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MONEY-LAUNDERING AND CRIMINAL COMPANIES IN ITALY

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CHAPTER 1: THE SIZE OF THE PHENOMENON

1. Worldwide issue

Money laundering has recently emerged as a highly topical matter of general interest, since it has demonstrated to be a widespread phenomenon and to have serious and dangerous repercussions: it affects the entire global economy, subtracting wealth and resources from emerging nations and inflating the cost of assets in the developed world.

Since the size of the problem is very substantial, it merits the complete attention of every country.

That's why it would be useful to answer questions such as: where does such a phenomenon occur? What can be done to stop it?

It may take place anywhere in the world, especially in countries with elaborate financial systems, basically for two reasons:

- on the one hand criminal organizations generally prefer to arrange several operations in more than one country to reach an adequate level of complexity. In order to make the source of dirty money more difficult to discover, they intensively recourse to sophisticated techniques which may involve transfers to, through and from different countries, the use of value-storing assets and many different financial transactions. They use as intermediaries: multiple financial institutions and other entities, such as financial advisers, shell corporations, service providers etc.;
- on the other hand they act in this way to take advantage of differences among countries with regard to Anti-Money Laundering (AML) regimes, enforcement efforts and international cooperation. They prefer to exploit services offered by juridical systems and sectors in which there is a low risk of detection due to weak or ineffective AML programs.

To understand the difficulties to stop the phenomenon we must point out that, as regards this matter, the existence of gaps in different legislations often depends on the corrupt conduct of governments and institutions, which intentionally satisfy launderers' need for secrecy and anonymity, in order to attract funds and new investors. The reference is to the so-called "tax havens" or "off-shore centres".

Many international organizations and nationalgovernmentss are taking some measures to oppose this dynamics. That's why for so considered "virtuous countries" money laundering raises significant issues with regard to prevention, detection and prosecution. As explained by Claudio Clemente, the Italian Financial Intelligence Unit (FIU) Director, during his speech to the Senate which is available in the bill regarding self money laundering rules *"Disegno di*

legge recante disposizioni in materia di auto-riciclaggio" [1], of 25th November 2014, the national initiatives of fighting money laundering developed by several countries move towards two directions. Indeed they include both:

- a prevention system, based on collaboration between public authorities and private operators to identify the direct infiltration of criminal proceeds into the legal economy;
- a repression system, characterized by the gradual extension of the range of offences which are supposed to give rise to money laundering.

Moreover according to the FIU Director, the prevention phase is probably the most important one since it may be viewed, using his words, at once as an opportunity and a necessity. An opportunity because it allows to intercept the crimes at the time of their cash flow effect, ensuring the avoidance of worse consequences and of the reiteration of the offence. A necessity because the injection of illicit capital into the legal economy produces distortions in the mechanisms of resource allocation and damages the correct functioning of markets, deteriorating competition among individual traders.

2. Data and statistics

As regards where money laundering occurs, it's essentially sure that no country is exempted and that the preferred ones are the "offshore financial centres"; instead there are substantial doubts on the magnitude of the phenomenon.

Unfortunately these uncertainties about how much money is laundered in a year can't be eliminated because by its own nature money laundering deals with concealment: it is an underground economic activity and so it is difficult to detect. Since launderers' purpose is to make the source of money untraceable, obviously they do not allow that information about their transactions and the amount of their gains leaks out. At the opposite, they try to divert the authorities' attention. Moreover these activities take place internationally and so statistical data are difficult to generate.

Although reliable and complete information is not available on a global basis, rough estimates have been sketched. Here it's reported the answer given by the FATF, which is the international standard setter for anti-money laundering efforts, in its official website to the question "How much money is laundered per year?"[2]: "The United Nations Office on Drugs and Crime (UNODC) conducted a study to determine the magnitude of illicit funds generated

[1] https://uif.bancaditalia.it/pubblicazioni/interventi/documenti/Clemente_251114.pdf 25/01/2016

[2] http://www.fatf-gafi.org/faq/moneylaundering/ 25/01/2016

by drug trafficking and organized crimes and to investigate to what extent these funds are laundered. The report estimates that in 2009, criminal proceeds amounted to 3,6% of global GDP, with 2,7% (or USD 1.6 trillion) being laundered. This falls within the widely quoted estimate by the International Monetary Fund, who stated in 1998 that the aggregate size of money laundering in the world could be somewhere between two and five percent of the world's gross domestic product. Using 1998 statistics, these percentages would indicate that money laundering ranged between USD 590 billion and USD 1,5 trillion. At the time, the lower figure was roughly equivalent to the value of the total output of an economy the size of Spain."

Quoting more recent numerical data, in an article entitled "*A Beginner's Guide To Laundering Money"*[3] uploaded by Diane Francis on 9th October 2014, it's shown as "China leads the world in this ancient art". Between 2002 and 2011 some $1,08 trillion have been smuggled out of the country despite currency-control laws. During that period the same thing happened in many other zones of the world (the total outflow, among twenty emerging economies, was $5,9 trillion, equivalent to $49 billion a month), making the phenomenon international :

- Russia for $880,96 billion;
- Mexico for $461,86 billion;
- Malaysia for $370,38 billion;
- India for $343,93 billion;
- Saudi Arabia for $266,43 billion;
- Brazil for $192,69 billion.

According to the UN, countries which attract the most the Foreign Direct Investment are "the offshore financial centres" such as Cayman Islands, Liechtenstein, Monaco, Andorra, and Vanuatu and in particular in 2013 the British Virgin Islands, an archipelago with less than 25.000 residents, set a record: about $92 billion in foreign cash were laundered there. Unfortunately a larger negative impact on the economy is reached because these funds are then used to buy real estate assets of various nature around the world. Also stock and bond markets are affected. In 2012 almost 30% of the total foreign investment (corporate, bonds, stocks) in the US were in the hands of tax havens.

However all the figures reported must be evaluated *"cum grano salis"* since the data on which they're elaborated are incomplete and partial because of the nature of the phenomenon investigated. They remain in any case useful because, giving an approximation, they offer a general overview of the size of money laundering which can't be undervalued.

[3] http://uk.businessinsider.com/beginners-guide-to-money-laundering-2014-10?r=US&IR=T 25/01/2016

CHAPTER 2: WHAT MONEY LAUNDERING IS

1. Definition

As explained in the file "Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism" [4], the definition and the regulation of money laundering has changed in time. At the very beginning the necessity of laundering money came into being because powerful narcotic drug traffickers needed an effective way to spend their ill-gotten gains, hiding their origin. The objective of drug traffickers typically was to convert small denominations of currency into legal bank accounts, financial instruments, or other assets.

The first legal description of the phenomenon was written and subscribed by a large number of countries in occasion of the *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* in 1998. The definition given reflected the context just described. In deed the Article 3(b-c) limited the meaning of money laundering to:

- "The conversion or transfer of property, knowing that such property is derived from any [drug trafficking] offense or offenses or from an act of participation in such offense or offenses, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offense or offenses to evade the legal consequences of his actions";
- "The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offense or offenses or from an act of participation in such an offense or offenses".
- "The acquisition, possession or use of property, knowing at the time of receipt that such property was derived from an offense or offenses …or from an act of participation in such offense or offenses".

As a consequence, crimes unrelated to drug trafficking, such as tax evasion, fraud, kidnapping and theft, for example, were not defined as offenses which could lead to money laundering activities under the *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*.

However in a short while this definition revealed to be too restrictive, seeing that the reality had and has been in quick evolution since the beginning. Nowadays a vast range of crimes are considered as potentially capable of triggering money laundering operations such as: political

[4] http://www1.worldbank.org/finance/assets/images/01-chap01-f.qxd.pdf pages 2-3 25/01/2016

corruption, illegal sales of weapons, and exploitation and illicit trafficking in human beings. In consideration of this changed political and social environment new definitions have been formulated in order to include several crimes in the list of the preconditions established by law which are supposed to make arise money laundering. For example, the *United Nations Convention Against Transnational Organized Crime* (2000) (*Palermo Convention*) requires all participant countries to apply that convention to "the widest range of predicate offenses."

The Financial Action Task Force on Money Laundering (FATF) defines the term money laundering synthetically as "the processing of…criminal proceeds to disguise their illegal origin" in order to "legitimize" the ill-gotten gains of crime. However, in its 40 recommendations for fighting money laundering (*The Forty Recommendations*), the FATF specifically makes reference to the *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* of 1998 but it recommends to expand the predicate offenses of that definition to include all serious crimes.

Summing up, money laundering is fundamentally a simple concept: it is the process by which proceeds from a criminal activity are disguised through legitimate channels to conceal their illegal source. Nevertheless it is very difficult to define it in an exhaustive way because it is in continuous evolution.

2. A three-step process

Nowadays the traditional way of laundering money is quite well known by the relevant authorities. It is essentially articulated into three subsequent steps which are called:

1. **Placement**

   At this stage, the launderer inserts his illegal profits into the legitimate financial system, usually through a financial institution. Since banks are required to report high-value transactions, before being deposited large amounts of cash are generally broken up into smaller sums in order to avoid deeper controls and any automatic report to the national Financial Intelligence Unit. Actually these less conspicuous amounts of money may be deposited directly into a bank account (in the form of cash bank deposits), over time, in different offices of a single financial institution or in multiple financial institutions. The exchange of one currency into another one, as well as the conversion of smaller notes into larger denominations, may occur at this stage. Furthermore, illegal funds may be converted into financial instruments, such as money orders or checks, and commingled with legitimate funds to divert suspicions. The placement step may be accomplished through the cash purchases of a security or a form of an insurance contract or used to purchase a series of monetary instruments

(cheques, money orders, etc.) that are then collected and deposited into accounts at another location.

This is a risky stage of the laundering process because on the one hand big amounts of dirty money - even if gradually introduced into the financial system – tend to draw attention and on the other hand generally financial institutions are organized to acknowledge and report suspicious transactions to relevant authorities. After all, banks are the first addressees of AML recommendations and laws and for this reason most of them have developed an internal AML unit with qualified staff able to use complex algorithms to process and analyze transactions.

2. **Layering**

The aim of this step is making the original dirty money as hard to trace as possible. At this point the funds, security or insurance contracts are converted or moved to other institutions spacing out them from their criminal source. In order to reach this aim, many elements are repeatedly changed: the geographical location of money, the accounts in which it is deposited, its currency, its amount and even its form for instance by purchasing high-value items (boats, houses, cars, diamonds). In some instances, the launderer might disguise the transfers as payments for goods or services, thus giving them a legitimate appearance.

Better explained, the funds might be channeled through the purchase and sales of investment instruments, or the launderer might simply wire the funds through a series of several bank-to-bank transfers, making deposits and withdrawals. This use of widely scattered accounts for laundering is prevalent in those countries which do not cooperate in anti-money laundering investigations. In fact, to success in hiding the source of the funds, complaisant jurisdictions are absolutely necessary.

The funds could also be transferred by any form of negotiable instrument such as checks or bearer bonds or transferred electronically to other accounts in various parts of the world. The launderer may also disguise the transfer as a payment for goods or services or move the funds to a shell corporation.

3. **Integration**

At the integration stage, the funds re-enter the legitimate economy and they appear to come from a perfectly legal transaction. The launderer might choose to invest the funds into real estate, luxury assets, securities, other financial assets or business ventures. This phase may involve a final bank transfer into the account of a local business in which the launderer is "investing". At this point, the criminal subject can

use the money. It's very difficult to catch a launderer during the integration stage if there is no documentation during the previous stages.

Also a strategic combination between the geographical concentration and the stage that laundered funds have reached may be exploited to increase the complexity of the entire process. In deed launderers often decide to accomplish the aforesaid stages of money laundering in different countries. For example, placement, layering, and integration may each occur in three separate world areas, one or all of them different from the place where money was produced.

At the placement stage the funds are usually - but not in every case - processed in the country where the funds originate, relatively close to the underlying illegal activity.

During the layering phase, the launderer might choose any location that provides an adequate financial or business infrastructure: a large regional business centre or a world banking centre. At this stage the laundered funds may also only transit bank accounts at various locations where this practice is allowed and can be done without leaving traces of the original source or of the ultimate destination.

Finally at the integration phase, launderers might choose to invest laundered funds in still other regions, especially if they were generated in unstable economies or locations offering limited investment opportunities.

It’s not enough knowing this basic scheme to prevent or simply detect money laundering processes put into action. One of the reasons consists in the fact that the phenomenon is continuously changing to the extent that in a certain sense also the three aforementioned standard steps have been integrated among each other so that they’re no more completely separated phases.

CHAPTER 3: THE ITALIAN CONTEXT

1. General overview

On 14th July 2015 in an on-line article the "Italy 24" (*Il Sole 24 ORE*) [5] underlined the fact that the phenomenon so far examined may be considered very dangerous for the economy because it allows to criminal organizations to seep through the public authorities and to penetrate the socio-economic system in a substantially legitimate way. It quoted a revealing warning of the Bank of Italy: "The threat of money laundering in Italy is considerable because of the widening and pervasive organized crime, corruption and tax evasion". In fact money laundering feeds off in a region which is historically characterized by a rooted and strong presence of Mafia. The risk is inherent in the system: corruption, tax evasion, drug trafficking, bankruptcy crimes, gambling, illicit waste disposal, smuggling, counterfeiting, extortion and usury are widespread criminal conducts in our country. These offences (with the only exception of tax evasion) are prevalently committed under the control of the Italian and foreign organized crime operating in our territory. That's why effective controls against money laundering are particularly necessary in Italy.

The Financial Security Committee (FSC) conducted an analysis[6] – whose results have been summarized in an article uploaded on 4th December 2014 - on money laundering risks (National Risk Assessment) in accordance with the recommendations written by the Financial Action Task Force. In this survey the threat that the current phenomenon of money laundering affects our economy is judged to be very significant, equal to the highest value of the rating scale used by the analysis model. At the same time however the system for preventing and combating this problem appears to be judged adequate as a whole. Although there is not a unique and official estimate of the impact of criminal activities and money laundering on the economy, all the attempts to make assessments (some of these estimate the illegal proceeds up to 12% of GDP) confirm the high risk and the threat that the illicit funds produced in the national territory are put back in the Italian and foreign legal financial circuits. Considering recent analysis the sectors in which it's expected that Mafia is interested the most are the following:

[5] http://www.italy24.ilsole24ore.com/art/business-and-economy/2015-07-13/riciclaggio-134144.php?uuid=ACo8vjQ
25/01/2016
[6] http://www.mef.gov.it/inevidenza/article_0059.html
25/01/2016

- the gambling industry

  The criminal activity is not only limited to illegal gambling but it extends its scope also to the legal one. Given this matter of fact, we have to underline that not all the different existing types of games of chance have been currently included in the scope of anti-money laundering programs. They differ in their specific risk profiles and vulnerability. Among the forms of online gambling the most dangerous ones are the online platforms established in other EU countries, since the related cash flows completely escape from the monitoring authorities control. Among the forms of gambling, the machines called VLT (Video Lottery Terminal) and fixed odds betting represent a significant risk;
- the cash-for-gold sector

  The economic crisis has led, among other things, to a development of this business. It includes heterogeneous categories who have to comply with the only obligation to report suspicious transactions. Several investigations confirm the high specific risk and the high vulnerability they have and suggest the need for an intensification of the controls;
- the real estate sector

  It is one of the ideal traditional areas to launder the illegal revenues of mafia and criminal organizations. Nevertheless real estate agencies are not yet completely aware of the role they could play in the struggle and prevention of money laundering;
- the use of Trusts

  They ensure an opaque company structure which is particularly suitable to screen the ownership of funds.

2. Legislative framework

Being Italy a EU Member State, in the Italian context not only the national law is relevant but also the Directives and Standards set at the European Union level, because Italy must conform to them.

Since 1991 the European Parliament has issued four relevant Directives as concerns money laundering:

- I Directive 1991/308/EC;
- II Directive 2001/97/EC;
- III Directive 2005/60/EC;

- IV Directive 2015/849/EC of 20th may 2015 (it makes some changes but it has not yet been implemented).

The first two aim at the prevention of the aforementioned offence to be achieved through the collaboration of both – on 2 different layers - Member States and individual operators indicated by law; the third one is the first to concern not only money laundering but also terrorism financing; the fourth one increases the focus on the risk based approach that addressees of AML obligations must adopt.

Money laundering is dealt together with terrorism financing because they have some similarities: they both are a three step-process and deal with concealment; the self-evident difference stands in the fact that in money laundering the funds themselves are illicit, while in terrorism financing the money isn't dirty but the purpose to which it is devoted is against the law. In other words, in the first case it's the origin of money to be illegal, while in the second one it's the destination.

As just referred to, the legislative framework in Italy is oriented in two directions: on the one hand to the prevention of the phenomenon itself and on the other hand to its repression. Indeed it is regulated in these two senses respectively by:

- the Legislative Decree 231/2007. It implemented the III Directive 2005/60/EC. It is oriented to the prevention of money laundering individuating all those actions and behaviors which may favor launderers. It addresses mainly professionals and financial intermediaries requiring them some prevention actions.
- the Art. 648 –bis, –ter and -ter 1 of the Penal Code. This article is placed under the title "crimes against property" and it is oriented to the punishment of this offense.

Yet up to December 2014 there was a sort of inner contradiction between these two, since they gave two partly different meanings of money laundering. In deed while the Legislative Decree - which adopted the definition given in the third Directive - included among forbidden conducts also the so-called "self money laundering"; the relative Penal Law excluded it from punishable cases. The term self money laundering indicates namely transactions executed by the perpetrators or accomplices of the predicate offence, that is the crime whose proceeds are being transferred. Even if the aforementioned Legislative Decree and penal law acted and still act on two different planes - the first one is relevant from an administrative point of view and the latter from a penal one – this fact created some problems for an effective prevention because of this formal asymmetry of the system. In the Community legislation and also in the national legislation it's expressly required that prevention is carried out in coordination with repression. Therefore the two phases must be complementary. However the ratio of this "privilege" of "self money laundering" was that

money laundering was seen as a mere *post-factum*, the logical consequence of the crime from which the illegal proceeds derived and so this was the only way to avoid a too hard punishment according to the principle of proportionality of the penalty and to avoid a double punishment for the same offense according to the principle of *ne bis in idem*. This stance has been overcome because self-money laundering has to be prosecuted as a distinct crime from that one which originated the illicit proceeds laundered since it undermines the socio economic balance. This is necessary in order to:

- ensure the proper administration of justice, since concealing the illicit source of money makes more difficult to reconstruct the "paper-trail" and so to find out the original crime;
- protect the public order by combating the organized crime for which money laundering techniques are indispensable;
- safeguard the good functioning of economy since money laundering tends to distort competition.

Moreover the risk to have too harsh sentences is very low in the Italian legal system considering the short period of time for a crime to be barred by the statute of limitation. In addition the lack of a punishment for self money laundering had led and would have led in the future people accused of money laundering to false declare to have taken part to the original offense - which often entails less strict punishments and shorter time to be barred by the statute of limitation - avoiding to be judged for money laundering.

Thus on 4th December 2014 the Senate has definitively approved the bill on this matter and consequently the new article 648 –ter 1 was introduced in the Penal Code, filling the existing gap.

a. The repression regime

Translating it, art. 648 –bis of the Italian Penal Code states that:*"[1] Apart from cases of complicity in crimes, whoever substitutes or transfers money, goods or other profits deriving from intentional criminal acts, or carries out other operations in relation to them, in order to prevent the identification of their criminal origin, is punished with imprisonment from four to twelve years and a fine ranging from euro 5.000 to euro 25.000. [2] The penalty is increased if the crime is committed in the exercise of a professional activity. [3] The penalty shall be decreased if the money, goods or other profits come from an offense for which the penalty of imprisonment may be at maximum of five years. [4] It applies the last paragraph of Article 648 ".*

The object of the crime is depicted as any item capable of economic assessment, while under the subjective profile anyone may commit the offence in question but according to the doctrine it has to be present the awareness of the illegal origin of funds, the willingness and a course of action appropriate to dissimulate the source of proceeds. Two typical ways are individuated: substitution and transfer – which indeed makes part of the first category - and a residual one to include all the new sophisticated techniques practically used which are emerging recently.

