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Research Report

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Unveiling the Structure of Unconventional Organized Crime

Investigating and Prosecuting Criminal Networks within and beyond European Borders

Simona Autolitano and Verena Zoppei

In the last decades, the traditional understanding of organized crime (OC) has been widely challenged. As the United Nations Office on Drugs and Crime (UNODC), Europol, as well as German authorities have extensively highlighted, hierarchical criminal organizations coexist and overlap with new forms of liquid networked criminality. These criminal networks are composed of flexible alliances between professionals acting worldwide that regulate themselves based on market logic rather than violent conflicts. While appearing "dis-organized," these criminal networks are highly resilient to law enforcement intervention due to their redundancy. Their capacity for infiltrating the legitimate economy and the estimated sums of money they launder globally, which amounts to between 2 and 5 percent of global GDP yearly (UNODC), are alarming. Therefore, not only law enforcement and policymakers, but also the private sector cannot afford to drop their guard. National interventions often just push criminal activities into other countries; hence, effective strategies should address global markets' dynamics.

Policy documents increasingly refer to OC as a serious threat that undermines the licit economy. The European Commission 2015 Agenda on Security and the 2016 European Union (EU) Global Strategy list OC among the core security challenges for the Union. Although in theory the social, economic, and political impacts of criminal networks have been long acknowledged, in practice investigating and prosecuting new forms of OC, whose structure is barely perceivable, is rather complex.

The analysis of investigation files, reports, and final decisions of three significant OC proceedings concluded in recent years by German authorities – human smuggling, cybercrime, and money laundering – offers insights into the strengths and loopholes of current law enforcement practices. In particular, three concrete issues emerge. The first concerns investigating and prosecuting non-hierarchical forms of networked criminality, which at first appear to be a multitude of individual offenders. The second outcome refers to the implementation of the follow-the-money strategy and the difficulty of engaging non-law enforcement actors in the prevention of money

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laundering. Despite all cases originating from investigations conducted in Germany, the criminal networks operate cross-border, leading to the third point, which deals with the necessity of further cooperation within and beyond the EU.

Seek Structure

First, traditional offenders-oriented law enforcement interventions, which target "intensive offenders," are successful when dealing with conventional pyramidal OC groups, but they are not appropriate for dismantling horizontal criminal structures. In fact, as long as there is standing demand, criminal networks adapt to any loss of personnel. For the sake of efficiency and convenience, criminal cases concerning a plurality of actors are often tried separately. Yet, investigators should consider the possibility that offenders who seem to be acting independently might actually be part of the same criminal network. Investigations focusing on top-ranking criminals should serve as entry points for further law enforcement activity directed at dismantling the underlying networks by targeting "crime enablers," namely those individuals acting in the gray area.

The first example relating to human smuggling illustrates how – by convicting only the main suspect – the activity of law enforcement did not affect the criminal network. Despite the investigations revealing the existence of a complex structure, which – driven by the demand of Vietnamese people willing to migrate to Europe – was able to promptly respond and present itself as a legitimate business, only one offender was sentenced. As the judicial files of the case show, investigations have been built around the irregular employment of Vietnamese workers in several nail studios around Germany owned by the main suspect. Those workers had been smuggled into Germany. Extensive financial investigations that involved banks, tax authorities, and employment agencies, gathered a remarkable quantity of data and revealed the involvement of "crime enablers," who profited from the smuggling activity. Based on falsified invitation letters, tourist Schengen visas were first issued by the German Embassy in Hanoi. Once the migrants arrived in Germany, those temporary visas were converted into permanent residence permits through forged marriage certificates or family reunifications with European nationals "recruited" during the commercial activities of the nail studios. Counterfeit identity cards, university degrees, and language certificates were provided by two professionals residing in Italy. Yet, none of the individuals acting in the gray area were convicted. It can be thus expected that, given the criminal networks' resilience, smuggling services will continue to be provided in the absence of convenient lawful alternatives.

Financial investigations often reveal the existence of unlawfully obtained assets without being able to prove the actual commissioning of the predicate offenses. These investigations present a high burden in terms of costs and resources employed. The German government has recently adopted draft legislation to reform criminal law regarding asset forfeiture. The legislation will allow – in the context of OC investigations – for the confiscation of assets whose lawful origin cannot be proved by the suspect if there is substantiated suspicion that they have been obtained illicitly. If approved, this reform would represent an important step forward in overcoming the difficulties of financial investigations and aligning German law with standards being applied already in several jurisdictions worldwide.

Trying cases together for different offenders who seem to be related has proven to be effective in dismantling criminal networks. The second selected example – referring to cybercriminal networks – is a good practice example. Individual investigations for computer fraud had begun in various public prosecutor offices around Germany. Only through further investigations was the presence of a wider cybercriminal network acting in the United Kingdom, Russia,

and Germany revealed. Following the merging of the cases, it was disclosed that perpetrators were highly skilled professional hackers who were part of an international, well-structured, illegal firm that was selling stolen data to third parties, causing damage of at least €1.3 million. Data of online banking systems hacked through malicious software were sold through intermediaries to OC groups. These groups were mainly involved in money laundering and used unsuspicious private bank accounts to transfer monies originating from criminal activities in order to give them an appearance of legitimacy. If investigations had been conducted individually and focused on the individual hackers, the existence of the network, the linkages with the other OC groups, and the money laundering activities would not have been detected. Despite being time- and cost-intensive, merging criminal cases turns out to be an effective tool for dismantling unconventional OC structures.

