PROJECT ICARO

COMPARATIVE ANALYSIS ON THE EUROPEAN POLICIES, LAWS AND REGULATIONS RELATED TO CONFISCATION AND RE-USE OF CRIMINAL COMPANIES AND ASSETS

by
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SUMMARY

1. INTRODUCTION: HISTORY AND MEMORY

It is known that Mafia has decades of existence in Italy, almost centuries, until nowadays in many countries of the world. In order to fight against mafia spread and infiltration into the legal economy affecting honest companies, workers and citizens' lives, it is mainly needed to understand what methods are the most efficient to tackle their power and spread. In 1982, fight actions against mafia organizations became really efficient thanks to Parliamentary Pio La Torre. He was affected by Sicilian Mafia and introduced a Bill characterized by two main elements: the assumption Mafia is an unitary criminal organization and the awareness that mafia men are more afraid of losing their assets rather than jail. La Torre had realized the ongoing transformation inside Mafia and its expansion in the international arena, that is the globalization of criminal activities.

Afterwards his brutally murdered, the Italian Government sent to Palermo General Dalla Chiesa, who in the previous years was able to defeat the terrorists named *Brigate rosse* (Red Brigades) through efficient solutions. For this reason, he was given the task to defeat mafia as well. However, Mafia did not let him time to pursue his task. His murdered arose a spread feeling of indignation such as to induce urgently parliamentarians to transform into law the Bill elaborated by Pio La Torre. It was the *Law 646/82,* called *Law La Torre/Rognoni*, by the names of its promoter and of the Minister of Domestic Affairs, Virginio Rognoni.

By law *646/82*, the article *416 bis* was added in the Penal Code, marking a revolutionary breakthrough in the fighting against the mafias, considering the *mafia association* a crime as such. As the law

states: *"The association is a mafia type whenever its members take advantage from deploying the strength of intimidation related to mafia-type organization, subjection condition and code of silence, deriving from committing crimes, with the purpose of obtaining directly or not the management or command of economic activities, concessions, authorization, tender and public services or make profits as well as taking unfair advantages for oneself or for others"*. Hence, in 1986 it was possible for judges Giovanni Falcone and Paolo Borsellino, under the guidance of Antonio Caponnetto, to prosecute 475 bosses. The judgments of the "maxi-trial" were 19 life sentences and more than two thousand six hundred years in jail. After the judgments were confirmed by the Italian Supreme Court, the reaction of Corleonesi was merciless: they killed their main enemies Giovanni Falcone and Paolo Borsellino, but also their friends Salvo Lima firstly and Ignazio Salvo secondly, as they were not able to avoid the confirmatory verdict of the Supreme Court.

During this Maxi-trial (*Maxiprocesso*) it was applied for the first time the so called *norma sui patrimoni* as required by the Rognoni-La Torre law, that is the confiscation of mafia assets. Indeed the article 416 bis states: *It is always mandatory the confiscation of the convict's assets that were used or made available for committing the crime, as well as all those things which are the price, product, profit of the crime or which constitute its use.*

Such measure obviously triggered when the convict is unable to demonstrate the legitimacy of the possession of the property at issue.

After the massacres of Capaci and via D'Amelio, a rebellion movement against mafia death culture started to spread around the country. It became clear that not only magistrates and law enforcement should fight and repress the Mafia, but it is equally necessary the active participation of citizens - because the achievement of legality coincides with the fulfillment of democracy.

In 1995 it was established "*Libera, associations, names and numbers*

against mafias": an association aimed to support the anti-mafia activities and to spread in the country a culture of legality. This was the way social anti-mafia was born. It would have reunited almost 1500 groups such as national and local associations, schools and citizens.

The first goal achieved by Libera was the collection of signatures in support of the Bill presented by the Parliamentary Giuseppe Di Lello for the social re-use of assets seized to the mafia clans: it was the perfection of La Torre's idea.

More than a million of citizens all over Italy signed to support that idea, which became the Law 109/96 in March 1996. A new season of fighting against Mafia was opened since the confiscated assets could remain State property for judicial, public order or civil protection purposes, or they could be moved to municipalities for institutional or social purposes and/or to meet the needs of the community. The law has a great symbolic value and generates jobs for thousands of people who are employed in cooperatives working on confiscated lands or in confiscated companies.

The application of the Law 109/96 did not always have an easy path. Firstly, in 1999 the *Ufficio del Commissario straordinario del Governo* (Office of the Special Commissioner of the Government) was established to manage and use confiscated assets. Since 2010, *ANBSC - Agenzia nazionale per l'amministrazione e la destinazione dei beni sequestrati e confiscati alla criminalità organizzata di stampo mafioso* (National Agency for the administration and the destination of assets seized and confiscated from organized crime) is responsible for the management of these assets, even if it has not yet reached its full operation.

The greatest difficulty occurs when the confiscated asset is a company, since in case of company's closure, the workers lose their job. The analysis of the problems faced by confiscated companies is the key element of the project ICARO.

In 2010, following Law n°136, the Italian government carried out a survey on the penal, trial and administrative anti-mafia rules and regulations in order to elaborate the Anti-mafia Code, that is the administrative measures necessary to prevent mafia crimes and infiltration into the legal economy. Furthermore, the already mentioned ANBSC was established during that year. Nowadays the Italian Parliament is discussing the reform of the Agency so to make its actions more effective and more matching to necessities.

The new regulation of the Anti-mafia code (to be approved) provides the introduction of measures addressed to support the turnover of confiscated companies and to facilitate their participation to public tenders. Improving changes are foreseen about the assignment of the confiscated companies, better guarantees of their operational continuity and a more effective protection of labor. In 2016 through the Budgetary Stability Law it was established a fund to support seized and confiscated companies.

ICARO - a project co-funded by the Prevention of and Fight against Crime Programme of the European Union – is promoted by Arci Milano, Avviso Pubblico, Centro di Iniziativa Europea, CGIL Lombardia, Associazione Saveria Antiochia Osservatorio Antimafia and Università degli Studi of Milano. Such a large partnership makes understand the amount of efforts required to tackle the mafia phenomenon.

Starting from the Italian experiences of the laws on the seizure and social re-use of mafia assets, the project ICARO has deepened a fundamental topic for the successful fight against mafias: the recovery of confiscated companies and their re-introduction into the legal economy.

The project ICARO has the following aims:

- To increase the knowledge on the policies, laws and regulations adopted in Europe to contrast the mafia organizations with particular reference to confiscation and re-use of criminal assets and companies.

- To study the conditions for success and the weaknesses of the policies of confiscation / reuse of Mafia assets and companies experienced in Italy.
- To supply competences and skills able to enhance the managing and recovery of confiscated assets.
- To foster seizure and confiscation as a tool to fight organized crime so to create ethical behavior and social corporate responsibility.
- To transfer on a European level competences, methodologies and good practices adopted in Italy on how to hit criminal richness and prevent diffusion of mafia interests into legal economy.
- To increase public awareness on the importance of asset recovery / social reuse as a tool to contrast and prevent criminal infiltration into legal economy

Within the project ICARO the following public events were held.

- International Conference, "Mafia's infiltration into the legal economy: mafia without borders", April, 10th 2015, Milan;
- National Conference, "Best practices to contrast the illegal economy: the social re-use of assets confiscated from mafia", November, 27th 2015, Milan;
- National Conference: "Policies, methodologies and tools to manage confiscated companies: from the mafia enterprise to the legal one", April, 19th 2016, Milan;

In 2012, some of the ICARO partners together with other civil society organizations, launched the campaign "Io riattivo il lavoro" to promote a law of citizens' initiative that fosters the recovery of companies confiscated from organized crime. Indeed, it is necessary being efficient in the recovering of confiscated companies, so as to eradicate the idea that fighting against mafia leads to unemployment.

Mafia can be defeated by the involvement of the law enforcement and judiciary authorities together with the involvement of the social antimafia. It is necessary to built the culture of legality acted by citizens, whether they are entrepreneurs or simple consumers. Social anti-

mafia occurs also in doing one's job properly, in respecting the laws and rules, in countering the corruption in any possible way.

Citizens are needed to be enable to recognize mafias and their activities starting from school. Once developed this ability and awareness about negative effects led by mafias organizations upon economic and democratic life in the country, citizens are able to seriously contrast mafias and put efforts into the fight of corruption. In Italy, there are plenty of associations, *Libera* before any other, that aim to contrast mafia and support the victims of its violence. Just as mafias are globalized, so too the anti-mafia institutions and the citizens must extend and globalize themselves.

The member countries of the EU can provide a great help to the other States and protect themselves by avoiding proliferation of mafia presence in their territories. Europol stated the existence of 3600 criminal organizations across the continent. Hence, it is required to elaborate an anti-mafia model usable in many countries.

Not by chance, Italy is the country where mafias were born but it is also the country of the anti-mafia.

2. SCOPE AND METHODOLOGY OF ANALYSIS

The research aims to **understand how the theme of social reuse of property confiscated from criminals in Europe**, in order to:

- provide an overview on **strengths and weaknesses in EU legislation** on this issue and in the legislative systems of the European Union countries;
- propose some recommendations to improve the procedures used to return property formerly controlled by criminals to the community and to reuse said property for social purposes, focussing especially on the reactivation of companies formerly owned or controlled by Organised Crime (mafia).

The research is divided into two main actions:

- analysis of the European legislative framework on confiscation of the proceeds of criminal activity, focussing in particular on the recent EU Directive 42/2014 on the "Freezing and confiscation of instrumentalities and proceeds of crime in the European Union", which for the first time establishes common principles and minimum standards in several Member States for the management and disposal of the property confiscated from criminals;
- the analysis of the Member States' Legislations with the aim to develop a comparative synopsis of confiscation regimes in the various national legal systems, paying special attention to the administration and disposal of confiscated property and the recognition of the possibility of its reuse for social purposes.

The research is based on analysis of both primary and secondary sources. The primary sources consist of European and national

legislation, accessed through the legal archives and by direct query to

the national parliaments or the specialized offices within ministries[1], in order to select the most suitable legislation sources for the comparative analysis. The primary sources analysed are divided into two categories:

- **The Community legislation on confiscation of proceeds of crime, with a specific focus on EU Directive 42/2014** and the documentation submitted in the proposal, elaboration and approval process of the Directive, such as preparatory documents, opinions and reports submitted and discussed between the EU stakeholders involved (Commission, Parliament, Member States), as well as the views expressed by the European economic and social Committee and the Committee of the Regions;
- the analysis of the **Member States' Legislations** with the aim to develop a **comparative synopsis of seizing and confiscation regimes in the various national legal systems**, paying special attention to the administration and disposal of confiscated property and the recognition of the possibility of its reuse for social purposes.

