsuperscript{159} is to improve the cooperation and the efficiency of the competent services of the states members in the following sectors:
1 - The prevention and the struggle against the terrorism.
2 - The illegitimate traffic of drugs.
3 –the traffic of human being.
4 - The networks of clandestine immigration.

\textsuperscript{158}SCADplus: Europol Drugs Unit
\textsuperscript{159}SCADplus: Convenzione Europol: Ufficio europeo di polizia
5 - The traffic of radioactive and nuclear substances.
6 - The illegitimate traffic of vehicles.
7 - The struggle against the falsification of Euro.
8 - The international recycling of the profits from the criminal activity.

Europol is located in the Dutch city of Aja, fundamentally a centre of coordination of police destined to gather, to analyze and to spread the information. Europol has been created to help the authorities entrusted in law enforcement (essentially the police and customs), when they have to investigate in more than one of the states members of the UE. The service of Europol is an informatics database, that when will be fully operational, will allow to seek and to easily investigate the traces of the well known criminals or suspected and to furnish an instant access to million of common issues of the entrusted services.

Europol Council Decision

The Europol Convention has been replaced by the Council Decision of 6 April 2009 establishing the European Police Office (EUROPOL) as of 1st of January 2001.

Competence given to Europol by the article 4 of this Council Decision.

Europol’s competence shall cover organized crime, terrorism and other forms of serious crime as listed in the Annex affecting two or more Member States in such a way as to require a common approach by the Member States owing to the scale, significance and consequences of the offences. (Article 4)
- Lisbon Treaty brings changes in the JHA field.

“Communitarization” of the EU Criminal Law. No more, intergovernmental cooperation\(^\text{160}\).

The Lisbon Treaty changed the regulatory framework of the EU cooperation at different levels. Cooperation in criminal law is influenced by both the abolishment (of phasing-out) of the ex pillar structure of the European Union (de facto communitarization of the III Pillar) and by the changes of general nature (e.g. the establishment of common legislative procedure and the incorporation of the EU Charter of Fundamental Rights).

The Lisbon Treaty brings major changes in its reform of the general framework of the EU cooperation in the criminal law, in particular:

1. Reduction of the right of the legislative initiative – in the pre-Lisbon situation, the legislative initiative in the criminal law was possessed both by the European Commission and by individual member states. The Lisbon Treaty requires that the legislative norms in the criminal cooperation must be proposed either by the European Commission or by a group of at least one quarter of member states\(^\text{161}\).

2. Changes in the decision making procedure – the ordinary legislative procedure (qualified majority in the Council and the approval by the European Parliament) is introduced as a default or standard decision making mechanism in all EU policies.

\(^{160}\) The intergovernmental cooperation is explained in the part “The judicial cooperation and its instruments of the European Union in the fight against the organized crime. An evolutionary process, until the Maastricht treaty”

In the domain of the EU cooperation in criminal law, the change is even more visible since the ordinary legislative procedure, which eliminates the right of veto of individual states in the Council, covers both adoption of the rules on mutual recognition of judgments and judicial decision and the harmonization of the substantive definitions of selected crimes.

3. **Expansion of standard “community” legal norms to the cooperation in criminal law.** Directives and regulations do replace the framework decisions and legislative measures for harmonization/approximation of the criminal law.

This change can transplant also the structural features of directives and regulations (direct effect, indirect effect)\(^\text{162}\) to the area of the judicial cooperation in criminal law. The “old” pre-Lisbon framework decisions\(^\text{163}\) will neither cease to exist nor be transformed into directives but will survive in the post-Lisbon space until being replaces by “standard” post-Lisbon EU legislative norms.

- **New areas of crime.**

4. **The Lisbon Treaty enlarges the catalogue of the offences,** where the EU law can harmonize the definition and sanction for the prohibited behavior (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 organized crime)\(^\text{164}\).

\(^{162}\) For comparison of the framework decisions and directives, see Kurcz, Lazowski 2007 (Kurcz, B. Lazowski, A. Two Sides of the Same Coin. Framework Decisions and Directives Compared. In Eeckhout, P., Tridimas, T. (eds.) Yearbook of European Law, Oxford University Press, Oxford 2007, s. 177-204

\(^{163}\) The former framework decisions where replaced by the directives. The framework decisions adopted before 1 December 2009 are still in force, and the case of the framework decisions on the fight organized crime, gives the opportunity to member states to harmonize their own organized crime legislation.

\(^{164}\) Article 83 of the TFEU:

The European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis.
Further, the Lisbon treaty incorporates and clarifies impacts of the recent ECJ case-law relevant for the criminal law, in particular the competence to harmonize criminal law sanctions for violation of the European (non-criminal) standards and regulations as reaction to the ECJ “environmental criminal sanctions” and “ship source pollution” judgments C-176/03 and C-440/05). The enlarged competences of the EU in the harmonization of the substantive criminal law can also have indirect impact to the mutual recognition mechanism as the enlarging volume of the harmonized substantive criminal law reduces the space for potential conflicts under the mutual recognition scheme (e.g. in the disputes linked with abolition of the dual criminality requirement).

Regarding the mutual recognition in the criminal law, the Treaty establishing the Constitution for Europe and the Lisbon/Reform Treaty further develop (ed) the trends formulated in the EU JHA since the 90s and the conservative nature of the changes under the Lisbon/Reform Treaty in the JHA, and particular the mutual mechanism scheme, has been even criticized for lack of ambitions and resignation to solving problems complication the mutual recognition in the pre-Lisbon European Union\(^{165}\).

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These areas of crime are the following: 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 organized crime. On the basis of developments in crime, the Council may adopt a decision identifying other areas of crime that meet the criteria specified in this paragraph. It shall act unanimously after obtaining the consent of the European Parliament.

**Versus the European Public Prosecutor’s office.**

*(to combat crimes affecting the financial interests of the Union and serious crime with a cross-border dimension, there is a need to have a supranational body).*

- **The legal base.**

  TFEU (Art. 86) provides that in the field of judicial cooperation there is a possibility of establishing a European Public Prosecutor’s Office, in order to combat crimes affecting the financial interests of the Union and serious crime with a cross-border dimension\(^{166}\). Such a possibility reveals the awareness that an effective contrast to these forms of criminality cannot result only from the promotion of the intercommunication and the cooperation between Public Prosecution Ministries of the Member States, but that a direct action of EU institutions is required.

- **Establishing procedures.**

  The establishment of a European Public Prosecutor’s Office is facultative and requires regulations unanimously adopted by the Council and the previous consent of the European Parliament.

  The lack of unanimity can be overcome only through a referral to the European Council or by the establishment of an enhanced cooperation among at least nine Member States: in the first case consensus is still required, in the second case the involvement of a limited number of States will affect the effectiveness of the Office.

- **Possible competences.**

  According to the TFEU, the European Public Prosecutor’s Office shall be responsible for investigating, prosecuting and bringing to judgment the perpetrators of, and accomplices in, the offences abovementioned, and it shall exercise the functions of prosecutor in the competent courts of the Member States in relation to such offences.

\(^{166}\) Art. 86 TFUE.

Judicial cooperation in criminal law, according to the Lisbon Treaty, is based on two pillars – the mutual recognition of judicial decisions and the approximation of the criminal law of member states. The mechanism of mutual recognition occupies clearly more prominent position as it is declared as a general principle of cooperation without implicit limitations while the harmonization of the national criminal law is either interconnected with the development of the mutual recognition (art. 82 par. 2 TFEU) or restricted to selected offences (art. 83 TFEU). The hierarchy of the mutual recognition and harmonization approach is also indicated by the art. 67 of the TFEU which (in par. 3) states that “The Union shall endeavor to ensure a high level of security through measures.... ...., as well as through the mutual recognition of judgments in criminal matters and, if necessary, through the approximation of criminal laws”.

However, even the Lisbon Treaty does not establish a general obligation of member state to unconditionally recognize judicial decisions of other member state in the domain of criminal law. The principle of mutual recognition of judgments in criminal law is mentioned as the general objective and should not be interpreted as having direct effect.

With the objective to transform the mutual recognition principle towards practical cooperation (into practice), the TFEU provides for several catalogues of areas for harmonization (approximation) of national rules of criminal law which should transform/develop the primary-law based general principle of into more detailed EU secondary legislation. The first catalogue provides for the adoption of specific legislative measures are expected with the objective of ensuring the recognition of judgments and judicial decisions, prevention of conflicts of jurisdiction in the criminal law domain and “technical” facilitation of cooperation of national authorities, including the education and training of its staff (Article 82 par. 1)\(^{167}\).

\(^{167}\) Article 82 TFEU, par. 1:” Judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions and shall include the approximation of the laws and regulations of the Member States in the areas referred to in paragraph 2 and in Article 83. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures to:

(a) lay down rules and procedures for ensuring recognition throughout the Union of all forms of judgments
This catalogue does not contain any specific limitations (above general limitations contained in the Lisbon/Reform Treaty for shared policies), such as de minimis rule or specific test of subsidiarity. The TFEU is silent about the form of the EU rules which implies that both directives and regulations can be used.

Further, the TFEU provides the constitutional basis for adoption of minimal standards for mutual admissibility of evidence, procedural rights of individuals in the criminal procedure and the rights of the victims of crime. This catalogue can be enlarged by unanimous decision of the Council and with approval of the European Parliament (art. 82 par. 2).

This second catalogue of possible harmonized rules is restricted by the requirement that they cannot go beyond the extent necessary for facilitation of the mutual recognition of judgments and judicial decisions and they do not prevent member states to establish higher level of protection of individuals by its autonomous domestic legislation. Regarding the second catalogue, the European Union rules must explicitly respect (or at least take in account) differences between legal systems and traditions of the EU states.

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168 I.e. above the general rules on the subsidiarity in the EU law.
169 Article 82 TFEU, par. 2: “To the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, the European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules. Such rules shall take into account the differences between the legal traditions and systems of the Member States. They shall concern:
(a) mutual admissibility of evidence between Member States;
(b) the rights of individuals in criminal procedure;
(c) the rights of victims of crime;
(d) any other specific aspects of criminal procedure which the Council has identified in advance by a decision; for the adoption of such a decision, the Council shall act unanimously after obtaining the consent of the European Parliament.
Adoption of the minimum rules referred to in this paragraph shall not prevent Member States from maintaining or introducing a higher level of protection for individuals.”
Further, the Lisbon Treaty provides for a specific safeguard mechanism for situations when the member state would consider that the planned EU harmonizing instrument would affect fundamental aspect of its system of criminal law/justice (art. 82 par. 3 TFEU).\textsuperscript{170} Regarding the second catalogue of standards, the directives are the only legislative measure permitted.

\begin{itemize}
\item - Consequences of the Lisbon Treaty.
\end{itemize}

The Lisbon Treaty will influence the mutual recognition mechanism in two directions:

1. Firstly, the Lisbon Treaty further elaborates the catalogue of the secondary EU legislation which should be adopted in order to make the mutual recognition system within the EU functional.

The catalogue could serve as the guideline for the EU institutions but the materialization of its individual elements is not formally interconnected and the adoption of the concrete norm will depend primarily on the ad hoc voting coalitions in the Council.

2. Secondly, the Lisbon Treaty replaces the unanimity rule in the Council by the ordinary legislative procedure\textsuperscript{171}. This change shall made the adoption of the EU mutual recognition instruments “less complicated” but can also produce more domestic judicial or parliamentary revolts against their domestic transposition.

\textsuperscript{170} Art. 82 par. 3 TFEU: “Where a member of the Council considers that a draft directive as referred to in paragraph 2 would affect fundamental aspects of its criminal justice system, it may request that the draft directive be referred to the European Council. In that case, the ordinary legislative procedure shall be suspended.

After discussion, and in case of a consensus, the European Council shall, within four months of this suspension, refer the draft back to the Council, which shall terminate the suspension of the ordinary legislative procedure.”

\textsuperscript{171} See the ordinary legislative procedure on the TFEU.
IV. INVESTIGATING AND COMBATING THE ACTIVITIES OF ORGANIZED CRIME

EU COMBATING TRAFFICKING OF HUMAN BEINGS.

The organized crime and the traffic of the human beings.

“In Europe, the trafficking of women and children is dominated by the traffic related to the prostitution and other forms of sexual exploitation”\textsuperscript{172}.

The traffic of women and children to the purpose of sexual exploitation is a profitable activity of the organized crime. The traffickers of women and children use different methods to decoy their victims. At times they operate through agencies of job, touristic, shows or matrimonial\textsuperscript{173}.

In the case of children, are observed the procedures of adoption, as well\textsuperscript{174}.
Instead for the women the enticement happens in different methods. The traffickers tend to take advantage of the fragile economic and social situation of the women, tangling with the promise of huge earnings in west. The victims often provided regular documents of trip to cross the frontiers, but after don't renew the visas because they start prostituting.

The European Union against the phenomenon of the traffic of the human beings.
The European Union has always been hocked in the struggle against the traffic of human beings. The struggle against the traffic of human beings turned above all:
1. Trafficking of women and children, finalized to sexual exploitation.
2. Trafficking of human beings destined to be exploited in different jobs.

\textsuperscript{172} Martti Lehti and Kauko Aromaa, \textit{Trafficking in Women and Children in Europe}, National Research Institute of Legal Policy, and European Institute for crime prevention and control affiliated with the United Nations, Finland, page 114.
\textsuperscript{173} Ibidem, page 116
\textsuperscript{174} Ibidem, page 119.
The struggle against the traffic of human beings is very wide, and the European Union has adopted a global strategy to prevent and to fight the traffic of human beings with the participation of all the interested subjects: NGO-s, social operators, judicial authorities, forces of police and the officials entrusted to control the immigration. The phenomenon of the traffic of human beings is an international phenomenon and asks an international cooperation. The phenomenon is fought considering the whole chain of the illegitimate traffic; the recruitment, exploiters, other intermediators and clients.

The traffic of human beings, is a complex phenomenon, and needs to develop:
1. Preventive measures.
2. The penal legislation.
3. The collaboration among forces of police and judicial authorities.
4. The protection, the assistance and the support of the victims.

The European Union from 1996, in a communication of the commission on the traffic of women for sexual exploitation, has set a European strategy to prevent and to fight this phenomenon. For that purpose were extended the EUROPOL competences, to deal with the phenomenon of the traffic of the human beings. To sustain the actions of the responsible institutions in the struggle against the traffic of human beings in 1996 has been launched the program STOP.

In another communication in October 2005, the Commission has proposed for an action plan\textsuperscript{175}, aims at further strengthening, the commitment of the EU, and member states to prevent and fight against trafficking in human beings, committed for the purpose of sexual exploitation, as defined in the ‘framework decision’ of 19 July 2002 on “Combating trafficking in human beings, and to the protection, support and rehabilitation of its victims” The European Union is already customized in preventing the traffic of women.


From the other side it has adopted some more specified measures to the prevention, as:

1. The informative campaign. 
This consists in the prevention and support to the NGO-s, realized through the financial support for the creation and the development of the active NGO-s in the field of the struggle against the traffic of human beings, that allow to complete in an effective way the role of the public authorities. The financing in the 1996 of the NGO "The road", the financing of the International Organization for the Migrations, in its informative campaign organized in Hungary and Bulgaria are the meaningful cases to this purpose (but more you can find in the activities of the IOM).

2. The European Forum for the prevention of the organized crime. 
In November 2000 the commission has introduced in general a communication on the prevention of the crime, including also the traffic of women. The strategy is realized through" The European Forum for the prevention of the organized crime", that turns to the prevention of the traffic of women for sexual exploitation, intended the promotion of the forms of collaboration of different subjects interested in this field. The program STOP is sustained to this purpose.

In the context of the prevention of this phenomenon it is important the:
A. Promotion of the gender parity.
B. The struggle against the poverty.
The strategy of the EU to favour the parity among the genders consists in the promotion of the parity in the civil life. This aspect is related also to the issue of the fully exercising the human rights and the fundamental liberties and to put aside the race, ethnic origin, and religion or believes differences. A particular attention must be paid to the women exposed to multiple discrimination or victims of violence and sexual exploitation.
The European Union has provided to prepare the candidate countries to progressively put into effect the European strategy for the occupation and the different existing dispositions in the social field to European level. For this a greater attention is required to incorporate women to the job market.
The European Social Fund constitutes the principal financial tool to support the European strategies for the occupation and the social integration.

The need for harmonization and approximation of penal legislation, to fight the phenomenon of the traffic of the human beings.

Another important moment in the fight against the traffic of human beings is also the harmonization and approximation of the penal legislation in the sector of the struggle against the traffic of human beings. From 1997 the Council has adopted a common action on the penal law and the judicial cooperation. Also the European commission under the mandate of the European Union Council, in December 2000 has introduced a proposal for a Framework Decisions of the Council on the struggle against the traffic of human beings, to induce the member states to insert definitions and sanctions, adopted as a commune accord of the respective national legislations. This proposal concerned to the joint crimes to the traffic of human beings for sexual exploitation.

New Directive on trafficking in human beings (IP/10/380), foresees 176:

“...The criminal law provisions include a common definition of the crime, as well as aggravating circumstances, higher penalties and the principle of non-punishment of the victims for unlawful activities - such the use of false documents - in which they have been involved when subjected to traffickers…”

The judicial and police cooperation is another important moment in the struggle against the traffic of human beings.

