

TACKLING ILLEGAL ECONOMY

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Co-funded by the Prevention of and Fight against Crime
Programme of the European Union
HOME/2012/ISEC/AG/INT/4000003868





Tackling illegal economy

ABSTRACT

This report provides the investigations performed along the Project Tackling Illegal Economy, financed by the DG. Home Affairs and coordinated by LIBERA. Associazioni, nomi e numeri contro le mafie.

Executive summary:

The research is focused on the factors that underlie criminal activity, based on macro and micro opportunities, and that drive organized crime to/from a region or market. The correlation between tax havens and illegal trafficking routes, the impact of corruption and the rule of law, and the instruments to tackle organized crime is also addressed. A review to the Asset Recovery Offices in Europe is provided along with the different confiscation procedures available across Europe. Finally, the Spanish case study is presented along with several examples of social reuse of confiscated assets.

1. ORGANIZED CRIME AND ILLEGAL ECONOMY

1.1. ORGANIZED CRIME AND ILLEGAL ECONOMY

Several definitions of *illegal economy* have been proposed. The broadests, see e.g. [33] and [34], account for all those undeclared economic activities (whether legal or illegal) so they do not contribute to the GDP. The OECD includes as *underground economy* all the activities that are productive in an economic sense and quite legal (provided certain standards or regulations are complied with), but which are deliberately concealed from public authorities for the following reasons: a) to avoid the payment of income, value added or other taxes; b) to avoid payment of social security contributions; c) to avoid meeting certain legal standards such as minimum wages, maximum hours, safety or health standards, etc; d) to avoid complying with certain administrative procedures, such as completing statistical questionnaires or other administrative forms. From these definitions it can be concluded that illegal economic activities are broader than the classical related to organized crime. However, in this study we will focus mainly on the part related to the production of illegal goods and services by organized crime. Therefore, we are not considering the shadow or *underground economy*. In other words, following the three areas of non-observed economy defined by [25]: underground production, informal production and illegal production, we will consider in this research only the latter. See [9] and [33] for more details.

The Transnational Organized Crime Threat Assessment, see [27], re-

ported “the growth of global crime is a threat to the rule of law [...] transnational criminal markets crisscross the planet [...], hundreds of billions of dollars in dirty money flow through the world every year, distorting local economies, corrupting institutions and fuelling conflicts”.

Organized crime groups can be formed in a widely type of structures an hierarchy. Although different types of group structures have been found, most of them fall in two model categories: vertically structured, that depends on a traditional hierarchy and operates on a different level basis; and horizontally structured, that operates as a network with a cellular form. However, in order to adapt to the changing environment and for the sake of flexibility, the structure of Organized Crime (OC) has been found lately less and less important to consider a group of criminals as an Organized Crime Group (OCG). As an example, non-Triad Chinese criminals engage as key players in the distribution of heroin trafficking and human smuggling both in China and in the USA creating an informal resilient network composed by members with no prior criminal records and that do not belong 'officially' to an organization. They work, see [6], in small groups, with informal-referrals and minimal bureaucratic structures by connecting supply and demand and operating as service providers in both the importer and the exporter country.

There are authors, see e.g. [32], that simply define OCG as a group that attempts to monopolize a market. Although, current OCGs hardly focus in a single market.

Instead of focusing on the common description of OCGs, the purpose of this research will be on how and why such OCG takes advantage of which vulnerability in a particular country or region. In this sense, following [5], we will identify two groups of OCGs:

- *Supply groups*: those OCGs that offer a good or service. Examples include: drug dealing/trafficking, illegal immigration, human trafficking, etc. They are affected by competition and monopoly rules, but they do not necessarily increase their criminal earnings by enlarging the range of control. Hence, they focus on detecting local opportunities to seize and, if possible, play as a monopolist in the market.

- *Demand groups*: those OCGs that demand a good or service from the society or other criminal groups. They predominantly carry out predatory activities, hence, they do increase their gains by expanding the perimeter of criminal action. Examples include: gang of burglars, motor-vehicle thefts, property crimes, credit cards theft, robbery, fraud, etc. A particular example is the demand for protection from a new group to another OCGs in the area.

Clearly, the same OCG can behave as *Supply group* and *Demand group* when participating in different markets or geographical areas.

Factors that underly criminal activity

It is clear that organized crime emerges when there is a vacuum and there is a lack of control or policy that would potentially correct the voids that are exploitable. The general strategy of focusing on dangerous criminal groups with high impact on Society overshadows the criminal activity and possible avenues of eliminating vulnerable opportunities that OCGs are currently seizing or that will attract other groups. In other words, the tactic of displacing a group can be assessed in different ways but they all will be ineffective if the opportunities remain for criminals. For example, spatial displacement will cause offenders too switch location; temporal displacement will cause offenders to switch the time at which they commit crime; target displacement will cause offenders to change target; tactical displacement will cause offenders to alter their methods; and offense displacement will cause offenders to switch crime, see [16] for further details.

In order not to simply focus on criminal groups that are in place, but instead to foresee which groups are likely to form once the current are displaced. A model proposed in [3] aims to predicting the emergence of organized crime groups in a setting based on two sets of factors. As by-product it would help law enforcement and policymakers to eliminate the opportunities that attract Organized Crime. The set of factors are:

- Macro opportunity factors: economic conditions, government regulation, enforcement effectiveness, demand for illegal product or service, opportunity to create a new product or service, significant

- social or technological change.
- Micro opportunity factors:
 - Criminal environment conditions that offers opportunities to be seized by OCGs.
 - Skills or access required by an OCG to carry out a criminal activity.

An analysis of the business sectors that most likely attract OCGs or are more vulnerable to the emergence of criminal groups is provided in [20] and [37]. It has been found that OCG was rife in non-capital intensive sectors and low capital technological business sectors. Also industries with high degree of upper/underworld interactions and high volume of low skilled and minimally professionalized workers tend to attract OC and, hence, must be closely monitored. The responsibility of monitoring these legitimate industries (e.g. transports, construction sector) corresponds to the authorities that supervise the markets. Furthermore, [21] stress that it is a requirement to improve the private sector in order to prevent organized crime. In naval transportation, for example, container monitoring is an expensive controlling measure for ports and law-enforcement. However, if the opportunity is ignored and organized crime freely seizes it, the criminal group will become big easily. In this case, a small increase in the amount of containers scanned by the private sector will enhance the deter capabilities and will have a high negative impact on OC.

Although there is no realistic way to eliminate all opportunities that are available for the OCGs, several factors have been identified that drive organized crime activity, see [24] and [39]. Based on [5] and [10], [18] and [28] these factors¹ have been classified as:

- *Push-out factors*, which drive away organized crime from a region or a market.
 - Increasing law enforcement, both legal and operational capabilities, A holistic approach must be established where all the divisions follow the strategic plan to fight against OC.

¹ Also called Crime-Relevant Factors (CRF) by Europol, see [11].

This would avoid individual investigators to continue following leads to target OCGs based on personal or past criteria, instead of following a national strategic plan,

- Increasing competition among criminal groups,
- International cooperation to exchange information on the roots and connections that potentially OCGs have internationally and/or illegal markets where they are involved,
- Increasing investigation and academic research.

Law-enforcement effective controls, international cooperation and competition within the criminal market are efficient deterrents for OCGs.

- *Pull-in factors*, which attract organized crime to a region or sector and, hence, promoting criminal groups formation or mobility.
 - Mass demand of a particular illegal good or service,
 - Access to supply or strategic location of illegal trafficking routes,
 - Lax law enforcement,
 - Corruption,
 - Porous borders,
 - Presence of brokers and facilitators,
 - Systematic impunity regarding participation in a criminal market,
 - Lack of anti-Mafia legislation²,
 - Period of vibrant economy (such as, e.g. the recent real estate bubble in several countries in Europe),
 - Proximity to a tax haven.

Both types of factors are correlated and they should not be considered separately and/or seen as mutually exclusive, [5]. The combined analysis of the classification provided by the macro/micro opportunity factors and managing the *pull-in* and *push-out* factors will really increase the policy impact

² Before the European Arrest Warrant (2004) offenders could not be prosecuted or extradited from a country where membership of a Mafia-type organization was not a criminal offense

to fight OC.

Europol described in 2013 the following *crime enablers*, see [11] for more details, as *pull-in factors* that create opportunities for OC: a) the economic crisis; b) transportation and logistical hotspots; c) diaspora communities; d) corruption and the rule of law; e) legal business structures (LBS) and professional expertise; f) public attitudes and behavior; g) profits *versus* risks and ease of entry into markets; h) the internet and e-commerce; i) legislation and cross-border opportunities; j) identity theft and document fraud.

Among the *pull-in factors*, corruption, the rule of law and tax havens will be further expanded in the next sections.

1.2. TAX HAVENS MAP AND THE ILLEGAL TRAFFICKING ROUTES

The opacity and anonymity that characterize tax havens act as *pull-in factors* for the proceeds of OC whereas, usually, the criminal activity is kept somewhere else. The advent of technological advances such as Internet, the internationalization of the companies and the global economy have simplified the movement of capitals in and out of territories that act as tax havens. The total value of the assets placed in offshore territories was estimated in between 21 and 32 billions of US dollars in 2012, [19], which doubles the GDP of USA and is around 10% of the global GDP.

Internet and some other technological instruments have stimulated the internationalization of criminal activity to a certain level that it is no longer easy to associate a particular OCG with an specific area, region or centre of gravity. In this regard, illicit goods can be trafficked responsibly to anywhere in the world through effective international transport links and proper infrastructure. These links and infrastructure have been developed over time and several main trafficking routes from source to the different markets can be identified. The Western Balkan countries, [11], still remain an active area where many illicit commodities are moved into the EU. For example, before reaching this area, heroin and cocaine transits Turkey and Africa; firearms, precursors, synthetic drugs and illegal immigration have also quite active exchange.

In Figure 1.1 the different flows of illegal markets are presented. These routes are subject to adaptation in response to effective *push-out factors* or

alternative geographical *pull-in factors* looking for easier and less risky as basic OCGs' decision criteria. The crime areas, see [11] for more details, are: a) drugs; b) counterfeiting; c) crimes against persons; d) organized property crime; e) economic crimes; f) cybercrime; g) environmental crime; h) weapons trafficking.

Illicit drug trafficking is the most dynamic crime area, with a highly competitive market but still very profitable for OCGs. The UNODC estimated in 2012 that a range of 162-324 million people (3.5-7%) of the World population aged 15-64 had used an illicit drug at least in the previous year; 16/39 million people have regular use of drugs and/or drug use disorders or dependence. Finally, it seems that the european financial crisis seems to have had an impact on drug use modalities and on prevention measures due to governmental austerity measures.

In particular, Figure 1.1 shows in brown arrows the cocaine routes, mainly stemming from central america. West Africa in an important transit region for cocaine towards the EU, mainly through Spain. In 2013, EUROPOL estimated that 15.5 million adults (aged 15-64) have used cocaine in their lifetime; and that there are 4 million users consuming 124 tons of cocaine annually .



Figure 1.1: Flows of the different illegal markets.

The black arrows in Figure 1.1 represents the heroin routes. In the UNODC World Drug Report (2011) the European opiates and opioids market

was estimated at 12 billion euro, accounting UK, Italy, France and Germany for more than the 50%. The heroin is smuggled via the Central Asian republics and the Russia, Latvia and Lithuania. The market in Russia and Ukraine is larger than the EU. Based on [11] Turkish OCGs bring into the EU the vast majority of heroin, taking advantage of the geographical location of Turkey between suppliers and the consumer market. Afghanistan is still the world's largest opium poppy cultivation and experimented an increase in the area from 154000 to 209000 hectares from 2012-2013, in 2014 this area is estimated in 296720 hectares.

The annual consumption of cannabis in Europe is estimated on 1300 tons of resin and 1200 tons of herbal (indoor cultivation mostly with seeds coming mainly from The Netherlands) by 23 million consumers and with market value of 18-30 billion euros (EMCDDA & Europol EU Drug Markets Report 2013). The high demand of this illicit drug sustains a broad variety in suppliers and routes. Morocco is still the biggest producer and exporter of cannabis resin, however, the supply from Afghanistan via the Balkans is increasing.

Cannabis and Cocaine (in this order) are the most important types of drug trafficking both in terms of volume of drugs and the number of OCGs involved. The EU remains one of the largest market for these illegal drugs in the world.

Some opportunities left by Colombian OCGs are being seized by groups from Mexican Cartel and Nigeria in the cocaine market. This would increase competition among OCGs and could act as an automatic *push-out factor*.

The purple arrow in Figure 1.1 represents the counterfeit goods exchange. Due to the current economic crisis and, hence, the reduction in the consumer expending power, counterfeited products have been expanded to daily consumer goods such as detergents, food, cosmetic products and pharmaceuticals. The low risk (usually involves minimal penalties) and high profitability characteristics of counterfeiting drives OCGs to this illegal trade, focused on below/standard goods and/or infringing intellectual property rights, with huge economic impact, harm to the health and safety of its consumers, and significant environmental impact. The European Commission estimated in 2011 the domestic retail value of seized arti-

cles infringing intellectual property rights over 1.2 billion euro. The United Arab Emirates is considered a source, transit and storage area, Dubai in particular, for cigarettes and counterfeit goods with final destination the EU.

The green arrows in Figure 1.1 represent the migrant smuggling routes. OCGs seize the opportunities, weaknesses and loopholes in asylum legislation for trafficking of human beings for labour exploitation. Two main gates of illegal immigration remain Spain entering from the south and Italy from Africa, Albany and eastern Europe. The yellow arrows represent the human trafficking for sexual or labour exploitation. In both exploitation cases, the forgery of identity and visa documents have been used as a powerful tool. The constant demand for services related to sexual and labour exploitation is covered by OCGs that link developed and developing world driving human trafficking and producing huge profits that are laundered and invested at the source, transit and destination countries. The freedom of movement in the EU and the Schengen Area provide OCGs a comfortable area both to operate and to move across borders.

The dark blue arrows in Figure 1.1 represent the firearms trafficking routes. The data collected by [11] indicates that this market in the EU has limited size and that remains stable compared to previous years. At international level, the illicit trafficking in firearms was estimated in around 170 million to 320 million US dollars annually, see [27] for more details. In 2011, the value of illicit trade of small arms and light weapons was estimated in around 300 million and 1 billion US dollars, see [17] for more details.

Tax havens

In order to better characterize the financial secrecy level of a country, baseline for a tax haven, we have used the Financial Secrecy Index (FSI), which ranks secrecy jurisdictions according to their degree of secrecy and the scale of their trade in international financial services (see [22] for more details). In Figure 1.1 the different tax havens are presented, where the dots represent the secrecy score (based on laws, regulations, cooperation with information exchange processes and other verifiable data sources) and the colored countries are based on the FSI. Only those countries having a FSI greater than 200 are represented.



Figure 1.2: Tax havens in Europe.



Figure 1.3: Tax havens in America.



Figure 1.4: Tax havens in Africa.



Figure 1.5: Tax havens in Oceania.

1.1.2 Corruption and the rule of law

Illegal activities impact the economy in many ways such as in foreign investment, job growth, tax revenues, market distortions, weaken institu-

tions, erode public trust in government, and undermine core democratic values such as the rule of law. Corruption is often connected with OC when the authorization and/or connivance of local or national administrations is needed. For example, in criminal activities such as illicit waste disposal, trafficking in endangered species (red arrows in Figure 1.1), illegal investment in real estate projects, facilitation of illegal immigration, weapons trafficking, document counterfeiting, etc. In Figures 1.6 and 1.7 the absence of corruption index is presented.



Figure 1.6: Absence of Corruption Index. Source: World Justice Project.



Figure 1.7: Absence of Corruption Index. Europe. Source: World Justice Project.

Interviews performed by [12] concluded that the drugs and prostitution markets were most often related to police corruption. The report concludes that both prostitution and illegal drug trafficking exert the most corruptive effect in the EU since the nature of these illegal activities require the engagement of corruption to control and monopolize the market over time. Regarding political corruption the study, see [12] for more details, indicates that in Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Malta, the Netherlands, Portugal, Spain, Sweden and the United Kingdom political corruption is primarily associated with *white collar crime* whereas in Czech Republic, Hungary, Poland, Slovakia, Slovenia, Latvia, Lithuania, Estonia, Bulgaria and Romania political

corruption was occasionally linked to organized or white collar criminals³.

