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The value of understanding organised crime business structures and processes

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The Value of Understanding Organised Crime Business Structures and Processes

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1. **Introduction**– Why is it necessary to develop our understanding of Organised Crime business structures?
2. **Review of the Literature** : The review covers published work by George Gilligan (Australia), JayS Albanese (USA), Dwight Smith (USA); Dennis Kenney & James Finckenauer (USA); Petter Gottschalk (Sweden); Anna Cevidalli (Italy); Dick Hobbs (UK) and others. Does the literature support the notion that Organised Crime exists in a manner that can be usefully analysed in terms of business structure?
3. **Conceptual Framework**: Can we design a framework that is flexible enough to make sense in the modern environment of Organised Crime, yet useful enough across different jurisdictions? Can we use it to generate meaningful comparisons and opportunities for joint approaches or even a supranational approach to dealing with EU Organised Crime? What would that look like? How do we teach it and roll it out?
4. **A Practical Programme**: What do we want such a programme to achieve? What are the necessary building blocks and qualities of a practical programme on OCG Business Structures that can be realistically used for benefit within Law Enforcement across the EU?
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6. **Feasibility of Routine Mapping and Monitoring of OCG business structures involved in money laundering activities and contribution to understanding of drugs market at EU level**: What are the practical obstacles –in terms of culture, resources and politics - to getting such an approach accepted and getting it implemented across the EU? To what extent can they be overcome and how?
7. **Recommendations** – What do we need to do now to get this approach up and running and delivering results? What can we expect in terms of problems, difficulties, and hurdles? And what can we realistically expect to achieve in terms of successes that will make the effort to overcome those difficulties worthwhile in the context of EU and in particular EMCDDA objectives?

The Value of Understanding Organised Crime Business Structures and Processes

1. Introduction - Why is it necessary to develop our understanding of Organised Crime business structures?

Attempts to size the market in illicit drugs can be relied upon to produce big numbers. Estimates of the size of the heroin market alone in the EU vary between EUR 11 billion and EUR 22 billion.¹ This is in the context of an EU population of approximately 500 million. In Scotland, with a population of some 5 million, the value of the heroin market was assessed in 2009 as £551 million; the total Scottish market for all illegal drugs being estimated at £901 million.² These are significant markets by any measure and they clearly cannot and do not exist in a bubble of purely illicit activity.

Traditional law enforcement measures to inhibit this activity are subject to varying degrees of appreciation. Some argue that 'the war against drugs' has fuelled an illegal profits engine that is increasingly difficult to control, while others contend the fact that only some 3% of the population use illicit drugs represents a degree of tangible success - unappreciated because we have not had to witness the consequences of traditional approaches being surrendered.

That debate will continue; but one assertion that can be confidently made is that whereas legalisation of currently illicit drugs may affect organised crime and may even reduce its profitability to an extent and for a while, it isn't going to put it out of business. It isn't even going to put it out of the drugs business, as recent US experience of prescription drugs abuses suggests.³

Viewed from a business perspective the prospects for organised crime in the next few years might actually be considered attractive. There will be increasing pressure on law enforcement budgets which may restrict their ability to inhibit operations; a broader diversity of drug products (some of which are not even illegal) will support a persistently strong regenerating market; continued ability to access trading/investment markets and banking systems around the world (partly due to the continuing inability of criminal justice systems to effectively enforce money laundering legislation) will enable criminal profits to acquire the appearance of legitimacy. On the back of this laundered wealth, there will be increasing opportunities to diversify into legitimate, or licit, markets and thereby exploit the traditional competitive advantages of organised crime business groups; such as access to cheap capital, ability to access and protect control over markets in claimed territories, and deployment of traditional abilities to harass, intimidate or even eliminate meaningful competition.

Drug markets continue to represent a powerful and dominant profit driver for organised crime and a proper assessment and understanding of the economic influence of organised crime cannot ignore the continued predominance of the core business activity of drug trafficking. But this paper will argue there is a need to develop of new ways of understanding organised crime in the context of the broader economic markets it operates in: how it responds to changes in those markets and how it

¹ European Commission (2013), *'Sizing national heroin markets in the EU: insights from self-reported expenditures in the Czech Republic and England/Wales'* Kilmer, B., Taylor, J., Hunt, P., and McGee, P. in *'Further insights into aspects of the illicit EU drugs market'* Ed. Trautman, Kilmer and Turnbull, European Commission, 2013

² Scottish Government (2009), *'Assessing the Scale and Impact of Illicit Drug Markets in Scotland'*, Casey, J. and Hay, G., Godfrey, C. and Parrott, S., Edinburgh, 2009

³ www.drugabuse.gov/DrugFacts: Prescription and Over-the-Counter Medications

organises itself to exploit them. It will argue there is a need to augment traditional law enforcement approaches of mapping and tracking drug transports with initiatives derived from a more complete understanding of the dynamics of organised crime markets and the business strengths and weaknesses of their participants.

The principal driver for this approach from a law enforcement perspective derives from its duty to protect the communities it serves, consistent with the intent of the renewed EU Internal Security Strategy⁴ based on the final implementation report of the EU Internal Security Strategy 2010-2014.⁵ The nature of the threats posed by the modern economically successful organised crime Group ('OCG') can take on increasingly diverse guises, ranging from the obviously criminal to the exploitation of unfair advantage obtained from criminality. The opportunity cost of that success can be perceived in one sense as the deprivation of opportunities for legitimate enterprises, extending to other compromises such as corruption of public procurement, endangerment of the environment and even loss of confidence in the democratic process.

It isn't just about the drugs in other words. The influence of criminal profits and the wealth they accumulate point to a key goal for aspirational organised crime, being the attainment of legitimacy. Legitimacy is the key to wealth, power and influence.

To provide an example; in some specific areas of Scotland the provision of public facing services in private car hire and bus travel has been essentially monopolised by companies known to be owned by or under control of the dominant local OCG, whether directly or indirectly. The extent to which this phenomenon has a direct impact on the public contract process was made apparent by close review of the applicants for a major contract by a local health authority for the provision of private car hire services for patients travelling to and from hospital. The tendering process had essentially been carved up by applicants connected, again by repute as well as intelligence, to two OCG groups, both of whom produced three or four applications in order to provide the process with the semblance of open competition. In this instance there was no interest from potential 'unconnected' competitors.

It appeared that everyone in this process knew exactly what was going on - including, in the absence of any serious alternative bidders, the apparently powerless authority. Obtaining, on law enforcement advice, a declaration from each applicant that it had no connection to organised crime provided the authority with a measure of protection against any future public fall-out. But there appeared to be no compunction on the part of any of the applicants to make that declaration. The whole set up, after all, had been designed to carry that impression.

