

In the search for solutions, increasingly urgent, suitable to break the chains that humiliate the dignity of so many human beings subject to trafficking, whose fixed point is constituted by the purpose of illicit enrichment of a few others, it is good to move from the strategy that the Italian experience of contrasting the mafia – strategy conceived by Giovanni Falcone and Paolo Borsellino, who were the first to apply it with courage and self-sacrifice, in the fight against 'Cosa Nostra' – it proved to be effective and, if pursued with determination and constancy, winning.

It is the one that can be defined with the English expression 'Follow-the-Money', that is to identify the sequence of the various passages of money, which constitutes the exclusive motive of the illicit conduct mentioned above, because its final landing identifies the creator, the financier and the organizer.

Interrupting this supply chain, isolating them and prosecuting their crimes, contributes substantially to restoring dignity and freedom to the men and women we are talking about, removing them from the condition of physical, mental, economic, cultural and social subjection in which they find themselves.

### **How to use financial data to investigate suspected cases of human trafficking**

The United Nations has defined trafficking in human beings – or trafficking in persons – as that criminal activity aimed at the capture, kidnapping or recruitment, transport, transfer, accommodation or reception of one or more persons, using illicit means and for exploitative purposes.

This criminal activity allows the perpetrators, often organized in criminal groups, to obtain, directly or indirectly, a monetary advantage: it is therefore quite evident, as we said, the need to investigate the financial flows that these organizations manage to carry out criminal conduct and generate the related illicit profits.

The cornerstone of the fight against these aberrant phenomena rests on the execution of investigations and investigations aimed at reconstructing the financial, patrimonial and income position of the subjects involved, in order to block the flows of resources intended to finance the activities of individuals and groups that can certainly be defined as para-terrorists.

The investigative experience has made it possible to detect multiple ways of transferring financial resources by criminal organizations, such as the use:

- legal financial and commercial systems (e.g. money transfer channels);
- the physical movement of money through couriers, c.d. cash couriers;
- of alternative transfer channels, c.d. alternative remittance systems, which operate outside the conventional financial sectors and allow the transfer of sums of money between different geographical areas (for example, think of the informal value transfer system known as Hawala or Hundi);
- joint use of the Darkweb and special browsers, which allow anonymous browsing and access to illegal markets for the performance of criminal activities.

These methods – in addition to ensuring efficiency and, most of the time, anonymity – allow rapid financial transactions, even in countries where banking systems are less perfected.

For these reasons, considering that such phenomena always provide for a phase of emergence in the legal economy of illicit provisions, the tools offered by the national legislator with Legislative Decree no. 231 of 21 November 2007, <sup>1</sup>constituting the legislation for the prevention of money

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<sup>1</sup> Implementation of Directive 2005/60/EC on the prevention of the financial system for the purpose of money laundering and terrorist financing, and Directive 2006/70/EC implementing its implementation.

laundering and terrorist financing, periodically amended and coordinated with the Community Directives, are extremely useful.

In this context, the obligations imposed on certain subjective categories (which also include money transfers, digital wallet providers and virtual currency exchangers) are particularly important, whose members must identify customers, identify the beneficial owner of the transaction, request specifications about the purpose underlying the transaction itself – suspending it where there is a suspicion that it is a scheme for money laundering – and, finally, send reports of suspicious transactions to the Financial Intelligence Unit (FIU) set up at the Bank of Italy.

These reports are processed by the FIU and forwarded to the Anti-Mafia Investigation Directorate and/or to the Special Currency Police Unit of the Guardia di Finanza which – using, among other things, the data contained in the Register of Banking Relationships – provide for the in-depth investigation.

Starting from these considerations, the analysis of suspicious transaction reports conducted in synergy by the Bank of Italy, the Anti-Mafia Investigation Department and the Guardia di Finanza, as well as shared with the Judicial Offices, allow to carry out investigations on financial flows departing from Italy and identify the subjects involved in the criminal chain.