Organized crime undermines the rule of law and the efficacy of governance. Furthermore, corruption is used to, somehow, shape the rule of law in order to allow OC to infiltrate at political, economic and social levels. In Figures 1.8 and 1.9, the rule of law index is presented.

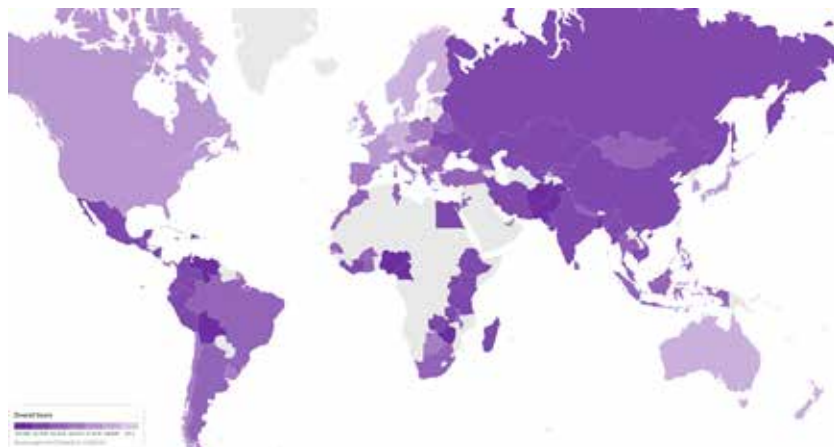


Figure 1.8: The Rule of Law Index. Source: World Justice Project.

³ This includes some organized crime and corruption links amongst Members of the Parliament or head of agencies or departments as in Bulgaria, Greece, Italy, Romania, and in local and regional administrations as in Bulgaria, Czech Republic, Germany, Greece, Spain, France, Hungary, Italy, Netherlands, Portugal, Romania.

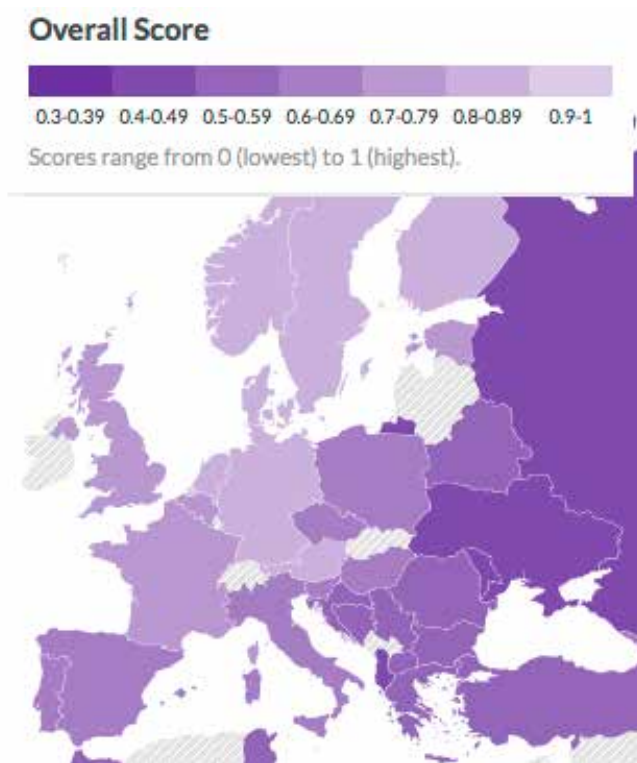


Figure 1.9: The Rule of Law Index. Europe. Source: World Justice Project.

The problem of corruption it is well known all around the world and it seems to be a keystone when it comes to analyzing levels of criminality. Corruption is an important *pull-in factor* that attracts organized crime and mutually feeds back. Although in countries where the impact of the current economic crisis has been severe the susceptibility to corruption by the population might have increased, the corruption perception is high across Europe as it is shown in Figures 1.10 and 1.11.



Figure 1.10: Corruption spread across the EU.



Figure 1.11: Corruption perception index.

The studies [12], [4] showed that there is statistical evidence about the impact of organized crime on corruption.

The link between organized crime and corruption, was presented on [12] where the following seven clusters of countries were specified. Starting from the cluster with weakest manifestation of corruption and organized crime: 1) Denmark, Finland and Sweden; 2) Austria, Belgium, Ireland, Germany, Luxembourg, The Netherlands, Slovenia, Spain and the UK; 3) France; 4) Estonia, Latvia, Lithuania, and Portugal; 5) Czech Republic, Cyprus, Greece, Hungary, Malta and Slovakia; 6) Italy; and 7) Bulgaria, Poland and Romania.

1.1.3 Measures of criminality in Spain

The criminal activity in Spain seems to be distributed geographically across all autonomous communities. However, there are more evidences in certain areas as it is presented in Figure 1.12.



Figure 1.12: Level of OC activity in Spain in 2013.

In terms of OC investments in Spain in 2013, as presented in Figure 1.13,

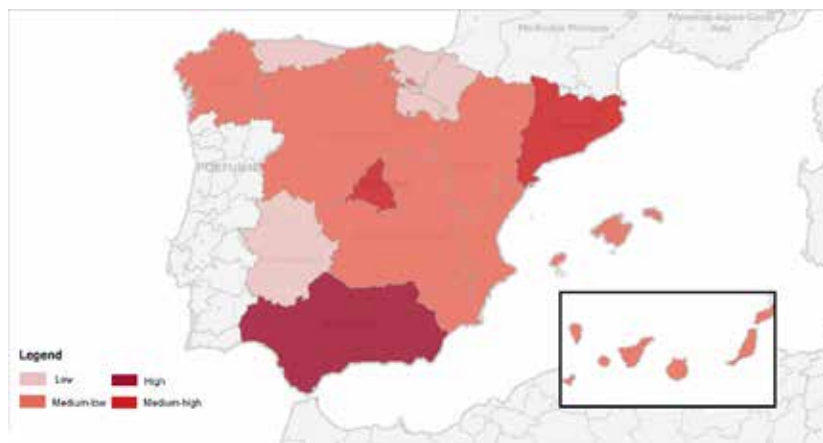


Figure 1.13: Level of OC investments in Spain in 2013.

Andalusia is the region that presents the highest amount of criminal investments in the country. This may be due to its unique geographical location and its nature as a mayor entry point. Also, this autonomous community has Gibraltar as an acting tax haven in the coast. It has been found several evidences of investments in companies, real estate activities and registered and movable assets by a wide range of OCGs. The autonomous communities of Madrid and Catalonia seem also to have a notable presence of criminal investments which might be related to the important tourism industry of these two regions. Finally, the eastern coast of Spain along with some central regions also show some evidences of the presence of criminal investments at a lower level.

Confiscated assets in Spain follow a similar allocation as OC investments. In 2013, Andalusia reported a total number of 751 confiscated assets, more than 30% of the total number of confiscated assets in Spain. The autonomous community of Madrid also showed a high number of confiscated assets (385). Another important area is the one formed by the autonomous communities of Valencia and Catalonia, which concentrates most of the confiscated assets in the Mediterranean coastal. Finally, Galicia and the Canary Islands along with the autonomous city of Ceuta also recorded notorious levels of confiscation. Figure 1.14 presents the level of confiscated assets in Spain in 2013.

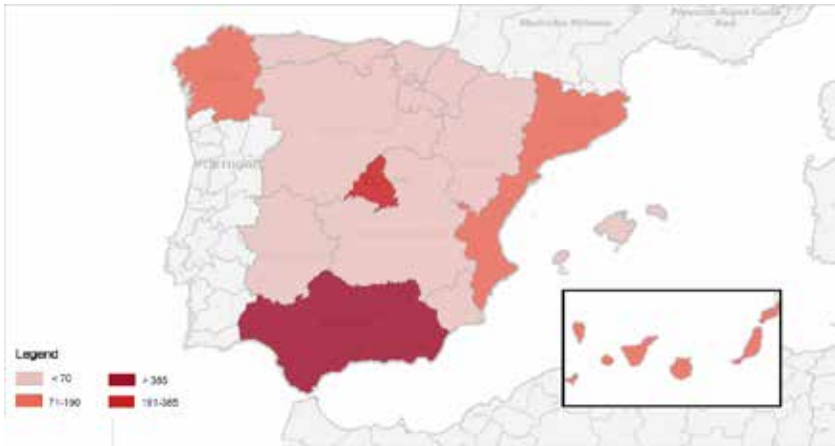


Figure 1.14: Level of confiscated assets in Spain in 2013.

In terms of monetary value of confiscated assets in Spain in 2013, see Figure 1.15, it seems that the value is not equally allocated across the Spanish peninsula. The types of assets considered are: registered assets, movable assets, real estate and cash. The autonomous community of Madrid seems to have the highest value, however it should be noticed that when the final confiscation is issued by the Supreme Court (located in Madrid) the value is computed to Madrid regardless the actual location of the confiscated asset. The autonomous community of Andalusia along with the coastal areas of Valencia, Catalonia and Galicia record higher levels than the rest of the regions. In addition, the Canary Islands also present high value in the confiscated assets.

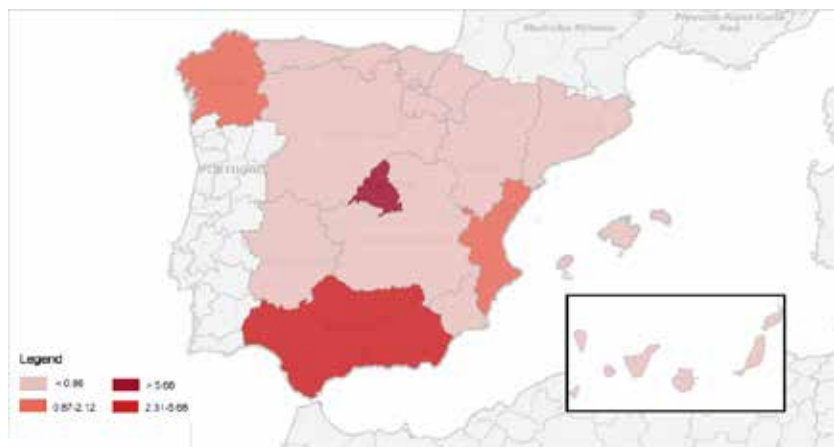


Figure 1.15: Value of confiscated assets (mn euro) in Spain in 2013.

Type of assets	Num. of seized assets	
	2012	2013
Registered assets	1790	2227
Movable assets	7820	6595
Companies	N/A	N/A
Real estate	N/A	N/A
Euros (cash)	44 million	30 million
Total	175335	59702.55

Table 1.1: Total confiscated assets in 2013. Source PNSD.

2. INSTRUMENTS TO TACKLE ORGANIZED CRIME

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Stemming from the protocols ruling the activity of medical doctors based on Vaccination, Prevention, Recovery, Diagnostics and Surgery we propose the following protocol to tackle OC and, hence, reduce the size of illegal economy:

- Investigation focused on the *pull-in factors*, introduced in Section 1.1, as an alternative to being targeted exclusively towards reaching the displacement of a particular OCG. The successful investigation is only reached when the current macro and micro opportunity factors that attract criminals (pulling them in) are identified and the *push-out factors* are implemented effectively.
- *International Cooperation*: the global nature of OC makes unfeasible for a single state to tackle it nationally.
- *Confiscation of proceeds of crime*: this legal instrument has been given strategic priority within the EU as a way of fighting OC. As part of a comprehensive package to protect the economy, the Commission has proposed to revise the EU legal framework on confiscation and asset recovery.
- *Asset Recovery Offices* (AROs), the *asset management* and *social reuse of assets*. The fact that the proceeds of crime are usually invested in countries different than where a OCG normally operates, makes more difficult the allocation and confiscation of these crime's pro-

ceeds. The national agencies that are in charge of tracing criminal assets as well as for international cooperation are the AROs.

- *Prevention.* One the most important prevention methods against OC is based on the international cooperation of AROs and Asset Management Offices (AMOs). However, law enforcement training at international level is important to harmonize and homogenize the fight against OC.

The current monetary instruments such as crypto currency, the absence of internal EU boundaries, and the implementation of the EU Money Laundering (ML) Directive have pushed OCGs towards financial type of products that avoid the detection of the proceeds of crime from law-enforcement investigations. We believe that ML and OC are linked like the flame and oxygen: suffocating ML will reduce OC considerably. The use of screen companies and, lately, the advent of crypto currency have been used profusely by OC for ML purposes. The final report on the fifth round of mutual evaluations, see [13], concludes inter alia that “Financial investigations should, as far as possible, be carried out in all serious and organised crime cases (which include terrorism) beyond the sole economic and financial crime offences”.

The remainder of this Section is devoted to the proposed protocol to tackle OC.

2.1.1 International Cooperation

We will introduce in this section the different international platforms that are available to tackle OC from an international perspective.

- **UNITED NATIONS:** The United Nations Office on Drugs and Crime (UNODC) is the guardian of the United Nations Convention against Transnational Organized Crime (Organized Crime Convention) and the three Protocols -on Trafficking in Persons, Smuggling of Migrants and Trafficking of Firearms - that supplement it. This landmark achievement represents the international community's commitment to combating transnational organized crime and acknowledging the UN's role in supporting this commitment. The adoption

of the Convention at the fifty-fifth session of the General Assembly of the UN in December 2000 and its entry into force in 2003 also marked a historic commitment by the international community to counter OC. The Resolution 55/188 urged the Member States to drive international cooperation for the elaboration of instruments which help avoid and combat the illicit transfers of funds, and send the illegally-transferred funds back to their countries of origin.

The International Money-Laundering Information Network (IMoLIN), a one-stop anti-money-laundering/countering the financing of terrorism (AML/CFT) research resource, was established in 1998 by the UN on behalf of a partnership of international organizations involved in AML/CFT. The Law Enforcement, Organized Crime and Anti-Money-Laundering Unit (LEOCMLU) of the UNODC now administers and maintains IMoLIN on behalf of the Asia Pacific Group on Money-Laundering (APG), Caribbean Financial Action Task Force (CFATF), Commonwealth Secretariat, Council of Europe - MONEYVAL, Eurasian Group (EAG), Eastern and Southern Africa Anti-Money-Laundering Group (ESAAMLG), Financial Action Task Force (FATF), Financial Action Task Force on Money-Laundering in South America (GAFISUD), Inter-governmental Action Group Against Money Laundering and Terrorist Financing in West Africa (GIABA), INTERPOL and the Organization of American States (OAS/CICAD).

The IMoLIN is a multi-faceted website that serves the global anti-money-laundering community by providing information about national ML and financing of terrorism laws and regulations including two general classes of money laundering control measures (domestic laws and international cooperation), as well as information about national contacts and authorities for inter-country assistance. It is an important reference tool for law enforcement officers involved in cross-jurisdictional work to assist them in their international cooperation and exchange of information efforts. Also, it identifies areas for improvement in domestic laws, countermeasures and international cooperation.

The information on IMoLIN is freely available to all internet users,

with the exception of AMLID, which is a secure, multi-lingual database reflecting new money-laundering trends and standards, and that takes into account provisions related to terrorist financing and other current standards, such as the revised FATF 40 + 9 recommendations. In addition, it also includes a Conventions Framework section that gives an overview of the status of a country or territory to the international conventions applicable to AML/CFT as well as the status of a country or territory to bi-lateral/multi-lateral treaties or agreements on Mutual Legal Assistance (MLA) in criminal matters and extradition.