There is no reference to a particular type of crime which may be the logical premise from which money laundering may trigger. As a consequence it could derive from profits originating from any sort of crime except for a crime committed without malice aforethought. Also crimes which don't determine enrichment, but simply a non impoverishment – only when the loss of a property is considered just an fair and is imposed by law - are included. Tax offences are the main example.

The art. 648 -ter has many elements of similarities with the precedent one. Translating, it states that:*"[1] Except for cases of complicity in crimes and the cases provided for in Articles 648 and 648-bis, whoever uses in economic or financial activities money, goods or other proceeds resulting from a crime, shall be punished with imprisonment from four to twelve years and a fine ranging from euro 5.000 to euro 25.000. [2] The penalty is increased if the crime is committed in the exercise of a professional activity.[3] The penalty is reduced in the case referred to in the second paragraph of Article 648. [4] It applies the last paragraph of Article 648 "*

It has been introduced in order to clamp down on also the third stage of money laundering since it damages the functioning of all the economic sector and it distorts the normal mechanisms of competition in the market.

Finally Art. 648 -ter 1 is about self money laundering and states that:*"It's applied the penalty of imprisonment from two to eight years and a fine of euro 5.000 to euro 25.000 to anyone, having committed or participated in committing an intentional crime, who uses, substitutes, transfers, in economic, financial, business or speculative activities, money, goods or other benefits resulting from the commission of this crime, in order to concretely prevent the identification of their criminal origin.*

It's applied the penalty of imprisonment from one to four years and a fine of euro 2,500 to euro 12,500 if the money, goods or other profits come from the commission of an intentional crime punishable by an imprisonment of a maximum of five years.

The penalties provided for in the first paragraph are still applied if the money, goods or other profits come from an offense committed with the conditions or the purpose referred to in

Article 7 of Decree 13 May 1991, n. 152, ratified, with amendments, by Law 12 July 1991, n. 203, and subsequent amendments. Except for the cases of the preceding paragraphs, conducts for which the money, property or other benefits are intended for mere use or personal enjoyment are not punishable.

The penalty is increased if the acts are committed in the exercise of a bank or financial or other professional activity.

The penalty is reduced up to its half for individuals who have worked to prevent further consequences or to secure evidence of the crime and the identification of goods, money and other profits coming from the crime.

The last paragraph of Article 648 is applied'.[7]

To introduce the self-money laundering crime, the legislator has preferred to create a completely new article in the penal code instead of simply deleting the saving clause in the precedent articles in order to avoid any sort of problem in the judgment of lawsuits which were not yet concluded.

b. The prevention regime

In Italy the prevention regime is based on cooperation with other countries and on collaboration between relevant authorities and some specified individuals and organizations inside the country, as required by the European Union.

At this aim the Italian Financial Intelligence Unit (FIU) has been established at the bank of Italy pursuant the Legislative Decree 231/2007; it became operational in 2008, substituting the Italian Foreign Exchange office (UIC) in its functions. It is independent, autonomous and formed by qualified and expert staff to keep the financial analysis separated from the investigative one. It receives reports on suspicious transactions and evaluates them using the data at its disposal, with the possibility of requiring additional information to the reporting subjects, relevant authorities or other national FIUs. Information on suspicious transactions may be exchanged, in derogation of the rule on professional secrecy, via secure and protected channels of communication, the *Egmont Secure Web*, a global system run by the Egmont Group, and FIU.NET, a network shared by all the EU FIUs. The Bureau of Anti-mafia Investigation and the Special Foreign Exchange Unit of the Finance Police investigate - in their respective areas of competence - the suspicious transaction reports that the FIU doesn't file away and transmits to them because qualified as founded. The FIU can freeze suspicious transactions for up to five working days and where appropriate, the FIU opens the

[7] http://www.altalex.com/documents/news/2015/09/09/autoriciclaggio 25/01/2016

procedure for the issue of sanctions by the Ministry of the Economy and Finance (the MEF is responsible for the policy to prevent money laundering and for matters relating to infractions of the limits on the use of cash). The FIU documents its yearly activity in a report transmitted to the MEF by 30th May for forwarding to Parliament, together with a report by the Bank of Italy on the funds and resources allocated to the unit (Article 6.5). Data acquired are also used by the FIU to sum up the current situation and draw a picture of emerging phenomena, trends, practices and weaknesses of the system. It analyses single irregularities, economic sectors at risk, categories of payment instruments, and local economies (Article 6.7.a). An outline of the results of these examinations is transmitted to other authorities (Article 9.9). All this information are used by the Bank of Italy, the Ministry of the Interior and the Ministry of Justice to prepare and update lists of irregular economic and financial conducts and indicators of anomalies. Subsequently, the FIU provides feedback on the outcome of reports (Article 48). Recognizing the importance of international cooperation the FIU makes part of the Egmont group, an informal network of FIUs which meet regularly to discuss and to have debates on ways to promote their development and to cooperate, especially in the areas of information exchange, training and sharing of expertise. Finally transactions in gold for investment purposes and in gold metal for predominantly industrial use for a value equal or higher than 12.500,00 € must be reported to the FIU in compliance with law 7/2000.

As regards money laundering, other relevant authorities are the Financial Security Committee and the Sectoral Supervisory Authorities. The Financial Security Committee (FSC) coordinates the various authorities and ensure the functioning of the entire system (Article 5). The Sectoral supervisory authorities (Bank of Italy, Ivass, Consob) oversee the issue of regulations in their respective areas of jurisdiction on matters such as customer due diligence, data recording, and organization. They also check compliance on the part of the persons supervised and exercise powers of sanction (Articles 55-60).

Moreover the Legislative Decree 231/2007 imposes to precise categories of subjects – homogeneous for the activity performed - to comply with specified set of rules; if these obligations are not fulfilled the law provides for a series of sanctions. The groups of addressees - which have enlarged during the time - have been chosen because of their characteristics and competences which make their professional contribution in the arrangement of money laundering crimes attractive for launderers. The set of subjects, who must meet reporting obligations, includes:

- banking, financial and insurance intermediaries, including their outside collaborators (Article 11),

- certain professionals (notaries, lawyers, tax accountants, and providers of business and trust services, specified in Article 12),
- auditors (Article 13),
- persons in other occupations specified in Article 14 (credit recovery, custody and transport of cash and securities or valuables, management of casinos, offer of games and betting online or via physical network, and real estate brokerage)
- general government offices (Article 10).

As a general principle, the obligations are proportionate to the characteristics of the different categories involved as well as the measures are proportionate to the risks (Article 3).

In summary the required obligations are the following:

- **Customer Due Diligence**

  It is a form of passive collaboration.

  CDD obligation extends to the entire business life of the customer relationship and must be fulfilled by adopting a risk-based approach. CDD is functional to ensure the effective compliance with the other obligations of collaboration: the recording of transactions and reporting of suspect transactions. The in-depth knowledge of customers is a prerequisite to send to the FIU as soon as possible reports on money laundering suspicious transactions. The addressees of the Legislative Decree are required to verify the identity of clients, to investigate about the beneficial ownership (especially for corporate structures with limited ownership transparency such as trusts) and to gather information about the purpose and the nature of the continuative professional relationship at its beginning and during its duration. If it's impossible to comply with the Customer Due Diligence obligation they have to refrain from executing the transaction or to stop it, whenever it is possible and admitted by law.

  The law provides also for Enhanced Customer Due Diligence (ECDD) obligations. ECDD should be carried out by someone of a more senior level and more frequently. The identification of the beneficial owner is particularly important: the ultimate beneficiary, who is the person who controls or owns the legal entity, must be identified to guarantee that real people are not concealed by corporate structures; it's necessary to avoid putting trust exclusively in customers' statements and to carry out adequate controls. Consequently all reasonable steps should be taken to identify the beneficial ownership and the operation should be blocked if this is not possible. Moreover it would be better, especially for more relevant positions, to adopt a "network" approach instead of traditional controls to entities, also aggregating them with respect to their economic or financial interests.

- **recording of data on relationships and transactions in a Single file ("AUI - Archivio Unico Informatico") (Articles 15-39)**

  It is a form of passive collaboration.

  The aforementioned addressees must keep information and documents acquired through the customer due diligence activity. The data may be used by the FIU for subsequent investigations. Accounting records of transactions executed and a copy of documents has to be kept for 10 years in the AUI. It is very important that requirements for the recording of operations should be properly fulfilled in the Single Electronic Archive (AUI) because AUI is the database used to analyze the "unusual behaviors" of customers and produce risk profiles. It has to be ensured the transparency, completeness and the ease of consultation and research of information recorded in a standardized, uniform and centralized way.

- **detection and reporting of suspicious transactions (Articles 41-48)**

  It is a form of active collaboration.

  Reports have to be sent to the FIU as soon as any suspicion arises. This requirement isn't in conflict with the professional secrecy principle because the information isn't communicated to third parties but only to authorities to comply with an obligation by law. Moreover lawyers and auditors are not obliged to communicate information acquired during their professional activity if it is performed in the defense field. Reports are not automatic but they are the result of an evaluation to be conducted applying a risk based approach. This assessment has to be conducted first of all verifying the beneficial ownership and taking into consideration the subject, the transaction and the way in which it is carried out. An element of suspicion is indicated by the relevant authorities as the deposit or the withdrawal of a sum higher or equal to 15.000,00 €. In order to facilitate the identification of suspicious transactions a list of indicators of anomalies is periodically updated.

- **dedicated organizational and training measures (Articles 7[2] and 54)**

  The subjects addressed by the Decree must endow their activity of effective internal control systems, in relation to their dimensions, to verify that anti-money laundering activity has been properly performed. Measures adopted must be proportional to their ML exposure.

  Training initiatives are functional to controls.

In a risk-based perspective the law provides simplified obligations for subjects who present a low level of risk (art. 25) and enhanced obligations for subjects who present a high level of risk (art. 28). As a clarification the fact that on 4th December 2014 the Senate passed a bill on

the declaration and re-entry of funds held abroad through the "voluntary disclosure" procedure doesn't interfere with the reporting obligations which remain binding. Moreover there are limits on cash transactions and requirements for funds transfers.

The role of banks is particularly important. On 25th June 2014 Luigi Mariani, deputy head of the Bank of Italy supervision department, gave a speech at the "10th Meeting on Compliance"[8] by AICOM (Associazione Italiana Compliance) about "The internal control systems for money laundering". He said that the Bank of Italy anti-money laundering supervision has changed over time: initially money laundering was considered a secondary reputational and legal risk but now money laundering is defined as an autonomous risk capable of affecting the financial stability of the banking system.

3. Updated results of the AML activity in Italy

As reported by the "Italy 24" on 14th July 2015[9], Claudio Clemente said "The results achieved in terms of volumes, rapidity and quality of the reports show a true cultural transformation: reports are the tip of a powerful and detailed monitoring of the economic activity led by operators to counter money laundering". In fact the number and quality of reports are increasing demonstrating a higher awareness of operators who are realizing the importance of their role. Actually there is a huge number of operators involved (almost 700 banks and many financial companies, 150 investment companies, more than 4.600 notaries, 230.600 lawyers, almost 115.000 accountants), but they are not all responding in a satisfactory way. The most reactive are banks and financial intermediaries which take appropriate measures for the high risk at which they are exposed. Instead professionals struggle along, even if the number of notaries' suspicious transactions reports has notably increased.

It's useful to report some updated data collected by the Italian Financial Intelligence Unit and resumed in the *"Quaderni dell'antiriciclaggio – dati statistici"* [10]. In the first half of 2015, the Financial Intelligence Unit has received 39.021 suspicious transactions reports. With respect to each of the semesters in the previous year, there was an increase in the number of reports with reference both to financial intermediaries and non-financial professionals. In comparison

[8] http://www.compliancenet.it/bank-of-italy-the-internal-control-systems-for-money-laundering-april-30-2015
25/01/2016

[9] http://www.italy24.ilsole24ore.com/art/business-and-economy/2015-07-13/riciclaggio-134144.php?uuid=ACo8vjQ
25/01/2016

[10] https://uif.bancaditalia.it/pubblicazioni/quaderni/2015/quaderni-1-2015/Quaderno-antiriciclaggio-I-sem-2015.pdf
25/01/2016

with the second half of 2014, the number of reports sent by financial intermediaries increased by 12%, mainly due to the increase in the category 'Banks and Post'; while, as said, reports made by professionals have grown significantly due to the contribution of Notaries. Among other financial operators, it emerges the strong increase in suspicious transaction reports transmitted by entities engaged in the trade of gold and the manufacture and trade of precious objects. With reference to the territorial division of the operations indicated, it is recorded an enhance of 21% in Emilia Romagna and 18% in Veneto. The number of reports analyzed and transmitted during the period to the investigative bodies exceeded 40.000 units. It's to point out that in recent years more than 50% per cent of Suspicious Transactions Reports re-transmitted by the Unit has been judged by the investigative bodies as valuable of interest and further investigation of criminal offenses[11]. In the first semester of 2015, the Unit has adopted 17 measures of suspension of suspicious transactions, corresponding to a total value of 4,2 million euro. In the period, the Judicial Authority has sent to the FIU 133 requests for information and has acquired, by motified decree, more than 700 reports. The exchange of information with foreign FIUs involved a total of 1,170 cases. Furthermore the removal of the Republic of San Marino and Turkey from the list of tax havens or uncooperative countries resulted in a significant impact onthe total flows attributable to this category of countries.

According to the Financial Security Committee a consistent strengthening of the anti-money laundering action is needed as concerns electronic money institutions (EMI), payment institutions (IP), brokerage companies (SIM), saving management company (SGR) and trusts.

In the first six months of 2015, the total amount of the Aggregate Anti-Money Laundering Reports (SARA) increased while the amount of cash transactions continued to decrease.

In the survey[12] conducted by the Financial Security Committee (FSC) it's reminded that according to a research made by the European Central Bank in 2012, in our country the volume of transactions settled in cash is equal to 85% of the total, against an EU average of 60%. Cash is considered to be the preferred means of payment for transactions related to the underground and illicit economy because it guarantees non-traceability and anonymity of trade. In our country the use of cash is not uniformly distributed among different regions. In the analysis we can find also the preliminary results which takes as indicator the use of cash to allocate Italian provinces to different classes of risk, as shown in the following table.

[11] https://uif.bancaditalia.it/pubblicazioni/interventi/documenti/Clemente_251114.pdf
25/012016

[12] http://www.mef.gov.it/inevidenza/article_0059.html
25/01/2016

CLASS OF RISK	ITALIAN PROVINCES
High risk	Benevento, Biella, Caserta, Catania, Catanzaro, Cosenza, Foggia, Isernia, Macerata, Messina, Napoli, Reggio Calabria, Vibo Valentia.
High-medium risk	Agrigento, Alessandria, Avellino, Bari, Bologna, Imperia, La Spezia, L'Aquila, Latina , Lecce, Livorno, Matera, Novara, Pavia, Pescara, Pistoia, Potenza, Rieti, Rimini, Savona, Siena, Siracusa, Teramo, Terni, Varese, Verbano-Cusio-Ossola.
Medium risk	Ancona, Aosta, Arezzo, Ascoli Piceno, Asti, Belluno, Bergamo, Brescia, Brindisi, Caltanissetta, Campobasso, Chieti, Como, Cremona, Crotone, Cuneo, Enna, Ferrara, Firenze, Forlì-Cesena, Frosinone, Genova, Gorizia, Grosseto, Lodi, Lucca, Nuoro, Palermo, Perugia, Pesaro e Urbino, Piacenza, Pisa, Pordenone, Prato, Ravenna, Roma, Rovigo, Salerno, Sondrio, Taranto, Torino, Trapani, Udine, Vercelli, Viterbo.
Low risk	Barletta-Andria-Trani, Bolzano, Cagliari, Carbonia-Iglesias, Fermo, Lecco, Mantova, Massa-Carrara, Medio Campidano, Milano, Modena, Monza e della Brianza, Ogliastra, Olbia-Tempio, Oristano, Padova, Parma, Ragusa, Reggio Emilia, Sassari, Trento, Treviso, Trieste, Venezia, Verona, Vicenza.

Table 1: Provincial classes of risk. Excessive use of cash
Source: Financial Information Unit at the Bank of Italy (UIF)[13]

[13] http://www.mef.gov.it/inevidenza/article_0059.html 25/01/2016

CHAPTER 4: HOW MONEY IS LAUNDERED

1. A phenomenon in continuous evolution

Since money laundering is a global phenomenon by its own nature and it is quickly evolving exploiting in many cases the newest technologies and the most sophisticated financial instruments available, it's obvious that there is an extremely huge variety of methods used for this illicit activity.

Several international organizations have written reference works on this matter. FATF has produced reference materials on methods in its annual reports and annual typologies reports. The various FATF-style regional bodies also provide information on the various typologies seen in their regions.

Nevertheless there are lots of money-laundering techniques that authorities know about and probably countless others that have yet to be found out. When overseers detect one method, launderers soon devise another. It is impossible to describe accurately all the possible methods used to launder money since they change during time. Moreover, techniques are likely to differ from country to country because of a number of characteristics or features that are unique to each nation, including its economy, complexity of financial markets, AML regime, enforcement effort and international cooperation.

The most suitable method is chosen according to the original source, the quantity of money to be laundered and other factors. For laundering relatively small amounts normally the most used technique is also the simplest one: the use of money in payment processes to buy and resale for example luxury items such as automobiles, antiques, and jewelry. It's preferable to use cash for purchases that do not alert the controls. It involves a wide network of accomplices, who have an awareness of their role limited to their own field of action and competence, within a strongly pyramidal structure.

To launder larger amounts of money you could typically invest in financial products or investments abroad, where money matures yields, and where it is left to clean up for very long times.

To launder an enormous quantity (to give an idea of the magnitude, we are speaking about millions euro) of illicit profits it's necessary to increase the complexity by entering the financial, commercial and industrial sector at the same time. Indeed the idea is to make impossible for authorities to trace the dirty money while it is cleaned.

As a consequence to handle such a complex process legal, tax professionals and financial advisers are hired and become abetters of this crime, since only these skilled subjects have the

relevant knowledge to succeed in the realization for example of a structure, which uses the system of Russian dolls with a series of participations or holding of various companies between them.

2. Common methods and techniques to launder money

This paragraph is intended to make a brief overview of some of the most known simple methods and techniques used to launder money.
Some of the most popular examples are the following:

- **Fake transactions of real estate assets**

This method implies the sale of a real estate asset at a price higher than its market value. We can explain how it is structured making reference to the example reported in the 'Economic and legal information Magazine about Anti-Money Laundering and tax planning'[14]. A criminal organization that launders has available a certain sum (for example 100.000 euro) to insert in the legal circuit. To this end, the members of the association buy a real estate property worthing far less than the amount to be reinvested (suppose 25.000 euro). Later the same sell it to a person who is accessory to the crime at a price equal to the sum to be laundered (i.e. 100.000 euro). At this point the buyer pays by bank transfer and receives from the association the sum paid for the purchase (i.e. 100.000 euro) in form of cash. Summing up the association has lost 25.000 Euros plus legal fees and tax, but has laundered 100.000 euro. On the other hand the complaisant buyer received the real estate asset as reward (the buyer of course must be above suspicion and a subject for whom it would not be difficult to have a high amount of cash available).

- **Smurfing** also known as **structuring deposits**

This technique entails the collaboration of a single person or more people (generally called smurfs) who must have a clean record and be above suspicion. Smurfs have to keep a low profile and to avoid to live expensively. Their role is to make a lot of bank deposits and transfers into different bank accounts in different banks over an extended period of time. They deposit little amounts of money, which summed together result in a huge sum. To circumvent controls, this smaller amount has to be below a certain threshold which changes according to

[14] http://www.moneylaundering.it/wp-content/uploads/2014/12/metodi-e-tecniche-di-riciclaggio-del-denaro.pdf 25/01/2016

the national law of each country. To make a withdrawal it's better to have a bank wire-transfer of money to offshore accomplices or to shell companies.

