**ECPR General Conference 2014, Glasgow**

**Section**
Understanding and Tackling the Roots of Insecurity: Terrorism, Transnational Organised Crime and Corruption.

**Panel Number P175** Italian Organised Crime: Past, Present and Future

**Paper Title**

**Criminal infiltration in legal economy and corruption: well-established phenomena in Italy and in Europe**

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(DRAFT paper, please do not cite without the authorization of the authors)

**Abstract**

Several studies and institutional analyses (such as, the recent anti-corruption report by European Commission) have recognized the criminal infiltration in legal economy, mainly in public contracts, and corruption as the most serious and widespread problems in many European Countries, especially in Italy. As a result, there is a need to analyze deeply the various operating modes used by OC to tamper with the procedures for the execution of public contacts, with special attention to the various corrupt forms utilized. In this research, we will formulate hypotheses on determinants of the unceasing phenomena. In our reasoning, special analytical attention is devoted to the weaknesses of the administrative practices which guarantee fair methods of public works execution for preventing crime infiltration. Finally, we wonder if an European strategy for combating criminal infiltration in legal economy exists or if a political harmonization among the various Member States for preventing OC is needed.

**Keywords** Criminal infiltration, corruption, public contracts, administrative procedures, policies for fighting OC infiltration.

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1. Introduction

Organised crime and corruption, as highlighted by several reports and analyses, are two of the biggest challenges facing Europe (EU Commission, 2014; EU Parliament 2012 and 2013). In particular, criminal infiltration in legal economy, mainly in public procurements, and corruption in public sectors affect all members states. The findings of the empirical research on these issues, show that these two phenomena are great obstacles to economic development of a country which is considered to be the level of average income. Specifically, corruption has a negative impact also on the growth rate of a state both in direct costs, which affect directly the national economy, and in indirect costs, which compromise the proper functioning of institutions and public administrations. The economic costs incurred by corruption in the EU are estimated to amount to around € 120 billion annually (EU Commission, 2014). A considerable part of such costs is constitute by Italy, where the total amount of direct costs is around € 60 billion per year - roughly 4% of the GDP- (Italian Court of Auditors, in EU Commission, 2014, Annex 12). Instead, the indirect costs result from various factors, such as administrative delays, malfunctioning of public bodies, inefficiency or uselessness of public works or public services, fall of economic investments, and so on. Despite a lack of statistics and data on corruption and on OC crimes in relation to public
procurements, the importance of these phenomena can be understand using estimations and various indicators (Special Committee on Organized Crime, Corruption and Money Laundering, 2012). Considering, for instance, the people perceptions, as shown by Special Eurobarometer survey n. 397 2014: 76 % of European citizens believe that corruption is widespread in their country (Italian average: 97%, second highest percentage in the EU), while 26% of EU citizens say that they are personally affected by corruption in their daily life (Italian average: 42%). 73% of European respondents believe that bribery and the use of connections is often the easiest way to obtain certain public services (Italian average: 88%). Mistrust in public institutions appears to be widespread. According to the same survey, the public offices and sectors most distrusted are: political parties; politicians at national, regional and local levels; officials awarding public tenders and officials issuing building permits (See also, Transparency International, 2013 and Transparency International It., 2012). As well as being widespread, corruption and OC are characterized by actual interrelations. Although they are two individual phenomena, they are so linked especially in reference to the public procurement sector (EU Parliament, 2013). This connection is very little explored by scholars and political advisers, even though it is very important to understand the reality of the facts and to identify an effective counter-strategy. The lack of attention for this connection is due to both the insufficient awareness of the relationships between the two, and the sectionalization of disciplines. And more, comparing the measurements on corruption and the information on OC is very difficult. In fact, the measuring techniques of the two realities are different (Gounev P. and RuggieroV., 2014, p. 21). Despite that, some academics and EU institutions highlight the importance of the link between corruption and OC, often co-existing and interacting when advantageous. (Buscaglia E. and van Dijk J., 2005; Gounev P. and RuggieroV., 2014; EUROPOL, 2009). This link can be considered as a “bridge” which produces opportunities for various actors. For example, OC can utilize corrupt methods in order to expand their relational networks even outside its own criminal group increasing human resources in various economic sectors whether legal or illegal. At the same time, corruption can be used in maintaining a system of power or relations. Hence, the connection between corruption and OC is functional in creating a “gray zone” which constitutes an illegal-legal continuum (see § 3). One of the legal sectors mainly engaged by the two is the execution of public contracts, in particular reference to public works of construction. As a result, the criminal infiltration in public procurements merits attention.

