

**Antimafia cross-border: conceptual and procedural
asymmetries in the fight against Italian mafias in Europe**

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Antimafia cross-border: conceptual and procedural asymmetries in the fight against Italian mafias in Europe

Abstract

This paper explores some of the challenges to fighting against Italian mafias and mafia-type organised crime in Europe, specifically in 8 countries – Germany, Switzerland, the Netherlands, Belgium, Spain, Romania, the United Kingdom, and Italy. Data has been collected and analysed in two phases: first, from open sources (including media and official reports) and judicial files; second, from 40 individual or collective interviews.

European institutions still struggle to counter the mobility of Italian mafias because of conceptual asymmetries in policing mafia-type crimes/groups and procedural challenges. We present two analytical foci: first, the existence of a conceptual tension in the definition of mafia and mafia mobility between Italy and European countries and institutions; second, emerging procedural asymmetries in countering mafias across borders, which relate more broadly to cross-border countering of organised crime. This paper wishes to screenshot the state of the art and advance some reflections, without pushing any specific theoretical framework. After exploring the two main analytical foci emerging in this research, we advance recommendations.

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Introduction

Academic interest on Italian mafias is wide and has touched different mafia-type groups and various foreign states (Allum, 2014, 2016; Calderoni et al 2016; Dagnes et al 2016; Lupo, 2008; Macrì and Ciconte, 2009; Sergi, 2019; Spapens, 2019). Recently, research on mafia mobility has been heavily influenced by debates fuelled by the judiciary and media on the internationalisation of the Calabrian 'ndrangheta (Sergi and Lavorgna, 2016) and the cross-borders activities of the Campanian camorra clans (Allum, 2016).

In 2013, Europol published a threat assessment of Italian Organised Crime (IOC). The European agency noticed the difficulty in collecting information on IOC abroad and the preference that Italian mafia groups (which equates in practice IOC) have for activities abroad: drug trafficking, money laundering, counterfeiting, use of corruption, and trafficking of waste. Europol (2013) also warned of emerging markets and trends in the mobility of Italian mafias in Europe, particularly referring to the importance of strengthening financial investigations and improving international tools for cooperation. Indeed, with increasing interest in the mobility of mafias, and particularly the 'ndrangheta abroad, also come demands for better cooperation and more efficient coordination at European level (Sergi, 2020).

Many countries today, especially in Europe, recognise the importance to investigate and monitor the evolution of mafia-type or mafia-style (organised crime) groups – even *beyond* Italian mafias. As identified by the European Commission in their communication on the EU Strategy to tackle Organised Crime 2021-2025ⁱ it is “*crucial to scale up the dismantling of organised crime structures, targeting those groups that are a higher risk to Europe’s security*”.

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3 Additionally, the EU Commission notes that “*some Member States have established structures*
4 *at national level or specialised bodies in law enforcement and the judiciary against mafia-style*
5 *organisations*”.

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12 This paper will present and discuss the results of a project on Italian mafias and cross-border
13 cooperation in Europe which has identified the current presence of Italian mafias in Europe,
14 current criminal law applicable to mafias and organised crime, and existing challenges
15 in policing and judicial cooperation in antimafia strategies. The project has been carried out
16 across 8 countries (Germany, Switzerland, Netherlands, Belgium, Spain, Romania, the UK,
17 and Italy) and 2 European institutions (Europol and Eurojust). A final comprehensive report
18 has already been published detailing the findings of this research more widely. In this paper
19 we wish to present only two analytical foci that emerged clearly during the project: first, the
20 existence of a conceptual tension between the Italy-centric nature of antimafia efforts
21 and the ethnic connotation of mafias abroad, which leads to practical issues in ‘seeing’ and
22 understanding of mafias’ and their mobility in European countries; second, emerging
23 procedural asymmetries in countering mafias across borders, which relate more broadly to
24 cross-border countering of organised crime. This paper does not wish to advance any
25 specific theoretical approach to the fight against mafias or mafia-type organised crime in
26 Europe. Rather, our intention is to screenshot the state of the art and advance some
27 reflections. On the basis of our research, we find that notwithstanding progress in this field,
28 further steps need to be taken to strengthen the antimafia fight in Europe and, as a result, the
29 countering strategies against organised crime cross-border. Last, after exploring the two
30 main analytical foci emerging in this research, we advance recommendations.

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Background - mafia mobility studies

Recently, socio-criminological scholars have studied the various levels of mobility of organised criminal and mafia groups abroad (Dagnes et al, 2016, 2019; Calderoni et al, 2016). Mobility of criminal groups is as much a sub-product of globalisation as it is an effect of capitalism (Morselli et al, 2011; Ruggiero, 1985). When organised criminal activities are linked to groups of migrants, which are often considered *ethnic groups* (Sergi and Storti, 2020) – or minorities abroad – questions arise about the similarity or difference between these activities and those committed by these groups in their homeland (Arsovska, 2016).