Since these are direct flows to other States, to acquire data and information as well as carry out investigations also in foreign territory, it is necessary to make use of all the instruments of international cooperation present between the Judicial Authorities and the Police Forces of the various countries.

In the context, they can also detect the data acquired by the Departments of the Guardia di Finanza operating at land, sea and air borders where controls are carried out on cross-border cash flows.

Nowadays, investigations must also be carried out on the dark web: terrorist groups, for example, use the Internet to spread their propaganda, recruit recruits and support related activities, including trafficking in human beings; in this operational scenario, the authorities in charge will have to use cutting-edge technologies to identify harmful patterns and block funding.

Often transactions through the "dark network" take place with the use of cryptocurrencies and therefore, even more so, it is necessary to adopt extremely advanced investigative techniques to be able to investigate the blockchain – or the chain of blocks used by each virtual currency to generate and move resources – primarily through a public and unchangeable register where to store all transaction data.

## **Relevant European investigation tools and procedures (including those corresponding to the "Anomaly Indicators" of the Italian Financial Guard)**

The fight against terrorist phenomena passes through the execution of investigations aimed at reconstructing the financial, patrimonial and income position of subjects suspected of involvement in illegal activities, such as human trafficking, in order to block financial flows.

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For this reason, the Guardia di Finanza is called upon to ensure its contribution, taking advantage of the specific investigative capabilities gained in the action of deepening the reports of suspicious transactions, in inspections and anti-money laundering controls, as well as in the widest range of economic-financial police interventions.

In addition to the obligations of a preventive nature, the Guardia di Finanza carries out judicial police investigations, on the initiative or by delegation of the Judicial Authority, as a result of which it can propose the inclusion of names in the specific lists of subjects suspected of feeding and financially supporting terrorist organizations.

In another respect, together with the crimes of counterfeiting, money laundering and re-use of money, goods or benefits of illicit origin and terrorism, art. 9 Law 16 March 2006, n. 146<sup>2</sup>, allows the carrying out of undercover operations for investigations on, inter alia, trafficking in persons, weapons, ammunition and explosives, as well as aiding prostitution and illegal immigration, providing for the non-punishability of those who execute them.

The aforementioned investigative activities – also implemented by financial investigations on current accounts and by investigations aimed at verifying the requirements of anti-money laundering legislation, also making use of international collaboration instruments in judicial matters – are linked to specific institutions that provide for the seizure and confiscation of means and resources attributable to those responsible for human trafficking.

The fight against criminal organizations, in fact, is all the more adequate the more effective and incisive the aggression of the respective illicitly accumulated assets: according to this approach the hypotheses of confiscation "for equivalent" and "for criminal disproportion [*with respect to one's income*]", provided for, respectively, by Articles. 648-quarter and 240-bis of the *Criminal Code; measure guarded in the preliminary investigation phase by the preventive seizure aimed at confiscation provided for by art. 321 c.p.p., ordered by the Judge of preliminary investigations at the request of the Public Prosecutor, who can also intervene directly, with his own provision, in case of urgency (art. 321.3 bis c.p.p.)*.

More in detail, the confiscation referred to in art. 648 quarter of the *Criminal Code*, borrowing the model provided for by art. 644 c.p. (crime of usury), is ordered in case of conviction or plea bargain on the goods that constitute the product or profit of the crimes provided for by Articles. 648 bis (Money laundering), 648 ter (Use of *money, goods or benefits of illicit origin*) or 648-ter .1 (Self-laundering) c.p., unless they belong to a person unrelated to the crime; When this is not possible, these rules provide for the equivalent confiscation, otherwise called "value", of the property available to the offender, for a value corresponding to the proceeds, profit or price of the crime. Obviously, there is also the possibility for the Public Prosecutor to carry out the asset assessments necessary for the identification of the assets to be seized even after the expiry of the preliminary investigations, This type of confiscation is applicable, pursuant to art. 600 septies c.p., also for the crime of trafficking in persons (art. 601 c.p.), as well as for the contiguous cases of reduction or maintenance in slavery or servitude (art. 600 c.p.), child prostitution (art. 600 bis c.p.), *child pornography (art. 600 ter c.p.)*, *possession of pornographic material (art. 600 quarter c.p.)*, tourist initiatives aimed at the exploitation of child prostitution (art. 600 quinquies c.p. .), purchase and alienation of slaves (art. 602 c.p.).