Analysis of primary sources was further reinforced by analysis of secondary sources, which consist in a reconstruction of the available literature on the subject, with particular reference to reports or researches of institutional or academic nature, or European projects dealing with the comparison between confiscation systems in several European countries and the EU regulation on confiscation and social use of goods confiscated in the EU.
The analysis of national legislation also considered the available literature on the presence of nationwide criminal organizations.

1 To date, only a few countries have answered (Denmark, Estonia, Finland, Ireland, Malta, United Kingdom, Czech Republic, Romania, Sweden)

A further research measure which, due to its exploratory nature has been incorporated in the Annexes to this research report, focuses on the characteristics of **national and transnational projects dealing with management of confiscated property financed by the EU** as part of "Prevention of and Fight against Crime" projects and programmes. The analysis focused on a sample of projects approved by the European Commission, with the aim to assess:

- the nature of the proposing parties and the project characteristics (e.g.. institutions/civil society, involved countries, funding bodies...);
- statistical (quantitative) and qualitative relevance of the issue of social re-use of confiscated property in the projects;
- the Commission's choice in the selection of projects.

This research allowed us to single out certain elements of attention but could not go beyond an exploratory level because, as shown in the annexes, there are significant problems of access and quality in the data that the Commission issues. These problems must be addressed in order to improve the transparency and the ability to activate civil society stakeholders on such a delicate and important issue as the social reuse of goods confiscated from criminal organizations.

3. DIRECTIVE 42/2014 ON FREEZING AND CONFISCATION OF INSTRUMENTALITIES AND PROCEEDS OF CRIME IN THE EUROPEAN UNION

3.1. Before, and besides the EU Directive 42/2014: instruments of cooperation in confiscation processes

Confiscation, and related issues, have long been the subject of attention and action by the European Union.

Over the years different tools and methods have been used at EU level to fight organized crime through the attack to criminal property. Among the **main instruments of cooperation** it is worthy to point out:

- Joint Action 1998/699 on money laundering, identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime;
- Framework Decision 2001/500/JHA, which requires Member States to enable confiscation, to admit alternative penalties for the concerned amount in cases where the direct proceeds of crime cannot be traced, and to make sure that requests from other Member States are treated with the same priority given to national procedures;
- Council Framework Decision 2005/212/JHA which harmonises the rules on confiscation. Ordinary confiscation, including alternative penalties like for the concerned amount must be available for any offense punishable by a year in prison. It must be possible to exercise extended confiscation powers for some serious crimes when said crimes are committed as part of a criminal organization;

- Framework Decision 2003/577/JHA provides for the mutual recognition of asset freezing measures;
- Framework Decision 2006/783/JHA which provides for mutual recognition of confiscation orders (in this regard see also the 2010 Commission report on implementation of the principle of mutual recognition of confiscation orders);
- Council Decision 2007/845/JHA on the exchange of information and cooperation between Offices of the Member States for the recovery of property, which obliges Member States to establish or designate national Asset Recovery Offices as points of central contact to facilitate, through enhanced cooperation, the fastest possible retrieval of proceeds of crime throughout the European Union.
- Communication to the Commission about the proceeds of offences committed as part of criminal organisations (2008);
- The Stockholm Programme (2009) and the conclusions of the Justice and Home Affairs Council on the confiscation and recovery of property (2010);
- the Commission's Communication on the EU Internal Security Strategy (2010);
- The European Parliament report on organized crime in the European Union (known as the Alfano report) and the subsequent resolution (2011).

In this corpus of instruments, however, there are a series of problematic elements that are the reasons of the Commission's decision to propose in 2012 a directive specifically devoted to the confiscation of instrumentalities and proceeds of crime in the European Union:

- **The issue of the reuse and destination of confiscated property,** and in particular the need to promote the social re-use of confiscated property and businesses **remains a grossly neglected issue**

in Community legislation, despite its overall importance in the effectiveness of the entire system of confiscation. Making confiscated property available to the civil society and local communities is mentioned in several EU documents, see for example the LIbE (Committee on Civil Liberties, Justice and Home Affairs of the European Parliament) 2012 report on this issue, but as yet it has not been dealt with in an organic way within the framework of the Community rules on confiscation of criminal property.

- **The implementation** by the EU's Member States of rules on confiscation has been very slow, with the result that **the process of harmonization between national laws appears inadequate and lacking**. This impacts the international cooperation capacity in all operations of identification, tracing, freezing and confiscation of instrumentalities and proceeds of crime at European level. There are still significant legislative differences regarding confiscation in the Member States' laws, with subsequent difficulties of cooperation during asset recovery and in the provision of mutual legal assistance in cases of conflict between the confiscation model used by the State requesting confiscation and the one used in the State where confiscation shall occur.

3.2 The Directive 42/2014: philosophy of action and implementation times

This is the framework in which the new **Directive 42/2014**, adopted by Parliament and the Council on April 3, 2014, following a proposal of the Committee of March 12, 2012 on the freezing and confiscation of instrumentalities and proceeds from crime in the European Union. The purpose of the Directive is to offer **'minimum standards'** [2] that

2 The legal grounds of this measure are laid down in articles82 par. 2 and 83 para. 1 TFEU which allows the Parliament and the Council to establish minimum standards, where necessary, to facilitate the principle of mutual recognition and cooperation in criminal matters or to deal with particularly serious criminal activities of transnational scope.

can approximate the Member States' schemes on freezing and confiscation of property, thus fostering mutual trust and effective cross-border cooperation.

But the directive is also an **important opportunity for political recognition of the importance that the criminal infiltration has taken on the economy of the European countries** and the need to implement effective tools to subtract from organised crime both the proceeds and property earned with criminal activities.

The Directive was approved by Parliament and the Council on April 3, 2014. Poland voted against it and England did not vote (thus excluding a significant area from the Directive's operational scope) and so did Denmark, which had been the main promoter of Directive. 212/2005

on extended powers of confiscation; Ireland instead voted in favour but only for what concerns offences covered by the legislative instruments the country is bound to.

The Member States must implement the Directive by **October 4, 2016,** and by **October 4, 2019,** the Commission shall submit to the European Parliament and the Council a report which assesses the effects of national rules on confiscation and asset recovery.

3.3 The object of the Directive: definition of the concepts and of the offences

As a general rule the process of recovery of instrumentalities and proceeds from criminal activities can be divided into four phases:

- the phase of intelligence or pre-investigation, during which the investigators verify the source of information on the basis of the inquiries in progress and determine its authenticity;
- the investigation phase, in which the proceeds from crime are

located and identified, and further evidence relating to the ownership of these property is collected, for example through requests for mutual legal assistance or financial investigations to obtain information on offshore accounts or banking data analysis. The investigative work can lead to temporary freezing measures - e.g.. seizure that can then be followed by a confiscation order by the judiciary;

- the trial phase, in which the person accused of the crimes identified in the investigation phase is submitted to the judgment of the courts, which also evaluates whether to issue an order of confiscation of property;

- the asset allocation phase, which covers what to do with the property seized by the judicial authority and which, in compliance with the law, is at the State's disposal, taking into account the international cooperation obligations and the compensation of damaged persons.

The directive intervenes in this general scheme leading to the confiscation of criminal **proceeds** by first providing some preliminary definitions and clarifying what are the offences covered by the Directive. The preliminary definitions relate in particular to the following concepts:

- proceeds means any economic advantage derived directly or indirectly from a criminal offence; it may consist of any form of property and includes any subsequent reinvestment or transformation of direct proceeds and any valuable benefits. The proceeds can therefore originate directly or indirectly from criminal conduct, or be the result of a subsequent reinvestment or transformation of the proceeds themselves. Moreover, the notion of "proceeds" encompasses also the estimated value of the property when they have been totally or partially "blended" with other property of legitimate origin. It includes, therefore, both surrogates (each subsequent reinvestment or transformation

of direct proceeds from the suspect or defendant) in which the original profits were invested, and assessable profits;

- property means **property** of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title or interest in such property. The notion includes, but is not limited to: financial instruments, debt securities and legal instruments "instruments evidencing title to or interest in such property" (recital 12). Secondly, the confiscated property include "instrumentalities", that is any property used or intended to be used, in any manner, wholly or in part, to commit a criminal offence or criminal offences (art. 2, n. 3).

The scope of the directive is defined by art. 3**, which identifies the serious crimes covered by the Directive** :

- crimes related to corruption
- crimes that are known to be the distinguishing traits of mafia and similar associations:
  - drug trafficking
  - human trafficking
  - offences relating to terrorism and attacks on information systems
  - offences involving counterfeiting currency and payment instruments
  - money laundering
  - sexual abuse and exploitation of children and child pornography.

The **Directive's** reference to the world of **"organized crime",** however, allows its extension to other offences. Indeed the first recital points out that the purpose of the Directive is to oblige Member States to acquire

the means to trace, freeze, manage and confiscate the proceeds of crime, because the profit is the main driver of cross-border organized crime, including mafia-like criminal organizations, and the prevention and effective fight against organized crime should be achieved by neutralizing the proceeds of crime. This means that, for example, environmental crimes such as toxic waste trafficking, if committed by criminal organizations for the purposes of profiting from it, is included in the Directive's scope.

3.4 Freezing and confiscation: what is the difference?

Freezing is the temporary prohibition of the transfer, destruction, conversion, disposal or any movement of property, by placing said property under the custody and control of the State. Freezing may indeed be preceded by other urgent measures aimed at granting the authority having jurisdiction immediate access to and acquisition of property. The ultimate purpose of freezing is to preserve the property in view of a future confiscation; freezing "only remains in force for as long as necessary" to achieve this purpose.

Confiscation is a measure taken by the court which irrevocably deprives the owner of the asset of any right to it, following a final criminal judgment. Once the sentence has become final and enforceable it is possible to seize property, regardless of the prior freezing thereof.

Freezing and confiscation are therefore independent one from each other although the freezing process, aimed at preserving the asset long enough to adopt a confiscation measure, has the features of a prerequisite to confiscation. The property frozen, if not confiscated, must be immediately returned or made available for other purposes (such as a guarantee or collateral of compensation for damages). The confiscation should not in any way limit the right of those harmed by the offence, with the result that States must take necessary measures

to guarantee the victims' compensation.

The Directive provides that those affected by these measures "have the right to an effective remedy and a fair trial" (art. 8). In transposing the Directive, the Member States undertake to comply with the principles contained in the Charter of Fundamental Rights of the European Union and the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), as interpreted by the court in Strasbourg (recital 38).

3.5 Confiscation in case of absconding or illness of the suspected or accused person

As mentioned before according to the Directive confiscation can only be ordered following a final conviction, which can also result from proceedings in absentia. **The Directive** however provides that**, under certain circumstances** and, wherever **it is not possible to carry on with the trial** due to the physical absence of the accused, the judicial authorities may still confiscate instrumentalities and proceeds from crime. The cases provided for by the law are illness and absconding of the suspected/accused**;** in these cases, the existence of proceedings in absentia in the Member States should be sufficient to comply with this obligation. The Member States have the responsibility to arrange, within reasonable limits, the necessary measures to make sure the subject is warned and given the opportunity to participate in the confiscation proceedings.

