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**Ethnic Organised Crime Groups:
Assessing Countermeasures Adopted by EU Member
States**

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La mafia non è affatto invincibile. È un fatto umano e come tutti i fatti umani ha un inizio, e avrà anche una fine. Piuttosto bisogna rendersi conto che è un fenomeno terribilmente serio e molto grave e che si può vincere non pretendendo eroismo da inermi cittadini, ma impegnando in questa battaglia tutte le forze migliori delle istituzioni.¹

Giovanni Falcone, 30th August 1991

¹ The Mafia is not invincible at all. It is a human fact and like all human facts it has a beginning, and it will also have an end. Rather, we must realize that it is a terribly severe and very serious phenomenon and that it can be overcome not by demanding heroism from helpless citizens, but by engaging all the best forces of institutions in this battle.

Abstract

Ethnic organised crime groups (OCGs), such as Nigerians, Chinese and Albanians, are deeply embedded in Europe and pose a threat to national and international security. They engage in a range of criminal activities, such as human trafficking and drug smuggling, and sometimes cooperate with local OCGs in Europe. In addition, there is evidence of their possible links to terrorist groups, as they are involved in illegal activities such as money laundering to finance terrorism.

Existing legislative and operational measures at the EU and national level were created to tackle local OCGs and were tailored to the specific economic, political and social contexts in which they developed. However, the network organisations, internal structures, criminal activities and *modi operandi* of ethnic OCGs differ in many ways.

The research question of this thesis concerns the assessment of the capacity to combat ethnic OCGs in EU Member States through a qualitative methodological approach focusing on the legislative and operational difficulties in fighting these new groups. Therefore, the study first analyses the specificities of Nigerian, Chinese and Albanian OCGs. Secondly, it identifies the countermeasures taken by EU Member States to combat OCGs, focusing from the legislative point of view on the implementation of Framework Decision 841/2008 and from the operational point of view on interceptions of communications, undercover investigations, informants and joint investigation teams. Finally, this dissertation assesses whether these measures against organised crime are applicable to counteract ethnic OCGs, identifying potential improvements that are needed to make these measures more effective.

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Chapter 1

Born and Spread of a New Threat to National and International Security: Ethnic Organised Crime Groups

Summary: 1. Introduction; 2. Researchable Problems; 3. Conceptualisation; 4. Discussion of Method; 4.1 Qualitative methodologies; Conclusion; List of references.

This chapter focuses specifically on the born and spread of a new threat to national and international security which is an ethnic organised crime group. This research starts by analysing the dissemination of organised crime groups to understand how this general category turned into one specific called ethnic. Then, it identifies the researchable problems, conceptualises the main concepts used and analyses the methodology used.

1. Introduction

Transnational organized crime has a negative impact on development, peace, stability, security, and human rights. States are increasingly vulnerable to such crime and there is a growing degree of penetration of criminal organizations, and of their financial and economic resources into the formal economy.²

Data gathered and elaborated by the EUROPOL's 'Serious and Organised Crime Threat Assessment' (SOCTA³) of 2021 (last available data) indicate that the presence of organised crime groups (hereafter, OCGs) in Europe is growing. Serious and Organised Crime 'constitute the most pressing internal security challenge to the EU'.⁴

More than 5,000 OCGs operate at the international level and are under investigation by EU Member States. These OCGs involve more than 180 nationalities, 70

² United Nations office on Drugs and Crime (2017), Annual Report, p.38. Available at <https://www.unodc.org/unodc/en/about-unodc/annual-report.html>.

³ Serious and Organised Crime Threat Assessment (SOCTA) is a quadri-annual, strategic, and multidisciplinary Europol's Report aiming at identifying the priorities in the fight against major crime. More information is available at: <https://www.europol.europa.eu/socta-report>

⁴ Idem, p.14.

per cent of which operate in more than three countries, and 40 per cent have members who are involved in more than one criminal activity. Furthermore, 79 per cent of these OCGs are composed of six or more members which are in 65 per cent of cases individuals of multiple nationalities. These networks use fluid crime structures in 60 per cent, and 1 out of 4 has been active for more than 10 years.⁵

For years, the fight against OCGs has been among the top priorities of the European Union. Continuing the previous EU Policy Cycle for organised and serious international crime,⁶ the European Commission has renewed its commitment to assist Member States in fighting OCGs effectively for the period 2018–2021 and then 2022–2025. This ongoing effort by the European community reflects the understanding that combating organised crime in all its forms is the primary challenge to internal security. As Spiezia⁷ stated,

the threats posed by organised crime are capable of directly affecting the constitutional model of the rule of law itself, influencing the structural and functional elements of Western democracies.

In the context of this research project, all considerations of the security threats posed by organised crime focus on the spread of ethnic OCGs that have emerged in the last two decades. According to international and European reports, the term ethnic OCGs

⁵ Europol (2021), European Union serious and organised crime threat assessment, A corrupting influence: the infiltration and undermining of Europe's economy and society by organised crime, Publications Office of the European Union, Luxembourg., available at: <https://www.europol.europa.eu/publication-events/main-reports/european-union-serious-and-organised-crime-threat-assessment-socta-2021#downloads>

⁶ The Policy cycle is the methodology adopted by the European Union to identify the most important criminal threats affecting the Eu. It includes the list of crime priorities and on the 27th March 2017, the Council decided to continue the EU Policy Cycle for organised and serious international crime also for the period 2018 –2021. All the priorities and their relevance are available at: <https://www.europol.europa.eu/empact>.

⁷ Spiezia F. (2022), *La lotta alla criminalità organizzata fuori dai confini nazionali*, edited text of the lecture given at the course organised by the Scuola Superiore della Magistratura and the Direzione Nazionale Antimafia ed Antiterrorismo entitled “I 30 anni della DNA, delle DDA e della DIA. 30 anni di legislazione contro il crimine organizzato: le origini e le evoluzioni del sistema antimafia”, 22 June 2022, Rome, Sistema Penale, p.5.

refers to OCGs based on ethnicity, family ties, and non-European origin. The most influential and widespread ethnic groups in Europe⁸ are Nigerians, Chinese, and Albanians.⁹ These OCGs operate throughout the European Union¹⁰ and pose a threat to national and international security for two reasons.

First, they engage in various illegal activities, such as human trafficking for sexual and labour exploitation¹¹ and drug smuggling.¹² Some research results show that ethnic OCGs, such as Chinese¹³, operate massage centres or restaurants in some European

⁸ Anti-mafia Investigative Directorate (DIA) publishes a semesterly Report each in which the authority analyses illegal activities carried out by *traditional* and *ethnic* OCGs. All Reports from 1991 to 2022 are available at: https://direzioneeinvestigativaantimafia.interno.gov.it/page/relazioni_semestrali.html

⁹ For more information about the Albanians OCGs see: Cicone E. (2016), 'La criminalità mafiosa albanese. Un fenomeno da approfondire', in S. Becucci and F. Carchedi (edited by), *Mafie straniere in Italia. Come operano, come si contrastano*, FrancoAngeli, Milano, pp. 96-107. Russo G. (2010), "La mafia Albanese", in *Rassegna Italiana di Criminologia*, n.1/2020, pp. 1-10.

¹⁰ Medici per i Diritti Umani – MEDU (2018), *EXODI. Migratory routes from Sub-Saharan Countries to Europe*, <http://esodi.mediciperidirittiumani.org/>. Organizzazione Internazionale per le Migrazioni – OIM (2018), *Mediterranean migrant arrivals reached 171,635 in 2017; Deaths reach 3,116*, <https://www.iom.int/news/mediterranean-migrant-arrivals-reached-171635-2017-deaths-reach-3116>.

¹¹ Baldoni E. (2011), 'Scenari emergenti nella tratta a scopo di sfruttamento sessuale verso l'Italia' in *Revista Interdisciplinar da Mobilidade Humana – REMHU*, n. 37, p. 43-58. Beretta L., Bondi L., De Masi F., Esposito F., Festagallo F., Gargano O., Quinto C.R. (2016) (edited by), *Inter/rotte. Storie di tratta, percorsi di resistenze*, BeFree Cooperativa Sociale contro Tratta, Violenze, Discriminazioni, Edizioni Sapere Solidale, Roma. Campana P. e Varese F. (2015), 'Exploitation in human trafficking and smuggling', in *European Journal on Criminal Policy and Research*, n. 22, issue 1, pp. 89-105. Dipartimento per le Pari Opportunità (2018), *Dati – Contro la tratta*, <https://www.youtube.com/watch?v=8e-B8uiDCLS8&feature=youtu.be>. Europol (2015), *Trafficking in human beings in the EU. Situation Report*, <https://www.europol.europa.eu/publications-documents/trafficking-in-human-beings-in-eu>. Eurostat (2015), *Trafficking in human beings*, Statistical working papers, 2015 edition, https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/eurostat_report_on_trafficking_in_human_beings_-_2015_edition.pdf. Reitano T., Adal L. e Shaw M. (2014), *Smuggled futures. The dangerous path of the migrant from Africa to Europe*, The Global Initiative against Transnational Organized Crime. Shelley L. (2014), *Human smuggling and trafficking into Europe. A comparative perspective*, Migration Policy Institute.

¹² According to DIA Report, these illegal activities represent the major sources of income of ethnic OCGs in Italy. For more information see: https://direzioneeinvestigativaantimafia.interno.gov.it/page/relazioni_semestrali.html

¹³ Becucci S. (2016), 'La criminalità organizzata cinese. Costanti, cambiamenti, e aspetti controversi', in Becucci S. e Carchedi F. (edited by), *Mafie straniere in Italia. Come operano, come si contrastano*, FrancoAngeli, Milano, pp. 59-89. Ceccagno A. (2015), *Giovani migranti cinesi. La seconda generazione a Prato, Centro di ricerca e servizi per l'immigrazione*, comune di Prato, Collana di Sociologia, FrancoAngeli. Ceccagno A. (2019), 'New Chinese Migrations: Mobility, Home, and Inspirations', June 2019, in *The China Quarterly*. Ceccagno A. and Rastrelli R. (2008), *Ombre cinesi? Dinamiche migratorie della diaspora cinese in Italia*, Carocci, Roma. Galullo R. (2018), *La mafia cinese fa il salto di qualità e replica il modello 'Ndrangheta*, *ilsole24ore*, 25th January 2018. Lintner B. (2010), 'Chinese Organised Crime', in *Global Crime*, Volume 6, 2004- Issue 1, Published online 08 September 2010. Ministry of Labour and Social Policy (2018), *La comunità cinese in Italia. Rapporto annuale sulla presenza dei migranti*, available at <https://www.google.com/lacomunitacineseinItalia->

cities to hide illegal activities such as prostitution or illegal immigration.¹⁴ These groups move illegal capital and carry out old and new offences.¹⁵

Secondly, there is evidence that ethnic OCGs are connected to criminal networks and terrorist groups worldwide. According to the United Nations Office on Drugs and Crime, in Europe

activities of terrorists and organised criminals frequently reinforce each other, where terrorists engage either directly or indirectly in organised crime activities, such as trafficking, smuggling, extortion, kidnapping for ransom and the illicit trade of natural resources, for financial and/or material benefits.¹⁶

OCGs are changing and the same is happening to terrorist groups: these two traditionally separate phenomena have many operational and organisational similarities. Nowadays, it is impossible to determine whether a clear distinction is meaningful¹⁷.

Consequently,

rapportoannualesullapresenzadeimigranti. Wang P. (2017), *The Chinese Mafia: Organized Crime, Corruption, and Extra-Legal Protection* (Clarendon Studies in Criminology), Oxford university press.

¹⁴ eastwest.eu (2013), *Come si muove la mafia cinese sul territorio italiano*, https://eastwest.eu/attachments/article/851/east22_Come_si_muove_la_mafia_cinese_sul_territorio_italiano.pdf

¹⁵ Commissione parlamentare di inchiesta sul fenomeno delle mafie e sulle altre associazioni criminali, anche straniere (2018), Final Report, (rapporteur: on. Rosy Bindi), Doc. XXIII, N. 38, p.159. Approved by the Commission on the 7th February 2018. United Nations Office on Drugs and Crime (2017), p.40.

¹⁶ United Nations Office on Drugs and Crime (2017), <https://www.unodc.org/unodc/en/about-unodc/annual-report.html>.

¹⁷ OCGs and terrorist groups were born historically separate. However, the possible links between organised crime and terrorism have been at the centre of criminal and criminological considerations in all European countries for many years. For example, the Council of Europe, a supranational organisation dealing, among other things, with the fight against terrorism, has focused a great attention on this issue. The legislation against terrorism is historically separate: Article 416 bis Italian Penal Code to combat mafia-type organised crime and Article 270 bis Italian Penal Code to combat associations for terrorist purposes, including international ones. Today, there is no evidence of structural fusion between these groups, but rather of collaborations to achieve common goals that lead to the identification of terrorist groups as organized crime groups for all intents and purposes (more details in the next chapter).

See: Europol, European Union Terrorism Situation and Trend Report (TE-SAT) (2020), p.21. Available at: <https://www.europol.europa.eu/activities-services/main-reports/european-union-terrorism-situation-and-trend-report-te-sat-2020>. See also: Puttonen R. and Romiti F. (2020), 'The Linkages between Organized Crime and Terrorism', *Studies in Conflict & Terrorism*, DOI: 10.1080/1057610X.2019.1678871

drugs, crime, and terrorism are sometimes bound by a dark alliance; but if we unite, if we act in concert, if we chase down the profits, we can disrupt this cooperation.¹⁸

While the existence and specific elements that characterise criminal organisations such as the Italian Camorra and Cosa Nostra have been extensively documented for years, the spread of ethnic OCGs raises new questions. The latter criminal groups have specific characteristics, – i.e., structures, organisation, illegal activities and modus operandi, and their own social and cultural elements that influence their behaviour. Understanding all these aspects is necessary to understand what elements characterise ethnic OCGs and therefore how to counter them effectively.

From a legal perspective, EU Member States have not developed a uniform response, but rather have introduced a range of legislative and investigative measures¹⁹ to combat OCGs. Italy was the first Member State to introduce specific prevention and prosecution measures to combat OCGs, as early as the 1980s.²⁰ As a result of this development, almost all EU Member States have gradually enacted legislation on this issue. The heterogeneity of these measures is due to the fact that national legislation has been developed based on specific political, social, and economic contexts and has national or local OCGs as its model. As Marotta²¹ argues, ‘organised crime is not contained in a

¹⁸ Statement by UNODC Executive Director Yury Fedotov at the OSCE-wide conference on the nexus between illicit drugs, organized crime and terrorism, 10 July 2017 in: UNODC (2017), p. 89, available at: <https://www.unodc.org/unodc/en/about-unodc/annual-report.html>

¹⁹ The expression *measures* is used to refer to criminal law, and investigative tools. The eight special legal and investigative techniques usually used in the fight against organised crime are: surveillance, interception of communications, covert investigations, controlled delivery, informants, hot pursuit, witness protection, and joint investigation teams. For more information see: <https://wcd.coe.int/ViewDoc.jsp?id=838445&BackColorInternet=DBDCF2&Ba%20ckColorIntranet=FDC864&BackColorLogged=FDC864>

²⁰ Law 646/1982 modified Article 416 bis Penal Code introducing the Mafia-type criminal association also for foreigners’ groups. Its full text and all the modifies are available at: <https://www.brocardi.it/art416bis>.

²¹ Marotta G. (2009), *Réflexions criminologiques sur le theme de la criminalité organisée*, in *Cahiers de la sécurité – Les organisations criminelles*, n. 7, INHESJ, Paris.

single definition.’ Because of the complex and flexible nature of modern OCGs, we must take the perspective of an ongoing process. Consequently, legislative and investigative measures must also be flexible in order to adapt to the evolution of OCGs.

The adoption of Framework Decision 2008/841/JHA²² stemmed from the need to provide a coordinated and clear response to transnational phenomena such as OCGs. The Framework Decision aimed to harmonise national legislation and establish common standards of prevention and enforcement in all EU Member States to fight against OCGs.

The emergence of ethnic OCGs raises the question of whether criminal law and operational measures are applicable to combat them. This study aims to fill knowledge gaps and understand whether there are difficulties in EU Member States in combating these emerging ethnic OCGs, and if so, what legislative and operational improvements are needed.

2. Researchable Problems

The purpose of this study is to assess whether existing legislative and operational measures are indeed applicable to ethnic OCGs. It does so by assessing whether there are difficulties in combating these new OCGs in EU Member States, by trying to understand the causes and proposing implementation measures.

In order to analyse the problem under study, it is first necessary to deal with two preliminary aspects. First, to study the specific characteristics – structures, organisation, illegal activities, *modi operandi*, etc. – of ethnic OCGs. The aim is to understand what elements particularly characterise these OCGs. Secondly, to map and compare the

²² Full text available at: <https://eur-lex.europa.eu>.

international and national legislative and operational measures taken by the EU Member States to combat OCGs. In particular, the study focuses on the most recent international instrument that provides direct legal guidance to the legislation of each Member State in the field of organised crime (i.e. Framework Decision 841/2008), and on the most useful operational measures used by Member States in order to fight OCGs (i.e. interception of communications, covert investigations, informants and joint investigation teams).

Only by examining these two preliminary aspects will it be possible to assess the capacities of EU Member States to fight efficiently ethnic OCGs, which currently pose a threat to national and international security.

3. Conceptualisation

It is necessary to define the boundaries, exceptions, caveats, and qualifications of the study and to determine delimitations and limitations. This research project focuses on a social phenomenon – ethnic OCGs – and a wide range of countermeasures taken by EU Member States. There is no clear and unambiguous definition for some of the key terms of the research, and for this reason, their use in this study needs to be clarified.

Organised crime: the real meaning of organised crime has been the subject of much discussion by scholars.²³ In fact, according to Schelling²⁴, it does not simply mean ‘crime that is organised’. Starting from the 1960s, sociologists, criminologists, and lawyers disagree about its proper definition²⁵. The main difference is that each scholar focuses on a different aspect of what can be considered organised crime,

²³ Symeonidou-Kastanidou E. (2007), “Towards a New Definition of Organised Crime in the European Union”, *European Journal of Crime, Criminal Law and Criminal Justice*, pp.83-103.

²⁴ Schelling, T. (1984) *Choice and Consequence*. Cambridge, MA: Harvard, University Press, p.180.

²⁵ Wright A. (2013), *Organised Crime*, Routledge, New York pp.2-13.

some on the illegal activities carried on, and others on the subjects that must act to have organised crime.²⁶ Today's organised crime is surely different from the past because it changes according to social, political, economic, and cultural mutations to which it adapts. Over time, criminal complexity increases, the links between members of the organisation grow, and the illegal activities carried on change. For this reason, it is not possible to base the definition of organised crime only on one of these aspects. It is not the type of crime committed that distinguishes between organised crime and non-organised crime, but a certain type of organisation with some specific characteristics.

In 1975, the UN sought to elaborate a universal definition of organised crime aiming at providing a common basis for the elaboration of policy and law.²⁷ Later, in 1998, the European Union set out a definition of organised crime in order to consolidate policies on the subject and to introduce in the EU Member States a criminal offence to participate in a criminal organisation.²⁸ In 2001, the European Commission together with Europol set out a list of characteristics comprising a working definition of organised crime in the context of the 1998 definition set out

²⁶ For more information see: Savona E. U. (1992), 'Voce Criminalità Organizzata', in *Enciclopedia del Novecento*, Treccani, pp. 423, 435.

²⁷ United Nations (1976) *Fifth UN Congress on the Prevention of Crime and the Treatment of Offenders: Report (A/CONF.169/15/Add.1)*. New York: UN Department of Economic and Social Affairs. The definition elaborated by the UN is the following: "Organised crime is understood to be a large scale and complex criminal activity carried on by groups of persons, however loosely or tightly organised, 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 connexion with political corruption.

²⁸ European Union (1998) *Article 1 of the Joint Action of the Justice and Home Affairs Council to Create a Criminal Offence to Participate in a Criminal Organisation*. Brussels: European Union, Council of Justice and Home Affairs Ministers.

Article 1 of a Joint Action of the Justice and Home Affairs (OHA) Council of the EU: "a criminal organisation shall mean a lasting, structured association of two or more persons, acting in concert with a view to committing crimes or other offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty, whether such crimes or offences are an end in themselves or a means of obtaining material benefits and, if necessary, of improperly influencing the operation of public authorities".

above.²⁹ Finally, Article 2 of the United Nations Convention against Transnational Organized Crime³⁰ provides a similar definition emphasising the relevance of structured groups.

The legal definitions above provide an opportunity to analyse the evolution of the concept over time by linking it to the legal and political context that generated those definitions. However, they do not explain the deeper nature of organised crime. In order to fill these gaps, criminologists have sought to provide comprehensive definitions. For example, Maltz³¹ identifies nine categories of activity that serve to define organised crime.³² Not all the OCGs have the same characteristics or structure but, violence, corruption, the pursuit of multiple enterprises, and continuity, constitute the essence of organised criminal activity. Abadinsky³³ sets out a similar list of characteristics, lighting the importance of power, profit, and perpetuity.

In this research project, the term ‘organised crime’ will be associated with the features that constitute the lowest common denominator of organised crime, namely: it must be a structured organisation (hierarchical or flexible) of people who collaborate for a prolonged or indefinite period, aimed at enrichment of both

²⁹ European Commission (2001) 'Joint Report from Commission Services and Europol - Towards a European Strategy to Prevent Organised Crime', Commission Staff Working Paper, SEC (2001) 433 (Brussels, 13 March). Quoted in Elvins M. (2003) 'Europe's Response to Transnational Organised Crime', in A. Edwards and P. Gill (eds) *Transnational Organised Crime: Perspectives on Global Security*. London: Routledge, p.34.

³⁰ United Nations (2000) *Convention against Transnational Organized Crime*. Palermo, Sicily: United Nations.

³¹ Maltz, M. (1976) 'On Defining Organized Crime: The Development of a Definition and a Typology', *Crime and Delinquency*, 22(3): 338-46.

³² These categories are use of corruption and violence to achieve their goals, sophistication, continuity and discipline in their operations, engagement in multiple enterprises, use of rituals for bonding members together. More information at: Wright A. (2013), *Organised Crime*, Routledge, New York p.10.

³³ Abadinsky, H. (1994) *Organized Crime* (3rd edn). Chicago: Nelson Hall, p.6.

the individual and the organisation, through the use of violence and the commission of crimes.³⁴

Criminal Organisation: the birth and spread of what is called criminal organisation is strictly linked with the evolution of gangs.³⁵ The term ‘gang’ was used first by Sheldon³⁶ during the late 19th century to refer to predatory associations of people involved in violence and property crimes. Starting from this definition, many criminologists started to study the birth and the development of gangs associating them with several criminological theories³⁷, mainly the School of Chicago. All research on the cultural and social contexts of gangs underlines that it is a complex phenomenon that varies from state to state and from culture to culture. The question about the relationships between gangs and organised crime is a central one. Some OCGs have their origins in local crime and in many cases, members graduate from gangs to more complex criminal groups.³⁸ For example, Decker et al.³⁹ examined the extent to which street crime gangs have been linked with organised crime groups. They concluded that there is not a unique determinant of

³⁴ For more information see: Savona E. U. (1992), ‘Voce Criminalità Organizzata’, in *Enciclopedia del Novecento*, Treccani, p. 424.

³⁵ Wright A. (2013), *Organised Crime*, Routledge, New York, p.28.

³⁶ Sheldon H.D. (1898) 'The Institutional Activities of American Children', *American Journal of Psychology*, 9/4: 425-48.

³⁷ For more information: Wright A. (2013), *Organised Crime*, Routledge, New York, p.28-35. Cohen A.K. (1955) *Delinquent Boys: The Culture of the Gang*. Glencoe, IL: Free Press. Cloward R. and Ohlin L. (1960) *Delinquency and Opportunity: A Theory of Delinquent Gangs*. New York: Free Press. Spergel, I. (1966) *Street Gang Work: Theory and Practice*. Reading, MA: Addison- Wesley. Hirschi, T. (1969) *Causes of Delinquency*. Berkeley: University of California Press.

³⁸ Wright A. (2013), *Organised Crime*, Routledge, New York, p.38.

³⁹ Decker, S.H., Bynum, T. and Weisel, D. (1998) 'A Tale of Two Cities', in J. Miller, C.L. Maxson and M.W. Klein (eds) (2001) *The Modern Gang Reader* (2nd edn). Los Angeles: Roxbury Publishing Company.

a linkage between them, but the presence of organised criminal groups leads to more organised gangs.⁴⁰

The EU Member States have adopted, in the wake of Italian legislation, several laws to define what is a criminal organisation. In 2008 the Framework Decision (2008/841/JHA⁴¹) defined the term introducing a European standard to which the EU Member States must comply. According to it, a criminal organisation is ‘*a structured association of more than two persons who act in concert for a period of time to obtain directly or indirectly financial or other material benefits.*’⁴²

In some Member States’ legislation, different terminology is sometimes used to refer to those characteristics. For example, ‘criminal association’, ‘organised criminal group’, or ‘organised criminal association’. All these terms refer to the same social phenomenon, which is the one described by the Framework Decision and therefore they must be considered equivalent to ‘criminal organisation’.

Ethnic OCGs: according to international and European reports and studies on this field,⁴³ this term is used identify OCGs characterized by ethnicity, extra-European origins

⁴⁰ Decker, S.H. (2001) 'The Impact of Organizational Features on Gang Activities and Relationships', in M.W. Klein, H-J. Kemer, C.L. Maxson and E.G.M. Weitekamp (eds) *The Eurogang Paradox: Street Gangs and Youth Groups in the US and Europe*. Dordrecht: Kluwer Academic Publishers.

⁴¹ Full text available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32008F0841>

⁴² This definition is in depth analysed in chapter 3.

⁴³ Gottschalk P. (2009), *Entrepreneurs and Organised Crime- Entrepreneurs in Illegal Business*, Edward Elgar Publishing, Glos. Cooley W. (2016), *Immigration, ethnicity, race and Organised Crime*, The Oxford Handbook of American Immigration and Ethnicity, edited by Ronald H. Bayor, August 2016. Dalla Chiesa N. (2018), *Mafia globale. Le organizzazioni criminali nel mondo*, Laurana Editore. Palermo G. (2020), *Transnational Organized Crime: The Branching of Mafias Into the Global Era*, available at: <https://www.igi-global.com/chapter/transnational-organized-crime/241468> The DIA semesterly Reports from 1991 to 2019 are available at: https://direzioneeinvestigativaantimafia.interno.gov.it/page/relazioni_semestrali.html Anti-mafia National Directorate, Annual Report, 2019. Available at: <https://www.google.com/DNA-report-2019>. Europol

(i.e. Nigeria, China, Japan, and Russia), and family connections. For these OCGs, the cultural component and the ethnic pattern represent a fundamental element of belonging and identification. Ethnic OCGs are different from all other OCGs because several historical and social reasons led to their birth, different are the methods used to carry on illegal activities, and their *modi operandi*.

Even though several ethnic OCGs are spread all around Europe, this research project focuses specifically on the Nigerians, the Chinese and the Albanians because, according to the DIA⁴⁴ and DNA reports, these groups are the most influential, dangerous, and spread ethnic OCGs in Europe. These three ethnic OCGs were born according to peculiar economic, political, and social contexts in their countries of origin and then, started their spread in Europe carrying on illegal activities with specific and characterizing *modi operandi*. This dissertation aims to provide an overview of the most important social elements linked with their born and of their main characteristics and illegal activities carried on in the EU Member States.

Legislation to combat OCGs: over the years the EU Members States legislated in different ways on the topic of counteracting OCGs. Starting from 1997 emerged at the European level demand for harmonisation of national legislations to harden the fight against OCGs with similar instruments in each Member State. Different legal acts were adopted up to the Framework Decision 2008/841/JHA which must

(2017), *Serious and Organised Crime Threat Assessment*, Report, available at <https://www.europol/serious-and-organised-crime-threat-assessment/2017>

Europol, European Union Terrorism Situation and Trend Report (TE-SAT) 2020, 23 June 2020, available at: <https://www.europol.europa.eu/activities-services/main-reports/european-union-terrorism-situation-and-trend-report-te-sat-2020>

⁴⁴ For more information see: https://direzioneeinvestigativaantimafia.interno.gov.it/page/relazioni_semestrali.html

be considered the main and most pregnant – and almost the most recent – instruments at the international level that pursue the objective of harmonising national legislation on the fight against organised crime. The Framework Decision 841/2008⁴⁵ invites all Member States to modify their national provisions identifying a European standard on⁴⁶ the structure of the criminal organisation, the definition of a criminal organisation, the offences relating to participation in a criminal organisation, penalties, special circumstances or exemption of penalties for offences relating to participation in a criminal organisation, the jurisdiction and the absence of a requirement of a report or accusation by victims.

Over the years, most of the Member States have legislated on the subject, but the transposition cannot be said to be complete. The Member States do not all have the same sensitivity and knowledge of the subject nor a direct experience of it. Because of this, they did not intervene with the same relevance on their national legislation. Furthermore, the main criticisms of the Framework Decision 841/2008 were revealed by scholars and researchers and the European institutions themselves. Despite all the requests for reform, this Decision remains, at this moment, the most recent international legislation with the aim of unifying the rules against organised crime. This dissertation analyses the sub-mentioned relevant elements of the Framework Decision 841/2008 in order to understand if and how the EU Member States have implemented the European guidelines. Finally, it focuses specifically on the Italian anti-mafia legislation because it represents the point from which the call for European standards reform has started.

⁴⁵ Full text available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32008F0841>

⁴⁶ For the purpose of this research project, the relevant elements are Articles 1,2,3,4,7,8.

Operational measures: special investigation techniques are necessary in the fight against

OCGs. According to the Council of Europe, several techniques are

applied by the competent authorities in the context of criminal investigations to detect and investigate serious crimes and suspects, aimed at gathering information in such a way as not to alert the target persons.⁴⁷

The research project analyses not only the legislation to counter OCGs in the EU Member States, but also the most useful special investigative techniques in the fight against OCGs, such as interception of communications, covert investigation (undercover officers), informants, and joint investigation teams. Most of the international legal instruments refer to these special investigative techniques and most of these tools have been incorporated into the EU legislation.⁴⁸ In particular, Article 20 paragraph 1 of the Organised Crime Convention⁴⁹ specifically endorses the investigative techniques of controlled delivery, surveillance and undercover operations. Furthermore, paragraph 2 encourages Member States to conclude bilateral or multilateral agreements using special investigative techniques in the context of international cooperation. According to the Convention, these features are useful particularly when dealing with sophisticated organised criminal groups.

⁴⁷ Council of Europe, Comm. of Ministers (2005). *Recommendation: Special Investigation Techniques in Relation to Serious Crimes Including Acts of Terrorism*, 2, Rec(2005)10 (20 April 2005). Available at: <https://wcd.coe.int/ViewDoc.jsp?id=838445&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864>

⁴⁸ In particular, in the Italian legal system, were introduced several measures to contrast the Mafia OCGs: special research powers for Police and the power to use electronic surveillance and telephone tapping, and programmes for the protection of witnesses. For more information see: Wright A. (2013), *Organised Crime*, Routledge, New York, p.108.

⁴⁹ United Nations (2000) *Convention against Transnational Organized Crime*. Palermo, Sicily: United Nations.

The contrast to OCGs requires transnational investigations by using special techniques. The contrast to some specific ethnic OCGs poses some more difficulties under the operational perspectives, which are analysed in this dissertation through the opinion of experts who constantly try to apply these measures.

4. Discussion of Method

Evaluating the applicability of investigative and legislative measures to ethnic OCGs must be considered an innovative and largely unexplored topic. For this reason, the only way to answer the proposed research question is to conduct an exploratory analysis using multiple qualitative research methods to obtain first-hand information. The study of law is complex and not exhaustive; it must be preceded by a serious study of the dynamics of law and social changes. Accordingly, it is necessary to focus first on the social phenomenon, and then on law. In other words, this research project first analyses the characteristics of ethnic OCGs then focuses on the countermeasures (legislation and operational techniques) adopted by EU Member States, and finally evaluates whether the provisions apply to ethnic OCGs.

From a methodological point of view, although there are different ways and concepts in the literature to determine how to design a proposal, according to Creswell⁵⁰, there are three main approaches: quantitative, qualitative, and mixed methods. Each approach has its advantages and disadvantages, and the key point is understanding which is the most advantageous for each research project. This project matches the second path,

⁵⁰ Creswell J. W. (2003), *Research Design: Qualitative, Quantitative and Mixed Method Approaches*, Sage, London, p.3.

even with some statistical results on the implementation in the MS of the Framework Decision 841/2008.⁵¹

The first research method is quantitative. According to Creswell⁵², quantitative research ‘explains phenomena by collecting numerical data that are analysed using mathematically based methods (especially statistics)’. The purpose of this kind of research is to answer questions such as ‘how much/how many?’ by analysing statistical results to measure and test a phenomenon. Quantitative research can be used to make predictions, test relationships, and calculate averages. The main methodologies utilised are survey research, correlation research and experimental research. Considering the purpose and the research questions of this thesis, this methodology does not fit.

The third (just because the second, the one adopted in this research work, is analysed in a specific paragraph later on) is the mixed approach. The use of the term mixed method is not unanimously accepted. Scholars have debated about the proper name for the method since its birth, and over the past 50 years, a variety of names have been used.⁵³ It has been called ‘multitrait/multimethod research’⁵⁴ referring to the collection of several quantitative and qualitative methods in a single investigation; ‘integrated’ or ‘combined’ considering that two forms of data are blended;⁵⁵ ‘quantitative and qualitative methods’⁵⁶

⁵¹ According to Onwuegbuzie A. J., Leech N. L. (2006), *Linking Research Questions to Mixed Methods Data Analysis Procedures I*, in “The Qualitative Report”, II, 3, pp. 474-98 the use of qualitative methods with also the collection of statistical result, could be defined as a mixed methods approach.

⁵² Creswell J.W. (1994), *Research Design: Qualitative & Quantitative Approaches*, London: SAGE Publications.

⁵³ Creswell J. W., Piano Clark V. L. (2007), *Designing and Conducting Mixed Methods Research*, Sage, London, p.5.

⁵⁴ Campbell D. T. and Fiske D. W. (1959), Convergent and Discriminant Validation by the Multitrait-Multimethod matrix. *Psychological Bulletin*, 56, pp.81-105.

⁵⁵ Steckler A., McLeroy K. R., Goodman R. M., Bird S. T., McCormick L. (1992), Toward integrating qualitative and quantitative methods: An introduction, *Health Education Quarterly*, 19(1), pp.1-8.

⁵⁶ Fielding N., Fielding J. (1986), *Linking Data: the Articulation of Qualitative and Quantitative Methods in Social Research*, Beverly Hills, CA: Sage.

refers to the type of data collected. Furthermore, it has been called ‘hybrids⁵⁷’, ‘methodological triangulation⁵⁸’ recognizing the convergence of quantitative and qualitative data; ‘combined research⁵⁹’ and ‘mixed methodology⁶⁰’ combining both a method and a worldview. Webb, Campbell, Schwartz, and Sechrest⁶¹ used as first the name ‘triangulation between or across method’. Denzin⁶² defined methodological triangulation as a method in which the nature of the research problem and its relevance to a particular research method must be assessed when choosing and implementing a particular integrated empirical approach. Finally, the term that will be used to define the methodology of this research project is ‘mixed-method research’.⁶³ This method helps in answering questions that can not be answered by qualitative or quantitative approaches alone.⁶⁴ The idea of combining methods stems from the recognition that the (previous) rigid distinction between the sphere of qualitative knowledge and the sphere of quantitative knowledge was no longer effective in analysing and studying social reality in which events and phenomena are characterised by complexity and changeability and therefore they struggle to be framed in rigid predefined categories. The name ‘mixed methods’⁶⁵ refers to this alternative way of doing research characterised by the systematic

⁵⁷ Ragin C. C., Nagel J., White P. (2004), Workshop on Scientific Foundations of Qualitative Research (report), <http://www.benjaminjameswaddell.com/wp-content/uploads/2013/09/nsf-guide-for-qualitative-research.pdf#page=119>

⁵⁸ Morse J. M. (1991), “Approaches to Qualitative-Quantitative Methodological Triangulation”, *Nursing Research*, 40, pp.120-123.

⁵⁹ Creswell J. W. (1994), *Research Design: Qualitative and Quantitative Approaches*, Thousand Oaks, CA: Sage.

⁶⁰ Tashakkori A., Teddlie C. (1998), *Mixed Methodology: combining Qualitative and Quantitative Approaches*, Thousand Oaks, CA: Sage.

⁶¹ Webb E. J., Campbell D. T., Schwartz R. D., e Sechrest L.(1966), *Unobtrusive Measures: Non-reactive Research in the Social Sciences*, Rand-McNally, Chicago.

⁶² Denzin N. K. (1978), *The Research Act*, McGraw-Hill, New York.

⁶³ Tashakkori A., Teddlie C. (2003), *Handbook of Mixed Methods in Social and Behavioural Research*, Thousand Oaks, CA: Sage.

⁶⁴ Creswell J. W., Piano Clark V. L. (2007), *Designing and Conducting Mixed Methods Research*, Sage, London, p.9

⁶⁵ Amaturio E., and Punziano G. (2016), *I mixed Methods nella Ricerca Sociale*, Roma: Carocci, Print., p.10.

and constant integration of techniques. According to these considerations, this research work could be defined from the methodological point of view as a mixed-method research. However, the use of numerical data is very limited and just functional to show the spread of different approaches in the Member States. And so, it is correct to conclude that this research project fits with the qualitative research method.