In a simplistic way, common ethnicity is often identified as a determining element of mafia mobility, albeit critically so (Morselli et al, 2011). Therefore, most of the discussion on criminal mobility seeks to unpack how and to what extent groups have adapted, to what extent their activities have diversified abroad or away from their place of origin, and how having knowledge of the groups’ characteristics in the place of origin can help to prevent their rooting elsewhere (Dalla Chiesa, 2017; Lupo, 2002; Sciarrone, 2019; Sciarrone and Storti, 2014; Sergi, 2015; 2019; Varese, 2011).

As noted by Varese (2011), mafia mobility can be studied in consideration of the proximity of the territory. Certainly, a contiguous and therefore easily accessible territory has very different characteristics, opportunities, and risks compared to a non-contiguous territory. Thus, both the characteristics of the groups and the characteristics and contexts of places of origin and countries of destination should be considered. It is also necessary to address the legal and criminal policy responses adopted by the different states to combat organised crime, even when the latter has problematic 'ethnic' connotations (Sergi, 2017). In relation to this, Morselli et al

(2011) have highlighted how the attribution of organised crime to a group of immigrants can trigger the so-called 'ethnic trap', the belief that ethnicity is a determinant of organised crime. This often represents an attempt, more or less aware/intentional, of the host society to preserve an ideal of itself as virtuous and non-criminal (Cicconte et al, 2013; Luconi, 2007). This perspective derives perhaps from the alien conspiracy theory, supported by Donald Cressey's work on the American La Cosa Nostra over 50 years ago (Cressey, 1969, 1971). As argued, the "*various stereotypes that essentially derive from an imprecise spatial-temporal location of the mafia phenomenon*" are still linked to this theory (Sergi, 2016: 98). Since its formulation with regards to organised crime studies, the alien conspiracy theory has been harshly criticised for its rigidity and the ethnic prejudices that can even result in real xenophobia (Albini, 1971; Ianni and Ianni, 1971). Some authors have pushed for the recognition of the mafia not as a "*secret criminal organisation*" but as a "*method of organised criminal activity*" (Albini and Rogers, 1998: 107). Other scholars have pushed for an interpretation of the mobility of criminal groups based on theories of economic deprivation and rational search of opportunities for the socio-economic rise of entire communities of migrants, which appear to be disadvantaged when abroad (Arsovska, 2016; Lupo, 2008; Morselli et al, 2011). Despite the numerous criticisms, the alien conspiracy theory remains particularly attractive, especially for some law enforcement agencies and analysts looking for easy answers on a complex phenomenon such as mafia mobility.

To describe the settlements of mafias overseas it is crucial to consider the *perception* of mafias abroad, which can influence the way in which the phenomenon is subsequently countered. There is in fact correspondence between the institutional perception of organised crime and its criminalisation and therefore countering (Sergi, 2017). As already discussed in the literature, the (social) perceptions of the mafia phenomenon abroad must be analysed and addressed

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because "*behind all these different perceptions lies the social reaction of the police forces, whose investigations framed the Italian mafias*" in different territories (Savona, 2013: 8). On the one hand, perceptions of mafias tend to exaggerate the phenomenon and transform a single episode into absolute and complete reality, often even by raising simple anecdotes to a systemic level. On the other hand, however, "*to make perception correspond exactly to the real dimension of the problem it is necessary to understand the problem and its evolution in different forms and geographical and social contexts*" (Savona, 2013: 10). To start any research on mafia mobility abroad and understand which countering strategies need to be adopted or developed, it is therefore crucial to monitor perceptions, both institutional and public, especially cross-borders. In transboundary organised crime strategies, there is tension between trust and informality (individual and institutional) on the one hand, and standardisation and formality (institutional and national) on the other hand (Hufnagel and McCartney, 2017). In cross-border antimafia cooperation, one can expect to find the same tension. On the one side, mafias are types of organised crime and therefore they are conceptualised as security threats and subjected to increased demands for formalisation and obligations for cross-border cooperation (Sergi, 2017). On the other side, surely the variety of activities attributed to Italian mafias abroad (Calderoni et al, 2016; Savona and Riccardi, 2015) requires flexibility and interdisciplinary approaches (Sergi, 2020); still, the secretive and lengthy nature of most antimafia investigations usually demands the establishment of trust networks across a variety of law enforcement agencies as well as civil societies institutions (Mosca, 2020).