- **Parallel banking systems**

Some countries in Asia have well-established, legal alternative banking systems that allow for undocumented deposits, withdrawals and transfers. These systems leave no paper trail and operate outside the government control. They include the *hawala* system in Pakistan and India and the *fie chen* system in China. These unofficial payment systems have been developed especially by criminal groups to circumvent the application of the financial rules in force in different countries.

An example in the 'Economic and legal information Magazine about Anti-Money Laundering and tax planning'[15] allows to understand how the process is structured. Supposing that some money should be transferred to China by an organization operating in Italy, the system works as follows: the dirty money is deposited in an agency (usually in a business of foreign currency exchange, travel agent, call center etc.) in Rome; as the deposit takes place in Italy the applicant receives a symbol, an object or acquires a password that acts as a "certificate of deposit"; later the organization operating in Italy delivers the so called "certificate of deposit" to the money recipient who operates in China; finally the latter will go, with the certificate, to a Chinese agency to cash money net of commission. In essence, the operation of such illegal banking systems is based on a method of compensation which operates between subjects who need to export money and others who need to import it. The money is never physically transferred abroad: the accounts are handled through writings and records.

- **Overseas banks**

Money launderers often send money through various "offshore accounts" in countries that have bank secrecy laws, meaning that for all intents and purposes, these countries ensure anonymity. A complex scheme can involve hundreds of bank transfers to and from offshore banks.

- **The loan back**

This method implies that the member of an organization deposits the dirty money on a current account in a bank established in a so called "tax haven". During the second step the criminal organization ask for a loan giving as real guarantee the money deposited in the first financial

[15] http://www.moneylaundering.it/wp-content/uploads/2014/12/metodi-e-tecniche-di-riciclaggio-del-denaro.pdf 25/01/2016

institution. Then the money granted by the bank is reinvested in real estate assets, companies and other financial instruments. This technique is based on the advantage offered by the legislations of several countries as regards bank secrecy.

- **Corporate restructuring method**

In practice the criminal organization acquires a business building to renovate or restructure. The restructuring is carried out through the purchase of goods and/or services paid for mostly in cash; in this way the value of the building is increased. At this point the association may decide to transfer the activity to another person, receiving a bank transfer for the sale.

- **Control of sports clubs**

Buying or selling professional sportsmen for several million euro (especially football players, hockey players) of various sports clubs offer excellent opportunities to launder dirty money.

- **Game of chance**

The activities of money laundering often are connected to games of chance.
In most cases criminal organizations launder money using gambling houses and casinos: they buy chips in large quantities in order to play, but they use only a small part of them or they do not use them at all. The purpose of these operations is to convert the chips into money and simultaneously get by the gambling house a document that certifies the win. However, a more effective method consists in getting the control of a gambling house. In this case you just have to declare the dirty money as income from the gaming activity.

- **Purchase of winnings and system of multiple bets**

In addition to casinos, even sports betting agencies may be subject to the launderers' interest.
A traditional way to launder money is the purchase of the winning ticket offering to the legitimate winner a sum that is higher than that one won. In this way the criminal organization obtains legal income. However, it may also happen that the organization decides to bet large sums of money (through multiple operations) on all possible outcomes of a sporting event so as to secure a substantial payout (although, it is a lower amount than the amount wagered).

Many money-laundering schemes involve some combinations of these methods and the most efficient ones exploit the financial, industrial and commercial sector at the same time. The variety of tools available to launderers makes this a difficult crime to stop.

3. Offshore financial centres

Recently the so called “tax havens” and “offshore financial centres” are drawing the international attention because it has been observed that they offer structures and means to commit crimes, as money laundering, which undermine the correct functioning and the stability of financial markets.

The characteristics of these tax havens are especially attractive to launderers of funds because they provide a wall of secrecy on transactions, so that the owner of a company incorporated in the tax haven can not be associated with the flow of its funds. All the types of corporations registered in the tax havens - generic companies, offshore banks, insurance companies, etc. - can be used to launder the funds in all the stages of money laundering: placement, layering and integration[16].

In order to identify countries at risk many supranational organizations and countries considered “virtuous” have written lists which contain the name of other jurisdictions which don’t comply with international recommendations and principles about the mechanisms of collaboration and informative exchange regarding matters as fiscal law, financial structures and AML.

To report some examples, according to the International Monetary Fund, "major offshore centers" include the Bahamas, Bahrain, the Cayman Islands, Hong Kong, Antilles, Panama and Singapore. **[17]**

As regards current news, in the light of recent political commitments made by Andorra, Liechtenstein and Monaco to implement the OECD standards of transparency and effective exchange of information and the timetable set for the implementation, the OECD Committee on Fiscal Affairs has decided to remove all the three jurisdictions from its Uncooperative Tax Havens list. At present it is deemed that these jurisdictions have declared their commitment to the internationally agreed tax standards but it is expected that now they all will swiftly implement them.[18]

All these matters of facts are the consequences ensuing from the extreme difficulty to decide which countries have to be included in the aforementioned lists since generally they are pretty heterogeneous.

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[16] http://upet.ro/annals/economics/pdf/2009/20090209.pdf
25/01/2016

[17] http://money.howstuffworks.com/money-laundering.htm
25/01/2016

[18] http://www.oecd.org/ctp/harmful/andorraliechtensteinandmonacoremovedfromoecdlistofunco-operativetaxhavens.htm
25/01/2016

On this point Mario Gara and Pierpaolo De Franceschis conducted an interesting work, published among the series of *"Quaderni dell'antiriciclaggio"* by the Bank of Italy with the title*: "I paradisi fiscali: caratteristiche operative, evidenze empiriche e anomalie finanziarie"* [19]. They state that black lists have not achieved the desired effect since countermeasures taken may be easily circumvented (by a formal adoption of recommendations by the part of the country or through mechanisms as the triangular trade). They mention an alternative more successful method of listing which was practically adopted in few cases and not really formalized: the disclosure of the identity of clients of financial intermediaries operating in tax havens. In this way both financial intermediaries and related countries are indirectly punished from being discovered, but however it is not without drawbacks because of the lack of objectivity and impartiality in determining who will be put inside the list. So it would be useful to find an alternative criterion.

As reported in the abstract of the abovementioned study, it "aims to map these countries and provide some tools for analyzing the financial flows thereof". It identifies two main aspects common to all "offshore centres": the high number of financial intermediaries among which many ones operate only with non residents; the high rate of opacity which characterizes the company structure, the fiscal and the financial sector. We can enumerate also other recurrent features which are typical of an ideal tax haven: [20]

- a highly developed tourist activity which may justify cash inflows;
- a propitious geographical location for business trips to rich neighboring countries;
- availability of modern communication systems that connect them to other countries;
- developed financial systems, allowing the rapid movement of funds;
- a government that is relatively invulnerable to external pressures;
- a high degree of economic dependence on financial services;
- the use of a universal currency as local currency (preferably U.S. dollars);
- the absence of international arrangements to cooperate and exchange information with other countries;
- international corporations can be created with minimum formalities;
- bank secrecy for these corporations and very harsh laws for the breach of bank secrecy.

[19] http://uif.bancaditalia.it/pubblicazioni/quaderni/2015/quaderni-analisi-studi-3/paradisi-fiscali.pdf 25/01/2016

[20] http://upet.ro/annals/economics/pdf/2009/20090209.pdf

25/01/2016

Actually a certain degree of financial and banking secrecy is a characteristic of all the states to protect banking and commercial information, but in this case they preserve this information also when an investigation is conducted by statutory bodies of a foreign country. A banking and financial secrecy jurisdiction will almost always refuse the violation of its own laws on bank secrecy, even when it could be about a serious violation of the laws of a country.

However the most important characteristic is the lack of transparency connected to the concept of beneficial ownership.

The financial havens place at the disposal of the foreign investors a wide range of services which in many cases allow them to withhold the origin of their money. International corporations registration is generally easy and banking operations are not subjected to controls.

Then in the aforesaid study it is shown that the so called 'havens' differ from one another with respect to

- the overall level of opacity that each one grants;
- the type of opacity services that each provides (either in the fiscal, financial or corporate realm).

Tax Justice Network – a non-government independent international organization born in 2003 – has evaluated the grade of opacity considering some criteria linked to anti-money laundering, fiscal law, bank secrecy and corporate law. The results of the analysis conducted are interesting; from the analysis of 47 countries, two groups quite different from each other have been identified:

- about half of them (26 countries) has a low per capita income (less than 20.000 euro) and a rough financial system: they are countries where illegal funds are sent presumably only to screen their origin, but which don't offer any financial service with high added value (so-called washing machines, concentrated in the Caribbean);
- the remaining 21 countries have a medium or high opacity, they are equally distributed in the three geographic areas considered and they have a medium-high per capita income (over 20.000 euro). The financial system in those jurisdictions is adequately developed to provide not only services aimed at screening very efficiently the origin of funds and the beneficial ownership, but also to satisfy the investment and profitability needs.

Continuing with the analysis, it's shown as it's possible to classify offshore financial centres using as criterion the typology of main services offered: tax optimization (TAX); investment

opportunities of illegal funds (FIN) and possibilities of hiding the beneficial ownership using opaque company structures (SOC).

The largest groups are those of tax and financial havens (TAX & FIN, 11 countries) and corporate and financial havens (SOC & FIN, 10 countries). There are also six countries for which the indicator has values above the average for all the three areas; they can therefore be considered complete havens. They are located mostly in Asia and the Pacific, and have a medium level of income.

Numbers confirm that the possibility to create companies characterized by lack of transparency – such as trusts - attracts foreign investors: in fact the number of companies compared with the number of inhabitants is much higher, almost the double (1.500 companies/10.000 inhabitants against the normal mean of 800/10.000 inhabitants - 255 companies/10.000 inhabitants in Italy).

Focusing on Italy the essay reveals that there is a high use of the company screen also as resumed in the table below:

Companies registered in Italy which are affiliates of foreign companies			
Total	**%**	**Activity sector**	n.
22.000	20%	building firm	4.400
	15%	commercial and professional activities	3.300
	Others		

Table 2: Number of companies registered in Italy which are affiliates of foreign companies

Source: Financial Information Unit at the bank of Italy[21]

In the study it's reported also an interesting financial flows analysis (in terms of portfolio investments and deposits of non-residents, and foreign direct investment) which underlines that countries at risk attract almost 1/4 of the total financial flows arranged by non-residents (see the following table).

[21] http://uif.bancaditalia.it/pubblicazioni/quaderni/2015/quaderni-analisi-studi-3/paradisi-fiscali.pdf page 15 25/01/2016

International Financial flows analysis (2011)								
Countries Categories	**Global portfolio investments made by non-residents**		**Global bank deposits made by non-residents**		**Global portfolio investments made by italian residents**		**Wire transfers from and to Italy**	
	USD	**% on the total**	**USD**	**% on the total**	**USD**	**% on the total**	**USD**	**% on the total**
Countries at risk	9.472,2	24%	6.157,8	27,9%	464	45%	327,3	16%
low opacity	3.550,6	9%	1.599,9	7,3%	175,1	17%	174,7	8,6%
medium opacity	5.298,5	13,4%	4.186,5	19%	287,5	27,9%	149,8	7,3%
high opacity	623,2	1,6%	371,5	1,7%	1,4	0,1%	2,7	0,1%

Table 3: International Financial flows analysis (2011)

Source: Financial Information Unit at the bank of Italy[22]

As regards, in particular, transfers between Italy and tax havens of various types (the last 2 columns), its dynamics is abnormal, indicating how they are influenced by factors other than the physiological determinants of flows with the rest of the world. In the figure below – reported in the Gara and De Franceschis' work - it is shown an analysis of the wire transfers made by Italy towards the rest of the world distinguishing between countries at risk and not. Transfers are broken up by the economic sector they refer to.

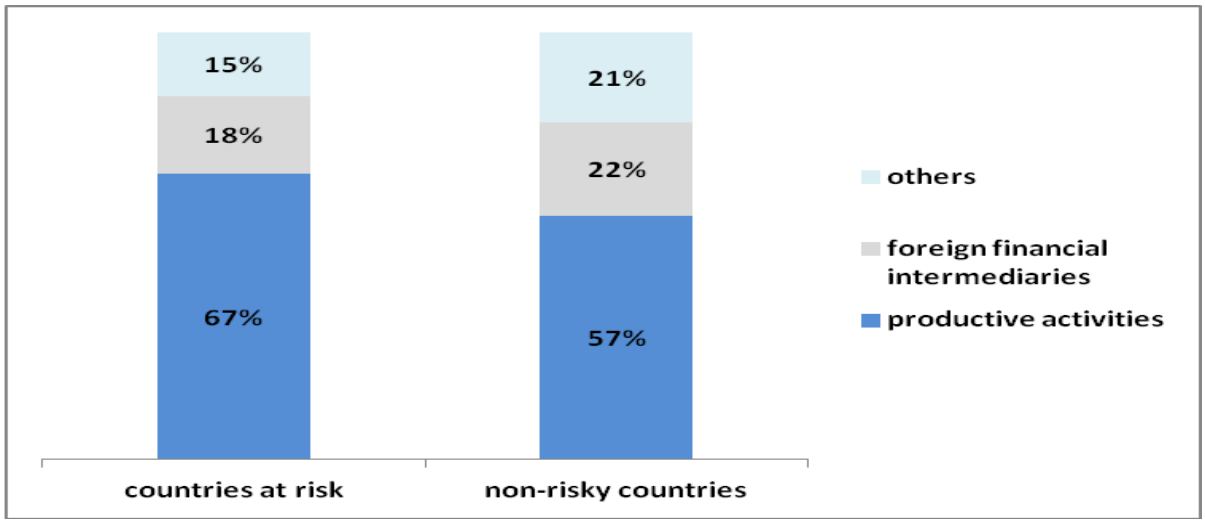

Figure 1: Wire transfers analysis

Source: Financial Information Unit at the bank of Italy[23]

[22] http://uif.bancaditalia.it/pubblicazioni/quaderni/2015/quaderni-analisi-studi-3/paradisi-fiscali.pdf page 15 25/01/2016

This result is counter-intuitive if we consider that in the group of countries at risk the majority are offshore financial centres, in which, by definition, it's the financial sector to cover a major proportion of the economy. The anomalies found suggest that the determinants of such flows differ from those underlying the flows with the rest of the world. One possible interpretation is that the observed data are affected by the phenomenon of profit shifting, which allows the company to optimize its tax burden by transferring profits in favor of associates located in low-tax countries. This interpretation is confirmed if we break down the flows with countries at risk taking into consideration the types of services and the consequent level of opacity offered (see figure at the following page).

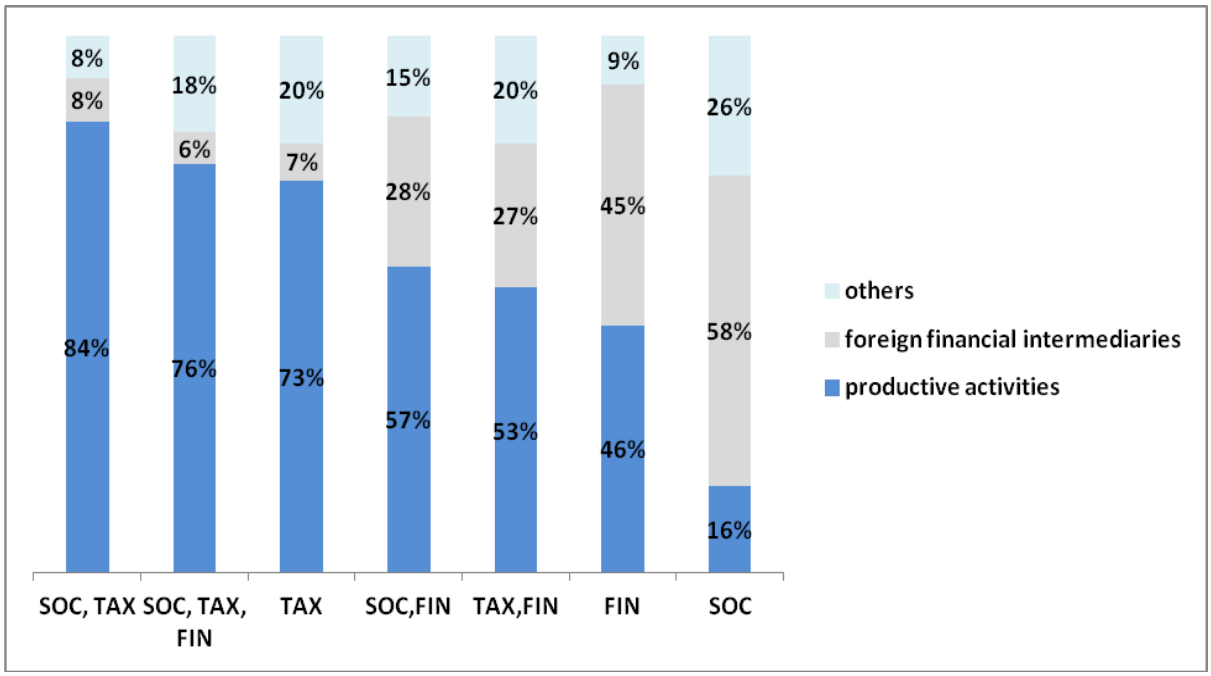

Figure 2: Flows with countries at risk

Source: Financial Information Unit at the bank of Italy[24]

Moreover, a far from negligible share of transfers vis-à-vis 'virtuous' countries refers to individuals or entities residing in tax havens, which may signal that the latter are used to screen financial flows among non-havens (triangular trade phenomenon).

Summing up it would be useful to have an objective method to categorize countries based on their degree of opacity and other parameters, such as, for example, the density of enterprises

[23] http://uif.bancaditalia.it/pubblicazioni/quaderni/2015/quaderni-analisi-studi-3/paradisi-fiscali.pdf page 17 25/01/2016

[24] http://uif.bancaditalia.it/pubblicazioni/quaderni/2015/quaderni-analisi-studi-3/paradisi-fiscali.pdf page 17 25/01/2016

and financial intermediaries, the significance of financial exchanges with foreign countries, as well as measures of abnormality based on the results of econometric studies.

4. The misuse of companies and the trade-based money laundering

It's interesting to investigate the reasons why criminal organizations choose to acquire or even establish *ex novo* a company in order to launder dirty money. Drawbacks of this practice are glaring: they expose themselves to stricter controls and as a consequence they have to comply with several rules and requirements – at least formally. A basic example of an obligation imposed by law that has to be fulfilled is the drawing up of the Financial Statements.

Actually the reverse of the medal of having more visibility is extremely low if compared with the several advantages obtained. From a pragmatic point of view, the profits produced by these functioning companies are summed to those deriving from illicit activities. In fact by analyzing empirical data it may be seen that businesses (whose object or activity is legal) managed by criminal organizations often are more successful than those owned and run by law-abiding people. On reflection it's quite obvious because they distort competition rules since they may charge lower prices and they have no scruples, being accustomed to corrupt powerful people.

Moreover criminals manage to obtain a sort of legitimation - all the documents regarding the acquisition or creation of the company are supported by certifications and attestations which are perfectly legal – and to penetrate the socio-economical context. From this point of view it's considerably important also the typology of company chosen. Contrary to what is generally thought the selected type of company is not always a building firm. Insurance companies and non-profit companies are attractive for launderers probably also because they offer the possibility of using complex instruments as policies to hide the beneficial ownership and also because for their company object they would tend to be over any suspicion.

Finally through complex corporate structures and nominees it's possible to keep secret the real identity of the actual beneficial owner. These mechanisms obviously work better by exploiting foreign bank laws which ensure an absolute bank secrecy. Concealing the beneficial ownership of funds is a critical passage in the money laundering process. That's why in February 2014 the European Parliament approved, within the relevant committees, a resolution calling for the establishment in member countries of public registers which include the indication of the beneficial owners of companies surveyed.