- CARIN: The Camden Asset Recovery Inter-Agency Network (CARIN)⁴ was created at The Hague on 22-23 September 2004, at the initiative of Austria, Belgium, Germany, Ireland, The Netherlands and UK. It represents a global informal network of practitioners and experts aimed at improving and reinforcing the common knowledge on the methods and techniques in the field of transnational identification, freezing and seizure, confiscation and forfeiture of the proceeds of crime and other crime-related assets. The goal of this network is to enhance the efficiency of the efforts aimed at depriving criminals of their illegal profits. The CARIN permanent secretariat is based in Europol headquarters at The Hague. CARIN members meet together regularly at an Annual General Meeting. Access to the CARIN network and its website is restricted only to members of the network. The organization is governed by a Steering Committee of nine members and a rotating Presidency. In Figure 2.1 three different members status are presented: Members (operational in green); Observers (operational but no vote in red) and Associate (complementary strategy role).

⁴ In June 2003, a meeting was held at the Camden Court Hotel (Dublin) where the initiative started with the attendance of Belgium, The Netherlands, Ireland, UK and Eurojust, with Europol acting as Secretary.

plication) allows the exchange of operational strategic crime related information and intelligence between the Member States, Europol and Third Parties. It also provides high security standards for exchanging sensitive information and exchanging information in accordance with Council Framework Decision 2006/960/JHA. The SIENA channel allows a Member State or Europol to send a message to another Member State, which will assign the SIENA message to a person nominated to represent the ARO. Optionally, the SIENA message could be downloaded and sent to the ARO using secure email or call the ARO to notify that a message has arrived into SIENA. Some data regarding the exchange of information via SIENA in 2014 are: 18% of the new cases were related to drugs, followed by fraud and swindling (14%), robbery (9%), money laundering (6%) and illegal immigration (6%). A total of 605,245 operational messages were exchanged, 573 competent authorities were configured in SIENA from 28 Member States, 14 third parties (countries that have cooperation agreements with Europol) connected directly and 19 third parties connected indirectly.

- The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 with the objectives of setting standards and promoting effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system. The FATF is therefore a "policy-making body" which works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas. Its recommendations are recognized as the international standard for AML/CFT and proliferation of weapons of mass destruction. They form the basis for a co-ordinated response to these threats to the integrity of the financial system and help ensure a level playing field. First issued in 1990, the FATF Recommendations were revised in 1996, 2001, 2003 and most recently in 2012 to ensure that they remain up to date and relevant, and they are intended to be of universal application. The FATF monitors the progress of its members in im-

plementing necessary measures, reviews money laundering and terrorist financing techniques and counter-measures, and promotes the adoption and implementation of appropriate measures globally. In collaboration with other international stakeholders, the FATF works to identify national-level vulnerabilities with the aim of protecting the international financial system from misuse. The FATF's decision making body, the FATF Plenary, meets three times per year. The FATF currently comprises 34 member jurisdictions and 2 regional organizations, representing most major financial centres in all parts of the globe.

- Grupo de Acción Financiera de Sudamérica (GAFISUD) is a regionally based inter governmental organization that gathers 12 countries from South America, Central America and North America in order to foster AML/CFT by means of a commitment for continuous improvement of the national policies against both scourges, and the enhancement of different cooperation mechanisms among its member countries. It was formally created on 8th December 2000 in Cartagena de Indias (Colombia) when the Memorandum of Understanding was signed by government representatives from nine countries: Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru and Uruguay. Mexico (2006), Costa Rica and Panama (2010) joined as plenary members at a later stage. New member countries are Cuba, Guatemala and Honduras; observers: Germany, APG, The World Bank, BID, Canada, CICAD, CTED, United States of America, Spain, IMF, France, FATF, CFATF, INTERPOL, Portugal and UNODC

A peculiarity of GAFISUD is that it is acting “in the system”, i.e. not only does it deal with the political aspect of communication of the 40 Recommendations, but it also deals with cooperation measures. It is through the initiative of the UNODC, and with the support of the Inter American Commission for the Control of Drug Abuse of the Organization of American States (CICAD/OEA), INTERPOL and the Executive Secretariat of the GAFISUD, that it set out to use the platform created in the region by the latter, in order to create

and develop a contact network in the region called GAFISUD's Asset Recovery Network⁵ (RRAG) to facilitate the identification and localization aiming to recover the assets, products or instruments of illicit activities through the contact points appointed by each State. Among the objectives and commitments of the contact points, they must consolidate as an experience centre in all aspects, so as to prosecute the crime sourced revenues, to foster the exchange of information and to act as an advisor group for the national competent authorities; to advise, to facilitate mutual legal assistance and out of their own initiative, to share good practices, knowledge, and experiences. Also, to provide feedback to collaborate with the investigations on this issue.

Since October 2010, RRAG has an electronic platform to interchange information in a safe environment that is located at the Financial Intelligence Unit in Costa Rica.

Currently, 24 Contact points are appointed in all member countries, mainly consisting of a police contact point and another one from the Attorney General's Office of each country.

- MONEYVAL (Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism) was established in 1997⁶. It aims at ensuring that its member states have in place effective systems to counter money laundering (including confiscation measures) and terrorist financing and comply with the relevant international standards in these fields. The compliance in the legal, financial and law enforcement sectors is performed through a peer review process of mutual evaluations based on the recommendations of: the FATF, including the Special Recommendations of Financing of Terrorism and Terrorist Acts and related Money Laundering; the 1998 United Nations Convention

⁵ Red de Recuperación de Activos de GAFISUD.

⁶ In October, 13 2010, the Committee of Ministers adopted the Resolution CM/Res (2010)12 on the Statute of MONEYVAL which elevates MONEYVAL, as from 1 January 2011, to an independent monitoring mechanism within the Council of Europe answerable directly to the Committee of Ministers.

on Illicit Traffic in Narcotic Drugs and Psychotropic Substances; the United Nations Convention against Transnational Organised Crime; the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism; the relevant European Union Directives on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing and the relevant implementing measures; and the 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, concluded within the Council of Europe.

Its reports provide highly detailed recommendations on ways to improve the effectiveness of domestic regimes and states' capacities to co-operate internationally in these areas.

- GRECO (Group of States against Corruption) was established in 1999 by the Council of Europe as a committee which aims to improve its members' capacity to fight corruption by monitoring⁷ States' compliance with the organisation's anti-corruption standards through a dynamic process of mutual evaluation and peer pressure. It helps to identify deficiencies in national anti-corruption policies, prompting the necessary legislative, institutional and practical reforms in order to better prevent and combat corruption. GRECO also provides a platform for the sharing of best practice in the prevention and detection of corruption. Its membership, which is an enlarged agreement, is not limited to Council of Europe member States. Any State which took part in the elaboration of the enlarged partial agreement, may join by notifying the Secretary General of the Council of Europe. Moreover, any State which becomes Party to the Criminal or Civil Law Conventions on Corruption au-

⁷ In particular, for monitoring observance of the Guiding Principles for the Fight against Corruption and implementation of the international legal instruments adopted in pursuit of the Programme of Action against Corruption (PAC). So far three such instruments have been adopted, the Criminal Law Convention on corruption (ETS 173), opened for signature on 27 January 1999, the Civil Law Convention on corruption (ETS 174), adopted in September 1999, opened for signature on 4 November 1999 and Recommendation R (2000) 10 on codes of conduct for public officials, adopted on 11 May 2000.

tomatically accedes to GRECO and its evaluation procedures. Currently, it comprises 49 member States (48 European States and the United States of America).

Since the Criminal Law Convention on corruption also incorporates provisions on confiscation of proceeds, GRECO findings, conclusions and recommendations can provide information regarding the efficiency of confiscation measures.

Several focal international platforms have been implemented in order to coordinate actions with local authorities. We highlight here the following:

- The African International Liaison Officers Units in Accra (Ghana) and Dakar (Senegal)⁸ established in June 2009 by the proposal of United Kingdom and France. The platform model improves both the collective gathering of greater and better intelligence and the support provided to the host country, whereas the exchange of intelligence is not mandatory and the participation in the Platform does not affect the principles of intelligence ownership.
- Bogotá Platform (Colombia): In line with the spirit of the EU Drug Strategy (2013-2020) and following the experience in Accra and Dakar, Spain proposed the European Commission an American International Liaison Officers Unit in Bogotá (Colombia)⁹ with the objective to exchange strategic and operative information on cocaine trafficking from the Andean Region to Europe. The city of Bogotá was chosen in order to increase the disruptive impact in one of the main cocaine production area, and to support the efforts of the Colombian government in fighting international drug trafficking.

8 See more info in <http://www.afrikonline.com/en/dakar-against-drugs> Interdepartmental Committee that fight against drugs (CILD) Ministry of Interior of Senegal.

9 COUNCIL OF THE EUROPEAN UNION (Brussels, 1 March 2013) Establishment of a Platform in Bogotá for the exchange of information on Transatlantic cocaine trafficking.

Other international coordination *fora* are:

- JIATFs (Joint Interagency Task Force South)
- MAOC-N
- CeCLAD-M
- Antenne OCRTIS
- EUROPOL-AWF (Analytical Work Files group)
 - TWINS: Child pornography
 - MARITZA: Human trafficking
 - COLA: Drug trafficking from Latin-American OCGs
 - MUSTARD: Cocaine trafficking
 - SUSTRANS: suspicious transactions
 - TERMINAL: Credit card fraud (skimming)

Based on the 30 countries analyzed, most of them are involved in cooperation activities throughout the networks and platforms mentioned above. Mutual recognition of foreign confiscation is used in 70% of the countries while Slovakia, Estonia and United Kingdom seem to not have a mutual recognition legislation at the moment. For the rest of the countries we were not able to find any mention regarding this topic within their respective laws and regulations. As for the participation on the GAFISUD platform, only a 4 countries (France, Germany, Portugal and Spain) were found to be involved. This low rate can be due to the Latin-American character of the platform. On the contrary, the inter-governmental body for cooperation FATF-GAFI seems to cooperate with more than 60% of the countries as members. In Figures 2.2 – 2.4 the presence in the main international cooperation platforms are presented.

Country	Mutual Recognition of Foreign Confiscation Orders	GAFISUD (Observers)	FATF GAFI	CARIN	UN	SIENA
AUSTRIA	YES	NO	YES	YES	YES	YES
BELGIUM	YES	NO	YES	YES	YES	YES
BULGARIA	YES	NO	NO	YES	YES	YES
CYPRUS	YES	NO	NO	YES	YES	YES
CZECH R.	YES	NO	NO	YES	YES	YES
DENMARK	YES	NO	YES	YES	YES	YES
ESTONIA	NO	NO	NO	YES	YES	YES
FINLAND	YES	NO	YES	YES	YES	YES
FRANCE	YES	YES	YES	YES	YES	YES
GERMANY	YES	YES	YES	YES	YES	YES
GREECE	YES	NO	YES	NO	YES	NO
HUNGARY	YES	NO	NO	YES	YES	YES
ICELAND	NON AVAILABLE	NO	YES	NO	YES	NO

Figure 2.2: International cooperation.

Country	Mutual Recognition of Foreign Confiscation Orders	GAFISUD (Observers)	FATF GAFI	CARIN	UN	SIENA
IRELAND	YES	NO	YES	YES	YES	NO
ITALY	YES	NO	YES	YES	YES	NO
LATVIA	NON AVAILABLE	NO	NO	NO	YES	NO
LITHUANIA	YES	NO	NO	YES	YES	YES
LUXEMBOURG	YES	NO	YES	YES	YES	YES
MALTA	NON AVAILABLE	NO	NO	NO	YES	NO
NETHERLANDS	YES	NO	YES	NO	YES	YES
NORWAY	NON AVAILABLE	NO	YES	NO	YES	NO
POLAND	YES	NO	NO	YES	YES	YES
PORTUGAL	YES	YES	YES	NO	YES	NO
ROMANIA	YES	NO	NO	YES	YES	NO
SLOVENIA	YES	NO	NO	NO	YES	NO
SLOVAKIA	NO	NO	NO	NO	YES	YES

Figure 2.3: International cooperation.

Country	Mutual Recognition of foreign Confiscation Orders	GAFISUD (Observers)	FATF GAFI	CARIN	UN	SIENA
SPAIN	NON AVAILABLE	YES	YES	YES	YES	YES
SWEDEN	YES	NO	YES	YES	YES	YES
SWITZERLAND	NON AVAILABLE	NO	YES	YES	YES	NO
UNITED KINGDOM	NO	NO	YES	YES	YES	YES

Figure 2.4: International cooperation.

2.1.2 Confiscation of proceeds of crime

There are generally different types of confiscation used internationally to recover the proceeds and instrumentalities of crime. All types share the same objective. First, those who commit unlawful activity should not be allowed to profit from their crimes. Proceeds should be confiscated and used to compensate the victim, whether it is the state or an individual. Second, unlawful activities should be deterred, and removing the economic gain from crime discourages the criminal conduct in the first goal mentioned earlier. Confiscation of assets ensures that they will not be used for further criminal purposes; it likewise serves as a deterrent.

As introduced in the previous Section, the use of the international cooperation is a powerful tool to fight against OC. However, the international use of certain terms related to asset confiscation have led to significant confusion, delay, and even the refusal of mutual legal assistance requests. This confusion stems mainly from differences in terminology between civil law and common law jurisdictions, as well as from the fact that certain terms do not have corresponding terms in different languages (for example, confiscation vs. forfeiture).

To solve these problems, the 1990 and 2005 Council of Europe Convention include the following definitions¹⁰:

- *Proceeds*, means any economic advantage, derived from or obtained, directly or indirectly, from criminal offenses. It may consist of any property, that includes property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or

¹⁰ The description of these terms is more or less similar to the ones included in the UN Convention (1988) and UNTOC Convention (2003) and EU Legal instruments.

instruments evidencing title to, or interest in such property.

- *Instrumentalities* means any property used or intended to be used, in any manner, wholly or in part, to commit a criminal offense or criminal offenses.
- *Confiscation* means a penalty or a measure, ordered by a court following proceedings in relation to a criminal offense or criminal offenses resulting in the final deprivation of property.
- *Freezing or Seizure* means temporarily prohibiting the transfer, destruction, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority.
- *Forfeiture* could be used for a measure of *confiscation* in civil procedure, but also for the *confiscation* in criminal procedure (the removal of direct advantage)¹¹.
 - *Criminal forfeiture* is an *in personam* order, an action against the person. It requires a criminal trial and conviction, and is often part of the sentencing process. Some jurisdictions apply a lower standard of proof (that is, the balance of probabilities) for the forfeiture process than for the criminal portion of the process. Nonetheless, the requirement of a criminal conviction means that the government must first establish guilt “beyond a reasonable doubt” or such that the judge is “intimately convinced” (intimate conviction). Criminal forfeiture systems can be object-based, which means that the prosecuting authority must prove that the assets in question are proceeds or instrumentalities of the crime.
 - *Civil forfeiture* permits the seizure and confiscation of the assets of persons who have not been convicted of any crime, and commonly takes place without any form of hearing. The action is not against an individual defendant, but against the

¹¹ The United States used the term of *forfeiture* for both the civil and the criminal confiscation. In the United Kingdom on the other hand, the terms *confiscation* and *forfeiture* has a different meaning. In Denmark, the Danish law does not use the term *freeze* but rather the term *seizure* which corresponds to the term *freeze*.

property, the owner of the property is a third party having the right to defend the property.

- *Non-conviction based confiscation* (NCBC) means confiscation through judicial procedures related to a criminal offense for which a criminal conviction is not required. NCB asset forfeiture is a critical tool for recovering the proceeds and instrumentalities of corruption. It is a legal mechanism that provides for the restraint, seizure, and forfeiture of stolen assets without the need for a criminal conviction; it can be essential to successful asset recovery when the violator is dead, has fled the jurisdiction, is immune from investigation or prosecution, or is essentially too powerful to prosecute. NCBC is often considered a synonym for civil recovery. Confiscation of criminal assets where a criminal conviction is not possible because the suspect is deceased, permanently ill or has fled. See Table 2.1 for a comparison between criminal and NCB forfeiture.