Methodology

This paper proposes an analysis of Italian open-source documentary data and in-depth interviews with 40 institutional experts in police and law enforcement from 8 countries in Europe – Germany, Switzerland, Netherlands, Belgium, Spain, Romania, UK, and Italy. These countries were chosen as they represent priorities by Eurojust Italian Desk & Operations, and as confirmed by Europol ITOC (Italian Organised Crime), whose experts were also interviewed.

Data collection has run in two phases. The first phase has gathered and analysed secondary data extrapolated from a content analysis of the bi-annual reports of the Italian Antimafia Investigative Directorate (Direzione Investigativa Antimafia or DIA) (2014-onwards) and the annual reports of the Italian Antimafia National Directorate (Direzione Nazionale Antimafia or DNA) (2014-onwards). For the most relevant operations mentioned in a DIA report, further media articles (in Italian and English) were collected to triangulate the source. When available, judicial files such as court hearings and sentences have been accessed using the specialist web platforms DeJure and Italgire. In the second phase, 40 specialist in-depth interviews (6 collective interviews and 34 individual interviews)ⁱⁱ have been carried out with several specialist authorities in the various countries, with Eurojust and Europol, and with a few academics. The participants' sample was purposive, strategic, and representative (Patton, 2002). At least 5 interviews per country have been carried out, mixing between Italian experts and country experts, and between the policing and the judicial expertise. Due to the very specialist nature of organised crime units in different countries, albeit low, this number can be considered representative of the available institutional knowledge out there. Each interview started with a summary of the mafia presence in the specific country (criminal activities, geographical presence, mafia groups involved). The participants were then asked to confirm and, if necessary, clarify this information and add any other relevant data. The interviews

continued by focussing specifically on the challenges of cross-border cooperation in fighting Italian mafias and, more broadly, mafia-type organised crime in Europe. In specific cases, further considerations to expand the view beyond Europe have been formulated as well.

In particular, the discussions have pivoted around the following points, tailored specifically to each country and institutional context:

- 1) Specific questions in relation to findings from open data collected in each selected country.
- 2) Presence of Italian mafias in the selected country; possible collaboration of Italian mafia groups with each other and with other, also local, criminal groups.
- 3) Perceptions on the evolution of mafia activities in the selected country and possible effects of such evolution (or involution) for countering perspectives.
- 4) Normative tools to tackle Italian mafias at the national and cross-border levels, including the element of ‘transnationality’ as feature included in legal tools.
- 5) Country’s priorities in fighting Italian mafias and mafia-type organised crime groups and how institutions think these differ from other states, including Italy.
- 6) Any specific conceptual and procedural difficulties across states and nationally.

The heterogeneous content of the interviews has not been an obstacle for data analysis, which has proceeded to content and thematic analysis carried out first for each interview and then across them.

Of course, this data collection has limitations. First, the bulk of the data almost exclusively comes from Italian sources (both primary and secondary), even if ad hoc interviews with specialist law enforcement in different countries have balanced this prejudice. Second, a proper analysis of antimafia perspectives of each country does need to be conducted locally. In this sense, this article can offer only a starting point to each country’s scenarios in relation to the

challenges of cross-border cooperation, with some considerations related to the presence of Italian mafias in each territory. Moreover, one of the main issues in the data analysis relates to the impossibility to quote materials directly from the interviews or to attribute specific considerations and citations to the participants directly and indirectly. The study received official approval by the University XXX's Ethics Committee and ethics was assured by asking participants for expressed consent to participate in the study and to be audio/video-recorded and anonymising the data. Most of the interviews, individual and collective were carried out without the possibility to record due to their confidential nature. While conducting the interviews the authors took notes that were later combined with first analytical considerations. In some occasions the authors recorded their own summary of the interview to better facilitate recollection afterwards. Even when recording was allowed, the participants only agreed to be recorded for the purposes of background information to be used anonymously and without direct attribution. Therefore, for ethical reasons, this agreement must be honoured. Every effort has been made to paraphrase the findings as closely as possible to the initial thoughts of the participants.

Analytical Focus 1: Conceptualisation of mafias and mafia mobility

The first analytical focus of the study found conceptual tensions in antimafia strategies in Europe, which are all related to the same issue: the (difficult) conceptualisation of mafias and, therefore, mafia-style organised crime across European states and European institutions.