4.1 Qualitative methodologies

Qualitative research methods are usually used to answer a ‘why?’ question by observing and interpreting the reality. For this research project, several qualitative research methods are used: ethnographic research, analysis of existing literature, semi-structured interviews and case analysis as examples. However, in such an unexplored topic, the main methodology used is interviewing.

In order to understand the specific characteristics of ethnic OCGs and assess the applicability of countermeasures to them, experts (i.e., prosecutors, journalists, and researchers) must be interviewed. The best choice is to conduct in-depth, semi-structured interviews with open-ended questions that give interviewees the freedom to focus on what they know best and get their perspective on that particular issue. Semi-structured interviews have predetermined questions, but the order can be changed according to what the interviewer feels is most appropriate.

The wording of questions may be changed, and explanations may be given; certain questions that seem inappropriate with a particular respondent may be omitted, or additional questions may be included. Open-ended questions have several advantages: they are flexible, they allow the interviewer to go into more depth or to clear up misunderstandings, they allow the limits of the respondent’s knowledge to be tested, they

encourage collaboration and rapport, they allow the interviewer to make a true assessment of what the respondent believes, and they may elicit unexpected or unanticipated responses.

Participating experts were contacted by telephone and interviewed using a semi-structured questionnaire⁶⁶ with questions on three main macro-themes:

1. characteristics of ethnic criminal organisations (the Nigerians, the Chinese, and the Albanians). The main aspects analysed are the elements that characterise ethnic OCGs in their presence and spread in Europe, as well as the ethnic OCGs' links with other OCGs, such as those in Italy;
2. legislative and operational tools to combat criminal groups. The main aspects analysed are the adoption of Framework Decision 841/2008 and the need for legal harmonisation, but also the particular investigative techniques used to fight OCGs (interception of communications, covert investigations, informants, joint investigation teams);
3. evaluation of the fight against ethnic criminal groups (Nigerians, Chinese and Albanians). The main aspects analysed are the applicability of European legal norms and special investigative techniques to evaluate the normative and operational difficulties in the fight against ethnic OCGs.

In some cases, the interview was conducted face-to-face, in others by telephone⁶⁷.

The idea of using semi-structured questionnaires arose from their wide use in the social sciences as they are suitable for collecting quantitative and qualitative data. The questionnaire is an instrument of:

⁶⁶ See Annex B.

⁶⁷ See Annex A for an overview of the experts contacted, interviewed and whom answers have been used in this research.

collection of information, defined as a structured set of questions and their response categories defined a priori by the constructor, i.e. so-called 'closed' questions where the respondent (i.e. the person who answers the questions written in the questionnaire) is asked to identify among the answers presented the one that comes closest to his or her own position, and/or 'open' questions, i.e. questions that do not have predetermined answers.⁶⁸

The main ethical issues related to the protection of respondents' privacy cannot be ignored.⁶⁹ In order to protect the identity of the respondents, each respondent was assigned a number, and in the text, the information about the respondents is given only with the number ID, without considering their identity. This is the best way to use the information provided while protecting the identity of the interviewees on such sensitive topics.

Interviews were recorded and subsequently transcribed in full if the interviewee agreed. In other cases, it was not possible to record them, and the information deemed most important was transcribed at the same time. Later, the transcript of the interview was sent to the interviewee with a request to submit any corrections. It is important to emphasise that recording is possible only with the free and informed consent of the interviewee and that an interview protocol was used to record the information. This protocol includes the following components: a heading, instructions to the interviewer (opening statements), the key research questions, probes to follow key questions, transition messages for the interviewer, space for recording the interviewer's comments, and space in which the researcher records reflective notes⁷⁰. Ethical issues do not stop

⁶⁸ Zammuer V. L. (1996), *Interviste e questionari. Processi psicologici e qualità dei dati*, Borla, Roma, 1996.

⁶⁹ Creswell J. W. (2003), *Research Design: Qualitative, Quantitative and Mixed Method Approaches*, Sage, London, p.66.

⁷⁰ Creswell J. W. (2003), *Research Design: Qualitative, Quantitative and Mixed Method Approaches*, Sage, London, p.190.

with data collection, but they also extend into the analysis of data collected, and the writing and dissemination of the research report phases.⁷¹

Semi-structured interviews are very useful for the evaluation profile of fighting ethnic OCGs. Through the experts' opinions, it is possible to gain their experiential knowledge and application of the measures to concrete case studies. EU Member States do not have the same knowledge and sensitivity towards the presence of ethnic OCGs in Europe⁷². These groups are not distributed in the same way in all Member States. Some European countries are not aware of the problem, others are in the process of acquiring it, and still others have understood the critical issues as a result of shocking events. Interviews with experts in the field allow us to understand all these differences and highlight the experience and state of the art in Italy as an absolute best practice in Europe.

While legislation is an objective fact, its application often leads to different results. The legal system is an aggregate of legal norms influenced by social behaviour, roles, statutes, and institutions. For this research, the disparate application of law and the countermeasures represent a case to be studied in order to understand the causes and determine what changes or improvements are needed, not only at the legal level but also at the sociological and criminological levels.

This project uses expert opinions to examine the concrete application of countermeasures and legal provisions in EU Member States towards Nigerians, Chinese and Albanians.

⁷¹ Idem.

⁷² This is one of the limits, analysed in chapter 4, of the fight against ethnic OCGs in Europe.

Conclusion

Combating OCG has been at the centre of the European agenda for many years and remains a top priority. Over the years, Member States have enacted legislation on this issue at the instigation of Italy and Europe. The emergence of new groups, so-called ethnic OCGs, has raised new questions, especially about how to combat them.

For some of the key terms of the research, there is no clear and unambiguous definition, and consequently they have been conceptualised. The main terms that have been defined are organised crime, criminal organisation, ethnic OCGs, legislation to combat OCGs, and operational measures.

To assess whether legislative and operational measures are applicable to such a new threat to national and international security, various research tools were used: qualitative methods such as analysis of existing literature, case studies, and semi-structured interviews with experts to understand the characteristics of Nigerian, Chinese, and Albanian OCGs, the potential difficulties in combating them from a social and criminological perspective, and the main operational measures used to fight them. In addition, the implementation of Framework Decision 841/2008, the most recent international instrument that provides direct legal guidance to the legislation of each Member State in the field of organised crime, have been studied by analysing the legislation of each Member State in order to understand the current panorama of law enforcement.

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Chapter 2

Ethnic OCGs in Europe: Nigerians, Chinese and Albanians

Summary: 1. Introduction; 2. Ethnic Organised Crime Groups; 2.1 The Nigerians; 2.2 The Chinese; 2.3 The Albanians; 3. Relations with traditional OCGs; 4. Relations with Terrorist Groups; Conclusion; List of references.

This chapter analyses the three main – in terms of prevalence, the dangerousness of their members and illegal activities carried on⁷³ – ethnic OCGs spread in Europe: the Nigerians, the Chinese, and the Albanians. Focusing on their peculiar born and spread, their members, the main illegal activities carried on, the inner organisation, the modus operandi, and their links with other OCGs and with terrorist groups, this chapter answers the first preliminary question, i.e. understanding what elements particularly characterise ethnic OCGs. In doing so, several qualitative methods have been employed: analysis of the existing relevant literature, national and international institutional reports and interviews with experts.

1. Introduction

Organised crime is the domain of ruthless operators constantly seeking to identify and exploit vulnerabilities in our societies, economies, and laws. While its underlying motivations may not have changed, the structures, modi operandi and criminal operators encountered in fighting organised crime have undergone remarkable changes highlighting the versatility and flexibility of criminality.⁷⁴

⁷³ Direzione Investigativa Antimafia – DIA (2022), Attività svolta e risultati conseguiti dalla Direzione Investigativa Antimafia. July – December 2022, p.281 available at: https://direzioneinvestigativaantimafia.interno.gov.it/wp-content/uploads/2023/09/DIA_secondo_semestre_2022Rpdf.pdf

⁷⁴ Europol (2021), ‘Serious and Organised Crime threat Assessment – SOCTA. A Corruption Influence: the Infiltration and Undermining of Europe’s Economy and Society by Organised Crime’, European Union, p.14. Available at: <https://www.europol.europa.eu/publications-events/main-reports/socta-report>.

The ‘Serious and organised crime threat assessment’ report elaborated by Europol aims at providing an overview of the threats posed by OCGs to the EU Member States. Since their advent, OCGs have grown continuously in terms of spread and criminal activities carried on. At the same time, they have developed increasingly sophisticated *modi operandi* that are more and more challenging to counter. Furthermore, they have developed new methodologies for managing and reinvesting illicit profits.⁷⁵

According to Expert n.3, all the forms of criminality in a new state start in the same way, and Italy has represented and is still now the starting state for quite all OCGs. The distinction between criminal specialisation and *modi operandi* comes only in a second moment. This is defined as a natural process of ‘incorporation’ of a criminal group into a state.

(...) we have seen several criminal groups rise to the criminal ranks, paths that started with predatory crimes such as burglaries in flats and businesses, in some cases turned into robberies, then exploitation of prostitution, then drug trafficking and extortion until they became structured criminal organisations and instead true transnational criminal structures (Expert n.3)

Over the years the criminal scenario has constantly expanded reaching each part of the world. However, the understanding of the phenomenon, its evolution and the threats to national and international security have been underestimated for a long time. This has determined a delay also in the creation of international networks to counter OCGs.

Despite the extensive literature on local OCGs such as Camorra, Ndrangheta, and Cosa Nostra – traditionally born in Italy and then spread all over the world – the emergence of ethnic OCGs raises many questions. What groups are they and where are they distributed? How did they emerge and how did they evolve? What specific

⁷⁵ Europol (2021), p.114, Direzione Investigativa Antimafia – DIA (2022), p.4.

characteristics distinguish them from all other OCGs? How do they relate to other OCGs and terrorist groups? What are the contrasting difficulties?

The terms 'foreign OCGs' or 'ethnic OCGs' are commonly used to identify criminal groups rooted in Europe and originating in countries such as Albania, China, Nigeria, Romania and some of the former USSR Republics⁷⁶. These OCGs often interact with local OCGs – in Italy in particular with local OCGs such as Camorra, Cosa Nostra and 'ndrangheta – which however maintain autonomy in the management of their own affairs.

Ethnic OCG is defined as

a polycentric organisation, based on various networks of groups or subjects, which does not have a top-level unit, but it is affected by the weight of multiple functional nodes that guarantee the continuity of illicit trafficking and the relative profitability of the different gangs belonging to the network.⁷⁷

All the members form international criminal networks characterised by the availability of substantial financial resources, the development of specific legal and illegal activities, the use of a particular *modus operandi*, and a high degree of dangerousness to security. In some cases, these organised criminal groups have been recognised by the jurisdiction as mafia groups, starting a process of assimilation between them and the OCGs of the Italian mafia.⁷⁸

⁷⁶ Direzione investigativa Antimafia – DIA (2022), p.281.

⁷⁷ Ministero dell'Interno (2007), 'Relazione sull'attività svolta e sui risultati conseguiti dalla Direzione Investigativa Antimafia', I semestre, p. 199, available at:
http://direzioneeinvestigativaantimafia.interno.gov.it/page/relazioni_semestrali.html.

⁷⁸ Amato G. (2015), 'Mafie etniche, elaborazione e applicazione delle misure di esperienza: le criticità derivanti dall'interazione tra "diritto penale giurisprudenziale" e legalità', in *Diritto Penale Contemporaneo*, 2015, p.286; Among the legal judgments qualifying foreign groups as mafias are the following: Cass. pen., Sez. VI, B. A., 16th May 2000, in *De Jure*; Cass. pen., Sez. VI, *Hsiang Khe Zhi* et al., 30th May 2001, *Foro it.*, 2004, II, 6 ss.; Trib. Bari, 28th March 2003, *Chen Jan Zhong* e altri, in *Foro It.*, 2004, II, 6 ss.; Cass. pen., Sez. Un., 10th December 2003, *Huang Yunwen* e altri, in *Foro It.*, 2004, II, 132 ss.; Trib. Rimini, 14th March 2006, *Abbiassov* e altri, in *Foro It.*, 2007, II, 510 ss.; Cass.

Ethnic OCGs sometimes team up with other OCGs to carry out specific illegal operations, but they differ in their intrinsic characteristics. In fact, during the operational cooperation, each OCG is able to maintain its mutual independence, and balance is ensured by territorial division and/or areas of competence.⁷⁹ The specific relationship between different OCGs – specifically between local and ethnic OCGs – will be analysed later.⁸⁰

There are two main sociological views on the emergence and spread of ethnic OCGs.⁸¹ The first understanding considers the emergence of ethnic groups as a consequence of a crisis of OCGs, widespread in Europe, in the management of illegal affairs – particularly due to the lack of generational change and, consequently, of a young workforce (Expert n.5) – and a lower competitiveness of the same.

The second considers their emergence as a consequence of the change of strategy of the already existing OCGs in the international panorama.⁸² This means that some OCGs have migrated to more lucrative markets, leaving the others to ethnic OCGs. It is important to emphasise that there is no evidence of interference in the areas of interest of the two types of criminals, but rather that they have developed forms of cooperation to achieve their previously established goals.⁸³

To these two interpretations can be added a third one that encompasses them and takes into account also social aspects. According to Spiezia, the states in which

pen., Sez. V, 18th April 2007, n. 15595, in *Dir. Imm. e Citt.*, 2008, I, 219 ss.; Cass. pen., Sez. I, 29th January 2008, n. 12954, in *De Jure*; Cass. pen., Sez. V, 5th May 2008, *A. H. e altri*, in *De Jure*.

⁷⁹ Direzione Investigativa Antimafia – DIA (2020), *Attività svolta e risultati conseguiti dalla Direzione Investigativa Antimafia. Gennaio – Giugno 2020*, p.380. available at: <https://direzioneeinvestigativaantimafia.interno.gov.it/semestrali/sem/2020/1sem2020.pdf>

⁸⁰ See section 3 of this Chapter.

⁸¹ Massari M. (2002), ‘Mafie, criminalità transnazionale, globalizzazione: il caso italiano’, in *Meridiana*, *Rivista di storia e di scienze sociali*.

⁸² *Ibidem*, p. 117.

⁸³ *Ibidem*, p. 116.

democratic instability persists or which are ravaged by military conflicts are ideal settings for the commission of predicate crimes by OCGs, and for the development of such groups.⁸⁴

In the last decade, migration flows to Europe have increased, especially those of citizens from North and Central Africa, the East and the Balkans.⁸⁵ This is the result of globalisation, the spread of information, and the rapid migration of populations from one region to another in search of better living conditions. All these factors have made Europe a destination for waves of migration. Migration flows have certainly allowed various forms of crime to spread and specialise in certain illegal activities, such as human trafficking. Ethnic OCGs have undoubtedly managed to fit into this context by exploiting the weaknesses of the system and the needs of the people.⁸⁶

2. Ethnic OCGs

Organised crime is a key factor in promoting and sustaining humanitarian crises in conflict zones since it profits from contexts characterised by chaos and instability. (...) Many vulnerable societies are locked in a negative cycle in which organised crime creates the basis for its own growth and countries are weakened in their ability to combat it and to ensure security and development.⁸⁷

⁸⁴ Spiezia F. (2022), “La lotta alla criminalità organizzata fuori dai confini nazionali”, *Sistema Penale*, 20 July 2022, p.5

⁸⁵ European Commission (2022), ‘Statistics on migration in Europe’, available at: https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/promoting-our-european-way-of-life/statistics-migration-europe_it#attraversamenti-irregolari-delle-frontiere

⁸⁶ Commissione parlamentare di inchiesta sul fenomeno delle mafie e sulle altre associazioni criminali, anche straniere, Doc. XXIII N. 30, Legislatura XVII, p.7, available at: <https://www.senato.it/service/PDF/PDFServer/DF/336112.pdf>.

⁸⁷ United Nations Office on Drugs and Crime – UNODC (2005), *Crime and Development in Africa*, available at: https://www.unodc.org/pdf/African_report.pdf.

In order to explain how ethnic OCGs emerged and spread, some preventive clarifications are needed. There is no direct causal link between the increase in immigration to Europe and the rise in crime.⁸⁸ It would be completely wrong to argue that migrants are themselves criminals, and it is important to underline that *this research focuses on a minimum percentage of migrants* (Expert n.3).

However, migration is one of the factors that facilitates the rise of OCGs, as they provide illegal services to meet the needs of migrants. The expansion of ethnic OCGs outside their countries of origin has only been made possible by the migration of large numbers of people. Membership – to the community of origin – and marginality – from the community of arrival – are the variables that determine the migration process⁸⁹ and are fundamental to understanding the spread of ethnic OCGs in Europe. These elements have influenced the emergence of ethnic OCGs, the illegal activities they engage in (especially human trafficking at all stages), and their relationships with other criminal organisations and terrorist groups.

This research focuses in particular on the Nigerians, the Chinese, and the Albanians OCGs, the only groups that can be described as mafia-like under certain circumstances. The following paragraphs focus on their spread, evolution and specific characterizing elements.

2.1 The Nigerians

OCGs emerge and develop as a symptom of economic, social, political, and cultural distress. This has happened on the African continent, where the spread of

⁸⁸ Bianchi M., Buonanno P., Pinotti P. (2012), 'Do immigrants cause crime?' in *Journal of the Economic Association*, 10(6): 1318-1347.

⁸⁹ Gilmartin M.(2008), Migration, Identity and Belonging, Volume 2, Issue 6, November 2008.

organised crime has contributed to severely delaying and sometimes blocking the processes of development, stabilisation, transparency, and democratisation of the countries concerned.⁹⁰ In some cases, the OCGs have been able to provide work, opportunities and assistance to people and communities, making up for the shortcomings of the state and preventing situations of deep poverty and alienation.

The phenomenon of African crime has developed over the past thirty years and has solidified into mafias in various regions and states. Many conditions have led to the emergence and persistence of OCGs in West Africa: the weakness of state institutions, the almost total absence of laws to combat organised crime, the difficulties of law enforcement, civil wars, ethnic conflicts, and secessionist movements.⁹¹

According to the analysis of the *modi operandi* of OCGs in Africa, it is possible to identify four different operational models.⁹²

1. The first model is most similar to European mafia criminal organisations. They have all the characteristics of traditional mafia OCGs, i.e. secrecy, unity, verticality, initiation rites, familism or tribalism and control over territory. These types of OCGs use violence to intimidate but also to assert their power in areas of interest. In West Africa, this model appears in Nigerian OCGs, but they have a distinctive feature: they are able to conduct most of their activities outside their country of origin and receive most of their remuneration outside their country of origin, due to the global distribution of members. Nigerian mafia OCGs have spread abroad – and especially in Italy as a consequence of

⁹⁰ Di Liddo, M., Terenghi, F., Cerasuolo, A., Piol, V. (2019), ‘Le capacità italiane di contrasto alla criminalità organizzata come strumento di stabilizzazione in Africa Occidentale’, Centro Studi Internazionali and Intellegit per il Ministero degli Affari Esteri e della Cooperazione Internazionale.

⁹¹ Ibidem, p.7.

⁹² Shaw M. (2018), ‘Where in Africa is organised crime most serious?’, Institute for Security Studies, 11st July 2018, available at: <https://issafrica.org/iss-today/where-in-africa-is-organised-crime-most-serious>.

migration routes – taking advantage of the diaspora's integration difficulties and the huge income from human trafficking.

2. The second model identifies criminal networks based on variable links of individuals with different interests and goals – legal and illegal. An example of the activities carried on by this kind of group is drug trafficking on the East and West African coasts, which is carried out by free connections of criminal entrepreneurs.
3. The third model can be defined as an extension of the second model. It consists of rebel organisations and irregular armed groups. This type of criminal organisation is more common in unstable areas where central state power is weak and balanced by the power of territorialised non-state actors.
4. The fourth model refers to the cybersphere and the various illegal activities carried out on the internet. In these cases, it is an unstructured model where individuals or networks with simple coordination carry out cyber crimes such as fraud, deception and illegal money laundering. There is no group with fixed structures because everything happens online.

Among all the criminal organisations widespread on the African continent, Nigerian OCGs are unique. Their structures and distribution are similar to Italian mafia-type OCGs. Although all four OCG models described above exist in Nigeria, the local

mafias (first model) have a monopoly on illegal activities and dominate over all fluid groups.⁹³

The emergence, development and spread of organised crime in Nigeria has been influenced by a combination of economic, social, political, security and cultural vulnerabilities. In that state, there are more than 200 ethnic groups with internal religious divisions between Muslims, Christians and animists. Corruption and mismanagement are organic and physiological elements in the functioning of the state.⁹⁴ Nigerian politicians, administrators and businessmen have been prosecuted for corruption and embezzlement. These kinds of fraudulent practices perpetrated by Nigerian leaders are the cause and effect of the development of organised crime in the country. Where there is a lack of social, legal, economic and educational protection from state agencies, people tend to build networks of contacts and informal relationships to circumvent legal procedures. These informal relationships have gradually developed into criminal groups. From the 1980s onwards, criminal groups began to spread endemic and they started to interact with institutional structures. The reason for this is, on the one hand, the decline in economic growth and expectations for the future. This was a push factor: poor citizens tried to solve their social and economic problems through illegal practices. On the other hand, the country's leaders tried to make more and more agreements with organised crime to guarantee victory in elections.⁹⁵

⁹³ Di Liddo, M., Terenghi, F., Cerasuolo, A., Piol, V. (2019), "Le capacità italiane di contrasto alla criminalità organizzata come strumento di stabilizzazione in Africa Occidentale", Centro Studi Internazionali and Intellegit per il Ministero degli Affari Esteri e della Cooperazione Internazionale, p.22.

⁹⁴ Lemahieu J. L. e G. Murray (2018), Annual Report 2017, United Nations Office on Drugs and Crime, Vienna, published in 2018.

⁹⁵ United Nations Office on Drugs and Crime, Organised Crime in Nigeria. A threat Assessment, 2022, UNODC and National Institute for Security Studies.

Different Nigerian OCGs act and operate independently of each other and are organised horizontally as nodes in a network and vertically as hierarchical criminal associations. The characteristic elements are the management of the various illegal businesses, the wide distribution of the various criminal cells, structural flexibility and the use of violence within and outside the group.

Criminal groups with variable geometry are composed of members of the same family or persons with similar ethnic backgrounds. New members are usually selected from acquaintances or relatives of the original members. In most cases, this type of organisation does not have a rigid organisational structure, but it is lean, and fluid and it consists of a chain of control reduced to the essential.⁹⁶

African OCGs and specifically the Nigerians ones are characterised by the constant element of ethnicity which emerges not only in the birth of the group but also in the illicit activities carried on. Not only the members but also the victims have all the same ethnicity.

Nigerian criminal organisations are linked to the phenomenon of so-called cults or brotherhoods or confraternities which were originally set up as student associations to create a breaking movement within the ruling classes of the country. In 1952, the first fraternity, the Pyrates Confraternity, was founded on the university campus in Ibadan. For almost twenty years it was the only fraternity; in the 1970s and 1980s, the cults spread to many other Nigerian universities.⁹⁷ After the 1983 coup d'état, university associations with exclusive political aims began to turn into complex criminal groups and to commit increasingly violent crimes. By the 1990s, the fraternities had moved most of their

⁹⁶ Koni Hoffmann L. e al. (2016), 'Tracing the Origins of Nigerian Organized Crime: Politics, Corruption and the Growth of Criminal Networks', Royal Institute of International Affairs, London.

⁹⁷ Omobowale E. B. e A. Abimbola (2015), 'Higher Education and the Challenges of Secret Cults', in *Africa Research Review*, n. 36, Bahir Dar.

activities outside the university campus. The main illegal activities of the criminal associations include prostitution, drug trafficking, kidnapping, and politically motivated violence. The successful diffusion of the brotherhoods is due to the quick profits they guarantee their members through the performance of illicit activities and the criminal opportunities provided by the connections between the military and political apparatus and the brotherhoods themselves. For young Nigerians, the fraternities were the occasion for a personal affirmation or at least a solution to uncertainty and poverty.⁹⁸

The brotherhoods are hierarchical, unified organisations characterised by symbolic membership rites⁹⁹ and by an identified colour. At the top of the hierarchy, there is a 'Capon'. The commanders of the individual local sections of the brotherhoods are subordinate to the capon. All the members of the confraternity aspire to these top roles and therefore the competition for them is very fierce. The candidates must show courage, ambition, and brutality. The sectional commanders exercise their authority over a complex system of cells called 'forum' that operate at a local level. The cells are linked to each other outside Nigeria's national borders.¹⁰⁰

The confraternities prospered and expanded beyond national borders thanks to the diaspora of Nigerian citizens. Nowadays, the most widespread cults are the Pyrates Confraternity, the Buccaneers Association of Nigeria, the Supreme Vikings, the Black Axe Confraternity, and the Eiyé Confraternity.¹⁰¹ Among all of them, the Black Axe is

⁹⁸ Albert I. O. (2005), 'Explaining "godfatherism" in Nigerian Politics', in *African Sociological Review*, n.9, Council for the Development of Social Science Research in Africa, Dakar.

⁹⁹ Direzione Investigativa Antimafia – DIA (2020), Attività svolta e risultati conseguiti dalla Direzione Investigativa Antimafia, January – June 2020, <https://direzioneeinvestigativaantimafia.interno.gov.it/semestrali/sem/2020/1sem2020.pdf>

¹⁰⁰ 'Nigeria: The Eiyé confraternity, including origin, purpose, structure, membership, recruitment methods, activities and areas of operation', state response (2014-March 2016), in *Immigration and Refugee Board of Canada*, April 2016.

¹⁰¹ More information at: Dipartimento della Pubblica sicurezza (2020), 'La mafia nigeriana in Italia', Direzione centrale della Polizia criminale- servizio analisi criminale, Rome, December 2020, p.13.

the most affirmed in the Nigerian organized crime circuit, becoming the prototype of the evolution of a part of the cultist associations in Nigeria. The Black Axe members are characterized by violent practices used to intimidate rivals, change the minds of potential informers, and accredit themselves in the eyes of possible future political protectors. All the members of this confraternity are obliged to respect a strict code of behaviour which imposes, first of all, the rules of clothing.¹⁰² The Black Axe does not have a defined and predetermined ethnic connotation inside Nigeria, even though the cells tend to attract new members based on the majority ethnic group of a city or region in which the confraternity wants to expand.¹⁰³ All new members have to submit to bloody and barbaric initiation rites, they must swear to maintain secrecy and they must wear the clothes of the confraternity. New members are often introduced to the entire local group through a ceremony called 'jolly' which is a procession to the new member's quarters.¹⁰⁴ Recruitment of new members is carried out through a combination of disinformation, propaganda, and psychological terrorism.¹⁰⁵ Once joined a confraternity, it is not possible to leave it.

Variable-geometry criminal groups and confraternities operate in different sectors, and they have multiple sources of income. In particular, in recent years, they have been able to spread abroad by exploiting the strong migration from Nigeria to Europe.¹⁰⁶ Their illegal activities are differentiated and specialised according to the foreign context in

¹⁰² All the members must respect a code of clothing which includes also an identifying colour for each cult. More information at: I.M.D., I. (2020). *Mafia nigeriana*. Italia: Dario Flaccovio Editore.

¹⁰³ United Nations Office on Drugs and Crime – UNODC (2006), 'Organized Crime and Irregular Migration from Africa to Europe', Regional Office of West and Central Africa, Dakar, 2006.

¹⁰⁴ Immigration and Refugee Board of Canada (2012), Responses to Information Requests n. NGA104208.E, Ottawa.

¹⁰⁵ Zubairu Surajo A. and Zehadul K. A. H. M. (2017), 'An Assessment of Black Axe Confraternity Cult in Nigeria: Its Impact on the University Educational System', in *South Asian Anthropologist*, n. 17, Sarat Chandra Roy Institute of Anthropological Studies, Ranchi.

¹⁰⁶ Le Pichon T. and Mazzitelli A. (2007), 'Cocaine Trafficking in West Africa: The Threat to Stability and De-velopment', UNODC, Vienna.

which they operate: money laundering in Hong Kong, drug trafficking in Latin American countries, prostitution and human trafficking in Spain and Italy, and financial fraud in London. Nigerian criminal organisations have established networks of contacts and collaborators in all the countries involved in illegal activities, especially in the trafficking of human beings which requires a high level of internalisation. Nigeria has become a logistical centre for various international illicit trafficking activities such as narcotics, small arms, advance payment fraud or financial fraud, and trade in crude oil, because of the international connections of the OCGs.

The Nigerian OCGs are able to manage these illicit markets thanks to several factors:

1. the geographical position of Nigeria. It is one of the most important junctions for the trafficking of heroin from South America to Europe. According to Expert n.6, *Nigerian OCGs act in their country as financial brokers of drugs imported from South America that are smuggled to Africa in order to differentiate supply lines;*
2. gaps in the Nigerian investigative bodies allow members of OCGs to act freely and autonomously in some parts of the territory. According to Expert n.6,

the Nigerian law enforcement authorities do not have all the resources that the Italian ones have - in terms of interception, infiltration into the organisations, and technological law enforcement capabilities, for instance. Consequently, when the tools are blunt, effectiveness in the fight is also blunted.

3. The establishment of Nigerian citizens offers logistical support in Europe, Asia, and South America. Migrants who arrive in a foreign country tend to recreate in that country a situation similar to their community of origin and people from the same community are the ones they rely on to solve any economic, logistical and social problem. In this way, they create isolation from the country to which they have

moved – marginality – and completely self-sufficient intra-community groups – membership. According to Expert n.5,

communities are used to remaining closed within themselves, a closure of culture, lifestyle and food, and this constitutes an obstacle to integration because in this way they do not understand the culture of the other country and a self-referential community is established.

These closed communities are able to attract continually new compatriots to be included in their illicit trade.

All these characteristics allowed Nigerian OCGs to develop and establish outside their national borders as criminal groups with their autonomy and strength. Over time, these OCGs were able to emancipate themselves from the domination and control of local European-based OCGs by concluding mutually beneficial agreements with them.¹⁰⁷

Nowadays, Nigerian OCGs are spread across Europe - mainly in Italy, the Netherlands, and Germany - and in non-European countries such as Malaysia, Ghana, and Canada¹⁰⁸ where has been documented the presence of cults such as Black Axe, Eiyee, Mephite, Vikings, and Black Cats.¹⁰⁹

The two most remunerative activities for Nigerian OCGs are the trafficking of human beings for sexual and labour exploitation and drug trafficking.

¹⁰⁷ Direzione Nazionale Antimafia e Antiterrorismo - DNA, Relazione annuale sulle attività svolte dal Procuratore Nazionale e dalla Direzione nazionale antimafia e antiterrorismo nonché sulle dinamiche e strategie della criminalità organizzata di tipo mafioso nel periodo 1 January – 30 June 2016, 383; Terenghi, F. e Piol, V. (2018), Finanziamento e uso dei fondi nella tratta di persone in Italia. Dai modelli di business all'attività di prevenzione e contrasto. Trento: eCrime – Università di Trento. More information about the relations between traditional OCGs and ethnic OCGs at the end of this chapter.

¹⁰⁸ Di Liddo, M., Terenghi, F., Cerasuolo, A., Piol, V. (2019), “Le capacità italiane di contrasto alla criminalità organizzata come strumento di stabilizzazione in Africa Occidentale”, Centro Studi Internazionali and Intellegit per il Ministero degli Affari Esteri e della Cooperazione Internazionale.

¹⁰⁹ Pipitone G. (2015), “Mafia nigeriana: il patto con Cosa Nostra, agguati con l'ascia e sangue bevuto. A Palermo prima inchiesta sulla ‘Cosa nera’”, *IlFattoQuotidiano*, 19th October 2015, available at: <https://www.ilfattoquotidiano.it/2015/10/19/mafia-nigeriana-il-patto-con-cosa-nostra-agguati-con-lascia-e-sangue-bevuto-a-palermo-prima-inchiesta-sulla-cosa-nera/2105873/> ; Vannaroni A. and Levantini E. (2018), “La tratta di esseri umani e le mafie nigeriane. Un mondo criminale tra antichi riti e modernità”, in *Articolo 21*, 28th May 2018.

The first illegal activity is managed by horizontal and fluid Nigerian networks. Recruitment of victims in their home country is carried out by deception, i.e., the promise of legal and paid work in Europe. Before departure, the potential victims are subjected to *jùjù* rituals in order to create a situation of psychological subjection that forces them to honour the debt they have unconsciously contracted with the criminal group. The victims believe that *jùjù* gives them punishments if they do not obey the exploiter. In fact, in Nigerian esoteric culture, there is the belief that every evil deed will be punished, but in the case of the victims of OCGs, this belief is distorted and it is not the exploitation of people that becomes evil, but the rebellion against the exploiters of the victims.¹¹⁰

The suggestion of voodoo could not exist if the *baba-loa*, migrants and non-migrants, refused to practise negative magic that the animist religion does not allow: true voodoo should not become an instrument of psychological control of people forced to remain submissive, for instead, it must lead to respect for good and evil, punishing those who do evil. (...) Traffickers, however, invert values and consider that evil is not obeying them (...) they use violence to make those who disobey and suffer material violence believe that they are punished by voodoo.¹¹¹

Furthermore, they believe that if they rebel, the punishments will fall on their family of origin in Africa. This fear pushes them not to rebel and to work forcedly in order to be able to pay the debt they have taken on.¹¹² In general, it is possible to observe how *so many aspects of life in Nigerian communities are conditioned by voodoo, a set of animist religious rules, compliance with which is administered in voodoo courts* (Expert n.5).

¹¹⁰ Aikpitanyi I. (2011), *500 storie vere sulla tratta delle ragazze africane in Italia*, Ediesse, Roma, p.58.

¹¹¹ Aikpitanyi I. (2011), *'500 storie vere sulla tratta delle ragazze africane in Italia'*, Ediesse, Roma, p.58.

¹¹² *Ibidem*, p.35.

Once victims reach Europe via Spain or Italy, they are forced into prostitution or illegal employment.¹¹³ A key figure in Nigerian criminal networks is the *Maman* (or Madam), she manages the exploitation of the victims who arrive in the country of destination. Sometimes she takes care also of the financing of the trip.

(...) there is always a maman and an organization behind the maman. They smuggle the girls into Italy, send them to a reception centre, they are exfiltrated by the criminal organization, bounced from one place to another, and then they reach the one they are destined for. Often it is the family that pushes the girls to leave in order to achieve an evolution on the financial and economic level.’ (Expert n.5)

Each *maman* manages several victims ranging from a minimum of three to a maximum of ten assisted by several co-workers.¹¹⁴ Nigerian criminal organisations invest their funds in mamans, who mostly work in pairs, sometimes sisters or relatives. This is the scheme followed: one of the two remains in Nigeria and takes care of the recruitment phase and the management of relations with the victim's family of origin. The other maman lives in the place where the girls are exploited (e.g. Italy), manages their work and daily life and derives profits that are also used to maintain the organisation.¹¹⁵ According to Expert n.5, *‘the victims, once the debt is repaid, become maman. They are organised like men i.e. in female cultist groups in which women play specific roles within the organisation’*.

¹¹³ The Dutch police investigation in 2006 uncovered the activities of Nigerian criminal groups that exploited the Dutch immigration system, which allows migrants who have reported a trafficking operation to be accommodated in special structures. It was discovered that young people were trafficked to the Netherlands, where they were identified as victims of trafficking so that they could be accommodated in a structure from which they escaped. Under the threat of voodoo rituals, they reached the members of the criminal organisations, who took care of their transfer to the place of sexual or labour exploitation. For more information: Conzo G. (2006), ‘La criminalità nordafricana. Una premessa’, Direzione Distrettuale Antimafia di Napoli, available at: http://www.distretto.torino.giustizia.it/documentazione/D_1953.pdf

¹¹⁴ Aikpitanyi I. (2011), ‘500 storie vere sulla tratta delle ragazze africane in Italia’, Ediesse, Roma, p.52.

¹¹⁵ Monzini P. (2022), ‘Il mercato delle donne. Prostituzione, tratta e sfruttamento’, Donzelli editore, Roma, p.71.

The second illicit activity is the trafficking of drugs, even if Nigeria is not a drug-producing country. However, it has played a key role in the entry and stocking of cocaine for the local and European markets. This has happened as a result of the availability of young workers without jobs due to unstable and inefficient governments and a high level of widespread poverty. In addition, Nigeria lacks effective law enforcement tools due to the high level of corruption in the political and social system. Specifically, the transport of cocaine to Africa and then to Europe is guaranteed by the ramifications of cells of the Nigerian OCGs working in the countries of origin of drugs in South America. Before arriving at its destination, the substance is diverted to warehouses or storage laboratories in West Africa in areas characterised by political instability, high levels of corruption, and weak or absent police controls. From there, Nigerian OCGs transport the substance to Europe. The most common way to transport is by using ovulators that depart from several airports and arrive at European international airports. Nigerian networks use this transport strategy to reduce the impact of a possible loss of cargo: in the case of an arrest, many more transporters enter the country. Their business strategy consists of transporting a quantity of ova by several people at the same time departing from different airports and arriving in Europe. With large numbers, the possibility of being intercepted increases, but it also allows many people to travel with success. For one person stopped, many more managed to get through.

Drug importation is the main activity, along with prostitution, that the Nigerian mafia performs, some couriers bring hundreds and thousands of kilos of cocaine and heroin to Italy every year. These play the role of middlemen because we are not talking about heroin and cocaine produced in Africa but substances that transit Africa coming from South America or Southeast Asia. (...) they act a bit like Amazon, which does not deal with the production of the product but with the logistics. (Expert n.6)

2.2 The Chinese

Europe, and Italy in particular, have become a place of arrival for increasing flows of Chinese migrants '*xin yimin*'.¹¹⁶ In order to understand when and how the Chinese OCGs have become a potential transnational threat to European security, it is necessary to start from their origins as secret societies.