Absconding and lifelong illness are the only cases where the Directive allows confiscation without conviction. Confiscation is not allowed in case of death of the offender, although this provision was originally part of the Proposal for a Directive submitted by the Commission in 2012 and envisaged, for example, in Italian law. This option, according to several observers, is an important and effective tool in the fight against organized crime, because it allows subtraction of the criminal

property in the event that the death of the offender occurs during the proceedings but after the criminal origin of the property to be confiscated has been ascertained (even if not finally).

3.6 Value confiscation and extended confiscation

As an alternative to direct confiscation of the proceeds and instrumentalities, Member States have the option of performing **value confiscation** that is confiscation of property, in the ownership of the convicted, the value of which corresponds to that of the proceeds or instrumentalities to be confiscated. This is used, for example, when the convicted is responsible in making the property to be confiscated unavailable.

The court may also proceed to confiscation not only of goods closely linked to the crime object of a final sentence but also decide to block access to part of all of the property according to the suspect (even an unsubstantiated suspect) that said property is the result of criminal conduct. This is a form of **extended confiscation**, meaning that it does not require the ascertainment of a cause link between the property to be confiscated and specific crimes, but rather the confiscation extends to all goods that the court considers of criminal origin, "on the basis of the circumstances of the case, including the specific facts and available evidence."

This does not mean that it must be made certain that said property has been obtained from criminal conduct. **The extended confiscation can be adopted on the basis of a "balance of probabilities", or by reasonably presuming that the property in question has been obtained from criminal conduct**, although the application of this measure requires final conviction for an offence covered by the Directive. An evident disproportion between the property owned by that person and his/her legitimate income is an example of one of the facts which may lead the court to conclude

that said property is derived from criminal conduct. Member States may also set a time limit for the decision that property is derived from criminal conduct.

In recital no. 19 it is stated that extended confiscation is an important means of combating the accumulation of illicit proceeds by organized crime: "Criminal groups engage in a wide range of criminal activities. In order to effectively tackle organised criminal activities there may be situations where it is appropriate that a criminal conviction be followed by the confiscation not only of property associated with a specific crime, but also of additional property which the court determines constitutes the proceeds of other crimes". The Directive defines a single model of "extended" confiscation through "a single set of minimum standards" required with which Member States should follow, to pursue harmonisation and consequent mutual recognition, thus remedying the lack of implementation of Framework Decision no. 212/2005 that has failed to promote harmonisation in this field. The continued existence of different concepts of extended confiscation in national jurisdictions has been a definite obstacle to cross-border cooperation in confiscation.

3.7 The use of complacent third parties: third party confiscation

Transfers (including fictitious ones) of property to complacent third parties (e.g. front men, figureheads, shell companies) to avoid the effects of court orders is widespread practice within criminal organizations. Because of this the Directive requires Member States to adopt measures to enable confiscation (and freezing) of property from third parties who "knew or ought to have known" that the cause of the transfer was the exclusive avoidance of the court order. This is called **third party confiscation**. The targets of this operation may be either natural or legal persons (e.g. companies or firms). Awareness on the part of third parties involved must result from circumstances and facts such as, for example, the transfer free of charge or a sale to

an unjustified price (lower than the market price), without prejudice to good faith. This type of confiscation should also be applicable whenever the crime has been committed on behalf of or to the advantage of the purchaser and whenever the transfer has taken place through an intermediary. The Directive leaves Member States free to define third party confiscation as either subsidiary or alternative to direct confiscation, as appropriate in accordance with national law.

3.8 Finding hidden property

The accused may try to avoid the effects of freezing and confiscation by simply hiding their property instead of transferring it to a third party. For such cases, Member States are required to identify effective tools for courts and judicial authorities so that they can on one hand seek and identify the goods and on the other define in any case "the precise extent of the property to be confiscated" so that they can proceed to the proper execution of the measure (i.e. its issue) even after the final judgment (recital 30).

3.9 Management of the property during the freezing and disposal

The property shall, while subject to freezing, be properly managed so as to preserve its economic value. To this end Member States must put in place appropriate mechanisms, such as, for example, the establishment of centralised offices, possibly allowing the sale or transfer of the property. In order to prevent the management of property seized from the holder from becoming an additional economic opportunity for criminal organizations, measures must be taken to prevent any illegal infiltration.

3.10 The social re-use of confiscated property

The Directive requests, without obligation that **Member States use preferably confiscated property for public interest or social purposes**. Article 10.3 reads: "Member States shall consider taking measures allowing confiscated property to be used for public interest or social purposes." This formula binds Member States to implement and enact additional measures such as conducting a legal analysis or discussing the advantages and disadvantages of introducing measures. Such measures could include earmarking property for law enforcement and crime prevention projects, as well as for other projects of public interest and social utility. (recital 35). At the same time, the Directive specifies that Member States should include among the destination options for frozen goods and confiscated property the opportunity to sell or transfer them where appropriate.

However, it is also necessary to point out that the Directive makes no reference to the case of confiscated companies and their recovery for social and socio-economic development projects.

3.11 Collection of data on frozen and confiscated property

Article 11 of the Directive requires Member States to **regularly collect and maintain comprehensive statistics about freezing and confiscation of property in their State and those to be performed in another State, and regularly send said data to the Commission**. The data must also contain the estimated value of property covered by these measures. Such work must be performed at central level.

These tasks should provide more data to back up the scarce sources of data about the freezing and confiscation of property, as well as allow a specific assessment of the effects of the Directive. To be more precise, the Directive mentions "appropriate statistical data on freezing and confiscation of property, asset tracing, judicial

and asset disposal activities" (recital 36). The directive also specifies that the States should keep the administrative burden of data collection within reasonable limits, and indeed a "complete" collection might not even be necessary (recital 37).

Data collection and communications to the Commission, together with the text of the main provisions of national law adopted by the Member States will enable the States to provide a report as complete as possible, with reference to the assessment of the "impact of existing national law on confiscation and asset recovery, accompanied, if necessary, by adequate proposals" (art. 13), such as the widening of the number of the offences to which extended confiscation applies. That report, as already mentioned, will be submitted by the Commission to the Council and Parliament by October 4, 2019.

4. DISCUSSION OF DIRECTIVE: CRITICAL POINTS AND PROBLEMS

EU Directive 42/2014 is the result of a long drafting, consultation and discussion process involving the Commission, the European Parliament and the Council of Europe. **The final version, approved by the Parliament and the Council is a compromise between different (and sometimes almost opposite) stances and opinions** as shown in the preparatory and discussion materials analysis[3]. The initial proposal to the Commission has undergone several changes, a further proof of the fact that the points of view between the parties involved - the Commission, the Parliament and the Member States, as well as the views expressed by the European Economic and Social Committee and the Committee of the Regions - were often very far from each other. The gap was particularly wide and hard to bridge on two issues:

- the need to strengthen EU recognition of the social reuse of confiscated criminal property and the allocation of proceeds of crimes as a priority which would guarantee efficiency, visibility and trust-building in institutions and social capital in local communities;
- the opportunity to include in the "minimum standards" conditions specified in some common rules to all Member States on confiscation without conviction, a mechanism which currently exists only in some national legal systems.

3 The Commission's proposal for a Directive of 2012, and the amendments proposed by the European Parliament, especially the LIbE Committee (Committee on Civil Liberties, Justice and Home Affairs) - and the opinions of the European Economic and Social Committee and the Committee of the Regions. COM (2012) 85 final - 2012/0036 (COD)

4.1 What is the role of social reuse in EU legislation? The proposals of the European Parliament

The Directive is, beyond doubt, quite timid on the promotion of social reuse of confiscated property. It indeed requires the Member States to consider the opportunity of introducing measures to allow the social reuse of property confiscated from criminals (if this is not already provided for in their national law systems), but in doing so it basically does nothing more than just recommending to consider: in the end each Member State shall assess by itself whether or not to introduce social reuse, explaining the advantages and disadvantages that have led to the decision.

In other words the Directive does not impose social reuse but rather asks for a commitment to assess the suitability and opportunity of introducing such measures.

However, even if this approach is a relatively timid one, **it indeed represents the first time the EU specifically mentions social reuse of confiscated goods in legislation**: in the Framework Decisions previously adopted by the Council on the disposal of confiscated property the social reuse option had been rather overshadowed (as pointed out by the report on the social reuse in Europe drawn up in 2012 for the European Parliament)[4].

The 2012 report, together with the earlier (and first of its kind) report on organized crime in the European Union of 2010 (known as the Alfano report) and the subsequent 2011 Resolution all underline the need to adopt as soon as possible an EU legislative instrument on the confiscation of property and proceeds of international criminal organizations that specifically addresses the issue of their reuse for social purposes, given that many Member States do not provide for

4 European Parliament's Committee on Civil Liberties, Justice and Home Affairs "THE NEED FOR NEW EU LEGISLATION ALLOWING THE ASSETS CONFISCATED FROM CRIMINAL ORGANISATIONS TO BE USED FOR CIVIL SOCIETY AND IN PARTICULAR FOR SOCIAL PURPOSES", 2012 PE 462.437

reuse and the very definition of social reuse appears ambiguous while its practical applications are many and highly diversified.

The 2012 Parliament report recognizes the benefits that derive from the possibility of granting property confiscated from criminals in use to civil society. According to the report, social reuse:

- provides a more efficient prevention of organized crime, as it activates economic growth and social development dynamics through social participation;
- allows compensation of damages and of the negative effects of organized crime on the communities involved, since such criminal activities often have no identifiable victim that can be compensated;
- strengthens the ability of civil society to take a reactive role in the prevention and fighting of organized crime, allowing it to achieve greater accountability of Member States and consequently increasing the power of representation of national legal system, promoting more transparent relationships between citizens and institutions.

These benefits may be more easily achieved through greater harmonisation of national laws and more stringent cooperation and communication between National Asset Recovery Offices (ARO). To this end, the report suggests some **recommendations with the aim to strengthen, at European level, the promotion of social reuse of property confiscated from criminal activities**:

- drafting a **European Directive specifically devoted to the theme of social reuse**, which will set conditions in presence of which the Member States must necessarily assign for social purposes a portion of confiscated property and which shall include additional annual minimum thresholds of proceeds and property dedicated to this purpose;

- creating a **European Database on the management of goods** that collects data on the reuse, at national level, of confiscated property, with particular focus to their social reuse. Monitoring the actual use of the property (to compensate the victims or for specific social projects) may generate and make available more comprehensive data than data currently available on the total amount of seized and confiscated property. The database generated with this data would increase transparency and allow civil society to develop a platform to evaluate and suggest new practices and social destinations of use for confiscated property;

- creating a **European Fund for criminal property** management which would gather part of the goods confiscated from criminal organizations in every individual country after the final conviction and after any right to compensation obtainable through said property has been settled. This fund's aim would be to allocate resources to specific European social projects, which could even extend beyond the EU borders given the international, even global nature of criminal trafficking and criminal activities;

- establishing a **European Office for the Management of Confiscated Property** which would have the responsibility to ensure that all requests of seizing and confiscation that incorporate a transnational element shall be taken care of and completed. The European Office would, theoretically, work jointly with the National Offices having the corresponding tasks and ensure the exchange of information. One of the duties of this office would be to ensure that a certain amount of criminal property confiscated nationwide are employed for social purposes, thanks to the identification of a shared definition, by the different Member States of what is meant by "social purposes".