The relationship between licit and illicit markets cannot, therefore, remain an area of relatively unexplored territory if approaches to organised crime are to be made more effective in the context of the duty of public protection. Developing law enforcement understanding in this direction responds to the desire expressed in a paper by Rubin, Pardal, McGee and Cully included in the

⁴ EU Council (2014), *'Development of a renewed European Union Internal Security Strategy'*, Justice and Home Affairs Council meeting 4 December 2014, consilium.europa.com

⁵ EU Council (2014), *'The final implementation report of the EU Internal Security Strategy 2010-2014'* Communication from the Commission to the European Parliament and the Council, 20 June 2014', ec.europa.eu

EMCDDA collection of papers entitled *'Further Insights into Aspects of the Illicit EU drugs market'*, published in 2013 and entitled *'Polymorphous Criminal Networks'*⁶. In that paper it was asserted that the provision of licit goods or services engaged in and provided by OCGs and their networks are normally beyond the scope of law enforcement action or interest. The inference made was that this cannot continue to be the case, but that *'without better information about how criminal networks' activities shift and change, it is difficult to develop evidence-based policy and operations to tackle them.*⁷ The authors advocated developing the necessary evidence base through expert consultation via a mix of web-based and email questionnaires.

The benefits of such an exercise would be constrained in practice by the availability and quality of intelligence speaking directly to the business capabilities of organised crime as opposed to its primarily criminal activities. There is a need, therefore, to devise a practical framework that will enable the necessary culture change and evolution of law enforcement practice to take place, in such a way that the expert responses from law enforcement embody the intelligence necessary to construct a meaningful evidence base. Such a framework must be properly founded in theory and yet be capable of easy adaption for practical use by law enforcement personnel who have generally little patience for theory.

This paper intends therefore to set out a theoretical foundation that will specifically address the impact of organised crime use of business structures to infiltrate and dominate licit markets, and provide a programme for practical action within law enforcement based on the current experience of such an effort currently being undertaken by Police Scotland.

2. Review of the Literature

A useful introduction to the subject of applying business strategy analysis to organised crime is provided by George Gilligan⁸. He provides a helpful departure platform of definition by considering organised crime as *'various forms of business activity which may or may not have attracted the label of criminality'*. He considers *'the law enforcement potential in developing counter strategies that consider organised crime as part of the continuum of business.'* The discussion is thereby set up inexorably leading to identification of the key battle ground of legitimacy. In Gilligan's view the anonymous nature of modern market forces assist organised crime's infiltration into modern capitalism. The inherent business focus of organised crime activity therefore pushes legitimacy contexts to the forefront of law enforcement attention in attempting to devise effective strategies to combat organised crime.

The distinctive nature of organised crime business activity is succinctly captured by Albanese⁹ who characterises it as enterprise that *'rationally works to profit from illicit activities that are often in great public demand. Its continuing existence is maintained through the use of force, threats, monopoly control, and/or the corruption of public officials'*. The importance of this conception is that it gets to the heart of the relationship between illicit and licit markets and how organised crime uses

⁶ European Commission (2013), *Polymorphous Criminal Networks'*, Rubin, Pardal, McGee and Cully ', from *'Further Insights into Aspects of the Illicit Drugs Market'* published by EMCDDA, 2013, Part II, Report 3, p.361-388; Publications Office of the European Union, Luxembourg

⁷ *ibid*

⁸ Gilligan, G (2007), *'Business, risk and organised crime'*, Journal of Financial Crime, Vol. 14, No. 2

⁹ Albanese, J.S. (1996), *'Organised crime in America'* 3rd ed., Anderson, Cincinnati

its distinctive 'traditional' methods to acquire significant footholds leading up to dominant market positions. This is obviously the on-going case in illicit markets, but the more advanced the organised crime group is in terms of penetrating licit markets the less necessary it is for it to bare its teeth in respect of these core characteristics. On-going domination in licit markets can be achieved by exploitation of market position, aided by a reputation that discourages meaningful new entrant competition.

Haller¹⁰ develops this as a core business reason for the very existence of organised crime: the satisfaction of certain needs not met by the legitimate world. While the drugs trade is clearly a dominant example, it can also crowd out proper discussion of other forms of organised crime activity. Russian organised crime, in particular, has principally developed from the supply of 'protection' – a demand it creates in order to be met – which is usually characterised as the provision of the service known as a 'krysha', which means a roof¹¹. The story of how key business sectors emerged from the Soviet state into free enterprise cannot be told without reference to the influence of organised crime and the various high profile oligarchs who emerged, seemingly legitimised, from that milieu. Some eyes can read that history as a series of master classes on how to build structures that will enable the protection and enjoyment of criminal profits. It is this kind of experience that provides support for Haller's premise that, '*Organised crime...is best thought of as a type of organisational crime and part of a continuum between business and crime*', leading him to the conclusion that '*An anti-organised crime strategy should prioritise issues of conventional strategic management*'¹².

This is a theme that has been explored by a number of contributors. Hagen¹³ also conceives of organised crime as a continuum. Dwight Smith¹⁴ adopted the image of a 'spectrum', considering '*a theory of enterprise*' to be the appropriate basis for analysing organised crime activity along the reach of this spectrum, with suppliers and customers occupying various points depending on their appetite or willingness to mix illicit activity with licit. On the basis of this analysis Smith concluded that the key constructs enabling organised crime's interaction with legal and illegal business were power and legitimacy. He considered these notions were '*crucial in attempting to explain organised crime and the risks it can pose to business and broader society*'.¹⁵ Smith asserted that the drive for '*wealth generated definitive legitimacy, with its attendant capacity to undermine both civic institutions and economic relationships, which is perhaps the greatest risk posed by organised crime*'. He further elucidated on the consequences of this, rather tellingly, as follows: '*Licit businesses and licit business people, whether willingly or unwillingly, become increasingly sucked into the process as organised criminal activity gathers momentum*'¹⁶

¹⁰ Haller, M (1990), '*Illegal enterprise: a theoretical and historical interpretation*', Criminology, 28:2, pp 207-235, John Wiley & Sons, London

¹¹ Varese, F. (2011), '*The Russian Mafia in Rome and Budapest*', chapter 4 of, '*Mafias on the move: how organized crime conquers new territories*', Princeton, 2011

¹² Haller, *ibid*

¹³ Hagan, F. (1983), '*The organised crime continuum*', Criminal Justice Review 8(2):52-57, Sage Publications, London

¹⁴ Smith, D.C. (1980), '*Paragons, pariahs and pirates: a spectrum-based theory of enterprise*', Crime & Delinquency, Vol. 26, No. 3, 1980

¹⁵ Smith, *ibid*

¹⁶ Smith *ibid*

If identifying and exposing the true nature of the threat posed by organised crime requires understanding of their business structures, the question then becomes, 'what can be done?' Cevidalli posed the question in her 2010 paper¹⁷ asking if there was '*potential for business professionals to contribute to the multi-disciplinary approach to combatting organised crime by applying strategic management methods and their professional knowledge and expertise*'

There have been various theoretical frameworks proposed which seek to break into this area. For example: Dick¹⁸ and Gottschalk's¹⁹ work on a transaction cost based theory of economic crime; Becker's²⁰ 'rational choice theory' whereby individual crime decisions are calculated by weighing up the 'pros' and 'cons' of the costs; and Schilling's²¹ idea that organised crime is '*a formal governance structure that specialises in providing illegal goods and services to downstream suppliers*'. These are important works that need to be considered by students in this field but the progress they make in assisting the development of practical measures is sometimes not obvious.