For this in 1996 was extended the mandate of Europol including it in the struggle against the traffic of human beings. The cooperation among the services of police of the states members is a decisive factor in the struggle against the traffic of the human beings and the coordination with the European Task Force will assure such collaboration.

176 The new Directive replaces current EU legislation dating from 2002 (Framework Decision 2002/629/JHA) and will apply to all Member States but Denmark and the United Kingdom. Once implemented, the Directive will ensure consistency among national definitions of crimes and level of penalties. Member States now have two years to transpose the new rules into their national legislation.
Euro just is an important structure that facilitates the coordination among the judicial authorities and sustains the investigations on the organized crime, connected to the traffic of the human beings.

The EU is also reinforcing its policy on human trafficking. In 2010, the Commission appointed an EU-Anti-trafficking Coordinator to improve coordination and consistency between actions by EU institutions, EU agencies, EU States, non-EU countries and international players in the fight against trafficking. In addition, an EU anti-trafficking website has been launched, with the aim of providing a one-stop shop for practitioners, civil society, academics and others interested in the problem of trafficking.

_The European Union assists, sustains and protects the victims of the organized crime._

Another important moment in the struggle against the traffic of the human beings is the support and protection of the victims of the organized crime.

“At present, the day-to-day protection and support of the victims of trafficking in Europe depend mostly on the activity of various NGOs. The European Union has supported their work within the Stop, Stop II and Daphne programs. However, the main responsibilities are shouldered by voluntary citizens' organizations and volunteer workers”\(^\text{177}\). The efficient support and the assistance to the victims, as well as their protection ask for a disciplinary approach with all the parts. The welfare has to consist not only on furnishing the centres of reception and rehabilitation that protect the victims from their exploiters, but also medical, social and psychological cares, as well as juridical assistance. Another important point is also the assistance to _reintegration_, the _professional formation_ or the _repatriation of victims_\(^\text{178}\).

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\(^{177}\) Martti Lehti and Kauko Aromaa, _Trafficking in Women and Children in Europe_, National Research Institute of Legal Policy, and European Institute for crime prevention and control affiliated with the United Nations, Finland, page 123

\(^{178}\) The EU has concluded four readmission agreements, with Hong Kong, Sri Lanka Macao and Albania. Negotiations continue with Morocco, Russia, Pakistan, Ukraine, Algeria, China and Turkey
An important and fundamental moment in the actions of support to the victims is the solution on the issues of the *residence* in the countries of destination. The issue of the temporary residence permits in a certain way the victims of the traffic of the human beings to collaborate with the justice, fighting so their exploiters, but not only this.

- *Directive on trafficking in human beings (IP/10/380).*

The Directive provides for specific treatment of particularly vulnerable victims aimed at preventing secondary victimization (*no visual contact with the defendant*), no questioning on private life, no unnecessary repetition of the testimony, etc). It also provides for police protection of victims, and legal counseling to enable victims to claim compensation. Special protective measures are envisaged for children (such as holding interviews in a friendly environment).

Victims' support includes national mechanisms for early identification and assistance to victims, based on cooperation between law enforcement and civil society organizations, providing victims with shelters, medical and psychological assistance, information and interpretation services. A victim is to be treated as such as soon as there is an indication that she/he has been trafficked. A victim will be provided with assistance before, during and after criminal proceedings. Prevention aspects cover measures discouraging the demand that fosters trafficking as well as awareness raising and trainings aimed at the officials likely to come into contact with victims, and potential victims to warn them about the risks of falling prey to traffickers. Monitoring of the implementation of the measures foreseen by the Directive should be ensured by National Rapporteurs or equivalent mechanisms. These independent bodies should have further tasks including giving advice and addressing recommendations to governments.
EU COMBATING ILLEGAL IMMIGRATION.

The European Union has always been hocked in the struggle against the clandestine immigration. From the Council of Tamper on 1999 the member states are hocked to fight the clandestine immigration. Also the Action Plan of Vienna in 1998, dealt in the struggle against the clandestine immigration offering and introducing proposals. The strategy of the European Union is built up in such decisions:

1 - The strengthening of the penal law as an important point in the strategy of the European Union, fighting the organized crime that favours the clandestine immigration. For this, it has been adopted a ‘framework decision’ of the Council on September 28-th 2001\textsuperscript{179}

2 - Another important moment of the struggle against the clandestine immigration is the construction of a common policy in the issue of the visas (a more liberalized system on the issue visas can diminish the possibility of the organized crime to exploit the stricter visa policy, as part of the stricter migration policy), which is tightly connected with the policy of control of migratory flows. To this purpose it is required the list of the third countries whose citizens have to own visas. The 22-nd point of the conclusions of the Council of Tamper, confirms that is necessary to intensify the cooperation among the services proposed to issue visas (which are the embassies of the member states within the third countries) and the control of the visas.

The cooperation between the services of customs and customs polices in this case with the embassies that have issued visas consists in:

- A network of exchange information on the issued visas, that contains besides the personal data, photos and a copy of the documents of journey.

The gathering and the analysis of the data on the phenomenon of the clandestine immigration it is an important moment of the struggle against this phenomenon.

\textsuperscript{179} Bruggeman, W.,(5 December 2002), Security and combating international organized crime and terrorism, page 34
- The control and the management of the frontiers is another approach adopted from the EU on the struggle against the clandestine immigration and it is necessary a closer cooperation among the administrative competent services (not only of two member states, but among a member state and a third country), through an exchange of ‘liaison officials’, and to a common control of a territory in which the organized crime develops this activity 180 (example is the common control of Italy and of Albania of the Adriatic sea where the clandestine immigration is developed).

- Improving external border controls

Images of migrants crammed into unseaworthy boats making perilous voyages to Europe grab the headlines and have come to symbolize the irregular migration phenomenon. To address this phenomenon, a major joint effort by the coastguard and naval services are required, together with assistance from the European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX). They not only manage the influx but often save lives.

Moreover, most irregular migrants originally entered the EU legally on short-stay visas, but remain in the EU for economic reasons once their visa has expired. Effective and credible external borders are essential. The EU is therefore developing an integrated border management strategy which aims to maintain high levels of security by using, for example, information technology (like the Visa Information System) and biometric features (e.g. fingerprints) for identification. With a view to preventing irregular migration, to ensure that each EU State effectively controls its own portion of the EU’s external borders and to build trust in the effectiveness of the EU system of migration management, the Commission recently proposed:

- Strengthening the mandate of FRONTEX so that it can act more effectively at the external border.

180 Ibidem, page 33
- Establishing an evaluation mechanism to verify the correct application of the Schengen acquis. - Intensifying coordination between border surveillance authorities (which is the purpose of the European Border Surveillance System – EUROSUR) and considering the feasibility of creating a European system of border guards. - Addressing the failure by an EU State to fulfill its obligation to patrol its part of the external border. - Considering the establishment of a European entry-exit system, ensuring that data on border crossings by non-EU nationals are available for border control and immigration authorities. A registered traveler programme allowing non-EU nationals to use an automated border control system, making access to the EU easier, will also be considered.

- Cooperation of different states to tackle the phenomenon.

But more there were taken initiatives between member states or the member states and ex candidate countries, to tackle the illegal immigration, because the ex candidate countries were used as transit points for the illegal immigration\textsuperscript{181}.

For this purpose has been established the decision of the Council, “ARGO” program\textsuperscript{182}, since January 1 -to December 31-st 2006.

This program will have to sustain the administrative cooperation and eventually the creation of a ’ permanent agency of technique support that guarantees the coherence and the effectiveness of the cooperation.

This agency could acquit three principal functions:

a - To facilitate the harvest, the analysis and the diffusion of the immigration (from the European observatory of the migrations, from the system of rapid alarm.

b - To coordinate the administrative cooperation. 3 - To manage the systems of SIS and EURODAC\textsuperscript{183} that gathers the data in topic of migration.

\textsuperscript{181} Ibidem, pages 31- 33.
\textsuperscript{182} Ibidem, page 33.
\textsuperscript{183} The Eurodac file, includes fingerprints of all asylum seekers, and intends the facilitation of the Dublin Convention.( SIS is the Schengen Information System).
To manage better the struggle against the clandestine immigration is necessary to be careful to the:

1 - Economic exploitation of the migrant, it is necessary to face the matter of all the consequential financial profits from criminal activity related to the clandestine immigration.
2 - The cooperation with the countries of origin and transit.
3 – The readmission and repatriate policy. - A humane and effective return and readmission policy

In September 2005, the commission adopted a new package of measures on immigration and asylum, comprising a proposed directive on common standards on return and three communications on integration, regional protection programmes and migration and development.

Further, A humane and effective return policy — in line with the Charter of Fundamental Rights and based on the principle of giving preference to voluntary return — is essential to a comprehensive and sustainable migration policy.

The EU is seeking to harmonize and support national efforts to manage returns better and facilitate reintegration with the Return Directive (which lays down common standards and procedures for the return of non-EU nationals who are staying in the EU irregularly), as well as with the European Return Fund. Effective cooperation with non-EU countries on the basis of readmission agreements is also necessary to ensure that the return policy is efficient. So far the Commission has been formally authorized to negotiate EU readmission agreements with Russia, Morocco, Pakistan, Sri Lanka, Ukraine, the Chinese Special Administrative Regions of Hong Kong and Macao, Algeria, Turkey, Albania, China, Former Yugoslav Republic of Macedonia, Serbia, Montenegro, Bosnia-Herzegovina, the Republic of Moldova, Georgia, Cape Verde and Belarus. Agreements with the two Chinese Special Administrative Regions, Sri Lanka, Russia, Ukraine, the Western Balkan countries, the Republic of Moldova, Georgia and Pakistan have entered into force.
INVESTIGATIVE METHODS COMBATING ORGANIZED CRIME AND ITS ACTIVITIES.

- *The illegal immigration and trafficking of human beings as a problem of organized crime in EU territory.*

As explained in the recent chapters, organized crimes groups are involved in different activities and, as identified in this research:

1- In the *trafficking in human beings* and,
2- *Illegal immigration*.

In this chapter are provided the effective ways of investigative methods serving to combat organized crime groups and their activities.
EFFECTIVE WAYS OF INVESTIGATIVE METHODS IN THE EUROPEAN UNION.

The correlation between activities of organized crime, criminal organization offences and victims of organized crime.

The notion of organized crime generally is linked with a criminal activity which in fact constitutes the criminal organization offence. From this criminal activity comes out the victim of organized crime activity.

As we have already explained from the traditional activities of organized crime like illegal immigration and trafficking in human being, most women and children, we found the victims (witness) of these activities. This correlation generally is constituted in different national laws, but in a large scale of international law.

\[184\] Among their activities organized crime groups committed different types of crime, which are accepted from the European Union and adopted in reality from the United Nation Convention on organized crime. This list of types of crimes is reflected in the annual reports of the Europol. (see the chapter “Types of crime”)

4.1-Crimes against persons:

4.1. a. Illegal immigration or smuggling of persons. The problem of illegal immigration is being a growing problem within the EU. Large number of people across the borders of the EU for the purpose of the work and this is exploited by the organized crime groups that are operating in this field. The facilitation of the illegal entry is seen as a lucrative activity from the organized crime groups. Another important type of crime which is linked to the illegal immigration is the: Trafficking in human beings. According to article 3(a) of the protocol of the UNTOC:

“Trafficking in persons shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of person having control over another person, for the purpose of exploitation. Exploitation shall include, as a minimum the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.

\[185\] ...A witness is a person in possession of information important to the juridical or criminal proceedings... Witnesses can be classified as Victim-witnesses. Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime, United Nations Office on Drugs and Crime Vienna United Nations, 2008
This is why I have chosen to develop as particular chapter “Effective ways of Investigative methods in the European Union”, against organized crime, because it deals and is linked with Collaborators of justice, that in this case are the victims of trafficking in human being and illegal immigration. This is why these to phenomena are introduced and developed in this chapter.

- The tackling and dismantling of organized crime structure, by penetrating in its structure. The role of members of organized crime and victims of organized crime.

“Super grasses and pentiti”

Those are the members of a criminal organization that decide to give up from their activity or those who are captured or arrested from the police forces\textsuperscript{186}, that accept to aid the justice system in the investigation and arresting of the members of a organized crime group.

The 'super grass'\textsuperscript{187} is someone who originates from the ranks of the criminal organisation itself. Hence the origin of the term lies in 'grassing' or betraying your associates.

The Italian term \textit{pentiti literally} refers to the 'penitent' or someone who has decided to repent for his criminal activities by offering a service to the law enforcement agencies.

The super grass is one of a number of types of informants from the criminal (or terrorist) underworld who gives information to the law enforcement agencies:

\textsuperscript{186} These are called ‘\textit{pentiti}’, in Italian language, and they really provided many facts and names supporting so, the criminal justice in Italy to discover, investigate and arrest organized crime groups of the mafia type. There is also another category known as \textit{victims} of organized crime.

1. An individual who voluntarily comes forward to the law enforcement agencies because for various reasons he has 'had enough' or decided, often in the case of Sicilian Mafia pentiti, that the activity of the organisation has 'degenerated' and is no longer 'honourable' as it once was.

2. An individual who is apprehended by the law enforcement agencies and who, in return perhaps for a lighter court sentence, decides either to give evidence in court which leads to the conviction of other criminals or who agrees to tell all he knows about the organisation of which he admits fully to having been a member.

3. An individual, who is contacted in secret by the law enforcement agencies and, in return for promises of a lighter sentence or even non-prosecution, continues to remain active in the organisation and act as an undercover agent in a more or less identical way to a member of the law enforcement agencies entering the criminal organisation in disguise.

To investigate and combat the organized crime is needed to identify and dismantling its structure. Combating trafficking means combating organized crime. An important moment in this context is the securing cooperation by victims, and this makes the trafficking in general a problem of organized crime. Successful prosecution of traffickers requires the testimony of victims. A part from the risk of secondary victimisation, criminal proceedings may expose women and their families to the risk of retaliation from the side of perpetrators harassment by authorities in their home country or stigmatising exposure to their home communities, and so it is clear that victims of trafficking identified during police raid often fear reprisals by traffickers and therefore, don’t provide evidence for the prosecution of the traffickers or the criminal groups.  

But, more the members of organized crime who decide to collaborate with justice system are a strong point in the identification of the organized crime structure and its different activities in which they are involved.

The example of the confessions of the Italian collaborators of justice, the so called “the pentiti” made during and after long investigations of Italian organized crime groups, shows the importance of their role in dismantling the structure and combating the activities of organized crime groups.

In Italy he helped the judges Giovanni Falcone and Paolo Borsellino to achieve significant successes in the fight against organized crime (the two judges were later both killed by the Mafia). He was the star witness in the Maxi Trial that led to almost 350 Mafia members being sent to prison. Buscetta revealed the existence and workings of the Sicilian Mafia Commission. It enabled Falcone to argue that Cosa Nostra was a unified hierarchical structure ruled by a Commission and that its leaders—who normally would not dirty their hands with criminal acts—could be held responsible for criminal activities that were committed to benefit the organization. This premise became known as the Buscetta theorem and would be recognized legally with the confirmation of the Maxi Trial sentence in January 1992.

His testimony in the New York Pizza Connection Trial in the mid-1980s allowed the conviction of hundreds of mobsters in Italy and the United States, including Gaetano Badalamenti.

Joseph Valachi was an admitted lower level member associated with a particular New York Mafia ‘family’. He testified before the US Senate Committee and spent months talking to police and FBI investigators.

He was the first member of the American Mafia to admit belonging to it or had openly talked to the authorities about organised crime.

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189 The repenter Tommaso Buscetta.
Valachi's testimony had an influence far beyond the evidence he gave to Cressey and the Senate Investigation: his testimony led to new laws against organised crime which we shall consider presently.

Why did Valachi decide to testify? At the time (the early 1960s) he was serving a prison sentence for drug trafficking. He claimed that he was under a death threat from his 'Boss' and he had responded by killing another prisoner who turned out to be innocent. To avoid the death penalty he agreed to testify. His testimony had a great deal of influence. As Virgil Peterson, a former FBI agent and director of the Chicago Crime Commission observed: "During the years following his revelations, the great majority of published books, articles and news items that have attempted to describe the structure of organised crime in America clearly reveal a heavy reliance on Valachi. Likewise his disclosures have been accepted without much questioning by official agencies as well. On some occasions, writers either misinterpreted portions of Valachi’s testimony or attributed to him statements he never made at all."

The two things that Valachi revealed were, firstly, that a power struggle had taken place among Italian-American gangs during the early 1930s - known as the 'Castellamarese Wars' and, most important, the existence of a structured organisation. This was the basis of Cressey's 'bureaucratic-corporate' model of organised crime. How did investigators know he was telling the truth? Firstly, the murders he referred to had in fact taken place. But his allegations of a mafia war of country-wide proportions during the 1930s may well have been an exaggeration. In retrospect historical investigations have confirmed only about five or six deaths. There were also various contradictions in what he told about the structure of the mafia. Thus he described the structure which Cressey elaborated. A Boss, and under him an Underboss and then the Lieutenants and the next level down and under them the 'soldiers'. But when it came to specifying the role of the mafia in the lives of its members the system appears to be less well organised. Thus he admitted that apart from mutual protection of members of the crime 'family' by the organisation, individuals operated very much by themselves and make their own initiatives and involve other members of the family only if they choose. In other words
the organisation seems fairly loose. It is interesting that no-one except Valachi testified to the existence of the national 'Commission' which allegedly organised all the Italian-American crime families in the United States.