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<sup>2</sup> Ratification and implementation of the Convention and the United Nations Protocols against Transnational Organised Crime adopted by the General Assembly on 15 November 2000 and 31 May 2001.

It should be specified that the confiscation for criminal disproportion referred to in Articles. 240 *bis* of the Criminal Code, 600 *septies* of the Criminal Code and 648 *quarter of the* Criminal Code, represents a hypothesis of compulsory confiscation for which the law provides for a facilitated procedure: it is sufficient to demonstrate, in fact, the disproportion between the accumulated assets and the income capacity of the convicted defendant, or for whom a sentence of application of the penalty has intervened on request of the parties (plea bargain), for certain specific hypotheses of crime, all united by the explicit connection with the typical manifestations of criminal organizations. In this regard, the list of crimes – object of progressive expansion over the years – extends to a series of criminal conducts that, although not homogeneous with each other, are joined – as mentioned – by the obvious connection or instrumentality with respect to the typical operation of organized criminal groups, moved by exclusive purposes of interest.

The regulatory provisions in question have considerable potential to be exploited in order to make investigations increasingly effective for combating the most serious and pernicious transnational criminal conduct, as well as for the identification and aggression, even abroad, of the illicit wealth accumulated by common crime, economic-financial and organized crime.

Finally, with regard to the specific crime of terrorism, there is a special hypothesis of confiscation, also in the form for equivalent, *pursuant to art. 270-septies c.p.*, which provides for the application of the measure on things or goods of which the offender has the availability, for a value corresponding to the price, product or profit of such conduct.

## **The use of SIT (Special Investigative Techniques) through technologies for the analysis of big data, OSINT (Open Source Intelligence) and digital forensics**

Page | 5 Cyber terrorism and cybercrime are increasingly widespread, also as a result of the opportunities offered by the ongoing pandemic crisis that has led entire sectors to operate remotely through IT tools.

Therefore, direct investigations coordinated by the Judicial Authority, with the help of the Police Forces, require an essential monitoring of the network, aimed at ascertaining the presence of illegal content and searching for sources of evidence.

With the acronym OSINT (Open Source Intelligence), according to the definition generally shared in doctrine, we intend to describe the collection of information through the consultation of sources in the public domain also defined as 'open sources', or freely usable by users of the network.

In the monitoring of macro communication areas for intelligence *needs, it is often also necessary to inspect resources freely available on the web*, precisely with an OSINT approach.

This method must then be combined with other types of analysis, including different disciplinary areas coordinated with each other: network hacking tools to obtain information – so-called DIGINT (Digital Intelligence) sources – on digital identities, the advanced use of search engines, the use of digital investigation portals to obtain institutional information on natural / legal persons, real estate, shareholdings or corporate participations and, finally, investigative analysis techniques to evaluate the information material acquired and processed through graphical data visualization tools.

Having to probe an ever-increasing amount of information characterized by different properties (c.d. Big Data), research requires analysis tools and software capable of transforming information, apparently unrelated to each other, into an overall picture of high investigative significance.

These searches must also creep into the containers of the Deep and Dark Web, that is, in that part of the network not indexed by search engines, reachable through some software for anonymous browsing such as the T.O.R program. (The Onion Router) or through the I2P protocol, originally named Invisible Internet Project.

Digital forensics – which deals with the processing of digital data of any kind in order to detect computer evidence useful for investigative activity – is of absolute importance, however, for the search and conservation of digital evidence acquired through OSINT searches, capture tools and / or on seized computer devices.