There have also been more direct attempts to grip the reality of the myriad ways in which organised crime manifests itself, and these begin to offer insights that assist practical application. The commonly observed reality is that organised crime business structures are clearly not homogenous. They can range from the classic hierarchical structures associated with mafia organisations to amorphous cell like structures. The characteristics of these structures can emphasise authority, status and ritual at one end of the continuum; autonomy, independence, informality and shape - shifting at the other. A method must be found therefore that not only accommodates both ends of that range (or 'spectrum' to adopt Smith's term) but provides insights as to how various interactions occur within it.

Tschofen²² postulated, on the basis of direct interaction with an Austrian group of drug traffickers, that the characteristics of the modern drug business are essentially nomadic. Nomadic crime groups move unconfined by walls and enclosures. They may not conceive of themselves as OCGs at all but as a group of like-minded people under siege from the outside world. Even at this level, however, there is organisation present: in the form of the information networks and the relationships necessary for criminal activity to take place at all; also in the networks of outstanding debts that operate both as an organising principle in these spheres and as an incentive to collaborate and bond in the context of mutual advantage.

The theoretical foundation for Tschofen's nomadic conception of Organised Crime is influenced by the concept of the 'rhizome' developed by the French existentialist philosophers Gilles Deleuze and

¹⁷ Cevidalli, A. (2010), '*Leveraging the Multi – Disciplinary Approach to Countering Organised Crime*', University of London, London

¹⁸ Dick, A.R. (1995), '*When Does Organised Crime Pay? A Transaction Cost Analysis*', International Review of Law and Economics 15, Elsevier B.V., Amsterdam

¹⁹ Gottschalk, P. (2008), '*Criminal Entrepreneurship*', Nova Science Publishers, New York

²⁰ Becker, G. (1968), '*Crime and Punishment: An Economic Approach*', The Journal of Political Economy 76, University of Chicago, Chicago

²¹ Schilling, T.C. (1967) '*Economic Analysis of Organised Crime*', in President's Commission on Law Enforcement and Administration of Justice, '*Organised Crime*', (Task Force Reports'), US Government Printing Office, Washington DC

²² Tschofen, D. (2009), '*Flow – The Organisation of Upper Level Drug Dealing*', Paper delivered to International Critical Management Conference in July 2009, University of Warwick, UK

Felix Guattari²³ in *'A Thousand Plateaus'*. The rhizome is a mode of knowledge which allows for multiple, non-hierarchical entry and exit points: a cell of shared practice that matches up with other rhizomes as circumstances and self-interest permit. The title, *'A Thousand Plateaus'*, used by Deleuze and Guattari refers to the essence of the rhizome as a decentralised network.

The practical relevance of this conception of organised crime appears endorsed by Hobbs' study of organised crime in the UK.²⁴ Hobbs counsels against the use of law enforcement data to create theoretical frameworks that, *'can give the impression of a stable 'mappable' community, rather than a volatile, market based series of fluid and mutating collaborations'*.²⁵ Hobbs talks of *'communities of practice'* typified by *'ever fluctuating networks of individuals whose formal identities may or may not be located within categories of transgression'*. These communities *'embrace a wide population including those with access to business and the infrastructures of formal commerce and should be considered as integral to entrepreneurial fields that operate within a context of economic, class and ethnic power relations embracing the entire range of the global marketplace.'*²⁶

The delineation of such nomadic arrangements at one end of the organised crime continuum offers overdue interpretation and understanding of one end of it, but does not negate the importance of understanding the more developed modes of business organisation that emerge and become more prevalent in developed criminal markets such as drug trafficking the higher up you go in the supply chain, especially at national and international wholesale levels. Positions on the continuum are moreover not fixed: relative success may encourage the adoption of more formalised methods of organisation, again with the general compass being set in favour of legitimacy. It is in that direction that there are better prospects of criminal wealth and profits, which are moreover capable of being enjoyed without resistible interference.

Organised crime therefore falls to be viewed not just as the activities of various identifiable organised crime groups but as a process involving a range of participants situated at various points along a continuum. This chimes with the following conclusions of the UNODC Globalisation of crime report,²⁷ quoted approvingly by Woodiwiss²⁸:

1. *'Because most trafficking flows are driven more by the market than by the groups in them, efforts that target these groups – the traditional law enforcement response – are unlikely to be successful on their own.'*
2. *'Because markets are global in scale, global strategies are required to address them, and anything else is likely to produce unwanted side effects, often in the most vulnerable countries.'*

²³ Deleuze, G and Guattari, F (1988) *'A Thousand Plateaus'*, Vol. 2 of *'Capitalism and Schizophrenia'*, Athlone Press, University of Minnesota, USA

²⁴ Hobbs, D. (2013), *'Lush Life: Constructing Organized Crime in the UK'*, Oxford

²⁵ Hobbs, *ibid*, p 5

²⁶ Hobbs, *ibid*, pp 226-228

²⁷ UNODC (2010), *'The globalisation of crime'*, United Nations Office on Drugs and Crime, Vienna

²⁸ Woodiwiss, M. (2013), *'Moralism, Mafias and Markets: The evolutions of popular and governmental understanding of organised crime'* Working Paper, University of the West of England, Bristol, UK

3. *Because globalised commerce has made it difficult to distinguish the licit from the illicit, enhanced regulation and accountability in licit commerce could undermine demand for illicit goods and services'*

Woodiwiss considers that what needs to be looked at are 'events called organised crime rather than people called organised crime before making any recommendations as to what to do about it'²⁹. The argument of this paper is that the challenges of organised crime require the consideration of both structures and processes in order to devise more effective means of containing it. The existence of significant business machines fuelled by organised crime cannot be theorised away, just as law enforcement responses to organised crime need to be increasingly nuanced in a way that can only be achieved if there is a more developed understanding of the OCGs, their networks and their processes.

3. **Conceptual Framework:** Can we design a framework that is flexible enough to make sense in the modern environment of Organised Crime, yet useful enough across different jurisdictions? Can we use it to generate meaningful comparisons and opportunities for joint approaches or even a supranational approach to dealing with EU Organised Crime? What would that look like? How do we teach it and roll it out?

The literature encourages caution in any attempt to harness the disparate and fluid activity of OCGs into something as confining as 'structure'. But there is one concept that binds all organised criminal activity together and that is the objective to be profitable³⁰, or at least sufficiently successful in an economic sense to survive. There is a need for discipline in the achievement of the economic goal in organised crime in the same way as there is in legitimate business. Without it, quite simply, no business survives, legitimate or illegitimate.

The need for that discipline suggests there may be organising principles which will hold valid for organised crime structures across a broad spectrum ranging from the least sophisticated to the most. If we are able to posit what these might be, we might have the beginnings of an approach which enables an understanding of organised crime as a business that will foster effective means to control it. This is the somewhat tentative ambition of this paper; 'tentative' because for this approach to have any worth it requires the virtue of open-mindedness and wariness of the traps of being didactic and over prescriptive.

The first step in this approach, necessary to get it off the ground, is to set aside for the moment the distinctions between legitimate and illegitimate activity, and licit and illicit markets. The intention is to understand how organised crime works as a business and these distinctions in this context are unhelpful and serve little purpose. Exploring how OCGs function as businesses requires understanding of how they relate to all the markets they operate in. OCGs are businesses and as such they serve the same preoccupations of all businesses: how to be successful; how to be profitable; how to survive.

