

Table of contents

1. <i>Foreword: Greasing the organisation of crime in Europe</i> Petrus C. van Duyne	I
2. <i>The 'invisible hand of the market': the illegal drugs trade in Germany, Italy, and Russia</i> Letizia Paoli	19
3. <i>Organising the nicotine racket. Patterns of criminal cooperation in the cigarette black market in Germany</i> Klaus von Lampe	41
4. <i>Money laundering policy. Fears and facts</i> Petrus C. van Duyne	67
5. <i>Following the criminal and terrorist money trails</i> Mike Levi	105
6. <i>Protecting against money laundering in the Slovak Republic</i> Josef Stieranka	123
7. <i>Financial crime in the Czech Republic: its features and international extension</i> Vladimír Baloun and Miroslav Scheinost	133
8. <i>Precautionary measures against economic and financial crime in Slovakia</i> Jan Vittek	147
9. <i>The market and criminal law: the case of corruption</i> Matjaž Jager	153
10. <i>Anti-corruption policies in Ukraine</i> Igor Osyka	175
11. <i>Political corruption in Italy</i> Jim Newell	191

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Foreword

Greasing the organisation of crime-markets in Europe

Petrus C. van Duyne¹

Criminal battlegrounds: the crime-markets

Looking back at the history of fighting crime, one may get the impression that law enforcement efforts have progressed both quickly and slowly. The solemn declarations and the action plan against organised crime adopted by the European Council at its Tampere meeting in 1998; the convention of the United Nations in December 2000, and other firmly expressed intentions: all these events look like the pinnacles of a decade which saw the ‘global’ emergence of a united will to fight ‘organised crime’. However, overlooking the ‘battlefield’ – to retain the widely used military metaphor– little seems to have changed. The police, while perpetually complaining that they do not have enough ‘tools’ (that is, sufficient investigative powers), continue to convey the impression that they are involved in a never-ending ‘war against organised crime’. The struggle continues without interruption on the old battlefield of drugs, while ‘organised crime’ is alleged to have moved into new profitable markets, such as human trafficking. All the same it is a strange ‘war’, for ‘organised crime’ apparently refuses to engage in battle, succeeding, instead, in remaining elusive. To this the police (and public prosecutors) have seemingly only one answer: ‘The criminals are way ahead of us’. To this there is seemingly only one rejoinder: ‘We will give you more tools’. Since it is politically highly incorrect, if not politically dangerous, not to respond positively, the police often gets its tools without too many questions being asked. Yet one question that should be asked in such

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situations is: ‘How have you used the tools available to you thus far?’ Unfortunately, however, such efficiency directed questions are rarely posed. Yet even such ‘daring’ questions miss the most significant point. That is, the work of police and other law enforcement agencies is hampered not mainly by shortages of tools or weapons, but by the fact that they are deployed on the wrong battlefield, namely, the market for prohibited goods and services, and the market for legal goods supplied cheaply because of fraud. Such illegal markets are not the realm of sinister, evil forces, but dynamic, interactive places in which criminal entrepreneurs meet the demands of many ordinary, usually law-abiding citizens. Such markets do not provide the conditions for resounding successes.

It is ironic that in this regard the western, capitalist world betrays its basic capitalist principle: ‘Do not fight the market’. This principle goes very much against the traditional ‘war-on-crime’ philosophy of generations of policy makers and crime-fighters. In this philosophy there is no space for capitalist, let alone liberal viewpoints. If there is a market for forbidden commodities, it is a wicked one in which unscrupulous merchants seduce and corrupt citizens, particularly young ones. In addition, the very fact of the continued existence of such markets, together with the success of many criminal adventure-capitalists, is taken as evidence that they have been penetrated by organised crime. This almost tautological conclusion emphasises the immorality and danger of the phenomenon.

Empirical research carried out in the Netherlands, Germany and the United States, fails to support the law enforcement and policy maker’s view. Reuter’s well-known research on Cosa Nostra in the US suggested that the latter’s most salient characteristics were best captured by the term ‘disorganised crime’ (Reuter, 1983). The term should not be taken to imply chaos. Rather, it is intended to draw attention to the dynamics of unregulated underground markets (Adler, 1985; Van Duyne et al., 1990; Van Duyne, 1996). Such markets are the hunting grounds of criminal freebooters who are continually *organising* their enterprises (Block and Chambliss, 1981). In the process they usually operate (and improvise) within flexible trading networks (Rebscher and Vahlenkamp, 1988; Zaitch, 2000).² Thus far these findings have had little impact on the conventional images held by policy makers, though they are very much recognized by detectives at grass-roots level.³ Is the weight of evidence still insufficient, or is it

² This has again been confirmed by Kleemans et al. (2002).