One way used so far by criminals to conceal to be the beneficial owner of a company is by owning bearer shares in it. Here it is reported the definition of bearer security given by the

business dictionary web site[25]: "Share, bond, or debenture whose owner's name is not recorded (registered) in the register of the issuer, and which is payable to its holder or presenter. Ownership (title) of such securities is transferable merely by handing over or delivery and, therefore, they are secured with the same care as is cash. The main benefit of a bearer security is preservation of the owner's anonymity. Dividend or interest on bearer securities is claimed by presenting the attached coupon to the issuer or its agent."

Bearer shares guarantee in a legal way the anonymity to the holder of the share (rights and obligations are transferred to the shareholder who owns the paper certificate) and shares can be easily sold.

Actually in the European Union there are few countries that still allow the issue of such a kind of shares. As reported in an article of 2nd June 2015 "Bearer shares abolished from 26th May 2015"[26] in the UK "Bearer shares … were abolished with effect from 26th May when amendments to the Companies Act 2006 were implemented. … Any bearer shares not surrendered and exchanged by 26th December 2015 can no longer be transferred (any purported transfer will be void) and no rights will attach to them (voting etc.) Any distribution to which the bearer shares would have been entitled must be paid into a separate bank account. Companies which still have bearer shares on 26th February 2016 will be required to apply to court to cancel them and to pay into court an amount equal to the nominal value of the shares within 14 days of cancellation together with any suspended distributions to ensure that all bearer shares are eliminated."

As reported in an article of 6th January 2015 entitled "Reform of the bearer shares regime in Luxembourg"[27] in Luxembourg, "instead of abolishing bearer shares as already done or planned to be done by some neighboring countries, the lawmaker … has chosen to retain the possibility, for Luxembourg commercial companies, to issue bearer shares provided to their immobilization. …The Law introduced the obligation for holders of bearer shares to immobilise them. Materially, this immobilisation is reflected in the requirement for their holders to deposit such securities, when localisable, with a qualified professional based in Luxembourg, which becomes the depositary (dépositaire) of these securities, including the obligation for the latter to ensure the keeping of a register and its update. In order to strengthen the incentive for holders of securities to deposit their securities with the depositary within the time allowed, the legislator has provided a mechanism to suspend the rights

[25] http://www.businessdictionary.com/definition/bearer-security.html
25/01/2016
[26] http://www.lexology.com/library/detail.aspx?g=a8e97ede-6a00-4191-b844-2bcf5ae90e9d
25/01/2016
[27] http://www.lexology.com/library/detail.aspx?g=ffc16f8c-4ab6-44c9-8b88-b9d65af624a0
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attached to bearer shares which may therefore be exercised only in case of deposit beside the depositary."

Bulgaria is one of the few European countries that allows the issue of bearer shares up to 100% of the company's capital. The article 178 of the Code of the Bulgarian companies regulates the issue of bearer shares. Bearer shares are transferable and their owner acquires the property of the Bulgarian limited liability company demonstrated by the mere possession of the paper certificate (art. 185 of the Bulgarian Code of Companies).[28] This peculiarity of the bearer shares, makes this type of shares not permitted for the company established in Italy, and are accepted but in a limited amount relative to the value of the company, in a few other European countries. Bulgarian law allows the conversion of bearer shares into nominal shares (issued to a person, and that must be recorded) and vice versa.[29]

Practically, once decided to use a company structure to launder, criminals may choose to invest in legitimate businesses or to create *ad hoc* fake companies which exist for no other reason than to launder or both.

The first option is to place dirty money in otherwise legitimate businesses to clean it. They may use small, cash-intensive businesses like bars, car washes etc. It would be a hard task to demonstrate how many meals a restaurant really sold and how many were registered in a fictitious way. These businesses may be "front companies" that actually do provide a good or service but whose real purpose is to clean the launderer's money. This method typically works in two ways: the launderer can combine his dirty money with the company's clean revenues -- in this case, the company reports higher revenues from its legitimate business than it's really earning; or the launderer can simply hide his dirty money in the company's legitimate bank accounts in the hope that authorities won't compare the bank balance to the company's financial statements.

The second option is to use shell companies**.** They take dirty money as "payment" for supposed goods or services but actually provide no goods or services; they simply create the appearance of legitimate transactions through fake invoices and Balance Sheets.

The organization may also integrate the two possibilities in a certain sense by establishing or acquiring two companies: company A in which money must be placed and company B, which acts as a shell company. In practice the first (A) makes a fictitious order for goods or services to the second one (B); while the second (B) makes invoices for non-existent transactions.

Thus the first company can certify with the false invoices the origin of the money.

[28] http://it.tiras.bg/azioni-al-portatore-in-bulgaria-ammesse-fino-al-100-del-capitale/ 25/01/2016

[29] http://www.targabulgara.com/azioni-al-portatore-in-bulgaria-sono-ammesse-fino-al-100-del-capitale/ 25/01/2016

It often happens that the supply of goods and services is actually put in place, but the value stated in the invoice is far greater than the real one. In that case the surplus (i.e. the difference between the declared value and the real one) corresponds to the value of the sum to be laundered.

Companies may be used to over-invoice as well as to under-invoice. Simply a person who wants to launder money may sell goods or services to a business at a price that is less than the goods or services are worth. Then, out of the embezzled funds, he gets the rest of the consideration directly from the company that got the bargain. These funds can be placed directly into anonymous offshore accounts or into an asset.

Taking into account all these considerations we can say that criminal organizations have a big interest in establishing or acquiring and managing companies which actually perform licit activities for many reasons. One of the most important is that in this way they get a legitimate access to the international trade system which allows them to buy, sell and transport illegal goods and to move money to disguise its origins and integrate it into the legitimate economy.

This phenomenon which technically is called trade-based money laundering has attracted the attention in particular of the Financial Action Task Force (FATF), the Wolfsberg Group[30] and the Joint Money Laundering Steering Group (JMLSG)[31]. Moreover the Financial Conduct Authority[32] published in July 2013 a review entitled "Bank's control of financial crime risks in trade financing"[33] in which it's analyzed the conduct of a sample of banks. Their activity is assessed as regards anti-money laundering, anti-terrorist financing and sanctions controls with a particular focus on the potential impact of financial crime on the trade system.

In this document it's underlined the fact that trade finance can be misused to shift money around the world and conceal its illicit origin. In deed it's well known that globalization has led as result a unique global market in which it's possible to exchange goods and services

[30] "The Wolfsberg Group is an association of thirteen global banks which aims to develop frameworks and guidance for the management of financial crime risks, particularly with respect to Know Your Customer, Anti-Money Laundering and Counter Terrorist Financing policies."
http://www.wolfsberg-principles.com/
25/01/2016

[31] "The Joint Money Laundering Steering Group is made up of the leading UK Trade Associations in the Financial Services Industry. Its aim is to promulgate good practice in countering money laundering and to give practical assistance in interpreting the UK Money Laundering Regulations. This is primarily achieved by the publication of industry guidance."
http://www.jmlsg.org.uk/
25/01/2016

[32]" the **Financial Conduct Authority** (**FCA**) is a financial regulatory body in the United Kingdom,. It aims at making sure that financial markets work well so that consumers get a fair deal.
This means ensuring that: the financial industry is run with integrity; firms provide consumers with appropriate products and services; consumers can trust that firms have their best interests at heart
http://www.fca.org.uk/about"

[33] https://www.fca.org.uk/static/documents/thematic-reviews/tr-13-03.pdf
25/01/2016

crossing the national borders. Economic transactions are often agreed with a foreign buyer or seller. The frequency and complexity of the international trade allow to move value abroad without being detected. Obviously this implies the complicity of the counterparty which is generally involved in the same illicit practices.

This objective is pursued and accomplished in basically three ways:

a. by over-invoicing or under-invoicing to misrepresent the price of the goods;

b. by over-shipping or short-shipping to misrepresent the quantity or quality of the goods (in this case the nature of goods itself may be illicit; i.e.: drugs, arms…)

c. by falsifying all the documentation attached to the shipment (so-called 'phantom shipping'); it may even happen that nothing is transferred.

Since payments are made through financial institutions the main subjects which are required to implement adequate controls on trade finance are banks. That's why the work made by a huge number of these entities has been controlled by the Financial Conduct Authority in the abovementioned review.

In the essay it turns out that financial controls made by the majority of the banks considered are not very effective. It emerges that this depends on several reasons. First of all the main difficulty perceived by the banks in question is that that the controls that the law and regulations require to apply against financial crime might be at odds with the commercial obligations set out by the International Chamber of Commerce. In fact they must handle a trade-off between the commercial pressure to progress with a transaction and the legal obligation to perform accurate controls. On the one hand they should be as quickly as possible to process transactions in order to pursue the legitimate interest of their clients and on the other hand they should be accurate and prudent in the compliance of their duties. In few words we could say that in a certain sense banks must face a lack of time to investigate potentially suspicious activities as regards this matter. They should be able to reach a good assurance that they don't reject or delay licit transactions and that at the same time they report and stop any transaction related to trade-based money laundering cases. It's self evident that this is a difficult task to accomplish and the response of many financial institutions have been to conform only formally their behavior to rules in this matter.

Many banks are focused on the formal aspects of the controls rather than on the substance of the transactions they are checking (some banks find a legitimation of this attitude in the UCP600, which states that banks are only required to take documents 'on their face'.)

In other cases the money laundering risk is undervalued or there are internal communication and organization shortcomings owing to which different professional figures or groups think

that the problem has already been coped with through other means (for example through CDD procedures).

Actually there are standards that should be applied while conducting controls. As a general indication the money laundering risk must be considered throughout the life of a transaction and not only when the amounts of money moved are conspicuous. Moreover it's necessary to adopt a risk-based approach that considers:

- the parties involved;
- the bank's particular role in LCs[34] or BCs[35] - if the instructing party isn't an existing customer of the bank (even if this is a rare circumstance) due diligence must be carried out on the instructing party before going ahead with the transaction;
- the countries where they are established;
- the nature of any goods in the underlying commercial transaction.

Also 'red flag indicators'[36] set out in the FATF report are very useful, since they list some examples of clues which may indicate illicit conducts in trade. Some common red flags are the following:

- unusual, illogical or inconsistent size of containers;
- continuous container numbers on a bill of lading (as they are generally random);
- unusual transaction size (given what is known about the goods/customer);
- a shipment route that does not make sense (for example if a certain good is being shipped to a country that is known to be an exporter of that good, or a route that is not normally used);
- consistency of the transport method chosen with the volume of goods been shipped
- complex transaction structures;
- the beneficiary and applicant appear to be group companies.
- port descriptions such as 'any safe world port'.;
- addresses in offshore centres.

[34] "**Documentary Letters of Credit (LCs) =** a financial instrument issued by a bank that guarantees payment to a named beneficiary upon presentation of certain complying documents specified in the credit terms." https://www.fca.org.uk/static/documents/thematic-reviews/tr-13-03.pdf 25/01/2016

[35] "**Documentary Bills for Collection (BCs) =** process by which payment, or an accepted draft, is collected by a 'collecting' bank from an importer of goods for onward payment to the exporter. The collecting bank gives the relevant trade documentation (which will have been received from the seller, normally via the seller's [remitting] bank) to the importer in return. No payment obligations are assumed by the banks involved." https://www.fca.org.uk/static/documents/thematic-reviews/tr-13-03.pdf 25/01/2016

[36] "**Red flags =** a detail/feature of a transaction that appears unusual and may, in isolation or in combination with other details, give rise to suspicions of financial crime." https://www.fca.org.uk/static/documents/thematic-reviews/tr-13-03.pdf 25/01/2016

The International Maritime Bureau (IMB) provide a service for checking whether shipments have taken place as described in the bill of lading. In this way banks have an instrument to verify details related to the description of the quantity shipped, the route and date in the documents.

However in certain cases it isn't always easy to obtain the underlying trade documentation for review. For instance in an LC transaction the beneficiary may choose to send it directly to the issuing bank and not also to the advising bank. Another example which presents a difficulty for the bank is when financing is provided on the basis of a letter of indemnity[37]. As it typically happens in the oil industry, the bank receives the documents only after the occurrence of the payment. It's to point out that the presence of a letter of indemnity would need additional scrutiny.

Considering all these facts it appears clear that at the moment the trade finance system isn't able to completely counter trade-based money laundering in an effective way because of the impediments dealt in the precedent paragraphs. As a consequence criminal organizations succeed in exploiting the international trade system for their illegal purposes. That's why awareness of financial institutions should increase as regards the riskiness of money laundering.

[37] "**Letter of indemnity** == A letter guaranteeing that contractual provisions will be met, otherwise financial reparations will be made."
http://www.investopedia.com/terms/l/letterofindemnity.asp
25/01/2016

CHAPTER 5: AML OBLIGATIONS FOR PROFESSIONALS WITH A FOCUS ON THE CHARTERED ACCOUNTANT FIGURE

1. An increasing attention to the AML obligations

There is more than one reason why in the recent period the interest in anti-money laundering has considerably increased by the part of the professional world.

Firstly all the obligations they must meet in force of the European and Italian law are becoming more and more detailed and cogent. As aforesaid, at present the regulatory framework is given by the Legislative Decree 231/2007 which has implemented the III European Directive of 2005. However the legislative context is going to further change when the latest European Directive (the fourth one) will be implemented by the Italian legislator.

Secondly harsher penalties and administrative fines have been introduced and for his conduct in the matter of anti-money laundering the professional risks to commit and be accused of a criminal offense with the subsequent consequences.

Finally the Italian financial police (the *"Guardia di Finanza"* – GdF) have tightened the controls in all the national territory focusing its attention on the professional studios. Inspections are conducted in a thorough way; the GdF analyzes a chosen sample adopting an approach which takes into consideration both the form and the substance: on the one hand they control whether there is a formal compliance with the obligations imposed and on the other hand they express a merit judgment. Since the tax officers make an assessment on the validity of the motivations which led the professional to not transmit any report, this latter must be able to show documents in support of decisions taken. Matters of facts and concrete situations which may concern the objective or the subjective profile of the transaction weigh on the evaluation. The typical result of these examinations is generally the application of sanctions which may be pretty serious.

The huge number of punishments inflicted does depend on different factors, but certainly also on the fact that professionals don't send reports anytime they should. In particular the category for which probably there is more space for improvement is that one at which chartered accountants (called *"Dottori Commercialisti"* in Italian) belong.

The figures speak for themselves: both in the 2014 and in the first semester of 2015 on the total of reports sent to the FIU only less than 0,3% came from chartered accountants; as regards the general category of Professional the most active figures are notaries who in fact transmitted more than 90% of reports coming from professionals, while chartered accountants about 6% (see the next table).

	2014	%	%	2015	%	%
NUMBER OF REPORTS TRANSMITTED (by different categories)	**entire year**	of the category of *"Dottori Commercialisti..."* compared tothe relative total	of the category of *"Notai..."* compared tothe relative total	**first semester**	of the category of *"Dottori Commercialisti..."* compared tothe relative total	of the category of *"Notai..."* compared tothe relative total
Overall Total	71.758	0,21%	3,05%	39.021	0,28%	4,41%
Total of Professionals	2.390	6,19%	91,46%	1.898	5,80%	90,67%
"Notai", "Consiglio Nazionale del Notariato"	2.186	-	-	1.721	-	-
"Dottori Commercialisti", "Esperti Contabili", "Consulenti del Lavoro"	148	-	-	110	-	-

Table 4: Number of Reports transmitted
source: FIU "Quaderni dell'antiriciclaggio - dati statistici"[38]

These data are neither cheering nor reassuring. Actually chartered accountants should be one of the most sensitive category as regards anti-money laundering. In fact on the one hand they have a direct interest in meeting carefully their obligations to avoid sanctions and on the other hand they have enough expertise and skills to pick up also the apparently petty clues in the light of the close and ongoing professional relationship that they use to establish with their clients. Thus this negative outcome probably depends on the fact that they're afraid that their identity will not be perfectly protected and of the related consequences of this lack of secrecy on their professional relationship which normally continues in time.

Another limit may be the fact that procedures to adopt are not yet completely clear. The relevant authorities are trying to find a remedy for this situation. That's why the CNDCEC (Consiglio Nazionale dei Dottori Commercialisti ed Esperti Contabili) – the professional association of the chartered accountants - has recently issued a handbook about the operative procedures to adopt entitled *"Antiriciclaggio (D.Lgs. 231/2007): manuale delle procedure per*

[38] https://uif.bancaditalia.it/pubblicazioni/quaderni/2015/quaderni-1-2015/Quaderno-antiriciclaggio-I-sem-2015.pdf

gli studi professionali"[39] which has been taken as reference material in the following paragraphs to speak about the required and best practices to use in professional studios.

2. Systems and Procedures to adopt in Professional Studios

In the article 3 of the Legislative Decree 231/2007 it's required that the addressees of the regulation adopt suitable and appropriate systems and procedures as regards anti-money laundering obligations they must meet. Two keywords in this sentence are 'suitable' and 'appropriate' to be interpreted in the following sense: the obligation of professionals isn't a "specific result obligation" but an "obligation of means" that is they are imposed to conduct themselves with prudence and diligence in order to achieve the result desired by parties.

Moreover it's specified that measures adopted must be tailored to the dimension, the structure and the specific features of the professional studio. In the case of complex entities it would be useful to draw up:

- the organization chart;
- a written document to appoint people responsible for the processing of data for AML purposes and written delegations of tasks made by professionals to employees or collaborators (to be signed for acceptance by those latter);
- a training program;
- an internal control program for the verification of the proper fulfillment of the obligations.

Moreover the most complex entities, in which there is a deeper division of tasks, should appoint a person responsible of anti-money laundering controls. His main duty is the evaluation of the procedures used to reduce the risk of money laundering and of terrorism financing with respect to the type of transaction, customer, geographical areas. He must take any useful initiative to adapt the procedures to any change in the above factors.

The main functions he performs are collaboration, coordination and formal control favoring the knowledge of money laundering legislation in the studio; keeping updated records of the provisions of law and regulations; keeping relations with the FIU and investigative authorities; representing the studio during an inspection made by the supervisory authorities.

In their operating position, collaborators and employees may catch revealing aspects and, therefore, they play a key role in the monitoring phase during the year. Employees working in the back office area must follow and practically execute orders and report to the senior officers. They must assist in the ongoing control of transactions, to see if they can be linked to

[39] http://www.commercialisti.it/MediaContentResource.ashx?/PortalResources/Document/Attachment/ee774de1-ff04-4187-9376-199e804d4566/Allegato%20-%20Informativa%20n.%202-2016.pdf.
25/01/2016

money laundering or terrorist financing, communicating without delay any suspicious fact or situation and any breach in rules about the use of cash.

In detail, they have the following tasks, when and if they have been delegated by the professional:

- the identification of the customer and beneficial owner, collecting and verifying identity documents;
- the creation and updating of the file of every customer, collecting the necessary documentation;
- the inclusion of relevant data in the paper or electronic archive;
- the preparation of a timetable in order to have valid identity documents in every moment, as regards the file of customers.

However this doesn't divest the professional of responsibilities: he maintains the power and duty to make the main decisions and to give the general guidelines.

The role of the professional takes shape in relation to each obligation he must meet:

a) Customer Due Diligence

The first moment in which information about customers must be acquired is before accepting to engage in the professional activity. In fact the chartered accountant has the right and above all the duty to reject a mandate when one of the following controls can't be carried out with success:

- the identification of the client;
- the identification of the beneficial owner;
- the acquisition of information about the aim and the nature of the professional performance.

As regards the mandate the CNDCEC strongly recommends the use of the written form which allows to document significant matters of facts such as:

i) the object and complexity of the task;
ii) the starting date of the contract and its duration;
iii) the full name of the professional charged ;
iv) the amount of the remuneration and fees;
v) the possible clauses.

It's necessary to bear in mind that it exists a list of professional performances that can't be carried out and others for which it's expressly required an appropriate verification (transactions of a value higher than 15.000 euro or with an indeterminate or indeterminable value).

The theme of the beneficial ownership is particularly significant and thus it merits a closer examination. The GdF claims that it's mandatory to register also the beneficial ownership while according to the MEF it's sufficient to identify him (D.M. 141/2006).