The Follow-the-Money Strategy

Second, the follow-the-money strategy needs to be reviewed according to the outcomes of the implementation of anti-money laundering measures. Although there is considerable theoretical evidence that the follow-the-money strategy helps to combat OC, in reality tracing money flows is not always effective. Historically considered the Achilles' heel of OC due to the risk of detection, the laundering of money through legitimate economic and financial means has instead become advantageous for the offenders. Money launderers take advantage of ever-new emerging financial vehicles and economic sectors that are, in principle, lawful. Limiting the use of vehicles created originally for licit goals in order to avoid their abuse for illicit purposes means being confronted with the possibility of violating established economic and civil rights and facing legitimate claims. The third selected example concerning a German-based criminal network offering money laundering services worldwide, from Germany to Australia, shows how a combination of newer and older transaction methods is used to avoid law enforcement detection. In particular, the criminal syndicate used the so-called cuckoo smurfing, a highly sophisticated method of money laundering based on the informal value-transfer system "Hawala banking." Offenders acting as legitimate Hawala remitters took advantage of customers by replacing their licit monies with ill-gotten gains. Meanwhile, the same amount of illicit cash was collected in the country of destination and transferred to the designated recipient. Using informal payment methods, the criminal syndicate could act for long periods without being detected by supervisory authorities that monitor financial transactions. The cash resulting from the laundering process, which had an appearance of legitimacy, was then moved between import-export companies to justify the transfer through fictitious invoicing. Again, the use of shell companies allowed criminals to conceal their identities. Regulations that try to include the variety of mechanisms utilized by money launderers need to impose restrictions on activities that are, in principle, legitimate. Given the ambivalent nature of those tools and the fact that they are often used to commit less serious, victimless offenses, policymakers often need to make a compromise between criminal prosecution and economic interests. The current debate on the limitation of cash transactions is a prime example. As reported by Europol in 2015, the use of cash is almost unavoidable at a certain stage in the laundering process, even when virtual currencies or complex financial subterfuges are utilized. Yet, cash is, in principle, a legitimate payment method. Policymakers need to strike a delicate balance also when including in the regulations informal value-transfer systems. If excluding such forms of money remittance from the regulations means opening up the possibility for abuse, banning them would impede legitimate transactions in the absence of formal financial structures.

Also considered highly controversial are those financial instruments granting secrecy, such as trusts, shell companies, Bitcoins, and safe deposit boxes, which were created originally for protecting the assets of persecuted individuals but then abused by offenders who began using them to conceal their identities. Although the disclosure of beneficial corporate ownership is desired to discern law-abiding users from criminals, supervisory and investigative authorities should be further supported to ensure the effective processing of collected data. Private-sector intelligence providers such as banks and real estate agents, which have been involved in the prevention of money laundering, should be further supported with information about the risks presented by the infiltration of illegal monies, demolishing the idea that *pecunia non olet*.

International Cooperation

Third, given the cross-border nature of networked criminality, which is evident also from the three proceedings examined, cooperation among national law enforcement agencies is essential. The EU's strategy for fighting OC has been to attempt more cooperation and compliance at the European level. The Union has fostered mutual recognition among judicial authorities with regard to the gathering of evidence in criminal proceedings, the establishment of Joint Investigations Teams, the harmonization of laws to freeze and confiscate the instrumentalities and proceeds of crime, as well as of laws to prevent money laundering. However, the implementation of such measures is far from being a reality. In fact, a consensus among EU Member States on a definition of OC does not seem to be feasible. Furthermore, the considerable room for discretion that is left to national governments, the unsystematic extension of grounds for refusal, and the possibility of non-participation in the scope of Directives open the potential for "venue shopping," thus favoring criminals. The absence of harmonized laws among EU Member States, for example with regard to the collection of digital evidence, results in cumbersome cooperation. In the context of computer-related crime, e-evidence is often the only tool for detecting hackers' real identities, locations, and relationships with other OC groups. As the cybercrime example illustrates, despite national authorities having gathered a significant amount of data, sentencing the offenders was not an easy task due to the differences in national standards for the admissibility of digital evidence. Given that surveillance is highly controversial because it collides with data protection and privacy rights, there is the necessity for a clear and comprehensive international – or at least European – legal framework relating to e-evidence that ensures the respect of fundamental rights.

Adopting effective regulations at the European level would lead to a spillover effect beyond the Union's borders without actually eliminating OC. Therefore, the EU should support further international cooperation by providing an example of strong commitment, without exporting its own standards and definitions to third countries.

Dis-organized Does Not Mean Less Serious

Finally, narratives on less violent and less organized criminal networks should not lead one to underestimate the seriousness of such forms of OC. Although professional criminals tend to minimize the use of violence to avoid unwanted attention, their capacity for infiltration into the licit world is a security threat. Criminal justice-based solutions alone are not sufficient. There is a growing consensus on the necessity for enhanced regulations in the economic and financial systems to prevent the abuse of instruments that are perceived first and foremost as being legitimate. This requires a strong political will that can outweigh the interests at play.

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