The use of super grasses in Britain\textsuperscript{190} was most likely influenced by the successful handling of Joe Valachi in the US. Although some judges and lawyers were horrified at the idea of prior agreements for non-prosecution or lenient sentence in return for information from active criminals, the idea became established and following Bertie Smalls a large number of other super grasses emerged.

The question arose of what sort of sentence reduction a 'super grass' could legitimately expect as a reward for collaboration with the prosecution. In a landmark case in 1985 (R. v King), Lord Justice Lane summed up as follows: "One of the most effective weapons in the hands of the detective is the informer . . . It is to the advantage of law-abiding citizens that criminals should be encouraged to inform upon their criminal colleagues. They know that if they do so they are likely to be the subject of unwelcome attention, to say the least, for the rest of their lives. They know that their days of living by crime are probably at an end. Consequently, an expectation of some substantial mitigation of what would otherwise be the proper sentence is required in order to produce the desired result, namely the information. The amount of that mitigation, it seems to us, will vary . . . from about one half to two thirds reduction”

\textsuperscript{190} John Lea (March 2004) Combating organized crime and terrorism.
Aggravating circumstances:

The Framework Decision (2008/841/JHA) on the Fight against Organized Crime is still in force, and the member states can harmonize and approximate their legislation in the organized crime issues, making use of it. Following the example of the Italian legislation on the issues of aggravating circumstances, participation in a criminal organization and the mitigating circumstances member states can harmonize and approximate their legislations on these issues, so, therefore can be successful in the fight organized crime.

With the new possibility offered by the Lisbon treaty, member states only after 1 January 2014 can make full use of the new instruments (regulation) introduced in the framework of the EU criminal law, because a simple veto till 2014 is possible.
And this is why “the next arguments for the aggravating circumstances, participation in a criminal organization, and the mitigating circumstances are referred to the above framework decision”.

Aggravating circumstances for offences committed within the framework of criminal organizations.

- **The meaning of the “Aggravating circumstances”**

Aggravating circumstances are special circumstances that increase the seriousness of a crime and in turn increase the applicable penalty.
Aggravating circumstances enables increased penalties for offences committed in the framework of criminal organization, in recognition of the increased seriousness of organized crime.
However, the existence and extent of these circumstances varies much among different legal systems. In some countries, these circumstances apply to few offences typically committed by criminal organizations (e.g. extortion, drug-trafficking).
Other legal systems adopt a more general approach. In this case, the general part of criminal codes lists aggravating circumstances applicable to any offence.
Aggravating circumstances may represent both a possible alternative and an additional element to the criminalization of the participation in a criminal organization. Therefore this indicator can provide additional information on national legislations and their general approach to the criminalization of organized crime.

- The possibility to introduce it among EU member states. (regarding the EU organized crime law)

The Framework Decision (2008/841/JHA) requires EU Member States to adopt aggravating circumstances. Article 3 paragraph 2 of the Framework Decision (2008/841/JHA) requires Member States to ensure that the fact that predicate offences of a criminal organization have been committed within the framework of a criminal organization, may be regarded as an aggravating circumstance for these offences.

The current situation among EU Member States:

1. The existence of aggravating circumstances related to the commission of an offence in the framework of a criminal organization only for specific crimes191.

This approach is followed by: Austria, Belgium, Bulgaria, Cyprus, France, Germany, Greece, Luxembourg, Malta, Portugal, Slovenia, Slovakia, and Spain. Within this group, some legal systems make extensive use of these aggravating circumstances (Bulgaria, France, Germany, Portugal, Slovenia, Slovakia, and Spain). Other countries provide these circumstances only for a limited number of crimes (Austria, Belgium, Cyprus, Greece, Luxembourg, and Malta). Moreover, some circumstances specifically refer to the presence of an organized group or association (e.g. Section 204B of the Criminal Code of Malta, “Inducing persons under age to prostitution or to participation in a pornographic performance”: “When the offence is committed with the involvement of a

criminal organization ...” (Article 433 octies of the Criminal Code of Belgium, on human trafficking: the punishment is increased when human trafficking is “an act of participation to the main or accessory activities of a criminal organization”). Others only refer to the commission of a crime by a group of people (e.g. Article 132, para 2g) of the Criminal Code of Portugal, on homicide: “commit the fact together with, at least, two other people...” Article 311-4 of the Criminal Code of France, on theft: “when it is committed by several people acting as offender or accomplice”).

The existence of both a general aggravating circumstance and aggravating circumstances for specific crimes. This approach is followed by: Estonia, Hungary, Italy, Latvia, Lithuania, and Romania. In this group most countries provide for a general aggravating circumstance for crimes committed in group (e.g. 58 10) of the Criminal Code of Estonia: “commission of the offence by a group”; Section 48 of the Criminal Code of Latvia: “the criminal offence was committed while in a group of persons” and aggravating circumstances referring to criminal organization for specific crimes (e.g. 199 of the Criminal Code of Estonia, on theft: “[a theft,] if committed by a criminal organization, is punishable by 2 to 10 years’ imprisonment”; Section 175 para 4 of the Criminal Code of Latvia, on theft: “if has been committed by an organized group the applicable sentence is deprivation of liberty for a term of not less than three years and not exceeding fifteen years, confiscation of property and police supervision for a term not exceeding three years”. Hungary has the opposite solution. A general aggravating circumstance tackles all crimes committed by criminal organizations (Section 98). Aggravating circumstances increase the penalties only for specific crimes, when these are committed by a group (when three people participate in the commission of the crime, Section 137 para 13 of the Criminal Code) or in a criminal conspiracy (“two or more persons are engaged in criminal activities under

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arrangement, or they conspire to do so and attempt to commit a criminal act at least once” Section 137 para 7 of the Criminal Code).

- Italian provision of this issue.

In Italy\textsuperscript{193} several general aggravating circumstances exist.

Article 112 para 1 of the Criminal Code of Italy provides a penalty increase if the number of people cooperating is of five or more. Other general circumstances refer more directly to criminal organizations. According to Article 7 of Decree 152/1991, for offences committed using the mafia method or for the benefit of a mafia-type association, the penalties are increased from one third to one half. Moreover, Article 4 of law 146/2006 provides a penalty increase from one-third to the half for crimes punished with at least 4 years of maximum imprisonment when an organized criminal group engaged in criminal activities in more than one state is involved. For specific crimes, aggravating circumstances are provided, related to the commission by more than one person (e.g. Article 625 of the Criminal Code of Italy, on theft: “if the fact is committed by three or more persons”).

The existence of only one general aggravating circumstance.

This approach is followed by: the Czech Republic, Denmark, Estonia, Finland, Poland and Sweden. Some countries in this group explicitly mention criminal organizations or associations (e.g. Section 34 (g) of the Criminal Code of Czech Republic: “committed the offence as ..., member of an organized group ...”). Other countries have general circumstances, applicable when crimes are committed by several people jointly (e.g.) 80 of the Criminal Code of Denmark increases penalties for crimes committed in group)\textsuperscript{194}.

\textsuperscript{193} Italian penal and procedural code.
The absence of any aggravating circumstance of this type.

This approach is followed by: Ireland, the Netherlands, and the United Kingdom. The absence of any specific aggravating circumstance does not prevent the imposition of more serious penalties for these offences.

However, the penalty increase may be decided by the court within the penalty range provided by the law. In Ireland, Section 73 of the Criminal Justice Act 2006 has recently criminalized the “commission of offence for criminal organization”. This is an autonomous offence, but it appears to be functionally similar to an aggravating circumstance. Indeed, its main goal is to increase the penalties for offences committed in the framework of a criminal organization\textsuperscript{195}.

The need to introduce and adopt in their respective legislation, the Italian approach.

- The existence of both a general aggravating circumstance and aggravating circumstances for specific crimes.

In fact this approach constitutes and copes with the aggravating circumstance in the framework of both, mafia associations, and other criminal organization activities, including the international nature of the activities.

This approach gives the opportunity to Justice to make possible the collaboration of mafia or other criminal organizations members\textsuperscript{196}.

Finally, the EU member states need to introduce this approach, and it should be foreseen in their legislation, and not to be as an option in the trial proceeding\textsuperscript{197}.


\textsuperscript{196} An increasing penalty push the members of mafia or criminal organization to collaborate with Justice.

\textsuperscript{197} The absence of any aggravating circumstance of this type. This approach is followed by: Ireland, the Netherlands and the United Kingdom. The absence of any specific aggravating circumstance does not prevent the imposition of more serious penalties for these offences. However, the penalty increase may
1- Participation in a criminal organization. (It is a criminal offence and the member states need to introduce in their respective criminal law).

…punish the members of a criminal organization for the general criminal activity of the group. This function is crucial for targeting the leaders of criminal organization….

Criminal Organization Offences (the criminal law of conspiracy)

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- To understand the notion and the meaning of “Criminal Organization Offences”

Criminal Organization Offences are a key factor to effectively investigate and tackle organized crime. Indeed, they perform multiple functions in relation to the contrast to organized crime. COOs perform a strategic function. They lead law enforcement agencies to focus their investigations on a whole organization. This achieves a better understanding and in-depth knowledge of criminal organizations. This would be hard if investigations had to focus merely on collecting evidence on single offences perpetrated by a criminal organization.

COOs perform a generalization function of the criminal liability. They punish the members of a criminal organization for the general criminal activity of the group. This function is crucial for targeting the leaders of criminal organization.

They are not able anymore to avoid the prosecution.

In the chapter one we argued that “There is a need for a working definition on organized crime issues”

Criminal Organization Offences

The difficulty of obtaining information about organised crime and terrorist groups sufficient to secure criminal convictions ‘beyond reasonable doubt’ in the courts, is compounded by a second problem, the fact that the leaders and organisers of organised criminal groups may be able to distance themselves effectively from the actual commission of criminal offences. So even successful penetration by police undercover agents or recruitment of super grasses may only lead to convictions of lower level operatives who have actually committed recognisable crimes. Al Capone, it is always useful to remember was eventually imprisoned not for violence or coercion or dealing in illegal goods and services but for tax evasion. There is growing concern about the increase in the number of wealthy and powerful criminals of this type in the UK. According to an article in the Economist (21st April 2001) the UK National Criminal Intelligence Service (NCIS) in that year estimated the number of wealthy crime bosses (or ‘core nominals’ as it calls them) as having risen by a third every year for the previous five years and by 2001 was numbering around 150 with 750 ‘lieutenants’ on the next rung down. The wealth of these individuals comes predominantly from drugs trading, immigrant smuggling and bootlegging. The article quotes the Chief Constable of the
Frequently, leaders do not participate directly in the illicit activities in order to avoid detection and prosecution. This also facilitates law enforcement agencies in evidence collection. Instead of proving each member’s implication in a specific crime, it is enough to prove the participation in the activities of the group.

COOs perform an anticipating function of criminal liability. They punish the members of a criminal organization independently from the actual commission of any crime\textsuperscript{202}. This function lowers the threshold of criminal responsibility in presence organized crime groups. Experience shows that this function usually remains a theoretical possibility, but nearly never applies in practice.

COOs normally apply against criminal groups that have already committed offences and hardly ever before the commission of any crime. COOs perform an aggravating function. They punish the members of a criminal organization with higher penalties than the ones provided for the single crimes committed by the organization.

\textbf{Indeed, the sanction for participation in a criminal organization adds to the sanction provided for the single offences, resulting in a remarkable increase in the penalties imposed on organized criminals.}

COOs perform a procedural function, triggering the possibility to use special investigative techniques that may not be accessible for the investigation of relatively minor crimes. All the international legal instruments of harmonization and approximation of organized crime legislation require the adoption of COOs.

\textsuperscript{202} Manacorda 2008, 273
The current situation among EU Member States:

The presence of one general criminal organization offence

This approach is followed by: Bulgaria, Cyprus, the Czech Republic, Estonia, Finland, France, Germany, Hungary, Latvia, Lithuania, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, and the United Kingdom. Within this group different legal traditions can be found. The United Kingdom’s legislation is based on the concept of conspiracy. The offence of conspiracy focuses on the notion of agreement between two or more persons to commit one or more offences and is typical of the common law systems. The other countries focus on the notion of association, organization or group.

This approach corresponds to the civil law model of the association de malfaiteurs whose archetype was Articles 265–268 the Criminal Code of France of 1810 (Bulgaria, Cyprus, The Czech Republic, Estonia, Finland, France, Germany, Hungary, Latvia, Lithuania, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain).

The presence of more than one criminal organization offence.

In this case there is a general criminal organization offence and a special criminal organization offence.

This reflects the efforts of some Member States to define more precisely criminal organizations in criminal law. This approach is followed by: Austria, Belgium, Greece, Ireland, Italy, Luxembourg, Malta, and Romania. Also in this group different legal traditions exist. Ireland and Malta are common law countries. In Ireland and Malta the general offence is the offence of conspiracy, which focuses on the agreement to commit a crime. The special offences focus instead on the concept of group or organization.

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204 The mafia-type association crime has been defined by the Italian legislature, observing the typical modus operandi of traditional Sicilian Mafia. However, the result was a general legal definition, which applies to any criminal group acting in the same way, no matter in what part of the country the group might be active, no matter how the group might be named. This is why the Italian legal definition of mafia-type association maybe some interest also in other countries, where new mafias may come to life.
(Article 83A of the Criminal Code of Malta and Section 71 of the Criminal Justice Act 2006 of Ireland). Austria, Belgium, Greece, Italy, Luxembourg and Romania are civil law countries. They all have two criminal organization offences (COOs) centered on the notion of association or organization.

In Belgium and Luxembourg the offences of criminal organization (Article 324-bis ff. of the Criminal Code of Belgium and Article 324-bis ff. of the Criminal Code of Luxembourg) have been introduced along with the traditional offences of criminal association. In Greece, Article 187 of the Criminal Code of Greece provides for both criminal organization (para 1) and criminal association or gang (para 3).

In Italy, Article 416-bis of the Criminal Code of Italy (mafia-type criminal association) has been added along with the traditional Article 416 on criminal association.

In Romania, law 39/2003 introduced the new offence of criminal organization beside Article 323 of the Criminal Code of Romania on criminal association. The elements of specialty of these provisions may vary from one system to the other. Some countries apply a quantitative threshold in order to restrict the scope of application of the offence (e.g. Belgium, Luxembourg, Romania; others require particular modus operandi for the special offence (Austria, Belgium, Italy, Greece.\textsuperscript{205}

\textit{The absence of any criminal organization offence countering criminal organizations.}

This solution is adopted in Sweden and Denmark.

Mitigating circumstances:

1-Collaborator of justice and victims of organized crime.

Those are “witnesses”, and in this case a witness is a person in possession of information important to the juridical or criminal proceedings… Witnesses can be classified into two main categories:

a) Justice collaborators
b) Victim-witnesses

- **Benefits for Collaborators with Justice**, the legal framework of different member states, provide the possibility to grant benefits to Collaborators of Justice.

Granting benefits to criminals who cooperate with the authorities.

Many legal systems introduced this type of provisions to incentivize the dissociation of criminals from criminal organizations. This allows the authorities to gather important information and evidence concerning criminal organizations.

The possibility is of particular importance since research has shown that the criminal organizations have the capacity to avoid investigation and prosecution through different means.

One problematic issue is the possibility to grant immunity to collaborators with justice. This issue is strictly related to legal traditions of EU Member States, where some countries allows for total exemption while others do not and the prosecution has

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different discretionary powers in prosecuting criminals which collaborate with the authorities\textsuperscript{208}.

\textbf{International organizations have frequently stressed the importance of collaborators with justice in countering organized crime.}

In the European context, both the Council of Europe and the European Union have issued several non-binding documents on the topic. Lastly, Article 4 of the Framework Decision (2008/841/JHA) leaves EU Member States free to implement or not this type of measures in connection to criminal organizations.

- \textit{Current situation among EU Member States. What offer the respective legislations?}

\textit{The possibility of exemption from criminal liability for criminals who collaborate with the authorities.}

This approach is followed by: Estonia, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Malta, Poland, Portugal, and the United Kingdom. This solution attaches a significant benefit for criminals’ collaboration with the authorities aiming at incentivizing these behaviors. The exemption from criminal liability can be granted even if the organization has already been discovered or has already committed crimes.

It must be noted that \textit{in Latvia exemption can only be granted if the criminal contributes to uncover crimes which are “more serious or dangerous than the crime committed by the person himself or herself”} (Section 58(3) of the Criminal Code of Latvia; this does not apply if the criminal has committed especially serious crimes, i.e. offences punished with more than 10 years of imprisonment).

\textsuperscript{208} Fransen, Belde´ and Vermeulen 2005, 68–69.
The possibility of exemption from criminal liability for criminals who collaborate with the authorities at an early stage of the activities of a criminal organization.

This approach is followed by: Belgium, Bulgaria, the Czech Republic, Finland, France, Luxembourg, and Romania. The benefit of exemption from criminal liability is granted only for the withdrawal from criminal activities at an early stage.

Only penalty reductions to criminal collaborating with the authorities.