³ It is the author’s experience that discussing concrete cases with detectives, the stereotypes (after an initial obligatory citation) are soon replaced by more lively representations of the (continued...)

based on the investigation of phenomena too broad to allow it effectively to convey this alternative view?

Evidence from crime-markets

If the weight of evidence is insufficient, then the accounts of the research projects covering the drugs markets in Frankfurt am Main, Milan and Russia, by Letizia Paoli, and the illegal cigarette market in Germany, by Klaus von Lampe, make up for this deficit. Paoli's research demonstrates that the drugs trade, with its many sources of supply and trade routes, constitutes a flexible, many-sided network within which there is little potential for monopolisation. Even the participation of the dreaded mafia groups has not resulted in a trading monopoly. Granted, they were very active – and in some areas dominant – traders, who had the advantage of a criminal infrastructure, mainly consisting of convenient social networks. Despite this advantage even the mafia heroin enterprises were far from being stable, centralised units. Many of them remained clearly independent of the mafia group or *Cosca* to which the mafia-trafficker belonged. In Germany the drugs market is very open and likewise operates within horizontal networks. Stable hierarchical structures or family organisations are not often observed, though they do occur. Moreover, such stable, usually small organisations, are dependent on other networks for supply, distribution and other *ad hoc* tasks. The most commonly occurring drugs enterprises can be described as 'crews': loose associations of participants between which the trading structure is not vertical, but horizontal. This observation applies to Germany and Italy as well as to Russia.

Despite the suggestions emanating from reports and studies of the feared Russian *mafija*, a close analysis of the phenomenon does not support the image of huge, vertically structured syndicates under a strict leadership. Rawlinson (1998) has already pointed to the myth-making – perpetuated by gullible Western journalists as well as the Russians themselves – surrounding the Russian *mafija*. Many so-called syndicates, sometimes named after their leaders, prove to be less stable than the term suggests. They are rather like umbrellas, encompassing various (youth) gangs. With regard to the drugs market, the latter is less profitable, as far as the high-level criminal organisation is concerned, than

(...continued)

exploits of offenders as streetwise, pragmatic entrepreneurs. Back again on the political stage, these insights are soon replaced by the conventional images.

the legal markets to which they apply their parasitic skills. The drugs market is left to the smaller, more flexible crews.

Such commercial flexibility and uncoordinated dynamics leads to the conclusion that the drugs market is a very open one. This is not a new finding. Some twenty years ago New York's Police Commissioner compared the drugs business with the open garment industry: 'Organisation in the drugs industry is largely spontaneous, with everybody free to enter any level if he has the money, the supplier and the ability to escape arrest or robbery' (Block and Chambliss, 1981, p. 57). This relative openness and irregularity does not imply that criminal entrepreneurs operate without constraints. The Police Commissioner's observation already indicates that criminal entrepreneurs require specific skills to avoid the dangers inherent in operating in a generally hostile commercial environment (Van Duyne, 1998). The skills concern the effective management of human resources and information. Paoli correctly concludes that – the current fear of 'transnational crime'⁴ notwithstanding – such management encourages small and local organisations, rather than international organisations. It goes without saying that distant agents are needed for the cross-border transport of contraband, but at the same time they are difficult to control. Therefore a prudent criminal entrepreneur limits his cross-border human resources (and thus the potential information risks) to only a few trusted go-betweens.

A final implication of the information risk concerns its influence on the nature of the market. As Paoli indicates, illegal trades are denied all the supply-side techniques of their licit counterparts: they cannot advertise nor create their own brand images to bind customers to them. Therefore, the illegal commodity market is essentially a *demand* market, which takes us back to our starting point. To combat illegal markets from the side of supply only is to ignore the real driving force: the demand for commodities on the part of numerous ordinary citizens. This demand is not organised or channelled towards a few main suppliers, but fragmented. And so is the supply side. As far as law-enforcement efforts are concerned, this does not look very promising. It is an arduous, Sisyphean task, a bit like that of the mythical king who had to push a stone uphill, but which always rolled back each time he got within a few yards of reaching the top. This Sisyphean task has been carried on since 1914.