What are the various operating modes used by OC to tamper with the procedures in the execution of public procurements? What corrupt methods are found within? Why does this phenomenon continue? What is the EU’s position in combating it? To answer these questions secondary resources composed by the literature of these fields and other documents, such as reports by national and international institutions, have been utilized.

2. OC modus operandi to infiltrate public procurements

Before analyzing the main issue of this paper, it is important to clarify the meaning of OC adopted for the present research. Without diverting to a thorough exploration of the literature on the definitions of “organised crime” due to its vastness, problematic nature and various approaches, it is solely necessary to establish an understanding in reference to this study. In fact, a common level of understanding among scholars on the meaning and constitution of OC is still missing. This is due to various reasons: (a) several disciplines (such as crime and international law, criminology, IR, sociology,..) deal with OC and discuss its definition according to their specific interests and focus; (b) OC is conceptualized around the world in different ways, using various cultural points of reference; (c) OC is a label that identify and include a whole range of different crimes and groups (Lavorgna A. and Sergi A., 2013; Tenti V., 2012; Fijnaut C. and Paoli L., 2014). Despite that, it’s worth identifying the borders of a OC concept to get a common theoretical point of reference and understanding. In this research, OC is being considered «as a structured and permanent group of individuals who use violence [typical, but not exclusively] to gain profit through criminal activities» (Armao F., 2014, p. 124). Criminal organizations usually achieve their proper aims
using various strategies: for instance, controlling or conquering portions of political power; managing illegal markets or exploiting sections of the legal economy; and/or calling off the civil relationships of solidarity. Although general, this conceptual definition allows to distinguish OC from other kind of groups which use violence as a resource of revenue in and of itself (like military companies) or as a means to gain power (like terrorist groups).

Then, too, it is important to specify the substantial differences existing among various type of criminal organizations in themselves (such as street gangs, mafia, and so on), each one characterized by a specific level of criminal specialization. In this perspective, as suggested by Armao F., OC can be thought of as a broader category (a genus) consisting of various types of groups (species) which peculiarity depend on historical and socio-political context. This conceptual representation includes several kinds of criminal groups which can be laid out on a continuum, starting from “organised crime” thought of as a combination of individuals who commit a series of felonies; then proceeding on to “crime syndicates” as well-structured groups which aim to profit economically; and, at the end of this climax, mafia groups that are the most specialized criminal organizations which seek also political control of the territory (Armao F., 2003, pp. 25-27).

Although so different, mafias and criminal groups often closely cooperate or even work in partnership which weakens the distinction among them (DNA - Direzione Investigativa Antimafia, 2007; 2012; 2014).

All such criminal groups are engaged, to some degree, in various types of illegal activities, among which include the exploitation of legal economy especially in the public works sector. Though systematic analyses on this specific plight don’t exist, it is possible to have a overview on the reasons why, the main strategies and the methods utilized by various OC groups through exploring the literature and the reports of national and international institutions.

Reasons of public procurements choice

Various reasons exist why the diverse types of criminal groups and the mafia choose the public works sector especially infiltrating public procurements. The first reason is economic. Why? Because the expense for public contracts is a great part of the territorial economy especially where the private sector is little developed. The second is linked to the investigative judicial penal sector. Why? Because the investigations of criminal activity within public contracts are difficult to carry out and very costly in both procedure and personal. It’s harder to be discovered, let alone found guilty, of crime in the public work sector as opposed to crimes like drug trafficking, etc. The third reason is linked to the weaknesses and inefficiencies of the public administration. Why? Because the public contract sector always had the characteristic of corruption and collusion from the very start (Calderoni F. and Caneppele S., 2009, pp. 7–9; CNEL, 2008, p. 11). And finally, criminal infiltration has strategic importance as a means of territorial control in the penetration of social, economic and institutional structures of the territory. In fact, certain businesses and sectors (such as restaurants, supplies, construction) can be used both for maximizing physical control on the territory and to strengthen the relationships with politicians and public administrators (Riccardi M. in Caneppele S. and Calderoni F., 2013, pp. 198-199).