Criminal forfeiture		NCB forfeiture
Against the person (<i>in personam</i>): part of the criminal charge against a person	Action	Against the thing (<i>in rem</i>): judicial action filed by a government against the thing.
Imposed as part of sentence in criminal	When does it take place?	Filed before, during, or after criminal conviction, or even if there is no criminal charge against a person.
Criminal conviction required. Must establish criminal activity “beyond a reasonable doubt” or “intimate conviction”	Proving unlawful conduct	Criminal conviction not required. Must establish the unlawful conduct on a “balance of probabilities” standard of proof.
Object-based or value-based.	Link between proceeds and unlawful conduct	Object-based
Forfeit defendant's interest in the property	Forfeiture	Forfeit the thing itself, subject to innocent owners.
Varies (criminal or civil)	Jurisdiction	Varies (criminal or civil)

Table 2.1: Differences between Criminal and NCB asset forfeiture. Source: UN-ODC.

A growing number of jurisdictions have established NCB asset forfeiture regimes and such regimes have been recommended at regional and multilateral levels by a number of organizations. The United Nations Convention against Corruption (UNCAC) urges countries to consider permitting NCB asset forfeiture of stolen assets when the offender cannot be prosecuted. The following jurisdictions have already implemented NCB asset forfeiture: Albania, Antigua and Barbuda, Australia, most of the Canadian provinces, Colombia, Fiji, Guernsey, Ireland, Isle of Man, Israel, Jersey, Liechtenstein, The Philippines, Slovenia, Switzerland, Thailand, South Africa, United States and United Kingdom.

- *Extended confiscation* lay down clearer and more efficient rules on the confiscation of assets which are not directly linked to a specific crime, but which clearly result from similar criminal activities committed by the convicted person. For example, Italy has it.
- *Third-party confiscation* where assets have been transferred from the suspect to a third party who should have realized that they were illegal or the fact that they were transferred in order to avoid confiscation.
- *Precautionary freezing* allows competent authorities, such as prosecutors, to freeze assets temporarily that risk disappearing if no action is taken, subject to confirmation by a court as soon as possible. For example, Spain has it.
- *Effective execution* allows financial investigations on a person's assets to be continued for years after a criminal conviction in order to fully execute a previously issued confiscation order.
- *Value confiscation* can mean three things: the sale of assets, which can be replaced by the profits; the return of the assets, subject to payment of a sum of money, so those can be replaced by that amount; or retention in kind of property confiscated in accordance with the resources available for this purpose. For example, Belgium has it.

2.1.3 The Assets Recovery Offices (AROs) and the Asset Management

In order to fight against OC a criminal policy has been designed to deprive OCGs of the benefits coming from their illicit activities. In order to ensure a final confiscation of the proceeds of crime it is necessary to use rapid and efficient investigative and provisional measures. The first stages are the identification, tracing and freezing or seizure before the assets are transferred or performed disposal actions. This phase involves law enforcement investigations (usually under the coordination of a prosecutor) and requires the means to identify those assets and to establish their connection with the crimes giving rise to them, along with substantial financial investigation skills. The access by law enforcement to the information on property (land registries, company registries, ...) are crucial at this stage. In Figures 2.5 – 2.7 the different registry access available for the AROs are presented: Central Bank Account register, Central Company Register, Central Land Register, and Central Movables Register.

Country	Central Bank Account Register	Central Company Register	Central land Register	Central Movables Register
AUSTRIA	NO	YES	YES	YES
BELGIUM	NO	YES	YES	YES
BULGARIA	NO	YES	YES	YES
CYPRUS	NO	YES	NO	NON AVAILABLE
CZECH R.	NO	YES	YES	YES
DENMARK	NO	YES	YES	YES
ESTONIA	NO	YES	YES	YES
FINLAND	NO	YES	YES	YES
FRANCE	YES	YES	YES	YES
GERMANY	YES	YES	NO	YES
GREECE	NON AVAILABLE	NON AVAILABLE	NON AVAILABLE	NON AVAILABLE
HUNGARY	NO	YES	YES	YES
ICELAND	NON AVAILABLE	NON AVAILABLE	NON AVAILABLE	NON AVAILABLE

Figure 2.5: Registry access.

Country	Central Bank Account Register	Central Company Register	Central land Register	Central Movables Register
IRELAND	NO	YES	YES	YES
ITALY	NON AVAILABLE	NON AVAILABLE	NON AVAILABLE	NON AVAILABLE
LATVIA	NO	YES	YES	NON AVAILABLE
LITHUANIA	NO	YES	YES	YES
LUXEMBOURG	NO	YES	YES	YES
MALTA	NON AVAILABLE	NON AVAILABLE	NON AVAILABLE	NON AVAILABLE
NETHERLANDS	NO	YES	YES	YES
NORWAY	NON AVAILABLE	NON AVAILABLE	NON AVAILABLE	NON AVAILABLE
POLAND	NO	YES	YES	YES
PORTUGAL	NON AVAILABLE	NON AVAILABLE	NON AVAILABLE	NON AVAILABLE
ROMANIA	NO	YES	NO	NON AVAILABLE
SLOVENIA	NON AVAILABLE	NON AVAILABLE	NON AVAILABLE	NON AVAILABLE
SLOVAKIA	NO	YES	YES	NON AVAILABLE

Figure 2.6: Registry access.

Country	Central Bank Account Register	Central Company Register	Central land Register	Central Movables Register
SPAIN	NO	YES	YES	YES
SWEDEN	NON AVAILABLE	NON AVAILABLE	NON AVAILABLE	NON AVAILABLE
SWITZERLAND	NO	YES	YES	NON AVAILABLE
UNITED KINGDOM	NO	YES	YES	YES

Figure 2.7: Registry access.

The European Union adopted in December 2007 Council Decision 2007/845/JHA concerning cooperation between Asset Recovery Offices (AROs) of the Member States. This decision requires states, through Article 1, to create AROs with a maximum of two per country, as a point of contact. The decision aims that AROs cooperate with each other, exchanging information and best practices (Article 2). This exchange of information can be made upon request of an agency or spontaneously and has rendered crime a less lucrative activity, see [38].

Once criminal assets are located, potentially in one or more countries, judicial procedures are needed to first freeze them and later to confiscate

them. The 2005 Council of Europe Convention determines the obligation for States to ensure a proper management of frozen property. Such measures should preserve the value of the property by prohibition of disposal, by storing, safe keeping, selling or managing it. After a confiscation order has been issued by a court (usually when the person is convicted), the execution of assets is carried out. The managing measures of frozen or confiscated assets are performed by the Asset Management Offices (AMOs) that attends to the nature of the property.

A good example of international cooperation among AROs was operation “Shovel” (2010), conducted by the Spanish authorities in collaboration with the United Kingdom, Ireland and Belgium and with the assistance of Europol. The targeted criminal group, led by Irish and UK criminals, was involved in drug and weapons trafficking, money laundering, forgery of documents and murders. Over 700 police officers were deployed in many Member States on the day of the operation (more than 145 persons and 100 companies were raided) and resulted in 38 arrests (24 in Spain including two lawyers who facilitated money laundering operations, 12 in the UK, 1 in Ireland and 1 in Bulgaria). It was frozen 60 luxury properties in the Spanish *Costa del Sol*, 25 luxury cars and 180 bank accounts.

Some European countries have not yet designated an ARO and others have recently created it. Figures 2.8 – 2.10 provide the different instruments that each ARO has to perform its activities.

Country	Police or Judicial	Police and Judicial	Multidisciplinary	Criminal	Able to Confiscate Outside Criminal Proceeding	Extended Confiscation
AUSTRIA	POLICE	NO	NO	YES	YES	YES
BELGIUM	POLICE	NO	NO	YES	NO	YES
BULGARIA	JUDICIAL	NO	YES	YES	YES	NON AVAILABLE
CYPRUS	JUDICIAL	NO	YES	YES	YES	YES
CZECH R.	POLICE	NO	NO	YES	NO	NO
DENMARK	JUDICIAL	NO	YES	YES	NO	YES
ESTONIA	POLICE	NO	NO	YES	YES	YES
FINLAND	POLICE	NO	NO	YES	NO	YES
FRANCE	POLICE	NO	NO	YES	NO	YES
GERMANY	JUDICIAL	YES	NO	YES	YES	YES
GRECE	NON AVAILABLE	NON AVAILABLE	NON AVAILABLE	YES	YES	YES
HUNGARY	POLICE	NO	NO	YES	YES	YES
ICELAND	NON AVAILABLE	NON AVAILABLE	NON AVAILABLE	YES	NON AVAILABLE	NON AVAILABLE

Figure 2.8: Structure of the AROs.

Country	Police or Judicial	Police and Judicial	Multidisciplinary	Criminal	Able to Confiscate Outside Criminal Proceeding	Extended Confiscation
IRELAND	JUDICIAL	NO	YES	YES	YES	YES
ITALY	NON AVAILABLE	NON AVAILABLE	NON AVAILABLE	YES	YES	YES
LATVIA	POLICE	NO	NO	YES	NON AVAILABLE	NON AVAILABLE
LITHUANIA	JUDICIAL	YES	NO	YES	YES	YES
LUXEMBOURG	POLICE	NO	NO	YES	NO	NO
MALTA	POLICE	NO	NO	YES	NO	NO
NETHERLANDS	NON AVAILABLE	NON AVAILABLE	NON AVAILABLE	YES	YES	YES
NORWAY	NON AVAILABLE	NON AVAILABLE	NON AVAILABLE	YES	NON AVAILABLE	NON AVAILABLE
POLAND	POLICE	NO	NO	YES	NO	NO
PORTUGAL	NON AVAILABLE	NON AVAILABLE	NON AVAILABLE	YES	NO	YES
ROMANIA	POLICE	NO	NO	YES	YES	YES
SLOVENIA	NON AVAILABLE	NON AVAILABLE	NON AVAILABLE	YES	YES	YES
SLOVAKIA	POLICE	NO	NO	YES	YES	YES

Figure 2.9: Structure of the AROs.

Country	Police or Judicial	Police and Judicial	Multidisciplinary	Criminal	Able to Confiscate Outside Criminal Proceeding	Extended Confiscation
SPAIN	JUDICIAL	YES	NO	YES	NON AVAILABLE	NON AVAILABLE
SWEDEN	JUDICIAL	YES	NO	YES	NO	YES
SWITZERLAND	NON AVAILABLE	NON AVAILABLE	NON AVAILABLE	YES	NON AVAILABLE	YES
UNITED KINGDOM	JUDICIAL	NO	YES	YES	YES	YES

Figure 2.10: Structure of the AROs.

In the reminder part of the Section we briefly review the different AROs and AMOs. For more full details see [38] the final report of the RECAST Project.

- AUSTRIA designated the Federal Criminal Police (Bundeskriminalamt) as ARO.

It does not have a central register of bank accounts, but it has access to the rest of the country records, such as vehicles database, lands, inhabitants and central company register.

- BELGIUM designated the Central Office for Seizure and Confiscation (COSC) as ARO in March 2003, following the example of the Netherlands, by the Law of 26 March 2003. The COSC is a federal judicial institution, as it is integrated within the Office and chaired by a magistrate, focused on recovery with extended model as it combines the functions of recovery and asset management. COSC functions are manifold, among which are: to assist the judicial authorities, police and finance department in criminal proceedings in the following areas: developing a centralized and computerized management of data relating to their various competences; dispose of assets, prior authorization of the Prosecutor or the judicial authority; take over the management of confiscated assets, etc.
- BULGARIA¹² designated two AROs. On May 3, 2012, the National Assembly of Bulgaria adopted a new law on the basis of civil and

12 www.cepaca.bg and www.mps.prb.bg

criminal forfeiture entered into force in its second reading. This law introduces a new institution, the Inter-Agency Council for the Management of Assets (ICMSA) that entered into force November 19, 2012, however was stalled by a constitutional complaint brought before the Constitutional Court of the Republic of Bulgaria. With this law the term “tainted funds” which is based on French law, which are funds where part of the goods are of criminal origin and allows them to be subject to confiscation is introduced. In addition, the burden of proof shall be charged (shifting the burden of proof). Currently the Commission for Establishing Property Acquired based on Criminal Activity (CEPACA, which later changed its name to CEPAlA) and the Supreme Prosecutors’ Office are General National AROs in Bulgaria. CEPACA is a collegial body composed of five members who are appointed for five years. The Prime Minister appoints the Director, while the National Assembly and one by the President of the Republic elect his deputy, and two members. The aim is to ensure the complete independence of the members of the Commission for the government, although CEPACA is an administrative body. The activity of the Commission is carried out with the help of general and specialized administrative agencies. In terms of staff, it has 168 people.

According to the Act, the Commission has jurisdiction for, among others: identification and location of assets, imposition of court orders seizure of assets when the defendant has been convicted and the judgment accrues firm, the Director will issue territorial a report specifying the type and amount of property that reasonably could have been acquired based on criminal activity. Based on this report, the Commission shall decide the presentation in court of a reasoned request intervention of assets, etc.

It does not have a Central Register of Bank Accounts and the identification is only possible in certain cases.

- CYPRUS designated the Unit for Combating Money Laundering (MOKAS-FIU Cyprus) that acts specifically for each of the cases. Specialized training for each type of action is provided.

It does not have access to a Central Register of Banks or Property. A Central Company Register is available.

- CZECH REPUBLIC designated the Unit Combating Corruption and Financial Crimes (UOKFK), International Cooperation Department, and enacted Act no. 273/2008.

Since January 1, 2004, public prosecutors assign the administration of assets and objects seized within criminal prosecution to the Office of the Government Representation in Property Affairs (OGRPA) acting as AMO. The property is only seized by bodies responsible for penal proceedings and consequently after the official handover to OGRPA administered. The accused person is the owner of the property until the final judgment on the property forfeiture sanction or the surrendering of the object to the damaged party to accommodate its claim or until the judgment on the surrendering of the objects and property based on a request of an authority from another country is delivered.

- DENMARK designated the State Prosecutor for Serious Economic and International Crime as ARO in 2007, shortly prior to the adoption of the Council Decision 2007/845/JHA. The ARO consists of five members, one prosecutor (who is in charge of legal issues in relation to cases) and four police officers (who are in charge of investigative issues). The main task of the ARO is to assist the State Prosecutor for Serious Economic and International Crime and the 12 local police districts in complex cases where proceeds of crime have been generated. More specifically, the ARO takes over the part of the investigation regarding tracing and seizure of the assets. In this manner, the ARO handles approximately 40 cases (mostly drug-related offenses) for local police districts and approx. 10 cases for the Office of the State Prosecutor for Serious Economic and International Crime annually. The ARO also provides assistance in the post-conviction phase, in cases where Danish confiscation order was issued for assets located abroad. In such cases the ARO makes an effort to enforce such confiscation order through MLA

request.

In Denmark there is no legal basis for asset management. Once the asset has been seized, the police are responsible for the asset. There is no legal provision that allows the sale of seized property before conviction. The police are not entitled to dispose of the property, and only if the owner of the seized asset agrees the goods can be sold.

- ESTONIA designated as ARO contact point the V Division, Investigation Department, Central Criminal Police. As a result of reorganization in January 2010, the Estonian Police and Border Guard Board has taken on the responsibilities formerly assumed by the Police Board, the Citizenship and Migration Board, the Border Guard Board, the Central Criminal Police and the Personal Protection Service.

It does not have access to a Central Bank Register, but easily and quickly it can be accessed the records of movable and immovable property as well as commercial companies.

- FINLAND designated the National Bureau of Investigation, Criminal Intelligence Division/Communications Centre as ARO. In Finland the pre-trial investigation authority is responsible for tracing the proceeds of crime and for applying for protective measures by the court. Implementation of the court's decision on protective measures, and competence to implement binding confiscation orders and decisions on compensation for criminal damage is laid down in the Act on the Enforcement of Fines and in the Enforcement Code. According to those provisions, the enforcement authorities implement financial protective measures ordered by the court, and final judgements concerning financial confiscation penalties and compensation for criminal damage.
The enforcement authority is responsible for administering property, and it may sell property during the procedure if it may easily be spoiled, is likely to deteriorate quickly or is especially expensive to keep.

- FRANCE designated two AROs, the Platform for the Identification of Crime-related Assets¹³ (PIAC) and the Agency for the Recovery and Management of the Assets Seized and Confiscated¹⁴ (AGRASC). It is an example of innovation and efficiency. Since 2012 the volume of seizures and confiscations has risen by 49% and courts of law have diversified still further the nature of assets seized, see [26] for full details.