Mafia-type groups manifest, in shared meanings across Europe, the following traits: organisations based on family links, kinship and brotherhood; secrecy; investment in illegal, legal, and semi-legal business ventures; diversified portfolios of activities; recurring involvement with their ethnic groups of origin (i.e. local Italian communities); exploitation of

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common language, culture and solidarity mechanisms. For Italy, mafias are crucially also considered permanent organisations, characterised by entrepreneurship as much as will to power and able to exercise territorial control. Abroad, it is very rare that mafia-type groups behave as such, employing the full mafia method. The search for power, subjugation, and territorial intimidation (the mafia method) is almost never considered abroad, because it does not necessarily help to carry on what essentially are believed to be economic opportunities. In relation to this, a focus on external collaborators, professionals, brokers, or individuals of the so-called 'grey zone', is almost completely missing in the data. Not because these relationships do not exist abroad, but because they are more difficult to frame as criminal conduct. This last characteristic of the mafia concept – power proximity and territorial control – is not easily

The double-faced nature of the mafia concept

The mafia concept in Italy often appears wider than its legal definitions and interpretations for foreign interpreters and authorities. Literal translation – and following expectations – of article 416-bis of the Italian criminal code, which criminalises the mafia methodⁱⁱⁱ used by unlawful associations, is often the first issue. Additionally, conceptual translation is often considered imprecise. It is difficult to follow the evolution of Italian jurisprudence, the interpretation of the mafia phenomenon's dynamism, and the 'untidiness' (as it has been defined throughout the research) of its manifestations in daily life. Essentially, what Italians label as mafias or as

'mafia members' abroad does not sit well with other authorities outside Italy. These labels do not have the same degree of 'certainty' abroad. Crucially, Italy's definition of mafias remains double-faced. On the one hand, official documents persist in grouping and naming mafia groups (Cosa nostra, 'ndrangheta, camorra etc.) with little attention to the meaning that such 'naming' might have abroad (see for example the ongoing debate on the 'unity' of the 'ndrangheta, Sergi and Lavorgna, 2016). On the other hand, the Italian judicial understanding of mafias remains naturally anchored to its legal definition, not simply of criminal groups, but of those groups that use the mafia method (as defined in article 416-bis of the Italian criminal code). Mafias are at the same time 'too Italian' – that is Italy has the best knowledge of the phenomenon (and should therefore lead the fight) – but also 'not-only-Italian' – mafia as a method and type of criminality can be arguably found everywhere (so everyone needs to join the fight). Both these tendencies still exist, and they of course create short circuits of comprehension. Arguably, an effect of the enduring 'naming' of groups abroad is the ethnicity trap, e.g. 'ndranghetisti are naturally sought among *Calabrian/Italian* offenders abroad. The result of the judicial focus on the mafia method mirrors in the efforts to de-Italianise the phenomenon and promote concepts of mafia-type/mafia-like groups abroad.

A debate on what mafias actually are is of course not new in mobility studies (Lupo, 2008; Sergi, 2018), nor can be ignored when looking at cross-border legislation in organised crime (Balsamo, 2016). It appears also related to the connotation of the mafia term as a 'cultureme' (Whithorn, 2014). In translation studies, a cultureme is a portion of cultural knowledge, whose content and meaning are recognisable by a group of people, but not easily translated to be comprehensible fully by others outside that group, as they are words that bear cultural value. In practice, this confirms why it still is complicated for authorities outside of Italy to 'attach' 'mafia meanings' to local phenomena. Admitting the double-faced nature of the mafia concept in Italy is a necessary step to understand the cognitive and strategic difficulties of the fight

against mafias in Europe. It is to avoid the prejudicial meaning of mafia as a weighted concept that European institutions have started using both near-synonyms for functional equivalence – mafia-type and mafia-like – to operate with a translation with similar meaning to the cultureme without being identical. But these near-synonyms are still unfortunately dependent on the main mafia conceptualisations.

Conditioned opportunism of mafia mobility

Foreign antimafia units (in the Netherlands, Belgium, Germany, and Switzerland) posit that knowing the territory of destination is as fundamental as (re)knowing the territory of origin for an appropriate recognition of mafias on the move. Mafia groups and activities cannot simply just move across borders; their opportunity-seeking nature is naturally conditioned by other factors in both the place of origin and place of the arrival. Mafia mobility in different territories is the result of a complex interaction of different dynamics, which we have named *conditioned opportunism*; mobility is in fact conditioned by push and pull factors (Morselli et al, 2011). When we talk about opportunism, we refer primarily to the economic theory of transaction costs which defines opportunism as the pursuit of self-interest characterised by shrewdness and forms of dissimulation (Williamson, 1993). The idea behind the concept of opportunism as a human behaviour refers to a specific way of collecting the opportunities available to the various actors, almost as a synonym for resourcefulness. Fundamental, in the critical evolution of this theory, is the analysis of the heterogeneity of groups, the differential capacity of the actors, and the structural social factors, which obviously also complicate opportunistic dynamics (Biran, 2011; Ghoshal and Moran, 1996; Granovetter, 1985). Mafia crimes have been described by European antimafia units as mostly hybrid (groups' boundaries are constantly eroded), different in capacity, and heavily conditioned by many economic, political, and social factors. Indeed, interviewees in the Netherlands, Spain and Belgium primarily, have agreed that