²⁹ Woodiwiss, *ibid*

³⁰ Hobbs argues that it is '*a simplistic fallacy*' to conceive of organised crime in terms of the rational economic actor, but the sub cultures at the heart of his analysis are still '*mediated through market engagement*'. *Ibid*, pp. 228-231

What makes a business successful? There are numerous business text books that can be consulted on this matter. The framework advanced by John Kay in his seminal text written in the nineties '*Foundations of Corporate Success*'³¹ is particularly useful in that it seeks to distil the factors that determine success in a way that provides scope for wide application across all types of business activity. The essential thesis can be summarised as follows: businesses achieve success in accordance with their ability to deploy competitive advantage in relevant markets. The foundations of competitive advantage are sources of distinctive capability that can be grouped under the following three headings:

Architecture – the network of 'relational contracts' within, or around, the OCG. These relationships are with their suppliers and customers or with other OCGs engaged in related activities. The concept can also be used to cover the internal architecture of OCGs in terms of how they manage membership and internal influence.

Reputation – For OCGs this can be regarded as the key mechanism for conveying information to customers, suppliers and competitors. Making, building and exploiting reputation is a core activity for OCGs. Losing it is the most obvious and most worrisome business risk.

Innovation – This capability is linked to those of architecture and reputation. The ability to be flexible, nimble, to be able to respond effectively to changing circumstances, to be able to survive significant setbacks such as law enforcement disruption, requires not just the maintenance of the capabilities of architecture and reputation that exist, but the ability to exploit those capabilities in ways that enable access to new markets, new products and new ways of doing things; and to be able to exploit these capabilities through the renewed force of reputation.

There is a secondary form of competitive advantage for OCGs which generally will follow on from the successful exploitation of the capabilities listed. This is the establishment of **strategic assets** in the form of dominant market positions. The significance of this type of competitive advantage to OCGs is obvious from virtually every form of business activity they are engaged in. Kay identifies three main types:

Natural monopoly – The OCG has established itself in a market that cannot readily accommodate more than one player;

Monopoly based on cost of entry – the OCG has established a position that would require other potential players to incur significant establishment costs;

Monopoly based on licence or regulation – a dominant market position has been essentially licensed through contracts won from a government authority achieved through corruption, unfair competition and manipulation of tendering processes.

There is no OCG, or no group which would qualify under the broadest definitions of what an OCG is³² that cannot be analysed in terms of the distinctive capabilities listed above. The nomadic, cellular

³¹ Kay, J. (1993), '*Foundations of Corporate Success*', Oxford

³² For instance, the definition of the Council of Europe: '*the illegal activities carried out by structured groups of three or more persons existing for a prolonged period of time and have the aim of committing serious crimes*

processes of lower levels of organised crime are still only able to function because they can in some way protect the market they operate in by virtue of their access to suppliers and a network of customers. They are only able to survive in that trading capacity by maintenance of a reputation, either owned or borrowed, that protects their territory from competition. They need to sustain the loyalty of customers through the quality of the product provided. If a new product arrives on the block, then the OCG has to put itself in a position through innovation or *force majeure* to be able to exploit it.

This approach therefore offers the prospect of being sufficiently flexible to enable meaningful application to the full range of OCGs involved in organised crime. It addresses the contention³³ that it is an error to base an organised crime strategy on people or groups rather than processes. In the context of organised crime the capabilities themselves can be stripped from their owners and applied to criminal process. Drug trafficking commonly involves the involvement of a number of co-operating groups based on liaisons established by custom or convenience. The processes to which these OCGs are attached can be viewed as joint ventures with their own distinctive capabilities formed from the collectivisation of the distinctive capabilities of their constituents.

The significance of this is that understanding distinctive capabilities enables a proper appreciation of the business strengths and weaknesses not just of OCGs but organised crime processes as well. The conception of organised crime so obtained encompasses what is done and why it is done as opposed to an approach which is primarily, or even exclusively, based on who is doing it.

There is a further dimension also. The characteristics of the Organised Crime process can be analysed not just in terms of process and constituent parts but in terms of the relationships and interfaces that establish the relevant links in the process chain. It therefore offers the prospect of understanding the mechanics and dynamics of the process in terms of strengths and weaknesses that can be exploited in terms of law enforcement, regulatory control and even social policy. It offers a basis, in other words, for understanding organised crime in a way that is relevant to the primary motivations that provide it with its energy, and to the economic and social environments in which it has its impact.

How can this approach translate into tangible application within the context of modern law enforcement?

One of the first points to make is that it touches on a facet of organised crime activity which is not well developed with law enforcement. There are many aspects of current approaches to organised crime which call on very sophisticated techniques, for example in terms of interception of communications and cyberspace monitoring, but attempts to piece together or even capture intelligence which would establish a suitable basis for undertaking analysis of OCG business capabilities are relatively underdeveloped. This might be explained in terms of police cultures failing to assimilate the specialist skills required for such analysis at an appropriate level, leading to a bias in favour of approaches set and confined by existing skill sets, as opposed to those that the relevant challenges require and which would be made possible through the acquisition of new skillsets.

through concerted action by using intimidation, violence, corruption or other means in order to obtain, directly or indirectly, a financial or other material benefit. (Council of Europe, 2002, 6)

³³ see, for instance, Hobbs (ibid) and Woodiwiss (ibid)

One consequence of this within law enforcement is that responses to OCG activity reflect a bias in favour of commodity focussed responses as opposed to business based responses. But another reason such a bias exists is simply the difficulty of bringing criminal charges. Making criminal money laundering offences stick in practice against serious organised crime groups remains problematic^{34 35} not just in Europe, but across the globe³⁶. One of the principal difficulties arises out of proving knowledge on the part of the accused that the money is criminal. Proving this outside of the context of the business process in which the money has been transferred is a challenge that has defeated many prosecutions, with the principal obstacle being a lack of evidence, based on a lack of relevant intelligence, as to how money is handled and directed through the relevant criminal business process.

The effective application of money laundering legislation has therefore suffered because it relies on a foundation of intelligence and evidence gathering relating to organised crime business structures that often just isn't there. Critics who argue that current responses to organised crime are motivated more by political considerations³⁷ than a realistic assessment of what is actually going to work, have fertile ground for their arguments if offences placed on the statute book cannot be effectively enforced. Over time the persistence of such an impression is likely to have a corrosive effect on public confidence and criminal influences will be all the more motivated to acquire legitimate veneers to their activities. In some places it might be argued that this has happened already.³⁸

There is arguably therefore a need across the EU to develop new ways of tackling organised crime that provide a more effective framework to understand it in terms of structure and process. The test of any proposal set to meet this challenge is capability to exert practical effect. In other words: if we need a game changer, will this approach fit the bill and make a worthwhile difference? Can it be applied and how?

4. **A Practical Programme:** What do we want such a programme to achieve? The 'why' determines the 'how'. What are the necessary building blocks and qualities of a practical programme on OCG Business Structures that can be realistically used for benefit within Law Enforcement across the EU?