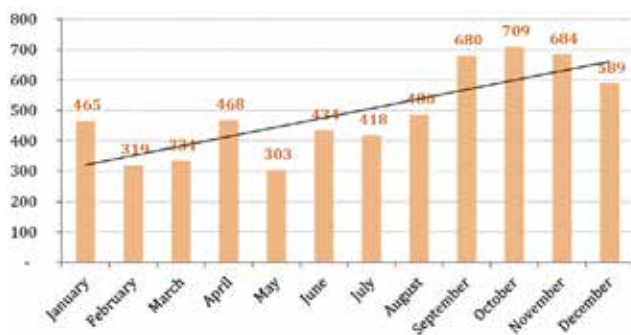
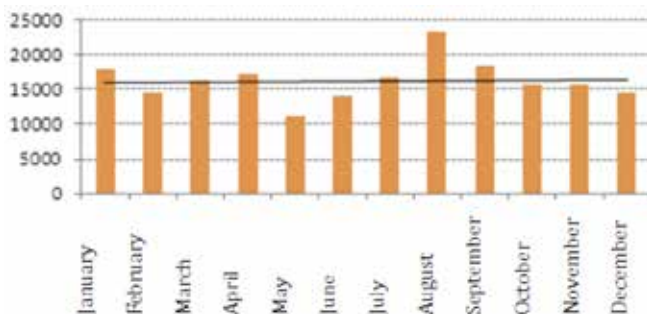


Figure 2.11: Daily average of operations entered on the database per month in 2012. Source: AGRASC



¹³ Plateforme d'Identification des Avoirs Criminels - PIAC.

¹⁴ Agence de Gestion et de Recouvrement des Avoirs Saisis et Confisqués (AGRASC).

Figure 2.12: Number of operations entered on the database per month in 2013.
Source: AGRASC

In Figure 2.11 and 2.12 it is presented the constant progression of the number of operations performed by AGRASC in 2012 and 2013 respectively. Two significant milestones have marked the performance of this AMO. First, the possibility of confiscating all the property of legal entities in the event of money laundering, and the introduction of the principle of free disposal for value as regards seizures and confiscations. Second, the improvement in the auctioning process that allowed to plan sells of real estate properties and non-standard vehicles with profitable success.

In terms of value, as presented in Figure 2.13, more than half of the total value of AGRASC's portfolio corresponds to real estate.

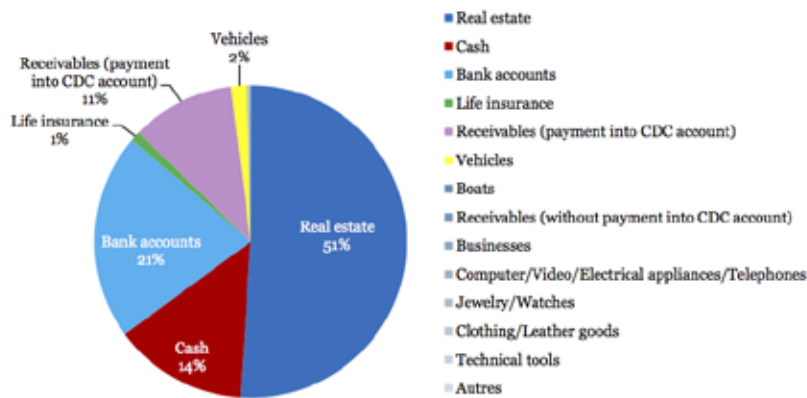


Figure 2.13: Type of seized assets and the percentage in terms of total value.
Source: AGRASC

French ARO has access to the national database of bank accounts (FICOBA), created in 1971 as centralized register. Currently is the responsibility of the Directorate General of Public Finance of the Ministry of Economy and Finance. About 500 entities file periodically account information. To access the file information, it is re-

quired that the queries contain minimal information about the person or the product. In case the query is submitted electronically, the response process is automatic, so that the system itself performs the search and returns the result through the same channel where the request was made.

- GERMANY designated two AROs, the Federal Criminal Police¹⁵ (BKA), acting as the police-based operational part with responsibility for practical cooperation between law enforcement authorities; and the Federal Office of Justice¹⁶, fulfilling a mainly advisory and training role and as the central point for national and international requests.

The powers of the financial investigators/asset recovery officials in the police (at federal and LŠnder level) in respect of criminal and regulatory offenses are based on the Code of Criminal Procedure, the Regulatory Offenses Act (Gesetz Ÿber Ordnungswidrigkeiten, OWiG) and at LŠnder level on respective LŠnder police acts.

The powers of the financial investigators/asset recovery officials in the Monitoring Authority in respect of criminal and regulatory offenses in the area of the fight against illegal employment are based on the Code of Criminal Procedure and the Regulatory Offenses Act (Gesetz Ÿber Ordnungswidrigkeiten, OWiG). Thus, the powers of the financial investigators/asset recovery officials are identical to police powers.

In all LŠnder jurisdictions tasks and powers of prosecution authorities responsible for seeking the confiscation of profits are based on the Code of Criminal Procedure and the Criminal Code. In general, prosecution authorities are responsible for and lead investigations, even though in practice these are carried out by the relevant investigating authority/authorities under the supervision of the prosecution authorities.

Information regarding bank accounts can be collated nationwide by means of an automated procedure for the retrieval of account details pursuant to Section 24c of the Banking Act. According to

15 Bundeskriminalamt Referat SO 35 "Vermšgensabhšpfung".

16 Bundesamt fŸr Justiz.

the Banking Act, every bank with a registered office in Germany must have a database in which it stores master data in respect of all bank accounts held by the bank. The Federal Financial Supervisory Authority (BaFin) can access each database via an automated procedure. The information supplied includes what are known as master data comprising information on the name of the bank, the account number, the date on which the account was opened and closed, the name of the account holder, the name of a person having the right of disposal, in the case of natural persons also their date of birth and, in certain cases defined by the Money Laundering Act, the name and, if the bank stores this, the address of a beneficial owner. Germany does not have a national central land register. Information concerning real estate can be found in the relevant land register folio, which is kept by the relevant Land Registry at the local courts or, in the case of Baden-Württemberg, in the notary's offices. Each Land maintains a real estate register (Liegenschaftskataster). The Federal Motor Transport Authority (Kraftfahrt-Bundesamt, KBA) is responsible for the Central Traffic Information System (Zentrale Verkehrsinformationssystem, ZEVIS). Germany does not have a central register for ships and boats. Instead, specific local courts have inland vessel, maritime vessel and shipbuilders' registers in accordance with the Code of the Register of Ships (Schiffsregisterordnung, SchRegO).

The Commercial Register (Handelsregister) is a public register which contains entries on registered business people in the district in which the competent register court has its seat. It also supplies information on documents deposited there. It provides information regarding business people's and companies' economic situation and can be inspected by any person for information purposes.

The central database of prosecutions (Staatsanwaltschaftliches Verfahrensregister, Section 492 of the Code of Criminal Procedure), in which all the prosecuting authorities enter their on-going prosecutions, provides an effective mechanism for avoiding competing prosecutions. If there are overlapping prosecutions in different geographical areas, one lead prosecutor is designated. Such a central

database is especially useful since financial crime by its very nature is likely to be spread over various geographical regions and even cross borders

It is noteworthy to differentiate that under German law *Verfall* (forfeiture) is understood to be the recovery of that which the perpetrator acquired through a criminal offense or for its commission. *Einzziehung* (confiscation), by contrast, refers to objects which were used or designed to be used by a criminal offense, or in its commission or preparation.

Germany has not yet established an AMO, and all its competences rely on the district attorney's office.

- GRECE designated as ARO the Financial and Economic Crime Unit (SDOE) within the Ministry of Finance, according to law no. 3842/2010.

Regarding the management of confiscated assets, immovable assets such as land, water and air transportation means, and containers, the Directorate of Management of Public Material of Ministry of Finance sells them after three months from the date of confiscation. After this date, if a court order arrives asking to return the asset to the owner, a compensation will be paid according to the provisions of the current legal framework. In the case of cash or valuables, they are deposited into the Hellenic Consignment Deposit and Loans Fund. They are either attributed to the beneficiary after a court decision or written order of the Judicial Authority, or forfeited by a decision of the Greek government and attributed to the State. Until then, the Hellenic Consignment Deposit and Loans Fund is the trustee of them.

- HUNGARY currently has no designated ARO. In December 2012, following a major reorganization of the Hungarian Police, the National Bureau of Investigation (NBI), a previously independent agency, fell under the mandate of the Riot Police. Although the Hungarian Government Decree 329/2007 mandates the activities of the Riot Police to include asset recovery, there is no single legis-

lative act that specifically designates the NBI as the current national ARO. On 1 July 2013, the penal code was amended to provide full investigatory powers in relation to asset recovery and, in fact, Hungarian legislation makes it an obligation that all investigators carry out basic asset tracing checks on all investigations (land registry checks, vehicle ownership and company checks), and more detailed financial investigations in certain specific circumstances, for example for more complex cases. Following the 2012 changes, the NBI has continued to carry out the functions of an ARO, albeit without formal legislative or structural designation. There is a future plan to formally designate an ARO in Hungary within the Riot Police, NBI, and the below department structure within the NBI indicates the likely location of this office.

The existence of a central registry of property (TAKARNET) that is accessible through the ARO speeds up the processing time of compiling information regarding real estate assets. The banking system in Hungary does not have a central registry of bank accounts. However, there is a direct link to the a specific police department which is in charge of requesting information on bank account activities and money transfer operations to different Hungarian banks.

There is no asset management office in Hungary. The NBI is mandated to manage assets seized during its own investigations. Cash is deposited into a central bank account held by the Hungarian police. Any other moveable assets are held in the criminal property office and remain there until the final decision of the court. The Hungarian law does not currently allow for selling the assets before the final judgement. Assets frozen by the Hungarian authorities on behalf of another jurisdiction are managed by whichever regional police or prosecutorial office is involved. The NBI does not involve itself in all foreign requests to restrain assets.

- IRELAND¹⁷ designated as ARO the Criminal Assets Bureau (CAB), established by the Criminal Assets Bureau Act of 2005. However,

17 An Garda S'och na.

since 1996 CAB has been in charge of the management of the assets recovered by the authorities. Due to a series of murders, mainly related to drug tracking, including the Detective McCabe and a the journalist Veronica Guerin, the Irish Central Government decided to create a new set of laws focusing in the identification of any asset coming from criminal activities with specific rules to confiscate all the goods illegally acquired by the criminal.

The main competence of the CAB is to confiscate, freeze, and seize the assets coming from illegal activities. CAB identifies assets of persons which derive, (or are suspected to derive), directly or indirectly from criminal conduct. It then takes appropriate action to deprive or deny those persons of the assets and the proceeds of their criminal conduct. In addition, this unit is also in charge on the taxation of the those assets.

Since criminals are continually becoming more adept at hiding the fruits of their criminal conduct and, in order to continue to identify and trace such assets and to present testimony before the Courts, CAB has: established the Bureau Analysis Unit; adopted international best practices in the area of Forensic Analysis; and Adopted the use of enhanced training. At the same time, new national legislations were set up in order to make available the exchange of information between police and other institutions such as the Tax Agency or Social Security. The main purpose for the establishment of these new laws was to guarantee the right application of the taxation proceedings and social security laws against organized crime activities.

In 2006 the Criminal Assets Bureau adopted a keystone strategy with the creation of a specialized unit of analysis called BAU. The BAU aimed towards the development of a professional specialized unit within CAB that will provide service to research and investigation workgroups related to forensic accounting, forensic computing and the analysis of economic and financial crimes among others.

During the preparation of an operation, BAU include Internet researching procedures based on open sources (OSINT). Software

analysis gets into place to prepare visual graphic charts of the structural organization used by OCGs. Also, family trees of the individuals under investigation are present during preparations. All these graphics are found to be decisive in order to inform researchers correctly about the connexion between crime group members.

- ITALY designated the International Cooperations Office of the Criminal Police¹⁸. The ARO and AMO tasks are competence of the National Agency for administration and destination of seized and confiscated assets from organized crime¹⁹ (ANBSC). All confiscated assets that are assigned for social use follow two different directives.

When it comes down to specific asset assignments, some rules are needed to be followed depending on the nature of the goods or assets. For example, real estate could be assigned to the State to be used in justice, public order, civil warning, and other public or administrative use; or transferred for institutional or social purposes to the communities heritages where the good is located.

The orientation with regard to the social use of forfeited goods must be highlighted; Italian law establishes two ways: first, similar to other countries in Europe, part of the goods are transferred to the central administration (13.06%, May 2012); second, restoring the heritage to the communities (86.94%, May 2012.)

Once assigned, the ANSBC goes on controlling and overseeing about the use of the goods, since the transfer could be canceled or a representative nominated when the asset is not used as provided on the transfer agreement, or has not been used along one year. In the case that it has been impossible to assign the asset for an organization for public interest, there are some conditions to achieve the sale of the asset through a public auction mechanism:

¹⁸ Servizio Cooperazione Internazionale, Direzione Centrale Polizia Criminale. It is a joint forces service: Carabinieri, Polizia di Stato, Guardia di Finanza, Polizia Penitenziaria and Corpo Forestale dello Stato.

¹⁹ Agenzia Nazionale per l'Amministrazione e la Destinazione dei Beni Sequestrati e Confiscati alla Criminalit  Organizzata.

- The price cannot be under 80% of the value established by the judicial receiver valuation.
- Only some entities can acquire the properties: public entities allowed making real estates investments; associations that ensure guaranties for the achievement of public interest; bank foundations; real estate cooperatives, established by members of army and police forces; public territorial entities.

The Servizio Centrale Investigazione Criminalit  Organizzata²⁰ (SCICO) (Organised Crime Investigations Central Service), within the Guardia di Finanza, is using new technologies in order to improve investigations and information analysis focused on acquiring and centralizing all the information this service can obtain. For this purpose, a powerful software called *Progetto Molecola* has been implemented by introducing the files obtained from several databases. The program, based on the established parameters, shows crossing information and relationships among individuals. It has become an important tool for the investigator due to the huge amount of data that the program is able to screen. Another remarkable feature is the automatic warning system, that notifies the existence of incoherences in the information. For example, a disproportion between the income and the expenses (declared and effective) of a suspect would be flagged.

- LATVIA designated as ARO the Economic Police Department of the Central Criminal Police Department of the State Police.
- LITHUANIA designated two AROs, the Criminal Police²¹ and the Attorney General²², to be responsible for carrying out the investigation and recovery of assets. Furthermore, by decision of the Di-

²⁰ The SCICO has no investigative functions, only supports and offers collaboration to Italian police forces such as Carabinieri, Polizia Nazionale and Guardia di Finanza.

²¹ Lietuvos Kriminalines Policijos Biuras

²² Lietuvos Respublikos Generaline Prokuratūra

rector of the Financial Crimes Investigation (FCIS) and the Head of the State Tax Inspectorate, it was decided to establish the Centre for Analysis of Risk (CAR). The main objectives, in order to identify threats to the state financial system and tax collection, are: to analyze and exchange information on tax violations and acts against the financial system.

Currently there is no AMO in Lithuania and every law enforcement agency is responsible for the storage/administration of seized objects. There is no centralized register system of these objects; instead, an inventory is kept locally at the agency and there are officers responsible for annual revision of the inventory. According to the national legislation, after final court decision on confiscation the State Tax Inspectorate has to take over the responsibility of storage/disposal of the confiscated assets.

- LUXEMBURGO designated as ARO the State Attorney's Office²³.
- MALTA has not yet designated an ARO.
- NETHERLANDS, through the Minister of Security and Justice, designated as ARO/AMO the Dutch Criminal Assets Deprivation Bureau²⁴ (BOOM). There is no specific legislation with regard to the Dutch ARO/AMO.

Probably, the Netherlands is a syncretism example, because its legal system combines a criminal proceeding with another that, being criminal too, is very similar to *civil confiscation* procedure existing in other countries such as United Kingdom and Ireland.