⁴ It is interesting to observe the power of common language to further a collective representation. The dreaded 'transnational crime' has found its way into a large number of political and law enforcement phrases, and it has even found an outlet in the *Journal Transnational Organized Crime*.

Another illegal market is the one described by Klaus von Lampe: the market for untaxed cigarettes in Germany (Von Lampe, 2002a). The author provides a proper theoretical rationale for the selection of a specific illegal market (Von Lampe, 2002b). The discourse on organised crime is saturated with broad concepts and phony definitions, while a researcher should study organised crime at a specific time, in a specific place. This provides the data needed to describe and analyse the *modus operandi*, the social relationships and the interactions of organised crime with the upper world, as well as the legal institutions.

As suggested above, findings from previous research indicate that observations in this area may be most fruitfully interpreted from a 'network' perspective. From such a perspective, the form – such as the strength of a relation – and the content – for example, the nature of transactions or communication – of dyadic ties can be analysed. From such a perspective, Von Lampe gives a detailed account of four cases selected from the pilot phase of his on-going research project. The first group of smugglers, which could be described as having a 'flat' network with no clear division of labour or hierarchy, seems typical of the first phase of the illegal cigarette trade. The group constitutes a short-term combination of three to five persons, formed on the basis of kinship or other social bonds, living in the same neighbourhood or vicinity. Some differentiation of tasks, based on previous experience of smuggling, can be discerned.

In the second case description Von Lampe takes us to the next phase of the smugglers' development, one in which we see the structure of the enterprise network grow. There is a leading personality; underlings are paid to carry out menial tasks, and a kind of foreman oversees them. Such small groups with a 'boss' and a few aides may be the most typical form of criminal enterprise, as is suggested by Paoli's study as well as others that have been carried out over the past fifteen years (Rebscher and Vahlenkamp 1988; Van Duyne et al, 1990; Van Duyne, 1996). These trading organisations differ sharply from those suggested by the threatening image of 'organised crime-on-the-march', which policy makers have successfully conveyed to legislators, the media and the public (Van Duyne, in preparation).⁵

The simple structure of these groups does not prevent them from forming complex trading alliances and patterns of cooperation while operating in the illegal market. Most alliances are shifting affairs, being brought about by operational requirements. If the operations become more diverse than the simple

⁵ Legally these organisations can be regarded as belonging to the category of 'organised crime', much to the surprise of their sponsors.

smuggling and delivery of goods, then the network organisation too becomes 'complex' as is demonstrated by the third case. This illustrates the consequences of operating in illicit and licit settings at the same time. Though it sometimes happens unwillingly and unknowingly, often the legal business structure *is*, or overlaps with, the criminal structure. This underlines once again the regular occurrence of interaction between upperworld and underworld operations (Passas, 2002).

Do these empirical findings disprove the thesis of a hierarchical 'organised crime'? The field of criminal businesses is too heterogeneous to support such a firm conclusion. At the level of retail sales, Von Lampe identifies a sizeable Vietnamese group operating on the basis of a discernable division of labour. There are sellers, keepers of cash and merchandise, lookouts etc. One of the circumstances that contributed to the emergence of such an organisation was the need for mutual protection against extortion gangs, not against the police. It also illustrates the thesis that criminal organisations are generally not premeditated or planned entities, but action structures which come into being around and in accordance with the needs of a core business operating in a hostile environment. More often than not it is a haphazard process.

Crime-money and criminal finances

In talking about illegal markets, one cannot avoid talking about what they are all about: crime-money. This topic is surrounded by many fears based on few facts. Perhaps fears run so high *because* of the scarcity of facts. It cannot be denied that the authorities have done virtually nothing to supply themselves, legislators or the public with proper insight based on facts. If the phenomenon is considered global, its related policy can be described as one based on global ignorance – – making it not much different from policies against economic crime in general (Van Duyne, 1999).

The fear of crime-money has as its twin the equally dreaded phenomenon of money laundering. In his contribution Van Duyne raises the question of whether after ten years of anti-laundering policy some clarity about the concept of money laundering has developed. Do prevailing definitions, such as those of the Council of Europe or the European Commission, delineate the concept unambiguously? Close scrutiny shows that they encompass all and sundry acts following the advantages acquired by crime. Since laundering clauses are, in most jurisdictions, *reflexive*, applying to the perpetrator of the predicate crime too, no offender can escape this comprehensive laundry net. The only way out is by destroying the

loot, giving it away (for free!) or turning oneself in to the police. In the field of (tax) fraud one may deduce a virtual fusing of the act of committing the fraud and the act of laundering, as the false document is also the very instrument by means of which the laundering takes place. In this way the offence of laundering is 'canned' into the predicate crime.