conditioned opportunism describes the ability of clans or affiliates to seize the opportunities available thanks to – or despite – specific factors, both constraining and adjuvant– relating to their conditions of origin and the contexts found in the countries of destination. These factors are visible in the data and manifest themselves differently depending on whether the groups move to already known territories (of consolidation) or to new territories and markets (of venture). Among these: a favourable position within a territory for a specific activity (e.g. Spanish coasts for tourism); existing infrastructures useful for a particular type of activity (e.g. ports of Antwerp and Rotterdam, with necessary stops in Spanish ports, for drug trafficking); financial benefits of investing in a particular territory (e.g. the secrecy of the banking or taxing system in Switzerland); the pre-existence of a community of Italian migrants in the destination territory (e.g. the large and well-established Italian community in Germany), facilitating business connectivity. Also, the lack of awareness and specific attention by authorities of what the characteristics of organised crime of mafia type as well as legal and judicial asymmetries could be conditioning factors. Each context of mafia mobility and each country or area need therefore to be further explored considering such conditioning factors.

If mafia groups move conditioned by a multitude of factors and, as many criminal groups do, are characterised by opportunism and profit-seeking activities (Von Lampe, 2016; Kleemans and De Poot, 2008), then one must wonder whether their connotation as mafia groups still stands in a mobility context. As we considered both the different manifestations of mafia activities and groups in Europe and the characteristics of cross-border antimafia cooperation, we noticed first and foremost, enduring asymmetries and conceptual challenges in defining what mafias actually are outside of Italy. The result is that defining mafia-style or mafia-type organised crime, which seems to be paramount to any strategy in this direction by European authorities, is severely impaired by institutional confusion.

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Analytical Focus 2: Procedural Asymmetries in Countering Mafias across Borders

Drawing upon how the activities, frequency, and atomised mobility of alleged mafia members and associates around Europe give way to very different manifestations of mafia presence outside of Italy, the study’s second analytical focus is on the many challenges of cross-border cooperation. As member states of the European Union can count on a number of tools to facilitate cross-border criminal investigations, especially in the field of organised crime, and non-EU countries such as the UK or Switzerland tend to adjust to EU standards, these tools are of course also used against mafia-type groups.

There are many procedural and technical difficulties in countering ‘mafias’ across border, some of which are challenges to countering organised crime more generally. Without specifically looking at matters of criminal procedure cross border, here we explore three practical aspects of cooperation:

- a. The tension between formality and informality of relations among practitioners in different countries.
- b. The complexity of creating bonds and trusting each other in technical investigations.
- c. The principles of mutual recognition and trust also in financial investigations.

First, cross-border cooperation is made of both police and judicial cooperation. This study confirmed that cross-border police cooperation– as expected from literature (Hufnagel, 2016) – is heavily reliant on personal and direct contacts and informality. Given the confidential nature of many antimafia investigations, Italian liaison officers and antimafia prosecutors believe that informality can help pre-arrange preferential relationships among different teams, agents, and officers: this, in turn, helps to screen out those who lack the ‘sensibility’, ‘professionalism’, and ‘practicality’ to carry out the work needed in an efficient way, as agreed primarily by Antimafia prosecutors in the region of Calabria for their ‘anti-ndrangheta’ efforts.

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3 Italian liaison officers abroad argued for their role to become more one of cultural facilitators,
4 as they already informally are. This informality is eroded by the growing importance of an
5 institution like Europol for data collection and centralisation of resources for law enforcement
6 cooperation, which pushes towards formalisation of procedures. Moreover, in judicial
7 cooperation, the tension between informality and formality swings more in favour of formality
8 instead, as argued by Eurojust. For example, cooperation instruments, like the European
9 Investigation Order (EIO) have streamlined procedures and facilitated requests across different
10 judicial authorities. EIOs encourage mutual recognition and speed up processes by providing
11 clear guidelines on timings and expectations for responses. Furthermore, Eurojust also points
12 out that the requirements of evidence are indeed formal, also when obtained abroad, which
13 pushes to formalise prior procedures to. However, cultivating personal relationships, especially
14 among Italian judicial authorities – and primarily antimafia prosecutors – is still a necessary
15 step alongside formal instruments, to make sure that professionalism and sensibility to
16 antimafia issues is maintained. This might affect the speed of technical investigations too.