The general tasks of BOOM are: a) prosecuting the most important deprivation cases; b) asset tracing and precautionary seizure; c) management of the precautionary seizure of capital assets (AMO); d) supporting the Central Fine Collection Agency²⁵ (CJIB) regarding the execution of deprivation measures (confiscation orders); e) ARO

23 Parquet du Tribunal d'Arrondissement de Luxembourg.

24 Bureau Ontnemingswetgeving Openbaar Ministerie.

25 Centraal Justitie'l Incassobureau.

contact point.

In order to identify and trace the proceeds of crime of a suspect, a Criminal Financial Investigation (CFI) can be initiated under the following conditions:

- There must be a suspicion of criminal offenses.
- There must be a suspicion that the criminal offense resulted in a significant illegally obtained advantage (more than €12000) The initiation of a CFI implies:
- Each investigator with CFI authority is entitled to order anyone to provide statements and to access and seize written documents.
- During the CFI, the Prosecutor is entitled without further judicial authority to order the precautionary seizure of objects within the scope of a further confiscation.

A CFI is initiated under the supervision of a Prosecutor following authority from the Examining Magistrate. Because in many cases a CFI is a complicated investigation, the legislator has determined that a deprivation claim may still be filed 2 years after the accused has been convicted. It is also possible that a CFI as a preliminary enquiry, also can be conducted simultaneously or even independent from one another.

- NORWAY designated the National Authority for Investigation and Prosecution of Economic and Environmental Crime (ØKOKRIM) for asset recovery purposes.
- POLAND designated as ARO the Assets Recovery Unit, Criminal Investigation Bureau, General Headquarters of National Police on December, 5 2008, prior to being given legal status as the Polish ARO on the basis of the Act of 16 September 2011, on exchanging information with EU law enforcement authorities. This act entered into force on January, 1 2012.

There is currently no AMO in Poland, so the prosecutors and then the court are in charge of this issue until judgement, and then the Ministry of Finance assumes this task.

- PORTUGAL designated in 2011 a group under the authority of the

Minister of Justice that will be responsible of the asset recovery functions.

The Portuguese ARO was finally established in October 2012. In 2013, the arrested or confiscated assets were: number of cases (5), vehicles (33), property (52) and bank accounts (112). The total value of the assets was (MMŪ) 17.405, corresponding to: vehicles (0.904), property (4.594) and bank accounts (11.907).

Also it identified 253 companies with a total value (MMŪ) of 75.822; 712 vehicles with a value of 2.018; 1690 properties with value 110.225 and 7196 bank accounts with a total value of 12.065. On average, total value (MMŪ) of an asset was 200.234.

Portugal established a centralized register bank accounts through the Parliament approved Law 36/2010 of 2 September 2010 amending the General Rules on Credit Institutions and Financial Companies.

- ROMANIA²⁶ designated the National Office for Crime Prevention and for the Cooperation with Asset Recovery Offices (ONPCCRCI) of the European Union Member States, according to Government Decision no. 32/2011 and Law no. 201/2010. Other units involved in asset recovery are the National Anticorruption Directorate (DNA) and Directorate for Investigating Organized Crime and Terrorism (DIICOT).

Romania has criminal confiscation (special/ordinary and extended) and civil forfeiture/ non-conviction based confiscation regimes. The extended confiscation was introduced in the Romanian legislation through Law no. 63 from April 17, 2012. Romania uses five main disposal methods: selling assets to the general public, transfer of assets to state institutions or local authorities, transfer of assets to other beneficiaries (churches, NGOs), destruction and restitution. The general deadline for disposal is 180 days with an average disposal time of 103 days.

- SLOVAKIA designated as ARO the Financial Intelligence Unit (FIU) of the Bureau of Combating Organised Crime of the Presidium of Police Force.

There is no AMO or another centralized authority for management of seized and confiscated assets in the Slovak Republic. The management of seized assets is regulated by the Code of Criminal Procedure. Seized assets are managed by the court, the prosecutor or police office, depending on whether the assets are seized in pre-trial proceedings or court proceedings. If they cannot ensure management of the seized assets, they may contact for the management a state authority or subject carrying out related business in the respective area. The state authority dealing with land register provides management of the seized real estate.

The management of confiscated assets is regulated by Act on Management of State Assets. In general, the Ministry of Finance manages confiscated assets, administered by relevant authorities: state authority, state fund, public institution or a legal entity, depending the type of assets. Some assets such as securities are administered under other special acts.

- SLOVENIA designated as ARO the Expert Information Center of the Supreme State Prosecutors Office.
- SPAIN designed two AROs, one police type (the CICO, Ministry of Interior) and one judicial type (Special Anti-drugs Prosecutor's Office, Ministry of Justice) Act 7811/09 CRIMORG 42 of 19 March 2009. The main reason for appointing CICO as the police type ARO is its general competence in the field of the fight against all forms of organized crime. Both Guardia Civil and the Police National have their own databases. Only in cases of organized crime the data is send to CICO. The general task of CICO are:
 - Receive, integrate and analyze as much information and operating analysis related to organized crime as are relevant or necessary for the elaboration of strategic intelligence and foresight in relation to organized crime.
 - Dictate or determine, in cases of joint or concurrent inter-

vention, the criteria of coordination and action of the operational units of the Law Enforcement Agencies, and the other involved services, depending on their own skills or support.

- Develop the annual report on the situation of organized crime in Spain, as well as a periodic threat assessment.
- Develop and disseminate statistical information related to this matter.

The main role of the judicial ARO is to provide information about the Spanish legal system, competent authorities and the status of ongoing asset recovery requests but it is no central point to receive and send official requests.

Spain has not yet designed an AMO so the prosecutors are in charge of this matter.

- SWEDEN designated two AROs. the National Criminal Intelligence Police Service and the National Economic Crimes Bureau²⁷.

In order to seize an asset the following conditions are needed:

- The property must belong to the debtor (person or company). If the asset is in a person's possession (commonly a home) the Enforcement Authority assumes that the asset is owned by that person unless it is proved otherwise.
- The asset must have an economic value that can be turned into money.
- The asset must be possible to sell. It may, for example, be no will or deed that prohibits it to be sold.
- An economic entity may not be broken. Assets that belong together cannot be separated without special reason. The reason is that assets are often worth more together than the sum of its parts sold separately.
- The surplus should be justifiable after the costs for sale are deducted.

- UNITED KINGDOM (England, Wales and Northern Ireland) des-

ignated as ARO the Serious Organized Crime Agency (SOCA) in 2008. It is an independent public body under the Ministry of Interior, established based on Section 1 of the Act Serious Organised Crime and Police 2005, and formed on 1 April 2006 by merging the National Crime Squad, the National Criminal Intelligence Service, the National Technological Crime Unit (NHTCU), investigating sections of Finance and Customs large-scale drug trafficking, and the Immigration Service regarding trafficking.

SOCA acts with greater powers in England and Wales than in Scotland and Northern Ireland, working with the Agency Scottish Crime and Drug Task Force and Organized Crime (Northern Ireland), which share some of their functions in their respective jurisdictions.

The ARO has access to the Common Database Asset Recovery (Joint Asset Recovery Database - GARDEN) that provides the following advantages in relation to asset recovery and crime reduction: it improves effectiveness in asset recovery actions and provides a single chronological source of information regarding to asset recovery.

The United Kingdom does not have an AMO. Instead, prosecutors and Benefit Unit Crime Prosecution Service of the Crown are responsible to request the confiscation of criminal assets. It is also possible, in some cases, to appoint administrators to manage the properties before final seizure and/or sale.

Civil recovery in the UK, established in Part 5 of the Proceeds of Crime Act 2002 (POCA), can be prosecuted even if there was prior criminal conviction.

- UNITED KINGDOM (Scotland) designated as ARO the Scottish Crime and Drug Enforcement Agency (SCDEA). Although the Scottish legal system is separate and distinct from the legal system used in other parts of the UK, Scotland is subject to UK legislation, and this includes POCA. The UK legislation, such as POCA, is enforced and implemented in Scotland through Scotland's own distinctive legal institutions, and the enforcement authority for the purposes of Part 5 of POCA is the Scottish Ministers.

The Civil Recovery Unit (CRU) plays a key role in the civil confiscation in Scotland, as is the agent for the Scottish Ministers in the discharge of their functions under Part 5 of POCA. The CRU is part of the Operations Group of the Crown Office and Procurator Fiscal Service (COPFS). The COPFS is the sole prosecuting authority in Scotland.

All members of the CRU are security vetted to a high level, in order to minimize the risk of any CRU officer being susceptible to corruption/bribery. Furthermore, some CRU officers operate under pseudonyms since they come into direct contact with major criminals, and it is necessary to protect their private identities. The Unit works also from covert premises somewhere in Edinburgh, so that safety and security of CRU and its personnel can be guaranteed.

Currently there is no AMO in the UK. Based on the UK legislation, asset recovery is value based: the onus is on the convicted person to realize assets to pay any confiscation order. It allows for restraint (freezing) of assets, to prevent disposal, however the day to day maintenance of such assets tends to rest with the accused person.

2.1.4 Prevention measures

Besides the international cooperation among AROs and AMOs mentioned earlier, international training is an important OC prevention measure. Here we highlight two initiatives, among several, that have been implemented in Europe in the last 10 years.

The CARPO project ("Development of reliable and functioning policing systems, and enhancing of combating main criminal activities and police cooperation"), see [14] for more details, was a technical cooperation project funded by the Council of Europe and the EU (March 2004 – September 2006) in partnership with Belgium, Finland, Hungary, Italy, Slovenia, Spain, Sweden and the International Organisation for Migration. The project aimed at two main goals: a) develop tools against economic and organized crime, and b) training in all matters related to trafficking in humans beings, smuggling and illegal migration. Regarding the former goal, the focus was to strengthen police capacities against serious crime in

South-Eastern Europe²⁸ aimed at the confiscation of proceeds from crime. Legal, institutional and operational elements necessary for the implementation of the concept of integrated financial investigations in practice were identified. In addition, shortcomings were exposed and short and long term actions foreseen. Regarding the latter goal, specialized trainings in financial investigations were developed to provide the necessary knowledge and specialization for practitioners who will later conduct integrated financial investigations/confiscation in practice.

The CEART project (Centres of Excellence on Asset Recovery and Training), see [38] for full details, was a technical cooperation (February 2010 – May 2012), financed by the European Commission within the ISEC programme, by Europol, the Rey Juan Carlos University (Spain), and the AROs of the following countries: Belgium, Poland and Hungary, Spain and UK (Scotland). The objectives of the project were to identify best practices in the AROs in Europe and to develop an European training course for asset recovery and financial investigation.

The Rey Juan Carlos University designed a new degree course, “The International Expert Practitioners Course in Asset Recovery and Financial Investigation” as a first step towards an Asset Recovery and Financial Investigation Training Centre of Excellence. As a pilot course, several pre-requisites were imposed to the participants in order to obtain more informative feedback upon finishing. In particular, applicants must: a) currently be employed as law enforcement personnel, b) with minimum experience of 2 years in asset recovery and/or financial investigation, and c) to be fluent in English.

The syllabus was divided into five modules and the Course was taught by 25 experts and professors from 7 EU Member States to 24 students from 15 European countries. During the residential stage, the following lectures were given: Stages of the investigation; Sources of investigation; Criminal intelligence analysis; Operational support devices; Obstacles when gathering evidence; Open sources. Practical issues on asset tracing Spanish Financial Intelligence Unit; Civil recovery in Scotland; Proceeds of crime in Scotland; Polish asset identification and recovery system; Asset

²⁸ It covered the following areas: Albania, Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, Serbia and the former Yugoslav Republic of Macedonia.

recovery networks in Europe, Southern Africa and Latin America Financial training; Introduction to financial accounting; Investigation on social networks; Decision support techniques; Social Marketing; How important is the strategy in the organization; Art appraisals and fakes; Statistics to improve efficiency.

In the final part of the Course, the participants developed an applied research project, based on their experience and knowledge acquired over the Course, over the following main topics: The importance of social marketing; Social networks analysis; Asset valuation and management; Establishing an ARO; Establishing an AMO; Sources of investigations; Analysis of case studies on international cooperation on Asset Recovery; The strategy in the organizations.

The learning experience through this Course worked as a prevention measure in three ways. First, the harmonization among the participants of both the legal terminology, limitations and extensions, and the best practices and research tools that the AROs were using for seizing and confiscating proceeds of crime. Second, the trust links among the participants that were built over 15 days working as classmates. Finally, the multidisciplinary approach of the Course allowed the law enforcement participants to analyze situations from multiple perspectives.

3. THE SPANISH CASE

3.1. THE SPANISH CASE

Organized Crime Groups (OCGs) have been present in Spain since the 70s. Their criminal activities and presence have mainly established in the Spanish coastal areas: in the Mediterranean coast, in order to launder their illicit benefits; and in the north-west coast, mainly for tobacco and drug trafficking and smuggling. According to several institutional reports, Spain currently has been positioned as one of the main countries with an important presence of organized crime illegal activities. The article presented here aims to shed some light on these statements, since little research efforts have been put on this topic. The main goal is to gain a more comprehensive understanding of why OCGs and mafias are apparently getting more attracted by the country. To carry out this analysis, we enumerate the main active OCGs in the recent years and the preferred business sectors where they have been investing and/or have been infiltrated, see [31] for more details. The main factors that could contribute to the attractiveness of Spain for OCGs have been studied along with legal economy and business sectors indicators. Finally, we identify several vulnerabilities and strengths that should lead the way ahead.

3.1.1 *Pull-in and push-out factors*

Following the *pull-in and push-out factors* introduced in Section 1.1 we will focus now on the particular case of Spain.

Several authors have claimed that little has been researched in OC in Spain, see e.g.[30]. The existing academic literature on OC is lacking from an extensive and more specific empirical works. According to [15] it seems that academically research in the field of OCGs is virtually non-existent “[...]unfortunately, we have found no more than two empirical studies about organized crime in Spain”. This is particularly surprising when compared with the amount of news that appear every day on newspapers and other open sources about police investigations and operations against OCGs in Spain. A potential explanation could be the difficulty in finding official data from the public institutions involved in fighting organized

crime. In order to provide an international comparison of the research on OC and to have some perspective when compare the research on OC with respect to Terrorism we have performed a bibliometrics analysis. The focus of this methodology it to study the amount of research efforts, measured through the science production, in OC and Terrorism over a given period of time (see [1] and [2]). Based on the SCOPUS database²⁹ we have found that until 2013 a total of 31334 scientific articles were published on Terrorism and OC. However, the share is presented in Figure 3.1 were only 6% of the studies involved OC and not Terrorism, 1% correspond to the published studies on OC and Terrorism, and 93% of the studies were focused on Terrorism.

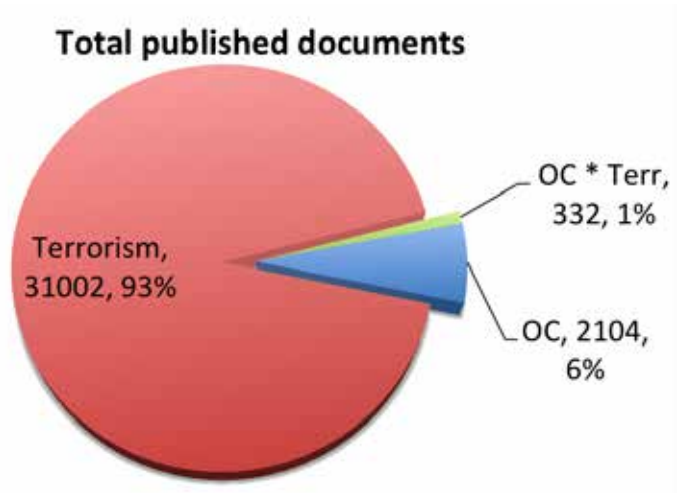


Figure 3.1: Bibliometric analysis: percentages of terrorism and OC until 2013.

Focusing on Terrorism, Figure 3.2 compares the total amount of studies (31334) with those published about Terrorism in Spain or about ETA (384) and those regarding Terrorism and OC and Spain.

²⁹ A bibliographic database containing relevant data for academic articles. It covers nearly 21,000 journals from over 5,000 publishers, of which 20,000 are peer-reviewed in the scientific, technical, medical, and social sciences (including arts and humanities).