Also, during the discussion of the Proposal for a Directive, the European Parliament has proposed a few amendments on the issue of social reuse of property confiscated from the crime, in line with the recommendations expressed in its 2010 report and in the 2012

report.

In particular, the European Parliament asked to explain more clearly and in a more stringent manner in the Directive the importance of the social reuse of confiscated property as a priority target by Member States and proposed to delete the reference to the sale of frozen property as selling property makes it impossible to reassign it for social purposes, stressing instead that a careful management of frozen property may encourage "the social reuse", thus avoiding the risk of "further criminal infiltration." In other words, the approach proposed by the Parliament is very similar to the one that inspires the Italian legislation on the reuse of property confiscated from the mafia, introduced with the "Rognoni-La Torre" Law (law no. 646 of 13.9.1982): the safeguard of the profitability of the property in a strictly economic sense is integrated by a "social profitability" which is a broader context to be understood as an affirmation of the law and as a response to the social needs of the community.

A similar approach is also found in the Parliament's proposal to include in the Directive the creation of an *"Union fund which collects a portion of the property confiscated by the Member States. Such a fund should be open to pilot projects of Union citizens, associations, coalitions of NGOs and any other civil society organizations to encourage effective social reuse of confiscated property and extending the Union's democratic functions."* The reference to the "Union's democratic functions" has an important political significance because it makes it possible to consolidate social consensus to the confiscation tool, which is not only to fight crime, but also to liberate the economy and the society from criminal infiltration that hinders development.

This approach is confirmed in the proposal to add the following recital to the Directive: "*In order that civil society may concretely perceive the effectiveness of the action of the Member States against organised crime, including mafia type crime, and that the proceeds are actually taken away from the criminals, it is necessary to adopt common measures to avoid that the criminal organisations recover possession of property*

illicitly obtained. Best practice in several Member States has shown that the following are effective tools: management and administration by Asset Management Offices (AMO) or similar mechanisms, as well as the use of the confiscated property for projects aimed to contrast and prevent crime, and for other institutional or public purposes or social use. "

That reference to the social reuse was further clarified in the following passage *"The practice of using confiscated assets for social purposes fosters and sustains the dissemination of a culture of legality, assistance to crime victims and action against organised crime, hence creating 'virtuous' mechanisms, which may also be implemented through non-governmental organisations, that benefit society and the socio-economic development of an area, using objective criteria. "*

Unfortunately, these amendments did not find a place in the final version of the Directive approved by the Council and Parliament in April 2014, although even the European Economic and Social Committee (EESC) had argued for a greater emphasis on the importance of social reuse of property confiscated as a more virtuous and efficient choice. *"Since direct sale of property often allows criminal organisations to regain possession of such property in roundabout ways, the EESC highlights the advantages of applying such assets first to social purposes, as is the case in Italy. As the European Parliament has noted, this would have the double benefit of preventing organised crime and promoting economic and social development."*

4.2 The exclusion of non-conviction confiscation

Another point on which opposing views have emerged among the stakeholder involved in the discussion of the Directive is related to the opportunity to enter in the "minimum standards" common to all Member States the so-called **non-conviction confiscation**.

As we have seen, Directive 42/2014 defines confiscation as a

measure issued following a final court order, which can also result from proceedings in absentia. The only exceptions to this rule are absconding or illness of the suspected or sentenced person, as in these cases it is not possible to carry out the judgment due to the physical absence of the accused.

In the final version approved by the Council and Parliament there is therefore no mention of the confiscation **in absence of criminal conviction (non-conviction confiscation),** a form of confiscation, alternative or ancillary to prosecution *in personam,* **that operates mostly in the field of civil or administrative law, *in rem jurisdiction* on each property or proceed attributable to a criminal organization or a person suspected or accused of belonging to a criminal organisation**.

It is a measure justified by the inherent danger of the continuation of illicit wealth in presence of mafias or mafia-like organisations (also for what concerns the risk of "polluting" the ordinary, legal economy of a country). Considering that immovable assets (non-personal property) do not require the same guarantees as personal property, which typically requires criminal coercion, "non-conviction confiscation" **makes it possible to attack criminal property in a quickly, more streamlined way,** as it often requires a reduced burden of proof or access to evidence that cannot be used in criminal trials; the procedure can also be applied following acquittal if the evidence is insufficient for a conviction. In other words, it is not necessary to establish whether the defendant has committed the deed and is responsible for it, but rather it is necessary to ascertain: the connection between a given property and the offence; namely, the illicit origin of the property or the lack of an explanation about a possible legal provenance thereof; or rather the relationship between the property and a criminal organization.

The main function of non-conviction confiscation is a preventive one: on the one hand, it prevents the illicitly produced wealth to be reused to fuel further illegal activities; on the other, it averts the risk that said wealth may be reinvested in formally lawful economic activities, which

results in mafia conditioning the economic activities of a country and even altering the rules of competition and compliance with the laws in force.

Different types of "non-conviction confiscation" are employed in different national systems[5], such as: Italy (through property prevention measures introduced by the "Rognoni-La Torre" law and reformed in the Anti-Mafia code), Ireland, the United Kingdom, Austria, Switzerland, Albania, Bulgaria, Slovakia and, outside Europe, the United States, Australia, South Africa and the Canadian provinces of Alberta and Ontario. It is important to note that the first version of the Directive, proposed by the Commission in 2012 contained an article named "non-conviction based confiscation" which provided for the application of confiscation only in the case of death or permanent illness of the accused, or in case the unavailability or absconding of the accused or convicted may cause the sentence to be time-barred or fall within the period of prescription, as applicable.

This "timid" approach was further reinforced by the European Parliament through the **Committee on Civil Liberties, Justice and Home Affairs (LIBE)** which, during the discussion, submitted a series of amendments aimed at building a European model of **non-conviction confiscation** *"An effective fight against economic crime, organised crime and terrorism would require the mutual recognition of measures taken in a different field from that of criminal law or otherwise adopted*

5 The need to attack illegally acquired property is more strongly felt in the countries where organized crime has deep, ancient roots and a consolidated presence, and it is not by chance that the first countries that introduced specific laws on the matter are Italy and the US. In recent decades, this pattern of aggression against organized crime and illegal profits from crimes with a high social impact has had a significant spread within the European Union, especially in the countries of Anglo-Saxon legal tradition. In particular, the common law countries (UK, Ireland, USA, Australia, Canada, New Zealand) have adopted legislation along the lines of " actio in rem", a civil law proceeding in which the public authorities must prove, without the need for any connection with a trial and a criminal conviction, that the property was derived, with a high degree of probability, by an unlawful criminal conduct. It is not necessary to prove exactly to what offence the goods are connected, even if it is at least necessary to demonstrate the type of offence from which property originates.

in the absence of a criminal conviction in the circumstances defined in Article 5 and having as their object, more broadly, any possible asset or income attributable to a criminal organization or to a person suspected or accused of belonging to a criminal organisation." (COM (2012) 0085 - C7-0075 / 2012 - 2012/0036 (COD). Moreover, the European Parliament had already, in 2011 asked for a more functionalist and less protective approach by voicing its hopes for the adoption of a real *actio in rem* in the fight against organized crime. The 2011 resolution, amongst other things, envisaged the development of standards for:

- the effective use of instruments such as extended confiscation and confiscation in absence of conviction (non-conviction confiscation);
- mitigating the burden of proof after the conviction of a person for a serious offense (including those related to organized crime) for what concerns the origin of the property and proceeds in their possession;
- the introduction into the national legal system of tools to mitigate, under criminal, civil or fiscal law as appropriate, the burden of proof regarding the source of property owned by a person convicted of an offence related to the organized crime.

With the subsequent resolution of October 23, 2013, the European Parliament envisaged a series of even more stringent measures on the need to recognize the "non-conviction confiscation". In particular the European Parliament:

- Prompted the Member States, on the basis of the most advanced national legislation, to introduce models of non-conviction based confiscation, in those cases where, based on the available evidence and subject to the decision of a court, it can be established that the property is the result of criminal activities or is used to carry out criminal activities (paragraph 27 of Parliament's resolution of

23 October 2013);

- Considered that, in compliance with constitutional national guarantees and without prejudice to the right of property and the right of defence, provision could be made for preventive models of confiscation, which should be applicable only following a court decision (paragraph 28);

- Called on the Commission to bring forward a legislative proposal aimed at effectively ensuring the mutual recognition of seizure and confiscation orders linked to the asset-protection measures adopted by the Italian judicial authorities and to the civil law measures adopted in various Member States;

- Called on the Member States to immediately adopt the operational measures needed to render those provisions effective (paragraph 29);

Among the different States, during the discussion on the Directive, Ireland was the one more vehemently in favour of the recognition of confiscation without a criminal conviction. In Ireland confiscation without conviction was introduced in 1996 with the *Proceeds of Crime Act,* a set of rules intended to hamper the growth of criminal organizations (gangs) and the possibility that the leaders of these organizations could acquire the proceeds of crime without being directly responsible of engaging in criminal activities. As in other common law countries, in this case the principles and standards of the Civil Code shall apply, that is the confiscation takes place in presence of a "balance of probabilities" and not according to the criminal principle of "beyond reasonable doubt".

Conversely, the EU Council (17287/12 DROIPEN 185 COPEN 272 CODEC 2918), Finland in particular, and the Committee of the Regions opposed the non-conviction based confiscation proposal during the Directive drafting and discussion process. The opposition was mainly due to fears that the preventive confiscation instrument

posed a disproportionate risk for what concerns protection of the rights of owners of the property confiscated in civil and administrative judgments in absence of a criminal conviction. The European Court of Human Rights, despite being asked several times to rule on actual cases of application of confiscation without a criminal conviction has always regarded this type of confiscation proportionate to the aim pursued, that is, to fight mafias or other major criminal organisations. However, the Court has never found it necessary to voice its opinion, not even an abstract, general one, on the premises of such confiscation systems as a whole in relationship to the European Convention on Human Rights.