In the technical annex to the Legislative Decree 231/2007[40] some objective criteria are expressed to evaluate the beneficial ownership. The term 'beneficial owner' means the natural person on whose behalf a transaction or activity is made, or in the case of legal entities, the natural person or persons who ultimately own or control that entity, or are beneficiaries according to the criteria set out in the technical annex, which are resumed as follows:

- if the client is a **company**,

  the beneficial owner is the person or persons who ultimately own or exert direct or indirect control on the client.

  The concept of control contained in the technical annex of the Decree should be interpreted systematically, considering both the art. 2.359 c.c. and the art. 93 TUF.

  Beneficial owners are all individuals who have possession or direct or indirect control of a percentage higher than 25% of the share capital or of the voting rights in the client-company. If a percentage greater than 25% of the capital or voting rights in the client-company is not controlled by a natural person, the beneficial owner must be identified – going up along the chain in the equity participation – in natural person or persons who ultimately exert control on that subject.

  When the conditions referred to in the precedent two paragraphs are not present the beneficial owner may be identified in one or more persons charged to manage and administer the company. This latter situation can occur, for example, in publicly traded companies or cooperative societies.

  It's not necessary the identification of the beneficial owner for the persons subject to simplified due diligence pursuant to art. 25, paragraphs 1 and 3, and art. 26 of the Decree against money laundering.

- if the customer is a **fiduciary company** (the Italian *"società fiduciaria"*):

  a. If the fiduciary company is acting on behalf of the *"fiducianti"* then:

  a. 1) in accordance with art. 21 of the Decree the fiduciary company-customer must provide in writing all the necessary and up to date information about the *"fiducianti"* who are beneficial owners of the transaction or operation;

  a. 2) if the *"fiducianti"* are not natural persons, the data of the beneficial owners should be identified and verified;

[40] http://www.camera.it/parlam/leggi/deleghe/07231dl.htm 25/01/2016

b) if the fiduciary company acts in its own name and on its own account, the data of the beneficial owners of the fiduciary company have to be identified and verified.

- for **foundations** and **trusts**, the beneficial owner coincides with:

  a) the natural persons who are beneficiaries of 25% or more of the assets of the foundation or trust, where the future beneficiaries have already been determined; conversely, if the beneficiaries have not yet been determined, the category of people for whose main interest the foundation or trust is established or acts ;

  b) the natural person or persons who exercise control in fact over 25% or more of the assets of the Foundation or trust;

  c) and, if different, each trustee of the trust.

- if the customer is a **non-profit organization**, it applies as provided in the paragraph about foundations and trusts lit. a) and b).

- in **cases other** than those mentioned in the preceding paragraphs, the beneficial owner coincides with:

  a) individuals who have a share higher than 25% of the funds or assets of the organization;

  b) and – if different - the subjects who, by virtue of the constitutive agreement of the Organization (and subsequent amendments and supplements) or other acts or circumstances, hold a percentage of votes within the decision-making body of the Organization higher than 25%.

  The beneficial owner may be identified with one or more subjects in charge of administration.

The performance of the Customer Due Diligence allows to define the risk profile of the client and of the transactions.

SOME EXAMPLES OF SANCTIONS as regards professionals (Legislative Decree 231/2007)		
BREACH OF THE LAW		PENALTIES
Art. 55	Obligation of customer identification	Fine from 2.600 to 13.00 euro (doubling of the penalty if the offence has been commited through fraudolent means)
Art. 55	Omitted or false indication of full name and other particulars of the subject on behalf of which transactions are made	Imprisonnment from 6 months to 1 year and a fine from 500 to 5.000 euro (doubling of the penalty if the offence has been commited through fraudolent means)
Art. 55	Omitted or false indication of aims and nature of the ongoing professional relationship or professional performance executed	Imprisonnment from 6 months to 3 years and a fine from 5.000 to 50.000 euro
BREACH OF THE LAW		ADMINISTRATIVE FINES
Art. 57	the addressee of the anti-money laundering rules have not reject to execute or stopped the performance of a suspected transaction	Fine from 5.000 to 200.000 euro

Table 5 : Examples of sanctions

Source: www.studiozambon.it/Files/Le%20sanzioni%20antiriciclaggio.doc

b) Risk assessment and management

The importance of adopting a risk-based approach has been intensified in the IV European Directive. Professionals must be able to justify the risk profile attributed to each client and to each transaction; consequently it's required that the risk assessment is:

- objective,
- motivated,
- traceable.

The third feature calls for the keeping of the detailed documentation about the process and the result of the assessment in the file devoted to the relative client while the first two may be achieved by establishing a set of criteria a priori. In particular in the manual it's shown an example on how to create a model to apply at each new evaluation. The drawing up of the model is a duty of the professional or the professionals. The model has to be constructed in the following three steps:

1. attribution of an overall risk score to each of the two groups of general criteria (customer and transaction) indicated in the article 20 of the Decree;
2. attribution of a risk score to each dimension concerning the client and the transaction;
3. identification of a series of elements to be evaluated for each dimension concerning the client and the transaction.

During the application of the model to a concrete case the order of actions to accomplish is obviously the opposite, it's mandatory to attribute a score to each question and it may be also lower than 1. The unique summary rate then obtained is expression of the risk of money laundering and terrorism financing. It should be updated applying a dynamic approach in the sense that anytime new information is acquired or the profile of the subject changes, it may be increased if necessary; while if other operations are done at a later moment they've to be evaluated on their own. The level of risk must be attributed in a well-pondered way, using as elements of evaluation all the information available and the knowledge of the client developed by the professional himself and his employees, since it will determine whether to use simplified, standard or enhanced measures in the due diligence and control activity. Besides the professional must keep trace of the evolution of the assessment in his "working papers" to be able to demonstrate to have met the obligation of making a constant and ongoing judgment with a dynamic approach.

c) Recording of data on relationships and transactions in a unique file

The article 36 of the Legislative Decree 231/2007 states which information to record:

- the type of professional performance (the professional will use the description he considers the most fitting),
- the recording date,
- the identification data of the customer and of any beneficial owner (although for the latter currently it is sufficient to store the customer's identification data in the file according to the MEF while the GdF states it's necessary to record also the identification data of the beneficial owner), together with the identification details of any person delegated to act on behalf of the client.

With the term "identification data" the Legislative Decree 231/2007 means for natural persons:

- the first and last name,
- the place and date of birth,
- the address,
- the fiscal code,
- details of the identification document;

or, in the case of persons other than the natural persons:

- the name,
- the registered office,

- the fiscal code or, for legal entities, the VAT number.

It's required also the description of the work activity of the client and the indication of the value of the professional performance where it is not indeterminate or indeterminable.

In the recording of the performance in the file it is expected to sign a "multiple-performance" when more than one professional of the same studio contributes to the performance; reporting in this case the names of all professionals.

The article 38 of the Legislative Decree 231/2007 regulates which method to adopt to do so, providing that professionals can alternatively establish:

- an electronic file (AUI – *"Archivio Unico Informatico"*); or
- a paper file, but it must be numbered and initialed on each page; at the end of the last sheet it must be signed by the obligors and there must be the number of pages that make up it. The file must contain the identification data of the client while additional data and information are then stored in the file set up for each customer.

The recording activity must be completed within 30 days from:

- the conclusion of the transaction;
- the acceptance of the professional mandate;
- the possible subsequent acquisition of more information;
- the end of the professional performance.

The dossier of the customer must be established at the time the mandate is given to the professional or at the moment of performance of the operation, it must be constantly updated and presented at the request of the supervisory bodies. The dossier of the customer must be kept for ten years after the completion of the operation or the end of the ongoing professional relationship. The dossier of the customer can be held in the computer according to the current legislation. The documentation must be kept in folders – one for each customer. Documents in paper form must be scanned, while electronic documents may be stored without further operations. The files will be stored in PDF or similar formats and to give legal validity to the document it must be digitally signed. The dossier of customers, whether paper or electronic, must be stored in compliance with the rules on the protection and conservation of personal data, taking all the minimum security measures provided for by the Legislative Decree June 30th, 2003, n. 196.

SOME EXAMPLES OF SANCTIONS as regards professionals (Legislative Decree 231/2007)		
BREACH OF THE LAW		PENALTIES
Art. 55	Omitted, belated or incomplete registration	Fine from 2.600 to 13.000 euro (doubling of the penalty if the offence has been commited through fraudolent means)
BREACH OF THE LAW		ADMINISTRATIVE FINES
Art. 57	The customer files have not been created	Fine from 5.000 to 50.000 euro

Table 6 : Examples of sanctions

Source: www.studiozambon.it/Files/Le%20sanzioni%20antiriciclaggio.doc

d) Detection and reporting of suspicious transactions

The final aim of all the procedures adopted by the addressees of the Legislative Decree 231/2007 is to give them the instruments indispensable to report suspicious transactions (regulated at article 12 of the abovementioned Decree) to the FIU when deemed necessary.

There are some hypothesis for which the professional is exempted from this obligation that is:

- during the examination of the legal position of the customer;
- if he is defending or representing the same in a legal proceedings or in relation to this proceedings;
- if he is giving a professional advice on the possibility to institute or avoid a proceedings, whether such information is received or obtained before, during or after such proceedings.

It implies that the obligation of active collaboration specifically doesn't apply in the following cases:

- the activities of advice, assistance and representation related to the Tax Litigation;
- the assignments conferred by the Judicial Authorities when the professional is appointed as insolvency administrator;
- the resolution of disputes beside the conciliation bodies.

Theoretically the professional would have two ways to transmit his reports: by his own or through the professional association of reference. In fact Professional Associations identified by the Decree of the Ministry of Economy and Finance in cooperation with the Ministry of Justice may receive reports of suspicious transactions by their members - in this case, the report should be sent to the FIU without the name of the reporting subject. Nevertheless this transmission way is subject to the existence of a technical protocol between the Professional Associations and the FIU: therefore, until the signing of the Protocol, this method can't be used.

That's why currently the only functioning way to transmit reports is by using directly the software INFOSTAT; indeed since 2011 reports may be sent only electronically.

Furthermore inside the studio it should be arranged a sort of internal report system. The employees or collaborators who find any significant anomaly should communicate it to the professional by writing. Anytime the professional receives a written notice about "suspicious transactions", accompanied by the copy documentation, he should confirm the receipt of the notification and remind to the sender the obligation to not disclose to unauthorized people reporting information and, in particular, to not warn the customer.

The documents of examinations made and of reports transmitted should be stored in a file protected by a password.

SOME EXAMPLES OF SANCTIONS as regards professionals (Legislative Decree 231/2007)		
BREACH OF THE LAW		PENALTIES
Art. 55	Breach of the prohibition of communicating any information to the client or third parties about the suspicious transaction reports transmitted	Imprisonnment from 6 months to 1 year and a fine from 5.000 to 50.000 euro
BREACH OF THE LAW		ADMINISTRATIVE FINES
Art. 57	Suspicious transaction reports have not been transmitted although it was necessary	Fine from 1% to 40% of the amount of the transaction which has not beeen reported
Art. 57	Breach of informative obligations towards the FIU	Fine from 5.000 to 50.000 euro

Table 7 : Examples of sanctions

Source: www.studiozambon.it/Files/Le%20sanzioni%20antiriciclaggio.doc

e) Communication of breaches in rules regarding the use of cash

The prohibitions provided by the art.49 of the Legislative Decree 231/2007 are as follows:

- It is forbidden to transfer cash; bearer postal or bank passbook; bearer securities in euro or in foreign currency, made by any way between different subjects, when the total value being transferred is higher or equal to 3.000 euro. The transfer is also prohibited when it is carried out with multiple payments individually below the threshold that appear artificially fractioned. The transfer may, however, be performed by means of banks, the *"Poste italiane Spa"*, Electronic Money Institutions (EMI) and payment institutions.
- All the bank drafts and the bank or giro cheques whose value is higher or equal to 3.000 euro must indicate the name or the business name of the beneficiary and the clause of non-transferability. The bank and postal checks issued to the order of the drawer (checks "to myself") may be endorsed to cash it only to a bank or the "*Poste Italiane SpA"*, regardless of the amount.

- The balance of bearer bank or postal passbooks must be lower than 3.000 euro. In case of transfer of bearer passbooks, regardless of the balance, the transferor is required to notify, within 30 days, to the issuing bank, the full name of the transferee, the date of the transfer and the acceptance of the transferee.

The threshold of 3.000 euro has been applicable since 1st January 2016, while the previous threshold was equal to 1.000 euro.

Professionals who, during the performance of their activities, become aware of breaches of the rules relating to the limitations in the use of cash and the other offenses listed in art. 49 and Art. 50 of Legislative Decree 231/2007, shall report them within thirty days to the Ministry of Economy and Finance by means of a classical certified mail or an electronic certified mail (PEC).

If the transaction within which the breach has been committed has already been the object of a suspicious transaction report transmitted by the professional, he isn't bound to make further communications.

Particular attention should be given to the so-called fractionated payments, whose total amount is higher than the legal threshold. If the abovementioned breaches are found out by the employees of the studio, the professional must be given a communication by writing with all the documentation attached within 12 hours.

Moreover the professional has some duties of communication towards the client. At the beginning of the professional relationship and then periodically the customer must be informed both of the prohibitions imposed by the law and of the professionals' disclosure obligations. It should be better to obtain a statement of facts by writing by the customer.

If the professional doesn't comply with the obligation of giving and making aware the client about the privacy policy it's provided a fine from 3.000 euro to 18.000 euro. The sanction may be increased of 2/3 from 5.000 to 30.000 euro if data are sensitive; it may be tripled according to the economic situation of the transgressor.

The computer system may be integrated as desired to comply with this obligations in a faster and more standardized way.

SOME EXAMPLES OF SANCTIONS as regards professionals (Legislative Decree 231/2007)		
BREACH OF THE LAW		ADMINISTRATIVE FINES
Art. 57	No compliance with the obligation of communication to MEF of breaches in rules regarding the use of cash and bearer stocks	Fine from 3% to 30% of the amount of the transaction or balance of the passbook or account

Table 8 : Examples of sanctions

Source: www.studiozambon.it/Files/Le%20sanzioni%20antiriciclaggio.doc

f) Internal control system and training activity

The article 18 and 19 of the Legislative Decree 231/2007 concerns the obligation of exerting an ongoing constant control. In these perspective the elements to monitor are many; however the professional should watch at least the following:

- the identification data;
- the business activity;
- the geographical area of residence or registered office of the client with a focus on tax havens;
- the beneficial owner;
- the geographical area of residence or registered office of the main counterparts;
- the type and way of performance required in the course of the relationship;
- the presence of one or more indicators of anomalies;
- the frequency of cash transactions, although not in violation of the limits of Article 49 and, in particular, withdrawal or payment in cash with financial institutions for an amount equal to or greater than 15.000 euro;
- the splitting of transactions;
- the frequency with which it's asked for the performance;
- the recurrence, historicity or cyclicality of operations;
- the behavior held on the occasion of carrying out of performances required during the relationship.

If necessary, the professional should

- check the source and destination of the money used;
- make a comparison of the overall picture of the customer with the up to date strategies and practices known, used for the implementation of money laundering and terrorist financing (periodically disclosed by the relevant authorities);
- make a comparison with the patterns of abnormal behavior issued by the FIU.

Finally, the internal training is functional to permit an ongoing control activity if the following activities are accomplished:

- the adoption of internal training programs;
- the examination of the outcome of the evaluation reports;
- the study of the updated information about the practices of money launderers and terrorist financers provided by FIU, DIA, GdF;
- the constant updating about the evolution of legislation.

In the studios with a larger and more complex organizational structure, training can be developed with reference to specific areas.

Training aims may be achieved also through specific external courses. Training activities must be documented by preparing and filling the relevant Training Plan, in which requests to participate to courses are indicated, in the presence of well-defined requirements. The actions of periodic further training (eg. meetings) are properly verbalized, with evidence of the identity of the participants. The minutes of meetings are then stored in chronological order.

CHAPTER 6: USEFUL INDICATIONS FOR THE ADDRESSEES OF REPORTING OBLIGATIONS

1. Recommendations and indicators

One first form of guide in the anti-money laundering action may be found in the "Forty Recommendations" written by the FATF-GAFI. They are global standards which have been internationally endorsed and which aim at helping countries to successfully prevent the illicit use of their financial system, by increasing transparency and by implementing best practices.
However from the point of view of the addressees of reporting obligations the anomalies indicators and the models and patterns of anomalous behaviors are the most helpful instruments provided by the FIU for the identification of suspicious transactions. The indicators of anomalies are a list of examples of elements and conducts which potentially may characterize money laundering or terrorism financing behaviors. The FIU formulates and proposes the anomalies indicators and then they are issued by different authorities (according to the category to which the subjects addressed belong): the Bank of Italy for the financial intermediaries and entities; the Ministry of Justice for professionals (after consulting the Professional Associations); the Ministry of the Interior for the public authorities and for other non financial subjects. They reduce the operators' uncertainty in their assessment activity related to anti-money laundering obligations by giving some objective parameters to rely on. However these latter have not to be intended as thorough or imperative. The presence of one or more elements identifiable as indicators of anomalies isn't sufficient to give a reasonable assurance of the existence of an illegal conduct and vice versa, despite of the absence of clues of this kind, it may be evaluated as necessary to report the case. In fact this is the reason why reports are not automatically transmitted to the FIU. The professional judgment on all the information available isn't to be set aside. Although it isn't possible to list all the situations which may give rise to money laundering or terrorism financing the indicators play an important role in helping the concerned subjects to comply with AML requirements, reducing discretional and subjective assessments. The models and patterns are drafted and issued directly by the FIU. They consist of examples of recurrent cases detected and analyzed on the basis of a deep financial experience and with the cooperation of investigative authorities. They help addressees to comply with their active collaboration obligations and they give a feedback of the reports transmitted.

2. *"Quaderni dell'antiriciclaggio"*: main cases

As aforesaid, since a huge number of subjects are required by law to report any suspicious transaction which might be connected to money laundering activities, it's more and more relevant to know which elements to focus on.

To this purpose it could be useful to make reference to the series of *"Quaderni dell'antiriciclaggio"*[41] written by the Italian Financial Information Unit, in particular as concerns the part which shows the analysis and studies done.

In this section published in April 2015 it's dealt with main real cases dividing them into recurrent and emerging ones.

RECURRENT CASES:

I. Suspicious cash transfers between entrepreneurs

The first case presented deals with the attempt made by two subjects to circumvent the rules which limit the cash transfer between private individuals. Concretely in the example analyzed the facts observable were the following:

- frequent cash deposits were made to a building contractor's current account;
- simultaneously, at the same branch of a bank, cash withdrawals for the same amount of money were made from the current accounts of two companies;
- the abovementioned two companies apparently had no link with the aforementioned entrepreneur.

Making some controls it was found that the two companies operating in the sector of rental of machineries for the building sector were in a state of financial distress and that its administrator cashed cheques from the building contractor. Moreover the aforesaid cash withdrawals and deposits were ordered in the space of few minutes at the same bank counter.

It was thus discovered that these operations were linked to each other because they were put in place in order to repay the liquidity advance made by the entrepreneur to the two companies which were in financial difficulty. Thus it's clear that under this conduct phenomena of usury are probably concealed.

[41] https://uif.bancaditalia.it/pubblicazioni/quaderni/2015/quaderni-analisi-studi-2015-2/quaderno-antiriciclaggio-2-2015.pdf
25/01/2016

II. Use of companies incorporated abroad to hide the beneficial ownership of an asset

Natural people often exploit companies - frequently incorporated in foreign countries - as intermediation and screen in order to hide the actual beneficial ownership.

In detail, companies particularly suitable for this purpose are Securitization Special Purpose Entities and companies providing life-insurance especially if they offer unit-linked policies. In unit-linked insurance policies the insurance benefits are expressed as “parts” or “shares” of the underlying, These polices permit to have a regime similar to the trust one. Moreover policies may not be sequestrated or distrained.

Practically it was observed that a subject had subscribed a policy of this kind with an insurance company which bought (using the money just received) shares of a fund managed by an asset management company and reserved to professional investors. The yield of the policy subscribed depended entirely on the trend of the underlying, that is the shares of the funds.