This approach is followed by: Austria, Cyprus, Italy, the Netherlands, Slovakia, Slovenia, and Spain. These countries never allow exemptions from criminal liability in cases of collaboration, but may still provide significant penalty reductions (e.g. in Italy life imprisonment can be reduced to imprisonment from 12 to 20 years and other penalties can be reduced by one third to half, according to Article 8 of decree 152/1991)\(^\text{209}\).

The indicator does not apply to Sweden and Denmark since no criminal organization offences (COOs) criminalizing the participation in a criminal organization exists in these legal systems.


- **Requirements for Benefits**

*The legal requirements for granting a penalty reduction/ immunity to criminals who cooperate with the authorities.*

The requirements may vary markedly among different national systems. This depends on different legal traditions and may show different priorities among criminal justice systems. Article 4 of the Framework Decision (2008/841/JHA) leaves great autonomy to national legislators, providing only some examples of requirements for the granting of penalty reduction/exemption.

The analysis of the requirements to grant benefits to criminals who collaborate with the authorities highlights different options of criminal justice policy among EU Member States\(^{210}\).

*The first option requires collaborators with justice to provide information allowing the identification and prosecution of the other offenders or the group.*

This approach is followed by: Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Estonia, France, Germany, Greece, Hungary, Latvia, Lithuania, Luxembourg, Poland, Portugal, Romania, Slovakia, and Slovenia. This option focuses on the investigative contribution that collaborators with justice can provide to the authorities.

For Belgium, France and Luxembourg this requirement is provided only for exemption from criminal liability, which can be granted only at an early stage of the criminal organization. For other cases, the general provisions on penalty reduction may apply.

The second option requires collaborators with justice to provide information allowing to end or mitigate the effects of the offences already committed or to prevent the commission of further offences.

This approach is followed by: Cyprus, the Czech Republic, Estonia, Finland, Germany, Greece, Italy, Poland, Portugal, and Slovenia. This option focuses on the preventive contribution that collaborators with justice can provide to the authorities. With the exception of Finland, all EU Member States providing for this requirement also grant benefits to collaborators for information allowing identifying or prosecuting the other offenders of the group. In Finland no benefit is ever granted to criminals merely providing information on other offenders, on the ground that this information may be less reliable. Contrarily, exemption from criminal liability can be granted to criminals withdrawing from the criminal organization and providing information which allow to prevent offences or to eliminate the effects of the contribution to the completion of the offence.

The third option does not provide specific requirements for granting benefits to criminals collaborating with the authorities.

This approach is followed by: Belgium, France, Ireland, Luxembourg, Malta, Spain, and the United Kingdom. The criteria for granting benefits to criminals collaborating with the authorities are not provided by the law and are usually assessed by the prosecution or the court. As mentioned above, for Belgium, France and Luxembourg the general provisions only apply for penalty reductions and not for exemption from criminal liability.

Legal systems of Sweden and Denmark have no criminal organization offences (COOs) criminalizing the participation in a criminal organization.
Except, what I have mentioned recently regarding the investigative methods to combat organized crime, in the EU framework, in my research resulted that particular roles in this issue play:

1 - The exchange of information on movements of groups,
2- The Liaison Officers,
3- The exchange of DNA analyses results,

- The exchange of information on movements of groups.

This is a very important way of the investigating and combating organized crime. As a union measures for that purpose was the Joint Action 97/339/JHA of 26 May 1997, adopted by the council on the basis of article K.3 of the Treaty on EU, with regard to cooperation on law and order and security. This cooperation is realizing among the law enforcement agencies which are engaged in fighting transnational organized crime. The information should include full detailed about:

   a- The group in question.
   b- The proposed route and stopping places.
   c- The means of transport.
   d- Any other relevant information.
   e- The reliability of the information.

- The Liaison Officers.

Those are the ‘structure of the European Union’, supporting the investigation of international organized crime for the purpose of prevention and combating organized crime.
With the Joint Action 96/602/JHA of October 1996 adopted by the council on the basis of article K.3 of the treaty on the EU providing for a common framework for the initiatives of the member states concerning liaison officers.

- The exchange of DNA analyses results.

This ensures and is seen an effective way to investigate and combat the organized crime. The European Union with the council resolution of 1997 and 2001 has oriented the member states for the exchange of DNA analyses results, carried out by member states.

Network of Europol, (liaison officers)\textsuperscript{211}

Europol liaison officers ensure a live link between Europol headquarters in The Hague and 27 Europol National Units in the national capitals of the Member States. This is a unique network of 129 liaison officers who play an important role in everyday law enforcement activities by facilitating the exchange of information, as well as providing support and coordination for ongoing investigations. Europol also hosts liaison officers from 10 non-EU countries and organizations who work together with Europol on the basis of cooperation agreements. This network is supported by secure channels of communication provided by Europol. In addition, Europol has seconded two liaison officers to Washington DC and one to Interpol’s headquarters.

As is explained in the recent parts of my thesis, the cooperation\textsuperscript{212} and collaboration of police and customs cooperation in the field of criminal law, within EU is seen as an effective investigative method against organized crime in EU.

\textsuperscript{211} https://www.europol.europa.eu
REASONS FOR INTRODUCING THE ANTI MAFIA LEGISLATION IN THE EU MEMBER STATES LEGISLATION.

In one of the base documents of the World Conference, article 416-bis of the Italian Penal Code and the United States Racketeer Influenced and Corrupt Organizations (RICO) Statute were presented as models for an effective strategy to fight organized transnational crime. “The numerous indictments in the United States on the basis of the RICO legislation and the positive results of the implementation of article 416-bis of the Italian criminal legislation suggest that the extension of those categories to other national legislations may have definite advantages.”

Italy’s top mafia fighter has urged European Union governments to follow his country’s lead in enacting tough laws against organized crime, warning that mobsters are spreading their tentacles throughout the bloc.

After a series of high-profile murders of policemen and magistrates in the 1980s and 1980, Italy adopted trailblazing legislation to combat organized crime syndicates originating from its Southern regions.

It includes measures criminalizing the act of “mafia-like association,” allowing the state-seizure of mafia-linked assets, introducing protection schemes for turncoats and incommunicado prison regimes to stop bosses communicating with accomplices.

“Italy has the most thorough legislation against organized crime, even if this is unfortunately the result of the blood spilled by all of our martyrs,” - National Anti-Mafia Prosecutor Piero Grasso said during a visit to the European Parliament in Brussels.

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212 Operational one.
“We need laws that reproduce the global strategy that has been launched in Italy,” Grasso stressed, as he singled out practices in some EU countries which hinder investigative efforts.

“Some people say that talking about the mafia abroad discredits Italy’s image. I say that people abroad very much appreciate the actions that we have managed to take against it,” he said.

The shooting of six men from ’Ndrangheta — the crime ring originating from Italy’s Calabria region — in the German town of Duisburg in 2007 is evidence that “no country in Europe can consider itself immune from (mafia) influence,” Grasso said.

However, he admitted it is “impossible” to quantify the extent to which Italy’s mafia organizations have pervaded the rest of the EU.

“The mafia-type association crime has been defined by the Italian legislature, observing the typical modus operandi of traditional Sicilian Mafia. However, the result was a general legal definition, which applies to any criminal group acting in the same way, no matter in what part of the country the group might be active, and no matter how the group might be named. This is why the Italian legal definition of mafia-type association maybe some interest also in other countries, where new mafias may come to life.”

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1- Existence of Italian mafia and other groups like Mafia in the EU and beyond.

**International ramification**

The night of 15 August 2007, it instantly became clear to the world that the Italian mafias were dangerous and violent, with tentacles reaching not only throughout Italy, but also the rest of the world. That night, members of the Ndrangheta murdered six men in Duisburg (Germany), marking the first violent attack outside Italy. The murders were a consequence of a feud in Italy, but the opportunity to get even arose in Germany.\(^{215}\)

The murders in Germany awoke the German authorities but the rest of the world also became aware of the fact that the mafia had spread its tentacles throughout the world. This, however, was not something new. Even before the attacks in Duisburg, several academics, journalists and policemen had pointed to the fact that the Italian mafia had expanded its territory\(^{216}\).

Many disregarded the warnings believing that if there was a problem it was in Italy, or the United States, China and Japan\(^{217}\).

“By the mid 1990s there could be few regions of the world untouched by Italian Mafia presence or influence”. The Cosa Nostra had long since installed ‘families’ throughout Sicily, Italy and the rest of the world. Currently, representatives or sub-divisions of Cosa Nostra can be found in northern Italy, Germany, France, Belgium, the United States and Latin America\(^{218}\).


\(^{216}\) (For further information on the expansion of the ndrangheta in Italy and in the world, and for the families of the ndrangheta, see pages 145, 147, 149,153, -158 of the Rivista ‘Limes’ Come Mafia Comanda, 2-2005 )

\(^{217}\) Fijnaut, 1994

\(^{218}\) Paoli L, 2003 and The Cosa Nostra is expanded in other regions of Italy, in Europe, and in the world. (for a clear vision see pages 51-53-55 of the Limes 2- 2005, “The Mafia Sicula in North America, in Europe” “La Mafia Sicula in Nord America, in Europa”)

The territorial expansion of the ndrangheta is connected to its entry in the world of the illegal traffics. If in Australia and Germany the presence of the ndrangheta was so visible, in other countries it was more discreet and effective because finalized to retrieving drug to commercialise in Italy or around the world, and to open the channels of connection for the recycling of the dirty money.” (For further information on the expansion of the ndrangheta in Italy and in the world, and for the families of the
Other mafias have expanded their territory too. The “Ndrangheta, for example has members and even some full ndrine established in United States, Canada, Australia, Argentina, Colombia, France, Germany, Belgium and Spain. Camorristes have been found in Eastern-Europe, France, the Netherlands, Spain, Portugal and Latin-America. The Federal Bureau of Investigation estimates that “the four groups have approximately 25,000 members total, with 250,000 affiliates worldwide”. The latter statistic (i.e. that there are 250,000 affiliates worldwide) seems to be a clear exaggeration, but it is obvious that the Italian mafia-type associations have spread their wings throughout the world.

What are the reasons of the Italian mafia existence in the World?

1. A first reason is pure greed. The Mafiosi want to take as much advantage of their criminal activities as possible. Expanding to other countries means also a possibility to earn more, to gain more power and to become more and more important.

   a- Following the routes of trafficking in local and international level.

   Expansion, which refers to the capacity of a criminal group to embark on the colonization of new regions, in the same city, in bordering regions or in new states, because the mafia’s strength lies in its capacity to be both local and international level, and the effects are:

   1- “External expansion, with intensification on demanding violence to demolish the obstacles in the process of expansion.

   2 - Invasion of the market, formally profile rating some legal economic activities, often with mere function of recycling and of coverage.”

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ndrangheta, see pages 145, 147, 149,153, -158 of the Rivista ‘Limes’ Come Mafia Comanda, 2-2005 )

Ministero dell’Interno, 2004 ; CPM (Commissione parlamentare di inchiesta sul fenomeno della criminalità organizzata mafiosa o simile (Parliamentary Commission of Inquiry regarding the phenomenon of mafia-type or similar organised crime), 2008” ; FBI, 2008


Defining “The expansion”, for the purpose of the research.

The expansion first of all could be reach:

*Following the routes of trafficking in local and international level,* “Mafia goes out of its confinesments in succession to drugs, which are the required necessities on drugs trafficking conducting in territorial expansion... numerous episodes, submitted to the examination of the commission, have shown how the mafia, moving from its traditional base, is installed in other zones and particularly in the big urban centers as Milan, Rome, Genoa, Naples, and in the neighbouring zones”\(^{223}\). But more than this, the mafia could be found: “In the illustration during the summit developed to Palermo, at Hotel of the Palms in October, 1957. It assumes the proportions of a Yalta in the international relationship on drug trafficking: from there is born the new planetary traffic assets and starts the scaling of the mafia to the monochratic power. This power previously is subsequently confirmed by the << exclusive pact >> recently initiated between Sicilians and Colombians for the entry in great style of the cocaine in Europe\(^{224}\).”

\[\text{2. A second reason is migration.}\]

The Men of Honour travelled alongside the stream of Italian immigrants and colonised many countries\(^{225}\). The migration of Mafiosi could be voluntary, or as a result of the mafia wars that were going on in their home territory. But the presence of migrants from mafia territories, albeit a contributing factor, is not enough to explain the establishment of new mafias (or branches of them) around the world. There are other factors that have contributed, such as changes in Italy’s legislative situation.

In the 1950s, it was assumed that the policy of punishing convicted Mafiosi by forcing them to relocate outside their area of origin (called *soggiorno obbligato* or forced settlement), would prevent them from acting as Mafiosi in the future. Another frequent reason for the displacement of Mafiosi is increased efforts from the different law enforcement agencies in Italy.

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\(^{224}\) *Mafia – Politica – Affari*, rapporto 1992, edizioni La zisa, page 111

In order to escape being captured, prosecuted and convicted, the Mafiosi may opt to move abroad. Moreover, after the murders of Judges Giovanni Falcone and Paolo Borsellino in 1992 and bomb attacks in mainland Italy in 1993, the attitude towards the mafia changed significantly in Italy. This was, for example, evident in even more intensified law enforcement efforts. These increased efforts are borne out by, amongst other thing, the number of arrest warrants. According to the DIA, in the period 1992 - June 2007 the prosecutor’s offices issued 1,663 arrests warrants against members of the Cosa Nostra, 2,353 against those of the Ndrangheta, 2,353 against members of the Camorra and 607 against members of the Apulian organised crime groups\(^{226}\). Naturally, these data concerning the arrest warrants do not correspond with the number of actual arrests. Another result of intensified law enforcement is that it has become more likely for Mafiosi to spend a long time in jail. Furthermore, the financial drain on the associations has become particularly serious. The problem is, however, that a frequent by-product thereof is the displacement rather than the removal of criminal activities. The intensified law enforcement measures in Italy brought about financial and investment relocation abroad. Legislative discrepancies may have been a strong motivating factor in international movements.

Organised crime-groups will seek to base themselves in those countries where legislation and law enforcement ignore or tolerate their presence. They will try to found bases in those countries where law enforcement agencies do not have the means and possibilities to bring them down\(^{227}\).

An apparent example of this was Spain. Legislative discrepancies induced a strategic migration from Italian Mafiosi to this country for drug trafficking in the 1980s. It has been proven that the Camorra has been operating in Spain since that period. The Camorristi covered their drug trafficking under the front of a chain of pizzerias in the southern city of Granada. Finally, it is important to note that:

\(^{226}\) DIA, 2007 ( Direzione Investigativa Antimafia )

1. Not only national legislation and law enforcement efforts play a role in the decision to set up bases in a particular country but,
2. The activities of intergovernmental and supranational bodies have an influence too. For example, the freeing up of borders within the European Union has made it easier for people, goods, and services and capital to move. But this means that it has also become easier for criminals to move around\textsuperscript{228}. Society evolves constantly, and with globalisation it has become easier than ever for organised crime to outsource, invest abroad and consolidate, in the same manner other multinationals do.

\textit{b- Sharing the same culture of Italian mafia.}

Modus operandi: The core element of their culture: the intimidation and law of silence.

The\ Intimidation and Law of silence are the key elements of the mafia method or its modus operandi. Through this modus operandi mafia is capable to create a diffuse halo of fear around the criminal group, without any need of direct threats. Then, as a consequence of this peculiar force of intimidation, the mafia type organized crime easy controls markets and territories.

- \textit{Murders and other violent attacks in the countries where they live.}

“The mafia-type association crime has been defined by the Italian legislature\textsuperscript{229}, observing the typical \textit{modus operandi} of traditional Sicilian Mafia.

\textsuperscript{228} Fijnaut, 1994
\textsuperscript{229} The article 416 bis of Italian Penal Code introduce: “\textit{The organization is of the mafia type when its components use intimidation, subjection, and consequentially, silence (omerta), to commit directly or indirectly acquire the management or the control of the business, concessions, authorization public contracts and public services to obtain either unjust profits or advantages for themselves or others}”
However, the result was a general legal definition, which applies to any criminal group acting in the same way, no matter in what part of the country the group might be active, no matter how the group might be named. This is why the Italian legal definition of mafia-type association maybe some interest also in other countries, where new mafias may come to life”\textsuperscript{230}.

In Italy, the Italian mafia groups are known for murdering members of their own and other crime groups as well as police and justice officials. Many people have been killed over the years and often their bodies were not found. Examples of high-profile murders were those of judges Giovanni Falcone and Paolo Borsellino in 1992.

Above that, the Italian mafia-type associations are also notorious for other violent attacks, such as the bomb-attacks in mainland Italy in the early-1990s. In Italy, the different mafia-type associations have their own territory, and when someone from outside that group violates this area, murders can be a result. Outside Italy, and then specifically in Belgium, Italian mafia groups do not control a specific territory, so these events do not come up. Even when such an event does happen, as did in Duisburg (Germany) in August 2007, it is as a result of a feud that started in Italy. The opportunity for the attack just happened to arise in Germany.

Conversely, all other respondents affirmed that there have been murders in the mafia-environment in Belgium. Notwithstanding that there have been a couple of mafia-murders in Belgium, there was very little about it in the media. A Wallonia newspaper (Le Soir) mentioned in 1992 that Salvatore Hamel was murdered in La Louvière by Franco Cacciatore, a murder they called “between Mafiosi”\textsuperscript{231}.


\textsuperscript{231} The ability to use violence whether direct or in a form of a credible threat is generalized ingredient of Mafioso behaviour.