The 'comprehensive laundry net' is not just some legal scholastic sophism. Applying it to determine the extent of crime-money and laundering, policy makers can yield staggeringly high figures, which cannot but underline the apparent magnitude of the evoked threat. However, even a superficial analysis of the Financial Action Task Force (FATF) data evokes an 'Enron-like' feeling that the figures are willfully inflated. However, unlike Enron, the FATF has never been held accountable for its misleading presentations. The deployment of a thorough, conscientious methodology to ascertain the real nature and extent of this new menace appears to be lacking.

The University of Tilburg and the Research Department of the Dutch National Detective Service have carried out investigations to obtain more insight into the nature of the crime-money threat. The simple question was, 'What do criminals do with their ill-gotten profits?' This implies, of course, the more evaluative question concerning the nature of the potential threat posed by the money-management of criminals. Depending on the level of criminal money-management (a more neutral term than money laundering) the threat can range from 'corruptive permeation' to 'life style expenses' (assuming one considers the high spending of criminals a 'menace').

The outcome of the project sheds some light on two repeatedly expressed concerns: the *sophistication* of the 'money launderers' and the *interweaving* of crime-money with the upperworld, particularly the financial system and trade and industry. But first a preliminary remark about the 'money launderers'. The researchers did not find 'launderers' to be a separate group, who stealthily 'cleaned' the dirty money of the big criminal earners. As a matter of fact, in only one case did a different suspect act as launderer, revealing real sophistication in the finishing touch: the *false justification*. In three other cases assistance was obtained in *channelling* the monies to a foreign destination: a small accountant's office and two bureaux de change were observed. The outcome of the project compares poorly with the many warnings: 'The Launderers come', which has acquired a narrative reality of its own.

As far as the level of sophistication is concerned, elaborate forms of money-management, like criss-crossing between numerous accounts, putting the money together again and fabricating a justification, were not frequently observed. Of course, the tried and trusted, but clumsily executed, *loan-back* constructions were

resorted to a few times. In most cases the money was simply exported or placed in the name of another person. This ownership disguise proved dangerous for the straw man because he could not justify *his* acquisition of the assets. The expectation that fraudsters would show more sophistication in laundering than drug dealers was not fulfilled. Actually, the laundering depends on the nature of the predicate offence. If the offence consists of accumulating (tax) debts with the bankruptcy of the empty front firm as the final event, no one, least of all the straw man, bothers about laundering. The only equipment used is the paper shredder. Only if it is intended that the firm will live on, laundering is vital. But in these cases the false bookkeeping (the predicate crime) *is* the laundering at the same time.

The level of financial penetration, the other big worry, was not impressive either. In a few cases sizeable real estate investments were made. Whether these amounted to a strategy to obtain a power position in the upperworld is difficult to assess. In one case there was a high level form of corruption, indeed. Investment in shares hardly differed from normal investments undertaken for the purposes of speculation or of earning interest. An attempt to become a partner in a legitimate business failed.

To summarise: in general, criminal financial management displays much pragmatism, little strategy and little, or at best moderate, professionalism, while penetration of the upperworld looks shallow. Comparison with other, scarce research and the meagre enumeration of the FATF annual report (the so-called typology) did not falsify this finding. If the threat of the deluge of crime-money really warrants the building of a global legislative Maginot line, its costs have to be justified by more facts established with greater methodological rigor. Thus far the FATF and legislators seem more concerned to maintain fears than to find facts.

Apart from these critical comments and whatever the actual laundering taking place in the crime-market, the phenomenon has become a political and penal law reality. Michael Levi provides a succinct account of that reality, to which he adds the all too realistic terrorist financing, though that may not involve money laundering. Levi makes clear that the concern about money laundering has transcended the widespread fear about crime-money. Concern about a lack of financial transparency; tax evasion masquerading as tax avoidance, and the harmful effects of corruption on fair competition (of the rich countries) and dissipation of the development aid (from the same rich countries) have been added to the driving forces behind the global anti-laundering drive.

The terrorist attacks on 11 September 2001 gave a new momentum to the anti-laundering policy. The FATF agreed to new international standards to combat