Moreover there is a substantial opening to the adoption of this important instrument both in international law instruments, such as the Merida Convention on Corruption of 2003[6], and in standards shared globally (so called Soft law) such as the 40 Recommendations of the FATF (Financial Action Task Force) to combat money laundering and terrorist financing issued in February 2012.

In connection with these innovative profiles the Directive takes a minimalist approach that merely requires a mandatory "extended" confiscation model valid for the purpose of mutual recognition to be adopted, without prejudice to Member States' freedom to introduce more extensive models with fewer guarantees which might however be refused mutual recognition. In short, the Directive lacks the political will to identify those essential guarantees, the presence of which should grant mutual recognition and implementation, in each Member State, of confiscation measures requested by a foreign authority. The lack of recognition of the "confiscation without conviction" at European level has a serious impact on the circulation and use, within the EU, of such

6 The UN Convention on Corruption includes among the tools to be implemented to recover property generated by corruption, the need for States to "consider" adopting any measure necessary measures to confiscate property in absence of a final conviction if the offender cannot be criminally prosecuted due to death, absconding, absence or other specific circumstances (art. 54, paragraph 1, letter. c).

very effective tools as the Italian patrimonial prevention (property-based) anti-mafia measures and the British *civil forfeiture*.

5. COMPARATIVE ANALYSIS OF THE REGULATIONS OF THE MEMBER STATES IN MATTERS OF SEIZURE AND CONFISCATION

The second part of this research work focuses on comparative analysis of the national laws of the EU Member States on seizure and confiscation of property.

In criminal matters the harmonisation action of the European Union has been, until now, less effective than intervention made in other subjects[7] and therefore each country has maintained a high degree of autonomy with regard to legislation on the subject.

In addition to that many states have not developed specific measures for the fight against organized crime and mafia including confiscation which, as far as attacks to mafia property and proceeds go, is one of the measures criminal leaders fear most: *"There ain't nothing worse than confiscation of property. (...) So the best thing is to leave"* (interception of Mafia Boss Francesco Inzerillo)[8]. In fact, in all the countries we have analysed (except, of course Italy) no specific legislation on confiscation has been introduced and hence all provisions are related to the current, ordinary provisions of the Criminal Code which apply to a wide range of offences. These rules are very different one from

7 See also Gloria Marchetti I recenti passi avanti compiuti dall'Unione Europea nella direzione di un'armonizzazione dei sistemi penali. spetti positivi, profili problematici e prospettive di riforma [The recent steps taken by the European Union towards a harmonization of criminal justice systems. Positive aspects, problematic aspects and prospects for reform], Centro studi per il federalismo, November 2012.

8 Legal Interception of conversation as part of the Old Bridge investigation in 2008. Attilio Bolzoni, Decine di arresti a Palermo e New York. Presi i boss del nuovo patto Italia [Dozens of arrests in Palermo and New York - The police apprehends the leader of the new Italian Mafia covenant]. - USA, La Repubblica, February 7, 2008.

each other since they represent various legal cultures and differing needs of fighting specific criminal phenomena, found in each State.

It was not, finally, always possible to analyse the primary sources, since suitable translations for criminal law sources were not always available. Therefore, for some countries we had to use secondary sources, such as research and studies or information provided directly by the relevant Ministries.

5.1 The European criminal context[9]

The expansion power of the mafias and mafia-type organizations is a well-known fact[10]. There are no specific regulations for countering the expansion of or attacking the wealth of organised crime and indeed these organisations are firmly established in different Member States. A subsequent stage of the ICARO project will develop some data on the presence of criminal organisations (Italian and otherwise) in the EU. In this stage we will briefly focus on some information on crucial points that may make it possible to understand how deeply rooted and strong criminal organisations are and, therefore, the possible risks deriving from the lack of specific provisions to deal with these issues.

There are numerous organized crime groups active on the territory of the EU, which can be divided into 3 groups:

1. Mafias and mafia-type criminal organizations;
2. Local criminal organizations (from Member States);
3. Foreign criminal organizations (from non-Member States).

9 The sources used are Transcrime study for the "National Security Plan 2007-2013 (PON Sicurezza) project: Mafia Investments" to the extent concerning the presence of Italian Mafia organisations. For the foreign criminal organisations we have also consulted various graduation theses of the Sociology of organized crime degree course (Università degli studi di Milano).

10 See also Federico Varese, Mafie in movimento [Mafias in motion], Turin:Einaudi, 2011.

1. As for **mafias and mafia-type criminal organizations**[11] (hereinafter simply "mafias"), the most important Italian organisations (Camorra, Cosa Nostra, 'Ndrangheta and the Sacra Corona Unita to a lesser extent) are active in all of the EU. All of them are deeply and strongly rooted in some countries in particular (for example Camorra is stronger on the French and Spanish coasts and 'Ndrangheta is stronger in Germany and the Netherlands). Nigerian and Chinese mafias too are active in the EU albeit to a smaller extent.

2. In addition to Mafias many **different forms of indigenous organized crime have developed and taken root in many Member States**. In some cases, these groups' activities mostly remain within their national border; in other their activities (especially trafficking) are markedly transnational. Examples of this type of organisations are the *lancheros gallegos* from Galicia (Spain), the French Milieu (gangs) or the so-called "Bulgarian mafia".

3. In addition to the above the burgeoning European market attracts also different **foreign criminal organisations that exploit the potential of the Schengen area to develop their illicit trades**. Most relevant among them are the South American criminal organizations operating in drug trafficking (especially in Spain and the Netherlands) but also the Balkan and Russian gangs which operate in Eastern Europe and the North African ones, mainly active in southern Europe for geographical and cultural affinity reasons.

The European crime landscape is, therefore, quite composite, with different areas showing different levels of infiltration and control by different criminal groups. Among the most infiltrated areas there is Southern Europe (Italy, Spain, Greece and the Balkan countries) and Western Europe (Belgium, France, Germany and the Netherlands), while Nordic countries have a lower risk.

11 We have chosen to classify as Mafias the criminal organisations whose members have been charged with crimes described in Article 416 bis of the Italian Criminal Code in Italy.

5.1.1 The relevant contextual elements

We have identified some elements that may have favoured the development or the outright creation of forms of organized crime in the different contexts of the Member States. The following elements can be regarded as opportunities that the environment either provides or has provided and which can influence organised crime (directly or indirectly):

1. migration flows (Italian mafias);
2. political instability;
3. war,
4. presence of hubs for trafficking.

1. The use of **migration flows** for **camouflage purposes** has concerned chiefly the expansion of the **Italian mafias**. In the past, the migration flows from Southern Italy towards the "industrial triangle" of Northern Italy were a perfect vessel[12] for mafia clans infiltration in Northern Italy; in more recent times the clans used the same "cone of shadow[13]"of Italian migrants to infiltrate Northern European countries. This is for example the case in Belgium, France, and Germany where groups of Italian immigrants have, unwittingly, offered the clans an opportunity to hide their men, infiltrate the country and build up a strong power base.

2. Political instability also helped the spreading of **criminal groups.** The construction of new nation states after World War II was often accompanied by times of strong instability and legal uncertainty,

12 For further information please see Nando dalla Chiesa, La convergenza [Convergence], Milan:Melampo, 2010 and Enzo Ciconte, 'Ndrangheta padana ['Ndrangheta in Northern Italy] Soveria Mannelli:Rubettino, 2010,Rocco Sciarrone, Mafie vecchie, mafie nuove[Old and new Mafias], Rome: Donzelli, 2008, Rocco Sciarrone (ed), Mafie del Nord [Mafia in the North], Rome: Donzelli, 2014.

13 For the concept of "Cone of shadow", see Nando dalla Chiesa, La convergenza [Convergence], Milan:Melampo, 2010.

during which criminal organizations have found ample room to set up new businesses or trades or reinforce the existing ones. The clearest example is the collapse of the Soviet regime in Eastern Europe.

3. A special case of political instability is represented by an **outbreak of war or other conflicts**. A good example is the series of conflicts called Balkan wars that have laid the foundation for the development of numerous types of trafficking, with weapons trafficking being the most profitable (and still running) one.

4. Another favourable factor is a country's hosting **a natural hub for transnational** illegal traffics. This is the example of the Dutch and German ports, the Spanish airports (in particular for the cocaine traffic from South America) and the land routes through the Balkans. Criminal organisations are therefore quite eager to take root and develop permanent settlements in these transits to increase their involvement in the affairs taking place there.

All these factors suggest that they are indeed few countries that can be considered immune from the phenomenon of organized crime: In fact, at the time only the Nordic countries seem to show no contextual elements (which of course does not necessarily correspond to absence of criminal organisations), which are the prerequisites to the infiltration or the settlement of particularly powerful criminal groups.

5.2 A comparison of the seizure and confiscation measures in the European Union

In order to reconstruct a European framework we chose to take into consideration in a comparative perspective some specific information about the seizure and confiscation stages.

In particular it is important to understand which person or institution is responsible for property management and what are the relevant potential uses. It is possible to seize/confiscate any type of property:

movable, immovable, or even cash/cash equivalents.

We know that these property-based countermeasures might be analysed in more detail (comparing, for example, preventive measures or provisions on extended confiscation or even the times required for property transfer after final confiscation) however we decided, for the time being, to simplify the analysis to the listed factors because we believe that they may be more relevant to the work that will be conducted by the project as a whole[14].

At the current state of research, we can only provide data from the tables: We have contacted each country but few have provided answers and we have consulted several secondary sources, where available, but not all countries have been thoroughly investigated.

Lastly, it is necessary to remember that the work here refers only to primary law sources [15].

5.2.1 The seizure stage

As mentioned in the introduction, we have analysed data on the property management table and mode of use. As the table shows the property seizure stage is operated by a wide range of subjects (individuals or agencies/bodies) of very different nature: state agencies or personnel of the institutions or of state law enforcement agencies, or even individuals appointed by the court (receivers). There are very few agencies specialized in managing property and

14 For a more in-depth analysis please refer to project RECAST - Reuse of Confiscated Assets for Social Purposes: towards Common on EU Standards (Centre for the Study of Democracy, Università di Palermo, FLARE, ANBSC, UNICRI) which analyses more the items mentioned more thoroughly.

15 We have restricted our analysis to primary legislation (laws, acts, consolidated laws) and did not include any secondary or delegated legislation (enforcement decrees, government circulars or regulations). This choice was made because even when an English translation of a given item of primary legislation was not available, it was still possible to have access to a synthesis in secondary sources, while that was not possible with items of secondary legislation.