Channels for exercising influence and for infiltrating public contracts

According to some thinkers, OC groups mainly use three broad channels for infiltrating public works and public contracts:

- **direct infiltration in the public process of bidding through the direct control of private companies i.e. through the use of name and/or members of criminal family;**
- **mediating actions where the OC acts as mediator among companies, politicians and public administration using relational networking, persuasion and intimidation.**
- **post bidding protection on site agreed upon by both sides or forcefully reckoned where payment is based on a percentage of the total public work fee.** (Calderoni F. and Caneppele S., 2009, p. 8 e pp. 63–65; DNA - Direzione nazionale Antimafia, 2007; EU Parliament, 2012, p. 15).
These channels used by criminal groups are used in diverse ways and differing frequencies according to the characteristics of the OC structure, the specifics of the context, or the opportunity of the moment. South Italy is a good example where infiltration frequently occurs in the post bidding phase. The mafia clans/families through intimidation or agreement oblige entrepreneurs to pay bribes in exchange for protection of building site, force sub-contract, and/or control material acquisition and human resources. The major sectors in the post bidding phase infiltration are linked to infrastructures - Viability, Transport, Waste, Environmental Defense - (CNEL, 2008, pp. 40 and ss.)

Methods used by OC
The practices utilized by OC to tamper with the procedures for the execution of public contacts are various:

a. Collusive practices/Partnership relations. Such practices consider various levels of criminal infiltration. These methods can include simply a series of agreements between two or more participants in the commercial bidding or more complexly the creating of networks to control the allocation of public funds derived from various forms of public procurement managed by political parties which are based on favors exchanges, mediation and protection by OC.

One of the most sophisticated methods used by OC is based on work in partnership between criminals and legal market entrepreneurs. It is called “metodo del tavolino” where companies linked to criminal and mafia groups participate in the bidding process for allocating public procurements using falsification and alteration methods. This method is usually used together with the lowest bid auction system in which the contracting authority (or commissioning body) are accomplices.

Another kind of scheme to infiltrate bidding procedures is the Cartel agreements. They consists in the networking of companies which take part together in the same bidding process harmonizing illegally their bids in order to allocate the public contract of one of them.

These more complex agreements can be made with the mediation and coordination of OC groups. These kind of pacts work where mafia and criminal groups involved are more entrenched and infiltrated in various sectors of society. They are typical of south Italy during nineties, and during the following years, with particular reference to infrastructure biddings.

(Vannucci A., 2007; Calderoni F. and Caneppele S., 2009, pp. 82-84; EU Parliament -Special Committee on organised crime, corruption and money laundering, 2013; DNA, 2007; DNA, 2014).

b. Corrupt methods. The resources which can be used in a bribe for infiltrating the bidding procedures are primarily three: discretional decisions; classified information; political and institutional protection. These resources are used in each kind of public bidding procedure and in each of its phases - starting from fund appropriation, to bid posting, to the actual payment of public money- (Vannucci A., in Cabiddu M.C., 2005, p. 82; EU Parliament, 2012, pp. 7-9).

Discretional decisions can be useful for the direct posting of a public work or for increasing the chances of allocation a favoring specific company. In these cases, the corrupt public official utilizes his/her power in order to help the bidder along for a bribe.

Then, too, private corrupt entrepreneurs can increase their own chances of successfully passing each phase of the bidding procedure simply through the fore-knowledge of administrative practices and timing, or institutional decisions or the bids of other competitors. The trading of technical or commercial information on bids can take place directly between a private entrepreneur and a public official, or with the mediation of intermediaries (Andvig J. C., 2012, pp. 77 e ss.; Vannucci A., in Cabiddu M.C., 2005, pp. 87 e ss).