“The use of violence is considered in terms of three directions in which it may be directed
1-Intra group violence is directed at the members within the group in order to maintain disciplines and the submission of the members to the group or organization.
2-Inter group violence directed by a group at another group, typically, arising from territorial or cultural rivalry.
Cacciatore was known in Italy for thefts, armed robberies and homicide. Furthermore, in 1994 Gioacchino Alaimo was murdered in Zaventem, presumably by people linked to the Italian mafia. Another event mentioned by two of the respondents was the shooting of an internationally wanted mafia-member in Brussels. This man survived the attack. The shooting appeared to be the result of a feud on a private matter.

The victim did not even make a statement; he just saw it as risk of the business. On its website, the Belgian Federal Police requests information regarding these shootings adding that the two events might be connected. In the newspaper article it is said that these murders happened in a mafia environment. The local public prosecutor, Christian De Valkeneer, is quoted as saying that the “problem (in solving these crimes) is the omertà”

According to the Italian Parliamentary Commission of Inquiry regarding the phenomenon of mafia-type or similar organised crime, the goal of mafia-type associations is to rapidly enrich themselves and have a controlled form of impunity by committing offences, *exercise violence and employ intimidation* throughout the territory in which they work.\(^{232}\)

..., The Mafia thrived by following a strict set of rules that called for an organized hierarchical structure and a code of silence that forbade its members from cooperating with the police (Omertà)\(^{233}\)

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3-Extra group violence is directed at the victims outside the criminal fraternity and is therefore typical of criminal activity directed at persons or property. The first can be considered as to inside violence and it serves: To punish defectors, discourage internal competitors for leading positions, or conversely to challenge the leaders. In fact many Mafiosi have begun their career with violent acts. The second and third can be considered as an outside violence

\(^{232}\) CPM, 2008a

\(^{233}\) American mafia – Wikipedia, the free encyclopedia
The institutionalization of the cultural dimension.

As we have mentioned in the chapter… “Mafia style organized crime as the “highest level” of organized crime” …the existence of a Mafiosi culture is related more than anything else to the mentality and the style of Mafiosi’s life in all the ranks of the society or of the social block.

The way in which it works and organizes its daily life is an important paradigm of its complexity. The cultural dimension includes its internal organization, as a criminal association (the initiators ritual, the language they use, the conspiracy of silence). The hierarchical vision of the organization and of the society is the process of institutionalisation of this culture inside the organization and it is an integral part of this culture.

The mafia as other social subjects has a behavioural code of its own and this is considered as a culture on its own. “To behave as a Mafioso means to behave in an honourable way... the honourable word denotes nothing but the superior affirmation. Honourable means << exceptional >>, << worthy >>, means << bossy >>”234. “In order to be invited into the American Mafia and become a member one must perform a series of tasks, such as committing murder for the family and not for one's own personal benefit. When the boss decides to let a member into the family one will be part of a ceremony, involving the drawing of blood, swearing an oath over a gun or holy picture, and obeying the rules of the organization.

In New York City, the Mafia created customs and traditions which the members have to follow. If one breaks any of the rules they can be killed by another member of the family and usually the murder is committed by the people closest to that person.

1. "Omertà" - is the oath or "code of silence", never talk to the authorities.
2. "Ethnicity" - only men of Italian descent are allowed to become full members (made man) Associates, partners, allies etc. have no ethnic limits

234 Arlacchi, Pino (1983), La Mafia imprenditrice,Contemporanea 2, Società editrice di mulino Bologna , p 21, 22.
3. "Family secrets" - members are not allowed to talk about family business to non-members.

4. "Blood for blood" - if a family member is killed (by another member) no one can commit murder (in revenge) until the boss gives permission.

5. "No fighting among members" - from fist fights to knife fights.

6. "Tribute" - every month; member must pay the boss; also giving the boss a cut on any side deals.

7. "Adultery" - members are not allowed to commit adultery with another family member’s wife.

8. "No facial hair" - members were not allowed to grow moustaches; part of the Moustache Pete way.

The use of the violence and the intimidating power is defined in the Mafioso world, as a culture, for which the homicide is not a crime; a penalty is foreseen by the same formula of the oath. This culture is the pillar on which the doubleness of the mafia founds itself towards the state. The mafia from a verse is out and against the state, it has its own penal code and its forms of justice, and therefore it doesn't recognize the repressive and jurisdictional function of the state.

The system of an absolute rule of obedience and law of silence.

The associative bond has such an intimidating capacity to cause subjection and omerta (conspiracy of silence). This can be defined as the ‘law of silence’, and it consists in the duty of associates to keep silent about the secret.

However this applies to everyone else, because the Mafia rules over an extensive area and many citizens either by habit or out of fear, even if they know where the Mafioso are to be found or even if they have witnessed a mafia crime, don't collaborated with the forces of law and order. ‘Cosa Nostra moves close to the State its internal organization as a political and mutual subject said Marino Mannoia, explaining the relationship between various families and different ‘institutional’ positions.

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235 American mafia – Wikipedia, the free encyclopedia
We need to take account that the inside dynamisms of Cosa Nostra resemble to the political institutions with the difference that we shoot for reaffirming the respect of the rules. Mafia’s code, in substance foresees the death penalty and the trial process is practically without appeal. The dialectics therefore has to be violent. The syndicate is always seeking to gain control, and once the control is gained, as is already said, it is maintained through fear or threat or further violence. And this serves as to virtual immunity from prosecution for those at to higher level, in other words it means:

1- Protection from infiltration by law enforcement
2- The impossibility to take action against leaders
3- Providing good degree of safety

2.1. b.3. The use of violence

The ability to use violence whether direct or in a form of a credible threat is generalized ingredient of Mafioso behaviour.

“The use of violence is considered in terms of three directions in which it may be directed:

1- Intra group violence is directed at the members within the group in order to maintain disciplines and the submission of the members to the group or organization.

2- Inter group violence directed by a group at another group, typically, arising from territorial or cultural rivalry.

3- Extra group violence is directed at the victims outside the criminal fraternity and is therefore typical of criminal activity directed at persons or property.”

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236 Ibidem, p 25-26
The first can be considered as to inside violence and it serves:
To punish defectors, discourage internal competitors for leading positions, or conversely to challenge the leaders. In fact many Mafiosi have begun their career with violent acts.
The second and third can be considered as an outside violence.

2- The model of anti mafia law regarding the “Pentiti” (Repenters)

- Why this model is important?

1. The existence and the need for the Collaborators of Justice. (Their role)

“Super grasses and Pentiti”
If there were not Super grasses or Pentiti, the law and law enforcement agencies will have not known about the organized crime and the existence of Mafiosi or member of organized crime. Thanks to their confession and collaboration with specialized law enforcement agencies they make possible the discovering the existence of the mafia, their structure, their names, their culture inside of the organization. They confess how the mafia is organized internally. They speak for the mafia method of obtaining the goal of organization, achieved through - the culture of violence and the law of silence.
They show the activities in which the organized crime is involved. They show that leaders are untouched, because of the mafia method used to keep silence and the refusal to collaborate with law enforcement agencies. In this basis, the law has built up its strategies, has framed the laws and used the special techniques of investigation to dismantling and combating this phenomenon “The example of the confessions of the Italian collaborators of justice, the so called the “pentiti” made during and after long investigations of Italian organized crime groups, shows the importance of their role in dismantling the structure and combating the activities of organized crime groups”
But who are “Super grasses and Pentiti”?

In the chapter “Effective ways of investigative methods in the European Union”, I have explained that: Those are the members of a criminal organization that decide to give up from their activity or those who are captured or arrested from the police forces\textsuperscript{238}, that accept to aid the justice system in the investigation and arresting of the members of a organized crime group. The 'super grass'\textsuperscript{239} is someone who originates from the ranks of the criminal organisation itself. Hence the origin of the term lies in 'grassing' or betraying your associates. The Italian term pentiti literally refers to the 'penitent' or someone who has decided to repent for his criminal activities by offering a service to the law enforcement agencies. The super grass is one of a number of types of informants from the criminal (or terrorist) underworld who gives information to the law enforcement agencies.

3. Attracting ways to make pentiti broke the solidarity amongst members of organized crime. (Offering garancnes set by law)

The mitigating circumstances in favour of collaborators of justice and for mafia type associations and mafia crimes. (Italian case)

This mitigating circumstance specific to mafia type criminality is established in article 8 of law no 203 of 1991 that was introduced by the Italian legislature paying special attention to the usual and general attitude of silence and refusal\textsuperscript{240}, outside and inside the

\textsuperscript{238} These are called ‘pentiti’, in Italian language, and they really provided many facts and names supporting so, the criminal justice in Italy to discover, investigate and arrest organized crime groups of the mafia type. There is also another category known as victims of organized crime.

\textsuperscript{239} John Lea (March 2004) Combating organized crime and terrorism.

\textsuperscript{240} The specific mafia method is linked to the “The system of an absolute rule of obedience and law of silence” which serves to the mafia members for 1-Protection from infiltration by law enforcement 2-The impossibility to take action against leaders 3-Providing good degree of safety. The associative bond has such an intimidating capacity to cause subjection and omerta (conspiracy of silence). This can be defined as the ‘law of silence’, and it consists in the duty of associates to keep silent about the secret. However this applies to everyone else, because the Mafia rules over an extensive area and many citizens either by habit or out of fear, even if they know where the Mafioso are to be found or even if they have witnessed a mafia crime, don’t collaborated with the forces of law and order.
Mafia groups, to possibly cooperate with investigating authorities.

In order to defeat this refusal of cooperation inside the mafia groups, the mitigating circumstance was devised, with the aim of breaking the solidarity among the members of the criminal organization, in favor of those defendants who agree to cooperate with police and public prosecutors, helping them in discovering the criminal groups and in finding the necessary evidence.

The mitigating circumstances apply in favor of the collaborative accused with respect to both participation in the mafia type association and perpetration of the specific criminal offences being committed as of its programme. (When this specific mitigating circumstance applies, the specific aggravating circumstance established by article 7 of the law no 203 of 1991 is excluded).

The benefit awarded to the collaborator is a sensible reduction of the punishment: The life imprisonment penalty shall be substituted by imprisonment for 12 to 20 years and the other penalties shall be decreased by one – third to one half.

The provisions for the protection of the collaborators of justice.

Cooperative collaborators defendants (collaborators of justice) who were active in organized crime circles may be granted, a protection program, which may be extended to the members of their families and may imply change of personal details and assistance in the organization of a new life.

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242 The above and below information is offered from:
1.-“Legal frameworks and investigative tools for combating organized transnational crime in the Italian experience” by Giuliano Turone,
4- and the consultation with Italian legislation on these issues.
The protection system is supervised by a governmental commission and is regulated by law no 82 of 1991 (*Provision on protection of witnesses and collaborators of justice*) as modified by law no 45 of 2001\(^ {243}\).

The basic provision is article 9 of law 82, which establishes the possibility of special protection measures for persons who are in serious danger because of the cooperation given to justice and because of the statements given in a criminal proceeding concerning organized crime offences provided for in article 51 paragraph 3-bis of the code of penal procedure.

According to paragraph 3 of this article, cooperation and statements, in order to have protection awarded, must have “a character of subjective reliability”, must be “new and complete”, and must appear “of significant importance for the purposes of the trial or for the development of investigations, concerning organizational structure, the equipments, the domestic and international relationship, the purposes of the criminal organizations”.

Among the special protection measures, paragraph 4 of article 13 of law 82 lists the possibility of a bodyguard service; of technical devices of security and of detention in special protect prisons. If such protection measures prove to be insufficient, then a special protection programme shall be defined and operated according to paragraph 5 of article 13 of law 82. The program can establish the transfer of the person and his family to a protected place, measures of personnel and economic assistance for the organization

Article 16-quarter of law 82 provides for a particular deed named “*Illustrative record of contents of the collaboration*”, which constitutes a condition for the protection programme to be awarded. In this recorded, the person who manifested the will to be a collaborator of justice shall immediately report to the office of the prosecutor the whole information in his or her possession that is useful to offences and to identify, seize and confiscate their criminal assets and instruments. The persons shall also testify on record

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\(^ {243}\) Collaboratori di giustizia: finalmente il regolamento
http://www.abusi.it/collaboratori_di_giustizia_finalmente_il_regolamento.htm
that he or she is not in possession of further significant information which might be relevant to justice.

**The mitigating circumstances for drug trafficking associations and their offences.**

A specific mitigating circumstance is established for the drug trafficking association crime in paragraph 7 of article 74 of the law no 309 of 1991 on narcotics\(^\text{244}\).

The punishment established by the same article for the participation in the association crime shall be decreased by one-half to two-thirds for the accused who “effectively did his or her best to ensure the evidence of the crime or to deprive the association of decisive resources for the perpetration of its offences”.

**The provisions for the protection of witnesses\(^\text{245}\).**

A wider protection provided for in articles 16 bis and 16 ter of law 82 in favor of the so called “witnesses of justice”, i.e persons (unrelated to organized crime circles) who simply have a position of victims and or witnesses and agree to testify against a criminal organization even when this behaviors exposes them to grave dangers. The Italian legislation provides not only, proper protection and his/her/their families (through the aforesaid special measures and protection programs provided for by articles 9 and 13 of law 82), but also a complete reparation of a suffered damages\(^\text{246}\).

The only requirement for a statement given by a witness of justice, in order to have the protection programme awarded, is its “reliability” (besides, of course, a condition of grave danger as a consequence of the statement). It is not required that the information


\(^{245}\) -“Legal frameworks and investigative tools for combating organized transnational crime in the Italian experience” by Giuliano Turone.

\(^{246}\) Collaboratori di giustizia: finalmente il regolamento http://www.abusi.it/collaboratori_di_giustizia_finalmente_il_regolamento.htm
given by a new complete or special importance for the proceedings. Furthermore, the statement may concern also crimes that are not included among the ones indicated in article 51, paragraph 3 bis, of the code of the penal procedure as typical organized crime offences.

3-The use of special methods of investigation.

a- Electronic Surveillance.

Telephone tapping and interception of onsite conversation are widely used in Italy as an investigative tool in the field of organized crime. The general regulation of electronic surveillance, as it is dictated in the code of penal procedure (article 266) is very strict. However, in the investigation concerning organized crime, the regulation is made looser by a particular legal provision introduced in 1991 which allows electronic surveillance “whenever the interception is necessary in order to carry on investigations related to an organized crime offences, for which sufficient indicia exist” (article 13 of the law no 203 of 1991). In any case a motivated warrant of an electronic surveillance has to be issued by a judge, at the request of the public prosecutor.

The warrant can be granted for a maximum term of 40 days, but may be executed by the judge. In case of urgency, the warrant, or the extension, may be provisionally issued by the public prosecutor himself, but has to be presented to the judge within 24 hours with a request of validation.

247 “Legal frameworks and investigative tools for combating organized transnational crime in the Italian experience” by Giuliano Turone.
b- **Undercover operations.**

*Undercover operations, performed by under covered police officer, have been regulated in Italy only in the last fifteen years. Undercover agents are allowed to make stimulated purchases of drugs in order to acquire evidence concerning drug smuggling*.\(^{248}\)

However, high level police commanders have to decide or authorize these operations. Furthermore, the public prosecutors must be informed in detail of any undercover operation, and may issue a motivated order to postpone the seizure of the purchased drug until the conclusion of the investigation, if so requested by the police (article 97 of the law no 309 of 1990 on narcotics). An identical regulation has been introduced for undercover operations concerning simulated act of money laundering and simulated purchases of weapons (article 12 quarter of the law 356 of 1992)\(^{249}\).

c- **Task force units.**

Task force “antimafia” units of prosecutors (Direzione distrettuali antimafia) were created in 1992 and are active for investigations and prosecutions concerning organized crime in the 27 district prosecuting offices of the country. They are coordinated by a central coordinating unit for (antimafia) prosecutions “Direzione nazionale antimafia” (article 51 3-bis and article 371 bis of the Italian code of penal procedure).

Task force units exist- for specific organized crime investigations- in the different police forces (polizia di stato, carabinieri, and guardia di finanza) so as to specialize in this or that field of investigations: drug smuggling, extortion, money laundering etc, and they are also coordinated by central coordinated units.

\(^{248}\) “Legal frameworks and investigative tools for combating organized transnational crime in the italian experience” Giuliano Turone.

\(^{249}\) L’evoluzione normative delle operazioni sotto copertura, amsdottorato.cib.unibo.it/_/Test_Stopponi_Cinzia by N L’evoluzione
A new central force police unit (the direzione investigativa antimafia) was also created fifteen years ago in order to enhance the fight against mafia organizations (law no 410 of 1991)\textsuperscript{250}.

\textsuperscript{250} “Legal frameworks and investigative tools for combating organized transnational crime in the Italian experience”, by Giuliano Turone.
- The importance of community method on fighting trafficking in human beings and illegal immigration.

When the treaty of Amsterdam came into force, from 1 May 1999, some sectors of third pillar (established with the treaty of Maastricht) the policy of migration and visas have been transferred inside the first pillar, generalizing such subjects and therefore guaranteeing the effectiveness of these tools and forms of integration in the European level, which operate in first pillar and constitute the figure of the Community method, in contrast to what happened within the second and third pillars, that operate with intergovernmental method.