The secret societies originated in the activities of the secret *Banghui* (which means gang) during the Qing dynasty (1644-1911).¹¹⁷ They were similar to a feudal family, *Bang* was organised according to discipline relations, while *Hui* was an illegal group of sworn brothers. The three major *Banghui* during the Qing dynasty were¹¹⁸ the Heaven and Earth Society '*Tiandihui*'; the Green Gang '*Qingbang*'; and the Red Gang (also named the Society of Brothers) '*Gelaohui*' or '*Hongbang*'. the Heaven and Earth Society is considered the starting point for all the following secret societies. It has been defined as a secret brotherhood association to restore the Ming dynasty, but it has become a criminal organisation with economic illegal objectives.¹¹⁹ These original *Banghui* organisations had a huge impact on society at that time, and their legacy (e.g. organisational structure, ideology, and subculture) still has a deep influence on OCGs in contemporary China.¹²⁰

The name *Triad* refers to these original secret societies, but it was coined much later. Its meaning refers to the number 'three' which is magic in Chinese culture. Three

¹¹⁶ Term used to refer to 'wave of skilled and urban migrants from China who ventured to Asia and elsewhere after the reform era began in the 1980s'. For more information: Siriphon A. and Banu F. (2022), The nature of recent Chinese migration to Thailand, in ThinkChina, 6th January 2022, available at: <https://www.thinkchina.sg/nature-recent-chinese-migration-thailand>.

¹¹⁷ Wang P. (2017), 'The Chinese Mafia: Organized Crime, Corruption, and Extra-Legal Protection', in *Clarendon Studies in Criminology*, Oxford University Press, p.4; Sabattini M. and Santangelo P. (2008), *Storia della Cina*, Laterza, Bari, p.551.

¹¹⁸ He B.S. (2009), 'China Organized Crime Research', Beijing: *Qunzhong Press*.

¹¹⁹ Wang P. (2017), 'The Chinese Mafia: Organized Crime, Corruption, and Extra-Legal Protection', in *Clarendon Studies in Criminology*, Oxford University Press, p.45.

¹²⁰ Wang P. (2017), 'The Chinese Mafia: Organized Crime, Corruption, and Extra-Legal Protection', in *Clarendon Studies in Criminology*, Oxford University Press, p.44.

represents the balance between Heaven, Earth, and Man.¹²¹ For these reasons, the secret societies, then called Triads, have always been surrounded by a magical esoteric meaning.

The definition of Chinese secret society is really hard to elaborate because all Chinese criminal organisations have been brought under the term ‘secret society’¹²² even though the Chinese use a different term to distinguish between secret societies strictly ‘*mimi shehui*’ and groups with a more political or religious nature ‘*hei bang*’ or ‘*hei shehui*’.¹²³

According to official statistics, secret societies are extremely widespread in China nowadays. It is estimated that affiliates in different forms have reached more than twenty million people with a higher prevalence in some provinces, such as Guangdong, Guangxi, Yunnan, Sichuan, and Fujian.¹²⁴ All the secret societies carry on legal and illegal activities by using organised extortion, blackmail, and racketeering to monopolise some economic sectors. It is estimated that the ‘black economy’ controlled by criminal groups contributes to one percentage of China’s GDP growth.¹²⁵

Some general characteristics of secret societies are the hierarchical structure, the respect for formal rules, and the fragmentation of functions between members.¹²⁶ However, the hierarchical structure cannot be considered nowadays the determinant element in order to identify Chinese secret societies. In the beginning, they had a hierarchical structure but over time they evolved and partly changed their internal structure as well. Nowadays, the hierarchical structure is a key characteristic of most

¹²¹ Lintner B. (2010), ‘Chinese Organised Crime’, in *Global Crime*, Volume 6, 2004- Issue 1, p.88, Published online 08th September 2010.

¹²² Chen A. (2005), ‘Secret Societies and Organized Crime in Contemporary China’, in *Modern Asian Studies*, Vol. 39, No. 1, February 2005, p.78.

¹²³ *Ibidem*, p.77.

¹²⁴ *Ibidem*, p.79.

¹²⁵ *Ibidem*, pp.77, 84.

¹²⁶ *Ibidem*, p.79.

secret societies, but it should not be considered the *discrimen* between them and the political or religious associationism.

The distinction between OCGs and mafia-type organisations¹²⁷ is complex too. Chinese criminologists and European scholars, such as Varese¹²⁸, have a different understanding of what to consider a phenomenon of mafia. Chinese criminologists, for example, Xia¹²⁹ refers to a group of the mafia as the most authoritative and best-organised criminal organisation worldwide. Varese, instead, considers the mafia a type of illegal enterprise.¹³⁰ According to Wang¹³¹, OCGs and mafia are neither synonymous nor opposite concepts: the mafia is one particular part of what is recognised as organised crime.

According to Ming Xia¹³², it is possible to classify the organisational forms for Chinese OCGs into three different major types:

1. traditional hierarchies. It is the structure adopted by the original secret societies and, in recent years, also many OCGs have adopted this kind of structure with a society name, a chief, a ritual of induction, argots, etc;
2. ‘hermit-crab’ hybrid organisations. It is the structure adopted by OCGs that takes over the shells of legitimate hierarchies, such as non-governmental organisations and business firms;

¹²⁷ Ibidem, p.6.

¹²⁸ Varese F. (2011), *Mafie in movimento. Come il crimine organizzato conquista nuovi territori*, Einaudi.

¹²⁹ Xia M. (2008), ‘Organizational Formations of Organized Crime in China: perspectives from the state, markets, and networks’, in *Journal of Contemporary China*, Volume 17, Issue 54.

¹³⁰ Wang P. (2017), ‘The Chinese Mafia: Organized Crime, Corruption, and Extra-Legal Protection’, in *Clarendon Studies in Criminology*, Oxford University Press, p.4. Varese F. (2011), *Mafie in movimento. Come il crimine organizzato conquista nuovi territori*, Einaudi.

¹³¹ Ibidem, p.5.

¹³² Xia M. (2008), ‘Organizational Formations of Organized Crime in China: perspectives from the state, markets, and networks’, in *Journal of Contemporary China*, Volume 17, Issue 54, pp.12 ss.

3. criminal networks. This is the most complex and articulated structure. Its primary purpose is enrichment and for this reason, it establishes a network of apparently economic links to launder dirty money, preserve existing wealth, and increase it.

Beyond the different structural organisations of the Chinese OCGs, it is important to underline one of the main aspects of the Chinese criminal organisations: guanxi. It constitutes the fulcrum around which Chinese migrations turn and the symbol of the ethnicity of Chinese OCGs. Guanxi does not play a role only in the great diaspora but also within the OCGs by constituting its key characteristics. Guanxi is a cultural model, a traditional system of social relations that unites people. It is based on mutual obligations and favours¹³³, family bonds, or commercial interests.¹³⁴ Guanxi is an informal institution that operates both in China and in other countries where Chinese citizens live. It complements and sometimes substitutes the formal and legal system and the rule of law.¹³⁵ It is recognised as a mechanism to protect rights, facilitate transactions, and guarantee the quality of services. Finally, it is considered a benefit for all of society.¹³⁶

According to Peng¹³⁷, benefits are at different levels: businesspeople use the guanxi network to obtain under-priced resources from the state allocation agencies, gang bosses use their guanxi ties with police officers to avoid criminal investigation and punishment, and public officials obtain promotions thanks to their guanxi connections with superiors. The guanxi model operates both within OCGs and in the relations between operators in

¹³³ Ceccagno A., Rastrelli R., and Salvati A. (2008), *Ombre cinesi? Dinamiche migratorie della diaspora cinese in Italia*, Carocci Editore, Roma, p.43.

¹³⁴ eastwest.eu (2013), 'Come si muove la mafia cinese sul territorio italiano', 27th June 2013, p. 102, available at http://eastwest.eu/attachments/article/851/east22_Come_si_muove_la_mafia_cinese_sul_territorio_italiano.pdf.

¹³⁵ Wang P. (2017), 'The Chinese Mafia: Organized Crime, Corruption, and Extra-Legal Protection', in *Clarendon Studies in Criminology*, Oxford University Press, p.31.

¹³⁶ Ibidem, p.31.

¹³⁷ Ibidem, p.14.

the legal world: it guarantees a system of non-legal favours and facilities, and it has gradually transformed from a substantive to a corrosive informal institution.¹³⁸

It is possible to compare the Chinese OCGs to the primitive model of the 'Ndrangheta based on family or multifamily ties between the members. These connections are not only necessarily based on a parental bond, but rather they refer to the concept of family in the economic meaning. Chinese OCGs are flexible, resilient, and always ready to join new members.

Affiliation with Chinese OCGs represents a way of life because it is not possible to abandon the group.¹³⁹ As in the Italian gangs, admission goes through an initiation rite which is a long, complex, and macabre ceremony.¹⁴⁰ Characterising elements are loyalty and fidelity.¹⁴¹ Once a member of the OCGs identifies a promising young man, he takes him to a secret place where he meets other recruits. The incense is burned and a lifetime allegiance of loyalty to the Triad is taken.¹⁴²

I shall suffer death by five hundred thunderbolts if I do not keep this oath. I will always acknowledge my Hung [Triad] brothers when they identify themselves. If I ignore them, I shall be killed by a myriad of swords. If I am arrested after committing an offence, I must accept my punishment and never try to implicate any of my sworn brothers. If I do, I will be killed by five hundred thunderbolts.¹⁴³

¹³⁸ Ibidem, p.200.

¹³⁹ Galullo R. (2018), 'La mafia cinese fa il salto di qualità e replica il modello 'Ndrangheta', *ilsole24ore*, 25th January 2018. Verrengia E. (2018), 'Da dove viene la potenza della mafia cinese in Italia', in *Globalist Syndacation*, 18th January 2018.

¹⁴⁰ However, things seem to have changed in part in recent times and the old and traditional ceremonies would have given way to new, simpler ceremonies. For more information: Lintner B. (2010), 'Chinese Organised Crime', in *Global Crime*, Volume 6, 2004- Issue 1, p.84-96, published online 08th September 2010.

¹⁴¹ Tagliazucchi M. (2018), '#reportage. La quinta mafia italiana: criminalità cinese tra droga, prostituzione e usura', *ofcs.report*, 8th August 2018.

¹⁴² Lintner B. (2010), 'Chinese Organised Crime', in *Global Crime*, Volume 6, 2004- Issue 1, p.87, Published online 08th September 2010.

¹⁴³ For a full list of the 36 Oaths of China's Triad Societies, see: Lintner B. (2003), 'Blood Brothers: the Criminal Underworld of Asia', pp.388–391, in Lintner B. (2010), 'Chinese Organised Crime', in *Global Crime*, Volume 6, 2004- Issue 1, p.88, Published online 08th September 2010.

However, Ceccagno¹⁴⁴ believes that rites are no longer an essential element of the affiliation. Chinese OCGs have become more and more flexible and dynamic and for this reason, they would abandon more rigid ceremonial for less formal ties to realise common interests.

Nowadays, Italy represents one of the Chinese OCGs settlement countries today and the European state where the Chinese criminal community has grown exponentially over the years.¹⁴⁵ The DNA report presents Chinese OCGs as particularly dangerous and mainly spread in a few territories.¹⁴⁶ The Anti-Mafia Investigative Direction recognizes the Chinese criminal community as a relevant position among the foreign criminal organisations spread in Italy.¹⁴⁷ There is not a single criminal organisation, but there is a wide variety of autonomous criminal groups, usually composed of members of the same core.

Chinese OCGs operate in Europe in several illicit economic sectors. Since their origin, secret societies have been involved in smuggling, prostitution, and gambling.¹⁴⁸ Many investigations carried on highlight the main areas of illegality in which the Chinese OCGs operate today: money laundering (with money transfer services), import, production and distribution of counterfeit goods, gambling agencies, facilitation and exploitation of prostitution, human trafficking, extortion, trafficking in shaboo and

¹⁴⁴ Ceccagno A., Rastrelli R., and Salvati A. (2008), *Ombre cinesi? Dinamiche migratorie della diaspora cinese in Italia*, Carocci Editore, Roma, pp.111, 141, 142.

¹⁴⁵ Ceccagno A. (2015), *Giovani migranti cinesi. La seconda generazione a Prato*, Centro di ricerca e servizi per l'immigrazione, comune di Prato, Collana di Sociologia, FrancoAngeli, p. 33.

¹⁴⁶ DNA (2018), p.115. Tuscany (with Prato and Florence), Lombardy, but also Veneto and Piedmont are the regions with the largest Chinese communities.

¹⁴⁷ Direzione Investigativa Antimafia – DIA (2019), 'Annual report 2019 – second semester', p.463, available at: http://direzioneinvestigativaantimafia.interno.gov.it/page/relazioni_semestrali.html.

¹⁴⁸ Becucci S. (1998), 'La criminalità cinese in Italia tra stereotipo e realtà', in *Quaderni di sociologia, Nella rete criminale*, 18/1998, p.28-50.

synthetic drugs.¹⁴⁹ Chinese OCGs play a leading role in the trafficking of human beings and the smuggling of migrants to Europe, specifically Italy.

One of the most characteristic aspects of Chinese citizens arriving in the European territories, differently from African migrants, is that they arrive mostly through legal migration channels. The state of illegality only arises at a later stage when, after their residence permit expires, they decide to remain on European territory and in doing so seek support from criminal organisations:

the history of the Chinese community is peculiar in all aspects.... (...) migration by boat is not the Chinese type of migration. The Chinese citizen could start the journey, arrive in Central Asia and, as the Pakistanis do, arrive in Turkey or Africa and from there make the Mediterranean Sea route. Instead, if you search, you will not find a single Chinese person on the boats, yet Chinese people arrive in Europe. Chinese nationals enter in violation of legal migration systems. The modus operandi is as follows: they take a Visa to enter a country directly from China by applying to the Embassies or Consulates of foreign states that are based in China (e.g., the Polish embassy in China). Once obtained, they can go to the airport, take a plane and enter a country legally. (...) Chinese nationals remain in the territory of the final destination, which does not necessarily coincide with the one that gave the authorization for entry (i.e., visa), and become without a residence permit and therefore illegal. (Expert n.1)

The main activity of Chinese OCGs is to earn, manage and reinvest large amounts of money - mostly illicit. According to IOM¹⁵⁰, global remittance flows in 2018 amounted to almost 690 billion dollars, with China receiving over 67 billion dollars, the second-largest portion of international remittances worldwide after India. Chinese criminal communities have demonstrated substantial financial resources and an uncommon ability

¹⁴⁹ DNA (2018), pp.115, 116.

¹⁵⁰ OIM (2020), 'World migration report 2020', p.81. Available at: <https://www.iom.int/wmr/>.

to launder illicit capital through sophisticated transfer systems to the motherland.¹⁵¹

According to Expert n.1,

at first, Chinese OCGs transferred money that was the fruit of illicit activity in Italy, i.e., tax and contribution evasion, and damage to the treasury by implementing a mechanism of parcelling out the income. At a later stage, the organizations evolved, and developed transfer systems through triangulations with shell companies based in countries that may constitute the soft belly of Europe (e.g., Hungary and Poland).

today you find the financing coming out from Prato, Florence, Rome, anywhere in Italy and it goes to cities that are in Poland and then through a round-trip, it goes back to China through forms of triangulation that are then also reproduced in the arrival of the products. (...) the raw material arrives, it is processed in Italy, it is marketed, and no taxes or contributions are paid. The result produced is the maximization of profit, which, however, is not reinvested in Italy but is destined for China. (Expert n.1)

2.3 The Albanians

Albanian OCGs are considered one of the most complex and structured expressions of the ethnic crime scene in Europe.¹⁵² These OCGs spread outside their country of origin from 1991, the year in which, following the collapse of the Soviet bloc and the subsequent deep crisis in the Balkans, Europe became the destination of a new and intense flow of migrants from Eastern European countries.¹⁵³ The economic crisis and constant social tensions brought Albanian citizens into an exceptional state of poverty. In addition, the transition from the communist economy to uncontrolled liberalism caused power gaps that were filled by the rise of criminal groups.¹⁵⁴ Finally,

¹⁵¹ DNA (2018), p. 116. The most common are the Hawala system and the money transfer services.

¹⁵² Direzione Investigativa Antimafia – DIA (2020), *Attività svolta e risultati conseguiti dalla Direzione Investigativa Antimafia. Gennaio – Giugno 2020*, available at: <https://direzioneeinvestigativaantimafia.interno.gov.it/semestrali/sem/2020/1sem2020.pdf>

¹⁵³ Del Re E. (1997), *Albania punto a capo*, SEAM Edizioni, Roma; Devole R., (2006), *L'immigrazione albanese in Italia*, Agrilavoro, Roma.

¹⁵⁴ Lanni C. (a cura di) (2000), *Albania. Un paese d'Europa. Il fattore migrazione*, Gruppo Abele, Torino.

two other factors contributed to the rise of these OCGs: the high degree of corruption at all levels and the total lack of effective instruments and structures to combat organised crime.¹⁵⁵ According to the International Organisation of Migration (IOM)¹⁵⁶, Albania is one of the first countries in Europe with the highest percentage of emigrants in the population: 30 per cent of the population, almost 1.093.000 citizens. Europe constituted the dream for a better life for the Albanian Citizens and consequently, it became the main destination attraction. It was at this time that the first ‘travel agency’ was set up to transport people clandestinely to the nearest countries (Italy and Greece). The immigration of a large part of the population determined a socio-political context that facilitated the development of organised crime.¹⁵⁷ In a very short period, criminal groups evolved and structured, and were able to become effective criminal organisations.

It is possible to identify two different types of organisations. The first is made up of individuals who come together only occasionally as a group to carry out specific activities, which are mostly crimes against property. The second is made up of organisations that are structured and stable in time and space, with their own distinctive *modi operandi* and they are not too different from the characteristics of OCGs. This second type of group has a transnational connotation according to its widespread in Europe – the Netherlands, Belgium, Austria, Germany, the United Kingdom, Spain, France – and Central and South America. The different branches of the organisation interact directly with the heart of the organisation in Albania to carry out the most complex operations. From a sociological point of view, Albanian criminal organisations

¹⁵⁵ Shala Xh. (2008), *Krimi i organizuar dhe sigurimi kombetar*, Qendra Shqiptare për sigurinë në vend, Tiranë.

¹⁵⁶ International Organization for Migration (IOM), 2023. *Migration Governance Indicators Second Profile 2023*
– Republic of Albania. IOM, Geneva.

¹⁵⁷ Jean C. (2000), *Criminalità organizzata interna e stabilità dei Balcani*, GNOSIS

can be identified with a model similar to the one of the 'Ndrangheta, i.e., with members belonging to the same family nucleus, the same city or even the same neighbourhood.¹⁵⁸ Moreover, they have similarities with the Calabrian clans also in terms of internal organisation, i.e., a generally horizontal structure with interchangeable secondary figures and only one supreme leader.¹⁵⁹

Albanian OCGs are clan-like, family-based and predominantly autochthonous.¹⁶⁰ Members recognise certain values and there is a widespread sense of silence. The latter allows Albanian OCGs to be impermeable even in the case of serious convictions or arrests of group members. They are characterised by rigid rules within the organisation, by the methods of subjugation used, by the silence and climate of intimidation that governs relations between members of the organisation and relations between them and the outside world, and by violence in relations. All these elements make it possible to assimilate Albanian criminal organisations with traditional mafia OCGs.

Albanian OCGs have expanded their cells far beyond their country of origin. The criminal groups consist of permanent structures in different European countries, they are composed of permanent residents who direct and organise the illegal activities, and finally of individuals who physically carry out the operations. Groups are characterised by a degree of mobility from one country to another as they are not established in a particular territory. This structural organisation acts as a self-supporting force thanks to operational cells capable of obtaining residence permits in the different European countries where they operate.

¹⁵⁸ Camera dei Deputati - Senato della Repubblica, Atti parlamentari, cit., pag. 147.

¹⁵⁹ Senato della Repubblica - Camera dei Deputati, Atti parlamentari, cit., pag. 147.

¹⁶⁰ Raufier X. (2000), *“Come funziona la mafia albanese”*. Il Triangolo dei Balcani. LIMES, Quaderni Speciali.

The Albanian organised criminal groups refer to the ancient organisation of Albanian society regulated by the '*Kakun*'.¹⁶¹ The rules of the *Kakun* identify a community in which the main nucleus is a sort of extended family in which it is mandatory to respect the rules of the head of the family and in which private revenge is considered an instrument to defend the family itself. By the way, it is important to underline that *Kakun* is not the source of criminal actions. The '*Kanuni i Lek Dukagjini*' Code is a collection of customary rules dating back to the 15th century and passed down orally over the centuries. They were formalised only in 1500 by Prince Lek Dukagjini and they remained in force until the fall of the Ottoman Empire in 1912.¹⁶² The *Kakun* contains a set of customary rules that mirror the primitive society without a central government that created them. It explains how the family need to be organised, how property is divided, who can enter into a contract, etc. According to *Kakun*, justice is in the hands of a government of elders chosen for wisdom and prudence. The *Kakun* identifies the family as the central core of society, considered in a broad, patriarchal manner. The entire existence of the Albanians made up of rights and duties, takes place within the family. The older man is the master of the house and the person the rest of the family must respect. The woman is the property of the man.¹⁶³ It is based on these customary rules retrieved from a distant past the born and manifestation of Albanian organised crime.

¹⁶¹ Plaku V., Bosna V., and Grattagliano I. (2019), 'The Kanun as a self-governance code in Italian-Albanian criminal contexts: A research conducted in the Republic of Albania', 10 November 2019, in *La clinica terapeutica*, V. 170 N. 6 (2019), doi: 10.7417/CT.2019.2173.

¹⁶² Capra S. (2000), *Albania proibita: il sangue, la guerra e il codice delle montagne*, Mimesis, Milano.

¹⁶³ For example, Article 12 states 'a woman, even if her parents are still in life, is not free to decide and manage her marriage. This right is in the hands of her brothers or male relatives'. Article 28 states 'woman's blood is not to be equated with man's blood'.

Access to criminal association takes place through affiliations, which are mostly between relatives or people with the same geographical origin. Albanian OCGs are inclined to use violence not only to regulate internal fights but also above all, as a method of intimidation and subjugation of the victims. The entire system of violence adopted by the members of the criminal organisation to intimidate and exploit their victims - threats, beatings, burns, broken sticks on their backs, freezing showers in the middle of the night - is culturally accepted by the strong subordinate role of women.¹⁶⁴

Two main families manage Albanian criminal activities, the Hasani and the Shabani. According to Bernard Monnet¹⁶⁵, since 2005, an authority (autoritet superklanor) has appeared in Albanian OCGs, similar to a 'cupola', which controls the different criminal groups in the country. Albanian organised crime is seen as

a community whose danger derives from the combination of two opposing elements: one is the structure that is built around a homogeneous nucleus such as the family, and the other is the ability to exercise power even outside the community.¹⁶⁶

The main illegal activities managed by the Albanian OCGs are drug trafficking, arms trafficking, human trafficking, and the exploitation of prostitution. The most profitable activity for the Albanian gangs is probably drug trafficking on a European scale.¹⁶⁷ They operate by importing drugs from the country of origin (i.e. the place of production of marijuana and transit of heroin from Asia) and the Netherlands. Albanian OCGs are involved in the supply of the drugs, which are then passed on to local OCGs

¹⁶⁴ Monzini P. (2002), 'Il mercato delle donne. Prostituzione, tratta e sfruttamento', Donzelli editore, Roma, p.62.

¹⁶⁵ Monnet B. (2007), *La mafia albanaise*, IMARISC.

¹⁶⁶ *Ibidem*.

¹⁶⁷ For example, the operation 'Baccarat' of the 6th February 2020 in which DIA e Police Forces of other European States cooperated. See foot-note n.1.

for distribution. This *modus operandi* has allowed the development of non-conflictual relationships with domestic OCGs without fighting for supremacy in the area.

Italy continues to be the main destination for the trafficking of human beings due to its geographical position. Albanian OCGs have managed the irregular migrations of compatriots and time by the time they have started to act as a travel agency for citizens from different states. They were able to come in contact with Turkish or Chinese criminal groups involved in trafficking illegal immigrants and the Albanian OCGs work to guarantee the passage through the Otranto Channel to Italy and from there to other European countries. Originally, the victims were of Albanian nationality, but nowadays the victims are also of other ethnic origins, such as Romanian, Ukrainian, Moldovan, Turkish and Chinese.

The exploitation of prostitution is carried on in a particularly violent manner and overpowering the victims.¹⁶⁸ While initially, the women recruited and exploited by Albanian OCGs were of their nationality, over time, Romanian women have become increasingly aware of the situation and therefore unwilling to be exploited. They have shifted from the situation of being victims of exploitation to being the organisers of the logistical aspects of the exploitation of girls of other nationalities – especially in Eastern Europe.

Finally, Albanian OCGs are among the main actors in the field of theft of luxury cars in different European countries. It is estimated that a large proportion of the cars circulating in Albania have an illegal origin.

¹⁶⁸ Carchedi F. (2004), *Prostituzione migrante e donne trafficate. Il caso delle donne albanesi, moldave e rumene*, Ed. Franco Angeli, Milano.

3. Relations with other OCGs

Criminal organisations operate like real businesses to maximise their profits. In doing so, they cannot ignore the changing social and economic scenario in which they operate, as well as the transnationality and globalisation of their own activities. Criminal organisations have therefore understood that their new strength lies in their ability to network and form alliances not only strategically but also operationally between different groups, in different contexts and with different needs.¹⁶⁹

(...)OCGs (...) exploit the organizational ability to network, to establish operational and strategic alliances between different groups, putting the unity of purpose ahead of internal struggles.¹⁷⁰

Ethnic OCGs have also made this evolution. When they started to spread in European countries, they came into contact with already established criminal groups, especially the Italian OCGs, which are the most structured and widespread among the European groups.

In the first phase of coexistence, the relationship between the Italian and ethnic OCGs runs parallel (Expert n.2). In the development of the relationship, many points of convergence have been noted:

Either because agreements are needed for the management of a certain territory because they must share fields of operation, or because the Italian mafia can exploit foreign OCGs. An example of the latter type of agreement emerges with regard to economic remittances. In one of our investigations

¹⁶⁹ Spiezia F. (2022), "La lotta alla criminalità organizzata fuori dai confini nazionali", Sistema Penale, 20 July 2022, p.1. Revised text of the paper presented at the course organised by the Scuola Superiore della Magistratura and the Direzione Nazionale Antimafia ed Antiterrorismo entitled "30 years of DNA, DDA and DIA. 30 years of legislation against organised crime: the origins and evolutions of the anti-mafia system" (22 June 2022, Rome), p.11.

¹⁷⁰ Report on the activities carried out and results achieved by the Anti-Mafia Investigative Directorate in the first half of 2022 - Ministry of the Interior; analysis on mafia-like organized crime phenomena in the first half of 2022. available at: <https://direzioneinvestigativaantimafia.interno.gov.it/wp-content/uploads/2023/04/Semestrale-I-2022.pdf>

on the Chinese mafia, it emerged that money was put into cardboard boxes and thrown into trucks that carry hundreds of boxes so they are able to take them all over Europe. (Expert n.2)

At first, when a foreign OCG arrives in an area already controlled by OCGs, the first reaction is confrontation. The war between groups, however, generally involves a clash that is also physical, hence murders, which attracts the attention of investigators and investigative bodies (Expert n.2).

Mistrust in the case of absence of relations is always highest(...) this often leads to kidnappings, death threats, and murders. These are issues that can find a solution in terms of mutual benefit but often fundamentally travel on great levels of mistrust (...) organizations can cooperate but everything goes through great moments of mistrust and centred activities and repeated trials, great phases of mistrust on both sides. (Expert n.3)

The win-win solution is to keep everything under wraps and reach an agreement by avoiding sensational facts. Over time, what has emerged among all OCGs is the need to reach mutually beneficial functional agreements that allow the risk associated with carrying out certain activities to be passed on or sold to someone else, giving away part of the domain but helping oneself (Expert n.2). The agreements are based on a mutual relationship of trust, where everyone brings a certain level of security to the 'negotiating table'.

Chinese OCGs, for example, have developed great money management skills over time and this was the element that led to the development of agreements with Italian OCGs.

There has been a real evolution with Chinese OCGs from a relationship of distrust to one of cooperation with regard to money laundering. (...) a Chinese group can launder millions to a Calabrian group, but this happens

because the Calabrian group has already tested and proven that the Chinese group already performs that laundering activity flawlessly (Expert n.3)

Chinese OCGs can be attractive to OCGs, Camorra and 'ndrangheta especially, either to become a payment instrument for big business or to become a tool for cleaning up the proceeds of illegal activity. (...) Chinese OCGs are at the service of others criminality, running de facto banks, and payment systems, solving problems by taking risks that other OCGs once had to take on their own by transporting money or committing crimes such as kidnappings to obtain payment for drugs (Expert n.1)

Nigerian OCGs, for example, were dealing with a criminal market that was already completely controlled and saturated by other OCGs already settled in Europe. Therefore, the only possible space for coexistence was to obtain the procurement of some specific services needed by the domestic OCGs. According to Expert n.6, several links between Nigerian and Italian OCGs can be observed:

- Caporalato phenomenon. In the southern Italian regions, especially Sicily, Apulia and Campania, there are Nigerian OCGs that manage the phenomenon, hetero-directed by local OCGs to whom they pay a portion of the money earned. The Nigerian corporal has to pay a price to the Italian criminal entrepreneur that allows him to exploit the workers in their territories.
- Management of drug squares. Italian OCGs sometimes allow Nigerian OCGs to deal with trafficking in drug squares in order to reduce the risk of getting caught.
- Drug importation. Members of Nigerian OCGs act as middlemen for drugs coming from South America and passing through Africa in order to differentiate supply lines.
- The exploitation of prostitution. Nigerian OCGs are allowed to manage, in some European states, certain prostitution activities, especially on the streets but then

the victims 'protectors' must hand over a portion of the proceeds to the local OCGs that control that territory.

However, the conclusion of the agreements was not a simple matter and took several years to break in. For example, it is possible to go back to the 2008 Castel Volturno massacre¹⁷¹ in which there were seven Nigerian victims. According to Expert n.4:

(...) the massacre of Castel Volturno was the result of these forms of illicit agreements under which the Casalesi clan, hegemonic in that area, had decided that certain more dangerous and high-profile activities, such as drug dealing, should be entrusted to Nigerians.

Another example in this regard is the Police operation called 'no-fly zone' carried out in 2019 in the neighbourhood Ballarò in Palermo¹⁷², which is a neighbourhood with very high Mafia criminal density, which led to the identification of a Nigerian OCG that was running the drug trade '*and certainly could not attribute to itself the power to run it if organized crime had not given it the consent*'. (Expert n.4)

Most of the agreements that have been made between Italian OCGs and Nigerian OCGs arise from an awareness among Italian groups of the need to keep criminal activity under the radar as much as possible.

(...) Italian OCGs began to engage in other activities such as waste trafficking, and money laundering in illicit activities while subcontracting the most dangerous and least profitable businesses to ethnic OCGs (Expert n.4)

This evolution from a subordinate to a cooperative relationship can be observed with reference to Albanian OCGs as well. A sign of this effective evolution has emerged,

¹⁷¹ Nazzaro S. (2013), 'Castel Volturno. Reportage sulla mafia africana', 5 February 2013, Einaudi.

¹⁷² Giangrande A. (2019), 'Anno 2019 la mafiosità prima parte', Antonio Giangrande, p.370.

for example, with the police operation ‘Sabbia’ of December 2019 which has identified an Italo-Albanian association involved in the trafficking of drugs coming from Albania to be sold in Florence.

OCGs in Campania and Apulia since the 1980s have passed on to Balkan groups the stages of supply, temporary storage, and transportation to drug allocation markets, thereby reducing the risks associated with confiscating and embezzling smuggled goods. (Expert n.9)

In addition, it should be noted that agreements between OCGs are sometimes motivated by the absence of young labour among local OCGs. In fact, in this regard, it has been reported by Expert n. 5:

the Sacra Corona Unita lacks generational turnover, so from prison, it is able to create alliances and manage external affairs. Some bosses affiliate young boys especially from Eastern Europe (Albanians first and foremost) and in this way, links are created with Albanian formations. (...) the drug business of the Sacra Corona Unita is run by Albanian OCGs that have established their hub in Borgo Mezzanone. So, there are business joint ventures, and the unions are also fed from inside the prison. The moment the Sacra Corona Unita lacked manpower it looked for it in the affiliation of Albanians.

To conclude, it seems clear that currently the relationship between local OCGs and ethnic OCGs is of collaboration aimed at *best managing and further developing the crime supply chain, reducing costs, and increasing profitability*:

It is possible to focus on the lower costs incurred by Balkan or Eastern European OCGs in carrying out illegal transports along routes of thousands of kilometres: drivers, stockers, and couriers have far lower demands than their Italian 'colleagues' who used to operate in the same way but with higher economic demands even in the case of the higher risks incurred. (Expert n.9)

This evolution has allowed European-based OCGs to redirect their business interests¹⁷³ towards white-collar activities, waste management or the wind power sector.

(Expert n.5)

There are, however, still cases in which ethnic OCGs act in an extremely closed manner, without links to other gangs. In particular, the Experts interviewed highlighted two different contexts/environments in which this happens:

- according to Expert n.9, *Nigerian OCGs, who often operate in the cult sector, are very active in the area of computer fraud and laundering the profits obtained from it;*
- according to Expert n.7, *in north-eastern Italy, local OCGs have no interest in drug markets (...) therefore ethnic OCGs turn to organisations run by their compatriots in northern Europe or on the Iberian peninsula or set up new ones of their own, in order to obtain a favourable price for the supply of wholesale drugs.*

¹⁷³ Testai G. (2022), 'Le indagini patrimoniali nel contesto della criminalità organizzata', edited by Scuola di Perfezionamento per le Forze di Polizia di Roma, Volume 2/2022, Rome, p.33.

4. Relations between ethnic OCGs and Terrorist groups

According to the Council of Europe, terrorism constitutes one of the most serious threats to international peace and security.¹⁷⁴

‘The nexus between transnational OCGs and terrorism represents a growing threat to peace, security and development, globally. Terrorists are taking advantage from transnational organized crime in many contexts and by conducting many illicit activities spanning from the trafficking of arms, persons, drugs, artefacts and natural resources; to the kidnapping for ransom and other crimes including extortion and bank robbery.’¹⁷⁵

The link between transnational OCGs (for this research project, the term is referred to as ethnic OCGs) and terrorism is complex and dynamic and has evolved in recent years. This link is currently being studied by researchers, policymakers and academics as it can potentially have a direct negative impact on security and contribute to the erosion of political, economic and social stability and development. The link between these originally distinct and different groups has historical origins. Since the end of the Cold War, organised criminal activities have become a major source of revenue for terrorist groups worldwide. The use of crime has become an important factor in the development of terrorism, and the 1990s can be described as the decade in which the nexus between crime and terrorism was solidified.¹⁷⁶ Since the 1990s, these two traditionally separate phenomena have begun to show many operational and

¹⁷⁴ Council of Europe (2005), ‘Convention on the Prevention of Terrorism’, Warsaw, CETS No. 196, Article 1, available at: http://publications.europa.eu/resource/ellar/51a68d8b-23f5-11e9-8d04-01aa75ed71a1.0001.02/DOC_1

¹⁷⁵ De Meo A. M. (2020), ‘The nexus between organised crime and terrorism - A week dedicated to capacity building and advocacy’, director of the United Nations Interregional Crime and Justice Research Institute - UNICRI, 14th September 2020, available at: <http://www.unicri.it/news/Nexus-organizedcrime-terrorism>.

¹⁷⁶ Makarenko T. (2005), *The Crime-Terror Continuum: Tracing the Interplay between Transnational Organised Crime and Terrorism*, in *Global Crime Today- The Changing Face of Organised Crime*, edited by Mark Galeotti, Routledge, pp.129-142.

organisational similarities. Today, security is a cauldron of traditional and new threats that interact and sometimes converge. There is a continuum between crime and terrorism, and this coincidence could be defined as a strategic choice for both transnational OCGs and terrorist groups. The most important consequence is the development of more resilient and capable groups.

As stated earlier, the relationship between transnational OCGs and terrorist groups is not static but has evolved over time into a continuum that, by its very nature, aims to trace how the organisational dynamics and operational character of both phenomena change over time.

Given this connection, the question is whether they are based on a well-organised and clearly defined structure or are more opportunistic. The relationships between them can be described with the help of different ideal models.¹⁷⁷

1. The first model is called 'alliances'. The reason for this designation is the fact that transnational OCGs form alliances with terrorist groups and vice versa. The nature and structure of the alliances varies between one-off, short-term and long-term. These groups share economic opportunities and expertise to achieve the best possible result. These groups share also knowledge and operational support.
2. The second level of the relationship is the so-called 'operational motivations'. In this model, criminal groups use terrorism as an operational tool and terrorist groups engage in criminal activities. The ultimate goal of both groups is to maximise illegal profit. For this reason, many terrorist groups have become adept

¹⁷⁷ Ibidem.

at conducting criminal operations to develop their own capabilities, gain independence and cut ties with previously established alliances.