The challenge is to translate a conceptual framework based on business strategy analysis to a practical programme capable of being absorbed into practical models of policing and deliver tangible results. In the field of organised crime the principal theme of law enforcement models is that they are intelligence-led. The nature of the intelligence to hand is accordingly a key determinant of what is done. If the intelligence requirements set emphasise the 'hands-on' aspects of drug trafficking

³⁴ Sproat, P.A. (2009), 'To what extent is the UK's anti-money laundering and asset recovery regime used against organised crime?', Journal of Money Laundering Control, Vol. 12, No 2, Emerald Group Publishing, Bingley, UK

³⁵ Sproat, P.A. (2012), 'A critique of the official discourse on drug and sex trafficking using data on asset recovery', Journal of Financial Crime, Vol. 19, No. 2, Emerald Group Publishing, Bingley, UK

³⁶ Gerstein, I. and Hervieux-Payette, C (2013), 'Follow The Money: Is Canada Making Progress in Combatting Money Laundering and Terrorist Financing? Not Really', Report of the Standing Senate Committee on Banking, Trade and Commerce, Canadian Senate, Ottawa, Canada

³⁷ See Hobbs, *ibid*; Sproat, *ibid*; Woodiwiss, *ibid*

³⁸ See Saviano

(where the evidence indicates direct or traceable contact between the physical commodity and the accused) then it is coverage of that side of the business that will be most extensively covered in terms of intelligence capture. The training of intelligence sourcing personnel often reflects a background in an anti-drug trafficking enforcement with substantial expertise in that field built up and absorbed into the knowledge fabric of the respective law enforcement bodies. That body of knowledge is commonly strong on the side of the transaction which relates to the transfer of commodity and weak on the part of the transaction which relates to the money.

A concerted effort is required to broaden the range of the relevant officers' interest from: (i) the drugs; to (ii) the money; to (iii) the business processes. The effort required encompasses a need to broaden education, encourage new skill development, recruit the right specialist support, and drive cultural change. The essential proposition is that a modern law enforcement operation cannot meet the challenges of organised crime without a willingness and ability to develop an understanding of organised crime as a business. The question is how it can be done. The method to be described below is clearly not the only way it can be done, but it is a way that is currently being tested in practice by Police Scotland.

Project Jackal was launched in June 2014 primarily as a means to encourage the capture of intelligence relating to OCG businesses and finances. The two principal areas of focus were cash flows and business networks. A toolkit was designed based around simple questions designed to encourage relevant police personnel to develop an awareness of these factors and record the intelligence that improved awareness in intelligence logs. In terms of generating intelligence logs the early signs have been encouraging. The impact on organised crime of improving understanding of business structures will hinge upon developing workable methods for using that intelligence in ways that tell valuable things about organised crime that can translate into tangible results in terms of convictions, disruptions and asset recoveries.

The basis used for the transition from a raw collection of business oriented intelligence to an effective analysis of the strengths and weaknesses of an organised crime group or network is a matrix arrangement adapted from that developed by Ostervalder and Pigneur in their manual for generating business models, *'Business Model Generation'*³⁹. The attraction of the approach taken in that book is that it uses a matrix concept that, in the authors' words is *'simple, relevant and intuitively understandable, while not oversimplifying the complexities of how enterprises function'*. This is a prescription that seems ideally suited to the law enforcement community in respect of the challenge of tackling organised crime: a construction that everyone can relate to and contribute to, yet capable of grasping and making sense of the relevant complexities.

Such a model offers possibilities of developing a language that can be shared across the many platforms in terms of agencies, nationalities and territories relevant to the realities of organised crime business. It can in short be applied to any situation, any collection of organised crime groups forming a network, any organised crime process that constitutes a profit stream. Whatever the local differences or variations in custom and method such a model will be able to accommodate them in the field of organised crime, just as the original conception of the model by Ostervalder and Pigneur was designed to accommodate any kind of legitimate business. In their words: *'We believe a*

³⁹ Osterwalder, A. and Pigneur, Y (2010), *'Business Model Generation'* Wiley, London

business model can best be described through nine basic building blocks that show the logic of how a company intends to make money. The nine blocks cover the four main areas of a business: customers, offer, infrastructure, and financial viability. The business model is like a blueprint for a strategy to be implemented through organisational structures, processes and systems’.⁴⁰

The matrix arrangement used by Osterwalder and Pigneur to group these factors is shown in the matrix below, which has been adapted to make it more relevant to organised crime.

KP = KEY PARTNERS Accountants Lawyers Surveyors Logistics Bankers Landlords Suppliers Import/Export Agents Money Changers Fund Managers	KA = KEY ACTIVITIES Business Activity Criminal Legitimate Criminal service to legitimate customer Criminal service to criminal customer Legitimate service to criminal customer KR = KEY RESOURCES Access to specialised expertise commodity channels money laundering channels	VP = VALUE PROPOSITIONS Assessment of OCG ‘value proposition’ in terms of organisation, network or process <ul style="list-style-type: none"> • Competitive advantage • Distinctive capabilities • Strengths and weaknesses • Options and opportunities 	CR = CUSTOMER RELATIONS How do they look after their customers? How do they keep them? How do they get new customers? CH = CUSTOMER CHANNELS Routes to market How do they reach customer? Advertising and distribution channels	CS = CUSTOMER SEGMENTS Customer markets serviced: Legitimate Criminal Public Sector Private Individuals Foreign Criminal Partners
CS = CASH RESOURCES – Sources of working capital; sources of loan finance; recycling of criminal funds; co-investment of criminal partners		RS = REVENUE SPEND – Dividends; wages; cash exports; cash placements into the banking system; asset purchase; investment funds		

The key differences from the Osterwalder and Pigneur matrix is that along the bottom row ‘Cash Sources’ is substituted for ‘Cost Structure’ and ‘Revenue Spend’ is substituted for Revenue Streams. This is in order to match up the idea of cash flow through an organised crime group, network or process, with the intelligence capture efforts relating to cash described above.

The middle box seeks to gather together the principal themes and narratives emerging from appraisal of the contents of the boxes to the left and to the right of it under the heading ‘Value Proposition’, which is retained from Osterwalder and Pigneur. In such a way the key strengths and weaknesses of group, network or process can be identified suggesting options and opportunities for suitable exploitation by law enforcement and partner agencies.

⁴⁰ Ibid, p15

The other boxes remain as Osterwalder and Pigneur designed them for legitimate businesses. The main body of the matrix divides into a left - right division between product supply processes on the left and customer facing processes on the right.

The matrix can initially be used as a sorting box for relevant intelligence and analysed in terms of the principal characteristics associated with each box heading. For example, in respect of a straightforward drug trafficking process involving an OCG, the partners required to establish the business are in the far left box under KP (Key Partners); the key activities of the group such as import and distribution are under KA (Key Activities); and the supply sources of the drugs are under KR (Key Resources. On the right hand side, the methods used to exercise discipline and maintain market share are grouped under CR (Customer Relations); the warehousing and distribution networks accessed and used to generate the relevant sales revenues are grouped under CC ('Customer Channels'); and the various end markets served are grouped under CS ('Customer Segments').

The box that requires a degree of analytical thought is VP (Value Proposition). The challenge here is to bring together the information contained within the matrix in such a way that explains one basic thing: why is this group/network/process profitable? To help answer this challenge the Kay-inspired⁴¹ distinctive capabilities can be invoked. What are the factors which provide distinctive capability in terms of architecture, reputation and innovation? How do these factors translate into exploitable strategic assets?