But let’s see the importance of the community method on fighting the activities of trafficking in human beings and illegal immigration.

The two main activities of organized crime such as trafficking and illegal immigration are linked among others with the first pillar regulation community, and exactly with the immigration and visas policy. The European Union has adopted a regime Unique for visas and a stricter border control. But how does this policy adopted is functioning? Trafficking in human beings and especially in women is a complex phenomenon, related to different fields and interests, migration, organized crime, prostitution, human rights, violence against women, the feminisation of poverty, the gender division, the international labour market, unequal international economic relationships. Solution and strategies depending on how the problem is defined, what is seen as the problem that needs to be solved, how these strategies are strongly linked with the interests of the single states.

251 The community method is also offered from the Lisbon Treaty with the changes made in ordinary legislative procedures.
The two main links of trafficking in women and illegal immigration are.

1- **Trafficking in human being and illegal immigration as a labour market problem.**
In this case are involved the supply and demand factors. The mixing of these two factors in the age of the globalization is seen as a push factor in women’s and men’s migration. Demand for cheap low-skilled labour in industrialized countries (the EU case), the feminisation of the labour market, the huge unemployment in the Balkan and CIS countries have provided a significant impetus to labour flows and facilitate the incorporation of undocumented migrants.

2- **The restrictive migration policies and the trafficking as a problem of migration.**
The problem of trafficking has become more and more identified with the illegal immigration, especially within the Western European states. The focus than shifts, from combating violence and abuse-to combating illegal entry and residence. Combating trafficking thus becomes transformed into combating illegal immigration, whereas prevention of trafficking is taken to mean ‘to prevent the entry of possible victims’.
Under the dominator of prevention of trafficking, repressive migration measures are taken such as tightening visa policies, stricter border control etc. As detailed earlier, the root causes of migration are similar for both smuggled and trafficked migrants. When immigration is discouraged by governments through visa, financial or passport regulations, determined migrants can turn to illegal means, or are vulnerable to exploiters promising safe passage and opportunities abroad. For women wishing to better their economic situation, the push and pull factors of migration can lead them to accept the assistance of people who intend to exploit them.

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252 Tighter border controls have not halted migratory flows nor have they had projected results in reducing the number of workers crossing borders. Instead they have put more pressure on those who migrate. With few options for legal migration in the face of strong pull- push measures, irregular migration channels become the only alternative, and one which presents lucrative business opportunities for helping people arrange travel, obtain documents, cross border and find jobs in destination countries. Testimonies to these facts can be founded in the ILO Global Reports.
‘…Stricter immigration regulations are generally an ineffective way to combat the problem of trafficking. When the visa applications of single women from poor regions of the world are more carefully scrutinized or routinely denied, the demand for apparently legitimate operations which promise to assist women (who need or want to migrate for economic reasons) to obtain visas increases. Moreover…the increased prosecution of illegal migrants by receiving states make women hesitant to report abuse to authorities because they know they will be treated as illegal migrants and summarily arrested, detained and deported.

The measures to combat trafficking rather aim at protecting the state against illegal immigrants than at protecting women against violence and abuse, and thus is serving the interests of states rather than those of the women. Moreover, repressive migration policies and the resulting illegal status of women in the destination countries make migrant women more dependent and more vulnerable to various forms of exploitation and abuse and thus tend to promote rather than repressing trafficking and slavery-like practices. The exploitation of those who became victims of trafficking is frequently sexual exploitation, and exploitation for labour in slavery-like circumstances. But these forms of exploitation arise because there is a demand for the services and the unregulated of these sectors (the most job opportunities for women migrants are the unregulated sectors). The purchases of these services are in the countries to which the trafficked arrive. They are clients of massage, parlours of brothels, of telephone dating arrangements. They are the owners or managers of houses, farms, hotels, hospitals, factories. They are adopters of children or the people who facilitate the inter-country adopts. For that is needed strongly public information campaign to make such people aware that services they are buying may be the services of a slave, and clients253 that they are engaged with organized crime, as well as running health risks.

253 The purchase of sexual or any other kind of services should be criminalized in national legislations, and the clients would have punishments like in England where Toni Blair proposed some measures against the clients of prostitution.
Alternative approaches.

The problem of the trafficking and illegal migration as a problem of the labour market, and the factor that driving to an increase of these phenomena could be considered as the: Failure to tackle the demand side, it means the unregulated of the most sectors that are attracted from the migrants and victims of trafficking. And this is the case of an improvement and particular attention to the labour standards. If stricter immigration policies are not successful means for combating trafficking and smuggling, but in fact intensify the activities of such groups, is there reason to suggest that more liberal migration regimes would diminish the incidence of trafficking or smuggling? In the early and mid-nineties, many victims of trafficking to Western Europe Central and Eastern Europe were Polish, Czech, Slovak and Hungarian women. However the latest data indicate that victims of trafficking to Western Europe from Eastern Europe are almost exclusively Moldovan and Ukrainian. It is observed that one of the main reasons for this change is that the first group of countries for some time were candidate countries, and now members of the EU and the nationals of these countries no longer require visas to enter for a stay. They are still present in labour market of the EU, but at least, they are able to do so without requiring the labour broker services offered by smugglers or worse, by a trafficker.

In contrast, current main source countries of trafficked victims in Europe are on the ‘black list’ of countries that require visas for any visit, even for short tourist stay of less than three months. The list of requirements for visas is long (return travel tickets, certification of regular income, etc), the rejection rate is high and the time involved and lack of required documentation deter many from even bothering. This factor alone creates a substantial market for the trafficker.

And for the victims of trafficking that requires protection?

A better management of the permit of stay and the problem of residence (I mean not to apply the short-term of the permit to stay, but a long term of the permit to stay), for the victims of trafficking, even in the cases that they don’t provide evidences for the criminal proceedings.

Italy has been in the forefront for enacting legislation to meet the needs of women who have been trafficked. Article 18 of the Alien Law departs from legislation in most of the other EU Member States by extending protection to trafficking survivors regardless of their collaboration with state authorities. The protection provided as part of Article 18 is a six-month temporary ‘social protection residence permit’, with the possibility of extension for up to eighteen months, as required. While under state protection, the holders of this residence permit are given access to social services. Following the expiration of this residence permit, trafficked women may be able to convert their status into a two-year residence permit for study or work.

The enactment of Article 18 is relatively new; residence permits on the basis of trafficked status have been in place for approximately three years.

As per the Ministry of the Interior, as of early 2001 there were 726 holders of social protection residence permits, benefitting trafficking survivors from Albania, Moldova, Nigeria, Romania and Ukraine. With an estimated 35,000 to 50,000 foreign sex workers in Italy, the number of women receiving this form of protection is quite low, perhaps due to a reluctance on the part of the Italian police to grant social protection residence permits, particularly in Venice, Foggia and Palermo. Besides the obvious human rights benefits such a law has on women escaping oppression, a 2001 report by the Italian Ministry of the Interior has detailed the positive effect that these residence permits have had on the fight against organized crime, with an increase in the incrimination of traffickers from 664 traffickers in 1990, to 2866 in 2000.

Additionally, the percentage of foreign traffickers has also increased, from 24% of the total to 56% of the total of all incriminated traffickers.
This has been attributed to the temporary protection offered by the Italian state. The application procedure for the repatriation of the victims in their home countries could be applied when are studied some conditions related to what we mentioned above.
V. THE EUROPEAN UNION COMBATING ACTIVITIES OF ORGANIZED CRIME

- The need for a global strategy.

The EU strategy against organized crime can be defined as a whole of norms, tools, mechanisms, politics initiatives, structures and agencies adopted by the EU to combat the activities of the OC as well as to realize a “real area of freedom and security” within the EU.

Under this strategy fighting organized crime means, struggle against organized crime groups, means struggle against its structure, its activities and its patrimonies. Fighting organized crime means adopting policies, using instruments, creating law enforcements agencies and cooperating internally and internationally.
EU AGAINST DRUG PHENOMENON.

The EU’s action to fight drugs is closely connected to the fight against organised crime and to the high level protection of health. Organised crime groups make considerable profits from trafficking illegal drugs (up to EUR 230 billion a year). To contribute to countering this threat, the EU has developed a comprehensive Drugs Strategy, which is implemented through an EU Action Plan that covers drug supply and demand reduction, coordination between EU States, information and research on the drugs problem and cooperation with non-EU countries. The struggle against the drug traffic is an important moment of the struggle against the organized crime. For this the European Union has adopted a global strategy to fight this phenomenon based in three different juridical bases to fight against the phenomenon of drugs:

1 - The article 152 of the treaty EC regarding the Public Health in whose field of application re-enters the prevention of the drug addiction.

2 - The article 29, part VI of the treaty on the European Union, the struggle and the prevention of the illegitimate traffic of drugs. The article 31 of the treaty of EU contemplates the possibility to adopt least norms related to the crimes and to the sanctions regarding the illegitimate traffic of drugs.

3 - Part V of the treaty of EU on which is based the international cooperation.

The European Union has actively participated in the struggle against the drug traffic, merging the pillars in which is based this struggle:

a - The struggle against the drug traffic that composes the direct struggle to the international organized crime.

b - The struggle against the production of drugs.

256 For more information see: http://ec.europa.eu/home-affairs/policies/crime/crime_intro_en.htm
The struggle against the drug traffic is composed and consists in the juridical tools that serve to repress the drug traffic:

a - Approximation of the legislations of the member states.
b - Accords between services of police and customs.
c – Exchange of information.

- The article 31 of the treaty on the European Union has foreseen the harmonization of the penal legislation in the issue of drug traffic. It is dealt to adopt definitions, charges and common sanctions to avoid the juridical disparities inside the European Union that can advantage the traffickers. The action plan of the European Union (2000-2004)\(^{257}\), in the struggle against the drug traffic expressly asked to the commission to propose some measures for the fixation of least norms related to the constitutive elements of the crimes and to the applicable sanctions in subject of the drug traffic.

Later the Lisbon Treaty enlarges the catalogue of the offences, where the EU law can harmonize the definition and sanction for the prohibited behavior (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 organized crime.

The struggle against the drug trafficking is also tied up to the struggle against the recycling of the deriving capitals of this traffic. To this purpose a directive has been adopted in 1991 that fixed the norms that have to respect the financial institutions.

- Another important moment in the struggle against the drug traffic is the struggle against the production of drug.

The struggle against the production of drug is based more than everything in the implementation of the Convention of the United Nations against the illegitimate traffic of drugs and psychotropic substances in 1998. Instead within the European Union we found:

1 - The rule n. 3677/90 of the Council.

\(^{257}\) 2003 European Union organized crime report, page 27
2 - The directive 92/109/CEE that assure the implementation of the aforesaid Convention, contemplating a regime of authorizations for the export of the systems of control and licenses. In 1997 with the common action against the synthesis drugs has founded a system of alarm. The struggle against the production of drugs is also completed in the collaboration of the European Union with the third countries. For this purpose have been concluded various accords between the European Union and the Latin American countries. In 1997 a framework decision has been established “A framework of cooperation North –South” to sustain the developing countries in the struggle against the drug traffic and the drug addiction, adapting regional co operations. The support of the European Union is also realized through the programs of assistance PHARE, for the Central and Eastern Europe countries, TACIS for Russia and other CIS countries and among the Euro Mediterranean Partnership.

- The struggle against the phenomenon of drugs includes also the struggle against" the drug addiction." The European cooperation to fight against the drug addiction has the purpose to complete the action of the states members “to reduce the harmful effects for the human health, consequential from the use of drugs, including the information and the prevention”. The prevention of the drug addiction has been established in the community program for the period 1996-2000 with the following objectives:

1- Contribute particularly to the struggle against the drug addiction, encouraging the cooperation among the member states, sustaining the action and promoting the coordination of their policies and their programs.

2 - To prevent the dependences to the use of drugs and psychotropic substances, as well as the combined use of these substances with other products, alcohol or medicines (actions that promote the education and the formation, development of the precocious survey, to the use recommendation, the social rehabilitation of the addicts. The prevention of the toxic mania is placed in the global program of action, the Decision nr. 1786/2002/CE of the European Parliament and of the Council, on 23.09.2002.
But more, the Council of the EU adopts Drugs Action Plan for 2005-2008, indicating the priorities for these years\textsuperscript{258}.

A dedicated EU pact to combat international drug trafficking, with a special focus on disrupting cocaine and heroin routes, was adopted in June 2010.

The European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) provides the EU and its States with factual overviews of the European drugs problem and a solid evidence base to support the drugs debate.

The EU also increasingly cooperates on crime trends that dominate the political agenda, such as piracy on the high seas or trafficking in stolen cars, and continues to tackle existing challenges, such as violence in sports or trafficking in cultural heritage\textsuperscript{259}.

\textsuperscript{258} See the document with reference IP/05/791 date 24/06/2005 on EUROPA- Rapid- Press Releases. (internet).

\textsuperscript{259} For more information see: http://ec.europa.eu/home-affairs/policies/crime/crime_intro_en.htm
**FIGHT AGAINST “FRAUD”**.

The organized crime has placed a great deal of interest on EEC Fraud. These terms includes all the infractions of a judicial nature, committed by a person or private organizations that have financial consequences on the EEC’s budget. Fraud may regards both funds taken from the EEC’s budget, in particular those originated to states as part of the EEC’s political policy, and funds due to the EEC that for various reasons are not collected. The fight against the fraud so comprises the fight against the financial interests of the European Community, the fights against the utilization of the European investments, and overall the fight against the counterfeiting of the Euro.

For that purpose is needed to develop an overall antifraud strategy. A certain strategy adopted by the European Union in this field consists in a community approach to the fight against fraud developing a legislative framework, to cover all areas of protection of financial interests.

Regarding the legislation that covers the areas of the protection of financial interests there were:

2. The convention on the fight against corruption involving officials of the European Communities or officials of member states of the EU in 1997.
3. Council regulation (EC, EURATOM) No 2988/1995 relating to the protection of the European Communities’ financial interests and council regulation (EC, EURATOM) No 2185/96 concerning on the spot checks and inspections carried out by the commission in order to protect the European Communities’ financial interests against fraud and other irregularities (1996).

The strategy of the EU against fraud will be based on:

1. Prevention.
2. Detection
3. Cooperation
The prevention consists in a clear legislation easily applicable, and includes provisions sufficiently dissuasive to deter irregular actions.

The detection intends to develop and strengthened the means and legal instruments for detection, controls and sanctions.

The cooperation intends to establish a single legal basis for combating fraud in order to simplify and clarify the rules on participation in national investigations. The cooperation implies making provision for a cooperation and mutual assistance system to fight fraud, similar to what which already exists in certain areas such as the agricultural and customs policies, and the strengthening of cooperation with applicant countries and extra communities.

The fight against fraud is linked with the measures taken from the EU against the budget fraud and the protection of the Euro from the counterfeiting. The protection of the euro from the counterfeiting is developed in:

The protection, by penal sanctions against counterfeiting of the Euro. For that purpose the Council Framework decision 2001/888/JHA of December 2001 has amended the framework decision 2000/383/JHA on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the Euro.

The European Union has been actively in various acts in the fight against the counterfeiting of the euro, and its aim was that euro could be appropriately protected in all member states by effective criminal law measures before the new currency was put into circulation on 1 January 2002.

The article 1 of this act defines the terms used such as:

1- Counterfeit notes, counterfeit coins, counterfeiting and offences related to counterfeiting the Euro, competent authorities, technical data and statistics, Geneva Convention and the Europol Convention.

By this act member states ensure that the “The National Analyses Centre” (NAC) is able to carry out necessary expert analyses of suspect counterfeit note, while “The Coin National Analyses Centre” (CNAC) will carry out the necessary expert analyses of suspected counterfeit coins.
The collaboration of the CAN and NCAN with the EUROPOL, is very important because these communicates to Europol centralized information on investigations into counterfeiting and offences related to counterfeiting of the euro, including information obtained from third countries. The information should include useful data for identifying the person in question, the nature of the offence and how it was detected. Another important moment and an integrated strategy against the fraud was the EU action plan 2004 - 2007 to prevent fraud on non –cash means of payment. This act of the EU consisted in a communication from the Commission to Council and Parliament, the European and Social Committee, the European Central Bank and Europol. This action Plan was based on the action plan 2001-2003 and lays down the priorities for maintaining and reinforcing cooperation between the stakeholders in combating fraud. It means better cooperation between the public authorities and the private sectors in member states.

The pillar of this act was to:

1- Organize specific measures such as Pan- European Training Conferences.
2- Review the system of transmitting data at European Level.
3- Improve the security of payment systems and involve the public. Using chip cards improves security and reduces the risks of the fraud.
4- Take account of technological development.

The notification of lost and stolen cards in the EU should be improved. This measures aimed at preventing identity theft in the EU, which is linked to organized crime is an important way to combat the fraud.

- The structure established to fight the Fraud.

The European Anti-Fraud Office is a structure of the EU, and its aim is to fight the fraud against the Community budget and Corruption with the Community institutions. The specific role consists in the field of the prevention of the fraud. This office was set up in 1999, and is responsible for carrying out administrative investigation.
In accordance with community rules regarding these activities, the results of the investigation can be used as evidence by national public prosecution offices. The fact that the office can carry out its own investigations throughout the community and third countries (based on agreements made with the EU), and that the evidence gathered can be used in domestic criminal proceedings, is an absolute novelty.
FIGHT AGAINST CORRUPTION.