Table 1. The seizure stage[16]

State	Property manager	Property possibilities of use
Austria		Sale
Belgium	COSC[17]	Sale, return for a fee, storage
Bulgaria		No specific provision on property management (sale, in exceptional cases)
Croatia	USKOK[18]	Conservation (possibly sale)
Cyprus	Receiver (not for bank accounts)	Several options at the discretion of the recipient
Czech Republic	Crime Repression Authority	Preservation
Denmark	Local police or ARO	No specific provision on property management
Estonia	All departments of the Agency entrusted with enforcement of the seizure order	Transfer, sale
Finland	Police	Confiscation, mainly for cash and cash equivalents
France	AGRASC or owner[19] (if property has a complex structure)	Sale, assignment
Germany	Specific office of each Land	Sale
Greece	Secretary of the court	Conservation
Hungary	Receiver or owner (if property type does not allow for storage)	Storage, sale
Ireland	Receiver appointed by the court	
Latvia	Owner or institution chosen by the Cabinet	Retention, sale, destruction
Lithuania	Owners or police	No specific provision on property management
Luxembourg	Guardian	No specific provision on property management
Malta		No specific provision on property management
Netherlands	BOOM[20]	Storage or assignment
Poland	Court or State Prosecutor	Sale
Portugal	AMO[21]	Sale, transfer to social institutions (perishable property), retention (immovable property), destruction
Romania	National Agency for the management of seized property (for property exceeding EUR 15,000)	Sale, immovable property is donated to public authorities or private organizations for social purposes
Slovakia	District Office	No specific provision on property management
Slovenia		Storage, sale, destruction, donation for public use
Spain	Special office (its implementation is still being discussed)	Storage, sale
Sweden	Police or authorities which handled the seizure	Storage, sale
United Kingdom	Receiver appointed by the court	Receiver has full autonomy on management (can even sell)

16 Only data currently available has been shown.

17 Central Office for Seizure and Confiscation.

18 Bureau for Combacting Corruption and Organised Crime.

19 Agency for the Recovery and Management of Seized and Confiscated Assets.

20 Criminal Assets Deprivation Bureau of the Public Prosecution Service.

21 Asset Management office.

even fewer of the existing ones are involved in the management at this stage. Several states, in fact, have provided for the establishment of agencies, organizations or specific offices as part of police forces or of the offices of the prosecutors specialized in investigating criminal property (as the MOKAS[22] in Cyprus). These bodies support the investigation agencies in the investigation stage, contributing to the identification of the property that can be traced down to the suspect. Few countries, however, have provided properly qualified personnel to be used in the management of material goods (cash and cash equivalents are usually stored in special accounts or with similar means and therefore their management is not difficult). The only exceptions are the Italian ANBSC (which we will not deal with) the French AGRASC (Agency for Management and Recovery of Assets Seized and Confiscated) established in 2010 under the authority of the Ministries of Justice and Finance and, only for the seizure stage, the Portuguese agency AMO (Asset Management Office) and the Romanian National agency for the Management of seized Assets.

As for the possibilities of use of the goods seized the legislation of most States is explicitly aimed at either retaining the value of the asset unchanged or exploiting it, except for a few Member States[23] whose legislation does not feature specific provisions in this field. However, although all States aim for the same purpose, the methods they use to reach it are very different. In almost all countries, the property may be handled in many different ways in order to maintain its value unchanged, with sale being the first option. This option, however, is always secondary to retention and usable only in a few exceptional cases. Indeed the seized goods in fact are usually sold when they are perishable or when retention or storage would significantly diminish their value or cause the State to pay unreasonably high running costs

22 The Cypriot Unit for Combating Money Laundering

23 Denmark, Lithuania, Luxembourg, Malta according to reports in the RECAST - Reuse of Confiscated Assets for Social Purposes: towards Common EU Standards Centre for the study of democracy, Università degli studi di Palermo, FLARE, ANBSC, UNICRI.

compared to the value of the property. In several cases, however, immovable property is excluded from sale at this stage.

Among the provision used by the various States Portugal and Estonia are the most interesting: the property is temporarily assigned to Police (this provision mostly deals with vehicles which are assigned to police forces): this way the property does not lose value due to inactivity and its running costs are amortised or compensated by the savings on the purchase of a new vehicle (or other movable property); of course should the trial end with an acquittal, the owner/formerly accused will be returned the property and compensated for the depreciation of the property from the time of seizure and the time of return.

However, the lack of precise rules or of a body or institution appointed only to managing seized property leads, in some countries, to the deterioration of property.

5.2.2 The confiscation stage

The same elements analysed for the seizure stage were analysed for the confiscation stage, with the difference that special attention has been paid to social reuse: while it is just one of the options of use of the property, we think it is particularly relevant also considering the abovementioned provisions of the Directive.

The analysis showed that, except for Italy, there is no specific legislation for offences related to organized crime.

The analysis has considered both tangible property (movable and immovable) and cash or cash equivalents.

Table 2. The confiscation stage

State	Property manager	Property possibilities of use	Social reuse
Austria		Assignment to public institutions, sale, destruction	
Belgium	FINDOMMO (for immovable property only)	Sale, lease, transfer to the federal department, destruction, return to the victims	Immovable property, only in the Flemish Region
Bulgaria	CIAF and ICMFA[24]	Sale, in a few cases assignment to state institutions	
Cyprus	Receiver appointed by the court	Transfer of cash and cash equivalents to the State, sale, restitution to victims	
Croatia	Central Office for State Property	Transfer to the State, sale	
Czech Republic	OGRPA [25] (or other authorities depending on the type of asset)	Sale, lease, transfer to state institutions or local authorities, restitution to victims, destruction (only movable property)	Yes (indirect)
Denmark		Sale, transfer (for cash and equivalents) to the State, compensation of victims, destruction	
Estonia	County government, state institutions	Sale, destruction	The county government may use the property that way.
Finland		Sale, transfer to state or local authorities or institutions, destruction	Yes (indirect)
France	AGRASC	Sale (immovable property), transfer to state institutions/bodies, restitution to victims, destruction, victim compensation	Yes (cash and property linked to drug crimes are invested on anti-drug initiatives)
Germany		Sale, transfer (to state, local authorities, institutions, NGOs, police), restitution to victims, destruction	There are no specific provisions
Greece		Sale, transfer (to state or local authorities), restitution to victims, destruction	Yes (indirect)
Hungary		Sale, transfer to state or local institutions, restitution to victims, destruction	Yes (property is transferred to NGOs for social reuse)
Ireland	CAB[26]	Sale (civil trials), restitution to victims, transfer to local authorities	
Latvia		Transfer to the State	
Lithuania	Territorial State Tax Inspectorate	Sale	
Luxembourg	Storage in District Courts	Sale, transfer to public authorities, destruction	Yes (cash and property linked to drug crimes or money laundering are invested on initiatives fighting these crimes)

24 Central Office for Seizure and Confiscation.

25 Bureau for Combacting Corruption and Organised Crime.

26 Agency for the Recovery and Management of Seized and Confiscated Assets.

There are no agencies specialised in property management before final destination of the property is identified, the same issue we noticed in the confiscation stage. In some cases, property is entrusted to the state property management agencies (such as OGPRA[27] in Czech Republic). Exceptions in this case are always Italy and France, but also Ireland with CAB (Criminal Property Bureau). It is also evident that some countries which provided specialized agencies for the management of seized property have chosen not to entrust the agencies themselves with the management of confiscated property. It should be noted, finally, that the institution of an authority on the management of confiscated property is currently being discussed in the Romanian Parliament, while the Spanish legislature is considering a major reform of the Penal Code, aimed in particular at strengthening the whole confiscation and seizure system.

As for the property transfer modalities, the analysis shows that sale through public auction is the most used tool. In this case there does not seem to be the need for an authority that manages the asset in the time between confiscation and sale. The proceeds of the sale (or the lease, as applicable) become part of the State budget.

At the same time, however, there is no control system on the purchasers of the confiscated property, which means that the property might be purchased by strawmen, i.e. people operating on behalf of the convicted owner or the confiscated property. It is however possible to confiscate the property again if need be.

Another common option is the transfer of material property to state institutions, local authorities or public bodies that may use said property to fulfil their duties, or restitution of the property to victims as a refund.

Destruction applies only to hazardous or illegal goods (such as drugs or weapons).

27 Office of the Government Representation in Property Affairs.

5.3 Social reuse

While there are several countries that provide for social reuse of confiscated property, almost all regulations prefer an indirect reuse system, which allows investments in the funds raised from the sale of property in activities with a social purpose, transferring the proceeds to NGOs or state institutions or local authorities and applying usage constraints.

France, Luxembourg, Spain and Scotland represent a special case among the countries that have opted for indirect social reuse: the legislation of those States, in fact, provides for the transfer of the proceeds of the sale property related to certain crimes (consumption, drug dealing or trafficking in France and Spain, more general serious crimes in Luxembourg) to the funds aimed at preventing and combating those same crimes. Scotland is slightly different: confiscated cash and proceeds are transferred to the "Cash Back for Communities" fund which finances a special crime-prevention programme for young people with at-risk behaviours (Wales and the rest of the UK do not have such a programme).

There are only two cases of direct reuse of property: the first is Italy in which social reuse of confiscated property is mandatory but only for property confiscated in Mafia-related trials. Another case is that of the Flemish region of Belgium: immovable property (buildings only) uninhabitable or abandoned at the time of confiscation may be entrusted to the municipalities that manage them temporarily with the obligation to renovate them and use them for social purposes.

5.4 Specific provisions regarding organized crime

It is well known that ownership of assets and goods is extremely important, both from the economic and symbolic points of view[28]

28 See also Nando dalla Chiesa, L'impresa mafiosa. Tra capitalismo violento e controllo sociale, [Ma-

for criminal bosses: for this reason it is essential that the regulations on seizure and confiscation include aggravating circumstances, exceptions or even specific rules to be applied whenever the accused is charged with crimes related to organized crime or is part of organised crime.

Sadly, only Italy and three other countries have such specific provisions[29] Spain, Croatia and Ireland. In Spain extended confiscation[30] is allowed only in cases where the crime was committed by organized crime groups. In Croatia from 2009 the burden of proof has been reversed for persons suspected of corruption and membership in organised crime and now it rests on the accused. Lastly, in Ireland it is possible to confiscate even property that is not part of the investigation in organized crime cases.

As you can see, the reference in these cases is to organized crime offences, while the Italian legislation focuses on the mafias.

5.5 Seizure and Confiscation of companies in Member States

Since the ICARO project focuses heavily on confiscated companies, we have tried to verify the existence of specific regulations focusing on company seizure and confiscation in the Member States. As a matter of fact no State has adopted specific provisions on the management of the companies subject to seizure and confiscation, as from the little data available it is clear that seizure and confiscation measures mostly focus on movable property[31] Although in almost all countries it is in fact possible to seize and confiscate businesses and companies, these

fia-run businesses. Violent capitalism and social control] Milan: Cavallotti University Press, 2012.

29 We decided not to deal extensively with the Italian legislation, since it is subject to a more specific analysis within the ICARO project.