3. The third level of relationships is the so-called ‘convergence’. It occurs when terrorist groups and transnational OCGs merge into a single entity, each with characteristics of the other. The point at which they arrive is a single entity located in the opposite part from which it started.
4. Finally, the last level of relationship is the ‘black hole syndrome’. In this state, the convergence between the groups has created the conditions for a civil war or a regional war to gain economic and political power. This relationship is described as the natural progression of these two criminal groups gaining economic and political control over a territory or a state.

The nexus between OCGs and terrorist groups emerges with specific reference to the core business of their existence as organisations, i.e. the laundering and re-utilisation of illicitly derived funds.¹⁷⁸ According to the San Marino Financial Intelligence Agency (the equivalent of our UIF at the Bank of Italy), a large proportion of terrorist attacks in Europe were financed through money laundering from ordinary criminal activities (drug dealing, theft, robbery, sale of counterfeit goods and loan fraud).¹⁷⁹

The emerging nexus between terrorist groups and transnational OCGs constitutes a growing threat to Member States’ security and the fight against terrorism and criminal organisations has become a pressing issue on global, regional, and national agendas.

¹⁷⁸ Testai G. (2022), ‘Le indagini patrimoniali nel contesto della criminalità organizzata’, edited by Scuola di Perfezionamento per le Forze di Polizia di Roma, Volume 2/2022, Rome, p.34.

¹⁷⁹ Agenzia Informazione Finanziaria di San Marino, *Il Terrorismo e il suo finanziamento: l’esperienza europea*, settembre 2018, p. 42.

One of the protagonists in the fight against terrorism and the OCGs of the international scenario is the Council of Europe. One of its goals is to provide practical advice to member states to help their national authorities better prevent and combat terrorism and improve their understanding of the links between terrorism and transnational OCGs. For this reason, the Council of Europe, in particular its Counter-Terrorism Committee (CDCT), has adopted some guidelines based on the links between opportunist groups¹⁸⁰, intended as a practical tool for member states to combat transnational OCGs and terrorist groups and their links.¹⁸¹

According to these guidelines, terrorism and transnational OCGs have become increasingly close operationally, leading to their cooperation and coexistence as both groups have learned from each other's modus operandi. In recent years, the boundary between the two groups can no longer be clearly defined, as certain terrorist groups transform into transnational groups and vice versa. The comprehension of how terrorism and transnational OCGs are linked should be a priority for the Member States to target the phenomenon. According to the Council of Europe, terrorism is often a form of organised crime. As a consequence of this, Member States should target the first by using the operational methods and legal instruments that already have proved to be effective in the fight against transnational OCGs and vice versa.

¹⁸⁰ Council of Europe – Committee of Ministers (2021), ‘Links between terrorism and transnational organised crime: Committee of Ministers adopts guidelines’, 1st April 2021, available at: https://www.coe.int/it/web/portal/full-news/-/asset_publisher/y5xQt7QdunzT/content/links-between-terrorism-and-transnational-organised-crime-committee-of-ministers-adopts-guidelines?_101_INSTANCE_y5xQt7QdunzT_languageId=en_GB

¹⁸¹ Ibidem.

Conclusion

The purpose of this chapter is to identify the specific characteristics of the ethnic OCGs – the Nigerians, the Chinese and the Albanians. As has been made clear from the outset, they pose a threat to national, European, and international security for several reasons. They are organisations that carry out and manage illegal activities, with specific characteristic elements, with a particular *modi operandi*, and last but not least, there is evidence of their links to European-based OCGs and terrorist groups.

It is possible to identify some specific elements that characterise Nigerians, Chinese and Albanians OCGs:

- members share a common ethnic and/or geographic origin. This sociogeographic element allows people to identify with each other and trust people who ‘look like them’. This element is as evident in Nigerian OCGs, whose members are all from the same tribes, as it is in victims. Chinese OCGs are clan-centred and trust extended family almost exclusively. Finally, Albanian OCGs are organised into extremely small groups whose members are of the same origins. This element emerges as Membership with the members of the community of origin and as marginality from the community of arrival;
- joining an ethnic OCG takes place through a rite of affiliation that manifests itself in different forms and modalities, but in all cases has the goal of indissolubly binding the members of the organisation;
- they have an internal organisation with variable geometry and cells distributed throughout the countries, which are responsible for carrying out illegal activities. All ethnic OCGs maintain the core of the organisation is located in the country of origin (Nigeria, China, Albania);

- they engage in numerous illegal activities, the most widespread being human trafficking and smuggling, exploitation of prostitution, and irregular immigration. The variety of activities allows them to expand their profit opportunities according to the rules of the market;
- they often use violence against their victims. The Nigerian and Chinese OCGs usually use very strong forms of psychological violence, while the Albanian OCGs use mostly physical violence;
- there are strict rules of conduct that must be observed, dating back to the voodoo rites, the guanxi value system, and the Kakun customary rules.

All of these elements characterise specifically ethnic OCGs and make them complex to study and contrast, not only legally but also operationally. In order to understand the applicability of these measures to combat ethnic OCGs, it is necessary to analyse the legal scenario, focusing in particular on the most recent international instrument that directly deals with providing legal guidance to member states' legislation on organised crime, and the operational scenario, focusing in particular on interception of communications, covert investigations, informants and joint investigation team.

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Chapter 3

Countermeasures Adopted by EU Member States

Summary: 1. Introduction - European and International Countermeasures; 2. Framework Decision 841/2008; 2.1 Article 1; 2.2 Article 2; 2.3 Article 3; 2.4 Article 4; 2.5 Article 7; 2.6 Article 8; 2.7 Reform Perspectives; 2.8 A Best Practice in Europe; 3. Operational Instruments; 3.1 Interception of Communications; 3.2 Covert Investigations; 3.3 Informants; 3.4 Joint Investigation Teams; Conclusion; List of References.

This chapter identifies and analyses the countermeasures adopted by EU member states to counteract OCGs, focusing from the legislative point of view on the implementation of Framework Decision 841/2008¹⁸² in the Member states and a best practice in Europe, such as Italy. From the operational point of view, it focuses on interceptions of communications, undercover investigations, informants, and joint investigation teams since they are considered the most successful tools in the fight against OCGs. From a common starting point (specifically the framework decision 841/2008), then all the member states legislated in different ways. This chapter aims to provide an overview of the main and meaningful instruments of international law, which aim to harmonise national legislation in the fight against organised crime.

In doing so, several qualitative methods have been employed: analysis of the existing relevant literature, national European and international legislation and interviews with experts. The different measures taken by each state have been compared graphically as a whole.

¹⁸² For a deep analysed of the Framework Decision 841/2008 see: Study on paving the way for future policy initiatives in the field of f, fight against organised crime - effectiveness of specific criminal law measures targeting organised crime, available at: <https://op.europa.eu/en/publication-detail/-/publication/a1183e4b-1164-4595-a742-fb4514ddd10d>

1. Introduction – European and International Countermeasures

In the last twenty-five years, several pieces of legislation have been enacted at the international and European levels – and consequently at the national level – to strengthen the fight against OCGs. The European Union and the United Nations were able to define a legal framework within which states could act.

The first international legislation was the 1997 EU Action Plan to Combat Organised Crime.¹⁸³ Its recommendation n.17, asked the Council of the European Union to:

rapidly adopt a joint action aiming at making it an offence under the laws of each Member State for a person, present in its territory, to participate in a criminal organisation, irrespective of the location in the Union where the organisation is concentrated or is carrying out its criminal activity[..].

As a result of the above recommendation, the first international legal instrument to harmonise national legislation was adopted. On 21 December 1998, was adopted in the EU Member States the EU Joint Action¹⁸⁴ on making participation in a criminal organisation an offence. This Joint Action introduced an EU-wide definition of a criminal organisation in Article 1:

(any) structured association, established over a period of time of more than two persons, acting in concert with a view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty, whether such offences are an end in themselves or a means of obtaining material benefits and, where appropriate, of improperly influencing the operation of public authorities.

¹⁸³ Council of the European Union, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A51997XG0815>.

¹⁸⁴ Council of the European Union, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31998F0733>.

In addition, Article 2 of the Joint Action invites member states to introduce criminal sanctions to punish various forms of crimes committed by individuals, as well as by legal persons, linked to participation in a criminal organisation.

The Joint Action was followed in 2000 by the United Nations Convention against Transnational Organised Crime (UNTOC) well known as the ‘Palermo Convention’. It introduced a global definition of ‘organised criminal group’ as:

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 serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.

The Palermo Convention is the first international legal instrument that allowed member states to move forward in combating OCGs. According to Spiezia, this act has improved cooperation on transnational crimes and has introduced some common criminal law definitions, such as the one of organised criminal groups.¹⁸⁵

In addition, in 2005, the European Commission drafted a proposal for a framework decision on combating organised crime, with several objectives, such as the harmonisation of the definition of offences and penalties, the introduction of a specific offence of ‘directing a criminal organisation’, the definition of specific aggravating and mitigating circumstances, and finally, the inclusion of provisions to facilitate cooperation between judicial authorities and coordination of their actions. As a result of all these measures, Council Framework Decision No. 841 was adopted in 2008 with the clear aim of creating higher standards in the EU for offences related to a criminal organisation.

¹⁸⁵ Balsamo A. and Mattarella A. (2021), ‘Criminalità organizzata: le nuove prospettive della normativa europea’, *Sistema Penale*, Volume 3/2021, p.38

The above-mentioned Palermo Convention and Framework Decision 841/2008 can be considered as the main and meaningful instruments of international law, which aim to harmonise national legislation in the fight against organised crime. It should be emphasised that all provisions adopted at the European level are aimed at combating OCGs in their entirety, regardless of any sociological distinction between ethnic and local or European-based groups. Consequently, the following analysis refers to the legislative measures adopted to combat OCGs.

Furthermore, Member States have legislated on the operational to strengthen the fight against organised crime and terrorism. In particular, in 2005, the Council of Europe defined eight special investigative techniques – which are considered the best tools to pursue the purpose – such as surveillance, interception of communications, covert investigations, controlled deliveries, informants, joint investigation teams, hot pursuit and witness protection. These techniques are used by competent authorities in criminal investigations to detect and investigate serious crimes and suspects and aim to gather information in a way that does not alert the targets.¹⁸⁶ However, this research project analyses only some of the specific investigative techniques used in the fight against organised crime. According to the opinion of the experts, only some specific tools are not only necessary but also essential in the fight against OCGs. The operational measures analysed are interception of communications, covert investigations, informants and joint investigation teams. To reach the objective, this chapter analyses, for each of the above-mentioned four operational instruments, the definition of the tool, its scope of application and the legal basis for its use. The analysis of the substantive legal framework constitutes

¹⁸⁶ Council of Europe, Comm. of Ministers (2005a). *Recommendation: Special Investigation Techniques in Relation to Serious Crimes Including Acts of Terrorism*, 2, Rec(2005)10 (20 April 2005). Available at: <https://wcd.coe.int/ViewDoc.jsp?id=838445&BackColorInternet=DBDCF2&Ba%20c&BackColorIntranet=FDC864&BackColorLogged=FDC864>

the answer to the second preliminary question, i.e. provides an overview of the legal scenario in the fight against OCGs in the member states, and it represents the starting point for the assessment – in chapter 4 – of the applicability of these measures in the fight against ethnic OCGs.

2. Framework Decision 841/2008

The following paragraphs aim to analyse the provisions introduced at the European level (specifically Articles 1-8¹⁸⁷ of the Framework Decision¹⁸⁸) in their content, considering also the critical aspects highlighted over time by authoritative experts and their transposition into national legislation.¹⁸⁹ The graphs on the transposition or non-transposition of European guidelines are aimed at illustrating how fragmented the responses of Member States are. Finally, this research project aims to understand whether the main elements thus elaborated by the legislation are identifying characteristics of ethnic OCGs too.

2.1 Article 1

For the purposes of this Framework Decision:

1. 'criminal organisation' 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;
2. 'structured association' means an association that is not randomly formed for the immediate commission of an offence, nor does it need

¹⁸⁷ Text of the legislation available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32008F0841>

¹⁸⁸ Articles 5 and 6 respectively titled 'Liability for Legal Persons for Offences Relating to Participation in a Criminal Organisation' and 'Penalties for Legal Persons' are not discussed as they relate to legal persons. The fight against legal persons linked with OCGs is not the subject of this work.

¹⁸⁹ For the full texts of the legislation, see Annex C.

to have formally defined roles for its members, continuity of its membership, or a developed structure.

Article 1 introduces the definition of ‘criminal organisation’ as a structured organisation of more than two persons who act in concert for some time to obtain, directly or indirectly, financial or other material benefits. In addition, the ‘structured association’ is defined as an association that is not randomly formed for the immediate commission of a criminal offence, nor with formally defined roles for its members, continuity of memberships or a developed structure. The legal consequence is that ‘criminal organisation’, and ‘organised criminal group’ can be used as synonyms.

A first general analysis of this standard shows that criminal organisation is defined extremely vaguely in paragraph 1 (e.g. the requirement of continuity is stated as 'long established') and in paragraph 2 structured association is defined with a negative definition, i.e. the standard specifies what a criminal association is not. Furthermore, there is a lack of an accurate definition of the *modus operandi* of an OCG. As pointed out by Balsamo and Mattarella, the Framework Decision does not typify the *modus operandi* of a criminal organisation by referring to forms of violence such as intimidation, or threats.¹⁹⁰

Hereafter, this chapter analyses the main elements introduced by Article 1 focusing on how and if, they have been received by EU member States legislation.

- **Structure of the Criminal Organisation**

¹⁹⁰ Balsamo A. and Mattarella A. (2021), ‘Criminalità organizzata: le nuove prospettive della normativa europea’, *Sistema Penale*, Volume 3/2021, p.40.

The Framework Decision refers to an association that is not arbitrarily formed for the immediate commission of an offence and does not have formally defined roles for its members, continuity of its memberships or a developed structure.

From the information taken from the legal texts of the Member States¹⁹¹, it can be concluded that only Sweden and Denmark do not currently define a criminal organisation in their national legislation. Within the legislation of other member states, there are different approaches to the ‘structure of the criminal organisation’ element:

- the ‘*only a mention*’ approach. There is just the mention that the association is to be structured, with no further elaboration (Belgium¹⁹², Bulgaria¹⁹³, Cyprus¹⁹⁴, Finland¹⁹⁵, Greece¹⁹⁶, Ireland¹⁹⁷, Luxemburg¹⁹⁸, Romania¹⁹⁹ and Slovakia²⁰⁰);

¹⁹¹ All the legislation have been consulted online, starting from the sources identified as relevant by the Study on paving the way for future policy initiatives in the field of f, fight against organised crime - effectiveness of specific criminal law measures targeting organised crime, available at: <https://op.europa.eu/en/publication-detail/-/publication/a1183e4b-1164-4595-a742-fb4514ddd10d>.

During the research, the United Kingdom have been exclude as a consequence of Brexit.

¹⁹² Source: section 324 bis of the Criminal Code. Only a mention that the association is to be structured.

¹⁹³ Source: section 321 of the Criminal Code. Only a mention that the association is to be structured.

¹⁹⁴ Source: section 63b of the Criminal Code. Only a mention that the association is to be structured.

¹⁹⁵ Source: Chapter 17, section 1(a) of the Criminal Code. Only a mention that the association is to be structured.

¹⁹⁶ Source: section 187 of the Criminal Code. Only a mention that the association is to be structured.

¹⁹⁷ Source: Criminal Justice Act of 2006- Section 70. Only a mention that the association is to be structured.

¹⁹⁸ Source: section 324 bis of the Criminal Code. Only a mention that the association is to be structured.

¹⁹⁹ Source: section 367 of the Criminal Code. Only a mention that the association is to be structured.

²⁰⁰ Source: section 129 of the Criminal Code. Only a mention that the association is to be structured.

- the ‘*further elaborated concept*’ approach: the structure is elaborated with some more details (Croatia²⁰¹, Czech Republic²⁰², Estonia²⁰³, Latvia²⁰⁴, Lithuania²⁰⁵ and Spain²⁰⁶);
- the ‘*no mention*’ approach. There is no explicit reference to the structure of the criminal organisation. Within this approach, the application of the provision is easier because it opens also to a less structured manner (Austria²⁰⁷, France²⁰⁸, Germany²⁰⁹, Hungary²¹⁰, Italy²¹¹, Malta²¹², the Netherlands²¹³, Poland²¹⁴, Portugal²¹⁵, and Slovenia²¹⁶).

²⁰¹ Source: section 328 of the Criminal Code. The concept is further elaborated (shall not include an association randomly formed for the immediate commission of one criminal offence).

²⁰² Source: section 129 of the Criminal Code. The concept is further elaborated (internal organisational structure, a division of functions and division of activities).

²⁰³ Source: section 255 of the Criminal Code. The concept is further elaborated (the participants of which in accordance with previous agreement have divided responsibilities).

²⁰⁴ Source: section 21 of the Criminal Code. The concept is further elaborated (persons linked by permanent mutual relations and division of roles and tasks).

²⁰⁵ Source: section 25 of the Criminal Code. The concept is further elaborated (persons linked by permanent mutual relations and division of roles and tasks).

²⁰⁶ Source: section 570 bis of the Criminal Code. The concept is further elaborated (in collusion and co-ordination to distribute diverse tasks or duties).

²⁰⁷ Source: section 278 of the Criminal Code. No mention of the notion of ‘structured organisation’ in the legislation.

²⁰⁸ Source: section 450-1 of the Criminal Code. No mention of the notion of structured organisation in the legislation.

²⁰⁹ Source: section 129 of the Criminal Code. No mention of the notion of structured organisation in the legislation.

²¹⁰ Source: section 459 of the Criminal Code. No mention of the notion of ‘structured organisation’ in the legislation.

²¹¹ Source: section 416 of the Criminal Code. Only a mention that the association is to be structured.

²¹² Source section 83 A of the Criminal Code. No mention of the notion of structured organisation in the legislation.

²¹³ Source: section 140 of the Criminal Code. No mention of the notion of structured organisation in the legislation.

²¹⁴ Source: section 258 of the Criminal Code. No mention of the notion of structured organisation in the legislation.

²¹⁵ Source: section 299 of the Criminal Code. No mention of the notion of structured organisation in the legislation.

²¹⁶ Source: section 126 of the Criminal Code. No mention of the notion of structured organisation in the legislation.

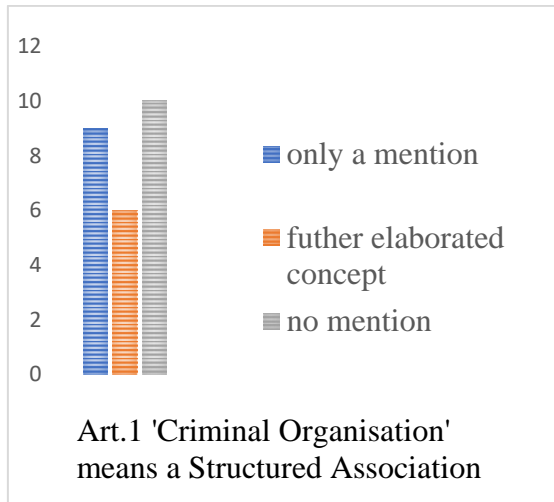


Figure 1- Criminal Organisation as a Structure Association.

The introduction of the requirement of structuring the criminal organisation could be a limitation in the fight against ethnic OCGs. This is because, as seen above, ethnic OCGs are largely fluid and constantly evolving to adapt to an ever-changing reality into which they fit. It cannot be ruled out that ethnic OCGs are structured with task sharing or continuous membership, but this is not a typical feature. The absence of reference to a structure (no mention approach) must be seen as the choice that best enables member states to counter ethnic OCGs.

- **Continuity of the Criminal Organisation**

A criminal organisation must have been 'built up over a period of time'. This provision aims at distinguishing between criminal organisations and less serious criminal activities, which are usually characterised by short-term criminal connections. The solution adopted focuses on the duration of 'establishment' instead of focusing on the

potential duration. By doing so, the definition has a reduced selective capacity, and risks conflicts with the principles of legality, clarity and proportionality.²¹⁷

Within the legislation of other MS, there are different approaches to the ‘over a period of time’ element:

- the ‘*mention*’ approach. There is an explicit mention of continuity in the legislation (Austria²¹⁸, Belgium²¹⁹, Finland²²⁰, Greece²²¹, Hungary²²², Ireland²²³, Luxemburg²²⁴, Romania²²⁵, Slovakia²²⁶ and Spain²²⁷);
- The ‘*no mention*’ approach. There is no explicit reference to continuity and time requirements in general. In these cases, the offence should be easier to prove

²¹⁷ Balsamo A. and Mattarella A. (2021), ‘Criminalità organizzata: le nuove prospettive della normativa europea’, *Sistema Penale*, Volume 3/2021, p.41 and Calderoni, F. (2012). *La decisione quadro dell’Unione Europea sul contrasto alla criminalità organizzata e il suo impatto sulla legislazione degli Stati Membri*. In S. Alfano, & A. Varrica (Edd.), *Per un contrasto europeo al crimine organizzato e alle mafie: La risoluzione del Parlamento Europeo e l’impegno dell’Unione Europea*, pp.16-22.

²¹⁸ Source: section 278 of the Criminal Code. Mention of duration in the legislation (set up for the longer term).

²¹⁹ Source: section 324 bis of the Criminal Code. Mention of duration in the legislation (established over a period of time).

²²⁰ Source: Chapter 17, section 1(a) of the Criminal Code. Mention of duration in the legislation (established over a period of time).

²²¹ Source: section 187 of the Criminal Code. Mention of duration in the legislation (for a long period of time).

²²² Source: section 459 of the Criminal Code. Mention of duration in the legislation (in the long term).

²²³ Source: Criminal Justice Act of 2006- Section 70. No mention of duration in legislation.

²²⁴ Source: section 324 bis of the Criminal Code. Mention of duration in the legislation (established over a period of time).

²²⁵ Source: section 367 of the Criminal Code. Mention of duration in legislation (for a period of time).

²²⁶ Source: section 129 of the Criminal Code. Mention of duration in legislation (for a certain period of time).

²²⁷ Source: section 570 bis of the Criminal Code. Mention of duration in the legislation (a stable basis, for an indefinite period of time).

(Croatia²²⁸, Cyprus²²⁹, the Czech Republic²³⁰, France²³¹, Germany²³², Italy²³³, Latvia²³⁴, Malta²³⁵, the Netherlands²³⁶, Poland²³⁷, Portugal²³⁸ and Slovenia²³⁹).

- The ‘*permanent basis*’ approach. Bulgaria²⁴⁰, Estonia²⁴¹ and Lithuania²⁴² refer specifically to a criminal organisation operating permanently.

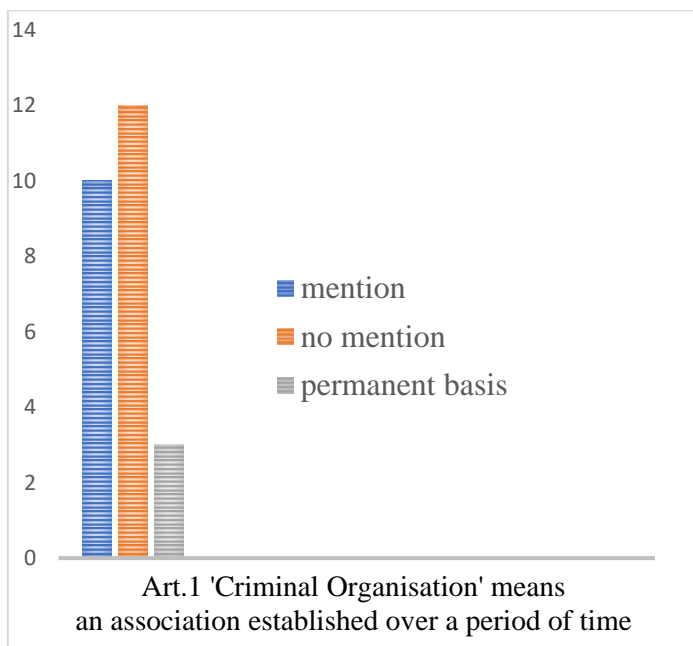


Figure 2- Criminal Organisation as a Continuative Association.

The introduction of a time requirement is potentially an obstacle in countering ethnic OCGs. Indeed, these are sometimes composed of members who join together for the exclusive purpose of committing certain illegal activities. Consequently, any reference to

²²⁸ Source: section 328 of the Criminal Code. No mention of duration in legislation.

²²⁹ Source: section 63b of the Criminal Code. No mention of duration in legislation.

²³⁰ Source: section 129 of the Criminal Code. No mention of the duration in legislation.

²³¹ Source: section 450-1 of the Criminal Code. No mention of duration in legislation.

²³² Source: section 129 of the Criminal Code. No mention of duration in legislation.

²³³ Source: section 416 of the Criminal Code. No mention of duration in legislation.

²³⁴ Source: section 21 of the Criminal Code. No mention of duration in legislation.

²³⁵ Source sections 48A and 83 A of the Criminal Code. No mention of duration in legislation.

²³⁶ Source: section 140 of the Criminal Code. No mention of duration in the legislation.

²³⁷ Source: section 258 of the Criminal Code. No mention of duration in the legislation.

²³⁸ Source: section 299 of the Criminal Code. No mention of duration in the legislation.

²³⁹ Source: section 126 of the Criminal Code. No mention of duration in the legislation.

²⁴⁰ Source: section 93 of the Criminal Code. Mention of a permanent duration.

²⁴¹ Source: section 255 of the Criminal Code. Mention of a permanent duration.

²⁴² Source: section 25 of the Criminal Code. Mention of a permanent duration.

the requirement of a group operating permanently or for a predefined period of time constitutes a potential obstacle in the application.

- **Number of Members of the Criminal Organisation**

A criminal organisation is one composed ‘of more than two persons acting in concert’. According to the information drawn from the legal text of the Member States, it is possible to conclude that several approaches exist:

- the ‘*three members or more*’ approach. This approach is adopted by the majority of the MS and it requires at least three members to identify individuals as a criminal organisation (Austria²⁴³, Belgium²⁴⁴, Bulgaria²⁴⁵, Croatia²⁴⁶, Cyprus²⁴⁷,

²⁴³ Source: section 278 of the Criminal Code. The ‘three members or more’ approach (more than two persons).

²⁴⁴ Source: section 324 bis of the Criminal Code. The ‘three members or more’ approach (plus de deux personnes).

²⁴⁵ Source: section 93 of the Criminal Code. The ‘three members or more’ approach (three or more persons).

²⁴⁶ Source: section 328 of the Criminal Code. The ‘three members or more’ approach (three or more persons).

²⁴⁷ Source: section 63b of the Criminal Code. The ‘three members or more’ approach (three or more persons).

Estonia²⁴⁸, Finland²⁴⁹, Greece²⁵⁰, Hungary²⁵¹, Ireland²⁵², Italy²⁵³, Latvia²⁵⁴, Lithuania²⁵⁵, Luxemburg²⁵⁶, Romania²⁵⁷, Slovakia²⁵⁸, and Spain²⁵⁹);

- the ‘*two members or more*’ approach. This approach allows the application of the provision also all kinds of organisations (Malta²⁶⁰ and the Czech Republic²⁶¹);
- the ‘*no mention*’ approach. There is no minimum number of members to identify a group as a criminal organisation (France²⁶², Germany²⁶³, the Netherlands²⁶⁴, Poland²⁶⁵, Portugal²⁶⁶, and Slovenia²⁶⁷).

²⁴⁸ Source: section 255 of the Criminal Code. The ‘three members or more’ approach (three or more persons).

²⁴⁹ Source: Chapter 17, section 1(a) of the Criminal Code. The ‘three members or more’ approach (three or more persons).

²⁵⁰ Source: section 187 of the Criminal Code. The ‘three members or more’ approach (three or more persons).

²⁵¹ Source: section 459 of the Criminal Code. The ‘three members or more’ approach (three or more persons).

²⁵² Source: Criminal Justice Act of 2006- Section 70. The ‘three members or more’ approach (three or more persons).

²⁵³ Source: section 416 of the Criminal Code. The ‘three members or more’ approach (three or more persons).

²⁵⁴ Source: section 21 of the Criminal Code. The ‘three members or more’ approach (more than two persons).

²⁵⁵ Source: section 25 of the Criminal Code. The ‘three members or more’ approach (three or more persons).

²⁵⁶ Source: section 324 bis of the Criminal Code. The ‘three members or more’ approach (plus de deux personnes).

²⁵⁷ Source: section 367 of the Criminal Code. The ‘three members or more’ approach (three or more people).

²⁵⁸ Source: section 129 of the Criminal Code. The ‘three members or more’ approach (at least three persons).

²⁵⁹ Source: section 570 bis of the Criminal Code. The ‘three members or more’ approach (more than two persons).

²⁶⁰ Source section 83 A of the Criminal Code. The ‘two members or more’ approach (two or more persons).

²⁶¹ Source: section 129 of the Criminal Code. The ‘two members or more’ approach (two or more persons).

²⁶² Source: section 450-1 of the Criminal Code. No mention of the minimum number of members in the legislation.

²⁶³ Source: section 129 of the Criminal Code. No mention of the minimum number of members in the legislation.

²⁶⁴ Source: section 140 of the Criminal Code. No mention of the minimum number of members in the legislation.

²⁶⁵ Source: section 258 of the Criminal Code. No mention of the minimum number of members in the legislation.

²⁶⁶ Source: section 299 of the Criminal Code. No mention of the minimum number of members in the legislation.

²⁶⁷ Source: section 126 of the Criminal Code. No mention of the minimum number of members in the legislation.

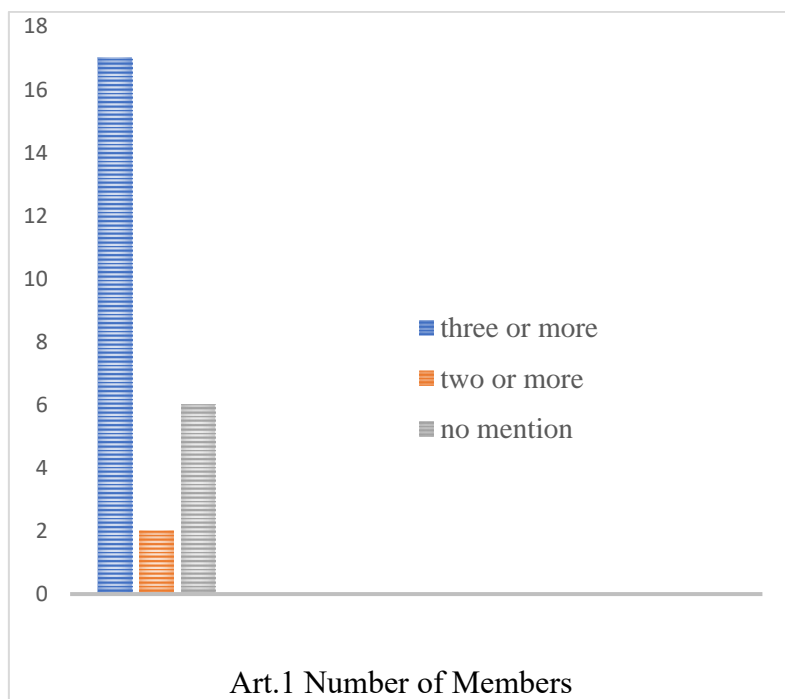


Figure 3 - Number of Members necessary to identify a criminal organisation.

As can be seen from the analysis of the data, a large proportion of Member States choose the ‘three or more’ approach. This choice has negative consequences for tackling ethnic OCGs because they are fluid and most members live in the country of origin, which means that there are often isolated members in Europe. Consequently, it is difficult to prove the permanence of such permanent members as part of a criminal organisation. The ‘no-mention approach’ seems to be the best choice, as it gives Member States the freedom to identify a criminal organisation without reference to a minimum number of members.

- **Intent to commit an Offence**

According to the Framework Decision, a criminal organisation is formed to commit offences. This specific intent is crucial and refers to the person’s state of mind and willingness to break the law. All 25 Member States where a criminal organisation is provided for by law include the element of intent. This legislative choice is coherent with

the intent of contracting OCGs which for their intrinsic nature commit crimes concretely or potentially. The same principle applies to ethnic OCGs too.

- **Scope and Predicate Offences**

According to paragraph 1, a criminal organisation is established to commit offences punishable by a custodial sentence or a detention order for a maximum term of at least four years or a more severe penalty. In this way, the provision applies to criminal organisations that commit serious offences punishable by a custodial sentence of at least four years.

The European legislator has chosen not to select the different offences to be included, but to make a 'quantitative' selection. The consequence of this decision is an uncontrollable variety of applications of the concept of 'criminal organisation', depending on the sanctioning decisions of the individual member states. The decisions could then be instrumentally altered, because, Calderoni says, some states could increase the penalties for some fine offences to include them in the purpose offences, while others could reduce them for the opposite reason.²⁶⁸ The possible solution identified by Balsamo and Mattarella to this problem is the provision of a list of offences recognised as typically committed by OCGs.²⁶⁹

According to the information drawn from the legal text of the Member States, it is possible to conclude that several approaches exist:

²⁶⁸ Calderoni, F. (2012). La decisione quadro dell'Unione Europea sul contrasto alla criminalità organizzata e il suo impatto sulla legislazione degli Stati Membri. In S. Alfano, & A. Varrica (Edd.), *Per un contrasto europeo al crimine organizzato e alle mafie: La risoluzione del Parlamento Europeo e l'impegno dell'Unione Europea*, pp.22-23.

²⁶⁹ Balsamo A. and Mattarella A. (2021), 'Criminalità organizzata: le nuove prospettive della normativa europea', *Sistema Penale*, Volume 3/2021, p.42.

- the ‘*offences punishable with at least three years of imprisonment or a more serious penalty*’ approach (Austria²⁷⁰, Belgium²⁷¹, Bulgaria²⁷², Croatia²⁷³, Cyprus²⁷⁴, Estonia²⁷⁵, Lithuania²⁷⁶, and Slovenia²⁷⁷);
- the ‘*offences punishable with at least four years of imprisonment or a more serious penalty*’ approach (Finland²⁷⁸, Ireland²⁷⁹, Luxemburg²⁸⁰, and Malta²⁸¹);
- the ‘*offences punishable with at least five years of imprisonment*’ approach (France²⁸², Hungary²⁸³, and Slovakia²⁸⁴);
- the ‘*no restriction to the scope*’ approach covers any possible criminal offence, without considering the years' punishment (the Czech Republic²⁸⁵, Germany²⁸⁶,

²⁷⁰ Source: section 278 of the Criminal Code. Offences punishable with at least three years of imprisonment or a more serious penalty.

²⁷¹ Source: section 324 ter of the Criminal Code. Offences punishable with at least three years of imprisonment or a more serious penalty.

²⁷² Source: section 93 of the Criminal Code. Offences punishable with at least three years of imprisonment or a more serious penalty.

²⁷³ Source: section 328 of the Criminal Code. Offences punishable with at least three years of imprisonment or a more serious penalty.

²⁷⁴ Source: section 63b of the Criminal Code. Offences punishable with at least three years of imprisonment or a more serious penalty.

²⁷⁵ Source: sections 255 and 256 of the Criminal Code. Offences punishable with at least three years of imprisonment or a more serious penalty.

²⁷⁶ Source: section 25 of the Criminal Code. Offences punishable with at least three years of imprisonment or a more serious penalty.

²⁷⁷ Source: section 126 of the Criminal Code. Offences punishable with at least three years of imprisonment or a more serious penalty.

²⁷⁸ Source: Chapter 17, section 1(a) of the Criminal Code. Offences punishable with at least four years of imprisonment or a more serious penalty.

²⁷⁹ Source: Criminal Justice Act of 2006- Section 70. Offences punishable with at least four years of imprisonment or a more serious penalty.

²⁸⁰ Source: section 324 bis of the Criminal Code. Offences punishable with at least four years of imprisonment or a more serious penalty.

²⁸¹ Source section 83 A of the Criminal Code. Offences punishable with at least four years of imprisonment or a more serious penalty.

²⁸² Source: section 450-1 of the Criminal Code. Offences punishable with at least five years of imprisonment or a more serious penalty.

²⁸³ Source: section 459 of the Criminal Code. Offences punishable with at least five years of imprisonment or a more serious penalty.

²⁸⁴ Source: section 11 of the Criminal Code. Offences punishable with at least five years of imprisonment or a more serious penalty.

²⁸⁵ Source: section 129 of the Criminal Code. No restriction of the scope of the predicate offences in the legislation.

²⁸⁶ Source: section 129 of the Criminal Code. No restriction of the scope of the predicate offences in the legislation.

Italy²⁸⁷, Latvia²⁸⁸, Portugal²⁸⁹, The Netherlands²⁹⁰, Poland²⁹¹, Romania²⁹², and Spain²⁹³);

- the ‘*selection of offences*’ approach according to which the legislation provides a list of predicate offences which do not include all the offences punishable by deprivation of liberty or a detention order of a maximum of at least four years (Greece²⁹⁴).