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19 Second, technical investigations – such as carrying out tails, interceptions, surveillance, covert
20 investigations – can prove to be particularly complex to harmonise in different legal contexts
21 and various participants believe them to have an impact on mafia investigations, as shared by
22 Europol, Eurojust, and Italian antimafia prosecutors, primarily with reference to German and
23 Spanish data. The need to create bonds cherished by investigators finds its natural resolution
24 in the formation of Joint Investigation Teams (JITs), established between countries, including
25 the UK after Brexit, with the help of Eurojust and Europol. The use of JITs is particularly
26 appreciated by prosecutors in Italy, especially in Calabria, as these allow the immediacy of
27 intelligence and evidence sharing and frequency of contacts. A similar tool in Switzerland helps
28 creating mirror investigations. When JITs are not active, investigations cross-border will rely

on EIOs, which are used for obtaining evidence from another Member State and to request another Member State to carry out investigative measures based on mutual recognition. Still, EIOs have only been in place for a few years (introduced in 2014 and fully active years later). Discrepancies and inhomogeneity in their implementation across countries are still visible: in certain countries seizures after arrests are not automatic, in others they can be; in certain countries interceptions are means to find evidence, in others they can only be authorised with existing evidence; in certain countries a bugged vehicle falls under interception, in others it falls under surveillance; some countries interpret interception of telecommunication as telephonic communication only, some others include environmental interception too. Eurojust has discussed some of these discrepancies in their report of 2020^{iv}. EIOs poses further challenges to authorities: different capacities across states to be proactive in antimafia investigations; the varying ability to align with others' requests which might differ in terms of urgency and length of investigations (as exemplified by some cases that involve more than two states, such as Germany, Belgium, and Italy); last but not least, technological capacities. The legal asymmetries in the realm of digital interceptions are a concern to the authorities as they impact their investigative capacities directly. For example, the use and nature of *trojans* to intercept digital communication is not yet agreed, as pointed out by Italian prosecutors as well as Eurojust; should it be used as surveillance or simply as interception? In the first case, according to antimafia prosecutors in Italy (in Lombardy and Calabria), bugging a phone can lead to surveillance of spaces, rooms, and cars: for mafia investigations these types of surveillance can be crucial as mafias are often using closed spaces to meet and greet. In the second case, the difficulties to recognise intercepted materials as evidence in court across states apply also for digital evidence, as mentioned above. Essentially, the different regimes across states do not allow simple answers and mutual trust in each other's procedures is often

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3 frustrated by official EIOs' requests that cannot be met due to procedural divergences, as
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5 pointed out by Eurojust reporting their experience of the past years.
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10 Third, mutual trust is also at the core of other procedures, especially for
11 financial investigations, notoriously difficult to harmonise. One among many, the EU
12 Regulation 2018/1805^v on mutual recognition of freezing and confiscation orders entered into
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14 force at the end of 2020. Especially with regards to confiscation, a thorny issue for Italian
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16 authorities is the possibility to execute non-conviction-based confiscations abroad; these are
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18 proceedings that have a preventative nature but are independent from criminal
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20 sentencing. The new EU Regulation should solve this hiccups, but it is still too early
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22 to say, according to Italian prosecutors, especially in Sicily where some of the first
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24 proceedings of this new regulations are currently ongoing. For instance, while of course all
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26 states are committed to the fight against criminal assets – and all states have money
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28 laundering regulations – the reality of money laundering operations is not the same across
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30 states. Some states like Germany still have no limits to cash payments, which in turn could
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32 facilitate cash-based money laundering, in which some mafia groups excel, according to
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34 antimafia prosecutors in Calabria. In other realities, like the UK and Switzerland, the opaque
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36 character of company set-ups has been flagged by liaison officers, as a conduit to establish
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38 shell companies, which are fundamental in mafia mobility. Another big issue is the
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40 requirement for some states to investigate money laundering after a predicate offence has
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42 been identified, as been noticed by liaison officers in the UK. The EU's Sixth Money
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44 Laundering Directive^{vi}, implemented by Member States by June 2021, is set to close certain
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46 loopholes in member-states' domestic legislations by harmonising the definition of money
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48 laundering, with a particular focus to expanding the remit of 'predicate offences'.
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50 Moreover, improving mutual recognition of offences in financial investigations is
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52 necessary also for investigative inquiries. Whereas EU states can now use EIOs to request
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3 information, similar requests encounter problem outside the EU when object of international
4 mutual assistance requests. For example, in Switzerland and the UK, the law requires that the
5 person affected by the measure (e.g. the bank account's owner) must be informed before
6 evidence is transmitted to the requesting state and this person can appeal against the
7 transmission. This point is difficult to ignore, as it clashes with the need for secrecy in
8 investigations that is deemed necessary in antimafia investigations.
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19 Lastly, like in many areas of cross-border cooperation, antimafia units across Europe are
20 constantly subjected to new trainings, new work practices, and new policies for security
21 provision (Dupont, Manning and Whelan, 2017). This affects perceptions, practices, and trust.
22 The existence of borders (and of politics at the borders) pushes the role of police and law
23 enforcement in Europe towards securitisation of organised crime (Carrapico, 2014) and
24 therefore mafias (Sergi, 2017). This securitisation might clash with the establishment of
25 informal collaboration networks typical of transboundary policing (Hufnagel, 2016; Whelan,
26 2016). On the one hand, police cooperation keeps relying predominantly on the creation of
27 'trusted' relations by incentivising practitioner networks, such as those in 'liaison' roles and
28 informal police-to-police contacts. On the other hand, *"increasingly there are mandated*
29 *exchanges of information and obligations upon law enforcement bodies to collaborate and*
30 *coordinate with bodies from beyond their operational borders"* (Hufnagel and McCartney,
31 2017:3). Overall, the complexity of cross-border cooperation affects not only trust across
32 institutions, but also the speedy and effective use of instruments that should indeed cement
33 that trust. On the one hand, there is a call towards more flexibility, informal bonding, and
34 trust in investigations and prosecutions; on the other hand, securitisation of organised
35 crime which invests also mafia and antimafia in Europe pushes towards formality,
36 training, and guided bonding.
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Conclusions and further recommendations