A guide to generating meaningful answers in terms of distinctive capabilities is provided in terms of the questions posed in the respective matrix segments above. The questions are not necessarily definitive and of course may vary in respect of contexts - one of the key benefits of this approach being flexibility. The essential proposition, however, is that there is no organised crime group, no organised crime network, and no organised crime process that cannot be meaningfully subjected to this analysis.

A further advantage of this approach is that it ought to drive continuous improvement in the quality and quantity of relevant business intelligence sourced on organised crime across the EU territories. The matrix offers a natural collaborative platform and the use of it will encourage the upgrading of intelligence gathering efforts through the identification of conspicuous systemic gaps and the competitive effects within the EU law enforcement community of natural peer pressure.

But what of the products? A better understanding of business process enables improved capture of intelligence relevant to the formation of money laundering cases and legislation designed to punish direction and involvement in organised crime. A better understanding of key supply and distribution networks enables targeted programmes of disruption to be constructed in ways that can more accurately predict punitive effect and displacement fall-out. There will be a direct positive impact on the amount and value of criminal assets and property that comes within reach of the various criminal and civil asset recovery mechanisms. There is a basis for more effective integration of anti-OCG activity with tax enforcement measures both within and across borders. There is finally the ability to generate narratives that can influence participants' and enablers' perspectives of the risks versus the rewards of getting involved in organised crime. In this sphere, credibility is important.

⁴¹ Kay, *ibid*

These comprise a worthy and ambitious set of aspirations. What are the obstacles that might be encountered and have to be overcome before they can be reasonably assumed to be capable of translation into reality? In order to grasp what these might be there is a need to delve deeper into actual experience.

5. Illustrations and Examples: What are we seeking to show with these examples? We want to emphasise the key points of weakness and to identify how these can be effectively addressed. Can we show how understanding OCGs business structures can aid better understanding? And can we suggest appropriate remedial action on the back of that understanding that will be consistent with EU law enforcement and EU social objectives re Organised Crime?

The normal difficulty in providing examples in the field of organised crime is the extent to which any lessons that can be drawn are limited to the circumstances of their individual characteristics. The framework provided, however, ought to be applicable to any set of circumstances if it is to offer value as a tool in this field. The examples provided therefore vary in range in terms of size and economic significance, moving from street level drug dealing to international financial arrangements which traverse the globe. They are anonymised but influenced from relatively recent experience within law enforcement in Scotland: a country of some five million people situated at the north-west fringe of EU territory.

Anonymised example 1

A taxi driver in the West of Scotland is supplied periodically with a batch of 50x 1g bags of cocaine. After he sells the batch at £50 per bag he keeps £200 and returns the rest of the money to his supplier - equivalent to a turnover, net of sales cost, of £2,300 per batch. It usually takes the taxi driver 1-2 weeks to sell the bags, which infers the supplier turnover, net of sales cost, earned from this one retailer could be up to £60,000 per annum. This compares with the price of compressed cocaine, i.e. cocaine in the form handled by wholesalers, of between £40,000 and £50,000 per annum. This gives a misleading picture, however, of the actual wholesale margins realised as it does not take into account dilution of the product. The EMCDDA pilot study on wholesale drug prices in 2011⁴² indicated that, once adjustments to purity levels were taken into account, 1kg of wholesale cocaine translated to 6kg at retail level. This suggests that it is the process of dilution that generates the main portion of the substantial profit margins earned by the wholesaler.

The local wholesaler is the dominant localised crime group based around two dominant families. The control of the cocaine supply market is enforced through reputation and, when the occasion demands it, physical retribution against any wholesale competition. The physical manifestation of the profits earned is in the form of cash, often literally very dirty cash and the ability to manage that cash is as significant and important an activity for the crime group as the sourcing, transport and distribution of the commodity. In this particular example the following routes are used:

1. Storage of cash in residential safe houses used as drop points. The business reason for this relates to how suppliers are paid. Consignments of drugs from Liverpool (A major import centre for Class A drugs in the UK) are delivered to drop points on credit with settlement made a week later in cash. The local crime group is therefore able to fund its stake in the process through retail profits earned on the risk that the cash stashes are raided and seized

⁴² EMCDDA (2011), *'Pilot Study on Wholesale drug prices'*, *ibid*, p 22-23

rendering it liable to substantial drugs debt. The ability to obtain the required credit is clearly also a function of the drug groups reputation for reliability.

2. The profits retained by the local drugs group are also in cash, but need to be quickly and efficiently laundered. The routes taken in this example are:
 - Retail outlets controlled by the OCG: the drugs money is used to purchase supplies for sale through a pub, which then generates excess profits (i.e. from selling products it hasn't actually paid for), which it then suppresses by invoicing for non-existent supplies paying wages to individuals who don't actually do any work.
 - Customer facing businesses controlled by the OCG which have access to legitimised revenue schemes. Energy saving improvements to houses, sold as part of a 'Green Deal', are funded by government subsidy and/or schemes sponsored by the principal energy companies. The OCG establishes a company which uses its domination of local housing scheme areas to access a customer base and its access to drug monies to pay for establishment costs. It obtains the necessary regulated 'Green Deal' dealer status through the reputation of the installers it sub contracts the work to. The OCG company receives the subsidy or 'Green Deal' money from the subsidy source and pays the sub-contractors in whole or in part with drugs money. The OCG controlled company thereby accumulates wealth in its balance sheet, which essentially acts as a legitimised 'store of value' for drugs profits.
 - Members of the OCG acquire properties using mortgages supplied via a corrupt financial advisor/broker using false income details. The property loans are then serviced with drugs profits distributed or 'smurfed' through family members and other individuals associated with the OCG.

The activities of this group can be assessed in terms of the business model matrix already introduced as follows:

Key Partners – Liverpool drugs source; suppliers to the pub; sub-contractors to the Green Deal business; the corrupt financial adviser.

Key activities – Wholesale supply of class A drugs; operator of pub retail outlet; proprietor of 'Green Deal' business; property acquisition.

Key Resources – Supply credit from Liverpool; cash liquidity; cash management process; distribution network; people network capable of exercising influence and control over certain local markets.

Customer Relations – Control over local drugs distribution network; Capability to provide legitimate face to public retail markets (i.e. pub and Green Deal company).

Customer Channels – Drugs distribution network; local blocks of consumers accessed through spread of OCG network.

Customer segments – Retail drug market; local drinkers; local householders across concentrated areas of public housing.

Given these factors, the essential **strengths and weaknesses** of the OCG can be discerned in terms of its distinctive capabilities:

Architecture – The relationship with the Liverpool supplier is critical and susceptible to interruption through cash seizure; the relationship with legitimate suppliers and sub-contractors offers opportunities for proactive disruption; access to legitimate mortgage funds is susceptible to exposing the abuse of mortgage applications by the corrupt financial adviser.

Reputation – It is reputation that underpins the OCGs ability to obtain drugs supply on favourable terms, enables it to exercise discipline over the relevant retail markets, discourages competition in both legitimate and illegitimate business activity, enables access to and influence over substantial end consumers of legitimate products such as alcohol and energy saving home improvements;

Innovation – The move into new legitimate markets such as the ‘Green Deal’ industry is a measure of strength and flexibility, and the extent to which it can access within this context access to consumer markets and access to a network of sub-contractor suppliers;

The **strategic asset** the OCG enjoys is its ability to dominate a local territory. This is founded on the above factors and also feeds back into them, principally in relation to reputation, which in turn supports the strength of the architecture and the ability to innovate. This suggests that a concerted programme to cut off the ability of the OCG to function in legitimate markets will impact on its reputation and potentially hamper its ability to deal efficiently in criminal markets as well.