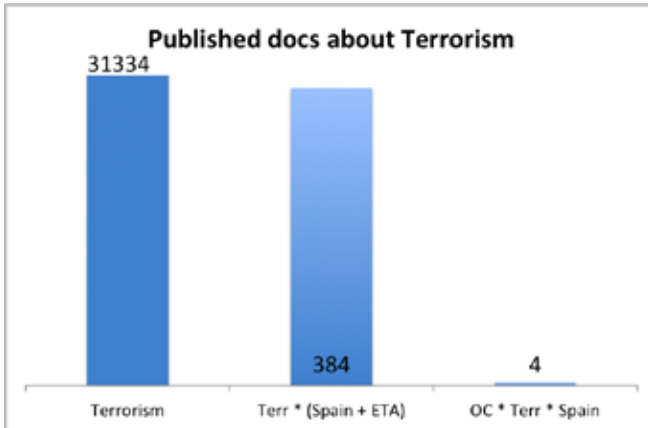


Figure 3.2: Bibliometric analysis: detailed percentages of terrorism.

This clearly indicates that Terrorism has been vastly studied by researchers compared to OC. In Figure 3.3 different aspects of OC has been analyzed. Out of the 2436 published studies on OC, most of them involve Italy or 'mafia' (176), and 58 studies focused on OC and its investments (7 of them involve Italy or 'mafia'). Finally, only 12 studies were about OC and Spain and non of them refer to investemests.

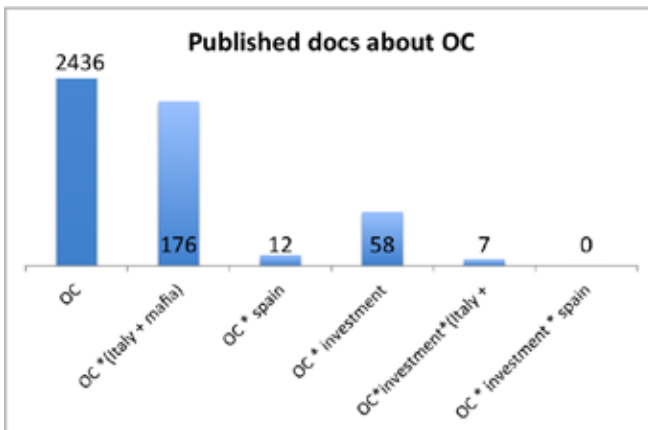


Figure 3.3: Bibliometric analysis: detail of the total scientific production on OC.

Regarding the countries where the research has been done (researchers' affiliations), Figure 3.4 presents the share of the top ten countries with higher percentage of studies published on OC.

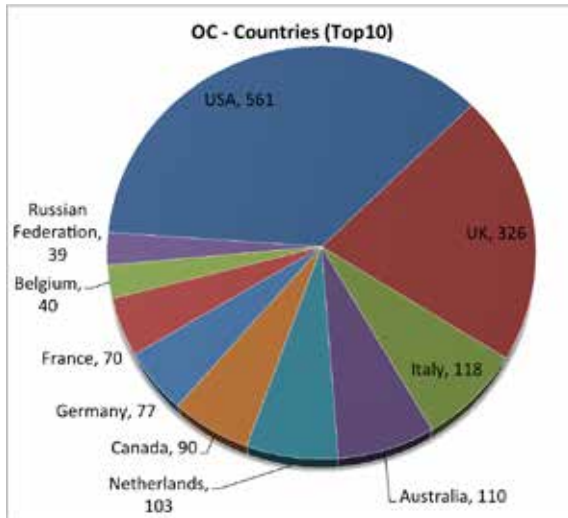


Figure 3.4: Bibliometric analysis: detail of the total scientific production on OC.

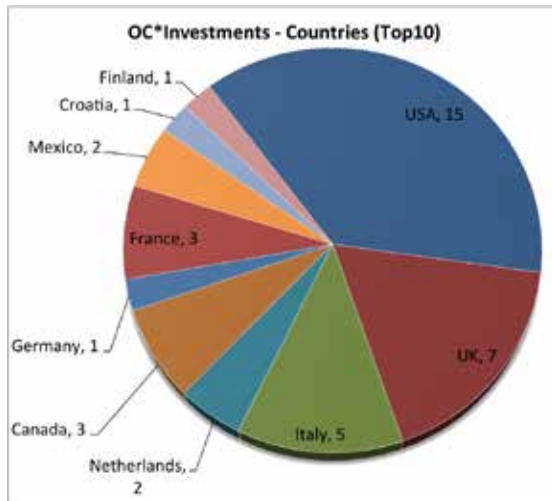


Figure 3.5: Bibliometric analysis: detail of the total scientific production on OC Investments.

In order to provide a general comparison between the research on OC and on Terrorism, Figure 3.6 provides the share of the top ten countries with higher percentage of studies on Terrorism; and

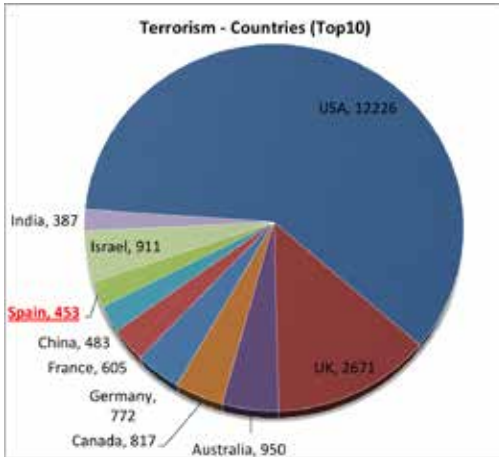


Figure 3.6: Bibliometric analysis: detail of the total scientific production on Terrorism.

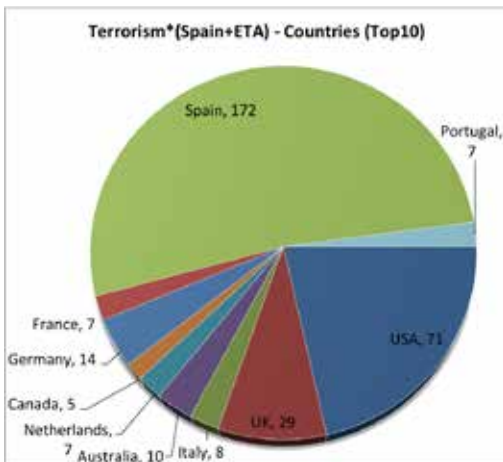


Figure 3.7: Bibliometric analysis: detail of the total scientific production on Terrorism and Spain or ETA

As highlighted in [12], the case of Spain is of particular interest since it involves a unique mix of historic, socio-economic and criminogenic factors. They have identified in the study: strong pressures from drugs smugglers (cocaine and hashish); a big prostitution market; the largest recent increase in immigration in the EU; a terrorist problem with ETA, which is a police priority; a coastline that has attracted for years not only tourists but also criminals and money-launderers; and a culture where informal and family relations are of significant importance. The *pull-in factors* have been highlighted also in the study [31] and [30]. We now summarize them here:

- Spain ranks 1 in Europe on proceeds from the illegal cannabis market and 3 on the cocaine market. Although not all these proceeds may be laundered locally, some of these may pollute the Spanish local economy.
- The nature of Spain as a *transit* country for a wide range of illicit trafficking (e.g. illicit drugs, tobacco products, human trafficking, etc.) makes it vulnerable also to illicit financial inflows and outflows. In this sense, the geographical proximity with producer countries (e.g. North Africa) may create vulnerabilities in terms of criminal investments too.
- Spain is showing the presence of a variety of different multicultural criminal groups. This competition may suggest that Spain still offers a wide array of opportunities for both illegal activities and legitimate businesses.
- The massive flows of tourism arriving each year to Spain are able to generate a multicultural scenario that facilitates anonymity for individuals trying to invest their illicit proceeds. Based on [8] the survey on total expenditure of international tourists, in August 2014 the amount was 9087 million euro, a 8.7% higher than year August 2013; and the accumulated total expenditure between January and August 2014 was 43584 million euro. The countries that contribute the most are UK, Germany and Asia; being Catalonia and The Canary Islands the preferred final destinations.
- The proximity of two tax havens such as Gibraltar or Andorra may facilitate the establishment of screen companies because of the low tax rate or high incentives.

- Spain, especially in some sectors, still offers important investment opportunities: for example the real estate price surges experienced in Spanish in previous years have also facilitated OCGs to launder their illicit profits in the country. Figure 3.8 provides the trend experienced in the average price per square meter in real estate in Spain over the period 1995 – 2013.
- Corruption affects both police and local-level political administrations relating to real estate and construction. Political influence over the judiciary was also identified by [12] as playing a role in local-level corruption and, occasionally, is related to organized crime.

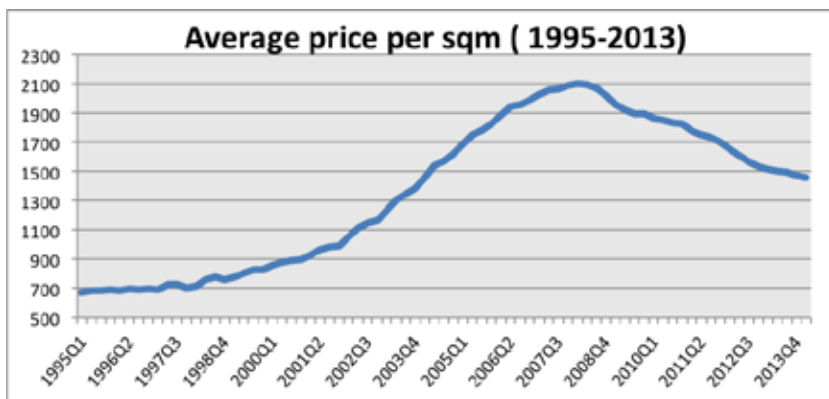


Figure 3.8: Real Estate average price trend in Spain.

Regarding the use of tax havens by Spanish organized crime for ML purposes, several cases have been prosecuted, being the most important these two:

- *Malaya Case, 2005*: it was a corruption case in Marbella where investigation found assets that could be in Isle of Man, Andorra, Cayman Islands, and Switzerland.
- *Ballena Blanca, 2005*. It was one of the biggest ML operation in Europe orchestrated by a law firm in Marbella investing in real estate (mainly in the Spanish east coast) with links in Canada, USA, Russia, Turkey, Argelia, Iran and Morocco through more than a thou-

sand screen companies based in Gibraltar, Isle of Man, Panama, Virgin Islands.

Strenghts in Spain

In order to fight against OC, Spain has several *push-out factors* that have been reported as best practices by other European law enforcement agencies, see [38] for more details, and the EUROPOL peer review report on the Spanish Asset Recovery Office.

- High international collaboration³⁰:
 - The Centre of Intelligence against the Organized Crime (CICO – Ministry of Interior)³¹ was designated as Police ARO: Law 991/2006 of 8 September 2006 creates the CICO, which has the mission of developing the strategic intelligence in the fight against all forms of organized crime, as well as the establishment of criteria of operational coordination of the acting services in cases of coincidence or concurrence in the investigations. The general task of CICO are:
 - Receive, integrate and analyze as much information and operating analysis related to organized crime as are relevant or necessary for the elaboration of strategic intelligence and foresight in relation to organized crime.
 - Dictate or determine, in cases of joint or concurrent intervention, the criteria of coordination and action of the operational units of the Law Enforcement Agencies, and the other involved services, depending on their own skills or support.
 - Develop the annual report on the situation of organized crime in Spain, as well as a periodic threat assessment.
 - Develop and disseminate statistical information re-

³⁰ In February 2009 Spain decided to put in place two asset recovery offices, one police type ARO and one judicial ARO

³¹ The CICO has recently been renamed as CITCO (Centre of Intelligence against Terrorism and Organised Crime) (BOE, 2014).

lated to this matter.

The main reason for appointing CICO as the police type ARO is its general competence in the field of the fight against all forms of organized crime. Both Guardia Civil and the Police National have their own databases. Only in cases of organized crime the data is sent to CICO.

- The Special Anti-drugs Prosecutor's Office of the Ministry of Justice was designated as Judicial ARO. Its main task is to prosecute drugs trafficking and money laundering connected to drug trafficking, and also to promote investigation into assets involved in these offenses.

The total number of ARO requests processed so far has been 1028 incoming and 79 outgoing. In Figure fig:PeticonesPais the total number of ARO request by country over the period 2010 – 2012 is presented.

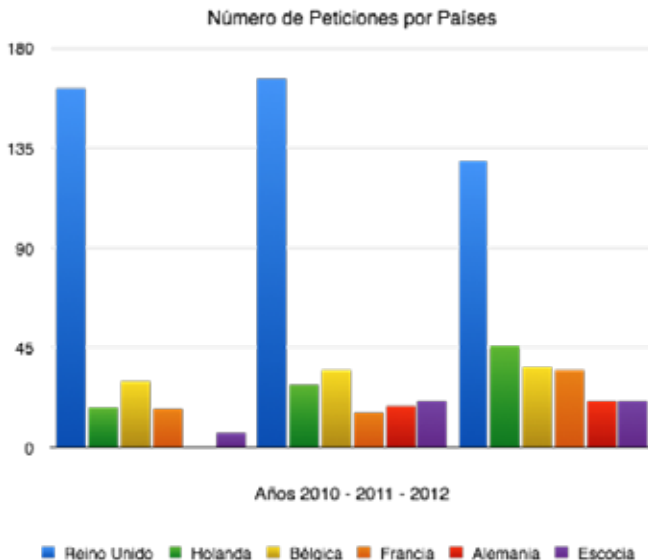


Figure 3.9: Source: Spanish Ministry of Interior

The UK is the country that have submitted more ARO requests to Spain, although in 2012 the number of requests were reduced in 28.6%. The Netherlands, Belgium, France and Germany are the countries that have augmented the number of ARO requests with respect to the previous year.

It is also interesting the related crime that sustains these ARO requests. Based on data provided by the Centre of Intelligence against Organized Crime (CICO)³², figure 3.10 shows most of them are money laundering related cases, followed by drug trafficking and fraud. The total value of the requested allocated assets in 2012 was estimated in 56 million euro.

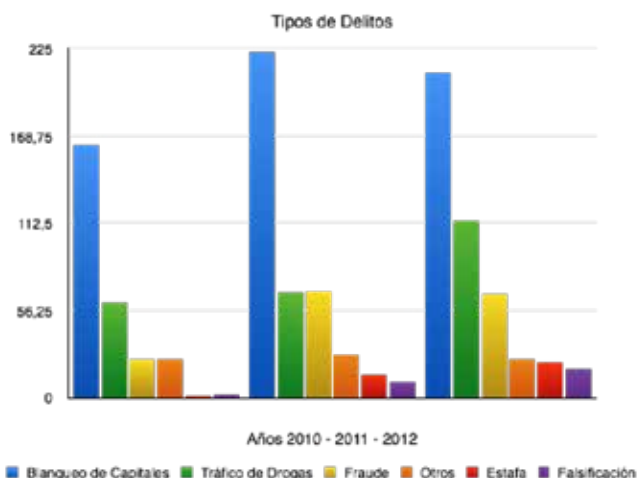


Figure 3.10: Main criminal activities of OCGs in Spain. Source: Spanish Ministry of Interior

Focusing on OC, based on the 497 OCGs identified in 2013, the percentages of the main criminal activities are presented in Figure 3.11. Given the poly-crime nature of the groups the sum of the percentages exceeds 100%.