At the same way two other subjects had subscribed stocks of a SSPE, which, through this financing, bought shares of the aforementioned fund managed by an asset management company.

It’s evident that in both cases the formal owner of the shares of funds were the companies but they were simple intermediaries and the actual beneficial owners were the natural individuals.

In this way these latter managed to buy these assets even without having the required requisites.

A situation like this one has to be carefully monitored because it could serve as a means to launder money since it allows to conceal the beneficial ownership

III. Operation of "buy gold" connected to buying pawn tickets

Also in this case the main result of the entire operation was to conceal the beneficial ownership; this fact is very dangerous in a anti-money laundering view. The instruments used in this case to attain this purpose were pawn tickets which are a particular kind of bearer securities.

In the case described, an individual company, operating in the cash-for gold stores field, withdrew huge amounts of money by cash from its own account and used money not only for the purchase of second-hand jewels but also to redeem pawn tickets on jewels policies registered in third parties name (probably clients of the store). It was clear that the objects of the policies were then sold to another company which operated in the field of the wholesale of ferrous material and was a professional trader in gold. In this way they speculated on the spread of the price of gold in violation of penal laws.

IV. Overinvoicing in the field of ferrous metals

Through an intense chain of financial flows among several companies operating in the field of ferrous metals, made possible by the technique of over-invoicing, the only non-fictitious company (ALFA) succeeded in realizing illicit tax savings.

The dynamics observed:

- three individual firms owned by three different entrepreneurs (A, B, C).
- the firm owned by C makes commercial bank transfers to the firm owned by B which makes at its turn bank transfers to the firm owned by A. After this steps subject A withdraws from the current account of his firm money in form of cash. In doing this he was accompanied by the subject C.

The investigation started from this anomalous withdrawals of conspicuous amounts of money probably put in place by the subject A to return to the subject C the funds arrived to A's firm through the above showed passages.

Analyzing more in detail the situation it was discovered that the current account of C's firm received commercial bank transfer from the part of two companies (GAMMA, BETA) operating in the sector of ferrous metals. GAMMA and BETA received transfers from the above mentioned ALFA, a company operating in the same sector and penally accused of false invoicing in the past.

In the light of the fact that at the entering of a new shareholder (probably a nominee seen its profile which was not consistent with the activity performed) in GAMMA, sales increased of 50 times, it was concluded that GAMMA and BETA were "shield companies" which over-invoiced.

Moreover it was seen that the same was done by BETA in the sector of advertising and communication and that also subject C repeated its actions in an east European country where he was shareholder of a company (this information was acquired thanks to a reciprocal dialogue with the FIU of that country).

V. Return of funds from abroad through cash withdrawals by credit cards

It emerged that three subjects (A, B, C), belonging to the same criminal organization laundered money coming from frauds related to over-invoicing. Subject A – who had already been involved in this kind of crime in the past - was the only shareholder of an Italian and of a European company. Collaborating with the foreign FIU it was observed that the italian company paid the European one for probably non-existing performances. Subject A regained possession of these funds partly through cash withdrawals from the European company's accounts in the foreign country in question and partly through the two nominee in Italy. These latter were holder of foreign credit cards that they used only for making systematic daily

withdrawals of money for a total amount of 750.000 euro. They raised suspects on financial intermediaries which transmitted reports to the FIU because these withdrawals were made in a little space of time on ATMs which were very close as position.

VI. Use of prepaid cards for possible frauds in the invoicing activity

Another similar over-invoicing scheme has been detected because of excessive and recurrent withdrawals made by a building contractor through his prepaid cards. He justified this conduct sustaining that they were put in place in order to pay emoluments to foreign subordinates who didn't hold current accounts. Although this explanation was not convincing because of the too conspicuous sums of money. In fact he withdrew on average 1500 euro per day for a total amount of 200.000 euro. Moreover it was suspicious that the prepaid card was credited for the sum to be withdrawn with money belonging to the building firm where the buiding contractor was the majority shareholder and the sole director. Furthermore the current account of this firm was credited through bank transfers by three companies operating in related sectors. These bank transfer were made as payments of invoices but the amounts paid were exactly equal to the sum credited on the prepaid card hold by the entrepreneur. It's quite logical that the three companies acted as "shield companies".

VII. Carousel fraud in the business of IT products

In the transactions put in place by the members of a same family – grandmother, father and two sons - it was recognized a carousel fraud scheme. The father was the legal representative of a series of companies operating in the sector of the wholesale of IT products, which were used as mere shield companies. In particular the accounts of one of these was credited by commercial cheques and cash deposits of high amount of money. As financial outflows from the accounts there were only withdrawals of cash and bank transfers relative to payment of foreign invoices but there was no consumption expenses, bank charges and so on. That's why it was concluded that they were fictitious companies.

The same thing had been done with the establishment of other companies whose accounts were opened and closed in about one year. The companies really bought and sold their products to companies which may enjoy the undue tax saving of the supplier and resell the goods at a price much lower than competitors.

In another situation the grandmother deposited big amounts of cash to the personal account of the grandson and then that amount was used by himself to make a bank transfer to a real estate company - referable to him - used by this latter for the purchase of a real estate asset.

The proceeds of the tax evasion were laundered by making several and fractioned deposits of cash, subscription of funds and subsequent issues of bank drafts. They were then destined to the accounts of real estate companies referable to the members of the family. Some of the

family members resulted to have already been involved in judicial investigation about the organized crime.

AML was born to avoid the use in the legal circuits of money deriving from illicit activities; it has become in Italy an important instruments of fiscal control to counter fiscal evasion Illegal tax savings are used to generate funds useful to help other criminal activities.

EMERGING CASES:

I. Suspicious transactions of a non-profit organization

This case demonstrates how non-profit organizations have recently become particularly suitable for criminal purposes.

Observed chronologically subsequent facts:

- 10,5 millions euro from other accounts hold by the company and 6 millions euro in the form of public grants and private donations were credited to an Italian non-profit organization's account;
- the non-profit organization transferred 1,2 millions euro on a foreign account in another European country (formally to open a new branch in that country) and 5,1 millions euro to a company (BETA) operating in the advertising and marketing sector for non-profit organizations;
- the company operating in the advertising and marketing sector for non-profit organizations transferred 5 millions to a company operating in the same sector in a tax haven country and 650.000 euro to the current account of a natural person who received 40.000 euro by the abovementioned company operating in a black list country.

Once it's said that the natural person was actually both the founding member of the non-profit organization and the beneficial owner of BETA, it results evident that these complex financial flows had been arranged in order to move the funds received by the non-profit organization to the personal accounts of its shareholders using screen companies operating in the field of advertising and marketing. Other circumstantial evidences are given by the following facts:

- the sums paid from ALFA to BETA constituted one third of the revenues of BETA and the percentages of costs of ALFA deriving from advertising and marketing activities were much higher than those sustained by other non-profit organizations.
- 40.000 euro transferred from GAMMA to the beneficial owner of BETA were part of a transfer of a total amount of 800.000 euro made by GAMMA to the shareholders of BETA (formally to acquire shares of BETA)

II. Misuse of Trusts

The owner of a company operating in the renewable energy sector and at the same time majority shareholder of a company decided to create a trust formally in favor of his daughters. It's to point out that both companies were in financial disease. Although, the fact that he was actually simultaneously settler, trustee and beneficiary of this trust and considered the financial flows among his companies and the trust itself, it appeared clear that his attempt was to subtract company assets to creditors.

In fact in few time one company was liquidated and the other one went bankrupt.

The financial flows observed were the following:

- 530.000 euro from the company operating in the renewable energy sector to the trust's account;
- 250.000 euro from company operating in the renewable energy sector (liquidated) to its majority shareholder;
- 60.000 euro from this latter natural person to the trust;

Finally the trust uses 500.000 euro to buy real estate assets.

III. Proceeds from the sale of business units between cooperative companies with the possible purpose of tax evasion

In this case through the subsequent constitution and transfer of business units the purpose attained was that the capital gain deriving from the sale was taxed in a European country with fiscal laws more favorable than the Italian ones.

More in detail the steps detected were the following:

- three cooperative companies operating in the health sector established a branch each, providing capital, whose book value was equal to 450.000 euro;
- in few days these business units were sold to another company established in a European country with more favorable tax law. The agreed consideration was equal to 3,3 million euro (too low relative to its actual value);
- after only two weeks the three initial branches were sold by the precedent acquirer to another cooperative company operating in the health sector and this time the consideration paid was much higher: 14 million euro;
- money received by the first acquirer was used in to pay the 3,3 millions euro and for a large part (8,3 million euro) to finance a consultancy company.

The illicit purpose behind these transactions is clear considering the fact that in the first acquisition both the acquirer and the acquiree made reference to the same centre of interest: the majority shareholder of the acquirer was at the same time the administrator of the initial

three cooperative companies. Actually he was also the majority shareholder of the consultancy company financed. Cooperative companies structure are often exploited in order to screen the beneficial ownership of complex financial transactions thanks to their typical fragmentation of capital.

However deeper controls have been triggered from a conspicuous bank transfer (1,3 millions) made by the last acquirer to pay the consideration due. The exchange of information with the other European country FIU has been decisive.

IV. Operations intended to possible corruption purposes

In this case the relevant financial flows were:

- 3,4 million euro as financing from the local body of reference to the political group;
- checks in round figures for a total of 100.000 euro from the political group to a political man belonging to the group;
- bank checks and drafts for 40.000 euro from a consultant of the local body and from a company operating in the business consultancy sector to the politically exposed person;
- bank transfers of 230.000 euro as "earnest money" for an hypothetical purchase of a real estate asset;
- 70.000 euro from the political man as "termination of the preliminary contract.

The conclusion is that it seems that the legal instrument of the "earnest payment" had been used to dissimulate an act of corruption seen that the company which paid the deposit had submitted a controversial project to the local body.

V. Use of the lease contract of branches for illicit purposes

In this case it was observed that subjects belonging to a criminal organization used the lease contract of business branches to hide the real origin of their proceeds.

A catering company (A) entered into a lease of a business branch with another company (B) operating in the same sector, but the rents paid through bank transfers each month were much higher than the agreed sum.

In the same period a third company (C), operating in the same sector, performed large cash deposit although it appeared inactive because of renovation works.

The two owners of C (50% each one) were respectively the sole owner and administrator of A and one of the two owners of B (50% each one).

Moreover the three natural individuals were under a judicial investigation for their involvement in mafia-style organized crime.

VI. Transfer of funds abroad in the form of payment of settlement agreements

Facts observed:

- a European consultancy company (A) had a 13 million euro commercial credit towards an Italian company (B) operating internationally in the food and wine sector;
- the credit was transferred many times to companies established in different countries;
- the credit was acquired by a financial company (C) operating in a European tax haven;
- A transferred 2 millions to C as first payment of the settlement agreement between the two parties after having received a 3 million bond issue from an Italian trust company; these 3 millions derived from bank transfers made by a North America company;
- the beneficial owner of the trust company and of the company A was the same person.

The long period of time elapsed between the origin of the commercial credit and the settlement agreement, the several changes of ownership of the credit between companies of different States and the unusual conditions agreed led to the hypothesis that this agreement was only functional to the outflow of funds abroad.

VII. Financial conducts preordained to fraudulent bankruptcy

The accounts of a company in a state of financial distress were credited by bank transfers arranged by a single counterparty by way of commercial payments. These sums were systematically used to issue bank drafts in favor of the company itself and deposited on its account only in the presence of the need to make payments. Among these, there were bank transfers to two subsidiaries of new constitution formally in order to finance them. These funds were then withdrawn or transferred abroad to a foreign company operating in a non-related sector.

These transactions seem to have been arranged to move funds from a company with a high default risk in order to make more difficult for creditors recover their money. This conduct presents the features to be considered a fraudulent bankruptcy crime.

3. Anomalies emerging from the analysis of suspicious transactions reports

From the cases described in the precedent paragraph it may be inferred that it’s necessary to be particularly careful when precise elements or situations occur.

From a subjective point of view it’s necessary to pay more attention to those subjects who have been under investigation or prosecuted; who are directly or indirectly connected with politically exposed people; who are in situation of economic and financial distress and/or who resides or work with counterparts in countries or territories at risk. It’s an error to undervalue cases in which transactions of significant amount are arranged with unusual ways, in the

absence of plausible reasons especially when these transactions are not consistent with the activity exercised or are economically or financially detrimental. Another element of suspicion is present if the customer renounces to the transaction after having been inquired on this point.

As regards the financial flows the following factors may indicate a money laundering attempt:

- repeated and unjustified use, deposit or withdrawal of cash for amounts of particular significance or involving the use of high-denomination notes;
- simultaneous cash withdrawals and deposits of the same amount of money made in the same branch by two different people who however appear to be connected considering people's identity and when, the way in which and the amount of the operation (this behavior may conceal cash transfesr between the parties)
- use of payment or credit cards for cash withdrawals especially if carried out in strict chronological sequence, using multiple cards and at ATM which are geographically close;
- breaking up of transactions especially if aimed at covering up the connection with other transactions;

In general it's potentially worrying whenever complex instruments are used in an irrational way especially if they are suitable to disguise the actual beneficial ownership. Some examples on this point may be:

- financial transactions of a significant amount made through the interposition of a non-resident intermediary (as Securitization Special Purpose Entities or insurance companies) designed to shield the beneficial owner of the investments;
- repeated presentation of bills of pledge by recurrent subjects, different from the original contractor;
- use of legal instruments for the breach of contract (for instance the Earnest payment) to facilitate and legitimize the transfer of funds.

Finally there are empirical evidences that addresses of reporting obligations have to be on the alert, when some particular kind of companies are used such as non-profit organizations, cooperative companies, trusts (in particular if there is coincidence between the settlor and the trustee, the guardian and/or the beneficiary especially if the purpose of the trust is not clearly understandable or not pursued by the trustee).

However as concerns companies in general you have warning signals if:

- they operate in the following business segments: cleaning and maintenance, consulting and advertising, ferrous materials, construction, trucking; trade in cars or consumer goods (such as computers and mobile phones, as well as in food);

- they operate in economic sectors characterized by the provision of substantial public funds (health, waste disposal, renewable energy);
- they lack of transactions in payment of expenses which are typical for business activities such as charges for supplies, services and utilities (electricity, gas, water), taxes (especially payments of VAT), emoluments and salaries to employees, social security, or such charges of species are insignificant in relation to the volumes handled.
- they lack of real operational structures, especially whether they're newly established;
- they have limited capital resources or otherwise inconsistent with the turnover evidenced by their Financial Statements.
- they make repeated inflows of transfers related to invoices and / or payments of checks, especially in round numbers to a single or a limited number of companies counterparts;
- they present a persistent unusual substantial balancing among the items on credit and those in debt.
- they present inconsistencies in the numbering or in the amounts of invoices or elements which make suppose the counterfeit of the same.
- they are start-ups sold shortly after their formation or whose legal representatives, considering their subjective profile (age, lack of knowledge normally expected for the type of activity) appear to play the role of mere nominees;
- they present a sudden unreasonable increase in volumes traded;
- they transfer sums or register assets in favor of foreign companies, especially if incorporated in countries at risk, when the companies are referable directly or indirectly to the same people who arrange the transfer;
- they purchase or sale of goods and services at prices clearly higher / lower compared to current market values performed with subjects belonging to the same group, incorporated abroad, especially in countries at risk;
- they repeat high value transactions in time with start-ups which have a corporate purpose which is too general or incompatible with the activities of the customer.
- they sale commercial credits, especially if intra-group, with no financial or business relationship below or based on relationships that are inconsistent with the activities carried out by stakeholders.
- they are companies in serious economic and financial distress which perform contextual operations (debit and credit) aimed at maintaining a minimum balance on the corporate current account;
- they repeatedly issue bank drafts in the company's own favor and deposit this money on the company account only when necessary;

- they are in financial difficulty but they establish and finance subsidiaries active in the same sector;
- they use the availability of the subsidiaries of new constitution, via operations difficult to trace and apparently not consistent with the economic activity exercised.

Even the presence of transactions with tax havens or the fact that foreign companies (especially when holdings) are indirectly controlled by people resident in Italy or administered by management bodies mainly composed of people resident in Italy are elements which may determine suspects.

In the report making part of *"Quaderni dell'antiriciclaggio – analisi e studi"*[42] related to offshore financial centres published in August 2015 there is a massive analysis of transmitted suspicious transactions related to tax havens useful to provide a basis to identify the most common anomalous financial conducts. As authors underlined in their work the most recurring characteristics are linked to the financial profile; the sector of economic activity and the features of transactions reported.

Under the financial profile 1/3 of reports examined referred to entrepreneurs, 10% to professionals and 10% to unemployed people (people who performed an undeclared activity or high-income holders of accounts on which operations referable to third people are made). It's to point out the fact that agents and financial advisors often put in place anomalous transactions mainly by cash or checks. Moreover many reports trigger from the fact that people are involved in criminal investigations; generally for the following crimes: criminal association, usury, bribery, fraudulent bankruptcy.

As regards the economic sector the most frequent ones are: business consulting, tourism, services, wholesale trade of computers or computers equipment, processing and recycling of metals, trade of cars, real estate activities, trade of meat and treatment of leather. However also some emerging sectors have been identified: renewable energy, waste disposal, sports association and non-profit organizations. Other risky activities to monitor are gambling (both at casinos and on-line) and that one of jewellers and individual firms which buy gold, usually by cash, to resell it in the rough abroad.

Finally with reference to the characteristics of transactions the remarkable practices are the misuse of:

- professional figures as intermediaries;
- companies as screen (for example trusts),
- the excessive use cash,

[42] http://uif.bancaditalia.it/pubblicazioni/quaderni/2015/quaderni-analisi-studi-3/paradisi-fiscali.pdf 25/01/2016

- insurance policies not as means of protection against risk but as instruments suitable to transfer wealth
- prepaid cards.

Other elements of suspicion which make trigger reports are: the over-invoicing, the reimbursement of shareholders, the transfer of capital shares and the fictitious increase of company's capital and transactions close in time to bankruptcy proceedings or voluntary liquidation.

CHAPTER 7: EMPIRICAL ANALYSIS

1. Aims of the survey

One of the implicit objectives of the theoretical dissertation elaborated in the first part of this graduation thesis was to clarify the nature of money laundering. It should distinctly emerge the extreme complexity of the phenomenon which occurs on a world scale and which may take many different forms exploiting sophisticated financial instruments and opaque corporate structures. Once again it's necessary to stress the fact that the techniques adopted evolve during the time in order to make the crime difficult to detect by the relevant authorities.

This is the background in which any academic study on this matter has to move. For the purpose of this empirical work it has been decided to focus on the Italian context not only because it was logic since it is the environment in which we operate and may act but also because it provides a framework which tends to favor the occurrence of this offence and it reveals many new aspects that haven't been deeply inquired as they merit. In particular it has been decided to investigate the role that the infiltration in the economic and commercial sector plays in this process, aiming at identifying the main characteristics which distinguish criminal from legal companies.

More in detail the objective pursued is to provide relevant authorities and especially the addressees of more and more stringent AML obligations with the means to timely detect emerging illegal conducts implemented with the purpose of laundering money through the establishment, acquisition and/or management of corporate structures.

Probably the results of this research will be considerably useful for chartered accountants. In fact at the opposite of banks which report also not significant transactions for obvious prudential reasons (so called "Crying wolf" attitude), they constitute one of the categories which reports the less to the FIU and that at the same time works in close touch with entrepreneurs and companies.

It is to be hoped that both the number of reports sent to the FIU and their quality will increase in the future. In fact the FIU succeeded in analyzing a high number of reports but a notable percentage of them are judged groundless (in the first semester of 2015 more than 20% of the reports analyzed have been dismissed[43]). Furthermore the timeliness is essential to detect money laundering and trace back the origin of funds.