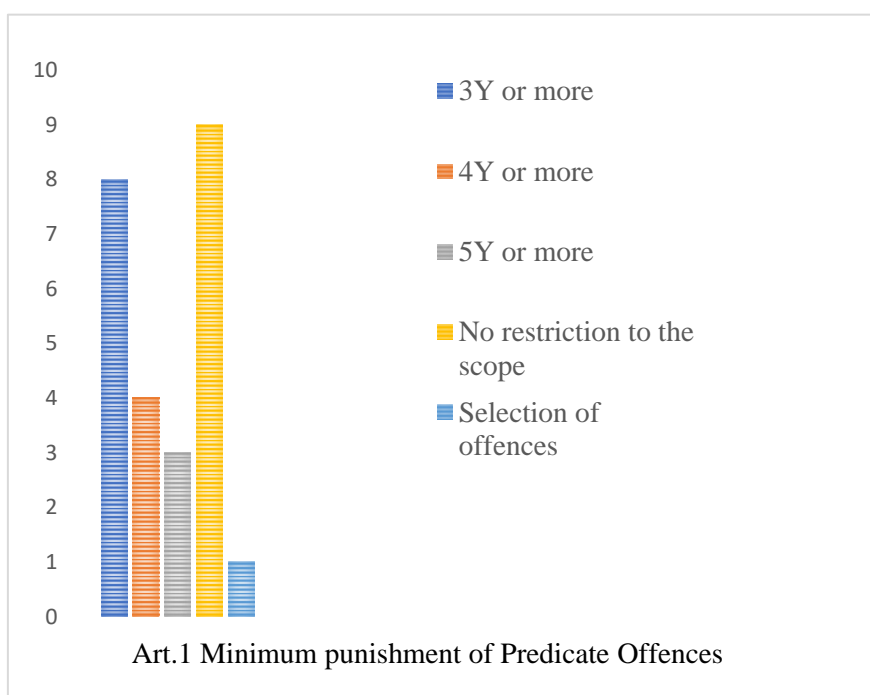


Figure 4 – Criminal Organisation: punishment of predicate offences.

²⁸⁷ Source: section 416 of the Criminal Code. No restriction of the scope of the predicate offences in the legislation.

²⁸⁸ Source: section 21 of the Criminal Code. No restriction of the scope of the predicate offences in the legislation.

²⁸⁹ Source: section 299 of the Criminal Code. No restriction of the scope of the predicate offences in the legislation.

²⁹⁰ Source: section 140 of the Criminal Code. No restriction of the scope of the predicate offences in the legislation.

²⁹¹ Source: section 258 of the Criminal Code. No restriction of the scope of the predicate offences in the legislation.

²⁹² Source: section 367 of the Criminal Code. No restriction of the scope of the predicate offences in the legislation.

²⁹³ Source: section 570 bis of the Criminal Code. No restriction of the scope of the predicate offences in the legislation.

²⁹⁴ Source: section 187 of the Criminal Code. A list of offences to be regarded as predicate offences is provided in the legislation.

The legislator chose to distinguish according to the amount of years imprisonment instead of the type of crimes. However, major of member states adopted the ‘no restriction to the scope’ approach. This choice appears the best solution to counteract OCGs, specifically ethnic ones, because over time criminal organisations have changed their activities and crimes committed. For this reason, the ‘selection of offences’ approach appears limiting and the approach based on the years of imprisonment is too vague and aleatory.

- **Benefit**

A criminal organisation aims at obtaining directly or indirectly a financial or other material benefit. According to the information drawn from the legal text of the Member States, it is possible to conclude that several approaches exist:

- the ‘*mention*’ approach explicitly requires the final goal of achieving benefit (Belgium²⁹⁵, Estonia²⁹⁶, Greece²⁹⁷, Luxemburg²⁹⁸ and Slovakia²⁹⁹);
- the ‘*no mention*’ approach which extends the definition to situations in which there is no evidence of benefits obtained (Austria³⁰⁰, Bulgaria³⁰¹, Croatia³⁰²,

²⁹⁵ Source: section 324 bis of the Criminal Code. Mention of benefit in the legislation (pour obtenir, directement ou indirectement, des avantages patrimoniaux).

²⁹⁶ Source: section 255 of the Criminal Code. Mention of benefit in the legislation (created for the purpose of property gain).

²⁹⁷ Source: section 187 of the Criminal Code. Mention of benefit in the legislation (for the purpose of achieving financial or other material gain or of attacking a person’s life, physical integrity or reproductive freedom).

²⁹⁸ Source: section 324 bis of the Criminal Code. Mention of benefit in the legislation (pour obtenir, directement ou indirectement, des avantages patrimoniaux).

²⁹⁹ Source: section 129 of the Criminal Code. Mention of benefit in the legislation (with a view to direct or indirect financial gain or other benefits)

³⁰⁰ Source: section 278 of the Criminal Code. No mention of benefit in the legislation.

³⁰¹ Source: section 93 of the Criminal Code. No mention of benefit in the legislation.

³⁰² Source: section 328 of the Criminal Code. No mention of benefit in the legislation.

Cyprus³⁰³, the Czech Republic³⁰⁴, Finland³⁰⁵, France³⁰⁶, Germany³⁰⁷, Hungary³⁰⁸, Ireland³⁰⁹, Italy³¹⁰, Latvia³¹¹, Lithuania³¹², Malta³¹³, the Netherlands³¹⁴, Poland³¹⁵, Portugal³¹⁶, Romania³¹⁷, Slovenia³¹⁸, and Spain³¹⁹).

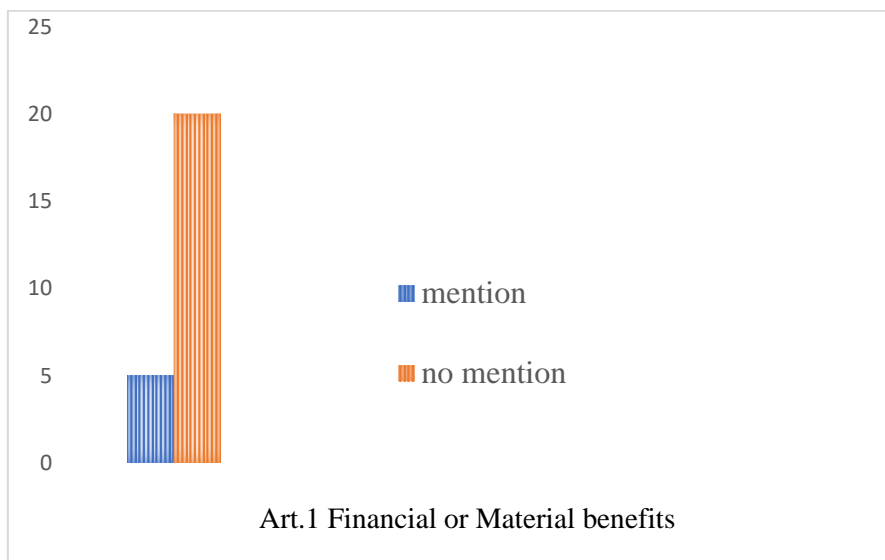


Figure 5 – Criminal Organisation: the aim of obtaining Financial or Material Benefits.

Major Member States adopted the ‘no mention’ approach, and consequently, to identify a criminal organisation, the aim of members is not determinant nor relevant. Criminal organisations mostly act with the specific purpose of obtaining an economic or material benefit. However, it should be emphasised that an open wording (i.e. no mention

³⁰³ Source: section 63b of the Criminal Code. No mention of benefit in the legislation.

³⁰⁴ Source: section 129 of the Criminal Code. No mention of benefit in the legislation.

³⁰⁵ Source: Chapter 17, section 1(a) of the Criminal Code. No mention of benefit in the legislation.

³⁰⁶ Source: section 450-1 of the Criminal Code. No mention of benefit in the legislation.

³⁰⁷ Source: section 129 of the Criminal Code. No mention of benefit in the legislation.

³⁰⁸ Source: section 459 of the Criminal Code. No mention of benefit in the legislation.

³⁰⁹ Source: Criminal Justice Act of 2006- Section 70. No mention of benefit in the legislation.

³¹⁰ Source: section 416 of the Criminal Code. No mention of benefit in the legislation.

³¹¹ Source: section 21 of the Criminal Code. No mention of benefit in the legislation.

³¹² Source: section 25 of the Criminal Code. No mention of benefit in the legislation.

³¹³ Source: section 83A of the Criminal Code. No mention of benefit in the legislation.

³¹⁴ Source: section 140 of the Criminal Code. No mention of benefit in the legislation.

³¹⁵ Source: section 258 of the Criminal Code. No mention of benefit in the legislation.

³¹⁶ Source: section 299 of the Criminal Code. No mention of benefit in the legislation.

³¹⁷ Source: section 367 of the Criminal Code. No mention of benefit in the legislation.

³¹⁸ Source: section 126 of the Criminal Code. No mention of benefit in the legislation.

³¹⁹ Source: section 570 bis of the Criminal Code. No mention of benefit in the legislation.

approach) allows the widest possible application and thus also a full extension to ethnic groups.

2.2 Article 2

Each Member State shall take the necessary measures to ensure that one or both of the following types of conduct related to a criminal organisation are regarded as offences:

- a. conduct by any person who, with intent and with knowledge of either the aim and general activity of the criminal organisation or its intention to commit the offences in question, actively takes part in the organisation's criminal activities, including the provision of information or material means, the recruitment of new members and all forms of financing of its activities, knowing that such participation will contribute to the achievement of the organisation's criminal activities;
- b. conduct by any person consisting in an agreement with one or more persons that an activity should be pursued, which if carried out, would amount to the commission of offences referred to in Article 1, even if that person does not take part in the actual execution of the activity.

Article 2 – titled ‘Offences relating to participation in a criminal organisation’ – refers both to the participation in a criminal organisation and/or to the conspiracy to commit offences punishable by deprivation of liberty or a detention of a maximum of at least four years or a more serious penalty.

The term ‘participation in a criminal organisation’ refers to the crime committed by the person who actively participates in the activities of a criminal organisation, knowing that such participation contributes to the realisation of the criminal activities of the organisation. This form of ‘active participation’ can include a wide range of activities, such as providing financial support or taking a role in the possible structure of the organisation. The purpose of this provision is to link the conduct of participation in a criminal association to specific criminal activities of the group that are committed. Therefore, the prosecution of the crime must prove the connection with the criminal activity carried out in practise.

The term ‘conspiracy’ refers to an offence that criminalises the mere agreement between two or more persons to commit a crime, even if no actual execution of the criminal activity has taken place. This second hypothesis is about punishing not the fact of active participation, but belonging to an organisation, regardless of the person's role or contribution. In this case, "belonging" to an organisation for law enforcement purposes needs to involve additional criminal activity.

The two models introduced by the Framework Decision adopt the behaviour of the two traditional models of associated crime: criminal association in civil law countries and conspiracy in common law countries. Choosing this dual model, the European legislature aimed to obtain the broadest possible political support for the adoption of the Framework Decision itself.³²⁰ However, in the view of Balsamo and Mattarella, this dual model achieved the opposite of the original goal, namely better harmonisation between the different legal systems.³²¹ On the contrary, the offence of participation in a criminal organisation would no longer be comprehensive, but rather an empty vessel unifying very different criminal approaches.

According to the Framework Decision, Member States should criminalise:

- the participation in a criminal organisation;
- the conspiracy to commit offences punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty;
- or both.

³²⁰ Calderoni, F. (2012). La decisione quadro dell’Unione Europea sul contrasto alla criminalità organizzata e il suo impatto sulla legislazione degli Stati Membri. In S. Alfano, & A. Varrica (Edd.), *Per un contrasto europeo al crimine organizzato e alle mafie: La risoluzione del Parlamento Europeo e l’impegno dell’Unione Europea*, p.24.

³²¹ Balsamo A. and Mattarella A. (2021), ‘Criminalità organizzata: le nuove prospettive della normativa europea’, *Sistema Penale*, Volume 3/2021, p.43-44

According to the information drawn from the legal text of the Member States, it is possible to conclude that several approaches exist:

- the '*participation in a criminal organisation*' approach (Austria³²², Belgium³²³, Cyprus³²⁴, the Czech Republic³²⁵, Estonia³²⁶, Finland³²⁷, France³²⁸, Germany³²⁹, Hungary³³⁰, Italy³³¹, Latvia³³², Lithuania³³³, Luxemburg³³⁴, the Netherlands³³⁵, Poland³³⁶, Portugal³³⁷, Romania³³⁸, Slovakia³³⁹, Slovenia³⁴⁰ and Spain³⁴¹);

³²² Source: section 278 of the Criminal Code. The only punishable conduct is the participation in a criminal organisation.

³²³ Source: section 324ter of the Criminal Code. The only punishable conduct is the participation in a criminal organisation.

³²⁴ Source: section 63B of the Criminal Code. The only punishable conduct is the participation in a criminal organisation.

³²⁵ Source: section 361 of the Criminal Code. The only punishable conduct is the participation in a criminal organisation.

³²⁶ Source: sections 255 and 256 of the Criminal Code. The only punishable conduct is the participation in a criminal organisation.

³²⁷ Source: chapter 17 section 1(a) of the Criminal Code. The only punishable conduct is the participation in a criminal organisation.

³²⁸ Source: section 450-1 of the Criminal Code. The only punishable conduct is the participation in a criminal organisation.

³²⁹ Source: section 129 of the Criminal Code. The only punishable conduct is the participation in a criminal organisation.

³³⁰ Source: section 321 of the Criminal Code. The only punishable conduct is the participation in a criminal organisation.

³³¹ Source: section 416 of the Criminal Code. The only punishable conduct is the participation in a criminal organisation.

³³² Source: sections 21 and 89.1 of the Criminal Code. The only punishable conduct is the participation in a criminal organisation.

³³³ Source: section 249 of the Criminal Code. The only punishable conduct is the participation in a criminal organisation.

³³⁴ Source: section 324 ter of the Criminal Code. The only punishable conduct is the participation in a criminal organisation.

³³⁵ Source: section 140 of the Criminal Code. The only punishable conduct is the participation in a criminal organisation.

³³⁶ Source: section 258 of the Criminal Code. The only punishable conduct is the participation in a criminal organisation.

³³⁷ Source: section 299 of the Criminal Code. The only punishable conduct is the participation in a criminal organisation.

³³⁸ Source: section 367 of the Criminal Code. The only punishable conduct is the participation in a criminal organisation.

³³⁹ Source: section 296 of the Criminal Code. The only punishable conduct is the participation in a criminal organisation.

³⁴⁰ Source: section 126 of the Criminal Code. The only punishable conduct is the participation in a criminal organisation.

³⁴¹ Source: section 570a of the Criminal Code. The only punishable conduct is the participation in a criminal organisation.

- The ‘both’ approach (Bulgaria³⁴², Croatia³⁴³, Greece³⁴⁴, Ireland³⁴⁵, and Malta³⁴⁶);
- The ‘none’ approach (Denmark³⁴⁷ and Sweden³⁴⁸).



Figure 6 – Different approaches: Participation in a Criminal Organisation and Conspiracy.

The legislator's choice was one of compromise, and so was the result. The common law countries remained attached to their tradition, as did the civil law countries to theirs. The decision to compromise, which was probably justified by the need to achieve the broadest possible consensus when adopting the Framework Decision, was not able to significantly affect the legislation of the Member States.

³⁴² Source: section 321 of the Criminal Code. It considers not only the participation in a criminal organisation but also the conspiracy to commit criminal offences.

³⁴³ Source: sections 327 and 328 of the Criminal Code. It considers not only the participation in a criminal organisation but also the conspiracy to commit criminal offences.

³⁴⁴ Source: section 187 of the Criminal Code. It considers not only the participation in a criminal organisation but also the conspiracy to commit criminal offences.

³⁴⁵ Source: Criminal Justice Act of 2006- Section 72. It considers not only the participation in a criminal organisation but also the conspiracy to commit criminal offences.

³⁴⁶ Source: sections 48A and 83A of the Criminal Code. They consider not only the participation in a criminal organisation but also the conspiracy to commit criminal offences.

³⁴⁷ Nor the participation in a criminal organisation neither the conspiracy to commit criminal offences is considered by the legislation.

³⁴⁸ Nor the participation in a criminal organisation neither the conspiracy to commit criminal offences is considered by the legislation.

Moreover, in the context of combating ethnic OCGs, the big difficulty of linking participation in a criminal organisation to concrete criminal activities of the group is evident. Individual members of OCGs are very often active in the countries of the European Union, and there is a complete lack of understanding of the phenomenon of the association, both in terms of individual members and as a link between members and criminal activities committed within the organisation.

2.3 Article 3

1. Each Member State shall take the necessary measures to ensure that:
 - a. the offence referred to in Article 2(a) is punishable by a maximum term of imprisonment of at least between two and five years; or
 - b. the offence referred to in Article 2(b) is punishable by the same maximum term of imprisonment as the offence at which the agreement is aimed, or by a maximum term of imprisonment of at least between two and five years.
2. Each Member State shall take the necessary measures to ensure that the fact that offences referred to in Article 2, as determined by this Member State, have been committed within the framework of a criminal organisation, may be regarded as an aggravating circumstance.

Article 3 – entitled "Penalties" - contains a second minimum legal norm that introduces the requirement of sanctions. It aims to provide for a possible aggravation in the case of the commission of a predicate offence within the framework of a criminal organisation. Paragraph 1 provides that all Member States shall take the necessary measures to ensure that the offence referred to in Article 2(a) is punishable by a maximum term of imprisonment of at least between two and five years. Paragraph 2 provides that each Member State shall take the necessary measures to ensure that the offence referred to in Article 2(b) is punishable by the same maximum term of imprisonment as the offence

at which the agreement is aimed, or by a maximum term of imprisonment of at least two to five years. In assessing the transportation of this article, two elements are considered: penalties and aggravating circumstances.

- **Penalties**

This article states that participation in a criminal organisation (as defined in Article 2a) is punishable by imprisonment for a maximum term of not less than two to five years, while conspiracy (Article 2b) is punishable by the same maximum term of imprisonment as the offence at which the agreement is aimed, or by imprisonment for a maximum term of not less than two to five years.

It appears clear that this provision refers to Article 2 of the Framework Decision, which aims at approximating the legislation of the Member States on the punishment of offences related to participation in a criminal organisation by establishing minimum thresholds.

Analysing the legislation of all Member States, it can be noted that all Member States provide for a custodial sentence of at least two years of imprisonment for the upper threshold of imprisonment. However, the national legislation of the Member States reveals a significant imbalance in both the differentiation of the conduct and the level of the penalties introduced.

Focusing on penalties related to the conduct of participation, the following categories emerge:

- Member States *with low penalties*: minimum level of the maximum from two to five years of imprisonment (Austria³⁴⁹, Belgium³⁵⁰, Croatia³⁵¹, Cyprus³⁵², Finland³⁵³, Germany³⁵⁴, Hungary³⁵⁵, Luxembourg³⁵⁶, Malta³⁵⁷, Poland³⁵⁸, Portugal³⁵⁹, Romania³⁶⁰, Slovenia³⁶¹, Spain³⁶²);

³⁴⁹ Source: section 278 of the Criminal Code. Conduct of founding punished up to three years imprisonment; participation punished up to three years imprisonment.

³⁵⁰ Source: 324 ter of the Criminal Code. Participation punished from one to three years imprisonment; conduct of decision making punished from five to ten years imprisonment; conduct of leadership punished from ten to fifteen years imprisonment.

³⁵¹ Source: sections 327 and 328 of the Criminal Code. Participation in a criminal organisation without committing any crime, or support or commission of legal acts to further the goal of a criminal organisation punished up to three years imprisonment; conduct of leadership punished from six months to five years imprisonment; conspiracy punished up to three years imprisonment.

³⁵² Source: sections 63A and 63B of the Criminal Code. Participation in a criminal organisation punished up to three years imprisonment; participation in any action of a criminal organisation punished up to ten years imprisonment.

³⁵³ Source: chapter 17 section 1(a) of the Criminal Code. Conducts of funding and/or organising punished up to two years imprisonment; participation and support punished up to two years imprisonment.

³⁵⁴ Source: sections 30 and 129 of the Criminal Code. Conduct of founding and participation and recruitment and support punished up to five years imprisonment; conduct of conspiring punished with a penalty dependant on the crime object of the conspiracy.

³⁵⁵ Source: section 321 of the Criminal Code. Conduct of instigation/suggestion/offer to engage in criminal activities, or joining/collaboration, or support punished from one to five years imprisonment.

³⁵⁶ Source: section 324 ter of the Criminal Code. Conduct of participation punished from two to five years imprisonment; conduct of participation to the legal activities of a criminal organisation punished from one to three years imprisonment; conduct of decision making punished from five to ten years imprisonment; leadership punished from ten to fifteen years imprisonment.

³⁵⁷ Source: sections 48A and 83A of the Criminal Code. Conduct of promotion/founding/organisation/financing punished from three to seven years imprisonment; participation punished from one to five years imprisonment; conspiracy punished with a penalty for the completed offence object of the conspiracy.

³⁵⁸ Source: section 258 of the Criminal Code. Conduct of founding or directing punished from one to 10 years imprisonment; participation punished from three months to five years imprisonment; conduct of founding/directing a terrorist organisation punished with no less than three years imprisonment; conduct of participation in an armed terrorist organisation punished from six months to eight years imprisonment.

³⁵⁹ Source: section 299 of the Criminal Code. Conduct of founding or participation or support punished from one to five years imprisonment; leadership punished from two to eight years imprisonment.

³⁶⁰ Source: section 367 of the Criminal Code. Conduct of founding or participation or support punished from one to five years imprisonment; founding/participation/support to an organisation aimed at committing crimes punishable with imprisonment for life or exceeding ten years punished from three to ten years imprisonment.

³⁶¹ Source: section 126 of the Criminal Code. Conduct of founding or leadership punished from six months to eight years imprisonment; conduct of participation punished from three months to five years imprisonment.

³⁶² Source: section 570 bis of the Criminal Code. Conduct of participation or support in a criminal organisation aimed at committing serious crime punished from two to five years imprisonment; participation/support in a criminal organisation aimed at committing minor crimes punished from one to three years imprisonment; leadership/founding of a criminal organisation aimed at committing serious crimes punished from four to eight years imprisonment; leadership /founding of a criminal organisation aimed at committing minor crimes punished from three to six years imprisonment.

- Member States *with medium penalties*: maximum from five to ten years of imprisonment (Bulgaria³⁶³, the Czech Republic³⁶⁴, France³⁶⁵, Greece³⁶⁶, Italy³⁶⁷, the Netherlands³⁶⁸, and Slovakia³⁶⁹);
- Member States *with high penalties*: maximum penalty over 10 years of imprisonment (Estonia³⁷⁰, Ireland³⁷¹, Latvia³⁷², Lithuania³⁷³).

³⁶³ Source: section 321 of the Criminal Code. Conduct of founding or leadership punished from three to ten years imprisonment; participation punished from one to six years imprisonment; conduct of conspiracy punished up to six years imprisonment.

³⁶⁴ Source: section 361 of the Criminal Code. Conduct of founding or participation or support punished from two to ten years imprisonment.

³⁶⁵ Source: section 450-1 of the Criminal Code. Conduct of participation in a criminal organisation to perpetrate one or more felonies punished by ten years imprisonment is punished up to ten years imprisonment; conduct of participation in a criminal organisation to perpetrate one or more felonies punished by at least five years imprisonment is punished up to five years imprisonment.

³⁶⁶ Source: section 187 of the Criminal Code. Conduct of founding or participation or support or leadership punished up to ten years imprisonment; conduct of conspiracy punished with at least three months imprisonment.

³⁶⁷ Source: section 416 criminal Code. Conduct of founding/leadership punished from three to seven years imprisonment; participation punished from one to five years imprisonment.

³⁶⁸ Source: section 140 of the Criminal Code. Conduct of participation or support punished up to six years imprisonment; conduct of founding or leadership or managing punished with a potentially increase by one third.

³⁶⁹ Source. Section 296 of the Criminal Code. Conduct of founding or participation or support punished from five to ten years imprisonment.

³⁷⁰ Source: sections 255 and 256 of the Criminal Code. Conduct of founding/leadership/recruitment punished from five to fifteen years imprisonment; participation punished from three to twelve years imprisonment.

³⁷¹ Source: Criminal Justice Act of 2006- Section 72. Conduct of participation or contribution to any activity punished up to fifteen years imprisonment; leadership punished up to imprisonment for life; conduct of conspiring punished with a penalty dependant on the crime object of the conspiracy.

³⁷² Source: sections 21 and 89.1 of the Criminal Code. Conduct of founding/leadership punished from eight to seventeen years imprisonment; participation punished from eight to seventeen years imprisonment.

³⁷³ Source: section 249 of the Criminal Code. Conduct of participation punished from three to fifteen years imprisonment; leadership punished from three to fifteen years imprisonment.

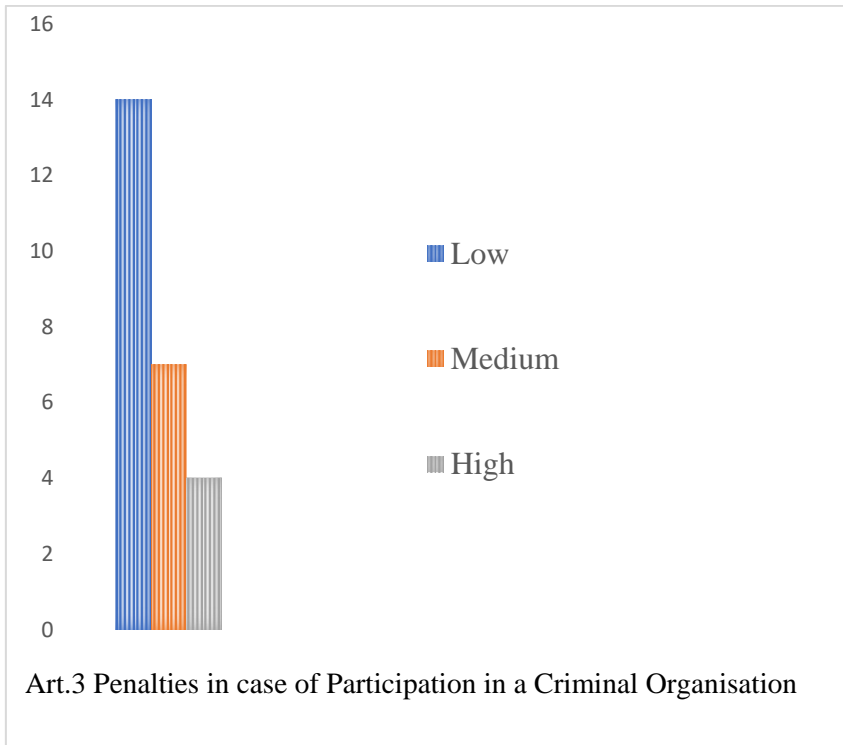


Figure 7 – Penalties

- **Aggravating Circumstances**

According to the second paragraph of Article 3, offences punishable by deprivation of liberty or detention order of at least four years may be aggravated if committed in the framework of a criminal organisation. This provision aims at aggravating the penalties for the so-called predicate offences punished by deprivation of liberty of a maximum term of at least four years when committed in the framework of a criminal organisation. The lack of a clear indication of the meaning of ‘aggravation’ gives the Member States a certain freedom to determine the specific conditions of the aggravation. As a consequence of this, the Member States must ensure that judges can apply some kind of aggravation in case of the commission of the offence in the framework of a criminal organisation.

Analysing the Member States’ national legal systems, several approaches emerge:

- the ‘*aggravating circumstances for a list of crime*’ approach: the penalty is aggravated for selected crimes (for example human trafficking, drug dealing) when committed in the framework of a criminal organisation or other possible associations. The list of predicative crimes includes some, but not all, offences punishable by deprivation of liberty of at least four years in the maximum (Austria³⁷⁴, Belgium³⁷⁵, Bulgaria³⁷⁶, Cyprus³⁷⁷, Germany³⁷⁸, Italy³⁷⁹, Latvia³⁸⁰, Malta³⁸¹, Portugal³⁸², and Spain³⁸³);

³⁷⁴ Source: section 104a, 130, 143, 207a of the Criminal Code. For a list of crimes (e.g. human trafficking, theft, robbery, child pornography), which includes some but not all offences punishable by deprivation of liberty of at least four years in the maximum.

³⁷⁵ Sources: section 433 octies and 433 duodecies of the Criminal Code. For a list of crimes (human trafficking), which includes some but not all offences punishable by deprivation of liberty of at least four years in the maximum.

³⁷⁶ Sources: Articles 156, 235, 253, 256, 330, 354a, 354 of the Criminal Code. For a list of crimes (e.g. abduction, arson, drug dealing), which includes some but not all offences punishable by deprivation of liberty of at least four years in the maximum.

³⁷⁷ Source: law 87(I)/2007; law 29/1977. For a list of crimes (human trafficking and drug dealing), which includes some but not all offences punishable by deprivation of liberty of at least four years in the maximum.

³⁷⁸ Source: section 146, 152a, 152b, 184b, 184c, 232, 233, 233a, 236, 244, 244a, 250, 253, 260, 260a, 261, 263, 263a, 267, 268, 269, 275, 276, 276a, 284, 300, 303b, 335 of the Criminal Code. For a list of crimes (e.g. counterfeiting of money, child pornography, human trafficking, robbery), which includes some but not all offences punishable by deprivation of liberty of at least four years in the maximum.

³⁷⁹ Source: section 576, 609 ter, 625, 628 ter of the Criminal Code. For a list of crimes (e.g. murder, rape, theft, robbery), which includes some but not all offences punishable by deprivation of liberty of at least four years in the maximum.

³⁸⁰ Sources: section 98, 99, 109, 118, 125, 148, 152, 153, 154, 154.1, 164, 165, 165.1, 166, 175., 176, 177, 177.1, 187, 190, 190.1, 192, 193, 193.1, 195, 195.2, 206, 218, 220.1, 221, 233, 243, 250, 253.1, 255, 256, 296, 285, 314, 320, 323 of the Criminal Code. For a list of crimes (e.g. murder, circulation of radioactive and chemical substances, robbery, theft, illegal deprivation of liberty, kidnapping, human trafficking), which includes some but not all offences punishable by deprivation of liberty of at least four years in the maximum.

³⁸¹ Source: sections 204A, 204B, 248E of the Criminal Code. For a list of crimes (e.g. child prostitution, child pornography, human trafficking), which includes some but not all offences punishable by deprivation of liberty of at least four years in the maximum.

³⁸² Source: 204 (2), 210 (2), 223 (3) of the Criminal Code. For a list of crimes (larceny, theft, extortion, drug trafficking), which includes some but not all offences punishable by deprivation of liberty of at least four years in the maximum.

³⁸³ Source: sections 177 bis, 183, 187, 188, 189, 197, 264, 271, 276, 302, 318 bis, 370, 371, 399 bis of the Criminal Code. For a list of crimes (e.g. human trafficking, sexual offences when the victim is below 13, prostitution and child corruption, coerced/child prostitution, child/disabled people pornography, computer crimes, intellectual property crimes, money laundering, human trafficking, drug trafficking, counterfeiting of means of payment), which includes some but not all offences punishable by deprivation of liberty of at least four years in the maximum.

- the ‘*aggravating circumstances for all crimes*’ approach: the penalty is aggravated for all crimes committed in the framework of a criminal organisation, without any reference to their seriousness and type. This approach goes beyond the minimum scope set out by the Framework Decision as it extends the application of this provision to all criminal offences and not only to those regarded as ‘serious’ (Croatia³⁸⁴, the Czech Republic³⁸⁵, Estonia³⁸⁶, Finland³⁸⁷, Hungary³⁸⁸, Lithuania³⁸⁹, Poland³⁹⁰, Romania³⁹¹, Slovakia³⁹², and Slovenia³⁹³);
- the ‘*aggravating circumstances for crimes punishable with penalties above a certain threshold*’ approach: the penalty is aggravated for all crimes punishable with penalties above a certain threshold when committed in the framework of a

³⁸⁴ Source: section 329 of the Criminal Code, for all the crimes.

³⁸⁵ Sections 108 c.c. of the Criminal Code, for all the crimes.

³⁸⁶ Source: section 58 and sections 151, 184, 199, 200, 209, 214, 349 of the Criminal Code. For all crimes (general aggravating circumstance), for a list of crimes (e.g. incitement of hatred, drug dealing, larceny, robbery, fraud, extortion, money laundering) which includes some but not all those punished with imprisonment for a maximum term of at least 4 years (specific aggravating circumstance).

³⁸⁷ Source: chapter 6, section 5(2) of the Criminal Code, for all the crimes.

³⁸⁸ Source: section 91 of the Criminal Code, for all the crimes.

³⁸⁹ Source: section 60 and sections 147, 157, 178, 180, 181, 263 of the Criminal Code. For all crimes (general aggravating circumstance) and for a list of crimes (e.g. human trafficking, purchase or sale of a child, theft, robbery, extortion, drug dealing), which includes some but not all offences punishable by deprivation of liberty of at least four years in the maximum.

³⁹⁰ Source: section 65 of the Criminal Code, for all the crimes.

³⁹¹ Source: sections 77, 78 of the Criminal Code, for all the crimes.

³⁹² Source: Article 138 and 147, 155, 159, 171, 172, 179, 180, 182, 183, 185, 186, 187, 188, 189, 199, 193, 194, 202, 213 of the Criminal Code. For all crimes (general aggravating circumstance) and for a list of crimes (e.g. killing, bodily harm, illicit removal of organs and tissues, illicit manufacturing and possession of narcotics or psychotropic substances, poisons or precursors, and trafficking in them, trafficking in human beings, stealing and trading of children, deprivation of personal freedom, restriction of personal freedom, taking a hostage, kidnapping for ransom, abduction to a foreign country, robbery, extortion, gross coercion, duress, forcible entry into dwelling, kidnapping, theft), which includes some but not all offences punishable by deprivation of liberty of at least four years in the maximum (specific aggravating circumstance).

³⁹³ Source: Articles 41 and 100-103, 108, 109, 113, 116, 175, 176, 186, 205-206, 211, 213, 217, 245, 249, 250, 307, 308, 332, 334, 335, 344 of the Criminal Code. For all crimes (general aggravating circumstance) and for a list of crimes (e.g. murder), which includes some but not all offences punishable by deprivation of liberty of at least four years in the maximum (specific aggravating circumstance).

criminal organisation. This approach is followed only by Ireland³⁹⁴ whose legislation copies the text of the Framework Decision;

- cases in which *the legislation does not explicitly mention the commission of an offence in the framework of a criminal organisation as aggravating circumstances* (Greece, France, Luxemburg and the Netherlands).

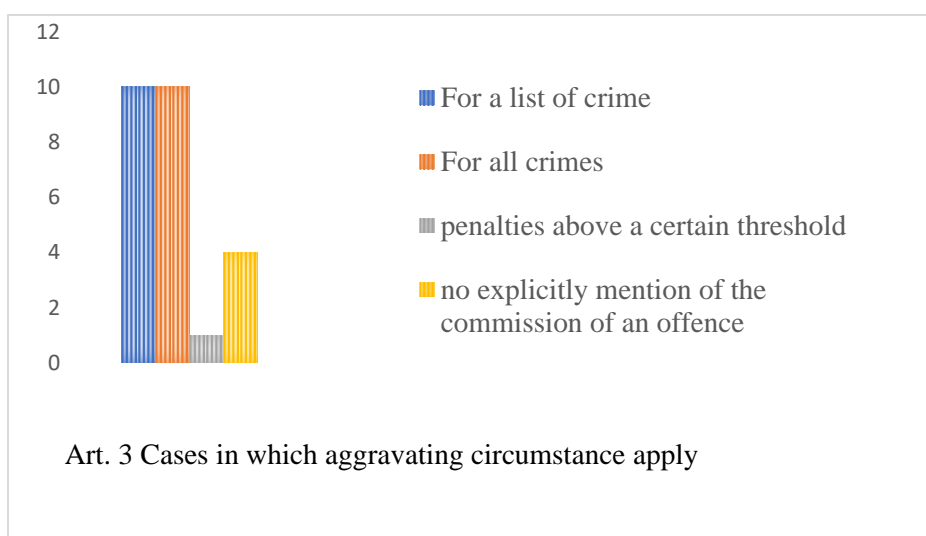


Figure 8 - Aggravating Circumstances.

From the analysis of data on the transposition of the standards provided by Article 3 of the Framework Decision, emerges that:

- for penalties for offences under 2a, 19 Member States envisage a maximum term of imprisonment of at least two years while for offences under Article 2a, 7 Member States envisage alternative penalties to the maximum term of imprisonment in line with the requests of the Framework Decision;

³⁹⁴ Source: Criminal Justice Act of 2006 as amended by section 3(1)(a) of Criminal Justice Act of 2009, section 74A. For all crimes for which a person may be punished by imprisonment for a maximum term of at least 4 years.

- for penalties for offences under 2b the assessment is possible only in 6 MS. Three of them envisage a maximum term of imprisonment of at least two years of the same maximum term imprisonment as the offence at which the agreement is aimed to offences under 2b; three does neither provide a maximum term of imprisonment of at least two years nor the same maximum term of imprisonment as the offence at which the agreement is aimed for offences under Article 2b;
- aggravating circumstances for predicate based on commission in the framework of a criminal organisation: 12 MS provide them, and 14 MS don't.

2.4 Article 4

Each Member State may take the necessary measures to ensure that the penalties referred to in Article 3 may be reduced or that the offender may be exempted from penalties if he, for example:

- a. renounces criminal activity; and
- b. provides the administrative or judicial authorities with information which they would not otherwise have been able to obtain, helping them to:
 - prevent, end or mitigate the effects of the offence;
 - identify or bring to justice the other offenders;
 - find evidence;
 - deprive the criminal organisation of illicit resources or the proceeds of its criminal activities; or
 - prevent further offences referred to in Article 2 from being committed.

Article 4 of the Framework Decision – titled ‘Special Circumstances or exemption/reduction of penalties for offences relating to participation in a criminal organisation’ – introduces a third minimum standard. In particular, it refers to special circumstances which determine the reduction or exemption of penalties in the case of offences relating to participation in a criminal organisation under specific conditions. According to Article 4, the member States may take the necessary measures to ensure that

the penalties provided for in Article 3 may be reduced, or that the offender may be exempted from punishment when he/she: renounces criminal activity and provides the administrative or judicial authorities with information that they would not otherwise have been able to obtain and that is concretely helpful in the suppression of the crime, identification of the perpetrators, identification of the financial resources of the criminal organisation, etc.