Socio-criminological research has often examined mobility of criminal and mafia groups abroad. Scholars have analysed cases of transplantation (or colonisation), delocalisation, and functional mobility with different intermediate stages of penetration into new territories (Allum, 2016; Campana, 2011; Dalla Chiesa, 2019; Sergi, 2017, 2019; Sergi and Lavorgna, 2016; Varese, 2011, 2020). As criminal opportunities to successfully move abroad are conditioned by social, economic, and political factors, mafia groups' as well as any other organised crime groups' success, can of course also be hindered by effective cross-border law enforcement and judicial cooperation. The steps forward made in cross-border cooperation against mafias in Europe are tangible and give an insight of both challenges and efforts made in the countering of organised crime cross-border overall.

Steps forward in the fight against organised crime, as identified in this research related to mafias, include tools like Joint Investigation Teams (JITs) and European Investigative Orders (EIOs) that have clearly cut waiting times, improved responsiveness, and promoted integration of policies and practices. Confusion, however, still exists at the very core of a European antimafia strategy, which has to do with the connotation and definition of the mafia phenomenon, which in turns leads to the confusion in defining mafia-type and mafia-style crimes and groups. It is therefore necessary, for any step forward towards improving cooperation, to understand how to approach such confusion. Overall, the raising sophistication of the concept of mafia-type and mafia-like organised crime in Europe is very promising as it enables to consider more nuanced and more composite forms of organised criminality beyond illicit trades. This conceptualisation however still needs to reconcile with the existing (and

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3 outdated) narratives on the Italian mafias, which – like it or not – still permeates the
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5 understanding of the phenomenon by many authorities. Knowledge and training to recognise
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7 the double meaning of the word ‘mafia’, its conceptual complexity, its evolution in Italian
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9 courts, as much as its legal definition, seem paramount to enable effective cross-border
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11 cooperation also in other forms of organised crime.
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14 From the procedural point of view, the tension in conceptualising mafias and mafia-type
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16 organised crime mirrors in, and is also exacerbated by, the difficulties to establish trust and
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18 bonds in cooperation also beyond antimafia efforts. Indeed, we can identify how the search for
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20 informality, trust, and bonding does not fit well within calls for securitisation of organised
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22 crime and therefore also mafia crime, with its double meanings and identities.
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25 In terms of practical recommendations, we can identify four medium-term steps forward. These
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27 are, of course, not the only steps possible, nor an exhaustive list of recommendations. We argue
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29 that these steps, however, are paramount to any further change.
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- 35 1. Recognising the leading role of Italy in shaping the European Antimafia can be an
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37 advantage and not just generate confusion.
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42 It is important to demystify the meaning of the mafia concept as it develops in Italy and
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44 beyond and make it more intelligible elsewhere. It would be helpful if an Italian unit –
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46 perhaps sitting in the Italian Antimafia National Directorate – could take on a permanent role
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48 in translating in different languages the most relevant judgements of the Supreme Court of
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50 Cassation and other relevant jurisprudence and judicial orders to be then distributed to the
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52 main authorities abroad. A permanent duty of such a unit could be to collate/collect/
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54 synthesise data from active investigations to be shared with relevant foreign authorities
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56 when they touch upon activities of interests in those countries. This last proposal, however,
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58 does need to overcome the procedural
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requirement for secrecy in investigations and might only be done after discovery has occurred. Specific ad-hoc agreements among states also need to be explored; this would also support reducing the expenses related to translating documents from Italy, which are reportedly very high. Moreover, the DIA reports, which have a somewhat obsolete group-based structure, could contain an English summary as well. Last, in recognition of the role of memory and historical knowledge that Italy has in the fight against some permanent mafia-type groups, access to Italian antimafia databases from the 26 District Antimafia Prosecutor Offices (DDA) could, for example, become part of a request within the EIO¹, as evidence from other state.