[43] http://uif.bancaditalia.it/pubblicazioni/quaderni/2015/quaderni-1-2015/Quaderno-antiriciclaggio-I-sem-2015.pdf page 4 table a 1.4

Moreover, since this analysis is conducted on the basis of Financial Statements data, it is particularly suitable for those professional figures which are accustomed to deal with accounting items and which are able to read the Balance Sheet, the Income Statement and the ratios, catching also possible anomalous elements. Assuming that chartered accountants don't fulfill their active collaboration obligation in a sufficiently satisfying way because they're not completely trained and aware on what clues and indicators pain attention. The results of this statistical analysis may help them in recognizing faster criminal companies and their involvement in money laundering practices which may seriously damage the market and the economic competition.

2. Data acquisition process

Before describing the sample of data acquired, some preliminary remarks are necessary. In Italy the overwhelming majority of illicit proceeds which need to be laundered are generated by the organized crime, with the only exception of fiscal evasion. This was verified also in the National Risk Assessment conducted by the Financial Security Committee[44], already quoted in this thesis. That's why we could define criminal companies, in a however simplified way, as those companies in which there has been a Mafia infiltration phenomenon.

This is also the reason why it has been decided to focus the attention on companies established in the North and in the Centre of Italy. Better explained, since Mafia wield an extremely strong and historical influence in the South, if we had decided to study criminal companies located in this area it would have been almost impossible to identify with a reasonable assurance a control sample with which to compare them. Moreover even if it has been seen that the organized crime strongly operates in the North of Italy, its presence is more recent there.

Then it has been chosen to limit the statistical analysis to the data acquired for three of the biggest North Italian regions: *Lombardia*, *Triveneto* (which of course includes *Veneto*, *Friuli-Venezia Giulia* and *Trentino-Alto Adige)* and *Piemonte*. It was used data of criminal companies operating in these territories and of legal companies which made up the control sample. Criminal companies have been matched with comparable companies which are similar to them as regards their size, geographical location, considered period of time and sector of activity (according to their ATECO Code).

[44] http://www.mef.gov.it/inevidenza/article_0059.html
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The total number of observations at disposal is 11.037 of which 1.519 refers to criminal companies and 9.518 to legal ones. In the following tables it's simply reported the number of available observations and the number of companies analyzed.

Companies	Number of observations	%
CRIMINAL	1.519	13,76%
NON-CRIMINAL	9.518	86,24%
Total	**11.037**	**100%**

Table 9: Number of observations available

Companies	Number of companies	%
CRIMINAL	454	17,09%
NON-CRIMINAL	2.203	82,91%
Total	**2.657**	**100%**

Table 10: Number of companies analyzed

Two restrictions have been made on the data used with due careful consideration. On the one hand it has been decided to consider only the Financial Statements relative to years of activity equal or subsequent to 2002 and on the other hand partnerships and individual firms have been deliberately excluded from this research. The 2002 has been judged as an appropriate watershed year because it is enough remote in time (it allows to collect up to more than ten years of observations for a company - given however the length of the period of infiltration at which it has been subject) and it is the year in which the unified currency for the Eurozone was introduced in Italy. Leaving the previous years out allows to avoid to convert values originally expressed in lira into euro to make them comparable.

Instead the choice to concentrate on corporations (in Italian called "Società di Capitali") was suggested both by the nature of the research and by opportunity reasons. In fact the aim of the analysis is to investigate criminal companies whose dimension is big enough (on average corporations have higher level of Net Sales, Total Assets and Equity than partnerships and individual firms) to use their visibility to influence the legal system and exploit it for their

illegal trades and furthermore in this way data are more uniform and their collection is much easier for those companies which are obliged to file the Financial Statements to the Companies Registry under the article 2.423 and subsequent ones of the Italian Civil Code.
It should be pointed out that in certain cases the Financial Statements relative to years subsequent to 2002 in which the company was subject to the organized crime penetration have not been reported in our observations basically for two reasons: sometimes they were almost illegible and/or drafted in a different form from that one that is laid by the Italian law in the Civil Code and other times the administrators omitted to file them to the Companies Registry. This occurred in a limited number of cases but it may be retained as a sort of further confirmation that the company was managed in a shady way. Indeed, avoiding to show and make public this documents, they can hide data about their management and performance. By the way the punishment provided by law for this non-fulfillment is mild. First of all it isn't considered a penal offence and the administrative sanction amounts to a minimum of 137,33 euro and a maximum of 1.376,00 euro (art. 2.630 of the Civil Code). This sums are really low and in addition this fine is imposable when the Financial Statements have been approved but not filed. In the case of missed approval it isn't specified a punishment except the possibility for shareholders to ask for the winding-up of the company (art. 2.484 of the Civil Code).
Besides it's noteworthy the fact that even when the Financial Statements were available some items have been classified as missing because data were inconsistent, evidently wrong or not detailed. For example in the notes often there wasn't the division of debts between the financial and the operating components.
Yet the most emblematic incongruence found out during the gathering of data has been the fact that it wasn't rare for criminal companies to report in year *n* as Financial Statements of year *n-1* (for comparison purposes) a document whose numbers were partially different from those one published the previous year (year *n-1*). This is a clear warning bell of an ambiguous activity.

3. Assumptions at the root of the empirical analysis

The main object of this survey are criminal companies; so the first step in the present work was to decide which criterion to apply in order to determine whether a company is criminal or not. The rule used was the following: a company had to be deemed criminal when at least an administrator or a shareholder owning a capital share equal or higher to 25% was a Mafia member. Moreover, in order to include also those circumstances in which the criminal individual was neither a shareholder nor an administrator but wielded his power through the

interposition of mere nominees, they have been labeled as criminal also those companies traced back to be under the control of the subject and for which there has been the preventive sequestration of shares or assets related to the economic activity.

The beginning point was a series of 'preventive detention orders' ("*ordinanze di custodia cautelare*") issued against natural persons in Lombardia, Piemonte and Triveneto for the following crimes: Mafia-type association (art. 416 -bis of the Penal Code), money laundering (art. 648 -bis of the Penal Code) and the reinvestment of illicit proceeds (art. 648 -ter of the Penal Code). Then it has been searched and found the links with companies responding to the standard above explained. This has been possible by examining the "preventive detention orders" in which there were the full name, the place and date of birth. From this information it has been derived the Fiscal Code which has been inserted in Telemaco to find out in which commercial activity the subject was involved. Telemaco is an online database which allows to access to the documents filed to the relevant Chamber of Commerce by those companies which are registered in the Companies Registry.

Once having ascertained the role these individuals played inside the company, it has been taken for granted that the corporate structure was used to launder since they had the right to exert control on the management of the company.

The period of interest have been determined in the following way: the starting point coincides with the moment in which the criminal subject entered in the company as administrator or shareholder instead the last year considered is that one in which he exited if there has been a simultaneous turnover of all shareholders and members of the administrative corporate body or otherwise at the moment of issuing of the preventive detention order. After this activity of investigation the Financial Statements have been downloaded from AIDA (which stands for *"Analisi Informatizzata Delle Aziende"*) when possible or alternatively from Telemaco.

4. Sample description

Before making any inference on the data acquired, it's necessary to understand how the sample is composed. As seen, we have 11.037 observations available (among which 1.519 refer to criminal companies and 9.518 to those companies which may be considered legal with a reasonable assurance); while companies analyzed are 2.657: 454 are criminal and 2.203 are legal. This happens because for the majority of companies we have considered more than one Financial Statement.

Focusing on criminal companies which are the object of this research, this means that during the years reported the relative company was actually controlled by the organized crime and

that the relative Financial Statement was filed to the Registry of Companies. In a certain sense the number of observations per company is an approximation of the number of years of infiltration starting from 2002. The detail is reported in the following table.

CRIMINAL		
Number of FSs considered per company	**Number of Companies**	**%**
1	123	27,09%
2	73	16,08%
3	71	15,64%
4	63	13,88%
5	39	8,59%
6	38	8,37%
7	24	5,29%
8	14	3,08%
9	8	1,76%
10	1	0,22%
Total	**454**	**100%**

Table 11: Number of FSs considered per criminal company

As regards the region in which companies are established, it's evident that the absolute majority of them – more than one half - have their registered office in *Lombardia*. This isn't surprising seeing that it is famous for its level of industrialization. Moreover in an article[45] of Giovanni Santucci of 17th January 2013 it turns out that Milan has a "mafia presence index" equal to that one of zones with traditional criminal settlement as Foggia, Brindisi and Trapani and that if in many other realities the criminal infiltration is more pervasive, Milan is also the only province in which there is a simultaneous and meaningful rootedness of Cosa Nostra, 'Ndrangheta and Camorra. Furthermore Milan is still the third province in Italy for absolute number of confiscated companies.

[45] http://milano.corriere.it/notizie/cronaca/13_gennaio_17/mafia-lombardia-pil-guadagni-dieci-milioni-giorno-2113582263890.shtml
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REGION	CRIMINAL	
	Number of companies	%
LOMBARDIA	249	54,85%
TRIVENETO	117	25,77%
PIEMONTE	88	19,38%
Total	**454**	**100%**

Table 12: Number of criminal companies per region

In the same way as regards provinces the majority of criminal companies are located in the region capital, as shown in the following tables.

REGION	PROVINCE	CRIMINAL	
		Number of companies	%
LOMBARDIA	**Milano**	155	62,25%
	Monza e Brianza	32	12,85%
	Brescia	13	5,22%
	Como	11	4,42%
	Lecco	9	3,61%
	Bergamo	7	2,81%
	Pavia	6	2,41%
	Sondrio	5	2,01%
	Varese	4	1,61%
	Cremona	3	1,20%
	Lodi	2	0,80%
	Mantova	2	0,80%
Total		**249**	**100%**

Table 13: Number of companies for province in *Lombardia*

REGION	PROVINCE	CRIMINAL	
		Number of companies	%
TRIVENETO	**Venezia**	69	58,97%
	Padova	18	15,38%
	Treviso	8	6,84%
	Verona	5	4,27%
	Pordenone	5	4,27%
	Rovigo	4	3,42%
	Vicenza	3	2,56%
	Udine	3	2,56%
	Gorizia	1	0,85%
	Trento	1	0,85%
Total		**117**	**100%**

Table 14: Number of companies for province in *Triveneto*

REGION	PROVINCE	CRIMINAL	
		Number of companies	%
PIEMONTE	Torino	77	87,50%
	Novara	5	5,68%
	Alessandria	4	4,55%
	Cuneo	1	1,14%
	Vercelli	1	1,14%
Total		88	100%

Table 15: Number of companies for province in Piemonte

It's interesting to note that in the table number 1 the FSC evaluated Venezia and Milano as low risk provinces and Torino as a medium risk province using as parameter the quantity of payments made in cash; this permits to understand how too simple and rough criteria of judgment can't reflect such a complex reality.

It may be useful in the continuation of this analysis also to observe the dimension of criminal companies individuated. The most indicative measures with regard to this aspect are the following items of Income Statement and Balance Sheet: Total Production Value, Total Assets, Equity and Share Capital. As regards these claims it has been calculated for each company the average value during the period of infiltration because otherwise it would have been as giving more weight to the values of companies on which we have more observations since it's practically sure that the value of one year influences that one of the subsequent year.

Starting from considering the value of production some results are reported in the table at the following page:

Production Value (in euro)	CRIMINAL	
	Number of companies	%
>5 million	50	11,01%
>3 million & <=5 million	22	4,85%
>1 million & <=3 million	69	15,20%
>500.000 & <=1 million	70	15,42%
>300.000 & <=500.000	55	12,11%
>100.000 & <=300.000	72	15,86%
>0 & <=100.000	87	19,16%
=0	29	6,39%
Total	**454**	**100%**
MAX	307.406.200	
MIN	0	
MEAN	4.298.000	
SD	20.539.230	

Table 16: Number of companies for Value of Production level

By definition the Value of Production differs from the Net Sales because it includes in addition changes in inventories and work in progress, increases in assets under construction and other revenues. Since among criminal companies the majority operates in the business sector of construction (see table number 20), it is deemed a better measure in order to describe the size of companies, reducing the distortion.

First of all what draws the attention is that the companies with a production value higher than 1 million euro are nearly one third of the total (about 31%) and more than 10% even exceeds 5 million euro. So it's self-evident that the criminal organizations don't have power only on little and marginal companies but on the contrary they control companies which contribute considerably to generate the Italian Gross Domestic Product. It's to remember however that among these numbers a phenomenon of over-invoicing may be hidden.

Another about 30% it's represented by companies with medium levels of Production Value (between 300.000 euro and 1 million euro).

Finally the remaining part shows figures under 300.000 euro. Something has to be said about the 29 companies (about 6% of the total) - among these - that have Production Value levels equal to zero. The overwhelming majority of them makes part of the category of companies in liquidation so it isnt necessary to find a particular explanation why they have the Value of

Production equal to zero. However it may be interesting to note that the Mafia has the control also of companies in financial distress and that it doesn't try to improve their results even if it would have the means to do so.

Finally we can argue the fact that there is an extremely high volatility indicated by the standard deviation and by the difference between the minimum and the maximum value observed.

The following table which shows the results for criminal companies as regards the Total Assets value doesn't lead to different conclusions.

Total Assets (in euro)	CRIMINAL	
	Number of companies	%
>15 million	28	6,17%
>10 million & <=15 million	17	3,74%
>5 million & <=10 million	24	5,29%
>3 million & <=5 million	24	5,29%
>1 million & <=3 million	92	20,26%
>500.000 & <=1 million	62	13,66%
>300.000 & <=500.000	59	13,00%
>100.000 & <=300.000	79	17,40%
<=100.000	69	15,20%
Total	454	100,00%
MAX	762.577.200	
MIN	2.048	
MEAN	6.334.129	
SD	41.339.580	

Table 17: Number of companies for Total Assets level

Also for this Balance Sheet account the variance is extremely high. Still, there is a confirmation that companies controlled by the organized crime may be of huge dimensions. In deed ¼ of them has Total Assets value which is higher than 3 million euro; among these a notable 6% accounts for Total Assets value higher than 15.000 euro.

Nevertheless there is also 1/3 which has Total Assets lower than 100.000 euro. So the variability is manifest.

Now we can evaluate conjointly the next tables regarding Equity and Share Capital.

Equity (in euro)	CRIMINAL		Equity (in euro)	NON-CRIMINAL	
	Number of companies	%		Number of companies	%
>3 million	26	5,73%	**>3 million**	149	6,76%
>1 million & <=3 million	34	7,49%	**>1 million & <=3 million**	170	7,72%
>500.000 & <=1million	19	4,19%	**>500.000 & <=1million**	133	6,04%
>200.000 & <=500.000	37	8,15%	**>200.000 & <=500.000**	238	10,80%
>100.000 & <=200.000	36	7,93%	**>100.000 & <=200.000**	252	11,44%
>50.000 & <=100.000	48	10,57%	**>50.000 & <=100.000**	255	11,58%
>30.000 & <=50.000	44	9,69%	**>30.000 & <=50.000**	193	8,76%
>10.000 & <=30.000	78	17,18%	**>10.000 & <=30.000**	403	18,29%
>0 & <=10.000	47	10,35%	**>0 & <=10.000**	201	9,12%
<=0	85	18,72%	**<=0**	209	9,49%
Total	454	100%	**Total**	2203	100%
MAX	55.954.750		**MAX**	1.130.731.000	
MIN	-61.084.660		**MIN**	-6.222.853	
MEAN	750.920		**MEAN**	1.577.580	
SD	5.372.380		**SD**	24.741.260	

Table 18: Number of companies for Equity level (comparison between Criminal and Non-Criminal companies)

Bearing in mind what has been observed, in tables 16 and 17, looking at table 18 we may realize at first sight that these companies have low level of Equity. This is a common problem for Italian companies but it has sense to investigate if the same situation is present also for non criminal companies (table 18). Indeed it stands out the fact that, even if for non-criminal companies the standard deviation is higher, it is also true that the minimum and the maximum level of Equity are much higher than for criminal companies. Furthermore the percentages of non-criminal companies having Equity lower than zero is "only" about 9% while for non criminal companies is about the double (about 19%). The presence of a negative Equity is likely due to the fact that there has been losses in the precedent years that haven't been covered.

In the following table data regarding the Share Capital for non criminal companies are exposed. They confirm the situation of under-capitalization of these companies; in fact almost the 40% has a Share Capital equal or lower to 10.000 euro.

Share Capital (in euro)	**CRIMINAL**	
	Number of companies	**%**
>1 million	38	8,4%
>500.000 & <=1million	17	3,7%
>200.000 & <=500.000	17	3,7%
>100.000	11	2,4%
>50.000 &<=100.000	65	14,3%
>20.000 & <=50.000	48	10,6%
>10.000 & <=20.000	87	19,2%
>0 & <=10.000	171	37,7%
<=0	0	0,0%
Total	**454**	**100%**
MAX	34.938.090	
MIN	930	
MEAN	489.357	
SD	2.616	

Table 19: Number of companies for Share Capital level

The tables just shown simply tell where the criminal companies identified are located and which is their size. A more interesting information is represented by the division of companies according to the activity they do (making reference to their ATECO code), because it allows us to understand which industries are mostly influenced by the organized crime. From this starting point hypothesis about the reasons why a sector is chosen rather than one other may be done making reference to what it's already known about the phenomenon.
Obviously in this analysis we must consider the fact that individual firms and partnerships have been voluntarily excluded with the obvious consequence that in certain sectors the presence of Mafia is stronger than what appears from the next table. For example in our sample less than 3% of companies operates in the "Accommodation and Food Service Activities", although it is traditionally associated with money laundering operations. Indeed it

is interested by frequent payments in cash and it's quite impossible to uncover a phenomenon of over-invoicing since the number of clients is potentially very high and the number of meals actually sold is practically impossible to demonstrate. Nevertheless probably it's plausible that the majority of hotels, restaurants and similar activities included in the "section I" were constituted as individual firms or alternatively as partnerships. However it's useful to reassert that these economic entities aren't interesting for the purposes of this research since this latter aims at understanding why companies are used to launder money and whether they give to the organized crime a stronger control and a form of legitimization in the social context. That's why only corporations of a considerable size are included in the sample.

The same thing may be claimed as regards the "transportation and storage row" (almost 5%) in the table with however the necessary clarification that this may give the opportunity to expand the influence exerted at the geographical level and that it may be used also to store and/or transfer illicit goods.

SECTION	ATECO CODE	DESCRIPTION OF THE ATECO CODE	CRIMINAL	
			Number of companies	%
F	41-43	Construction	125	27,53%
L	68	Real Estate Activities	98	21,59%
G	45-47	Wholesale and Retail Trade; repair of motor vehicles and motorcycles	52	11,45%
C	10-33	Manufacturing Activities	39	8,59%
M	69-75	Professional, Scientific and Technical Activities	35	7,71%
H	49-53	Transportation and Storage	21	4,63%
N	77-82	Rental, Travel Agencies and Business Support Services	19	4,19%
E	36-39	Water Supply; Sewerage, Waste Management and Remediation Activities	20	4,41%
R	90-93	Arts, Sports, Entertainments and Recreation Activities	13	2,86%
I	55-56	Accommodation and Food Service Activities	12	2,64%
K	64-66	Financial and Insurance Activities	6	1,32%

.	**.**	**Others**	14	3,08%
A	**1-3**	**Agriculture, Forestry and Fishing**	4	0,88%
P	**85**	**Education**	3	0,66%
Q	**86-88**	**Human Health and Social Work Activities**	2	0,44%
D	**35**	**Electricity, Gas, Steam and Air Conditioning Supply**	2	0,44%
J	**58-63**	**Information and Communication Services**	1	0,22%
S	**94-96**	**Other Service Activities**	1	0,22%
O	**84**	**Public Administration and Defence; Compulsory Social Security**	1	0,22%
TOTAL			**454**	**100%**

Table 20: Number of criminal companies for ATECO code

The first datum in the table which attracts the attention is the fact that in the complex more than 1/2 of companies works in the field of "Construction" or of "Real Estate Activities". In particular more than 1/4 of criminal companies analyzed belongs to the business sector of "Construction". Probably one of the main reasons is the fact that in this way it's possible to wield influence on other companies subcontracting them some works. In parallel in this manner they have the possibility to submit a tender. This fact has some positive repercussions in a criminal perspective of acquisition of public funds. On the one hand they will award it by exploiting their power and by applying several forms of intimidations and on the other hand they may strengthen the control they have on the territory and on the political sphere thanks to the linkage with the public administration.