For the sake of completeness, it should be noted that the legal principles of digital forensics were defined in 2001 with the Budapest Convention on Cybercrime, ratified by the Italian State with Law no. 48 of 18 March 2008.

## Good practices for cooperation with private companies and public authorities

Globalization has produced, together with the characteristics of individual contexts (historical, political, technological and cultural), important effects on criminal structures and organizations and on their operating methods.

Page | 6 For this reason, it is necessary to reorganize the monitoring and contrast bodies, and the similar structures, following a logic of coherence "strategy-structure": each strategy requires a specific and functional structure to achieve the objectives that underlie it; The pursuit of a strategy depends, in fact, on the availability of an appropriate structure or on the possibility of building it respecting the reference framework of the actors who can contribute to its success.

The same strategic approach must also be adopted to all those actions that are aimed at preventing forced migration, acting – in concert with public and private organizations operating on development, environment, cooperation and migration issues – on the causes that these phenomena are able to induce and on the territorial conditions that can favor the integration (or reintegration) of refugees.

The achievement of these objectives requires closer collaboration between governments, civil society and transnational organizations, according to a flexible partnership that reflects the variability of migratory phenomena and the problems that accompany them.

Another salient point, therefore, is the sharing necessary to address the migration and refugee crisis, which is a common obligation and requires a universal strategy and a decisive effort over time (also with regard to financial commitments and any further needs), as well as a spirit of solidarity and total responsibility.

In a territorial context affected by huge migratory flows, the European Union is committed to promoting cooperation between Member States in order to intercept illicit trafficking and guarantee border security.

With specific reference to the fight against trafficking in human beings, several actors are involved, including:

- at international level, the United Nations Office on Drugs and Crime (UNODC), which deals with, inter alia, combating trafficking in human beings;
- at European level, the OSCE (Intergovernmental Organization for Security and Cooperation) which, with regard to the fight against trafficking, establishes a reference framework to support the activities of the Member States. This plan contains fundamental recommendations, the cc.dd. "**3 Ps**", for initiatives at national level (**prevention**, including raising public awareness and analysing the deep roots of the phenomenon; **criminal prosecution**, with investigations and cooperation with international law enforcement agencies; **protection of victims' rights**, including the right to assistance and compensation);
- also at European level, Frontex, which is responsible for protecting the rights of freedom, security and justice. Over time, its mandate has been expanded, significantly increasing its work on combating cross-border crime and supporting it in preventing terrorist attacks.

## Indicators of illicit monetary flows

The phenomena of trafficking and trafficking in human beings are united by one element: the (potential) profit obtainable.

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In particular, the criminal organizations concerned have shown remarkable entrepreneurial skills, having identified in the needs, expectations, desperation and dreams of the populations of the most disadvantaged contexts a fundamental requirement – typical of market dynamics – as well as potentially inexhaustible: the demand for a service, consisting of providing "human capital", in itself instrumental for the control of the territory and the illegal market.

Consequently, with equal entrepreneurial zeal, they have created the conditions to meet this demand, creating the second fundamental element, namely the provision of a series of services (to be understood, to all intents and purposes, as indicators of illicit monetary flows), such as, for example, financial collection, logistics, transport, temporary accommodation, transit and, last but not least, directly employment in the country of destination.

This relationship of supply and demand is also reflected in a more general market dynamic that these organizations have grasped and been able to exploit: in fact, in the face of an increasingly pressing demand for goods and services on the one hand, an adequate channeling of legal migratory flows does not respond on the other.

At this point, the intermediaries creep in: it can reasonably be said that when the market requires cheap workers and services, it is the human trafficker who responds to the call. In addition, the services include "legal" advice, useful to circumvent police checks, both at the time of disembarkation and afterwards.