The corruption is a tool used by the organized crime groups, to achieve position of economic powers and to be privileged in their activities. The EU in a communication of the Commission to the Council, the Parliament and Economic and Social Committee has set up a comprehensive EU policy against corruption COM (2003) 317. This communication has adopted the definition of corruption made by the UN “Global Program against Corruption, ‘Abuse of power for private gain’”. Later, with the adoption of the Stockholm Programme, the Commission has been given a political mandate to measure efforts in the fight against corruption and to develop a comprehensive EU anti-corruption policy, in close cooperation with the Council of Europe Group of States against Corruption (GRECO)\textsuperscript{260}.

- The effectiveness of criminal law.

An effective criminal law instrument is seen as an important point in the fight against corruption. For that purpose is needed to agree on common definitions of offences and common penalties and to elaborate a multidisciplinary EU policy. The ratification of European and Anti-Corruption instruments is seen here as a key element of the fight against corruption. A significant case was the Joint Action to make the corruption a criminal offence, which was adopted in 1998.

- Prevention of the corruption, an effective way to reduce opportunities of organized crime.

Turning back to the Communication we mentioned above the Commission wanted to focus the initiatives on preventing measures designed to avoid first of all “Conflicts of interest” and to introduce systematic check and controls. The preventing of “Conflicts of Interest” is seen as an effective way to fight the political corruption.

\textsuperscript{260} For more information see: http://ec.europa.eu/home-affairs/policies/crime/crime_corruption_en.htm
An important moment in the fight against corruption is the *fight of corruption in the private sector.*

For that purpose with the Council Framework Decision 2003/568/JHA of 22 July 2003, was developed the fight against corruption giving more muscles to this fight of active and passive corruption in the private sector. This framework decision requires member states to penalize acts intentionally carried out, as part of business activities such as:

1- Corrupting a person by promising, offering or giving directly or through an intermediary to a person who in any capacity directs or works for a private sector entity, an undue advantage of any kind, for that person or for a third party in order that that person should perform or refrain from performing any act in breach of that persons duty.

2- Demanding an undue advantage directly or through an intermediary, requesting or receiving an undue advantage of any kind, or accepting the promise of an advantage, for oneself or for a third party, while in capacity directing or working for a private sector entity, in order to perform or refrain from performing any act in breach of one’s duties.²⁶¹

The framework decision introduces the involving of the liability not only of natural persons in the capacity of employees, but also of legal persons such as *firms.*

- *The European Community Officials, committing corruption.*

- *The fight against it-

Another step for the EU in the fight corruption is the fight against corruption involving European Community Officials. The Council has stressed the necessity to strengthened the judicial cooperation between member states for this purpose, and the council with the act 97/C, 195/01 of 26 May 1997 drawing up, on the bases of article K.3 (2) of the treaty on EU, the “*Convention on the fight corruption involving officials of the European Communities or officials of member states of the EU*”.

According to the convention the:

- The “*Officials*” means any Community or national official, including any national officials of another member state.

- The “*Community officials*” means:

²⁶¹ SCADplus; combating corruption in the private sector.
1- Any person who is an official or other contracted employee within the meaning of the staff Regulations of officials of the European Communities.
2- Any person seconded to the European Community, by the member states or by any public or private body, who carries out functions equivalent to those performed by European Community Officials or other servants.

- The police and Judicial Cooperation fighting the corruption.
The police and judicial cooperation in the European Union is supporting the fight of corruption.
1- The establishing of EUROJUST is seen as an important structure to fight corruption because its mandate covers fraud and corruption, but also the money laundering, participation in a criminal organization.
2- The extending of the mandate of the EUROPOL and the creation of a future European Prosecutor (The European Constitution provides the creation of this Body) will deal with this problem.
3- The European Arrest Warrant is seen as a key factor in the fight against corruption because it will make easier for offenders to be surrendered to the judicial authorities of the requesting states.

- The instruments to tackle the corruption.
The instruments used for the combating of the corruption are:
- The use of its own instruments (The EU instruments).
Regarding the instruments of the EU there are two Conventions on:
1- The protection of the European Communities’ financial interests.

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262 In addition to stronger monitoring and the proper implementation of existing legal instruments, the Commission foresees a wide range of EU-level actions to adequately tackle corruption. By the end of 2011, the Commission will propose revising the existing legal framework on confiscation of assets, which is a priority in the fight against organized crime, including in cases of corruption. In 2012, a strategy will be presented to strengthen the quality of financial investigations and the development of financial intelligence in EU States. Cooperation will also be strengthened with Europol (to step up its efforts to combat corruption, including through regular threat assessments), Eurojust (to further facilitate the exchanges of information on cross-border corruption cases) and CEPOL (to propose specific training programmes for law enforcement officials on cross-border corruption investigations).
2- The fight against corruption involving officials of the European Communities or officials of the EU member states.

The creation of the OLAF has developed the possibility for the ‘investigative purpose’ on fighting corruption.

- The adoption and ensuring the measures against corruption provided by other international organization which have produced their own conventions on corruption:

1- OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

2- The Criminal Law Convention on Corruption of the Council of Europe.

3- The Civil Law Convention on Corruption of the Council of Europe.

4- The United Nation Convention against Corruption\(^ {263} \).

\(^ {263} \) Approved by the EU in 2008.
COMBATTING MONEY LAUNDERING.

The money laundering is a very important process by which the organized crime groups ‘cleaned’ the proceeds of crime, and among this process the organized crime tries to hide the illegal origin of the proceeds of crime. The process of money laundering is seen as the ‘heart’ of the criminal activity of organized crime, because of the saving of the money among the mixing of the illegal and legal economy, causing like this the obscuring of legal economic parameters. The EU was determined and engaged to combat the money laundering process. The tackling of money laundering take part also in Tampere European Council in October 1999.

- Effective ways to combat money laundering.

1- The measures adopted to combat money laundering, include the EU Council of ministers’ decision of 17 October 2000 concerning arrangements for ‘Cooperation between financial intelligence Units of the member states’.

2- The second measure includes the act of the Council of the November 2000 amending the terms of the European Convention to ‘Extend the competence of the EUROPOL to money laundering in general’.

264 For more information see: http://ec.europa.eu/home-affairs/policies/crime/crime_laundering_en.htm

265 Financial intelligence Units. Financial Intelligence Units (FIUs) play a key role in the fight against money laundering and terrorist financing. These units are responsible for receiving, requesting, analyzing and disseminating information to the competent authorities on potential money laundering or terrorist financing activities. They are usually placed within law enforcement agencies or administrative bodies reporting to Ministries of Finance in EU States. A number of entities and persons fall under anti-money laundering reporting requirements, such as banks, financial institutions, notaries or casinos. They must file a suspicious transaction report without delay to the FIU when they know or suspect that money laundering or terrorist financing is being or has been committed or attempted. The reports are then transmitted to competent authorities, including law enforcement agencies and foreign FIUs. On the basis of these reports, criminal investigations might be launched if necessary.

Coordination at EU level: The Commission has made significant efforts to improve coordination and cooperation between FIUs and to harmonise criminal penalties for money laundering. The operational cooperation and exchange of information among EU FIUs has been reinforced by the FIU-NET project. Funded by the Commission since its beginning, this project aims to establish a secure computer network for the exchange of financial intelligence.
3- Another important measure against money laundering process was the adoption of the Framework decision in 2001, which deals with “The identification, tracing, freezing and confiscation of criminal assets and proceeds of crime”. The member states signed also the protocol to the Convention of 29 May 2000 on mutual assistance in criminal matters. This protocol represented the way to improve the cooperation between member states to fight economic and financial crime.

Except the framework decision as the legal binding instrument the EU agreed also on a directive of December 2001 which amends the earlier 1991(directive on the prevention of the use of the financial system for laundering of profits obtained from illegal activities).

The directive of 2001 was concentrated in:
1- The widened of the definition of criminal activity giving rise to money laundering to include all serious crimes, including offences related to terrorism.
2- The applying to activities and professions beyond credit and financial institutions, such as accountants, lawyers, notaries, real estate agents, casinos and dealers in high value goods.

- The organized crime groups in the process of money laundering of the proceeds of crime are using the Banks.

The European Union stressed the necessity to tackle the banking secrecy because this is seen a vital in order to combat money laundering. For that purpose in October 2000 the EU council of Ministers reaffirmed its position that fiscal and banking secrecy should not provide barriers to investigations on money laundering and international cooperation.

A protocol to the EU mutual legal assistance Convention now ensures that banking secrecy provisions are not invoked as a reason to refuse a request for assistance from another member state.
- *The EU taking part in the international level for the combating of the money laundering.*

The EU was engaged in initiatives to contrast money laundering on the international level. The main initiatives are to be mentioned the following:

1- The Basilea declaration signed in December 1998 by the G 7 countries, Belgium, Luxemburg, Holland and Switzerland.

The document assigns central banks the tasks of identifying clients and the origin of their funds, to refuse suspect transactions and collaborate with Police.

2- The Constitution of the FATF (Financial Task Force, where the European Commission is a member of it) in July 1989 after Paris G 7 meeting besides G 7 countries, other member state countries are the EEC, Austria and Sweden, and the countries of the Switzerland and Australia.

Its tasks are:

- Analyses of the Laundering phenomena verification of the national and international means, elaboration of proposals and recommendations. 3- The European Council’s ‘*Convention on Laundering and Seizure and confiscation of Profits of crime*’, in force since 1993.

The EU among the European Commission is participating fully in international bodies such as the OECD and the UN. The Commission of the EU has negotiated on behalf of the EU in respect of the relevant money laundering provisions of the ‘*UN Convention on Transnational Organized Crime*’.
PREVENTION OF THE ORGANIZED CRIME.

- EU main Actions to prevent Organized Crime.

_European Crime Prevention._

The process of crime prevention is defined as “all activities which contribute to halting or reducing crime as a social phenomenon, both quantitatively and qualitatively, either through permanent and structured cooperation measures or through ad hoc initiatives”.

What are the aims of the crime prevention as part of the EU strategy?

- Reducing the opportunities that make crime easier.
- Improving the social factors that foster crime.
- Informing and protecting victims.

The European Commission, in May 2001 launched “The European Forum on Organized Crime Prevention”, with the aim to promote a balanced approach to organized crime, mixing prevention and repression and involve external partners, the business Community, researchers and civil society in general. The European forum for the Prevention of the Organized Crime deals with various aspects of prevention such as economic crime, trafficking in human beings and corruption.

The crime prevention in the EU needs the improving of the cooperation between member states, and for that purpose with the council decision 2001/427/JHA of 28 May 2001, the EU has set up the “The European crime Prevention Network” (EUCPN)\(^\text{266}\), which is focused in the field of juvenile, urban and drug related crime.

The Objectives of this network are:

1- Facilitation of cooperation, contacts and exchanges of information and experience.
2- Analyses information on existing crime prevention activities.

\(^{266}\) In 2009, an evaluation of the Network identified certain shortcomings, as a number of EU States had been rather passive and the Commission had not treated crime prevention as a priority. This led to the strengthening of the Network, in particular through enhanced participation of the national representatives (Council Decision 2009/902/JHA replacing Decision 2001/427/JHA). A new evaluation of the functioning of the EUCPN is foreseen for 2012. A legislative proposal on the establishment of an Observatory for the Prevention of Crime (OPC) could be put forward in 2013.
3- Define the main areas for cooperation and organize the annual award of the European Crime Prevention Prize.
4- Organize seminars, conferences and meetings.
5- Step up cooperation with the applicant countries.
6- Present a report to the council each year on its activities.

The prevention and control of organized crime, “A strategy for the beginning of the Millennium”.

The council has adopted this strategy, where its objective was restated by European Council of Tamper in October 1999. This is a document which spells out the actions that should be taken in European level to combat organized crime, and provides details of priorities, the bodies responsible for implementation and target dates.

The political guidelines and thirty-nine detailed recommendations which make up the strategy reflect eleven objectives.
1. To strengthen the collection and analyses of data on organized crime.
2. To prevent penetration of organized crime in the public and the legitimate private sector.
3. To strengthen the prevention of organized crime and partnerships between the criminal justice system and civil society.
4. To review and improve legislation and control and regulatory policies at national and EU level.
5- To strengthen the investigation of organized crime.
6. To strengthen the EUROPOL.
7. To trace, freeze, seize and confiscate the proceeds of crime.
8. To strengthen the cooperation between law enforcement and judicial authorities nationally and within the EU.
9. To strengthen cooperation with applicant countries.
10. To strengthen cooperation with third countries and other international organizations.
11. To monitor the strengthening of the implementation of measures for the prevention and control of organized crime within the EU.
So far, EU States have had primary responsibility for crime prevention matters. With the entry into force of the Lisbon Treaty (Art. 84 TFEU), the EU now has the possibility to establish measures to promote and support EU States’ actions in this field.

THE EUROPEAN UNION COLLABORATING AND SUPPORTING THIRD COUNTRIES ON FIGHTING TRANSNATIONAL ORGANIZED CRIME.

1.1. The European Union and the Balkans.
The phenomenon of organized crime being a transnational phenomenon is also expanded in the Balkan region. This region is a very important space in which, most of organized crime groups have developed their activities, exploiting instabilities, economic and problems that characterizes this region. The Balkans is considered the crossroads for the organized crime groups, involving in various ways not only the Balkan states themselves but also neighboring states. Organized crime is real obstacle to democratic stability, sound and accountable institutions, the rule of law and economic development in the Western Balkans and a source of grave concern to the European Union. For that purpose, the European Union was engaged totally in the fight against organized crime and its main activities, seeking to tackling the organized crime across the borders of the EU, and supporting the Balkan states in fighting this phenomenon.

The political will of the EU.
From the political point of view the main (first) documents that shows the commitment of the EU to combat OC in this region are the meetings held in Tamper, Laeken, Seville, but the most important were the EU- Western Balkans summit in Thessaloniki on 21 June 2003, in which was decided that particular attention to combating trafficking in human beings, and the Balkan countries also commit to concrete measures, in accordance with the Thessaloniki Agenda and the document of the “Ohrid May 2003

267 For more information see: http://ec.europa.eu/home-affairs/policies/crime/crime_prevention_en.htm
Conference”, in order to cope effectively with illegal immigration and improve border security and management, with the aim of achieving European standards.

The policy of the EU towards the Balkan states is known as “Stabilization and Association” process (SAP)\(^{268}\). This policy envisages the establishment of privileged political and economic relations with the countries in the region, supported by a far reaching financial assistance program CARDS\(^{269}\). Enlargement and Western Balkans: helping acceding and candidate countries adjust to the EU acquis and contributing to stability in the Western Balkan region\(^{270}\).

**Stability Pact Initiative.**

The South- Eastern Europe Stability pact (Cologne, 10 June 1999) was an international initiative whose aim was to guarantee stability and democratic development in South-Eastern European countries. The objective of the stability pact was to promote the adoption, among the beneficiary countries, of policies, strategies and rules to combat organized crime that are in line with the international parameters; to strengthen operational cooperation among the authorities, to create specialized units; to reform judicial systems; and to organize training programs for law enforcement agencies\(^{271}\).

**The European Union instruments on fighting organized crime in Balkans.**

1. As the first instrument for the European Union to fight organized crime in Balkans are the *bilateral law enforcement agreements* with the Western Balkans, made by single member states with the Balkan countries, and by the EUROPOL with these countries\(^{272}\).

\(^{268}\) For further information and a clear vision see the “Stabilization and Association” agreements.

\(^{269}\) See for example, the CARDS programme in favour of the Balkan States, which is regulated by rule no.2666/2000 of 5.12. 2000 regarding assistance to Albania, Bosnia and Herzegovina, Croatia, The FR Yugoslavia and the ex Yugoslav republic of Macedonia (OJEC No. L 306 of 7. 12. 2000, page 1.)

\(^{270}\) All EU States are bound by a common body of legal rights and obligations, which is often referred to as ”acquis”. Any country joining the EU must transpose this acquis into its national legislation and implement it from the moment of accession. This section lists the European Home Affairs legislation currently in force and applicable to EU States

\(^{271}\) The USA Russia, the EU and various organizations and regional fora (Council of Europe, INCE; OECD; SECI; Adriatic and Ionian Initiative, Europol and Interpol are part of this pact. For a more detailed of the SPOC programme and Working Priorities for 2005 see the website: http://www.stabilitypact.org/org-crime/2005-priorities.html

\(^{272}\) The Council decision of 13 June 2002 authorizing the Director of EUROPOL to enter into negotiations
2. *The posting or exchange of the liaison officers.* As the first impetus was given by the council conclusions of 29 May 2001 concerning the creation of a network of national immigration liaison officers to help control migration flows through the Western Balkan region.\(^{273}\)

Further important steps in this direction were the:


b- The conclusions of the Chiefs of Police Task Force held in Rome the 6 and 7 October 2003 concerning the implementation of the above decision.

3. *Judicial cooperation.*

Judicial cooperation is part of the framework of the SAP which demonstrates to have reached the standards established by the EU.

The priorities in the framework of the judicial cooperation are:

a- Promotion of the role played by the EUROJUST, it means that this unit can conclude agreements with third countries for the purpose of the investigation of transnational organized crime.

b- Assistance to strengthen the professionalism of judges and prosecutors of the Balkan countries. This is realizing among the CARDS program.