"Real Estate Activities" represent about the 20% of our sample and this is a result that we could expect since selling properties at fake prices is one of the ways historically used to justify the origin of sums thanks to the complicity of a third person – the alleged buyer (see page 28).

The "Wholesale and Retail Trade" and "Rental, Travel Agencies and Business Support Services" are clearly suitable to launder money for the fact that they're characterized by an elevated quantity of payments in cash and so they allow to give a legitimation to frequent cash deposits.

Almost 8% of companies perform "Professional, Scientific and Technical Activities" included in the definition of section M. To be more precise they refer to the ATECO code 70 and 71. This means that their activities are related to the "business administration and management consultancy" in the first case and to "architectural and engineering activities; technical testing and analysis".

The services performed are respectively supplied to companies in general and to entities operating in the real estate industry. So it's easy to imagine a link between these ones and the companies placed in the second top rank of the table. Consultancy service are particularly attracting to launder money since the price of the service is difficult to determine in an objective way.

Finally a short mention should be made as regards those items forming the residual category named "others". The percentages are low (less than 1% each) but they're significant since some of them are related to social or public sectors which are particularly important: "Education", "Public Administration and Defence; Compulsory Social Security", "Human Health and Social Work Activities". Actually the percentage of companies operating in these sectors is generally low with respect to the total number of companies operating; so it could be said that it's worrying that the Mafia entered these businesses

5. Descriptive statistics and T-test results

Statistically speaking, in order to make some evaluations on the impact of the fact of being or not criminal on the economical and financial performance of these companies, the first step has been to create a dummy function for this categorical variable. Then for each observation available it has been calculated those variables which better explain the profitability and the financial structure of the companies. After that the descriptive statistics for the ratios chosen have been computed for all the companies in the dataset previously created and then distinguishing between criminal and legal companies in order to have a first element of comparison. It's to point out the fact that all the variables have been winsorized at the five per cent in order to eliminate the effect of outliers. It has been used the command *wins*or in STATA (the statistical program used to analyze data). In fact "*winsor* takes the non-missing values of a variable *x* ordered and generates a new variable *y* identical to *x* except that the *h* highest and *h* lowest are replaced by the next value counting inwards from the extremes"[46]. The results are reported in the following tables:

[46] http://www.haghish.com/statistics/stata-blog/stata-programming/download/winsor.html 25/01/2016

TOTAL									
RATIOS	**ROE**	**Leverage**	**Net Income on Ebit**	**ROA**	**Assets Turnover Ratio**	**Rigidity Ratio**	**Current Ratio**	**Days Sales in Accounts Receivable**	**Days Sales in Accounts Payable**
obs	11.035	11.034	10.881	11.034	11.034	11.034	9.925	8.832	9.959
mean	0,07	0,74	0,52	0,02	0,78	0,30	3,03	315,76	516,71
sd	0,47	0,29	0,81	0,10	0,86	0,33	4,92	484,60	1.031,04
p5	-1,11	0,08	-1,28	-0,24	0,00	0,00	0,12	10,09	0,06
p25	-0,05	0,59	0,07	-0,01	0,03	0,02	0,89	74,67	1,20
p50	0,04	0,85	0,49	0,02	0,46	0,16	1,22	146,83	144,12
p75	0,23	0,96	0,98	0,07	1,32	0,54	2,33	279,42	374,38
p95	1,11	1,10	2,54	0,23	2,81	0,96	20,70	2.033,11	4.233,41

Table 21: Descriptive statistics for the ratios calculated on all the companies in the dataset used

CRIMINAL									
RATIOS	**ROE**	**Leverage**	**Net Income on Ebit**	**ROA**	**Assets Turnover Ratio**	**Rigidity Ratio**	**Current Ratio**	**Days Sales in Accounts Receivable**	**Days Sales in Accounts Payable**
obs	1.518	1.516	1.396	1.516	1.516	1.516	1.400	1.197	1.382
mean	0,12	0,79	0,59	0,016	0,81	0,28	2,07	353,54	360,76
sd	0,52	0,27	0,85	0,10	0,88	0,32	3,86	516,78	933,43
p5	-1,11	0,10	-1,28	-0,24	0,00	0,00	0,12	10,52	0,06
p25	-0,06	0,68	0,09	-0,01	0,03	0,01	0,57	85,76	0,27
p50	0,07	0,89	0,56	0,01	0,53	0,13	1,04	160,32	2,59
p75	0,36	0,97	1,00	0,06	1,36	0,51	1,62	325,01	227,58
p95	1,11	1,10	2,54	0,22	2,81	0,93	9,07	2.033,11	2.665,61

Table 22: Descriptive statistics for the ratios calculated on criminal companies

NON-CRIMINAL									
RATIOS	**ROE**	**Leverage**	**Net Income on Ebit**	**ROA**	**Assets Turnover Ratio**	**Rigidity Ratio**	**Current Ratio**	**Days Sales in Accounts Receivable**	**Days Sales in Accounts Payable**
obs	9.517	9.518	9.485	9.518	9.518	9.518	8.525	7.635	8.577
mean	0,06	0,73	0,51	0,023	0,77	0,31	3,19	309,83	541,83
sd	0,46	0,29	0,80	0,10	0,85	0,33	5,06	479,12	1.043,79
p5	-1,10	0,08	-1,28	-0,23	0,00	0,00	0,17	10,09	0,06
p25	-0,04	0,58	0,07	-0,01	0,03	0,02	0,93	72,59	7,54
p50	0,04	0,84	0,48	0,02	0,45	0,16	1,26	145,15	158,67
p75	0,22	0,96	0,95	0,07	1,31	0,54	2,50	271,09	398,80
p95	1,06	1,06	2,41	0,23	2,77	0,96	20,70	1.973,87	4.233,41

Table 23: Descriptive statistics for the ratios calculated on non-criminal companies

The first thing that emerges looking at the first column of the three precedent tables is that there are some missing observations which make the results less reliable but this doesn't compromises the analysis. The second thing is that the values of the means for the two groups (criminal and non-criminal companies) are pretty different. In particular it's possible to notice that for criminal companies the values of the following variables are higher:

- the Return On Equity = Net Income/Equity;
- the Leverage = (Total Assets- Equity)/Total Assets;
- the Net Income on EBIT = Net Income/EBIT;
- the Assets Turnover Ratio = Net Sales/Total Assetss;
- the Days Sales in Accounts Receivables = Accounts Receivable/Net Sales*365;

while the value of the following variables are lower for criminal companies:

- the Return On Assets = Ebit/Total Assets;
- the Current Ratio = Current Assets/Current Liabilities;
- the Rigidity Ratio = Fixed Assets/Total Assets.
- the Days Sales in Accounts Payable = Accounts Payable/Cost of Goods Sold*365;

Even if this first analysis offers some elements to think about, it is still too rough to give us any sort of assurance to make inference from the data.

That's why with regard to each variable calculated, the means of the two groups have been compared applying the t-test in order to understand if the difference existing between them is statistically significant. So we have tested the hypothesis 0 H_0=the difference is simply due to chance and it has been rejected anytime the p-value was lower than 0,05. The nearer the p-value is to zero and the most the difference is statistically significant. The results obtained are synthetically summarized in the following table.

T-TEST RESULTS		**ROE**	**Leverage**	**Net Income on Ebit**	**ROA**	**Assets Turnover Ratio**	**Rigidity Ratio**	**Current Ratio**	**Days Sales in Accounts Receivable**	**Days Sales in Accounts Payable**
mu_0	**mean (NON CRIMINAL)**	0,06	0,73	0,51	0,02	0,77	0,31	3,19	309,83	541,83
mu_1	**mean (CRIMINAL)**	**0,**12	0,79	0,59	0,02	0,81	0,28	2,07	353,54	360,76
mu_1-mu_0	**difference**	0,05	0,05	0,09	-0,01	0,03	-0,03	-1,12	43,71	-181,08
T	**t statistics**	-4,01	-6,78	-3,76	2,56	-1,47	3,08	7,94	-2,90	6,07
P	**p-value**	***	***	***	*		**	***	**	***
* p<0.05, ** p<0.01, *** p<0.001										

Table 24: T-test results

We may summarize the t-test results as follows

- the differences which are high strongly statistically significant regard:
  - the ROE,
  - the Leverage,
  - the Net Income on EBIT,
  - the Current Ratio,
  - the Days Sales in Accounts Payable;
- the differences which are medium strongly statistically significant regard:
  - the Rigidity Ratio,
  - the Days Sales in Accounts Receivable;
- the differences which are weakly statistically significant regard:
  - the ROA;
- the differences which are not statistically significant regard:
  - the Assets Turnover Ratio.

6. Linear regression results

So far it has been checked which differences between the means of the two groups are statistically significant which means that we can conclude that they're not due only to chance with a probability of committing an error in affirming so equal to the level of significance observed (also called p-value).

The further step is to understand in which way the only fact of being "criminal" or not affects the economic and financial ratios, that we have previously tested, taking into consideration the fact that this variables may be influenced simultaneously also by other factors.

To do so, it has been developed a multiple linear regression model in which variables of controls have been inserted.

The linear regression model has been constructed in the following way:

$$Y_i = ß_0 + ß_1 CRIMINAL + ß_2 Size_i + ß_3 Industry_{1i} + ß_4 Industry_{2i} + \ldots + ß_{52} Industry_{50i} + ß_{53} Year_{1i} + ß_{54} Year_{2i} + \ldots + ß_{62} Year_{10i} + ß_{63} Region_{1i} + ß_{64} Region_{2i} + ß_{65} Region_{3i} + \varepsilon_i$$

$\mathbf{Y_i}$ is the independent variable for which we are studying the effect of being criminal. Thus each time it is equal to one of the ratios considered.

CRIMINAL is the dummy variable which assumes value equal to one when the company in object is criminal and equal to zero otherwise.

The **Size**, **Industry**, **Year** and **Region** are the control variables for which it's necessary to allow in order to wipe out the fixed effect that these one have on the independent variable.
Describing them more in detail:

- the variable $\mathbf{Size_i}$ is calculated as the logarithm of the Total Assets for each observation.

  It takes into consideration the effect of the dimension of the company on the independent variable. It's plain that for instance a little company will have a lower level of profitability than a bigger one. Moreover even since the first phase of analysis of the data acquired it has been observed that the level of variability in the item "Total Assets" is huge as explained by the high level of the standard deviation. That's why it has been calculated the logarithm of the Total Assets; in this way data are more homogeneous.
- The variables $\mathbf{Industry_{1i}...Industry_{50i}}$ take into consideration the effect on the ratio of the fact that companies analyzed belong to different business sectors. Indeed it's obvious that the core activity influences the profitability and the financial structure chosen. Different businesses are generally characterized by different level of innovation, need for investment and stability of profits. All these aspects reverberate on the economic and financial situation of the company. Practically it has been created a dummy variable for each ATECO code observed (with a detail of two figures – see table number 20) which assumes value equal to one when the company carries on the activity indicated by that specific ATECO code and zero otherwise.
- The variables $\mathbf{Year_{1i}…Year_{10i}}$ take into consideration the fact that the observations are referred to different years. This may impact on the independent variable because there are years in which the market condition are worse (suffice it to say that in the 2007 there has been a global recession that has heavily hit Italy) or better. They have been constructed a number of dummy variables equal to the number of years for which we have found the Financial Statement available and include it in the dataset. The dummy for year *n* assumes value equal to one when the observation is relative to the year *n* and zero otherwise.
- The variables $\mathbf{Region_{1i}…Region_{3i}}$ estimate the impact of being established in a specific region of those one here analyzed (*Lombardia*, *Piemonte* and *Triveneto*) on the company's performance.

$\boldsymbol{\varepsilon_i}$ is the error of the model which tells how much the results stray from the reality.
Finally it's necessary to point out that the observations have been clustered using the STATA command *cluster*. Indeed as already explained the total number of observations available

differs from the total number of companies investigated in this research. This is due to the fact that in the dataset the data of financial statements of consecutive years referring to the same company are reported. It's necessary to consider this fact in the regression model because it's obvious that for instance the ROE of year *n* is linked and influences the ROE of the same company in year *n+1*. The linear regression results obtained are reported in a synthetic way in the following three tables.

RATIOS	**(1)** **ROE**	**(2)** **Leverage**	**(3)** **ROA**
	Net Income/Equity	**(Total Assets-Equity)/Total Assets**	**Ebit/Total Assets**
CRIMINAL	0.0481***	0.0503***	-0.0112***
	[2.947]	[3.662]	[-2.777]
size_w	0.0049	0.0259***	0.0083***
	[1.400]	[6.999]	[7.725]
FIXED EFFECTS FOR INDUSTRY	YES	YES	YES
FIXED EFFECTS FOR YEAR	YES	YES	YES
FIXED EFFECTS FOR REGION	YES	YES	YES
Constant	-0.5955***	0.2391***	-0.0491***
	[-5.074]	[8.722]	[-5.669]
Observations	11,033	11,034	11,034
R-squared	0.017	0.085	0.062
Robust t-statistics in brackets *** p<0.01, ** p<0.05, * p<0.1			

Table 25: Linear regression results

RATIOS	**(4)** **Net Income on Ebit**	**(5)** **Assets Turnover Ratio**	**(6)** **Rigidity Ratio**
	Net Income/Ebit	**Net Sales/Total Assets**	**Fixed Assets/Total Assets**
CRIMINAL	0.1170***	-0.0298	-0.0235
	[4.170]	[-0.793]	[-1.481]
size_w	-0.0746***	-0.0655***	0.0318***
	[-11.030]	[-7.688]	[8.546]
FIXED EFFECTS FOR INDUSTRY	YES	YES	YES
FIXED EFFECTS FOR YEAR	YES	YES	YES
FIXED EFFECTS FOR REGION	YES	YES	YES
Constant	1.5333***	0.1020	-0.0577*
	[3.463]	[1.426]	[-1.957]
Observations	10,879	11,034	11,034
R-squared	0.044	0.243	0.191
Robust t-statistics in brackets *** p<0.01, ** p<0.05, * p<0.1			

Table 26: Linear regression results

RATIOS	(7) Current Ratio	(8) Days Sales in Accounts Receivable	(9) Days Sales in Accounts Payable
	Current Assets/Current Liabilities	Accounts Receivable/Net Sales*365	Accounts Payable/Cost of Sales*365
CRIMINAL	-0.8649***	56.9918**	-138.9352***
	[-4.312]	[2.228]	[-3.184]
size_w	0.0020	40.1885***	30.1718***
	[0.036]	[6.616]	[2.647]
FIXED EFFECTS FOR INDUSTRY	YES	YES	YES
FIXED EFFECTS FOR YEAR	YES	YES	YES
FIXED EFFECTS FOR REGION	YES	YES	YES
Constant	1.9087***	-186.5593***	-364.1360***
	[4.398]	[-3.696]	[-4.154]
Observations	9,923	8,830	9,957
R-squared	0.070	0.072	0.130
Robust t-statistics in brackets *** p<0.01, ** p<0.05, * p<0.1			

Table 27: Linear regression results

Essentially, thanks to the linear regression, we are able to confirm what was observed in the t-test results with a higher strength since we have controlled that the values of the variables individuated aren't influenced by the fixed effects of other factors.

Interpreting these results first of all we can notice that the difference which relates to the Assets Turnover Ratio isn't significant meaning that the number of times that the invested capital comes back in the form of revenues during the year isn't different from one company to another only for the effect of being criminal.

It comes out that the profitability represented by ROE is much higher (about + 0,05) for criminal companies that reinforce what emerges from the t-test according to which ROE for criminal companies equals on average the 12% being almost the double of that one computed for legal companies. Looking at other three ratios – the Leverage, the Net Income on EBIT and the ROA - it's possible to understand from what it is affected. The higher level of ROE doesn't depend on a better management of the core business but mainly on a higher level of debt.

Indeed leverage for criminal companies is higher. The other side of the coin of a high Leverage is that the financial risk increases but actually for a non legal company which has huge amounts of funds to reinvest this isn't a problem.

Moreover the ROA, which indicates how much efficient the management is in using its assets to generate its operating results, is significantly lower for criminal companies and at the same

time the Net Income on EBIT is higher, meaning that the non-operating management weighs more on the creation of value represented by earnings.

The Rigidity Ratio is lower for criminal companies meaning that the level of fixed assets compared with the total value of assets is lower. This may be explained also by the fact that certain companies are fake and are born only to launder money.

However at the same time also the current ratio is lower indicating that they've a financial difficulty in the short time. This is quite a paradox since the reason why criminals need to launder money is that they've got an excess of cash of which they have to justify and legitimate the origin to introduce it in the legal circuit. This matter of fact should be commented in the light of the results obtained for the variables related to the times of cashing and payment.

The data show as the Days Sales in Accounts receivable are higher and the Days Sales in Accounts Payable are lower with reference to criminal companies. In other words it emerges that they are paid by their clients about 57 days later and they pay their supplier even 139 days before compared to what legal companies do. This outcome is disturbing since it was expected that data revealed a higher bargaining power of criminal companies. Actually this result instead isn't astonishing if we remember that criminal companies generally deal with the public sector which pays typically later than the private one and if we avoid to neglect the fact that the Mafia has entered a huge variety of businesses which are often linked to each other. So we can explain this strange times of payments looking at them as transactions arranged to shift money from one company to another which is however controlled by the same centre of interest.

7. Conclusions

The framework that emerges from these results it's pretty worrying. We can say that the suspicion that criminal companies are not mere shell companies is well-founded. They have also a function that may be defined social and political in a negative acceptation. They are used by the exponents of Mafia to make themselves "presentable" and establish contact with the public administration. Indeed by winning tenders for the construction of several infrastructures or buildings etc. they manage to obtain public funds (this objective is likely attained by bribery or intimidation). Moreover these kind of companies appear attractive for the classic financial institutions because –although they adopt "diversification techniques" in the sense that they invest in a wide range of activities- in many cases they operate in mature sector with a low level of innovation that ensure stable returns and on average they have a

profitability (see the roe regression) higher than competitors. Banks are willing to grant loans to this kind of subjects because from their Financial Statements they are big, well managed companies and they seem to be not risky debtors. In fact from the research just presented it emerges that they have a higher leverage than legal companies.

Moreover they invest also in certain sectors which give them the possibility to have a more intense control on the territory. For this purpose the most suitable in those one observed are: "Wholesale and Retail Trade", "Rental", "Transportation and Storage" (for an overall percentage of about 20% on the total of criminal companies sample - see table n.20).

As aforesaid there are other sectors which serve to enter in contact with the public administration such as "Construction" and others that probably are mainly used to launder money by the typical technique of over-invoicing such as "Accommodation and Food Service Activities"

There is a high level of diversification and it's extremely likely that each company has a specific role in the entire system as it has been inferred through the data analysis. The most alarming fact is that it seems that all these companies are controlled by the same individuals or group of individuals so that they are referable to the same centre of interests. To make a parallel this situation may be compared with that one of a group of companies that operate in different sectors but are controlled by the same financial holding. Of course this has a repercussion also on the results exposed in this analysis: we must consider that these companies trade among them and are used to move money from one to another. That's why the data tend to lose a part of their significance as it has been explained in the precedent paragraph as regards the average number of days that pass before cashing from commercial creditors and the average time they take to pay their suppliers.

The conclusion is that we can no more speak about a simple "mafia-style infiltration" since nowadays the organized crime has deeply penetrated the economic, social and political fabric. It's common knowledge the fact that the Italian organized crime isn't confined to the South of Italy, its territory of origin, but the stereotype of the member of the Mafia involved exclusively in criminal activities and who uses only the force as means of persuasion is further belied. The companies they manage are surely devoted to the pursue of their criminal objectives but they're well functioning and not simply fake companies established only to over-invoice in order to launder money. The data hint that in the background there is a very complex system run by individuals who are without scruples but also clever business men. This ability allow them to arrange sophisticated schemes and structure and to interface with the political context.

This analysis has identified some common characteristics that may be used to identify criminal companies making easier the task of those ones who have to detect suspicious transactions and money laundering activities.

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