Two fundamentals emerge by reading Article 4. First, the provision is not binding since it states that the Member States '*may take*' the necessary measures. Secondly, the article indicates some potential circumstances in which each Member State '*may consider*' reducing the penalty in the event of integrated participation in a criminal organisation (Article 2). Consequently, not only the transposition of the rule is not mandatory, but also the content of the rule is not exhaustive.

From the analyses of the legislation of the Member States emerges that there are three types of special circumstances:

1. Renouncing criminal activity

In the hypothesis of renouncement from criminal activity, there is a mandatory exemption in Austria and Romania while the optional exemption is in Slovenia. Furthermore, there is mandatory mitigation in Austria, Estonia, and Spain, while optional mitigation is in Ireland, Lithuania, Malta and Slovenia.

2. Providing the administrative or judicial authorities with information

In the hypothesis of providing the administrative or judicial authorities with the information which they would not otherwise be able to obtain, there is the mandatory exemption in Belgium, Bulgaria, France, Greece, Hungary, Luxemburg, Poland,

Romania, and Slovakia while an optional exemption in Croatia, Germany, Greece and Portugal. Furthermore, there is the mandatory mitigation in Austria, Bulgaria, Czech Republic, Greece, Latvia, Slovakia and Estonia, while the optional mitigation in Austria, Cyprus, Finland, Germany, Ireland, Lithuania, Malta, Netherlands, Portugal, Romania, Slovakia, Slovenia, and Spain.

3. *Others*

Finally, there are other kinds of special circumstances which differ from state to state: Poland has a mandatory exception if the person voluntarily avoided the imminent danger; Germany and Portugal have an optional exception, the first in case the participants whose guilty or whose involvement is of minor significance, the second if the agent prevents with serious efforts the continuation of groups, organisations or associations. Furthermore, there are cases of mandatory mitigation in Estonia, Czech Republic, Italy, Latvia and Spain and cases of optional mitigation in Ireland, Italy, Latvia, Lithuania, Malta, Portugal, Romania, Slovenia, and Spain.

From the analysis of the legislation of the Member States emerges that even if the provision ex Article 4 is not mandatory, all Member States foresee in some circumstances reducing penalties or exempting the offender from penalties for crimes committed in the framework of a criminal organisation.

The purpose of this provision is to encourage cooperation with the authorities by members of criminal organisations. In the context of countering ethnic OCGs, it is of major importance because, as will become clear later, the almost total absence of cooperation and collaborators constitutes one of the greatest operational difficulties in law enforcement. Infiltrations into criminal organisations are an incredibly effective tool for breaking them down from the inside and understanding their internal dynamics and

memberships. The fact that this provision is not mandatory constitutes a limitation in the fight against OCGs because each Member State has legislated differently, instead of adopting uniform minimum measures to facilitate cooperation uniformly.

2.5 Article 7

1. Each Member State shall ensure that its jurisdiction covers at least the cases in which the offences referred to in Article 2 were committed:

- a. in whole or in part within its territory, wherever the criminal organisation is based or pursues its criminal activities;
- b. by one of its nationals; or
- c. for the benefit of a legal person established in the territory of that Member State.

A Member State may decide that it will not apply, or that it will apply only in specific cases or circumstances, the jurisdiction rules set out in (b) and (c) where the offences referred to in Article 2 are committed outside its territory.

2. When an offence referred to in Article 2 falls within the jurisdiction of more than one Member State and when any one of the States concerned can validly prosecute on the basis of the same facts, the Member States concerned shall cooperate in order to decide which of them will prosecute the offenders, with the aim, if possible, of centralising proceedings in a single Member State. To this end, Member States may have recourse to Eurojust or any other body or mechanism established within the European Union in order to facilitate cooperation between their judicial authorities and the coordination of their action. A special account shall be taken of the following factors:

- a. the Member State in the territory of which the acts were committed; the Member State of which the perpetrator is a national or resident;
- c. the Member State of the origin of the victims;
- d. the Member State in the territory of which the perpetrator was found.

3. A Member State which, under its law, does not as yet extradite or surrender its own nationals shall take the necessary measures to establish its jurisdiction over and, where appropriate, to prosecute the offence referred to in Article 2, when committed by one of its nationals outside its territory.

4. This Article shall not exclude the exercise of jurisdiction in criminal matters as laid down by a Member State in accordance with its national legislation.

Article 7 of the Framework Decision - titled 'jurisdiction' - establishes that each Member State must ensure that the offences in Article 2 fall under its jurisdiction in cases where:

- they were committed entirely or partly within its territory, regardless of the State where the criminal organisation is established or carries out its criminal activities;
- they have been committed by one of its nationals;
- they have been committed for the benefit of a legal person established in the territory of that Member State.

Furthermore, this article states that Member States must cooperate when offences ex Article 2 (of this provision) fall within the jurisdiction of more than one country and they may use coordinating bodies such as Eurojust for this purpose.

It is important to emphasise how this provision shows an awareness of the transnationality³⁹⁵ of OCGs as a main feature, to the point of explicitly providing for the need for Member States to cooperate.

From the analysis of the legislation of the Member States, it emerges that all of them envisage the standards of Article 7 in terms of jurisdiction rules and cooperation in cross-border investigations.

Cooperation in cross-border investigations must be considered one of the main measures to fight effectively ethnic OCGs. Over the years, the Member States elaborated several operational measures to implement and facilitate cooperation, the main of which will be operationally analysed in Chapter 4.

³⁹⁵ Transnationality as a constant element of Europol's analyses in cooperation with Eurojust within SOCTA. Latest version available: <https://www.europol.europa.eu/publication-events/main-reports/european-union-serious-and-organised-crime-threat-assessment-socta-2021>

2.7 Article 8

Member States shall ensure that investigations into, or prosecution of, offences referred to in Article 2 are not dependent on a report or accusation made by a person subjected to the offence, at least as regards acts committed in the territory of the Member State.

Article 8 of the Framework Decision – titled ‘absence of a requirement of a report or accusation by victims’ – states that each Member State must provide that investigations and prosecutions of offences under Article 2 do not depend on a report or accusation made by the victim of the offence, at least with regard to acts committed on the territory of the Member States.

An analysis of the legislation of the Member States shows that all of them have specific provisions to ensure that investigations into these matters do not depend on a report or accusation by a person subjected to the offence. This provision is very important to strengthen the fight against ethnic OCGs, as it is not very common for victims to report or accuse members of organisations of which they are victims. It is important to emphasise the importance from a legal point of view to have a provision that explicitly excludes the need for victims of OCGs to report or accuse to proceed.

As we will see in more detail later, another difficulty in combating ethnic groups is that victims do not report. This happens mainly for social and cultural reasons and because of a lack of trust in the authorities. We will discuss this operational aspect in detail later, after an overview of the main operative measures used in the fight against OCGs.

2.6 Reform Perspectives

When analysing the key aspects of Framework Decision 841/2008, the main difficulties in applying these provisions to fight ethnic OCGs became clear. Criticism of this legislation was voiced from many directions because the provisions it contains are

considered too vague and cumbersome and, as a result, would have had only an extremely limited effect on combating OCGs as a whole.³⁹⁶

In 2011 the European Parliament adopted a Resolution on organised crime in the European Union³⁹⁷ which states that Framework Decision 841/2008 'has not brought about significant improvements in either national legislation or operational cooperation in the fight against organised crime'. The above-mentioned Resolution calls on the Commission to draft:

a proposal for a directive containing a more concrete definition of organised crime and better identifying the essential characteristics of the phenomenon, in particular by focusing on the key concept of organisation and also taking into account the new types of organised crime of participation in a transnational criminal organisation and the crime of participation in a mafia-type organisation.

Subsequently, on 23rd October 2013, the European Parliament by Resolution³⁹⁸ invited the Commission to:

present a legislative proposal establishing a common definition of organised crime, formulated in such a way as to cover both the crime of participation in a transnational criminal organisation and the crime of participation in a mafia-type organisation.

Furthermore, the report submitted by the Commission to the European Parliament and the Council³⁹⁹ on 7th July 2016, following Article 10⁴⁰⁰ of the Framework Decision,

³⁹⁶ Balsamo A. and Mattarella A. (2021), 'Criminalità organizzata: le nuove prospettive della normativa europea', *Sistema Penale*, Volume 3/2021, p.43.

³⁹⁷ European Parliament resolution of 25 October 2011 on organised crime in the European Union (2010/2309(INI)), available at: https://www.europarl.europa.eu/doceo/document/TA-7-2011-0459_EN.html

³⁹⁸ Available at: https://www.europarl.europa.eu/doceo/document/TA-7-2013-0444_IT.html

³⁹⁹ Available at:

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjXiK3n_diAAxXezgIHHVxABEgQFnoECA0QAQ&url=https%3A%2F%2Feur-lex.europa.eu%2Flegal-content%2FIT%2FTXT%2FPDF%2F%3Furi%3DCELEX%3A52016DC0448%26from%3Des&usg=AOvVaw3cjw8HF-ammI7m2ABZpLjh&opi=89978449

⁴⁰⁰ 1. Member States shall take the necessary measures to comply with this Framework Decision by 11 May 2010. 2. Member States shall transmit by 11 May 2010 to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. On the basis of a report established using this information and a written

provides an overview of the implementation of the Framework Decision in the Member States. It points out that the Framework Decision has not brought about any significant improvements in national legislation. It points out that:

according to the Commission, the Framework Decision does not guarantee the necessary minimum level of approximation with regard to the management or participation of a criminal organisation based on a single notion of a criminal organisation. As such, the Commission considers that the framework decision allows Member States not to introduce the concept of a criminal organisation but to continue to apply existing national criminal law by using the general rules on participation in and preparation of specific offences. This could lead to further divergences in the practical implementation of the Framework Decision.

In light of these considerations, it is obvious that Framework Decision 841/2008 must be considered an important instrument of European law, as it has attempted to unify the rules against organised crime. However, it did not achieve its goal, as it reached a very weak approximation. It is precisely for this reason that many are calling for a new reform initiative by the European institutions. This new reform project should be able to envisage a criminal offence with a very general scope, but one that takes into account the sociological elements that characterise mafia organisations.⁴⁰¹ The idea of creating a European regulation along the lines of the Italian anti-mafia laws has been expressed from various quarters as it is considered by scholars and researchers a best practice in Europe and the model for all the other legislation⁴⁰².

report by the Commission, the Council shall, no later than 11 November 2012, assess the extent to which Member States have complied with this Framework Decision.

⁴⁰¹ Fiandaca G. and Musco E. (2008), 'Diritto penale. Parte speciale', I, Zanchelli, Bologna, p.485.

⁴⁰² On this point Balsamo and Mattarella on the hypothesis of sharing the Italian model in: Balsamo A. and Mattarella A. (2021), 'Criminalità organizzata: le nuove prospettive della normativa europea', Sistema Penale, Volume 3/2021, p.48.

The next section analyses the two provisions of the Criminal Code against organised crime in Italian law in order to assess their characteristic elements and their effectiveness in combating OCGs.

2.8 A Best Practise in Europe

In a fragmented European scenario, a best practice has emerged from a legislative point of view. Italy was historically the first state to be confronted with OCGs and consequently, the first to develop ad hoc legislation. The main provision to combat mafia-type OCGs in the Italian legal system is Article 416bis of the criminal code. This provision, introduced by Law 646/1982 Rognoni La Torre, made it possible to overcome the enforcement difficulties of Article 416 of the Criminal Code against a phenomenon, the mafia, that appeared to be continuously expanding. The main restriction was seen to be the conduct of individuals who were united by the bond of association and behaved lawfully. The text of Article 416 Criminal Code states that:

when three or more persons associate for the purpose of committing several offences, those who promote or constitute or organise the association shall be punished, for this alone, by imprisonment from three to seven years.
For the mere fact of participating in the association, the punishment shall be imprisonment from one to five years.
The leaders are subject to the same punishment as the promoters.
If the associates take up arms in the countryside or public streets, the punishment is imprisonment of five to fifteen years.
The penalty is increased if the number of associates is ten or more (...)

This restriction was overcome with the introduction of Article 416 bis of the Penal Code, which crystallised the new face of the mafia from a legislative point of view, as it had emerged by then from judicial investigations.⁴⁰³

⁴⁰³ Balsamo A. and Mattarella A. (2021), 'Criminalità organizzata: le nuove prospettive della normativa europea', *Sistema Penale*, Volume 3/2021, p.48.

Anyone who is part of a mafia-type association consisting of three or more persons shall be punished by imprisonment of ten to fifteen years.

Those who promote, lead or organise the association are liable to a term of imprisonment of twelve to eighteen years.

The association is mafia-type when those who are part of it make use of the intimidating force of the association bond and of the condition of subjugation and code of silence deriving therefrom to commit offences, to directly or indirectly acquire the management or control of economic activities, concessions, authorisations, contracts and public services or to realise unjust profits or advantages for themselves or others, or in order to prevent or hinder the free exercise of voting or to procure votes for themselves or others during electoral consultations.

If the association is armed, the punishment is imprisonment from twelve to twenty years in the cases provided for in the first paragraph and from fifteen to twenty-six years in the cases provided for in the second paragraph.

The association is considered armed when the participants have the availability, for the achievement of the association's purpose, of weapons or explosive materials, even if concealed or kept in a storage place.

If the economic activities of which the associates intend to take or maintain control are financed in whole or in part with the price, product, or profit of crimes, the penalties established in the previous paragraphs shall be increased by between one-third and one-half.

For the convicted person, the confiscation of the things that served or were intended to commit the offence and of the things that are the price, the product, the profit or that constitute the use thereof shall always be mandatory. (...)

According to Balsamo, the greatest strength of the legislation introduced by the Rognoni-La Torre law lies in its ability to typify a 'criminal type' - the mafia - by improving jurisprudential elaboration.⁴⁰⁴ Based on the judicial findings, Article 416 bis typifies the mafia-type association by considering certain specific and fundamental elements. An organisation of mafia:

- is composed of three or more persons;
- uses the strength of intimidation stemming from the bond of association;
- exploits the condition of subjugation and silence;

⁴⁰⁴ Balsamo A. (2014), *Codice Antimafia*, in *Digesto delle discipline penali*, Aggiornamento, VIII, Torino.

- aims at the commission of offences, the acquisition and control of economic activities, or procuring profit or advantage for oneself or others, restricting the free exercise of voting, procuring votes for oneself or others during elections.

Moreover, Law 50/2010⁴⁰⁵ amended paragraph 8 of the above-mentioned article, extending its application to foreign mafia-type OCGs too:

the provisions of this article also apply to the Camorra, the 'ndrangheta and other associations, however locally denominated, including foreign ones, which, making use of the intimidating force of the associative bond, pursue aims corresponding to those of mafia-type associations.

Italian anti-mafia legislation is considered a best practice in Europe for its formulation and ability to adapt to counter several OCGs. It was introduced to counter local OCGs and has evolved according to their evolution. Nowadays, the challenge is understanding whether the legislation is applicable and effective in countering ethnic OCGs too. In this regard, some reflections can be made.

The distinction between criminal association (Article 416) and mafia-type associations, including foreign ones (Article 416 bis) is extremely cutting-edge and is the result of a legislator's deep understanding of the phenomenon from a social point of view. According to Expert n. 8, *the distinction between two provisions allows one to identify the scope of the offence specifically*. Moreover, the extension of the applicability of Article 416 bis 'also to foreign mafia organisations' is an important aspect, because it shows that a law created specifically to combat Italian mafia OCGs has evolved into a law to combat mafia OCGs in general – including ethnic ones. This is the result of the

⁴⁰⁵ D.L. 4th February 2010, n. 4, art. 6, paragraph 2, converted and modified with Law 31st March 2010, n. 50.

comprehension that elements of the mafia are no longer limited to Italian OCGs but to criminal organisations with specific characteristics. According to Expert n. 2, at the time when ethnic OCGs emerged, the Italian legislator was faced with a choice: either to introduce an ad hoc regulation for foreign mafias or to extend the existing regulations to foreign mafias as well.

(...) The legislator has chosen to extend the existing crime and for me, this is a valid choice because ethnic mafias do not have a great diversification compared to the characteristics found with reference to Italian mafias. After all, the foreign mafia applies certain dynamics such as silence, intimidation, and control of the territory which is typical of Italian mafias. (Expert n.2)

Furthermore, as highlighted above, Article 416 bis details and typifies mafia behaviour and continues to evolve thanks to the contribution of case law. However, the typified elements refer to the mafia phenomenon as it occurred in the years when the provision came into force, and thus to Italian OCGs, which can lead to difficulties if one tries to apply it to ethnic groups with their peculiarities. According to Expert n.1,

(...)if the norm is born with a tradition and anchors itself to certain parameters, referring it to a criminal subject that does not have the characteristics originally considered, leads to difficulties of procedural hold.

Finally, all the Experts interviewed consider the Italian legislation detailed and incisive, the most avant-garde in the European panorama (Expert n.9), and performing with respect to the problem to counter, specifically OCGs (Expert n.4). It is considered fully applicable to fight ethnic OCGs, even if with some difficulties, legal and operational, which are discussed in the next chapter.

3. Operational Instruments

According to the Council of Europe, Member States use several special investigative techniques⁴⁰⁶ to combat criminal organisations. These tools have evolved over the years to strengthen the fight against criminal organisations. At the international level, several legislative instruments have been adopted in order to establish principles and guidelines governing the use of special investigation techniques. One of the more detailed texts is the Recommendation (2005)10⁴⁰⁷ of the Committee of Ministers to Member States on ‘special investigation techniques’ concerning serious crimes including acts of terrorism.

Over the years, the evolution of existing OCGs and the spread of ethnic OCGs has raised new issues that concern not only legal aspects (such as those analysed above about the adoption of European legal norms) but also operational aspects. Indeed, ethnic OCGs, with their own characteristics, raise questions about the applicability of all these instruments. The following sections provide an overview of the main investigative techniques that, according to the Council of Europe and the experts interviewed, are useful in combating ethnic OCGs. In particular, the next sections focus on the interception of communications, covert investigations, informants, and joint investigation teams. The specific applicability of these measures to ethnic OCGs is assessed in Chapter 4.

⁴⁰⁶ More information elaborated by the European Union Agency for Criminal Justice Cooperation available at: <https://www.eurojust.europa.eu/judicial-cooperation/instruments/special-investigative-measures>

⁴⁰⁷ Full text available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805da6f6

3.1 Interception of Communications

Member States can intercept various forms of communication: calls, messages, e-mails, etc.⁴⁰⁸ With the development of technology, interception of communications has become more challenging. While it used to be sufficient to simply tap a phone to listen in on live communications, with the development of encrypted communications, eavesdropping encounters new difficulties. By tapping a phone, it is not only possible to obtain an active surveillance code that allows access to the audio of incoming and outgoing calls from a cell phone. Alternatively or simultaneously, it is possible to obtain phone records from phone companies to gather information about locations, movements, or call histories. Further eavesdropping activities are then possible through the installation of malicious software in the phone, which enables a kind of duplication of what passes through the phone, or massive search tools such as IMSI catchers.

It is theoretically possible to distinguish different categories of interception:

- interception of data transmission: gives information on location, numbers called and phone received, duration generally in real-time;
- interception of content: provides actual content transferred;
- interception of retained data: analysis of data stored locally or by service providers.

Over time, EU countries have adopted very different rules on the authorization procedure, duration and conditions for authorization. The institutional and operational organisation of wiretapping is an extremely sensitive matter, as it constitutes an intrusion

⁴⁰⁸ Fitsanakis J. (2020). The Techniques of Communications Interception. In: Redesigning Wiretapping. History of Information Security. Springer, Cham, 19th December 2020.

into people's private lives, which is why most Member States provide for prior review by judicial authorities. Moreover, interception is usually only allowed in cases of particularly serious crimes, such as terrorism or organised crime. Finally, the duration of the instrument varies from state to state: 15 days in France, 20 in Italy, 30 in the Netherlands, 60 in Belgium, and up to 180 in Slovakia. For the purposes of this research paper, what is of interest is not an in-depth examination of the rules governing the authorisation of interception in each country, but rather an understanding of the importance of this tool in combating OCGs.

One of the prerequisites for conducting wiretapping in all Member States is that it be part of organised crime investigations. Communication is an essential aspect of criminal organisations. Therefore, interception is incredibly important in law enforcement because it provides information about the nature of criminal activities, the modus operandi and the structure of the criminal organisation. Intercepting the communications of members of ethnic OCGs raises many difficulties that have less to do with legislation than with practice and are related to linguistic and cultural peculiarities, which will be analysed below.

3.2 Covert Investigations

The term "undercover investigation" usually refers to the use of undercover agents and is considered a last resort because it is considered intrusive and risky. All Member States have legislated on this subject over the years, and in 25 countries this tool is regulated by national legislation, while in Sweden, Poland and Ireland it is regulated by internal law enforcement acts.

The training of undercover investigators requires several steps such as recruitment, training, creating a cover identity, psychological support and a support team. Consequently, it is an expensive and risky tool. Member States have created highly specialised special units that can be used to combat certain serious crimes (e.g., terrorism or organised crime).

One of the prerequisites for conducting undercover investigations in all Member States is that it be part of organised crime investigations. This tool would be of great importance in the fight against ethnic OCGs in order to get first-hand information about members and activities, but operational difficulties arise in this regard, which are analysed below.

3.3 Informants

The term is used mainly to refer to covert human sources and it has a broad meaning in the Member States. It is used to identify several individuals with different roles. For the purpose of this research, the term is used concerning a subject who provides information regarding a person or a group to the criminal prosecution authorities in a systematic manner and for a given duration.

Informants are of high importance in the fight against ethnic OCGs since they help investigators acquire a deeper understanding of inner structures and members of the organisation. This tool is very often used as a source of intelligence and this is the reason why its legal basis is at intra-institutional regulations which are mainly not public. The use of informants is considered one of the most useful measures in the fight against OCGs. However, the need for a relationship of full trust between authority and informant and the

need for continuous evaluation of the information provided give rise to several operational difficulties in using this instrument concerning ethnic OCGs.

3.4 Joint Investigation Teams

According to Framework Decision 465/2022,⁴⁰⁹ the Member States may create joint investigation teams - JIT composed of judges, prosecutors and law enforcement authorities for a determinate time and with a specific purpose to carry on specific criminal investigations in more than one state. The objective of this tool is to optimise cooperation during cross-border criminal investigations. In light of this, such tool appears of primary importance in the fight against OCGs, in particular, ethnic ones because, as seen above, one of their main characterizing element is transnationality. Faced with criminal organisations with ramifications in multiple countries, the only effective law enforcement response can be on a transnational basis with the cooperation of all countries involved. A further positive aspect of this instrument is that the JIT can also be set up with third countries through bilateral or multilateral agreements. JITs, therefore, assume great relevance in countering ethnic OCGs as they allow for cooperation and rapid exchange of information, thus enabling countries to understand best practices from more experienced countries.

⁴⁰⁹ Framework Decision of the Council 2002/465/GAI ratified from Italy on the 11st March 2016, full text available

at:<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjPk56Fmd-AAxXLVfEDHcajDgQQFnoECBIQAQ&url=https%3A%2F%2Feur-lex.europa.eu%2FIT%2Flegal-content%2Fsummary%2Fjoint-investigation->

Conclusion

Over the years, several legislative acts were adopted at the European level to strengthen the fight against OCGs in the Member States. All the regulations introduced were tailored to local and European OCGs, the only known at the time the legal acts were adopted. The emergence of ethnic OCGs and the understanding of their specific characteristics and *modi operandi* raise doubts about the applicability of legislation and operational measures to them as well.

The most recent European instrument to combat organised crime is Framework Decision 841/2008, and the analysis of its content and its transposition or non-transposition into Member States' legislation has allowed us to understand the aspects on which European legislation has focused and how they have been interpreted by the Member States. Moreover, the analysis main aspects of the Articles of the Framework Decision has given the possibility the reflect on the extension of such provisions to ethnic groups. Furthermore, the overview of the European scenario has shown how progressive Italian legislation is, especially concerning the extension 'including foreign' in Article 416 bis, paragraph 8 of the Criminal Code. Finally, this chapter analyses some special investigative techniques to combat organised crime, such as interception of communications, covert investigations, informants, and joint investigation teams. These measures are, according to the Council of Europe but also the experts interviewed that every day work with them, of fundamental importance in the fight against OCGs. Understanding how these operational measures work is crucial in order to assess whether they are adequate in the fight against ethnic OCGs too.

Given the state of the legislation and the calls for reform from many directions, it is important to understand the difficulties in combating ethnic mafias, both in terms of law enforcement and operational measures.

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Chapter 4

Difficulties in Counteracting Ethnic OCGs. Reform Perspectives

Summary: 1.Introduction; 2.Modus Operandi and 'Mafian' elements; 3.Linguistic difficulty; 4.New technologies; 5.Knowledge of the phenomenon in Eu Member States; 6. Cooperation with Third States; 7. Conclusive Proposals; Conclusion; List of references.

This chapter identifies and analyses the main difficulties in counteracting ethnic OCGs from an operational perspective. Specifically, it focuses on the specific modus operandi of these OCGs analyzing the relation with the typified mafia elements, the linguistic barriers above all with the Chinese and the Nigerians, the use of new technologies which represent a potential or effective obstacle in doing investigations, the different level of comprehension of the phenomenon in the EU Member States, and the possibility or not to cooperate with Third State, above all China and Nigeria. Finally, this chapter provides conclusive proposals that would make the fight against ethnic OCGs more effective.

In doing so, semi-structured interviews with experts are the main qualitative methods employed.

1. Introduction

Understanding ethnic OCGs – how they developed, what illicit activities carried on, and their *modus operandi* – is the key aspect in order to harden the contrast. This contrast is indeed legislative and operational, but it includes also sociological and

criminological reflections aiming at understanding the evolution and dynamics of ethnic OCGs outside their territories of origin.⁴¹⁰ As a consequence of this, the contrast to OCGs must not be only legislative but, according to Expert n.2, *the mafia should not be tackled by transposing a directive or not, the mafia should be understood and seen where it is.*

As observed above, on the one hand, the European legislative framework - i.e. Framework Decision 841/2008 - is criticised in several directions and a modification and integration intervention is requested. On the other hand, the Italian legislation - Article 416 bis Criminal Code - is considered in Europe the most advanced tool to counter OCGs, including foreign ones. Furthermore, several operational tools are useful in the fight against OCGs and the challenge is understanding whether there are difficulties in their application to ethnic OCGs.

In light of this, it is appropriate to ask what technical legislative and operational difficulties are faced by investigative and prosecutorial bodies when they counter specifically ethnic OCGs.

In particular, the following paragraphs analyse some critical aspects of the system.

2. Modus Operandi and 'Mafian' elements

As mentioned earlier, ethnic OCGs are constantly evolving and have proven over the years that they are 'very capable of adapting to crime over time'. (Expert n.1)

⁴¹⁰ Spiezia F. (2022), "La lotta alla criminalità organizzata fuori dai confini nazionali", Sistema Penale, 20 July 2022, p.1. Revised text of the paper presented at the course organised by the Scuola Superiore della Magistratura and the Direzione Nazionale Antimafia ed Antiterrorismo entitled "30 years of DNA, DDA and DIA. 30 years of legislation against organised crime: the origins and evolutions of the anti-mafia system" (22 June 2022, Rome), p.12.

The nature of the criminal activities they engage in has changed from a criminal organization to a mafia-like organization following what expert n.3 refers to as criminal escalation:

in our territory, we have assisted several criminal groups to criminal escalations, to criminal paths that started from predatory crimes such as thefts in apartments and commercial activities, in some cases turned into repine, then exploitation of prostitution, then drug trafficking, extortion, structured criminal organizations and then money laundering and real transnational criminal structures.

As part of this criminal escalation, ethnic OCGs have, on the one hand, begun to infiltrate local administrative apparatuses and thus infiltrate legal entities and institutions.

This is the case with Nigerian OCGs, which, according to Expert n. 5,

are individuals (naturalized foreigners) who run for political office at the local level. In this way, there is an evolution of foreign OCGs infiltrating not only and no longer street micro crime but also local government.

On the other hand, many ethnic OCGs, especially Chinese ones, have specialized in carrying out activities that are legal in themselves, such as business activities, but which conceal all sorts of illegality. In this way, Chinese OCGs reduce raw material and labour costs and prevent law enforcement from proving the criminal phenomenon as a whole because the facade is legal per se. The evolution of the modus operandi of ethnic OCGs has not been accompanied by the evolution of legislation.

According to all the experts interviewed, ethnic OCGs in the Member States operate in a mafia-like manner, using specific dynamics such as ‘silence and intimidation’. (Expert n.2) From a legislative perspective, the main difficulty is proving the existence of territorial control. Only one of the experts interviewed stated that, based

on his/her experience in Italy and France⁴¹¹, there is no doubt about the existence of territorial control.

(...) when the Chinese OCGs faced in Prato, we had for a while murders and extortions, the classic gang war dynamics. Then, at some point everything stopped, there was nothing more, and I hypothesized that there might be someone who had imposed a peace. And so there was, peace was imposed and this agreement was reached. And behind this agreement were all the typical crimes of the Italian mafias. (...) We discovered that these violent episodes that took place in Prato were to conquer the territory of Prato, and for the Chinese mafia, it was very important to be able to say that they commanded in Prato because 'if I command in Prato I can command in all of Europe' because Prato, after Paris, has the largest Chinese community in Europe both in absolute value and concerning population. In Prato 10% of the population is Chinese so it has a very important weight both numerically and objectively and also in absolute terms. The criminal organization that manages to control and dominate Prato is a criminal organization that has a comeback in Europe and we have had a classic return of that in the investigations. At a certain point, the two groups that were facing each other which were those from Fujian and those from Zhejiang-and here we have another parallel with the Italian mafias i.e., the relationship with the home territory-they stopped and did not fight anymore because a superior something/someone imposed control and put a boss. This leader is what we identified in Zhang Nai Zhong, a person from Zhejiang who put Fujianese and Chinese nationals from Zhejiang together. At some point in Paris there is the same struggle that there was in Prato, that is, those from Fujian and those from Zhejiang, and then we find out that the chief Zhang Nai Zhong talks to his number 2 who is from Fujian, they talk in the car and this one tells him that there is the same problem as in Prato in Paris. Zhang Nai Zhong replies that there is no problem "Just go to Paris, I gather everybody, you come in during the meeting you greet me saying 'hello boss' and everybody has to understand who is in charge and how the situation is, the same situation that we have in Prato we have to have in Paris." This we have documented that happens and from that moment Paris also achieves peace between the two groups. So a demonstration that those in charge in Prato could also impose control over economic activities and criminal groups abroad. (Expert n.2)

All of the experts interviewed specifically mention the problem of proving control over territory – which is one of the required legal elements – in Europe by ethnic OCGs.

⁴¹¹ The expert refers specifically to a Police operation conducted both in Italy and in France which is not concluded definitively.

Indeed, the core of the organizations remains in the country of origin (such as Nigeria, China, and Albania), while in Europe they appear mainly as individuals without the force of control specifically of an area. In contrast, the OCGs based in Europe (and especially the Italian ones) are characterized by a strong control over a specific area of interest. A parallelism between this characterizing element between Italian and ethnic OCGs is evident:

ethnic mafias usually operate in the exclusive execution of criminal designs, the purpose of which is to obtain gain and/or advantage over a territory that can sometimes vary according to need. Italian mafias, on the other hand, perpetrate "fine" crimes (such as usury, extortion, drug trafficking, tobacco smuggling, money laundering, etc.) with the intent of acquiring and imposing their power and control over a given territory. (Expert n.8)

Italian mafias have always had extensive control over the territory, supported by a deep knowledge of the territory, the relations between local power groups and the control of economic activities that develop within it. They are often supported locally by cultural factors and habits created over time. Imported mafias, flank homegrown ones, often occupying spaces and territories not under the control of homegrown crime. (Expert n.9)

In this context, an Italian prosecutor interviewed stressed that it is common for a case to start first with the accusation of mafia association (Article 416-bis C.C.) and then end with the recognition of simple association (Article 416 C.C.). (Expert n.3) Thus, it often happens that the mafia aggravation is not recognized because the group's control over the territory is not recognized (Expert n.5).

The lack of control over the territory would not be a failure of conquest by ethnic OCGs, but an actual operational decision. For example,

Chinese OCGs do not have the same interests as local OCGs who have to control territory to do business, Chinese OCGs manage to do business even without controlling anything (Expert n.1).

In this context, it was also noted that the fluid and poorly structured Albanian OCGs fit poorly into a norm that applies to organizations tied to a well-defined territorial context. (Expert n.7)

A viable solution to the problem outlined so far could be a jurisprudential development that allows norms to adapt to evolving OCGs:

We need to create a jurisprudence that points out that the element of control of the territory, if we refer to foreign OCGs in the Member States, must fail because they are host bodies in a different country so the discriminator must not be the control of the territory but must be the presence of an organization, a hierarchy with defined purposes and a well reconstructible network. Then the investigative and law enforcement tools would be even more effective. (Expert n. 6)

To conclude, emerges that ethnic OCGs differ in many ways from autoctonous OCGs and the main difference regards the missing element of the control over a territory. This happens for several geographical, social, and historical reasons, but what is crucial is understanding that it is not possible to research only the ordinary elements of OCGs in ethnic ones. It would be very important to evolve also the concept of ‘control over a territory’ to a changing criminality.

3. Linguistic and Cooperation Difficulties

From the operational point of view, the main contrasting difficulties are certainly the language and dialect problem and thus the problems of translation, but also the problem of the infidelity of interpreters in the sense of people who collaborate and help with translations but remain tied to the community of origin (Expert n.5)

The most important element to highlight in discussing the fight against ethnic OCGs is the linguistic factor, i.e., the fact that at best these groups communicate in the

native language of their country of origin – broken English for Nigerians, Mandarin Chinese for Chinese, and Albanian for Albanians – otherwise they communicate using potentially unfamiliar variants of their languages. This is a limitation in the use of operational contrasting measures such as interception of communications, undercover investigations, and informants for several reasons. According to Expert n.2, the language barrier is one of the main difficulties. It causes difficulties in the investigation phase – in terms of the ability to translate messages, to talk to informants and infiltration agents, but also in the execution of the process – in terms of finding interpreters willing to provide assistance and to understand certain dialect forms. Two elements can explain this difficulty: dialects and the cultural issue.

The first aspect, the different dialects spoken, occurs mainly among the Chinese OCGs and Nigerian OCGs, less so among the ethnic OCGs from Eastern Europe (Expert n.2).

This difficulty does not occur with Albanian OCGs for the simple reason that they do not have the diversity of languages and dialects as Nigeria and China. For this reason, law enforcement agencies have developed their linguistic expertise over the years to the point where they no longer need interpreters to translate technical work towards Albanian OCGs, having such expertise on their own. (Expert n.3)

Differently, both members of Nigerian and Chinese OCGs come from countries with multilingual contexts and/or the presence of many dialects that are difficult to understand by those who only know the official language (Expert n.8).

Over the years, the interpreting skills of investigative and law enforcement agencies have improved at the European level, but the understanding of dialects remains a large gap that is difficult to close. Interpreters do not only have to translate traditional

languages because many OCGs identify with their region and speak the language that is only known in these areas. According to Expert n.9, a variety of local idioms are spoken in addition to the official language, making interpretation even more complex.

In Nigeria, the official language is Broken English (a mixture of British English and African words), but there are over 527 different languages typical of the different ethnic groups in the country, and thousands of dialects, the most important of which are Agbor, Auchi, Bariba/Baatonum, Bete, Chamba, Delta Pidgin, Dendi, Edo, Eka, Esan(or Ishan), Etsako (or Esako), Hausa, Igbo (or Ibo), Igede (or Egede), Ijaw, Ika, Ikpe (or Ikpeshi), Isoko (or Ukwuani), Kwale, Ogbia (or Ogbinja), English Pidgin, Urhobo, Uromi, Yoruba.⁴¹² Even some dialects have not yet been identified.

In China, the official language is Mandarin Chinese and around 320 dialect forms are spoken, including the dialects Shanghainese, Huzhou, Wuxi, Ningbo, Suzhou, Changzhou, Jiaxing, Hangzhou, Shaoxing, Xuanzhou, Chuqu, Taizhou, Wuzhou and Oujiang⁴¹³. Each dialect, which identifies itself with the territory to which it belongs, carries not only different words from the official language but also meta-meanings anchored in the specific territory, so that an individual who is not Chinese, even if he manages to translate, cannot understand certain peculiarities that are crucial (Expert n.1).