4. *Joint investigation Teams.*

The conference of liaison officers operating in Balkan area, hosted by the Italian presidency in Rome on 6 and 7 November 2003, stated that the liaison officers operating in the Western Balkans should be involved in joint investigation teams.

\(^{273}\) The Italian Presidency has submitted a proposal for a resolution on the future deployment of liaison officers in Albania to combat drug trafficking.
5. **Police training.**

The CEPOL and other police training structures have carried out training exercises to the countries of the Western Balkans through CARDS\(^{274}\).

6. **Custom cooperation.**

Another important instrument in the fight against organized crime is the custom cooperation among the European Union and the Balkan countries.

1.2. **The European Union and the case of Eastern European and Central Asian States.**

In this case, is established a partnership and cooperation process. This process and partnership comprises a financial assistance program\(^{275}\) and bilateral partnership and cooperation agreements\(^{276}\), that contain provisions on cooperation in fight against organized crime that are similar to those contained in “The stabilization and association” process.

2. **The Organizations and the Pan-European Initiatives on fighting organized crime.**

2.1. **The Organization of the Black Sea Economic Cooperation (BSEC), as a framework of the regional cooperation in the fight organized crime.**

Within the year 90-92, a group of states belonging to the black sea region\(^{277}\) developed a permanent form of cooperation which was solemnly sanctioned in the summit Declaration of the BSEC and in the Bosphorus Statement, and was adopted in Istanbul on 25 June 1992.

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\(^{274}\) Such structures are South East European (SEE) Police Academies and the Southeast Police Chiefs Association (SEPCA) and the PROXIMA (its mission in Macedonia has already finished) and PAMECA.

\(^{275}\) The TACIS Programme.

\(^{276}\) Agreements have been stipulated and entered in force With Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Ukraine and Uzbekistan.

\(^{277}\) Armenia, Azerbaijan, Bulgaria, Georgia, Moldova, Romania, Russia, Turkey, Ukraine, Albania and Greece have joined in 1992.
This international conference became a real regional international organization, thanks to enforcement of the BSEC charter\(^\text{278}\). (Yalta, 5 June 1998). This could be considered as a form of cooperation among the Central- Eastern European Countries, and confirm the capacity of these to establish regional cooperation, while maintaining links with the European Union states.

The main action plans of \textit{BSEC organization are the following}:

- **Action Plan on Cooperation in Combating Crime, in Particular in its Organized Forms**
  - (May 2005 – April 2007)
  - (May 2007 – April 2009)
  - (May 2009 – June 2011)

The two most important agreements cooperation in the fight organized crime, were adopted in Corfu 2 October 1998 and the protocol of Kiev of 15 March 2002.

\subsection*{2.2. The South Europe Cooperation Initiative SECI.}

This is an international forum of these states that have a very important geographical position, and the participating states have finalized agreements on cooperation to prevent and combat Trans- border crime\(^\text{279}\). These agreements provides the creation of a regional center, with legal personality, to combat trans- border crime and envisages close forms of collaboration in the exchange of information and in carrying out investigations and the compatibility with the other international agreements.

\subsection*{2.3. The Adriatic and Ionian Initiative.}

This is an initiative launched by the Ancona Declaration of 20 May 2000, and promoted by Italy and Greece and its membership is limited to countries from Adriatic and Ionian area\(^\text{280}\).

\begin{itemize}
\item The text is available in the website: \url{http://www.bsec.gov.tr}. This charter came into force on May 1999.
\item For the texts, members and agreements within this regional organization see the Website: \url{http://www.ceinet.org}. and: \url{http://www.unece.org/seci/crime/agreement.htm}.
\item Albania, Bosnia and Herzegovina, Croatia, Greece, Italy, Slovenia, Yugoslavia (since 24 November
\end{itemize}
2.4. The Council of Europe and the Organization for Security and Cooperation in Europe.

The Council of Europe is an international organization, and it represents a wide European area. It could be considered as ideal forum in which the member states can discuss and elaborate common positions. The Council of Europe has implemented important activities in the field of Judicial Cooperation, paying particular attention to organized crime and the activities closely linked with it.\(^{281}\)

Giving attention to the Council of Europe, concerning the criminal organizations and their activities, first the European Conventions were elaborated on single issues, such as money laundering, and corruption, with the aim of harmonizing the definition of these crimes, which often have links with transnational organized crime- and promoting cooperation among states in fighting them; second with the recommendations and reports on organized crime has provided guidelines for fighting organized crime.\(^ {282}\)

The Organization for Security and Cooperation in Europe (OSCE) is a regional organization and has played a crucial role on fighting activities of organized crime focusing on fighting the trafficking in Women and Children, and especially its office for democratic institutions and human rights (ODIHR) has become increasingly involved in the issue the last years.

3. The European Union and the UN.

The EU has been actively involved in the negotiations with the UN, but the most significant case is:

The United Nations Convention against Transnational Organized crime, which is signed in Palermo in December 2000, and on its three protocols. These related to the smuggling of illegal migrants, trafficking in human beings, and fight against the illicit manufacture and trade of firearms.

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\(^{281}\) See the chapters of judicial cooperation and the EU combating the activities of organized crime.

\(^{282}\) For further information about the Council of Europe see its website.
They provide for the creation of domestic criminal offences to combat organized crime, the adoption of new, sweeping frameworks for mutual legal assistance, extradition, law enforcement cooperation and technical assistance and training.

4. The European Union Law enforcement cooperation and Third states.

The European Union structure: **EUROPOL.**

**Europol strategy.** Europol has to assist the Member States in combating organised crime within the European Union, but because organised crime does not stop at international borders, it is also essential to have cooperation initiatives with non-EU States, other EU Bodies and international organisations. The Justice and Home Affairs Council has therefore adopted the Council decision of 27 March 2000 (amended by the Council decision of 6 December 2001 and the Council decision of 13 June 2002) which authorises the Director of Europol to enter into negotiations on cooperation agreements with third states and non-EU related bodies. The extending of the Europol mandate and allowing it to cooperate with third states and different law enforcement agencies, has growth the possibility of such a structure to intensify the fight against organized crime. The Europol has concluded agreements with some states, for example on 2001 with Norway and Iceland. Also it has concluded agreements with Bulgaria, Colombia, Russia, Turkey and Croatia. These agreements cover the exchange of strategic and operational information on organized crime. Also the Europol signed (on 5 November 2001) an agreement with Interpol to establish and maintain the exchange of operational, strategic, and technical information, the coordination of activities, including the development of common standards, action plans, training and scientific research and the secondment of liaison officers.
The Europol signed a cooperation agreement with the EMCDDA to launch the exchange of strategic and technical information, and is limited to drug related matters, and illegal money laundering activities\(^\text{283}\).

On December 2001 was the first cooperation agreement between Europol and USA. Also in this year the Europol signed a cooperation agreement with the European Central Bank (ECB) to fight possible Euro fraud and counterfeiting once notes and coins come into use. The agreement is aimed at ensuring effective cooperation between the two parties and member states to combat counterfeiting of the Euro currency\(^\text{284}\).

Also the Europol has concluded agreements with the Switzerland in September 2004 and the Euro just\(^\text{285}\). Currently Europol cooperates with (in alphabetical order): Albania, Australia, Bosnia and Herzegovina, Canada, CEPOL (European Police College), Colombia, Croatia, Eurojust, European Central Bank, European Commission, European Monitoring Centre for Drugs and Drug Addiction, Former Yugoslav Republic of Macedonia, Frontex, Iceland, Interpol, Moldova, Norway, OLAF (European Anti–Fraud Office), Russian Federation, Serbia, Switzerland, SITCEN (EU Joint Situation Centre), Turkey, United Nations Office on Drugs and Crime, USA, World Customs Organization. This is done on the basis of cooperation agreements concluded in accordance with the Europol Council Decision. The Europol External Strategy defines the framework within which Europol is to develop its activities with regard to third partners. The nature of the cooperation agreements can vary, ranging from operational cooperation, including the exchange of personal data, to technical or strategic cooperation.

CONCLUSIONS.

The work aimed to show that the problem of organized crime is seen as an internal and external problem growth in the years, in the European Union.

The organized crime in the EU seems to be increasing both in quantity as well as in quality. The variables conducting to organized crime within the EU are numerous but as a result of the fall of the Iron Curtain and the eastward enlargement of the EU, the organized crime groups and their criminal activities expanded in both geographical spread and crime-type attention.

With the last enlargements, first, the international co-operation between the OC groups increased with the presence of groups and criminals from Eastern Europe and second, the external borders of the EU moved to the Russian, Ukrainian and Moldovan borders, which are already known to be important source and transit countries of organized crime.

OC groups do not concentrate on a single criminal activity but they engage in various criminal activities. The trafficking in human being, illegal migration, drug trafficking and various types of financial crimes present the greatest threat to the EU.

In this work, it is argued that the OC is a complex phenomenon in its nature and in its modus operandi. It is also argued that the features that characterize the Mafia-type OC such as: well structured criminal organization, adopting the rule ‘law of silence’, the institutionalization of its violence in its culture, the non-recognition of the state monopoly, its economic, social and overall political dimension makes it absolutely the ‘highest level’ of the organized crime.
Thus, its ‘long standing role in the society’ its state and social consent, its capacity to be transformed in the time conserving the traditional activities through the control and the dividing of the territory, are the very characteristics that distinguish the mafia from the rest of the OC.

The structuring of my research work, deals with investigation of organized crime, and the need to introduce the anti-mafia legislation in the respective legislation is argued.

To completely accomplish this, I have introduced also the chapter of the EU law cooperation arguing that Judicial, Police and Custom cooperation is the best way to investigate and fight organized crime.

In fact investigation of organized crime is focusing in two traditional activities, trafficking in human being and illegal immigration, because in these traditional activities we found the victims of organized crime. To those victims the EU member states offer the possibility to grant benefits as attracting way, to make possible their collaboration with Justice. And the Judicial position of the victim in these cases is victim-testimony.

In this work is shown the situation within EU member states regarding this issue, and the need to adopt and harmonize certain legislation, as the Italian one has provided is stressed. Following this argument has been shown that Community Method, adopted from the EU from recent year and currently (by the treaty of Lisbon, with changes made in ordinary legislative procedure) is so important to help the investigation and combating, the traditional activities of organized crime (trafficking in human being and illegal immigration), through collaboration of victims of organized crime.

Also is argued and shown that EU in this context can offer protection and grant benefits to victims of organized crime.
The other important point is related to the members of organized crime, like pentiti-penitent or supper grasses. In this part is argued that: *Those are the members of a criminal organization that decide to give up from their activity or those who are captured or arrested from the police forces*, that accept to aid the justice system in the investigation and arresting of the members of a organized crime group.

The 'super grass' is someone who originates from the ranks of the criminal organisation itself. Hence the origin of the term lies in 'grassing' or betraying your associates.

The Italian term *pentiti literally* refers to the 'penitent' or someone who has decided to repent for his criminal activities by offering a service to the law enforcement agencies. The super grass is one of a number of types of informants from the criminal (or terrorist) underworld who gives information to the law enforcement agencies.

*To investigate and combat organized crime and mostly the mafia type - organized crime, the Italian model is the best one.*

To investigate and to fight organized crime is needed to find the attractive ways to make members collaborate with Justice. In addition, is argued that attracting ways serves to Justice to make pentiti broke the solidarity amongst members of organized crime. (Offering garancies set by law), therefore they can collaborate with Justice.

In order to realize that, and to defeat the possible refusal cooperation inside the mafia groups, *the mitigating circumstance was devised*, with the aim of breaking the solidarity among the members of the criminal organization, in favor of those defendants who agree to cooperate with police and public prosecutors, helping them in discovering the criminal groups and in finding the necessary evidence.
The Italian legislation should be introduced among EU member states, and the reasons why, are explained in the chapter “Reasons for introducing the anti mafia legislation in the EU member states legislation”, where the arguments are: The existence of the Mafia in EU territory, sharing the same culture of “Use of violence” and “Law of Silence” (mafia methods), and the importance of the model of Italian legislation regarding the pentiti.

The anti mafia law regarding pentiti or victims of organized crime need to be introduced, even in the states where don’t experience at all the form of criminal organization offences, aggravating and mitigating circumstances.

The increased OC activity constitutes in political, economic and social terms an increased threat for the EU. This threat posed by the OC groups has been a major political concern for the EU who has stressed the need for a response to this phenomenon.

To this end, the European governments have devised strategies and have strived to enhance the police and judicial cooperation both as a response to the perceived threats to order and security and as means of compensating for the removal of border controls.

The perceived threat of the OC has induced the European leaders to devise a common policy in criminal matters as well as to improve the strategic thinking on the fight against the OC.

The EU has strived to achieve the objectives of these political and strategic instruments through the intensification of the adoption of the legal instruments laid down in the TEU and the Treaty of Lisbon (common positions, Decisions, Framework decisions regulation and conventions), the strengthening of the Judicial and Police cooperation in Criminal matters.
In this part is argued that **Mutual recognition is the Cornerstone of judicial cooperation in criminal matters within the Union, and the European Arrest Warrant as an EU legal instrument of the mutual recognition is a model for EU cooperation.**

**The need in particular to harmonize the EU organized crime legislation is stressed.** Important efforts of harmonization have targeted the sector of organized crime legislation. The driver for these efforts was the idea that in a globalized world, where borders and barriers among different legal systems increasingly fade out, organized crime may take advantage of the new opportunities that these changes provide also for criminals.

Therefore, a certain level of harmonization of criminal legislation may prevent the creation of “safe havens” for criminal organizations, where their criminal activities are lightly countered or do not even constitute offences at all.

Even if this reasoning received criticisms, arguing that rarely organized groups would ever consider the differences among national criminal legislation when organizing their criminal activities, **the idea of providing every criminal justice system with commonly agreed definitions and tools for tackling organized crime seems reasonable.**

The argument that many countries do not experience the presence of organized crime does not undermine the underlying rationale of harmonization of criminal legislation dealing with organized crime.

The lack of serious criminal groups within the borders of a country should not prevent it from approving some minimum legislation tackling criminal organizations applicable only in case of need.
So, harmonization and approximation of organized crime legislation among EU Member States is important to effectively counter organized crime and prevent its displacement toward countries where the criminal law system is less prepared to tackle it.

The creation of the Joint investigations teams, the set up of institutions and structures (the EUROPOL, the Liaison Magistrates, the European Judicial network, and the EUROJUST) and the above mentioned measures taken by the EU helped the investigation and combating organized crime in EU and.

In fact EU has achieved success to tackle the threat of the OC to order and security and what is most important to compensate the removal of international borders and the eastwards shift its external borders.

Except what I have argued in particular regarding the investigation and EU cooperation in criminal law, the EU need to adopt a global strategy to investigate and fight organized crime as hole, and EU strategy against organized crime can be defined as a whole of norms, tools, mechanisms, politics initiatives, structures and agencies adopted by the EU to combat the activities of the OC as well as to realize a “real area of freedom and security” within the EU.

Under this strategy fighting organized crime means, struggle against organized crime groups, means struggle against its structure, its activities and its patrimonies. Fighting organized crime means adopting policies, using instruments, creating law enforcements agencies and cooperating internally and internationally.

The priority areas of the EU strategy against OC are the struggle against trafficking in human beings, drug trafficking, illegal migration, financial crimes (fraud and money laundering) as well as the fight against the corruption.
The EU is fighting the activity of trafficking in human beings by focusing in the struggle against the trafficking of women and children.

For that the EU strategy consists in preventive measures, and the approximation of the penal legislation related to these phenomena, the improving and the reinforcing of the judicial, police and the custom cooperation.

The strategy of the EU against the illegal migration is based on the strengthening of the penal law, the enhancement of the police and customs cooperation, the control and the management of the external borders to halt the illegal immigration versus the EU.

The strategy of the EU against the drug trafficking consists in the approximation of the legislation of the member states related to the drug problems. The fight against the production of drugs and the drug addiction has been also another field in which the EU has been engaged.

The fight against the financial crimes (fraud and money laundering) and corruption is another important part of the EU strategy. The primary objective of this strategy is to protect the financial interest of the European Community.

To achieve this objective and to tackle the threat of these criminal activities the EU has adopted various instruments from the legal instruments (numerous Conventions, and Framework Decisions against fraud, corruptions and money laundering) and the establishments of the new structures and offices (OLAF,) to the international cooperation with the UN, Council of Europe and OECD.

The internal action of the EU against the OC is complemented by the cooperation at the international fora. To this end the EU has strengthened cooperation with the UN and other international organizations, with the applicant states as well as with other 3rd countries be they associates or partners countries of the EU.
The EU strategy and the EU action against organized crime in Europe has achieved successes to tackle the growing threat posed to the EU by the OC that takes advantage of the removal of borders controls.

At the end investigation and fight against organized crime, is realizing through the horizontal law cooperation among member states, with the possibilities offered from EU treaties and changes made in Lisbon Treaty, but nothing vertically is done.

The Lisbon Treaty provided the legal base for creation of European Public Prosecutor’s office with the competence to combat crimes affecting the financial interests of the Union and serious crime with a cross-border dimension, as a supranational body, and the EU should proceed in this direction.

Supporting this, the EU need to develop in a parallel way with harmonization and approximation, the process of Unification of EU criminal Law, because the European Public Prosecutor’s office, can be a real and an autonomous EU judicial authority.
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