2. In view of European states' needs to trust processes even more than people's goodwill, there should be a way to strengthen formal processes while reinforcing informal ones.

For example, the role of cultural facilitators in cross-border policing, including units where liaison officers sit in different countries, could be strengthened to include some of the tasks mentioned above (translation and data synthesis) in their respective countries of expertise. These units should and could also be used for bilateral cooperation and should keep updated contact lists to facilitate cross-borders formal requests as well as informal ones.

Also, projects like @ON with Europol and I-CAN (Interpol Cooperation Against the 'Ndrangheta), in their respective capacities, should be strengthened and funded at European level. Within these projects further capacity could be developed. These should also work closely with representatives in the Council of Europe, the EU Commission and Parliament. It could also be helpful to build and maintain a database with different language translations of relevant and applicable norms, laws, and even jurisprudence of different countries in

¹ Annex A of the European Investigation Order, is the form to request different Investigative measure(s) to be carried out in/to another state - see <https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties.aspx?Id=1720>

countering organised crime. Shared databases not subjected to swings of data retention regulations, but with clear, ad hoc, guidelines for data retention and data sharing need to be designed. This database could be also linked to a permanent unit with translating and collating duties as said above, within the limits of procedural secrecy. Additionally, Europol and Eurojust could support states in building networks of professionals that are best placed to join in JITs and that are developing specific skills in transnational cases (e.g. specialist investigators and prosecutors in mafia-type organised crime).

3. Investing in what works best, that is Joint Investigative Teams, needs further encouragement.

Eurojust has already taken a lead on this and is of course expected to continue to do so. In order to strengthen JITs:

- a. Intra-state cooperation (with other local authorities in the country) should be made easier when a JIT is established.
- b. JITs should have easier and direct access to databases and shared archives through @ON and I-CAN as outlined above.

4. The political will, at European and country levels, to identify normative priorities at European level should also be encouraged.

Primarily this means that methods and behaviours of mafia-type groups active cross-border – relevant for a criminal organisation charge abroad – need to be harmonised in criminal law throughout the Union. This could include the use of corruption and trafficking in favours to access privileges and networks in economic and political circles. In terms of criminal

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3 procedures to improve cooperation, some would be small steps. For example, Eurojust has
4 the power to issue notes and give directions on how to interpret technical investigations
5 and requirements of EIOs. While these notes could become more directive and binding, other
6 steps seem more long-term as asymmetries are more substantial. For example, in terms of
7 tools to conduct technical investigations on encrypted applications and devices (e.g. *trojans*),
8 the goal should be one of homologation, or at the very least harmonisation throughout
9 the Union. Similarly, for the purposes of financial investigations, access to intelligence
10 needs to be strengthened procedurally and conceptually. For example, obtaining and
11 exchanging financial information (e.g. bank data) at the criminal police level should be made
12 easier also for extra European countries.
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28 Finally, it is necessary to avoid the duplication of efforts across the Union in
29 antimafia strategies. Centralisation efforts by European agencies needs to happen as auxiliary
30 to already existing bilateral cooperation channels. Liaison officers need to be embedded in
31 the formal circles of communication within Europol and Eurojust. Formalisation should
32 accompany and streamline already existing informal networks. Informal networks are where
33 limited resources of police and judicial authorities seem to be spent the most, and this
34 needs to be taken into account. Redundancy of initiative and structure might end up reduce
35 the effectiveness of the fight against mafias and mafia-type crime.
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ⁱ European Commission – Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Strategy to tackle Organised Crime 2021-2025 - Brussels, 14.4.2021 COM(2021) 170 final – https://ec.europa.eu/home-affairs/sites/default/files/pdf/14042021_eu_strategy_to_tackle_organised_crime_2021-2025_com-2021-170-1_en.pdf

ⁱⁱ For a full list of participants see REPORT XXX

ⁱⁱⁱ The mafia method is characterised by the use of intimidation, the condition of subjugation and *omertà* in the community linked to the reputation of the group, and the aim to sue the (unlawful) *affectio societatis* to reach financial or other gain.

^{iv} Report on Eurojust's casework in the field of the European Investigation Order November 2020 - https://www.eurojust.europa.eu/sites/default/files/2020-11/2020-11_EIO-Casework-Report_CORR_.pdf

^v Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders - <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32018R1805>

^{vi} Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law - https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2018.284.01.0022.01.ENG