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

Among corruption are fraudulent practices, such as misrepresentation or omission of facts or documents for influencing a selection process or the execution of a contract. It’s important to say that the corrupt forms are not use exclusively by criminal groups, but they can
be utilized by entrepreneurs without links with OC.

c. **Coercive practices include such practices as extortions, intimidations, threats, blackmails.**

OC uses such methods when necessary in order to force entrepreneurs, businessmen, public administrators to be compliant or collaborative in achieving the goals of the criminal group within itself influencing their participation in the procurement process, or affecting the execution of a contract (EU Parliament -Special Committee on organised crime, corruption and money laundering, 2013, pp. 2-3).

The various methods just pointed out are usually utilized together in a combined and/or simultaneous way. Often the crimes are melded and used one to affect another (e.g. public bidding infiltration is used, not only for getting power or money, but also for money laundering). As such, the operational methods are chosen considering two important elements: (a) the reasons why a criminal group determines to illegally compete in a public bidding (e.g. if an OC group aims for territorial control and/or to infiltrate the socio-political context, the methods probably used more are **collusive practices** and/or the creation -or exploitation- of relational networks among politicians, entrepreneurs, public officials, and so on. In such case, the infiltration channel is on the level of mediating actions); (b) the context where OC acts. Criminal groups always interact with their environment and use local opportunities. Where a criminal organization is well-entrenched, the methods frequently used are collusive practices. On the contrary, where an OC organization is less entrenched, the techniques utilized more then not are coercive methods, such as extortion and intimidation (Sciarrone R., 2014; Allum F. and Sands J., 2004).

The mixture of various elements bring different criminal infiltration levels into the public sector by OC. According to Buscaglia E. e van Dijk J., even five infiltrating levels can be identified: starting from corrupt acts and abuse of authority; then proceeding on to gradual control of the public contracting agencies management; and on to affecting state’s policies (Buscaglia E. e van Dijk J., 2005).

### 3. Why is OC infiltration in public works phenomenon unceasing?

Two different hypotheses can be formulated on determinants of the unceasing phenomenon: (a) the former is linked to the organizational structure of various criminal groups; (b) the latter is linked to the types of administrative procedures which guarantee the fair modalities of public works execution for preventing crime infiltration.


The strength of various criminal and mafia groups are mainly derived from their capacity for creating complex relational networks which involve figures both in the criminal world, and in the legal sphere (such as politicians, entrepreneurs, and so on). These networks, created for gaining advantages, increase chances to illicit profits because they guarantee political protection, economic resources, opportunities for infiltrating in new market sectors and a wide range for illegal activities.

The network structure of the various criminal groups allows them to always create new alliances and to increase the complexity of partnerships. The complexity of the criminal systems that are based on relational networks has increased over time with changes in the 90s, especially with the process of globalization and the rise and spread of businesses across borders. Adapting to the global dimension of the economic environment, OC has become becoming more flexible and less hierarchical. (Armao F., 2000, pp. 115 and ss.; Armao F., 2014, p. 123-127). The individual mafias and criminals are thus adapted to operate in vast and articulated agreements and criminal networks that link their interests to the economic activities of the diverse powerful elite. In this situation, the criminal groups tend to operate as a business operating within a cluster. In this perspective, the criminal act clusters develop systematic relationships with other actors in the same field of activities and agreements. In this sense, criminal groups are linked both to other criminal clusters that have representatives from legal and legitimate institutions (for more details on the cluster theory, see Armao F., 2014, p. 130 and ss.) The more frequent interaction between criminals and politicians and public institutions, creates
a “gray zone” in which legal and illegal are increasingly intertwined and difficult to distinguish. We are witnessing a merging of networks, relationships, and diverse areas (AA.VV., 2012; Della Porta D. and Vannucci, A., 1994; Ruggiero V. and M. Welch, 2008). This, in addition to being the strength of the criminal groups, leads to the spread of the so-called “Mafia methods” as a type of behavior based on occult links and the pursuit of individual interests. Such misconduct can be taken even by those who do not belong directly to the criminal groups as a daily mode of action (V. Ruggiero, in Dino A. and L. Pepino, 2008, pp. 192 and ss., Dino A., in Dino A. and Pepino L., 2008, pp. 209 and ss.) The pervasiveness, flexibility and vagueness of this kind of structure is one of the reasons why it is difficult to definitively counter the activities of the OC specifically in relation to public procurement in which there is a significant presence of the gray zone.