30 Please refer to the first part of this report for the definition of "extended confiscation"

31 Transcrime From illegal markets to legitimate business: the portfolio of Organised Crime in Europe. Final report of Project OCP, Organized Crime Portfolio, Milan, 2015.

measures are either not applied or the seized corporate asset remains in the availability of the owner (who is, however, forbidden to sell)[32].

A partial exception is the French law which puts AGRASC (the seized and confiscated property management agency) in charge of management of the confiscated property including companies.

32 Interview to a privileged witness, June 2015.

6. WHAT IS THE ROLE OF SOCIAL REUSE OF CONFISCATED PROPERTY IN THE EU LEGISLATION?

What are the chances of social reuse of confiscated criminal property spreading throughout Europe? The answer to this question can only start from **Directive 42/2014,** to which we have dedicated ample space in our analysis.

As noted above, the Directive represents a milestone - both legal and political - in the European strategy against organized crime. **At legal level the Directive introduces for the first time at EU level systematic common minimum binding rules for Member States on the freezing and confiscation of proceeds of crime** with the explicit objective of encouraging effective harmonisation of the confiscation systems in the various national legal systems and to ensure better cooperation between courts.

At the political level it is clear that the Directive is part of a process of awareness-raising among the European institutions about the strategic importance of the fight against transnational organized crime for the future of the Union at many levels, including the achievement of the Europe 2020 social and economic targets. In this sense, the fact that the Commission (which launched a proposal for a Directive in 2012), the European Parliament (that devoted much attention to this matter beginning with the Alfano 2010) and the Council (which, as we pointed out, on several occasions has attempted to regulate judicial cooperation on confiscation) all have decided to dedicate a Directive to the issue of how to take away the proceeds of crime from criminal organizations should be understood as a major political success of the civil society of all of Europe and a tribute to its

efforts in the fight against mafias.

However even if the **Directive 42/2014 undoubtedly represents a milestone it cannot be regarded as a goal achieved**. On the contrary it must be seen as an opportunity on which to define **more precise measures at European level** on the points left in the background of the final text approved in April 2014 by the Parliament and Council.

One of these issues is surely social reuse of confiscated property. As we pointed out, the **Directive appears overall still too timid about promoting social reuse of confiscated goods as it** simply states that the Member States need to comment on the appropriateness of introducing measures for the reuse of criminal property for social purposes. The European Parliament's proposal to explain in a more thorough and stringent way in the Directive the importance of the social reuse of confiscated property as a priority target by Member States was not accepted.

It is therefore a priority to strengthen the recognition by EU of the public utility and the involvement of civil society as a strategic option in the processes of management and return to the communities of property seized to organized crime. In this sense, different researches and reports, most recently those produced under the RESCAT (Reuse of Confiscated Assets for Social Purposes: towards common EU Standards) project, coordinated by the Università di Palermo (Palermo university), indicates a set of principles the European legislation should adhere to in order to promote reuse of confiscated criminal property for social purposes:

- effectiveness in the relationship between optimal management of property seized/maximisation of social reuse (promoting reuse already in the process of seizure);
- transparency;
- visibility;

- equity in compensation in case of acquittal or safeguard procedures in the event of complaints of violations of property rights against the assignment for social reuse measures.

Together, these principles indicate that the EU should promote a Community system for the social re-use of goods that is both efficient and fair, with transparent property assignment and post-assignment management monitoring procedures, making all information public and accessible and providing procedural safeguards for those involved.

An important part of the issue of social reuse that absolutely needs recognition at European level **is the case of confiscated businesses**, due to its importance for the economy and employment as well as for the social paths that the reactivation of the companies subject to the criminal control can generate. On this point **there is still a long, long way to go,** especially considering that the issue of confiscated businesses still does not appear at all, not even a passing mention, in the European Union regulations, and also considering the countless difficulties that the attempts to reclaim and return to operation of the confiscated companies rise, as shown by the Italian experience, on procedural plans, legal and management. However, it is necessary and urgent to fill this gap and outline a strategy that, together with repressive measures to counter organised crime's penetration in the legal economy (a penetration, we should never forget, greatly favoured by the major crisis Europe is struggling with) shall develop **measures that actively support the EU's efforts of reclaiming and reactivating businesses after they have been removed from criminal control.**

The analysis of national legislation also allows us to understand the need for a stronger and more incisive action by the EU institutions in this area. The existence of such legislative differences can be an advantage for international criminal organizations: in fact they will continue to invest where the law enforcement tools are less effective, where they can buy back seized or confiscated property and where the lack of provisions for the management of enterprises will

strengthen the myth that "mafia is a good employer" while the State leads previously thriving businesses to bankrupt.

In most of the Member States the civil society is not involved at all in the social reuse of confiscated property: in fact, the indirect social re-use tool (which, as discussed above, occurs through the transfer of funds derived from the sale of property to state or local institutions or NGOs) tends to involve little if not at all the population of the territory the seized property belongs to (particularly for buildings and real estate). This lack of involvement is a far more dangerous in the mafia-controlled territories, as the power of the criminal organisations grows thanks to the building of social and mutual benefit relationships and to break these bonds we need cultural measures and not just crime repression ones[33]. A more interesting perspective, however, is the reinvestment of the proceeds of sale of seized goods as a result of conviction for specific offences (particularly those related to drug trafficking and smuggling) in funds dedicated to preventing (as in the case of Scotland) or fighting the same crimes. However at the moment there is no provision of this type for offences related to international criminal organisations.

33 See Nando Dalla Chiesa, Il manifesto dell'antimafia, [The Anti-mafia manifesto] Turin:Einaudi, 2015.

7. ATTACHMENT: EXPLORATIVE ANALYSIS OF EU-FUNDED PROJECTS ON SOCIAL REUSE OF CONFISCATED PROPERTY

In this attachment we have analysed a sample of EU-funded projects, all part of the "Prevention of and Fight against Crime" programme. This analysis is "exploratory" in nature and focuses on the main features of the subjects who had been granted "Prevention of and Fight against Crime" programme funds with projects related to confiscation of organized crime assets.

The analysis focuses on a sample of projects that have successfully passed the assessment of the European Commission for access to the funds provided for by the calls for proposals of the Prevention Programme. "Prevention of and Fight against Crime" is a program established by the Commission as part of the "Security and Safeguarding Liberties (2007-2013)" Framework Programme and its goal is the fight against terrorism, human trafficking, child abuse, drugs and arms trafficking, corruption, financial crimes and fraud.

We have used the following methodology:

- we have extracted 87 projects from the website of DG Migration and Home Affairs (Directorate-General for Migration and Home Affairs), entering as selection criteria keywords and other words and phrases related to confiscation of criminal property (e.g. Confiscation, Asset Recovery, Freezing, Proceeds of crime, Re-use Confiscated Asset...);
- the following information in the selected project cards have been included in a data matrix (database): project title, starting year, duration (months), funds granted (EUR), number of partners,

geographic area, country of project lead partner, type of project lead partner (local authority, national institution, NGO/civil society, university and research);

- this database was then analysed in two stages: a preliminary analysis to evaluate the quality of data and then a statistical analysis to evaluate the nature of the project proponents and the features of the projects.

7.1 Search results

From the data quality point of view the information available on the DG Migration and Home Affairs website has several limitations, as the Commission itself acknowledged in the report of the 2011 mid-term evaluation of the "Security and Safeguarding Liberties (2007-2013)" Framework Programme. The project cards available on the DG website contain very limited information on the projects approved within the Prevention programme, and in some entries data are altogether missing, resulting in a high incidence of missing data in the database we have analysed. This, together with the fact that the Commission does not provide open data in "raw" format has seriously hindered our analysis and in particular has seriously restricted any room for focused in-depth researches on selected projects aimed for example at understanding the role of social reuse of confiscated property in a given project and its importance for the project funding beneficiaries and it has also made it difficult to evaluate ex-post the Commission's choices in project selection.

We will return to the limitations of available information in the Conclusion. Because of these limitations our presentation of analysis result will focus only on those variables with a suitably high data quality (i.e. where missing data does not exceed 30% of total data).

The first relevant element in the analysis of the features of the European projects focusing on confiscation of criminal property

is the amount of funds granted by the EU (Table 1). Nearly half of the projects received less than 250,000 EUR, a rather small amount considering these projects last from 12 to 36 months.

Table 1 - EU funds granted

		Frequency	Percentage	Percentage of valid data
Valid data	<100,000 €	13	14.9	15.5
	101,000 - 250,000 €	27	31.0	32.1
	251,000 - 500,000 €	29	33.3	34.5
	501,000 - 750,000 €	5	5.7	6.0
	750,000 - 1,000,000 €	3	3.4	3.6
	>1,000,000 €.	7	8.0	8.3
	Total	*84*	*96.6*	*100.0*
Missing data		3	3.4	
Total		**87**	**100.0**	

As regards the topics indicated by the "Prevention" call of proposals (Table 2), it is not surprising that the majority of projects focus on economic and financial crimes, followed by the more general fight against organized crime.

Table 2 - Topics in the calls for proposals

		Frequency	Percentage	Percentage of valid data
Valid data	CBRN	1	1.1	1.2
	CORRUPTION	11	12.6	12.9
	CRIME PREVENTION	4	4.6	4.7
	CUSTOMS COOPERATION	1	1.1	1.2
	FINANCIAL AND ECONOMIC CRIME	46	52.9	54.1
	FINANCIAL CRIME/ORGANISED CRIME	2	2.3	2.4
	ORGANISED CRIME	15	17.2	17.6
	POLICE COOPERATION	1	1.1	1.2
	POLICE COOPERATION/ADMINISTRATIVE APPROACH	1	1.1	1.2
	PRUM	1	1.1	1.2
	THB	1	1.1	1.2
	VICTIMS	1	1.1	1.2
	Total	*85*	*97.7*	*100.0*
Missing data		2	2.3	
Total		**87**	**100.0**	

As for the features the beneficiaries, there are four key elements deserving our attention:

- the projects involve mostly small networks of subjects (Table 3): 54% of the applicants' networks consist of no more than 3 partners;
- the transnational scope of the networks is also quite limited (Table 4), given that 60% of the networks consists of partners from no more than three Member States (minimum threshold for transnational projects). Note that this category also includes national-only projects which are accepted in the Prevention Programme;
- as regards the country of origin of the lead partner (Table 5) Italy leads (almost a quarter of the lead partners are Italian organisations) followed by Romania (13%), Germany and Bulgaria. It is worth noting that there were no projects on the subject of confiscation proposed by British lead partners;
- regarding the type of proposing organization (Table 6), half of the projects has been submitted by Law Enforcement organisations, the judiciary and national institutions (such as Ministries of Justice and the Interior) of Member States. It is also worth noting that more than a quarter of the projects are coordinated by NGOs, further proof of the civil society's drive to have a leading role in the management of property confiscated from criminal organizations. Local authorities (regions, municipalities...) instead remained mostly in the background. Indeed the Commission in 2011 had already pointed out that courts and the judiciary accounted for 38% of participants in projects funded by the Prevention programme, followed by NGOs (12%) and ministries.