In this respect, parallels with the Italian OCGs are possible:

(..) during the first years of the investigation, the Mobile Units in northern Italy had some difficulty translating Crotonese, Reggino or Sicilian. The same difficulty is found today in translating Chinese conversations'. In fact, what often happens is that there are interpreters who know Mandarin Chinese but not the Fujian dialect and this constitutes an almost insurmountable limitation in operational contrast. Consequently, the problem arises of finding an adequate number of interpreters capable of translating certain communications. In the most complex investigations, it cannot be done with just one interpreter, so the difficulties expressed before

⁴¹² UNIDO, <https://www.unido.it/country.php?id=Nigeria>

⁴¹³ Ramsey, S. R. (1989). *The languages of China*. Italia: Princeton University Press.

that are solved by finding one translator, when 5-6 are needed it becomes an exponential problem. (...) with inevitable delays because you have interceptions that are not translated in real time. (Expert n.1)

If it is then possible to obtain translations, the problem of language difficulties is far from solved. Indeed, the defence lawyers play very important procedural tricks during the trial by raising the conflict of interpretation of individual words, and in the case of a conflict between one translation and the other, the court has to appoint an expert witness (Experts n.1, 3). Concerning the identity and previous status of the person used as an interpreter, the investigators have no operational space (Expert n.1) and sometimes cases of disloyalty on the part of the interpreters occur, with serious consequences for the trial:

there have been cases, even quite sensational ones, in which individuals considered reliable in the abstract, appointed by judicial offices/courts for years as interpreters of even important trials in a later case were then identified as being close to certain centres of interest that were not completely disconnected from the community of reference (Expert n.1)

Furthermore, Expert n.2, highlighted an episode that happened recently during a trial against Albanian OCGs:

we had a good and trained Albanian interpreter who translated everything for us, at one point I had a doubt about a quite delicate conversation and I decided to ask someone else to hear it. We called another interpreter who did a very very different and even more in-depth translation. Then we made her listen to almost all the conversations and it emerged that the first interpreter was not so reliable and meticulous and many things she had left out.

There are techniques to reduce the occurrence of such incidents, e.g. by having different interpreters listen in on the conversations from the beginning, without one knowing of the existence of the other, but allowing the doubt that it is not just one. In this way, 'interpreters are aware that they cannot be biased because they do not know who

else is listening to the same communication' (Expert n.3). However, this inevitably leads to a multiplication of human resources and time.

There is a second aspect related to the language barrier, namely the cultural seclusion of these communities. This has negative consequences on the capacity of law enforcement agencies to conduct covert investigations and work with informants. In this context, it should not be underestimated that the communities they belong to have an extremely strong power of control over their members.

Ethnic communities are used to remaining closed (like the Italians when they moved to America and formed Italian micro-communities), it is a cultural closure that is an obstacle in every aspect of contrasting (Expert n.5)

In the case of the Chinese community, there are episodes where people are potentially able to act as interpreters:

have also expressed fears about having to expose themselves in the translation of acts that they understand to be decisive in the fight against that criminal phenomenon (...) The Chinese community has a great sense of belonging and even years later, citizens who have settled in Italy have strong ties with the community as a sense of gratitude to it (Expert n.1).

Another aspect that should not be neglected is that the Chinese community, perhaps more than other communities, has a very specific sense of work, always aimed at monetising and the fees for interpreting activities are not attractive (Expert n.1). It happens that many qualified interpreters are not interested in this work because of the modest level of fees given the concrete risk of retaliation by the community of origin.⁴¹⁴

⁴¹⁴ Commissione parlamentare di inchiesta sul fenomeno delle mafie e sulle altre associazioni criminali, anche straniere (istituita con legge 7 agosto 2018, n. 99), attività criminali delle organizzazioni nigeriane, con una prima indagine parlamentare sulla portata della « green bible » Approvata dalla Commissione nelle sedute del 7 e del 13 settembre 2022, p.18. https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjZlqK0k96AAxXPhv0HHUp4CFwQFnoECBMQAQ&url=https%3A%2F%2Fwww.parlamento.it%2Fapplication%2Fmanager%2Fprojects%2Fparlamento%2Ffile%2FDoc_XXIII_n_37_Sez_XV.pdf&usg=AOvVaw18V2XKsct00mTdPFXTa2sD&opi=89978449

This aspect is therefore expressed as a cultural rather than a linguistic problem, these are communities that always remain closed, also due to a greater cultural distance between their way of life and ours. (Expert n.4)

The argument made for the Chinese OCGs can also be applied to the Nigerian OCGs because:

it is very difficult to obtain information when one has to talk to Nigerian citizens who are not affiliated with the criminal organisation but who are subjected to its activities or in some way collaborate with it or is part of the human base to which these organisations target (Expert n.6)

Given all the difficulties in finding competent interpreters who have broken away from their community of origin and are willing to cooperate, the question arises whether it would not be advisable to set up a central European administration for certified and well-trained interpreters. According to Expert n. 2, the instrument would be very useful, but it seems very difficult to train non-native speakers. According to Expert n. 1, the problems would not be solved because if the problem is the threat of translating certain things, that remains.

In the European context, the problem of translations has not been dealt with specifically concerning ethnic OCGs, but on a general level and thus also for the topic relevant here. According to Art. 5(2) of the European Directive 2010/64/EU⁴¹⁵ on the quality of interpretation and translation:

in order to ensure adequate interpretation and translation services and efficient access to such services, Member States shall endeavour to establish a register or register of independent and appropriately qualified translators and interpreters. Once established, these registers shall, where appropriate, be made accessible to lawyers and competent authorities.

⁴¹⁵ Text available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010L0064>.

In conclusion, it is important not to be misled into thinking that prosecution against ethnic OCGs is not possible, but to be aware of the operational difficulties and side effects in investigations and trials. The very fact that some trials were successfully concluded in some Member States and the proceedings made public led community members to discover the possibility of intercepting and translating intercepted communications. As a result, members of OCGs have started to make much fewer phone calls:

until recently in the phone calls of these Nigerians they would talk to each other saying 'Big boss of the group in Turin, I am your servant I play the role of... I heard what he did... we have to meet the group of...' in a single phone call they would tell us the role of each individual within the criminal organisation. Unfortunately, these things are outdated even for them because the state's response activities (investigations, arrests, sentences, publication of wiretaps) meant that this nonsense was no longer done. (Expert n.3)

And have started to switch means of communication. This means that the difficulties outlined earlier still exist, but a new one has been added: the struggle against ethnic OCGs in the context of the use of new technologies.

4. New Technologies

Another difficult element in countering ethnic OCGs is the increasingly common use of encrypted ad hoc platforms and chats, resulting in a severe softening of the distinction between telecommunications and IT⁴¹⁶ (with practical consequences for the interception tools to be used). These communication techniques (such as Sky ECC and

⁴¹⁶ Balsamo A. and Mattarella A. (2021), 'Criminalità organizzata: le nuove prospettive della normativa europea', *Sistema Penale*, Volume 3/2021, p.50.

Encrochat⁴¹⁷) are often inaccessible to law enforcement agencies, making their investigations extremely difficult. According to Expert n. 7, future challenges will also and primarily be faced in the digital world.

Ethnic OCGs have become highly specialised.⁴¹⁸ New technologies are used to steal sensitive data, distribute and sell illegal material, attack networks through cybercrime, but also to manage money from illegal activities, for example, through the Bitcoin network.

The most famous of these technologies is 'Sky ECC⁴¹⁹' because it was hacked and attacked (Expert n.2). The platform reportedly hosts more than 500,000,000 chats in its databases, which were decrypted by Europol⁴²⁰ in March 2021 as part of an investigation into suspected drug trafficking between France, Belgium and the Netherlands. The encryption programme 'sky ECC' was patented by the Canadian company Sky Global, which offers phones with disabled GPS, camera and microphone that can send and receive encrypted messages with a 30-second self-destruct timer.⁴²¹ According to data collected by Europol, this tool, with computer servers in Europe, is used by 170,000 people worldwide who exchange three million messages daily.⁴²²

⁴¹⁷ Varese F. (2023), 'Encrochat e Eurojust, quegli strumenti nascosti (ed efficaci) per sconfinare la 'Ndragheta', In la Repubblica, 3rd May 2023.

⁴¹⁸ Spiezia F. (2022), "La lotta alla criminalità organizzata fuori dai confini nazionali", Sistema Penale, 20 July 2022, p.1. Revised text of the paper presented at the course organised by the Scuola Superiore della Magistratura and the Direzione Nazionale Antimafia ed Antiterrorismo entitled "30 years of DNA, DDA and DIA. 30 years of legislation against organised crime: the origins and evolutions of the anti-mafia system" (22 June 2022, Rome), p. 11.

⁴¹⁹ Elliptic Curve Cryptography.

⁴²⁰ Spiezia F. (2022), "La lotta alla criminalità organizzata fuori dai confini nazionali", Sistema Penale, 20 July 2022, p.1. Revised text of the paper presented at the course organised by the Scuola Superiore della Magistratura and the Direzione Nazionale Antimafia ed Antiterrorismo entitled "30 years of DNA, DDA and DIA. 30 years of legislation against organised crime: the origins and evolutions of the anti-mafia system" (22 June 2022, Rome), p.9.

⁴²¹ Filippi L. (2023), 'Criptofonini e diritto di difesa', in Rivista Penale Diritto e Procedura, 23 June 2023.

⁴²² Europol (2021), New major interventions to block encrypted communications of crime networks, 10 March 2021. Available at: <https://www.europol.europa.eu/media-press/newsroom/news/new-major-interventions-to-block-encrypted-communications-of-criminal-networks>

The evolution of ethnic OCGs is parabolic, making interception by law enforcement increasingly difficult or even impossible (Expert n.3).

5. Knowledge of the phenomenon in EU Member States

Ethnic OCGs have aspects of transnationality and globalisation, they have aspects of foreign involvement that they exploit more because abroad there is no legislation equal to ours (Expert n.2)

One of the most recurring aspects in the experts' answers about the difficulties in combating ethnic OCGs is the lack of awareness of this phenomenon among European states. The main problem in this regard is not necessarily related to the introduction or non-introduction of ad hoc legislation, but rather to the lack of awareness that ethnic OCGs are not only a problem of the country where they are most prevalent, but a threat to the whole of Europe.

The highest degree of awareness, but still in relative terms, is in Italy, a little in Spain and in the UK where Nigerian OCGs have already made the quantum leap by manifesting themselves as OCGs with a strong financial footprint. But it remains a limited awareness (Expert n.6)

The same difficulty has existed in the past in recognizing that Italian OCGs were not just an Italian problem, but have implications for all MS (Expert n.9). In this context, it is worth recalling the Duisburg massacre of 15 August 2007, in which the 'ndrangheta carried out a massacre in front of a pizzeria in Germany. This episode was the moment when Germany realized that the mafia was not just an Italian problem. As a result of the massacre, Germany realized that it had the mafia in its own country, and this is a mistake that all nations make, by the time they realize it, it is already too late. (Expert n.2)

Other European countries often become aware of the phenomenon only at the moment when sensational events occur, such as bloodshed. Whereas as long as the clans

have moved under the radar and avoided violent manifestations, they have mostly been underestimated.⁴²³

In response to what happened in Germany, the European Union funded several projects, the most important of which is the I-CAN project⁴²⁴ carried out by the Italian Carabinieri, to illustrate information in order to effectively combat the 'ndrangheta.

(..)in Germany, they discovered the 'ndrangheta after Duisburg and they discovered that the Italians had not only pizzerias in Germany. there was a huge flow of money and all that money could not have come from the pizzerias there and they discovered the transnational structured criminal group that had contacts all over the world. This ability to identify the dangers, this new awakening that they had, meant that they began to understand the problem (Expert n.3).

The same process of late understanding of the phenomenon is now beginning to take place in Europe about the spread and pregnancy of ethnic OCGs:

(...) it was only after the judgments in Italy against the Nigerian OCGs, after the discovery of the Green Bible in 2019 in Italy⁴²⁵, that suddenly everyone started to take an interest because all those terms they were intercepting then started to take on meaning, Germany France Spain but also Sweden and Finland. (Expert n.3)

Given the difficulties encountered in explaining the spread of Italian OCGs in European countries, perhaps it is time to reflect on the need to centralise knowledge of ethnic OCGs and then disseminate it for the benefit of the Member States. An example

⁴²³ Spiezia F. (2022), "La lotta alla criminalità organizzata fuori dai confini nazionali", Sistema Penale, 20 July 2022, p.1. Revised text of the paper presented at the course organised by the Scuola Superiore della Magistratura and the Direzione Nazionale Antimafia ed Antiterrorismo entitled "30 years of DNA, DDA and DIA. 30 years of legislation against organised crime: the origins and evolutions of the anti-mafia system" (22 June 2022, Rome), p. 12.

⁴²⁴ More information at: <https://www.carabinieri.it/arma/arma-all%27estero/europol-e-interpol/progetto-i-can>

⁴²⁵ Sola E. (2019), Mafia nigeriana, 40 arresti al Nord. Sequestrata la Bibbia Verde: decalogo con i comandamenti dei boss, in Corriere della Sera, 18 July 2019.

of the sharing of competencies in the field of combating ethnic OCGs is the possibility originally foreseen in Article 19 of the Palermo Convention⁴²⁶ for European countries to activate a JIT (Joint Investigation Team) (Expert n.7) (Expert n.7). According to Europol,

a joint investigation team is an international cooperation tool based on an agreement between competent authorities – both judicial (judges, prosecutors, investigative judges...) and law enforcement – of two or more States, established for a limited duration and for a specific purpose, to carry out criminal investigations in one or more of the involved States.

This Framework Decision allows the Member States to have a predefined legal basis for the establishment of joint investigation teams⁴²⁷, thus achieving a sharing of expertise. This instrument has made it possible to

overcome all the bureaucracy of the European investigation order or the old rogatory letters (...) in the most important cases, a European investigation order or a joint investigation team is sent and all the activities carried out by those police officers automatically end up in the trial files of the countries involved without the need for any rogatory letters. This is a tool to overcome the time and mobility that criminal organisations have in our territory. (Expert n.3)

The difficulty of understanding the phenomenon from other European countries is not only expressed as an awareness that the mafia is not only Italian or only in Italy⁴²⁸ and that ethnic OCGs now have interests in all states but also as a difficulty in

⁴²⁶ Framework Decision of the Council 2002/465/GAI ratified from Italy on the 11st March 2016, full text available

at:https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKewjPk56Fmd-AAxXLVfEDHcajDgQQFnoECBIQAQ&url=https%3A%2F%2Feur-lex.europa.eu%2FIT%2Flegal-content%2Fsummary%2Fjoint-investigation-teams.html&usq=AOvVaw2_Fm301mG1dotnBnIFAWVC&opi=89978449

⁴²⁷ Testai G. (2022), 'Le indagini patrimoniali nel contesto della criminalità organizzata', edited by Scuola di Perfezionamento per le Forze di Polizia di Roma, Volume 2/2022, Rome, p.69.

⁴²⁸ Balsamo A. and Mattarella A. (2021), 'Criminalità organizzata: le nuove prospettive della normativa europea', Sistema Penale, Volume 3/2021, p.35

understanding the social phenomenon itself and the need for a contrast that affects the economic structure.

It should be understood abroad that the money that comes from the mafia (which invests in certain places) may seemingly be an advantage but in the medium and long term, it becomes a detriment to the economy and society, that there is a problem (...) because the introduction of large amounts of capital into a country also blows up the ordinary rules of the economic market. It is also a question of culture: understand the problem and manage it (Expert n.1)

The problem, then, is to explain to the Member States that fighting money laundering by OCGs means taking away illegal wealth, but it is wealth. In this sense, Expert n.4 describes an episode from his/her career in which he/she tried to explain to Swiss law enforcement the presence of OCGs on their territory:

for them, OCGs and therefore money laundering were not a problem even though we brought them all the evidence. Acknowledging the problem would have meant giving up some of the wealth (Expert n.4).

Given the extent of infiltration of local and ethnic OCGs into the economies of states, the question arises, to quote Salvatore Ricci⁴²⁹: do European democracies and, accordingly, judicial and police authorities have the necessary capabilities to counter the threat (which is a real threat) to the economic and political stability of sovereign countries?

⁴²⁹ Salvatore Ricci, ex ispettore della UIF della Banca d'Italia. Intervista pubblicata da Huffingtonpost il 4 ottobre del 2020, https://www.huffingtonpost.it/economia/2020/10/04/news/si_fa_troppo_poco_contro_il_ri ciclago_ma_sono_200-300_miliardi_un_sesto_del_pil_-5307573/

What is certain is that the problem of infiltration of ethnic OCGs into the productive economic fabric cannot be confined exclusively to the countries traditionally considered the cradle of local OCGs – Italy in particular.⁴³⁰

6. Cooperation with Third States

Cooperation with non-EU third countries is essential to effectively combat ethnic OCGs. The difficulties in putting this requirement into practice are a serious obstacle to Member States' activities, even when they act bilaterally (Expert n. 7).

As far as cooperation with Nigeria is concerned, it is important to realize that the Member States and Nigeria are different countries in the first place, and the mistake made in assessing forms of cooperation in advance is, according to Expert n. 6, not to take into account the differences themselves:

(...) at the moment in which we imagine the bilateral activity, we imagine that it is like that which exists between Italy and France, for example, therefore, imagining that Nigeria is in the same situation as Italy, has the same instruments and the same capacity when, instead, we are speaking of two profoundly different contexts. The point is this, the cooperation between the two States exists, but the problem is that at the level of counteracting capacity, the Nigerian Police Authorities do not have at their disposal all the resources that ours have (banally, at the level of interceptions, infiltration into the organizations, technological capacity of monitoring) and consequently, when the instruments at their disposal are blunt, also the effectiveness in the counteraction is blunted.

Thus, there are forms of cooperation between some European countries, such as Italy, and Nigeria, even if they have yet to be implemented. According to Expert n. 4, there is room for improvement because culturally they are much closer to us than other sub-Saharan African countries, cooperation is ongoing and it is a country where we can try to monitor exchanges.

⁴³⁰ Testai G. (2022), 'Le indagini patrimoniali nel contesto della criminalità organizzata', edited by Scuola di Perfezionamento per le Forze di Polizia di Roma, Volume 2/2022, Rome, p.36.

The situation is different in relations with China, where cooperation is completely lacking and, according to Expert n. 4, is in the logic of things, since China is interested only in its own interests. The lack of cooperation is identified as a problem that cannot be overcome at the moment:

There are in Europe forms of written collaboration that I must say I have never had occasion or personal experience even told by individuals that have been successfully completed. You can ask for assistance but the answer never comes. So there is a segment of the investigation that because it is in the territory that has at least an interest in the crime developing in those ways will never provide answers (Expert n.1)

Even if there is no cooperation at the moment, it is the only way to intensify the fight against Chinese OCGs. Therefore, according to Expert n. 3, cooperation with second and third-generation Chinese will be somewhat easier, as they have become more detached from their homeland and more aware of the role of our institutions.

(..) this collaboration will be difficult, it will go through many meetings and Italian policemen who speak Chinese and Chinese policemen who speak Italian, who can mentally facilitate Chinese children who have lived in Italy and therefore understand the Italian way of thinking and then there will be second generation Chinese policemen and they will become interlocutors with China. They will be a way to understand how to act better and defeat certain criminal phenomena in that country. (Expert n.3)

As for the cooperation with Albania, there is a small difficulty compared to the other countries studied. A cooperation agreement between the Italian Republic and the Republic of Albania to combat the OCG dates back to 2007⁴³¹, also because Italy historically was the first country that face the great migration of Albanian citizens. Through it, the two countries have mutually committed to cooperate in the detection of

⁴³¹https://ambtirana.esteri.it/ambasciata_tirana/resource/doc/2018/12/23235_f_alb103_accordo_di_cooperazione_nella_lotta_contro_la_criminalit.pdf

crimes, especially organised crime, with reference to a specific list detailed in the agreement itself (Expert n.7). Furthermore, according to Article 5 of the agreement,

the parties will exchange their specialists for mutual consultations on concrete issues and exchange their experiences in combating OCGs in all their manifestations (...). The parties shall exchange experiences with each other regarding activities in the field of professional training of police management (...)

This agreement is positively evaluated by the Police authorities that apply it, and Albania is considered a country with which fruitful cooperation with European countries has developed over time, albeit with some differences, as there are always small resistances. (Expert n.4)

The agreement between Italy and Albania should serve as a model for the creation of positive forms of cooperation with other countries as well. The goal is to achieve a fight against ethnic OCGs that is not completely blocked by the border crossing.

Finally, a form of judicial cooperation between some European countries and some African countries should be highlighted as a best practice. A form similar to that provided for in Article 18 of the Palermo Convention⁴³², entitled 'Mutual Legal Assistance', was established. In this way, the Palermo and Catania Prosecutor's Offices were able to gain the cooperation of three judges from Nigeria, Ethiopia and Eritrea to not only pursue mediation proceedings but also to have support in carrying out investigative activities.⁴³³

⁴³² <http://www.asgi.it/wp-content/uploads/public/protocollo.addizionale.tratta.en.pdf>

⁴³³ Balsamo A. and Mattarella A. (2021), 'Criminalità organizzata: le nuove prospettive della normativa europea', *Sistema Penale*, Volume 3/2021, p.51

7. Conclusive Proposals

Having examined the emersion of Ethnic OCGs with their specific characteristics, the European legislative scenario of countering OCGs, and having finally analysed the main legislative and operational difficulties, it is time to formulate innovative suggestions and ideas to make countering Ethnic OCGs more effective.

➤ Collaborators of Justice

Given the language and infiltration difficulties of ethnic OCGS, the input of judicial personnel is needed. Indeed, the purpose is both to facilitate translations and to break through the victims 'wall of non-cooperation'. (Expert n.1)

In this context, the idea of collaborators of justice goes back to the fruitful Italian experience in combating local OCGs through the contribution of collaborators. The same should be done in the fight against ethnic OCGs.

There is a need for the possibility of breaking the wall of collaboration today there are no experiences of serious and deep collaborations, beyond the collaborator recounting the experience of dealing but not the organization. (Expert n.1)

The European Parliament resolution⁴³⁴ adopted on 25th October 2011, contains a proposal addressed to the Commission to adopt directives in favour of collaborators of justice, providing guarantees for their benefit and, in particular, recognising the legal status of transnational collaborators.⁴³⁵

⁴³⁴ https://www.europarl.europa.eu/doceo/document/TA-7-2011-0459_IT.html

⁴³⁵ Balsamo A. and Mattarella A. (2021), 'Criminalità organizzata: le nuove prospettive della normativa europea', Sistema Penale, Volume 3/2021, p.54

The appropriate development of such an instrument could be a first step in ensuring that victims of OCGs are incentivized to cooperate in the face of internationally extended protection. Such an assurance could counterbalance the fear of strong retaliation that is constantly present among victims (members of ethnic OCGs live in a closed community, as explained above, and community members represent the only contact and 'form of support' they experience).

The proposal to increase the infiltration capabilities of undercover officers in ethnic OCGs is along the same lines.⁴³⁶ This measure is certainly not easy to implement, especially given the language barrier of the communities considered. The perspective should therefore be to invest in the training of second- and third-generation Chinese, Nigerians, and Albanians, where neither the language nor the ethnic problem arises.

(..) legislation regulating undercover activities, although with ample areas for improvement, is extremely effective at penetrating ethnic and local OCGs. This investigative tool has multiple strengths: reduced investigation costs, facility in identifying those involved and their roles within the criminal organization, identification of places of production, storage, and decoding of the modus operandi adopted by the OCGs. However, there are critical issues mainly related to the protection of the personal identity of the operator entrusted with the task and the difficulties associated with crossing national borders. (Expert n.9)

➤ **Knowledge, Inclusion and Regularization**

There is a need to intervene with both social inclusion tools and an understanding of the role of democratic institutions. Members of ethnic OCGs come from countries where they see institutions as a threat rather than a support and therefore do not think of asking them for help.

Integrating these communities means first of all giving these communities a chance to learn about our institutions and the way of being of European institutions, and so one day tomorrow that community can

⁴³⁶ Balsamo A. and Mattarella A. (2021), 'Criminalità organizzata: le nuove prospettive della normativa europea', *Sistema Penale*, Volume 3/2021, p.50

turn to the Italian institutions in charge of maintaining public safety also as a form of cooperation. They are closed communities used to managing everything internally without relying on institutions. (Expert n.4)

It is necessary to intervene in the phenomenon through social policies because as long as we have communities that are not integrated or have a low degree of trust in institutions, criminal organizations will be hyper-advantaged. (Expert n.6)

The only possible response to this cultural gap is to invest in education, both of the police so that they learn to deal with people from other cultures who do not necessarily think in European terms, and foreigners, who, upon arrival, often see illegality as the only possible path without knowing where to look for alternatives.

we need to keep our eyes up and focus a lot on training both law enforcement and youth (creating social structures so that there are alternatives to criminal careers). In addition to hard law enforcement of punishment, a legal alternative is needed. (Expert n.3)

As has been emphasised several times throughout this research, the problem of combating ethnic OCGs is not exclusive to finding a truly effective legislative response. On the contrary, there is still a social context to change that is perhaps even more important than the legislative one.

➤ **Follow the Money**

Asset investigation can and must be seen as the most appropriate tool to combat money laundering by OCGs. Based on experience in combating Italian OCGs, targeting

money laundering means significantly weakening the OCG itself.⁴³⁷ It is precisely this Italian experience that led to the adoption of Resolution 10/4, adopted on the 16th of October 2020 by the Conference of the Parties to the Convention against Transnational Organized Crime UN.⁴³⁸ It explicitly mentions the ‘economic dimension’ of transnational OCGs and is the first time in a resolution from the United Nations.

The adoption of this instrument in the international context is certainly a turning point in terms of raising awareness of the importance of focusing on money flows. It is hoped that Member States will be able to maintain the focus also in this direction and learn from the Italian experience, for example in the area of seizure and confiscation.⁴³⁹

(..) the real contrast to these types of organizations is implemented through an attack on the economic aspect, with seizures and confiscations of mobile and immobile assets, bank accounts etc. To this end, the application of patrimonial prevention measures in investigative contexts is important. The real problem is the adjustment of domestic regulations with foreign ones. (Expert n.7)

It therefore seems crucial to develop the expertise of Member States in the field of financial investigations so that they can effectively act against the funds managed by ethnic OCGs. Given this need, the Member States should take into account the Italian experience in the field of financial enforcement against local OCGs – in the wake of the lessons of Giovanni Falcone and Paolo Borsellino – and develop adequate legislation and law enforcement expertise. In fact, greater emphasis on financial investigations,

⁴³⁷ Testai G. (2022), ‘Le indagini patrimoniali nel contesto della criminalità organizzata’, edited by Scuola di Perfezionamento per le Forze di Polizia di Roma, Volume 2/2022, Rome, pp.42 ss.

⁴³⁸ More information at: https://italiarappvienna.esteri.it/rapp_vienna/it/la-rappresentanza-permanente/notizie/dall-ambasciata/2020/10/esiti-decima-conferenza-delle-parti.html

⁴³⁹ Spiezia F. (2022), “La lotta alla criminalità organizzata fuori dai confini nazionali”, *Sistema Penale*, 20 July 2022, p.1. Revised text of the paper presented at the course organised by the Scuola Superiore della Magistratura and the Direzione Nazionale Antimafia ed Antiterrorismo entitled "30 years of DNA, DDA and DIA. 30 years of legislation against organised crime: the origins and evolutions of the anti-mafia system" (22 June 2022, Rome), p.22-23, 28.

especially in the context of European cooperation, would make it possible to track financial movements (Expert n. 9).

➤ **International Cooperation**

Last but not least, serious thought needs to be given at the European level to what cooperation tools are needed to make all countries aware of the security threat posed by ethnic OCGs. What is lacking is the ability to process information in its entirety. According to Spiezia, the information available to foreign authorities is scattered in different areas and is difficult to assemble into a complex overall picture.⁴⁴⁰ It is therefore necessary for Italy to take up the task of disseminating knowledge and expertise⁴⁴¹ through projects such as I-CAN.

Over the years, significant progress has been made in the field of European coordination bodies. One need only think of the establishment of Eurojust. It has transformed the element of transnationality from an obstacle into a new opportunity. This has been done through information exchange, cooperation procedures, coordination meetings, joint meetings, mutual legal assistance requests, etc.⁴⁴² All these instruments have been an incredible step forward but are still not enough.

⁴⁴⁰ Spiezia F. (2022), "La lotta alla criminalità organizzata fuori dai confini nazionali", Sistema Penale, 20 July 2022, p.1. Revised text of the paper presented at the course organised by the Scuola Superiore della Magistratura and the Direzione Nazionale Antimafia ed Antiterrorismo entitled "30 years of DNA, DDA and DIA. 30 years of legislation against organised crime: the origins and evolutions of the anti-mafia system" (22 June 2022, Rome), p.15

⁴⁴¹ Spiezia F. (2022), "La lotta alla criminalità organizzata fuori dai confini nazionali", Sistema Penale, 20 July 2022, p.1. Revised text of the paper presented at the course organised by the Scuola Superiore della Magistratura and the Direzione Nazionale Antimafia ed Antiterrorismo entitled "30 years of DNA, DDA and DIA. 30 years of legislation against organised crime: the origins and evolutions of the anti-mafia system" (22 June 2022, Rome), p.28

⁴⁴² Spiezia F. (2022), "La lotta alla criminalità organizzata fuori dai confini nazionali", Sistema Penale, 20 July 2022, p.1. Revised text of the paper presented at the course organised by the Scuola Superiore della Magistratura and the Direzione Nazionale Antimafia ed Antiterrorismo entitled "30 years of DNA, DDA and DIA. 30 years of legislation against organised crime: the origins and evolutions of the anti-mafia system" (22 June 2022, Rome), p.24

Then there are further coordinating bodies such as Interpol, Europol, the European Anti-Fraud Office - OLAF⁴⁴³, the Antimafia Operational Network - @ON Network and the European Multidisciplinary Platform Against Criminal Threats - EMPACT⁴⁴⁴, just to mention a few.

The problem is that these tools do not yet have the power to be truly incisive, because they pursue a criminal activity that is always several steps ahead of law enforcement. And above all, it is necessary to act within the framework of coordinated, wide-ranging judicial initiatives, and not to limit oneself to a single country or a single activity carried out there by ethnic OCGs. (Expert n.9)

(...) we have tools, but it does not mean that they are enough, we need to refine more and more the types of response at a technical level and the capacities to respond to these new challenges. (Expert n.3)

(...) there is good cooperation, but some aspects could be improved. For example, the exchange of information should be faster, especially during ongoing investigations, because sometimes one can wait months before getting information. (Expert n.8)

Many more steps in the area of cooperation are needed if member states are truly aware of the proliferation of ethnic OCGs and the threat they pose, otherwise, all cooperation instruments will remain empty shells.

⁴⁴³ <https://eur-lex.europa.eu/IT/legal-content/summary/european-anti-fraud-office-olaf.html>

⁴⁴⁴ EMPACT è diventato uno strumento permanente nella lotta alla criminalità organizzata e alle forme gravi di criminalità. Stati membri, agenzie e altri partner dell'UE collaborano strettamente nel quadro di questa piattaforma per far fronte a importanti minacce criminali mediante azioni operative congiunte volte a smantellare le reti criminali, le loro strutture e i loro modelli economici. (Expert n.7)

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Conclusion

Summary: 1. Introduction; 2. Born and spread of a new threat to national and international security; 3. Ethnic Organised Crime Groups; 4. Countermeasures adopted by EU Member States; 5. Difficulties in Counteracting Ethnic OCGs. Reform Perspectives

1. Introduction

At the end of this research project, it is appropriate to retrace the coordinates from which it started in order to make a summary argument of the results.

The starting point of this research, as with any other research, is a question that needs a research process to be analysed. The research question of this dissertation is assessing whether the legislative and operational measures adopted by EU Member States are adequate to counter Ethnic OCGs (specifically the Nigerians, the Chinese, and the Albanians). The subject of the research was, therefore, the contrast to ethnic OCGs, and the aspect which needed to be analysed was the applicability of measures specifically tailored to local European-based OCGs. For the purpose of this study, applicability means concrete capacities of counteracting and weakening ethnic OCGs.

In order to answer the question, two aspects had to be analysed two preliminary aspects. First, to study the characteristics - in terms of structures, excursus, modi operandi, illegal activities, etc. - of ethnic OCGs. Second, to map and compare the main legislative and operational measures taken by the Member States to combat OCGs. Only through the analysis of these two preliminary aspects was it possible to answer the research question and to formulate, as the final objective, changes and additions to make these measures effective. For this purpose, several qualitative research methods were applied, above all semi-structured interviews.

2. Born and spread of a new threat to national and international security

Chapter I of this dissertation focuses on OCGs and it has both explanatory and descriptive objectives.

The chapter introduces the topic by analyzing the presence and spread of OCGs in Europe and around the world and presenting the distinction between local and European-based groups and ethnic OCGs (in particular, Nigerians, Chinese, and Albanians are considered for the purpose of this research) (first section). It also introduces the topic of law enforcement measures adopted over the years by Member States that are tailored to local OCGs.

Then the chapter presents the research question and the preliminary aspects to be analyzed in order to answer it later on (second section).

After that, the chapter defines the terminological framework in which the research project moves through the conceptualization of key terms. In particular, the following concepts are delineated: organised crime, criminal organisation, ethnic OCGs, legislation to combat OCGs, and operational measures (third section).

Thus, the chapter focuses on the different methodologies adopted to answer the research question, explaining the different methodologies adopted in social sciences, and then focusing specifically on the qualitatives adopted.

In particular, with regard to qualitative research methods, multiple ones have been adopted: ethnographic research, analysis of the existent literature, semi-structured interviews with experts, and analysis of case studies as examples mainly presented by experts. These methods were used to understand the origin and spread of ethnic OCGS

and the difficulties in countering it. In particular, interviews with experts (researchers, police executives, carabinieri, judges, etc.) were used to gather first-hand information from people personally engaged at apical levels of analysis and law enforcement of the phenomenon.

Qualitative research methods were used also to collect data on the receipt or non-receipt of Framework Decision 841/2008 - i.e., the most important legislative tool for combating organized crime in Europe. In particular, the transposition/non-transposition had been processed by analysing the existing legislation of each Member. So, state data numbers were collected on the reception of Articles 1,2,3,4,7,8 of the mentioned legislation and statistically elaborated. (fourth section)

3. Ethnic Organised Crime Groups

Chapter II of this dissertation focuses on Ethnic Organised Crime Groups. The first aspect analysed is the spread of ethnic OCGs alongside the local and European-based ones in order to define the topic of the research and understand the reasons why they represent a threat to Member States and the security of Europe (first section).

Then, it focuses specifically on the ethnic OCGS studied in this research project: Nigerian, Chinese and Albanian. The Nigerians OCGs were born in Nigeria as a consequence of the fragility of state institutions, the almost total absence of legislation to combat organised crime, the difficulties of law enforcement agencies, civil wars, ethnic conflicts, and secessionist movements. They are linked with the phenomenon of cults and brotherhood and they are organised according to different operational models. Furthermore, there is a huge diffusion of esoterism – mainly linked with the powers of *jùjù*. Nigerian OCGs manage several illicit activities in Europe thanks to: the

geographical position of Nigeria, the gap in investigative bodies, and the establishment of Nigerian citizens in MS. Overall, the main illicit activities carried on by Nigerian OCGs are trafficking in human beings for sexual and labour exploitation and drug trafficking. (section 2.1)

The Chinese OCGs originated in China from the activities of secret societies and they are characterized by the hierarchical structure, the respect for several rules, and the fragmentation of functions between members. They are guided by the *guanxi*. It represents a cultural model, a traditional system of social relations that unites people and it is based on mutual obligations and favours, family bonds, or commercial interests. Overall, the main illicit activity carried on by Chinese OCGs is reinvested large amounts of mostly illicit money. (section 2.2)

The Albanian OCGs spread in Europe after the collapse of the Soviet bloc and the subsequent crisis in the Balkans. They are clan-type, family-based and predominantly autochthonous. The Albanian-organised criminal groups refer to the ancient organisation of Albanian society regulated by the *Kakun*. The rules of the *Kakun* identify a community in which the main nucleus is a sort of extended family in which it is mandatory to respect the rules of the head of the family and in which private revenge is considered an instrument to defend the family itself. Overall, the main illicit activities carried on by Albanian OCGs are drug trafficking, arms trafficking human trafficking and exploitation of prostitution. (section 2.3)

Finally, this chapter focuses on the relations between ethnic OCGs and other OCGs. It emphasizes the evolution of the relationship from a phase of confrontation, which then became coexistence, and finally a cooperative relationship. In addition, it highlights the points of contact between ethnic OCGs and terroristic groups defined as

crime-terror nexus that is expressed according to different organizational patterns. (sections 3 and 4)

4. Countermeasures adopted by EU Member States

Chapter III of this dissertation focuses on the countermeasures adopted by EU Member States to counter OCGs.

The main legal provisions adopted at European and international levels on this topic are the 1997 EU Action Plan to Combat Organised Crime, the EU Joint Action on making participation in a criminal organisation a criminal offence in the EU Member States of the 21st of December 1998, the Palermo Convention of 2000 and finally the Council Framework Decision 841/2008. (first section)

Then, the chapter focuses specifically on the provisions introduced by the sub-mentioned Framework Decision because it represents the main and most pregnant instruments of international law that pursue the objective of harmonising national legislation in the fight against organised crime. It analyses specifically Article 1 titled 'Criminal organisation', Article 2 titled 'Offences relating to participation in a criminal organisation', Article 3 titled 'Penalties', Article 4 titled 'Special Circumstances or exemption/reduction of penalties for offences relating to participation in a criminal organisation', Article 7 titled 'jurisdiction', and Article 8 titled 'absence of a requirement of a report or accusation by victims'. For each of these articles, the characterizing elements, transposition or non-transposition in the Member States were explored by analysing the legislation of each and examining the main critical points. (Second section)

Finally, the chapter focuses on the operational tools used by member states to combat OCGs, as the proliferation of ethnic OCGs with their characteristics raises questions about the applicability of these tools. In particular, the section focuses on interception of

communications, undercover operations, informants, and joint investigation teams, as these are the main tools used to effectively combat criminal groups, according to the experts interviewed. (Third section)

5. Difficulties in Counteracting Ethnic OCGs. Reform Perspectives

Chapter IV of this dissertation addresses the difficulties in combating ethnic OCGs and presents perspectives for reform, using qualitative research methods, mainly expert interviews. (Section 1)

From a legislative point of view, the main difficulty lies in the elements required to identify a criminal organisation as a mafia-like association and, overall, in the problem of recognising an ethnic OCG's control over an area. Moreover, it is difficult to define the modus operandi of any ethnic OCG, as it may be very different from the modus operandi of local and European OCGs. (Section 2)

From an operational point of view, this research project focuses on the difficulties associated with the need to find interpreters who can translate Chinese or Nigerian dialects, the cultural closure of these communities and the risk of disloyal interpreters. (Section 3) Difficulties associated with the spread of new technologies – e.g. Sky ECC – used by ethnic OCGs to carry out various illegal activities. (Section 4) Difficulties related to the lack of specific knowledge in Member States about the phenomenon and the recognition of the threat to security only at a later stage of the phenomenon. (Section 5) And finally, the difficulties related to cooperation with third countries, especially China, but also Nigeria. (Section 6) All these operational difficulties have been highlighted to illustrate the risk that the operational measures analysed in Chapter 3 are not applicable in the fight against ethnic OCGs.