An approach to examining this OCG business model as a whole in the context of a law enforcement partnership involving police and other relevant agencies might consider the following interventions: to the pub landlord; to the trading standards bodies responsible for Green Deal regulation; to the relevant financial authority regulating the mortgage broker. In addition there may be scope for direct action which targets the OCG as a business: for example, the prosecution of the applicants for the mortgages obtained using false information. An impact on criminal participants further up the line is thus achieved, which may offer a more substantive response than exclusive reliance on drug seizures and the prosecution of certain of the end-users of the relevant network for drug trafficking.

The analysis also offers ways in which the process of drug supply can be investigated in relation to the other links in the criminal supply chain it links up with. In this example, undermining the ability of the OCG pay for its supplies hampers the business model of the Liverpool suppliers. The extent and nature of the business connections can clearly also be much more sophisticated, and it is usually in respect of the transit of money, rather than the trafficking of the drugs, that the gateway to understanding the extent of the relevant networks is opened.

Anonymised Example 2

The route of the cash taken in respect of another Scottish OCG suspected to be involved in the trafficking of cocaine involved the physical removal of cash out of the country into Spain. It is believed to have been transported by lorries commissioned by a logistics company established in Barcelona which hired Slovakian drivers for the relevant journeys. The other purpose of the

Barcelona based logistics company, established by an individual from Glasgow recently released from prison, was to provide documentation for transports of mobile phones for use in the execution of a carousel type VAT fraud. The commissioning of that fraud was engineered by another OCG with international reach but led by another individual from Glasgow of Asian origin. The fraud required the establishment of a labyrinthine network of companies which also served as a mechanism for the laundering of the drugs funds believed to have been fed into the system via the Spanish banking system. These monies ended up in accounts in Dubai, from where they were transferred to property companies set up by the original OCG group in Scotland.

The properties identified and acquired were mainly in the central belt of Scotland. The planning permissions attaching to these properties were for industrial usage. One of the key members of the OCG was alleged to have had a corrupt influence on an individual in the local planning department. The apparent intention was for these properties to acquire commercial and /or residential levels of planning permission through this influence and thus realise a substantial uplift in the relevant property values.

The funding mechanisms used to acquire these properties involved taking out bridging loans with a newly established Scottish finance company which had suddenly materialised in the local Scottish funding market with a balance sheet showing it had funds of some £250 million to invest. A public profile was cultivated by this company, highlighted by sponsorship of a high profile rugby tournament, which was televised nationwide. The TV pictures could not help but give prominence to its trading name since it was painted all over the pitch.

The business model conveyed to the funding investors was the provision of property backed loans offering premium rates of income consistent with those commonly earned in the loan bridging market. In reality many of these loans were advanced at inflated valuations with little or no prospect of them offering any tangible return. Why did the funding company offer these loans? The sourcing of some of the funds pointed to an answer. The funding of the feeder funds through which investor funds were transmitted involved the co-mingling of genuine investor funds with funds of dubious source transmitted through custom agent nominee accounts at Corkairport.⁴³

The individual at the centre of the bridging loan company was in the process of attempting to obtain a banking licence in an EU territory when he was thwarted by direct intervention efforts with the relevant local authorities. Had this attempt succeeded the scope for such a bank warehousing criminal profits across Europe would have been extensive.

The above is not a just a story but the outline of a business process which involves the linking up of business units in accordance with distinctive capabilities for mutual advantage. The drivers behind the link-ups may be influenced by connections and geographical proximity of the main players, but the principal driver of the relevant associations is economic. These are business relationships based on the deployment of skills, connections and funding which are directed and managed in accordance with business objectives.

It is not just the constituent parts of the process in the form of the various OCGs involved that can be analysed in terms of the business model framework, but the business process itself. There are weak

⁴³ Wall Street Journal, (2014) 'How a \$600 million Hedge Fund Disappeared', 12 December 2014, New York

aspects of the process which could be identified and exploited : such as the exposure of the corrupt planning official, the exposure of the embezzlement of investment funds in the bridging loan company, the exposure of the core tax fraud which resulted in the prosecution of some, although not all, of its main perpetrators.

The influence of organised crime across the EU is characterised by these kinds of business connections into processes which offer efficiencies and ways to infiltrate legitimate markets. It is clearly in the interests of the EU and its constituent members to frustrate and break these processes. The extent to which this can be done effectively on a piecemeal basis across borders is still likely to be restricted by jurisdictional issues and difficulties in transmitting intelligence and evidence across borders.

This gives the international OCG community an in built advantage which it can exploit through covering its tracks in ways that are difficult to unravel once established and which offer it ways of corrupting significant economic sectors to the detriment of the competitiveness of markets and enterprise opportunities for its participants. There needs in short to be a ramping up and upgrading of the international means and methods deployed against OCG sponsored business to restrict and roll back its influence.

What form should that activity take? In essence, the networks of OCG business activity need to be mapped, monitored and assessed in terms of their strengths and weaknesses. The product of that activity should be co-ordinated measures involving cross border co-operation of law enforcement agencies and their partners in order that options and opportunities are first appreciated and understood before being exploited to optimal benefit of the societies, economies and democracies they serve.

Feasibility of Routine Mapping and Monitoring of OCG business structures involved in money laundering activities and contribution to understanding of drugs market at EU level: What are the practical obstacles –in terms of culture, resources and politics - to getting such an approach accepted and getting it implemented across the EU? To what extent can they be overcome and how?

Mapping the distinctive capabilities of both organised crime networks and processes may well have the potential to provide an objective information basis enabling processes of triage which offer more effective applications of resource and effort and the achievement of tangible benefits across the EU territory. Realising that potential, however, will require the establishment of the necessary mechanisms and protocols to make this happen. Institutional structures are in place via Europol and other bodies which may provide a suitable home for what amounts to a new law enforcement discipline, but challenges in practice are still likely to arise in respect of the recruitment and retention of the relevant skill sets, and their integration into law enforcement cultures.

That some form of culture change may be required to accommodate the relevant skill sets is less a function of anti-intellectual bias within law enforcement as an understandable practical concern throughout criminal justice systems to make sure that scarce resources are seen to be deployed in ways which can be defended, which in practice tends to mean in ways which deliver easily reportable results. In this context, the key issue influencing relevant decision making processes in criminal justice systems is the likelihood of obtaining a conviction. In jury based systems, cases involving financial complexity have a reputation of being difficult to prosecute. Whether or not the

impression is well founded,⁴⁴ the existence of such an impression can have an influence right down the core of a criminal justice process as to what cases can be prosecuted and in what form they can be prosecuted.

It would be unacceptable for EU law enforcement to accept a situation whereby complexity is allowed to define the limits of action in this area, yet day to day experience indicates that deployed methods of organised crime are indeed becoming more and more complex. There is an obligation therefore to establish ways of addressing difficulties established by previous experience and to do so in a way that is capable of crossing borders both geographical and in terms of intellectual discipline.