b. The second reason for unceasing criminal exploitation of public resources and public contracts depends on the weaknesses of the administrative practices which guarantee fair forms of public works execution for preventing crime infiltration. Several reports have highlighted that in all MS the administrative procedures are permeable to criminal activities and to corrupt forms. This is true also for countries in which complex systems against corruption and against mafia are present. Let’s think of Italy, a state which has established different acts and legislative provisions to fight mafia, OC and corrupt forms with diverse kinds of preventive measures to block crime infiltration in public administration. In several years various acts were adopted and recently uploaded and strengthen in Italy. It is worth noting that in 2012 and 2013 not only the law against corruption was changed but also there were added some relevant new legal texts on anti-mafia legislation and on the organization and functioning of the public administration. The Italian system against corruption and counter criminal groups is very complex and includes various measures. It considers both (1) criminal law protection instruments with repressive and coercive natures - which become active subsequently-, and (2) administrative protection tools with a preventive nature. In particular reference to public procurement, different new preventive instruments for controlling criminal groups and for blocking the bidding access to companies so-called “dirty”, have been recently established: such as the Anti-Mafia Data Base for data collection at a national level (as a type of protection means) and White Lists (as types of soft law instruments). Moreover, new bodies of control have been established. For instance, a new national anti-corruption authority was established by the 190/2012 Act. It is the “Commissione Nazionale per la Valutazione, la Trasparenza e l’Integrità delle Amministrazioni Pubbliche” or CIVIT. It operates to control and to monitor both the effective applications of measures provided for, and the official approval of National Anti-Corruption Plan. Despite all these measures, the administrative procedure and preventive measures don’t effectively work especially in fighting criminal infiltration in public works (DNA, 2012, p. 372; Bevilacqua B., 2013). The weaknesses of the administrative procedures create another judicial problem: the high level of difficulty to convict associative character and crimes committed by clans (Armao F., 2014 p. 128-9).

All these plights highlight the need to study in depth the phenomenon for strengthening and making more effective the administrative procedures.

Now, it’s worth to briefly think about the political strategies for fighting criminal infiltration. Some words on this issue will be explored in the next paragraph.

4. Does an European strategy for combating criminal infiltration in legal economy exist?

After analyzing the reasons why and the methods used by OC for infiltrating legal economy, it’s important briefly think about the counter-strategies utilized at European level for fighting it. Specifically, we wonder if an European plan for combating criminal infiltration into public works exists or if political harmonization among the various member states for preventing OC is needed. To face these questions, it’s worthy to remember that OC was formally introduced into the legal sphere of the EU ever since the adoption of Maastricht Treaty (1993) and the construction of Justice and Home Affairs Area (JHA). Then, too, during nineties Organised Crime was become, together with
terrorism and others security threats, one of a few common issues of concern within the European region that, since Amsterdam Treaty (1997) was named Area of Freedom, Security and Justice (AFSJ).

The advent of the European market and the opening of borders have encouraged the spread of OC in Europe and have generated problems across jurisdictions.

These facts have turned the Organised Crime phenomenon into an EU problem (Allum F. and Den Boer M., 2013, pp. 140-141; Allum F. and Sands J., 2004, p. 137; Elias L. and Timmermans A., 2014, pp. 161 and ss). However, already in 1990 the European Council, as agenda-setting body in EU, had increased in an important way its attention on OC. Nevertheless, over time this threat had received fluctuant political attention by European institutions. As a result, the political plans and strategies adopted are rarely actually effective.