Table 3 - Number of partners in the project proponents' networks

		Frequency	Percentage	Percentage of valid data
Valid data	<3	34	39.1	54.0
	4 - 6	18	20.7	28.6
	7 - 10	7	8.0	11.1
	>10	4	4.6	6.3
	Total	*63*	*72.4*	*100.0*
Missing data		24	27.6	
Total		**87**	**100.0**	

Table 4 - Number of countries in the project proponents' networks

		Frequency	Percentage	Percentage of valid data
Valid data	<3	35	40.2	60.3
	4 - 6	12	13.8	20.7
	7 - 10	6	6.9	10.3
	>10	5	5.7	8.6
	Total	*58*	*66.7*	*100.0*
Missing data		29	33.3	
Total		**87**	**100.0**	

		Frequency	Percentage	Percentage of valid data
Valid data	Austria	3	3.4	3.7
	Belgium	4	4.6	4.9
	Bulgaria	7	8.0	8.6
	Czech Republic	4	4.6	4.9
	France	4	4.6	4.9
	Germany	8	9.2	9.9
	Ireland	1	1.1	1.2
	Italy	19	21.8	23.5
	Latvia	3	3.4	3.7
	Netherlands	5	5.7	6.2
	Poland	2	2.3	2.5
	Portugal	2	2.3	2.5
	Romania	11	12.6	13.6
	Spain	1	1.1	1.2
	Sweden	2	2.3	2.5
	Hungary	5	5.7	6.2
	Total	*81*	*93.1*	*100.0*
Missing data	99	6	6.9	
		87	**100.0**	

Table 6 - Type of organisation of lead partner

		Frequency	Percentage	Percentage of valid data
Valid data	Local authorities (regional administrations, municipalities, chambers of commerce...)	4	4.6	4.9
	National institutions (ministries...)	17	19.5	20.7
	Judiciary and law enforcement agencies (national prosecutors specialised in some types of crime, police...)	24	27.6	29.3
	NGOs and Foundations	22	25.3	26.8
	Universities and research centres	15	17.2	18.3
	Total	*82*	*94.3*	*100.0*
Missing data		5	5.7	
Total		**87**	**100.0**	

7.2 Conclusions

Available data on projects approved and funded by the European Commission under the Prevention Programme is very poor and lacking so developing a comparative analysis with an adequate degree of methodological significance is impossible.

This limit of the data is a critical one that not only significantly hampers independent researches like this one, but also decreases the European Institutions' transparency on such a delicate issue as the use of public funds. The ability to access, query and download data in raw, open format about the features of the projects approved by the Commission, on the nature of the beneficiaries and the actions and activities carried out, would also be a useful reflection and learning tool for those involved in EU activities planning. For example, the stakeholders of civil society involved in anti-mafia projects and activities would have a chance to compare ideas, identify possible synergies or overlaps with other projects and identify potential partners to propose transnational projects based on the experience built up in the previous calls.

In conclusion we have two main recommendations for the Commission:

- on one hand, as regards OPEN DATA we recommend the Commission to build databases employing open data in raw format on the projects funded within the Prevention programme that can be processed and analysed by independent researchers;
- on the other hand, the Commission should implement, on the DG Migration and Home Affairs website some database querying and access tools that would allow citizens and stakeholders involved in European activities planning to easily access the information, following the example of OpenCoesione, the Italian Ministry of Economic Development and Cohesion's special portal on implementation of projects financed by the cohesion policy in Italy. OpenCoesione contains navigable data on assigned resources and expenses, locations, subject areas, project planners and implementers, timing and payment of individual projects. For further information on OpenCoesione please see http://www.opencoesione.gov.it/.

8. REFERENCES

- AA.VV. Countries increase confiscation of criminal assets, February 5, 2014, SETimes.com.
- AGRASC Annual Report 2012.
- AGRASC Annual Report 2013.
- Anti – money laundering measures and the financing of terrorism (Moneyval) Report on Fourth Assessment Visit – Annexes – Croatia, September 17, 2013.
- Anti – money laundering measures and the financing of terrorism (Moneyval) Report on Fourth Assessment Visit – Annexes – Germany, February 19, 2010.
- Attilio Bolzoni, Decine di arresti a Palermo e New York. Presi i boss del nuovo patto Italia [Dozens of arrests in Palermo and New York - The police apprehends the leader of the new Italian Mafia covenant] - USA, La Repubblica, February 7, 2008.
- Bacarese Alan and Gomes Pereira Pedro (Council of Europe experts), Project on Criminal Asset Recovery in Serbia (CAR). Technical paper on criminal property recovery system in Serbia and comparative analysis with other systems in central and Western Europe, July 2010.
- Center for the Study of Democracy, Disposal of confiscated property in the EU member States. Laws and practices, 2014,

prepared within the project RECAST - Reuse of confiscated Property for Social Purposes: towards Common EU Standards Centre for the study of democracy, Università degli studi di Palermo, FLARE, ANBSC, UNICRI.

- Ciconte Enzo, '*Ndrangheta padana* ['Ndrangheta in Northern Italy], Soveria Mannelli: Rubettino, 2010.

- Parliamentary commission of inquiry on the phenomenon of the Mafia and other criminal organizations, including foreign ones, Relazione sulle prospettive di riforma del sistema di gestione dei beni sequestrati e confiscati alla criminalità organizzata [report on prospects for reform of the system of management of seized and confiscated property from organized crime] (Rapporteur: Hon. Rosy Bindi), approved by the Commission in its meeting of April 9, 2014.

- Communication from the Commission to the European Parliament and the Council, Proceeds of organised crime, Ensuring that "crime does not pay", COM(2008) 766 final

- Dalla Chiesa Nando, Il manifesto dell'antimafia, [The Anti-mafia manifesto] Turin: Einaudi, 2015.

- Dalla Chiesa Nando, La convergenza [Convergence] Milan: Melampo, 2010.

- Dalla Chiesa Nando, L'impresa mafiosa. Tra capitalismo violento e controllo sociale, [Mafia-run businesses. Violent capitalism and social control] Milan:Cavallotti University Press, 2012.

- Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union,

L127/39.

- Directorate-General internal policies, The need for new EU legislation allowing the assets confiscated from criminal organizations to be used for civil society and in particular for social purposes, 2012.

- Disposal of confiscated assets in the EU member states laws and practices, 2014, Center for the Study of Democracy, RECAST – REuse of Confiscated Assets for social purposes: towards common EU Standards.

- European Commission - Commission staff working document - Romania: Technical Report. Accompanying the document Report from the Commission to the European Parliament and the Council on Progress in Romani under Co-operation and Verification Mechanism - COM (2015) 35.

- Folgering and Daan van der Laan Niels Getting the deal through - Asset Recovery. Netherlands, 2015.

- G20 Step by step guides for Asset Recovery, Spain

- I beni confiscati nelle politiche di coesione e nei progetti di OpenCoesione (dati aggiornati al 31 dicembre 2014), [Confiscated assets in cohesion policies and OpenCoesione projects (data as of December 31, 2014)] Pillola di OpenCoesione n. 19 of April 30 2015

- Marchetti Gloria "I recenti passi avanti compiuti dall'Unione Europea nella direzione di un'armonizzazione dei sistemi penali. Aspetti positivi, profili problematici e prospettive di riforma" [The recent steps taken by the European Union towards a harmonization of criminal justice systems], Centro studi per il

federalismo, November 2012.

- Maugeri Anna Maria, "La direttiva 2014/42/UE relativa alla confisca degli strumenti e dei proventi da reato nell'unione europea tra garanzie ed efficienza: un "work in progress", [Directive 2014/42/EU on the confiscation of instrumentalities and the proceeds from crime in the European Union, guarantees and efficiency: a "work in progress"] in Dir. pen. cont. – Riv. Trim. http://www.penalecontemporaneo.it

- MOKAS Unit for Combating Money Laundering The prevention and suppression of Money Laundering and Terrorist Financing Laws of 2007 and 2010.

- Opinion of the Committee of the Regions on "Package on protection of the licit economy" (2012/C 391/14).

- Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on the freezing and confiscation of proceeds of crime in the European Union' 2012/0036 (COD) Rapporteur: DE LAMAZE.

- Procedure file for COD 2012/0036 Freezing and confiscation of proceeds of crime in the EU http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2012/0036%28COD%29

- Proposal for a Directive of the European Parliament and of the Council on the freezing and confiscation of proceeds of crime in the European Union, COM(2012) 85 final.

- Report on the Proposal for a Directive of the European Parliament and of the Council on the freezing and confiscation

of proceeds of crime in the European Union, (COM (2012) 0085 - C7-0075 / 2012 - 2012/0036 (COD) Committee on civil Liberties, Justice and Home Affairs, Rapporteur: Monica Luisa Macovei.

- Report on organized crime in the European Union, Committee on Civil Liberties, Justice and Home Affairs Rapporteur: Sonia Alfano 2010/2309 (INI).

- SAPUCCA Organized Crime and the fight against crime in the Western Balkans: a comparison with the Italian models and practices. General overview and perspectives for the future.

- Sciarrone Rocco, Mafie vecchie, mafie nuove, [Old and new Mafias] Rome: Donzelli, 2008.

- Sciarrone Rocco, (ed), Mafie del Nord [Mafia in the North], Rome: Donzelli, 2014.

- The need for new EU legislation Allowing the property confiscated from criminal organizations to be used for civil society and in Particular for social purposes EP 462 437, in 2012.

- Transcrime for *National Security Plan 2007-2013 project: Mafia Investments*.

- Transcrime From illegal markets to legitimate business: the portfolio of organized crime in Europe. Final report of Project OCP, Organized Crime Portfolio, Milan, 2015.

- Transparency International Extended Confiscation procedures in Romania. Country Report.

- Transparency International Forfeiture of Illegal Assets: Challenge

and Perspectives on the Bulgarian Approach, Sofia, 2014.

- Federico Varese, Mafie in movimento [Mafias in motion], Turin: Einaudi, 2011.

- Zoerle Pietro, La direttiva 2014/42/UE relativa al congelamento e alla confisca dei beni strumentali e dei proventi da reato nell'unione europea, [Directive 2014/42/EU on the freezing and confiscation of instrumentalities and the proceeds from crime in the European Union], in Processo penale e giustizia. - ISSN 2039-4179. - ISSN 2039-4527. - 2014: 4 (2014), pp. 17 - 22. http://www.processopenaleegiustizia.it

This project has been funded with support from the European Commission. This communication reflects the views only of the author, and the European Commission cannot be held responsible for any use which may be made of the information contained therein.

Finito di stampare nel mese di Luglio 2016
da Grafiche Riga s.r.l. - Annone Brianza (LC)

Progetto grafico: Sara Giovannoni