The value of complexity to the criminal world is founded on an ability to fragment units of the criminal business process in such a way that the complete process is beyond the reach and grasp of any one agency. That is bound to have a discouraging effect on the motivation to act within any one agency - and indeed, on a broader canvas, it does not assist financial institutions seeking justification for the effort and money expended on suspicious activity reporting. One of the founding principles of Jackal was that it should offer a means whereby relevant information about OCGs could be transmitted to collaborating agencies on a basis that encouraged co-operation, intelligence sharing and the creation of joint action initiatives. Sharing understanding of the whole process with those parties affected by it enables pooled understanding of the criminal business and encourages and enables the creation of strategies to counter its harmful effects in ways that meet the varying objectives of the collaborating participants.

Whereas it has been principally academia that has suggested the benefits that could be obtained through the application of business strategy analysis to organised crime, the regular complaint from that quarter is that access to the relevant data is too restricted⁴⁵ for the relevant skills to be applied to it. The nature of the material and its sources are always likely to represent a problem for external assessment, which would suggest that the alternative course must be to recruit and grow such expertise within Law Enforcement.

There would be myriad problems of harmonisation to be overcome if this was not done on a supra-national basis. It would be naïve to suppose that all law enforcement agencies in all countries would simultaneously accept and take action to develop what amounted to a new discipline in a coordinated fashion that enabled effective collectivisation and exploitation of material. Some law enforcement agencies may consider it an unwelcome intrusion on what they consider to be successful established practices, other might consider that the attempt to incorporate into law enforcement agencies individuals with the necessary backgrounds in business strategy analysis to be unrealistic, especially in the context of continuing deep budget cuts. Harmonisation of attitude would be the first challenge to meet before realistic prospects for harmonisation of practice could emerge.

This is an approach, however, that provides the necessary basis for extending the necessary collaboration across international borders. Its application is not dependent on any one particular

⁴⁴ A useful discussion of the relevant points in respect of UK jury trials is provided in, Staple, G. (2005), 'Juries in cases of serious and complex fraud', 'The Barrister', issue 25, www.barristermagazine.com

⁴⁵ Levi, M. (2012), *'The Patterns, Organisation and Governance of Economic Crimes: Enhancing the Evidence Base'*, ESRC Impact Report, Economic and Social Research Council, Swindon, UK

criminal justice system since it is designed to improve understanding of the matters to be investigated and does not require any variations or changes of criminal justice process. It can therefore be accommodated within those European jurisdictions which use examining magistrates, which already have a tradition of seeking interdisciplinary assistance throughout the various stages of the investigative process.

In terms of developing in house specialist expertise, encouraging developments are already taking place within EU law enforcement. Networks of forensic accountants employed by EU law enforcement agencies are currently being established and these might be regarded as providing evidence that new disciplines can be established within Law Enforcement. The needs which drove recruitment of professionally qualified accountants, and the bases upon which their roles have been interpreted, has naturally varied across agencies; but the likelihood over time is that there will be a measure of convergence. The speed and direction of the necessary processes left to their own devices, however, may not represent the optimal route to achieving the necessary deployment of the right skills in the right places for law enforcement, if the gap between the organised crime capabilities and law enforcement capabilities is not to widen further.

A utopian ideal would be the establishment of an EU/Europol advisory resource which had the resources, skills and intelligence capabilities to construct a comprehensive mapping product of major organised crime groups and processes across the EU. The value of that intelligence product would be shown to best effect in each of the constituent jurisdictions through support of the local law enforcement agency. A model, in other words, which has direct parallels to existing resources and processes used to track patterns of drug trafficking. The challenges to establishing such a utopia are therefore not technical, but cultural and financial.

The principal beneficiaries of hurdles created by cultural inflexibility are organised crime groups and the processes they run. Overcoming these kinds of hurdles is a matter of how fast the pace of progress is set by policy makers. The more immediate set of hurdles facing the set-up of such an EU resource would be financial. But the value of the new facility ought to be able to justify itself on the basis of a process of valuation for the impact its products have on the achievement of results, which in most modern law enforcement agencies translates to the achievement of targets. The essential proposition therefore ought to be that, on one level, this resource will better enable law enforcement agencies to achieve their targets. On another level, it will provide a means for assisting the setting of appropriate targets in the first place; so that they are not over narrow, and even overly nationalistic, in their intention and effect.

Recommendations – What do we need to do now to get this approach up and running and delivering results? What can we expect in terms of problems, difficulties, and hurdles? And what can we realistically expect to achieve in terms of successes that will make the effort to overcome those difficulties worthwhile in the context of EU and in particular EMCDDA objectives?

The recommendations listed below take as a given the overall case for establishing a resource that maps the business reach and structures of organised crime groups, networks and processes. The challenge then becomes one of implementing a practical programme that will deliver the envisaged benefits.

The model outlined above has a nationalistic bias as it is influenced by the successful establishment of an OCG mapping project in Scotland. Project Jackal essentially seeks to eventually turn the mapping process we have now - which is strong in terms of associations, drug trafficking networks and assessed harm - into a more comprehensive product which accurately maps the business reach and capabilities of OCGs. That ambition infers the need to establish connections to similar mapping type efforts across Europe and beyond; the relevant arenas of activity being assuredly international - however disparate and diverse manifestations of organised crime at street level might be.

An 8-point development programme might look like this:

1. Establish a pilot project with a remit and relevant funding to map the principal organised crime group networks and business processes across the EU territory (t);
2. Recruit and fund a core team of law enforcement, intelligence and business strategy professionals to design and implement the pilot study and a smaller team of specialists to undertake it (t+ 3 months);
3. Undertake the pilot study (t+15 months);
4. Share initial results with Europol and national Law Enforcement agencies with a view to determining a resilient set of reporting standards and formats and an on-going programme that will deliver envisaged results (t+18 months);
5. Identify key connections and intelligence exchanges with key law enforcement territories beyond EU shores which have significant organised crime interfaces with the EU ((t+18 months)+6 months);
6. Develop a training programme to disseminate the core business strategy analysis skills (t+6 months);
7. Publish a report with a view to obtaining buy in of all significant EU and national partners (t+24 months);
8. Develop a programme for implementation as integrated core feature of national and EU strategy against Organised Crime ((t+24 months) + 12 months)

The intention of such a programme would be to deliver plausible and credible counter measures capable of affecting organised crime where it is arguably and ultimately at its most damaging across the EU - the infiltration of legitimate business and abuse of legitimate markets.

Conclusions

1. The nature of the modern threat to EU territories posed by organised crime requires a law enforcement response capable of understanding its business processes, identifying its strengths and weaknesses and taking suitable action that will protect EU communities from its harm and creeping influence;
2. The inhibitors within criminal justice systems that serve to prevent effective action being taken against organised crime business structures and processes derive from intelligence gaps, the insights necessary to set suitable intelligence requirements and the specialist resources and methods required to exploit them;

3. This paper has suggested an approach which sets an appropriate context for the gathering of relevant intelligence, provides close specialist support to relevant intelligence gatherers, and suggests a simple method for its effective evaluation and exploitation;
4. The effective application of such an approach across the EU will encourage the establishment of a supra-national process of continuous improvement of intelligence gathering and exploitation in this field which will offer improved law enforcement capability against the more complex, and potentially most harmful, features of modern organised crime business structures and processes.

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