Interesting ideas in this regard emerged at the Eurojust meeting on illegal migrant smuggling, held in The Hague on 15 June 2017, where central issues in the field under consideration were addressed: problems related to jurisdiction and the risk of forum shopping; the difficult collaboration with the countries of origin and transit of migrants; the role of EUNAVFOR MED (European Union Naval Force in the South Central Mediterranean) and the importance of an adequate exchange of information between the States involved, also for the purposes of financial investigations, with the help of European Union bodies.

More specifically, the European External Action Service, the service responsible for foreign affairs of the European Union, has highlighted the difficulties related to collaboration with the countries of origin and transit of migrants, only partially contained through the instrument of joint investigation teams.

Significant were also the testimonies of representatives of some Member States, such as Italy, Malta and France: by way of example, the Italian representative mentioned an investigation carried out by the Como Public Prosecutor's Office, with the cooperation, assessed as decisive, of Eurojust and Europol, on an organization dedicated to the transport of migrants, up to Austria and Germany, through Hungary. In addition, the Maltese representative focused attention on the new challenges arising from the use, including by those involved in these forms of crime, of new technological tools, and on the importance of an adequate circulation of information, through, moreover, the Schengen Information System. According to the Greek representative, the main critical issues should be identified, in addition to insufficient cooperation with third countries, also with the various problems related to and related to the interception of vessels used at sea, with significant delays in the exchange of information and in the circulation of evidence even between the Member States themselves, and with the use of Hawala banking (system of transfer of values "parallel" to the official banking one), which makes financial investigations particularly complex and complex.

## How to identify them

Transactions for the benefit of human trafficking organizations take place in different ways, sometimes through official channels through money transfers, or, increasingly, through unofficial channels, among which currency couriers and the Hawala system, which is an illegal system for financing terrorism (in Arabic Hawala means 'exchange' or 'transform').

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The latter unofficial financial systems are managed, in general, by members of the main ethnic communities operating in Italy and in countries without a regular banking circuit or with anti-money laundering legislation absent or, in some way, particularly permeable.

They are a very easy tool to use, given the high accessibility and capillarity of the distribution network, which allows its use even to the less affluent and isolated social strata. Considering also the lack of traceability, they are one of the main means used by organised crime and operators in the shadow economy, including for illicit purposes other than terrorist financing.

Not to be underestimated, then, the growing spread of cryptocurrencies – born with the main purpose of allowing cash transfers easily – which, guaranteeing the absolute anonymity of the parties involved, fit perfectly with the criminal schemes covered by this study.

To intercept flows through official channels, anti-money laundering inspections must be carried out against money transfers to verify compliance with the obligations referred to in the aforementioned Legislative Decree no. 231 of 21 November 2007, or customer identification, reporting of suspicious transactions, identification of unit transactions above the threshold established by law.

Border control to intercept transnational currency trafficking to and from the countries most at risk, such as the Balkans and the Maghreb area, is also profitable to deal with these couriers and monetary flows.

## Response and reporting procedures

Criminal organisations that manage trafficking in human beings are able to obtain a large profit margin in the face of the low risk that characterises the exploitation of the person for sexual or labour purposes, both in relation to the identification and apprehension of the perpetrators and in relation to the criminal sanctions provided.

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We must consider how the trafficking routes have often been used by organisations, especially Nigerian ones, to import drugs at the same time, transforming victims into cocaine carriers (making them ingest eggs) and thus expanding profits, with a simultaneous reduction in risks; The proceeds from illicit trafficking, in a sort of economic circuit, are then reused in trafficking and trafficking in human beings.

According to estimates by the International Labour Organization, the trafficking market would be worth, considering only sexual exploitation, about 3 billion dollars a year and would have repercussions in terms of profits (from illegal labor exploitation) equal to 32 billion dollars, always on an annual basis. It is quite easy, then, to understand that the revenues of such organizations can reach particularly high volumes, so as to suggest that the trafficking of migrants has become an illegal economic business of such magnitude as to compete with that relating to drug trafficking.