Having gone through all the stages of this research, this study concludes with the formulation of suggestions to make the contrast to ethnic OCGs effective. The tip is to intervene in the countermeasures taken by EU Member States, focusing particularly on the following: collaborators of justice, knowledge inclusion and legalisation, financial investigations and international cooperation. (Section 7)

Ethnic OCGs pose a widespread security threat. The sooner member states become aware of this, the sooner they can take the necessary countermeasures to deal with them effectively. In doing so, they can take an example from those who have recognised the danger before others.

Annex A

For the purpose of this research work, several Experts have been contacted and then interviewed. The experts have been identified by referring to persons who work, with different roles (prosecutors, researchers, police officers) in activities aimed at counteracting ethnic OCGs.

Expert Number	Institution	Record	In Person
1	Judge	Yes	Yes
2	Antimafia Investigative Direction	Yes	Yes
3	Central Direction of Police Prevention (DCPP – Polizia di Stato)	Yes	Yes
4	Polizia di Stato (Deputy Commissioner)	Yes	Yes
5	Center for International Studies (Rome)	Yes	Yes
6	Presidency of the Council of Ministers	No	Yes
7	Presidency of the Council of Ministers	No	Yes
8	Guardia di Finanza	No (written answers to all the questions)	No
9	Guardia di Finanza	No (written answers to all the questions)	No
10	Presidency of the Council of Ministers	No	Yes
11	Presidency of the Council of Ministers	No	Yes
12	Presidency of the Council of Ministers	No	Yes

The interviews reported in the table have been used in several parts of this research project. Other six interviews have been asked for but the experts declined the request. Finally, other four interviews were done (2 researchers, one person from Polizia di Stato

and one person from Carabinieri) but the information gathered was not useful in answering the proposed research questions.

Annex B

Ethnic Organised Crime Groups: Assessing Countermeasures Adopted by EU Member States

I gruppi criminali organizzati di matrice etnica:
valutazione delle contromisure adottate dagli stati dell'Unione Europea

Traccia di intervista per comprendere le caratteristiche dei gruppi criminali organizzati di matrice etnica e per valutare le contromisure adottate dagli stati dell'Unione Europea. Lo scopo è analizzare punti di forza e punti di debolezza del sistema, fornendo suggerimenti per implementarlo.

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INFORMAZIONI GENERALI

Prima di iniziare l'intervista, Le chiedo se può indicare:

Istituzione di appartenenza	
Posizione	
Esperienza nel contrasto alla criminalità organizzata di matrice etnica	

Può indicare tra i seguenti gruppi di criminalità organizzata di matrice etnica, quali sono stati oggetto della Sua attività negli ultimi 5/10 anni?

Organizzazioni criminali albanesi	
Organizzazioni criminali cinesi	
Organizzazioni criminali nigeriani	

Allo scopo dell'intervista, con il termine "organizzazione criminale" si fa riferimento alla definizione contenuta nella Decisione Quadro 841/2008 contro la criminalità organizzata adottata dal Consiglio, tesa a identificare un comune standard europeo a cui gli stati membri si devono uniformare.

Art. 1 "organizzazione criminale" indica un'associazione strutturata di più di due persone stabilita da tempo, che agisce in modo concertato allo scopo di commettere reati punibili con una pena privativa della libertà o con una misura di sicurezza privativa della libertà non inferiore a quattro anni o una pena più grave per ricavarne, direttamente o indirettamente, un vantaggio finanziario o un altro vantaggio materiale; "associazione strutturata" indica un'associazione che non si è costituita fortuitamente per la commissione estemporanea di un reato e che deve necessariamente prevedere ruoli formalmente definiti per i suoi membri, continuità nella composizione o una struttura articolata.

Nel fornire le risposte alle domande delle sezioni seguenti, Le chiedo di fare riferimento ai gruppi criminali organizzati etnici (nigeriani e/o cinesi e/o albanesi) che sono stati/sono oggetto del Suo studio/lavoro/esperienza. *Le domande di seguito riportate vanno considerate solo come una indicazione di massima.*

1. CARATTERISTICHE DELLE ORGANIZZAZIONI CRIMINALI DI TIPO ETNICO

Quali sono le organizzazioni criminali di matrice etnica maggiormente diffuse in Italia?
Quali sono le caratteristiche specifiche che differenziano organizzazioni criminali etniche dalle cd. mafie tradizionali?

Quale rapporto è stato osservato (subordinazione, coordinazione, esclusione, ecc.) tra le organizzazioni criminali etniche e quelli tradizionali?

2. STRUMENTI LEGISLATIVI PER IL CONTRASTO AI GRUPPI CRIMINALI ETNICI

Ritiene che gli strumenti legislativi adottati a livello nazionale per il contrasto alla criminalità organizzata siano sufficienti/adeguati a contrastare anche le organizzazioni criminali di matrice etnica?

Ritiene che gli strumenti legislativi adottati a livello europeo per il contrasto alla criminalità organizzata siano sufficienti/adeguati a contrastare anche le organizzazioni criminali di matrice etnica?

Quale ritiene potrebbe essere un modello legislativo efficace da seguire?

3. VALUTAZIONE DEL CONTRASTO AI GRUPPI CRIMINALI ETNICI

Quali ritiene siano le difficoltà concrete nelle attività di contrasto delle organizzazioni criminali di matrice etnica?

Ritiene che ci sia una efficace cooperazione ed armonizzazione legislativa a livello europeo?

Come valuta la normativa italiana (artt. 416 e 416-bis C.P.)?

Annex C

Member State	Relevant legislation
<p>Austria</p>	<p>Section 278 Criminal Code</p> <p>(1) A person who founds a criminal association or participates in such an association as member is to be sentenced to imprisonment up to three years.</p> <p>(2) A criminal association is an union planned for a longer time of more than two persons aiming the commitment of one or more crimes by one or more members of the association, other considerable acts of violence against life and limb, not only petty damages to property, thefts or frauds or misdemeanours under sects. 165, 177b, 223 to 239, 304 or 307 or under sects. 104 or 105 of the Aliens Act.</p> <p>(3) As member participates in a criminal association who commits a criminal offence within the scope of its criminal orientation or participates in its activities by providing for information or assets or in another way with the awareness that he promotes thereby the association or its criminal acts.</p> <p>(4) If the association did not lead to a criminal offence in the planned way no member shall be punished if the association dissolves itself voluntarily or it results from its conduct that it has given up its plan voluntarily. Furthermore a person shall not be punished for criminal association who withdraws voluntarily from the association before an offence in the planned way has been committed or attempted; but a person who participated in the association in a leading position only in case he effects by an information of the authority (sect.151 para. 3) or in another way that the danger is removed which arises from the association.</p>
<p>Belgium</p>	<p>Section 324 bis Criminal Code</p> <p>Constitue une organisation criminelle l'association structurée de plus de deux personnes, établie dans le temps, en vue de commettre de façon concertée, des crimes et délits punissables d'un emprisonnement de trois ans ou d'une peine plus grave, pour obtenir, directement ou indirectement, des avantages patrimoniaux.</p> <p>Une organisation dont l'objet réel est exclusivement d'ordre politique, syndical, philanthropique, philosophique ou religieux ou qui poursuit exclusivement tout autre but légitime ne peut, en tant</p>

	<p>que telle, être considérée comme une organisation criminelle au sens de l'alinéa 1er.</p> <p>Section 324ter Criminal Code</p> <p>(1) Lorsque l'organisation criminelle utilise l'intimidation, la menace, la violence, des manoeuvres frauduleuses ou la corruption ou recourt à des structures commerciales ou autres pour dissimuler ou faciliter la réalisation des infractions, toute personne qui, sciemment et volontairement, en fait partie, est punie d'un emprisonnement d'un an à trois ans et d'une amende de cent euros à cinq mille euros ou d'une de ces peines seulement, même si elle n'a pas l'intention de commettre une infraction dans le cadre de cette organisation ni de s'y associer d'une des manières prévues par les articles 66 à 69.</p> <p>(2) Toute personne qui participe à la préparation ou à la réalisation de toute activité licite de cette organisation criminelle, alors qu'elle sait que sa participation contribue aux objectifs de celle-ci, tels qu'ils sont prévus à l'article 324bis, est punie d'un emprisonnement de un an à trois ans et d'une amende de cent euros à cinq mille euros ou d'une de ces peines seulement.</p> <p>(3) Toute personne qui participe à toute prise de décision dans le cadre des activités de l'organisation criminelle, alors qu'elle sait que sa participation contribue aux objectifs de celle-ci, tels qu'ils sont prévus à l'article 324bis, est punie de la réclusion de cinq ans à dix ans et d'une amende de cinq cent euros à cent mille euros ou d'une de ces peines seulement.</p> <p>(4) Tout dirigeant de l'organisation criminelle est puni de la réclusion de dix ans à quinze ans et d'une amende de mille euros à deux cent mille euros ou d'une de ces peines seulement.</p>
<p>Bulgaria</p>	<p>Section 93</p> <p>[...]</p> <p>(20) An "organized criminal group" is the permanent structured association of three or more individuals intended for the agreed perpetration, inside the country or abroad, of crime punishable by imprisonment of more than three years. An association shall also be considered structured in the absence of any formal distribution of functions among its participants, duration of their involvement or any developed internal structure. [...]</p> <p>Section 321 Criminal Code</p> <p>A person who forms or leads an organized criminal group, shall be punished by deprivation of liberty for three to five years.</p> <p>(2) A person who takes part in such a group shall be punished by deprivation of liberty for one to six years.</p>

	<p>(3) Where the group is armed, or formed with self – interested motives or for the purposes of performing crimes under articles 142, 142a, 143a, 243, 244, 253, 280, 337, 339, par. 1 – 4 and 354a, par. 1 and 2, 354b, par. 1-4 or an official takes part in it, the punishment shall be:</p> <p>1. under paragraph (1) - deprivation of liberty for five to fifteen years;</p> <p>2. under paragraph (2) - deprivation of liberty for three to ten years.</p> <p>(4) A member of the group shall not be penalised, provided he gives himself up voluntarily to the authorities and discloses everything that may be of his knowledge about the group, before the commitment of a crime by such person or by the group.</p> <p>(5) A member of the group who gives himself voluntarily to the authorities and discloses everything of his knowledge about the group, thus facilitating the detection and proof of crimes committed by the group, shall be penalised pursuant to Article 55.</p> <p>(6) Anyone who agrees with one or more individuals to commit, in this country or abroad, crimes punishable by deprivation of liberty of more than three years and that pursue the aim of supplying a material benefit or the exertion of illegal influence over the operations of a competent authority or the local government, shall be punished by deprivation of liberty of up to six years.</p>
<p>Croatia</p>	<p>Section 327 Criminal Code</p> <p>(1) Whoever conspires with another to commit a criminal offence for which a punishment of imprisonment exceeding three years may be imposed under the law shall be punished by imprisonment not exceeding three years.</p> <p>(2) A perpetrator who uncovers the conspiracy referred to in paragraph 1 of this Article before the agreed upon criminal offence is committed may have his/her punishment remitted.</p> <p>Section 328 Criminal Code</p> <p>(1) Whoever organises or directs a criminal association shall be punished by imprisonment from six months to five years.</p> <p>(2) Whoever participates in the association referred to in paragraph 1 of this Article but has not as yet committed any criminal offence for this association, or whoever carries out an act which in itself does not constitute a criminal offence but which he or she knows furthers the goal of a criminal association, or whoever financially or otherwise supports a criminal association shall be punished by imprisonment not exceeding three years.</p> <p>(3) The perpetrator of a criminal offence referred to in paragraph 1 or 2 of this Article who by timely disclosure of a criminal association prevents the commission of any of the criminal offences set forth in paragraph 4 of this Article or a member of a criminal association who discloses a criminal association before</p>

	<p>committing, as its member or on its behalf, any of the criminal offences set forth in paragraph 4 of this Article may have his or her punishment remitted.</p> <p>(4) A criminal association shall be made up of three or more persons acting in concert with the aim of committing one or more criminal offences that are punishable with imprisonment for a term longer than three years and shall not include an association randomly formed for the immediate commission of one criminal offence.</p>
Cyprus	<p>Section 63a Criminal Code</p> <p>(1) Any person who participates in a criminal organization is guilty of an offence and in case of conviction is liable to three years imprisonment.</p> <p>Section 63b Criminal Code</p> <p>(1) Whoever, having knowledge of the unlawful purpose or activities of a criminal organisation:</p> <p>(a) participates in any operation involved in any illegal act or criminal organisation;</p> <p>(b) engages in any act of a criminal organisation, of which it should reasonably have been known that it is in any way connected with the commission of a criminal offence shall be guilty of a felony punishable by imprisonment for up to ten years or a fine of up to fifty thousand pounds, or to both such penalties.</p> <p>(2) The court may also judge offences covered by subsection (1) of this Article where the criminal organisation is situated or operating wholly or partly outside the Republic.</p> <p>(3) A criminal organisation means a structured group of three or more persons established and operated for the purpose of committing criminal offences punishable by a maximum sentence of at least three years.</p>
Czech Republic	<p>Section 129 Criminal Code</p> <p>An organised criminal group is a community of multiple persons with an inner organisational structure, division of functions and activities, aimed at systematic commission of criminal activities</p> <p>Section 361 Criminal Code</p> <p>(1) Any person who establishes an organised criminal association, who participates in the activities of an organised criminal association, or who supports an organised criminal association shall be punished by the deprivation of liberty for two to ten years or with the forfeiture of property.</p> <p>(2) The perpetrator shall be punished by the deprivation of liberty for three to twelve years or the forfeiture of property if he commits</p>

	<p>the act specified in paragraph 1 in relation to an organised criminal association designed for or focused on the commission of treason (Sec. 309), terrorist attack (Sec. 311) or terror (Sec. 312).</p> <p>(3) The perpetrator shall be punished by the deprivation of liberty for five to fifteen years or the forfeiture of property if he is a leader or representative of an organised criminal association designed for or focused on the commission of treason (Sec. 309), terrorist attack (Sec. 311) or terror (Sec. 312).</p> <p>(4) The provisions of Sec. 107 and 108 shall not apply with respect to a perpetrator referred to in paragraphs 1 to 3.</p>
Estonia	<p>Section 255 Criminal Code</p> <p>Membership in a permanent organisation consisting of three or more persons who share a distribution of tasks, created for the purpose of proprietary gain and whose activities are directed at the commission of criminal offences in the second degree for which the maximum term of imprisonment of at least three years is prescribed, or criminal offences in the first degree, is punishable by 3 to 12 years' imprisonment.</p> <p>Section 256 Criminal Code</p> <p>(1) Forming or leading of or recruiting members to a criminal organisation is punishable by 5 to 15 years' imprisonment. [...]</p>
Finland	<p>Chapter 17 section 1(a) Criminal Code</p> <p>(1) A person who</p> <ol style="list-style-type: none"> (1) by establishing or organising a criminal organisation or by recruiting or attempting to recruit persons for it, (2) by equipping or attempting to equip a criminal organisation with explosives, weapons, ammunition or with materials or equipment intended for their production or with other dangerous supplies or materials, (3) by arranging, attempting to arrange or providing a criminal organisation training for criminal activity, (4) by obtaining, attempting to obtain or providing a criminal organisation premises or other facilities needed by it or means of transport or other equipment that is particularly important for the organisation, (5) by directly or indirectly giving or collecting funds to finance the criminal activity of a criminal organisation, (6) by managing financial affairs that are important for the criminal organisation or by giving financial or legal advice that is particularly important for the organisation or

	<p>(7) by actively promoting the accomplishment of the aims of a criminal organisation in another substantial manner</p> <p>participates in the activities of a criminal organisation with the aim of committing one or more offences for which the maximum statutory sentence is imprisonment for at least four years or one or more of the offences referred to in chapter 11, section 10 or chapter 15, section 9, and if such an offence or its punishable attempt is committed, shall be sentenced for <i>participating in the activity of a criminal organisation</i> to a fine or imprisonment for at most two years. (511/2011)</p> <p>(2) What is provided above in subsection 1(6) regarding legal advice does not apply to the performance of the duties of legal counsel or representative in connection with the pre-trial investigation or court proceedings regarding an offence or the enforcement of a sentence.</p> <p>(3) What is provided in subsection 1 does not apply if an equally or more severe penalty is provided elsewhere in law for the act.</p> <p>(4) A criminal organisation refers to a structured association, established over a period of time, of at least three persons acting in concert to commit the offences referred to in subsection 1.</p>
<p>France</p>	<p>Section 450-1 Criminal Code</p> <p>A criminal association consists of any group formed or any conspiracy established with a view to the preparation, marked by one or more material actions, of one or more felonies, or of one or more misdemeanours punished by at least five years' imprisonment. Where the offences contemplated are felonies or misdemeanours punished by ten years' imprisonment, the participation in a criminal association is punished by ten years' imprisonment and a fine of €150,000.</p> <p>Where the offences contemplated are misdemeanours punished by at least five years' imprisonment, the participation in a criminal association is punished by five years' imprisonment and a fine of €75,000.</p>
<p>Germany</p>	<p>Section 30 Criminal Code</p> <p>(1) A person who attempts to induce another to commit a felony or abet another to commit a felony shall be liable according to the provisions governing attempted felonies. The sentence shall be mitigated pursuant to section 49 (1). Section 23 (3) shall apply mutatis mutandis.</p> <p>(2) A person who declares his willingness or who accepts the offer of another or who agrees with another to commit or abet the commission of a felony shall be liable under the same terms.</p> <p>Section 129 Criminal Code</p>

	<p>Whosoever forms an organisation the aims or activities of which are directed at the commission of offences or whosoever participates in such an organisation as a member, recruits members or supporters for it or supports it, shall be liable to imprisonment not exceeding five years or a fine. (...)</p>
<p>Greece</p>	<p>Section 187 Criminal Code</p> <p>1. A sentence of imprisonment of up to ten years is imposed to any person who sets up or is included as member in a structured group with continuous activity, made up of three or more persons (organisation) and seeks to commit felonies provided for by articles 207 (forgery), 208 (circulation of forged money), 216 (falsification), 218 (falsification and abuse of stamps), 242 (false testimony, adulteration), 264 (arson), 265 (arson to forests), 268 (flood), 270 (explosion), 272 (violations relating to explosive materials), 277 (sinking of ship), 279 (poisoning of springs and food), 291 (disturbance of safety of trains, ships and aircrafts), 299 (intentional murder), 310 (gross physical injury), 322 (abduction), 325 (slave trafficking), 324 (abduction of minors), 327 (involuntary kidnapping), 336 (rape), 338 (abuse to lechery), 339 (child seduction), 374 (gross cases of theft), 375 (defalcation), 380 (robbery), 385 (extortion), 386 (fraud), 386A (computer fraud), 404 (usury), as well as felonies provided for in the legislation on narcotics, weapons, explosive materials and protection from materials emitting radiation harmful to people.</p> <p>2. Any person who, by threat or use of force against judicial functionaries, interrogating or judicial servants, witnesses, Experts and interpreters or by bribe to the said persons, attempts to cancel the discovery or prosecution and punishment of the offences of the previous paragraph, is punished by imprisonment of at least one year.</p> <p>3. Any person who, apart from the cases of paragraph 1, joins another person to commit a felony (gang) is punished by imprisonment of at least six months. The culprit is punished by imprisonment of at least three months if the joining under the previous sentence was carried out to commit a misdemeanour, punished by imprisonment of at least one year, by which financial or other material gain or damage to life, physical integrity or sexual freedom are sought.</p> <p>4. The manufacture, supply or possession of weapons, explosive materials and chemical or biological materials or materials emitting radiation harmful to people, aiming at serving the purposes of the organisation of paragraph 1 or the gang of paragraph 3 or the pursuit of financial or other material gain of their members are aggravating circumstances. The non commission of any of the sought crimes of</p>

	<p>paragraphs 1 and 3 are extenuating circumstances. The simply mental complicity to the crimes of formation or participation under paragraph 1 or gang under paragraph 3 is not punished if the members of the organisation or the gang do not seek financial or other material gain.</p> <p>5. The provisions of the present article are also applicable when the punishable actions provided for hereby were committed abroad by a Greek citizen or were made against a Greek citizen or legal entity with registered offices in Greece or against the Greek state, even if they are not punishable under the laws of the country in which they were committed. (...)</p>
Hungary	<p>Section 321 Criminal Code</p> <p>(1) Any person who instigates, suggests or offers, or joins or collaborates to engage in criminal activities in the framework of a criminal organization, or who provides the means intended to be used for such activities, or supports the activities of the criminal organization in any other manner is guilty of felony punishable by imprisonment between one to five years. [...]</p> <p>Section 459 Criminal Code</p> <p>(1) For the purposes of this Act: 1. ‘criminal organization’ shall mean when a group of three or more persons collaborate in the long term to deliberately engage in an organized fashion in criminal acts, which are punishable with five years of imprisonment or more; (...)</p>
Ireland	<p>Criminal Justice Act of 2006 - Section 72</p> <p>(1) A person is guilty of an offence if, with knowledge of the existence of the organisation referred to in this subsection, the person participates in or contributes to any activity (whether constituting an offence or not)</p> <p>(a) intending either to</p> <p>(i) enhance the ability of a criminal organisation or any of its members to commit, or</p> <p>(ii) facilitate the commission by a criminal organisation or any of its members of,</p> <p>a serious offence, or</p> <p>(b) being reckless as to whether such participation or contribution could either</p> <p>(i) enhance the ability of a criminal organisation or any of its members to commit, or</p> <p>(ii) facilitate the commission by a criminal organisation or any of its members of, a serious offence.</p>

	<p>(2) A person guilty of an offence under this section shall be liable on conviction on indictment to a fine or imprisonment for a term not exceeding 15 years or both.</p> <p>Criminal Justice Act of 2006 - Section 70</p> <p>Criminal organisation means a structured group, however organised, that is composed of 3 or more persons acting in concert, is established over a period of time, has as its main purpose or main activity the commission or facilitation of one or more serious offences in order to obtain, directly or indirectly, a financial or other material benefit.</p> <p>(...) 'serious offence' means an offence for which a person may be punished by imprisonment for a term of 4 years or more.</p> <p>'structured group' means a group of 3 or more persons, which is not randomly formed for the immediate commission of a single offence, and the involvement in which by 2 or more of those persons is with a view to their acting in concert; for the avoidance of doubt, a structured group may exist notwithstanding the absence of all or any of the following:</p> <p>(a) formal rules or formal membership, or any formal roles for those involved in the group;</p> <p>(b) any hierarchical or leadership structure;</p> <p>(c) continuity of involvement by persons in the group.</p>
<p>Italy</p>	<p>Section 416 Criminal Code</p> <p>When three or more persons conspire with a view to committing offences, those who initiate or form or organise the association will be punishable, on that account alone, by imprisonment for a term of three to seven years.</p> <p>Those who participate in the association will be punishable, on that account alone, by imprisonment for a term of one to five years.</p> <p>The leaders will be liable to the same penalty as that established for the promoters.</p> <p>Where the members bear weapons in the countryside or on the public highway, they will be liable to imprisonment for a term of five to fifteen years.</p>
<p>Latvia</p>	<p>Section 21 Criminal Code</p> <p>(1) An organised group is an association formed by more than two persons, which has been created for purposes of jointly committing criminal offences or serious or especially serious crimes and whose participants in accordance with previous agreement have divided responsibilities.</p>

	<p>(2) Liability of a person for the commission of an offence within an organised group shall apply in the cases set forth in this Law for formation and leadership of a group, and for participation in preparation for a serious or especially serious crime or in commission of a criminal offence, irrespective of the role of the person in the jointly committed offence.</p> <p>Section 89.1 Criminal Code</p> <p>(1) For a person who commits the establishment of such a criminal organisation (association), in the composition of which are at least five persons, for the purpose of committing especially serious crimes against humanity or peace, war crimes, to commit genocide or to commit especially serious crimes against the State, as well as for involvement in such an organisation or in an organised group included within such organisation or other criminal formation, the applicable punishment is deprivation of liberty for a term of not less than eight and not exceeding seventeen years, with or without confiscation of property and with or without probationary supervision for a term not exceeding three years.</p> <p>(2) For a person who commits the leading of a criminal organisation or participates in the committing of the crimes provided for in Paragraph one of this Section by such an organisation, the applicable punishment is life imprisonment or deprivation of liberty for a term of not less than ten and not exceeding twenty years, with or without confiscation of property and with probationary supervision for a term not exceeding three years.</p>
<p>Lithuania</p>	<p>Section 25 Criminal Code</p> <p>(4) A criminal association shall be one in which three or more persons linked by permanent mutual relations and division of roles or tasks join together for the commission of a joint criminal act - one or several serious and grave crimes. An anti-state group or organisation and a terrorist group shall be considered equivalent to a criminal association.</p> <p>Section 249 criminal Code</p> <p>(1) A person who participates in the activities of a criminal association shall be punished by imprisonment for a term of three up to fifteen years.</p> <p>(2) A person who participates in the activities of a criminal association armed with firearms, explosives or explosive materials shall be punished by imprisonment for a term of six up to twenty years or by life imprisonment.</p> <p>(3) A person who organises the criminal associations provided for in paragraph 1 or 2 of this Article or is the leader thereof shall be punished by imprisonment for a period of ten up to twenty years or by life imprisonment.</p>

	<p>(4) A legal entity shall also be held liable for the acts provided for in this Article.</p>
Luxemburg	<p>Section 324 bis Criminal Code</p> <p>Constitue une organisation criminelle, l'association structurée de plus de deux personnes, établie dans le temps, en vue de commettre de façon concertée des crimes et délits punissables d'un emprisonnement d'un maximum d'au moins quatre ans ou d'une peine plus grave, pour obtenir, directement ou indirectement, des avantages patrimoniaux.</p> <p>Section 324 ter Criminal Code</p> <p>(1) Toute personne, qui volontairement et sciemment, fait activement partie de l'organisation criminelle visée à l'article précédent, est punie d'un emprisonnement de deux ans à cinq ans et d'une amende de 2.500 euros à 12.500 euros, ou d'une de ces peines seulement, même si elle n'a pas l'intention de commettre une infraction dans le cadre de cette organisation ni de s'y associer comme auteur ou complice.</p> <p>(2) Toute personne, qui participe à la préparation ou à la réalisation de toute activité licite de cette organisation criminelle, alors qu'elle sait que sa participation contribue aux objectifs de celle-ci, tels qu'ils sont prévus à l'article précédent, est punie d'un emprisonnement d'un à trois ans et d'une amende de 2.500 euros à 12.500 euros, ou d'une de ces peines seulement.</p> <p>(3) Toute personne qui participe à toute prise de décision dans le cadre des activités de l'organisation criminelle, alors qu'elle sait que sa participation contribue aux objectifs de celle-ci, tels qu'ils sont prévus à l'article précédent, est punie de la réclusion de cinq à dix ans et d'une amende de 12.500 euros à 25.000 euros ou d'une de ces peines seulement.</p> <p>(4) Tout dirigeant de l'organisation criminelle est puni de la réclusion de dix à quinze ans et d'une amende de 25.000 euros à 50.000 euros ou d'une de ces peines seulement.</p> <p>(5) Les comportements visés aux points 1 à 4 du présent article qui se sont produits sur le territoire national sont poursuivis selon le droit luxembourgeois quel que soit le lieu où l'organisation criminelle est basée ou exerce ses activités.</p>
Malta	<p>Section 48 A Criminal Code</p> <p>(1) Whosoever in Malta conspires with one or more persons in Malta or outside Malta for the purpose of committing any crime in Malta liable to the punishment of imprisonment, not being a crime in Malta under the Press Act, shall be guilty of the offence of conspiracy to commit that offence.</p>

	<p>(2) The conspiracy referred to in subarticle (1) shall subsist from the moment in which any mode of action whatsoever is planned or agreed upon between such persons.</p> <p>(3) Any person found guilty of conspiracy under this article shall be liable to the punishment for the completed offence object of the conspiracy with a decrease of two or three degrees.</p> <p>(4) For the purposes of subarticle (3), in the determination of the punishment for the completed offence object of the conspiracy account shall be had of any circumstances aggravating that offence.</p> <p>Section 83A Criminal Code</p> <p>Any person who:</p> <p>(a) promotes, constitutes, organises or finances an organization with a view to commit criminal offences liable to the punishment of imprisonment for a term of four years or more; or</p> <p>(b) knowing or having reasonable cause to suspect the aim or general activity of the organization set up for the purpose mentioned in paragraph (a), actively takes part in the organisation's criminal activities, including but not limited to the provision of information or material means or the recruitment of new members, shall be guilty of an offence and shall liable, on conviction, to the punishment of imprisonment for a term from four to nine years.</p> <p>(2) Any person who belongs to an organisation referred to in sub-article (1) shall for that mere fact be liable to the punishment of imprisonment for a term from two to seven years.</p> <p>(3) Where the number of persons in the organisation is ten or more the punishment in the preceding sub-articles shall be increased form one to two degrees.</p>
<p>Netherlands</p>	<p>Section 140 Criminal Code</p> <p>(1) Participation in an organisation which has as its purpose the commission of serious offences, shall be punishable by a term of imprisonment not exceeding six years or a fine of the fifth category.</p> <p>(2) Participation in the continuation of the activities of an organisation that has been declared prohibited by final judicial decision or is prohibited by operation of law or against which an irrevocable declaratory judgment has been pronounced as referred to in Section 10:122(1) of the Civil Code, shall be liable to a term of imprisonment not exceeding one year or a fine of the third category.</p> <p>(3) The terms of imprisonment for founders, directors or managers may be increased by one third.</p> <p>(4) Participation, as defined in subsection (1), shall also include the provision of financial or other material support as well as the raising</p>

	of funds or the recruitment of persons on behalf of the organisation defined in said subsection.
Poland	<p>Section 258 Criminal Code</p> <p>(1) Whoever takes part in an organized group or association aimed at committing a criminal offense or a tax offense, is punishable by imprisonment from 3 months to 5 years.</p> <p>(2) If a group or association referred to in (1) are armed or intended to commit a terrorist offense, the perpetrator is punishable by imprisonment from 6 months to 8 years.</p> <p>(3) Who sets up a group or association referred to in (1), including of an armed character or such a group or association directs, is punishable by imprisonment from one to 10 years.</p> <p>(4) Who sets up group or association aimed at committing a terrorist offense or such a group or compound directs, is punishable by imprisonment for not less than 3 years.</p>
Portugal	<p>Section 299 Criminal Code</p> <p>(1) Who promotes or establishes a group, organization or association whose purpose or activity is directed to the crimes shall be punished with imprisonment from 1 to 5 years.</p> <p>(2) The same penalty applies to anyone who is part of such groups, organizations or associations or those who support them, including providing weapons, ammunition, instruments of crime, custody or places for meetings, or for any aid that recruit new members.</p> <p>(3) Who heads or leads groups, organizations or associations referred to in the preceding paragraphs shall be punished with imprisonment for 2-8 years.</p>
Romania	<p>Section 367 Criminal Code</p> <p>(1) The act of initiating or creating an organized crime group or of joining or supporting such a group in any way shall be punishable by no less than 1 and no more than 5 years of imprisonment and a ban on the exercise of certain rights.</p> <p>(2) When the offenses included in the purpose of an organized crime group are punished by life imprisonment or by a term of imprisonment exceeding 10 years, it shall be punishable by no less than 3 and no more than 10 years of imprisonment and a ban on the exercise of certain rights.</p> <p>(3) If the acts set out in par. (1) and par. (2) were followed by the commission of an offense, the rules on multiple offenses shall apply.</p> <p>(...)</p> <p>(6) An “organized crime group” means a structured group, made up of three or more persons, which exists for a certain period of time and acts in a coordinated manner for the purpose of perpetrating one or more offenses.</p>

<p>Slovakia</p>	<p>Section 11 Criminal Code</p> <p>(1) A ‘crime’ means an intentional offence in respect of which the special part of this Act specifies a penalty of imprisonment with a maximum length exceeding five years.</p> <p>(2) The definition of a ‘crime’ also covers the more serious elements of a misdemeanour committed intentionally, for which a maximum penalty exceeding five years is specified.</p> <p>(3) A crime for which this Act specifies a penalty of imprisonment of at least ten years shall be regarded as a particularly serious crime. [...]</p> <p>Section 129 Criminal Code</p> <p>(4) For the purposes of this Act, a criminal group shall mean a structured criminal association of at least three persons, existing for a certain period of time, acting in a co-ordinated manner with the objective of committing one or more felonies, the criminal offence of legalisation of proceeds of crime pursuant to Section 233, or any of the corruption criminal offences referred to under the Chapter Eight, Title Three of the Special Part of this Act, for the purposes of obtaining, directly or indirectly, a financial benefit or other advantage.</p> <p>(5) For the purposes of this Act, a terrorist group shall mean a structured group of at last three persons existing for a certain period of time with the objective of committing the offences of terror or terrorism.</p> <p>(6) The activity performed for a criminal group or a terrorist group shall mean an intentional participation in such a group, or other intentional actions serving the purpose of</p> <p>a) maintaining the existence of such a group, or</p> <p>b) committing, by such a group, the criminal offences referred to under paragraph 3 or 4.</p> <p>Section 296 Criminal Code</p> <p>Whoever establishes or plots a criminal group, is a member thereof, or acts for or supports a criminal group, shall be punished with a period of imprisonment of between five years and ten years.</p>
<p>Slovenia</p>	<p>Section 126 Criminal Code</p> <p>(15) A criminal association according to this Code is a group of at least three persons who have associated together for commission of</p>

	criminal offences for which a punishment by imprisonment of more than three years may be imposed.
Spain	<p>Section 570 bis Criminal Code</p> <p>1. Whoever promotes, constitutes, organises, co-ordinates or directs a criminal organisation shall be punished with a prison sentence of four to eight years, if it has the purpose or object of committing serious criminal offences, and with a prison sentence of three to six years in other cases; and whoever actively participates in the organisation, forms part thereof or co-operates financially or in any other way therein, shall be punished with a prison sentence of two to five years if its purpose is to commit serious criminal offences, and with a prison sentence of one to three years in other cases.</p> <p>For the purposes of this Code, a criminal organisation is construed to be a group formed by more than two persons, on a stable basis or for an indefinite term, in collusion and co-ordination to distribute diverse tasks or duties in order to commit criminal offences.</p>
United Kingdom	<p>England, Wales - Section 1(1) of the Criminal Law Act 1977</p> <p>(1) Subject to the following provisions of this Part of this Act, if a person agrees with any other person or persons that a course of conduct shall be pursued which, if the agreement is carried out in accordance with their intentions, either</p> <p>(a) will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement, or</p> <p>(b) would do so but for the existence of facts which render the commission of the offence or any of the offences impossible, he is guilty of conspiracy to commit the offence or offences in question.</p> <p>Northern Ireland - Part IV of the Criminal Attempts and Conspiracy Order 1983</p> <p>(1) Subject to the following provisions of this Part, if a person agrees with any other person or persons that a course of conduct shall be pursued which, if the agreement is carried out in accordance with their intentions, either</p> <p>(a) will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement, or</p> <p>(b) would do so but for the existence of facts which render the commission of the offence or any of the offences impossible, he is guilty of conspiracy to commit the offence or offences in question.</p> <p>Scotland – section 28 of the Criminal Justice and Licensing Act of 2010</p>

	<p>1) A person who agrees with at least one other person to become involved in serious organised crime commits an offence.</p> <p>(2) Without limiting the generality of subsection (1), a person agrees to become involved in serious organised crime if the person—</p> <p>(a) agrees to do something (whether or not the doing of that thing would itself constitute an offence), and</p> <p>(b) knows or suspects, or ought reasonably to have known or suspected, that the doing of that thing will enable or further the commission of serious organised crime.</p> <p>(3) For the purposes of this section and sections 29 to 31—</p> <p>“serious organised crime” means crime involving two or more persons acting together for the principal purpose of committing or conspiring to commit a serious offence or a series of serious offences,</p> <p>“serious offence” means an indictable offence—</p> <p>(a) committed with the intention of obtaining a material benefit for any person, or</p> <p>(b) which is an act of violence committed or a threat made with the intention of obtaining such a benefit in the future, and</p> <p>“material benefit” means a right or interest of any description in any property, whether heritable or moveable and whether corporeal or incorporeal.</p> <p>(4) A person guilty of an offence under subsection (1) is liable—</p> <p>(a) on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine or to both,</p> <p>(b) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both.</p>
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