32 Currently denominated CITCO, Centre of Intelligence against Terrorism and Organised Crime.

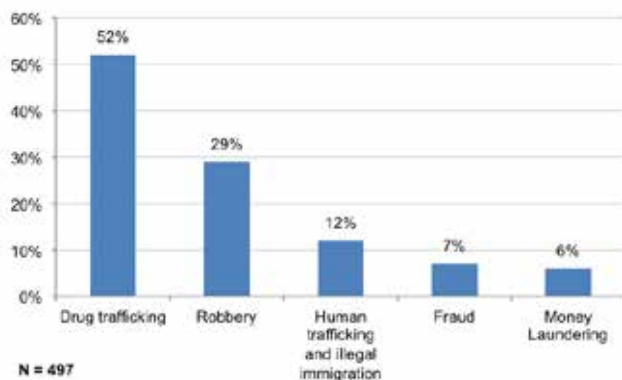


Figure 3.11: Main criminal activities of OCGs in Spain. Source: Spanish Ministry of Interior

- The press pressure has been an important lobby in many cases, providing a higher degree of transparency in judiciary processes, confiscated asset management, and social reuse of confiscated assets.
- Public Notaries: In Spain there are about 3000 notaries, all members of General Council of Notaries (16 regions & professional colleges under Council of Notaries), that have a Notarial Centralised Prevention Body (OCP³³) set up in 2005 as a centralised unit aimed at preventing and combating ML-FT according to the Ministerial Order no.2963/2005. The main features of the OCP are, see [7] for full details:
 - Full use of the potentialities of the so called Òunfiled indexÓ, fruitfully experienced in other areas of cooperation with Authorities (tax information, etc);
 - Integrated, compiled information on transactions performed before all notaries;
 - Automated treatment of information (red flags, patterns,

³³ Órgano Centralizado de Prevención del Blanqueo de Capitales (OCP) in Spanish.

etc.).

Interesting is the development of a Unified Index (centralized database) system which allows enhancing the involvement of the notaries in the AML-CFT regime starting with information from 2004.

The Unified Index (centralized database) contains all the transactions performed by notaries (there are 230 types of operations codified). The information from notaries feed the database every 2 weeks through a secured and confidential network using a certified signature process. The most frequent situations that have been reported by OCP are: sale of properties (25%), sale of companies shares or participations (24%), constitution of companies (16%), loan and debt recognition (7%), takeovers (7%), companies capital increase (2%), others (19%).

The database represents a public instrument for other competent authorities which may access it using a special card with CIP and using a password.

The target of the examination through the Unified Index (centralized database) is to assess the level of ML/FT risks and to identify the ML and FT suspicions. There are 3 levels of examinations:

1. Analysis of reports sent by notaries;
2. Analysis of sequences of several transactions (trigger situations & operations performed by a specific legal person/natural person in a relevant period of time);
3. Analysis on other competent authorities' request.

The analysis is performed in 2 steps:

1. An automatic electronic analysis by the system to establish the risk;
2. Adding information:
 - Internal information (using the Unified Index (centralized database), OCP analysts can identify all other transactions performed by a person in front of other notaries),
 - External information from public databases as Companies Register, financial statements or Internet. It is

worth to mention that OCP has access to FACTIVA in order to facilitate the identification of PEPs and more information on beneficial owner, if applicable.

3.1.2 Cases of social reuse

There are several cases that are remarkable regarding the social reuse of confiscated assets. In particular, operations *Avispa*, *Necora*, *Clotilde*, *Emperador*, *Java*, *Pozzaro*, *Tizona* and *Vigo*. However, in Spain there has been three cases of social reuse of confiscated assets that we would like to highlight for their importance in value, the novelty in the procedure and the impact on the Society. These cases are introduced in the next sections.

Pazo Baion

The Operation *Necora* began in June 1990³⁴ against one of the most important and known drug traffic dealer and his family, Mr. Laureano Oubi-a. It was seized several real state assets in Galicia region (northwest of Spain), including the Granja de Fontán – *Pazo Baion*³⁵ with a total extension of 287 hectares, and a couple of companies (Oula, S.A and Albari-o Bayón S.L.) whose main activity was cultivating vineyards and produce a very good local white wine type, called *Albari-o*.

Over more than a decade (the 80's and 90's) this area of Galicia had an intense activity on tobacco smuggling that eventually shifted towards drug smuggling and trafficking, causing a huge impact on drug addiction in the society. Civil society, mainly lead by parents with sons that had fell into drug addiction, soon got organized claiming the attention of the State and higher social awareness of the problems that organized crime was causing in the area. One example was the Foundation *frguete-Integración*³⁶

34 After a key revelation of the very first repentant in the Spanish drug trafficking organized crime, Mr. Ricardo Portabales, who provided the names of the bosses and the usual criminal procedure in Marín and Villagarcía de Arousa (Pontevedra). Later, another repentant, Mr. Manuel Fernández Padín, provided relevant information about the *Charlines clan* and the links between the two clans.

35 *Pazo* means palace in Galician language. It is a castle-like mansion with medieval towers whose origin goes back to the sixteenth century initially owned by Alonso de Sarmiento (local historian Pepe Fortes) with 54 acres of Albari-o grape vines – the biggest vineyard in the Val do SalnZs, Pontevedra.

36 <http://www.fundacionerguete.org>

created in 1999 by current President Mrs. Carmen Avendaño, dedicated to programs to assist drug addiction as well as legal advice and vocational training to rehabilitated people. Following the social awareness, and the courageous Mrs. Avendaño protesting right at the gates of the *Pazo Baion* asking for a final confiscation and claiming the social reuse of the assets³⁷, pointed the focus of national media towards the trial process.

Regarding this case, the management of the vineyard was the main focus of the National Plan on Drugs³⁸ since during judiciary administration the agricultural activities, the workers and the wine brewing was kept. After several judicial decisions during the whole trial, the final confiscation sentence was in June 2006.

Once the confiscation order was issued by Judges Baltasar Garzón and Carlos Bueren, as a previous step for the final auction announced in November 2007, a public auditing company analyzed the corporate balance to estimate the value of the Pazo and its production reaching the total value of 8693972.66 euro. The Award Board of the PNSD was deeply concerned about the possibility that people close to the criminal could participate in the auction. Therefore, the bidding criteria were set not only based on economic aspects, but also considering other requirements:

- To preserve the transparency in the whole auctioning process.
- To prevent speculation with the assets.
- To provide the highest return not only for the State but also for region of Galicia and its population.

37 Based on her personal experience with her sons, the Spanish movie *Heroína, ni locas ni terroristas* directed by Gerardo Herrero in 2005 partially represents the fight against organized crime and drug trafficking in those days.

38 Plan Nacional sobre Drogas. Founded in 1985, its main goal is to address the complex phenomenon of drug dependency with a holistic and multidisciplinary approach. Later, in 1995, the Spanish government decided to establish a fund of confiscated assets integrated in the PNSD. Among its duties, the PNSD is involved in the management and disposal of confiscated assets related to the illicit traffic of drugs and other crimes related to it. In addition, the PNSD promotes social programs regarding the prevention of drug use as well as special social assistance rehabilitation programs. It is regulated by Royal Decree No. 846, of 6 June 1997, adopting the regulation of the fund originating from property confiscated on account of drug trafficking and other related offenses (see in [36] the Annual Report).

In this sense, these were the minimum requirements for all the bidders, see [35] for more details:

- Having at least four years of experience in managing vineyards activities with average annual turnover higher than 5 million euros.
- Respect all current workers rights and contracts.
- Maintain the properties at least for 6 years and the vineyard activities for at least 15 years after the auction.
- Contract several workers who have been recovered from drug addiction in the following 15 years.
- Establish bank guarantee of 600000 euros before participating in the auction.
- Devote at least 5% of the company annual profits to programs oriented to fight drug addictions in the following 15 years.

After several appeals presented by the Oubi-a's heirs that even reached the European Human Rights Court the auction process could finally be celebrated. Four Spanish wine corporations bid for the asset and three of them tie the score so a second bidding round focused on the economic offer took place. Finally, July, 17 2008 the assets were awarded to a Galician society (ADEGA CONDES DE ALBAREI SAU) for a total amount of 15102000 euro and since then all the requirements have been met with a high level of social corporative responsibility.

Figure 3.12 presents the label of the wine brand and Figures 3.13 and 3.14 presents some pictures to provide an idea of the *Pazo Baion*. We present in Table 3.1 the contributions to the PNSD that has been provided and in Table 3.2 the number of social reintegration employees hired by the owner of the vineyard following the awarding conditions.



Figure 3.12: Label of “Pazo Baion” albari-o wine.



Figure 3.13: Image of the main building of “Pazo Baion”.



Figure 3.14: Image of the vineyard “Pazo Baion”.

Year	Production	5% Profit
	(Bottles)	(€)
2009	26667	8373.44
2010	55335	18675.56
2011	38000	13414.00
2012	25333	8904.55
2013	30000	10335.00
Total	175335	59702.55

Table 3.1: Total production of bottles and amount contributed. Source PNSD.

Year	Employees	Working hours
2009	8	584
2010	7	846
2011	15	823
2012	10	618
2013	6	530
Total	46	3401

Table 3.2: Number of employees in the period 2009-2013. Source PNSD.

Laion sailboat

The craggy and rugged coastal of Galicia helped tobacco- smugglers and traffickers to develop certain structure in late 70s. This opportunity was seized by Colombian organized crime to introduce cocaine into Europe through this area of Spain, see [15] and [29] for more details.

In a police operation, a 13 metre sailboat was intercepted and seized with 600 of cocaine aboard. Once more time in this case, social awareness and civil society promoted the social reuse of the confiscated asset. In this case, the Association for people with disability from Muros land

(ADISBISMUR) ³⁹ apply, among other associations of the region, for the management of the asset. The first judicial writ assigning the management of the boat came in October, 22 1998 signed by Judge Baltasar Garzón. As reported in an interview the president of the ADISBISMUR, see [23] for full details, some management concerns during seizing were raised “... the boat was completely out of water. The double bottom was completely destroyed and all electronic equipment was removed”. Therefore, several extra works, besides the proposed natural adaptation of the boat for disable people, were needed to put the sailboat into a regular condition. See 3.15 to see the current condition.



Figure 3.15: Image of the Laion sailboat.

Currently, ADISBISMUR has developed the Project Galicia Adapted Sailing (Galicia Vela Adaptada in Spanish) under the COGAMI Federation of Associations of people with disabilities in Galicia (Federación de Asociaciones de Personas con Discapacidad de la Provincia de A Coruña in Spanish). Since 2002 it promotes the participation of people with disabilities in nautical activities; not only in the main nautical events in Galicia such as the “Vuelta Náutica a Galicia”, the “Gira Náutica Costa da Morte”, the “Regatta S.A.R. Infanta Elena” and the “II Travesía a nado “Playa de Per-

39 Asociación de Discapacitados de la Comarca de Muros (La Coruña)

bes- Pena Fesa”; but also in several international events such as the initial Regatta of the *Volvo Ocean Race*, the 2004 *Universal Forum of Cultures*, and the 32 Edition of the *America’s Cup* celebrated in 2007 in Valencia.

The sailboat has been equipped with a crane to help people to get aboard (see 3.16) and the seats has been adapted for ten people (maximum capacity) being max 6 disabled passengers (see 3.17), including the bathroom for special needs of the current sailors. Also the rudder has been adapted in order to allow any passenger to be able to command the sailboat.



Figure 3.16: Usage of the crane to get aboard the passengers of the Laion.



Figure 3.17: Passengers of the Laion.

Since the restored and adapted relaunch of the vessel more than 3300 passengers have enjoyed the pleasure of sailing as sport and far from the former purpose as drug boat. The Laion crew works altruistically both during the preparation period for the sailing season (April – May) and over the

sailing in summer (June – August). Great support is provided by the club ports, when on a route, allowing the Laion to tie up freely at a dock.

Villa in Calvià Coast

The operation *Troika* started in June 2008 over the Spanish east coast area: Alicante, Málaga and Palma de Mallorca. It is an example of international cooperation to prosecute organized crime of the following agencies: FBI (USA), BKA and Organized Crime Prosecution Office (Germany) and Russian, Swiss and Belgian law enforcement. As a result, 20 people were prosecuted and Mr. Gennadios Petrov is prosecuted by Judge Baltasar Garçon of being the head of the Russian *Tambovskaya-Malyshevskaya crime family* OCG among other offenses such as: contract killings, threats, kidnapping, money laundering, arms and drugs trafficking, extortion, forgery, tobacco and cobalt smuggling and tax evasion. The total value of his movable and immovable assets and wealth, accumulated since he arrived in Spain in 1996, was estimated in €37 million. He had five screen companies, based in tax havens such as the Virgin Islands, mainly focused on real estate business sector for money laundering and hiding wealth. The total accountancy balance of the companies was estimated in €24.6 millions including cash and assets. Also, more than 90 bank accounts were frozen with total balance of €12,3 millions.

In May 2012, based on document issued by the Russian Federal Security Service clearing Mr. Petrov from any suspicion of corruption and stating that was not being investigated for anything, his residency was in Spain and he had low probability of leaving country, he was provisional released on bail to visit Russia for the funeral of his mother in law. The bail's amount of €600000 was collected in cash only four days. Once the permission was due, he did not ever come back to Spain and an international arrest warrant was issued.

The seized Villa faces the sea in a luxury condominium, see Figure 3.18, and has around 500\sup5(2), gym, jacuzzi and even heated dog house. It was used during the frozen stage until he escaped during the provisional release on bail by Petrov's family. The estimated price was 3,5 million euro.



Figure 3.18: Aerial view of the Villa in Calvià Coast (Mallorca).

Based on article 367 quarter of the Spanish Penal Code⁴⁰ and the fact that the final conviction cannot be issued since the suspect is pending on extradition to Spain, Judge Pablo Ruz accepted the Amadip.Esment Foundation⁴¹ request, proposed and supported by the anti-corruption Prosecutor Pedro Horrach, to temporary assign the use of the Villa to the Foundation for its cultural activities to aid people with intellectual disabilities, temporary shelter and leisure activities. In return, the Foundation would be responsible of the restoration and preservation of property, pay the commodities and local taxes. Also, it has to report to the Judge every 3 months a list of cultural activities, preservation of property actions and commodities payments.

Although this case is the first time that the use of a seized asset has

40 The “[..] owner express abandonment of them or when conservation and deposit costs are greater than the value of the object itself; When conservation can be dangerous to health or public safety, or may result in a substantial reduction of its value, or could seriously affect normal use and operation.”.

41 Amadip.Esment Foundation is one of the biggest NGO in Mallorca devoted to help people with intellectual disabilities and their families. It has provided for over fifty years training, assessment and career advice, long-term jobs, accommodation, leisure and sports activities, as well as psychological and social counseling to make a reality the principle of equal legal and human rights; also, improving the quality of life of disabled people and offering them the same opportunities for personal and social development as other citizens. More info at <http://www.amadipesment.org/en/>

been assigned before final conviction, in 2008 Judge Fernando Andreu, during the *Operación Avispa* to prosecute the head of the Russian-Georgian part of Izmailovskaya group in Spain, Mr. Tariel Oniani, ordered a seizing order with the support of the anti-corruption Prosecutor JosŽ Grinda of a Palace in Pedralbes (a luxurious suburb in Barcelona) with estimated value €4.5 millions. The asset was offered for social reuse to civil society and public administration but no requests were presented. After a considerable deterioration of the Palace and the consequent reduction in the asset value, the screen company based in Gibraltar that owned the asset (on behalf of Mr. Oniani) filed a case against the State for the damages that the property was suffering. Finally, in 2011 the city council ended up using the asset as local police station.

4. CONCLUSIONS

Money laundering is at the root of any organized crime group and corruption, so it could be considered a proxy to organized crime activity in general.

Contrariwise, the opportunities that a setting offers to OCGs do not usually receive much attention nor interest by policymakers.

Analyzing the *pull-in pull-out factors* will allow to tackle the opportunities that are currently available for OCGs. This will move the focus from targeting particular OCGs towards increasing/empowering the *push-out factors*. Only in this case, the resiliency of new OCGs in the same market will avoided.

Under certain conditions, law-enforcement can put in place economic strategies in order to increase the price of the illegal good or service being traded (which under elastic conditions of demand could imply a reduction of the quantity consumed) or to increase the competition among the agents in the market, i.e. the OCGs.

Civil Society has been the key of many changes in the regulation that provides more *push-out factors* to the governments and law enforcements. A clarifying example is the Association *Libera* in Italy, that collected more than a million signatures in order to allow the social reuse of confiscated assets and, hence, attend to the social awareness of total repulse of presence of mafia.

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