For the purpose of framing the phenomenon of trafficking, as well as understanding its exact extent on the international scene, the report drawn up by the International Organization for Migration (IOM) for the years 2014/2020, carried out with the contribution of its staff working at the places of disembarkation in Italy, as part of the Assistance and Aditus projects is also very useful., financed by the Ministry of the Interior through the Asylum, Migration and Integration Fund.

The report – which only describes the phenomenon of trafficking for sexual exploitation in the Italian context and makes known the dramatic stories of some victims identified by IOM – represents a further source of important information to learn about the system of recruitment and smuggling of migrants through the contribution deriving directly from the victims during the interviews that took place at the time of landings, aimed at implementing a series of appropriate initiatives to assist them.

As regards, then, the reporting procedures, the national legislator has provided that the activity of the Police Forces is proactive towards the fight against the trafficking of migrants by sea, also with diplomatic activities, to prevent the phenomenon at source, in international waters, precisely through the aeronaval device of the Guardia di Finanza, the Navy, of the Corps of Port Authorities and other naval or air units in police service and, finally, in territorial waters, through the units and naval means in police service, with the concurrence, if necessary, of the ships of the Navy.

These activities may have the character of surveillance and rescue (the coordination of the latter is the responsibility of the Corps of Port Authorities) as well as police intervention (whose competence is attributed, exclusively, to the Guardia di Finanza, increasingly engaged and active in national and international waters, even in operations of European scope carried out under the aegis of the European Border and Coast Guard Agency – Frontex).

## Good practices for cooperation with law enforcement agencies;

In view of the evolutionary process that has involved organized crime in recent years – especially with reference to its transnational connotations – it is evident the particular ability to exploit the removal of borders and new technologies, constantly developing operational projections in an increasingly globalized context.

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For these reasons, an appropriate prevention and contrast action was necessary, focusing on new forms of cooperation – both judicial and inter-force – between the various authorities of the individual Member States, harmonizing criminal and procedural legislation.

In an attempt to pursue these goals, the European Union has moved along two lines:

- firstly, new institutions have been created with competence in the individual subjects;
- secondly, the exchange of information and contacts between the authorities of the different Member States has been encouraged by means of acts and decisions.

Therefore, both joint investigation teams and mandatory blocking and seizure measures have been established through Legislative Decree no. 15 of 15 February 2016 and Legislative Decree no. 34 of 15 February 2016, implementing the framework decisions adopted at Community level.

As far as joint investigation teams are concerned, they respond to the need to overcome the limits of ordinary judicial cooperation in the fight against transnational crime, that is, the type of organized crime that makes use of the joint action of associations of different nationalities to carry out trafficking with lavish profits.

On this point, the most significant criticality is found in the fragmentary nature of the activities, which are divided, in fact, into multiple phases carried out in different national jurisdictions, also in order to share the related risks.

For these reasons and for an optimal contrast action, it was necessary to involve in the various States the various Authorities holding sanctioning powers in criminal matters: the obstacles that would usually have been posed by the local bureaucracy of these countries, have been overcome, therefore, through the prefiguration of a shared space of action in which it is possible to act directly, precisely, through a common team. The latter, in particular, is established through a formal agreement signed by the States as parties to the dispute, operating for a certain period of time according to the procedures defined by art. 4 of the aforementioned d.lgs. 15 February 2016, n. 34.<sup>3</sup>

The Public Prosecutor may therefore constitute, for certain serious criminal cases, the joint investigation team pursuant to Article 2 of the same decree.

It is also important to consider that there is no typified list of crimes for which this tool can be used, as it can be established and used whenever the Judicial Authority deems its use useful due to the transnational nature of the contingent criminal phenomenon considered. These offences include, of course, trafficking in human beings and smuggling of migrants.

Another fundamental principle in the fight against transnational crime consists in the mutual recognition of judicial decisions in criminal matters, both in the procedural phase and, above all, in the pre-trial phase of investigation.

In particular, in this prodromal phase, mutual recognition allows the various Judicial Authorities, territorially competent, to proceed with evidentiary seizures and confiscations, validly carried out in the context of the European Union.

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