This can be due to the absence of a common consensus within the EU about the meaning and the urgency of Organised Crime which is a highly differentiated problem in each European national context (Fijnaut C. and Paoli L., 2014). There are considerable differences country-by-country on what OC consists of, and on the illegal activities implemented by various criminal groups, and on their presence at national level, and so on. The peculiar geographical, cultural, economical conditions of a national context give different opportunities to OC. This implies that criminal groups are greatly diverse between states, and even more between cities. As a result, despite the transnational characteristic of OC, it remains a relatively sovereign and domestic field. The ideas of what OC is, and the approaches used for fighting it are very different among the various member states (Allum F. and Den Boer M., 2013, p. 136).

These dissimilarities have always been great obstacles for identifying both an European political plan and a common operational strategy. However, during first decade of this century important steps have been made for the widespread use of counter instruments in the field of Organised Crime. Various documents - such as Tampere Program (1999), the Hague Program (2004) and the Stockholm Program (2009)- have strengthened the idea at the European level that OC must be combated as one of the issues of general policy planning in cooperation with Justice and Home Affairs.

Despite the European attempts to increase and to extend the counter-means for confronting OC, the problem of conflicting jurisdictions and national legislations is today present. Jurisdictional conflict is its vulnerability which prevents an actual harmonization among MS policies and choices on specific issues, even though various European directives have been adopted. Just think of, for instance, the EU directives on public procurements for equalizing the national legislations which govern the public works allocations and for simplifying the bidding procedures (such as 2004/18/CE and 2004/17/CE, today replaced with the directives 2014/24/UE and 2014/25/UE).

Beyond the difficulties in overcoming the differences between countries and the resistance of each state to cede portions of their sovereignty, there is the awareness of the need for a common political line and greater uniformity of national laws supported by the EU Parliament itself (EU Parliament 2012). It is recognized that Organised Crime is a transnational phenomenon with various groups tending to expand and imitate each other.

With particular reference to criminal infiltration in legal economy and public sectors, various European institutions and national bodies have recognized that the most effective OC counter systems have being primarily based on law enforcement and on the adoption of preventive measure, such as entrepreneur monitoring, continual inspections of building sites, and so on (DIA, 2008, pp. 310 and ss.; Levi M. and Maguire M., 2014).

Furthermore, a preventive approach needs commitment and action from a wide range of organizations, along with naming-and-shaming institutions (such as Transparency International and Greco), for ensuring political accountability and external assessments (Levi M. and Maguire M., 2014; EU Parliament, 2013; Berenskoetter F., 2006).

5. Conclusions

The objective of this study was to address one of the poorly studied issues related to Organised Crime which is the operating procedures used by the various criminal groups to infiltrate the public
procurement procedures. The analysis of secondary sources considered allowed us to identify several important aspects of the issue, such as the reasons why the OC to choose the area of public contracts, the main channels of influence into public procurement and the methods used. As shown in this paper, the reasons are mainly linked to economic interests; to penal sectors of judicial investigation, to the weaknesses and inefficiencies of the public administration; and to the strategic importance of the public procurement in themselves. However, beyond the specific reasons that make public procurement a profitable sector for illegal activities, the various organized groups choose different channels for exercising influence and for obtaining public contracts according to their ability, the type of organizational structure, human resources, and relational and economic arrangement. The combination of these factors allow various channels of infiltration by OC groups, which can be: direct (direct infiltration in the public process of bidding through the direct control of private companies); using mediating actions (where the OC acts as mediator among companies, politicians and public administration using relational networking, persuasion and intimidation); and/or imposing or offering post bidding protection on building sites. Moreover, in the course of this study various methods used by organized crime and the mafia have been identified. They range from simple coercive practices (such as intimidation, extortion, threats, ...), to bribes or to even more sophisticated collusion based on agreements between criminal actors and entrepreneurs and/or public officials, and on to the creation of complex relational systems to control the allocation of public works. Various analyses and reports show that this kinds of methods are generally used in combination. They also are chosen considering both the reasons why a certain group decides to infiltrate legal economic sectors, and the circumstantial context. The combination of the various elements leads to different levels of infiltration of OC in the legal economy. The identification of the various aspects that make up the phenomenon deserves to be explored in greater depth, and to consider the transnational nature of the phenomenon. Further analysis is intended to continue with the contribution of various other disciplines including sociology, anthropology, political science, criminology and law.
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